



Bail Slip

The Appellant / Accused (1)Mohan, S/o Sangi Gounder, (2) Sangi Gounder, S/o. Adaikkala Gounder, (3) Nallammal, S/o. Sangi Gounder were released on bail, vide order 27/02/2014, made in MP(MD) No.1/2014 in CRL A(MD)No.82 of 2014.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.11.2019

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

CRL.A(MD)No.82 of 2014

1.Mohan
2.Sangi Gounder
3.Nallammal

: Appellants / Accused 1 to 3

Vs.

State represented by
The Inspector of Police,
All Women Police Station,
Manapparai, Trichy District.
(Crime No.13 of 2011)

: Respondent / Complainant

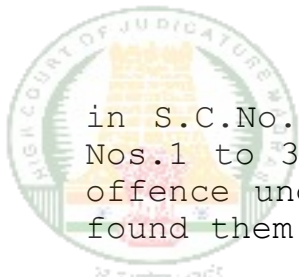
PRAYER : Criminal Appeal is filed under Section 374 (2) of Criminal Procedure Code, praying this Court to set aside the judgment and conviction dated 20.02.2014 by the learned Sessions Judge, Mahila Court, Tiruchirappalli, in S.C.No.53 of 2013 and acquit the appellants.

For Appellants : Mr.AR.L.Sundaresan, Senior Counsel
for Mrs.AL.Gandhimathi.

For Respondent : Mrs.S.Bharathi,
Government Advocate (Crl.Side).

JUDGMENT

This Criminal Appeal is arising out of conviction and sentence imposed by the learned Sessions Judge, Mahila Court, Tiruchirappalli
<https://hcservices.ecourts.gov.in/hcservices/>



in S.C.No.53 of 2013, dated 20.02.2014. The appellants are accused Nos.1 to 3 in S.C.No.53 of 2013 and they have been charged for the offence under Sections 376, 417 and 506(ii) IPC and the trial Court found them guilty as follows:

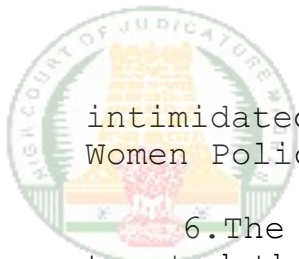
Accused	Penal Provision	Punishment
A1	376 IPC	12 year Rigorous Imprisonment and fine of Rs.1 Lakh in default 1 year Simple Imprisonment.
	417 IPC	1 year Rigorous Imprisonment and fine of Rs.5,000/- in default 3 months Simple Imprisonment.
A2 and A3	506(ii) IPC	4 years Rigorous Imprisonment and fine of Rs.5,000/- Simple Imprisonment.

2.As against the conviction and sentence imposed by the trial Court, the accused 1 to 3/appellants have preferred this Criminal appeal.

3.The case of the prosecution is that P.W.1/complainant, namely, Mallika and the first accused are relatives. P.W.1 was studying teacher training Course and the first accused was studying M.E. in a private college. Since they are close relatives, they loved each other over a period of three years.

4. On 17.04.2011, when the complainant (P.W.1) was alone at her home, the first accused came to her house and made a false promise to marry her, committed rape on the defacto complainant. They also continued their physical relationship on the subsequent days on 18.04.2011 and 19.04.2011. Due to that, the defacto complainant become pregnant and when it was informed by P.W.1 to the first accused, he took her to a private hospital, namely, GKM Hospital at Manapparai to terminate her pregnancy. The Doctor, namely, Mrs.Gandhimathi, who attended P.W.1 refused to terminate the pregnancy and insisted the consent of her parents. At that time, in the hospital, P.W.4, Banumathi, who is also a relative of P.W.1, saw the first accused along with P.W.1 enquired them, P.W.1 also revealed their illegal relationship and pregnancy to P.W.4.

5.On the next day, the first accused gave some tablets to P.W.1 and by consuming the same, the pregnancy of P.W.1 was terminated. From then, the first accused evaded P.W.1 and her distress was noticed by her parents and questioned. Thereafter, P.W.1 revealed the entire episode to her parents. Thereafter, P.W.1 along with her parents went to the first accused's house and narrated the incident to the second and third accused, who are parents of the first accused and requested them to arrange for marriage between their daughter (P.W.1) with the first accused. The second and third accused refused to arrange the marriage, originally



intimidated them. Therefore, P.W.1 lodged a complaint before the All Women Police Station, Manapparai on 21.08.2011 at 01.00. p.m.

6.The Police Constable (558), who received the complaint treated the same as petition enquiry in CSR.No.25 of 2011 and issued a receipt. The complaint was placed before the Sub-Inspector of Police (P.W.9) for enquiry and P.W.9 after perusing the complaint registered a case in Crime No.13 of 2011, as against the accused for the offence under Sections 376, 417, 420 IPC. The second and third accused were added as accused for the offence under Section 506(ii)IPC.

7. The (P.W.1) was referred for medical examination to the Mahatma Gandhi Government Hospital at Trichy. The Dr.Boovathi (P.W.5) attended the P.W.1 on 08.09.2011 at 11.20.am and issued the accident register (Ex.P.2).

8.The first accused was arrested by the Sub-Inspector of Police (P.W.9) and he was also referred for medical examination. Dr.Nehru, of KAP.Viswanatham Medical College Hospital (P.W.6) Trichy attended the first accused and he issued certificate (Ex.P.3) that the first accused is potent.

9. Further investigation was taken over by the Inspector of Police /P.W.10, namely, Tamizharasi from 05.10.2011. She also visited the place of occurrence and also examined the witnesses. She also examined the Doctor, namely, Gandhimathi at GKM Hospital at Manapparai on 18.11.2011 and recorded her statement, but Dr.Gandhimathi was not cited as a witness in the final report.

10.The learned Judicial Magistrate, Manapparai took the final report on file in P.R.C.No.3 of 2013 and committed the case to the Court of sessions on 14.03.2013. The case was bound over to the Sessions Judge, Mahila Court, Trichy and taken up for hearing in Sessions Case No.53 of 2013.

11. During the trial, 10 witnesses were examined on the side of the prosecution and six documents were marked as Exhibits. The available evidence from the prosecution is as follows:

11.1. P.W.1 is the victim girl/ defacto complainant and she speaks about the incident and her complaint (Ex.P.1).

11.2. P.W.2 is the father of P.W.1 and he speaks about the attempt taken by them to plead the first accused for the marriage and about the intimidation made by the second and third accused.

11.3.P.W.3 is the mother of P.W.1 and the wife of P.W.2, who has accompanied P.W.1 and P.W.2 to the house of the accused and she corroborate the evidence of P.W.2.

11.4. P.W.4/Banumathi is a relative of P.W.1 who witnessed the P.W.1 along with the first accused at GKM Hospital at Manapparai on



11.5. P.W.5 is the Doctor, namely, Poovathi in Government Hospital, Trichy, who attended the victim girl (P.W.1) on 08.09.2011 and also issued the accident register for P.W.1 in Ex.P.2.

11.6. P.W.6 is the Doctor, namely, Nehru of KAP.Viswanatham Medical College Hospital, who attended the first accused and issued the potency certificate (Ex.P.3).

11.7. P.W.7 is the constable, who produced the victim girl before the Doctor (P.W.5) and P.W.8 is the constable, who produced the first accused before the Doctor (P.W.6).

11.8. P.W.9, Latha is the Sub Inspector of Police, All Women Police Station, who registered the complaint of P.W.1 in Crime No.13 of 2011, and conducted the preliminary investigation. She also arrested the accused.

11.9. P.W.10/ Inspector of Police, All Women Police Station conducted the further investigation from 05.10.2011 and filed the final report.

12.The incriminating materials from the prosecution were put to the accused under Section 313 Cr.P.C, but the accused denied the same. Though they stated that there are witnesses on their side, they neither examined any witnesses nor produced any documents before the trial Court.

13.In conclusion of the trial, the trial Court found the appellants guilty and convicted and sentenced them to undergo imprisonment as stated supra, in para No.2. Aggrieved over the same, the present Criminal Appeal has been filed.

14. Heard Mr.AR.L.Sundareshan for Mrs.AL.Gandhimathi, appearing for the appellants and Mrs.Bharathi, learned Government Advocate (Criminal Side) appearing for the respondent/State.

Mr.AR.L.Sundareshan learned Senior Counsel made his submissions as follows:

14.1. The victim girl has stated before the doctor that she had physical relationship with the first accused on 17.04.2011 with consent. This evidence of Doctor (P.W.5) is also corroborated by the evidence of the Sub Inspector (P.W.9) that even during her enquiry, the victim girl (P.W.1) has stated that it was with her consent, she had physical relationship with the first accused hence, P.W.9 while registering the case in Crime No.13 of 2011, has not added the offence punishable under Section 376 IPC.

14.2.The victim girl/ defacto complainant is a Diploma Holder in Teacher training and the first accused was a M.E student and both are educated and also close relative, in order to coerce the first accused for marriage, she foisted the false case.



14.3. Though the occurrence was taken place on 17.04.2011, the complaint was lodged only on 21.08.2011, and the prosecution was not clear whether it was registered on 09.08.2011 or on 21.08.2011. The learned Senior counsel also pointed out that the correction found in the complaint (Ex.P.1).

14.4. The second and third accused, the parents of the first accused are added as accused as if they have criminally intimidated when P.W.1 along with P.W.2 and P.W.3 went to the house of the accused and insisted for marriage. But, there are contradictions between the evidence of P.W.1 to P.W.3, in this regard and their evidence would disclose that there was no such incident as alleged by the prosecution.

14.5. The entire prosecution case rest upon the evidence of P.W.1 that she had physical relationship with the first accused and conceived due to that and the first accused with an intention to abort the child took her to a hospital at Manapparai, namely, GKM Hospital run by one Dr.Gandhimathi. But though Dr. Gandhimathi was examined by the Inspector of Police (P.W.10), she was neither cited as a witness nor examined before the Court. The non examination of Dr.Gandhimathi is fatal to the prosecution.

14.6. According to P.W.4, on 17.05.2011, when she went to GKM Hospital, for the treatment of her child, she saw the victim girl (P.W.1) along with the first accused, at Chathiram Bus stand. But, the evidence of P.W.1 is contrary to the evidence of P.W.4 that she met the P.W.4 only in the Hospital at Manapparai. The P.W.4 is a close relative of P.W.1 and her conduct in not informing the P.W.2 and P.W.3 till the date of complaint shows that she is a put up witness to strengthen the case of the prosecution. The P.W.4, who took her child for treatment to the GKM Hospital, Manapparai was not aware whether the Dr.Gandhimathi was a Siddha or Allopathy Practitioner.

15. Per contra, the learned Government Advocate (Criminal Side) would submit that the case of the prosecution has been established by the evidence of P.W.1 to P.W.3 and also with the evidence of the Doctor (P.W.5). P.W.1 has specifically stated that she had physical relationship with the first accused and the Doctor (P.W.5) admit the possibility. The accused had the sexual relationship with the victim girl by making her to believe that he would marry her. Their attempt to abort the child was witnessed by P.W.4 and P.W.4 corroborate the evidence of P.W.1 and therefore, according to her, the prosecution has established its case beyond any reasonable doubt and the trial Court has also rightly found that the accused guilty and convicted them in accordance with law.

16. The learned Government Advocate further submits that a woman who is a victim of sexual assault is not an accomplice to the crime and her



evidence cannot be tested with suspicion as that of an accomplice. She relied upon the judgment of the Honourable Supreme Court of India in the case of State of Uttar Pradesh Vs. Chhotey Lal reported in (2011) 2 Supreme Court Cases 550, wherein the Honourable Apex Court held as follows:

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"22. In the backdrop of the above legal position, with which we are in respectful agreement, the evidence of the prosecutrix needs to be analysed and examined carefully. But, before we do that, we state, as has been repeatedly stated by this Court, that a woman who is a victim of sexual assault is not an accomplice to the crime. Her evidence cannot be tested with suspicion as that of an accomplice. As a matter of fact, the evidence of the prosecutrix is similar to the evidence of an injured complainant or witness. The testimony of the prosecutrix, if found to be reliable, by itself, may be sufficient to convict the culprit and no corroboration of her evidence is necessary. In prosecutions of rape, the law does not require corroboration. The evidence of the prosecutrix may sustain a conviction. It is only by way of abundant caution that the court may look for some corroboration so as to satisfy its conscience and rule out any false accusations.

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29. We shall now examine the evidence of the prosecutrix. The prosecutrix at the relevant time was less than 18 years of age. She was removed from the lawful custody of her brother in the evening on September 19.09.1989. She was taken to a different village by two adult males under threat and kept in a rented room for many days where A-1 had forcible sexual intercourse with her. Whenever she asked A-1 for return to her village, she was threatened and her mouth was gagged. Although we find that there are certain contradictions and omissions in her testimony, but such omissions and contradictions are minor and on material aspects, her evidence is consistent. The prosecutrix being illiterate and rustic young woman, some contradictions and omissions are natural as her recollection, observance, memory and narration of chain of events may not be precise.



30. The learned counsel for the respondent submitted that no alarm was raised by the prosecutrix at the bus stand or the other places where she was taken and that creates serious doubt about truthfulness of her evidence. This argument of the learned counsel overlooks the situation in which the prosecutrix was placed. She had been kidnapped by two adult males, one of them - A-1 - wielded fire- arm and threatened her and she was taken away from her village. In the circumstances, it made sensible decision not to raise alarm. Any alarm at unknown place might have endangered her life. The absence of alarm by her at the public place cannot lead to an inference that she had willingly accompanied A-1 and A-2. The circumstances made her submissive victim and that does not mean that she was inclined and willing to intercourse with A-1. She had no free act of the mind during her stay with A-1 as she was under constant fear.

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32. Although the lady doctor - PW-5 did not find any injury on the external or internal part of body of the prosecutrix and opined that the prosecutrix was habitual to sexual intercourse, we are afraid that does not make the testimony of the prosecutrix unreliable. The fact of the matter is that the prosecutrix was recovered almost after three weeks. Obviously the sign of forcible intercourse would not persist for that long period. It is wrong to assume that in all cases of intercourse with the women against will or without consent, there would be some injury on the external or internal part of the victim. The prosecutrix has clearly deposed that she was not in a position to put up any struggle as she was taken away from her village by two adult males. The absence of injuries on the person of the prosecutrix is not sufficient to discredit her evidence; she was a helpless victim. She did not and could not inform the neighbours where she was kept due to fear.

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35. We are not oblivious of the fact that the incident is of 1989; the prosecutrix has married after the incident and A-1 has a family of his own and sending A-1 to jail now may disturb his family life. But none of these factors individually or collectively persuades us for a soft option. Rape is a heinous crime and once it is established against a person charged of the offence, justice must be done to the victim of crime by awarding suitable punishment to the crime-doer."



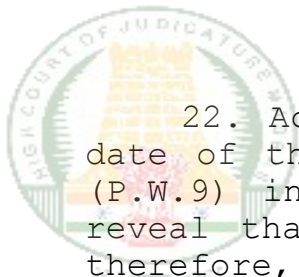
17. This Court paid its best attention and anxious consideration to the rival submissions made and also perused the available records.

18. The victim/ P.W.1 and the accused are close relatives and during the occurrence P.W.1 was studying teacher training and the appellant/accused was studying M.E. On 17.04.2011, there was a festival in their village and the parents of P.W.1 have gone to the festival and P.W.1 was alone in her house preparing her examination. Taking advantage of this situation, the appellant/ first accused entered the house of P.W.1 made her to believe that he would marry had physical relationship with her and they also continued their sexual relationship on 18.04.2011 and 19.04.2011. On account of that the victim/P.W.1 became pregnant and in order to abort the pregnancy, the victim girl and the accused went to a private hospital at Manapparai, where by chance P.W.4 witnessed them in the hospital.

19. The Doctor Gandhimathi of Manapparai Hospital refused to abort the pregnancy and insisted for the consent of her parents. Therefore, the appellant/accused arranged for some pills which aborted the pregnancy. When P.W.2 mother of the victim came to know about this affair, P.W.1 to P.W.3 went to the house of the accused and requested the appellant's parents to arrange the marriage of their son with P.W.1. The parents of accused/A2 and A3 refused to arrange for the marriage and also criminally intimidated them and therefore, the complaint was lodged on 21.08.2011 before the All Women Police Station, Manapparai and the case was registered.

20. The evidence of P.W.1 would show that she had physical relationship with the accused not on one occasion, on 17.04.2011 but also on subsequent two days. When the complaint was lodged before the All Women Police Station, Manapparai, the same was treated as petition enquiry in CSR.No.285/2011 by a Women Police Constable (558), but, the said Constable (558) was not examined by the prosecution. Thereafter, on the same day, the Sub Inspector of Police (P.W.9) registered the case at about 01.00 p.m in Crime No.13 of 2011 and even while registering the case, the offence under Section 376 of IPC was not added in the First Information Report (Ex.P.5).

21. The case was registered on 21.08.2011 and the victim girl was referred for medical examination on 08.09.2011 to the Doctor (P.W.5). The Doctor (P.W.5) of Mahatma Gandhi Government Hospital at Trichy in the accident register (Ex.P.2) mentioned as the victim girl had sexual relationship with his relative on 17.04.2011 with her consent. The statement of victim girl before the Doctor on 17.04.2011, after 17 days from the date of registration of the case would reveal that her relationship with the accused was only with her consent.

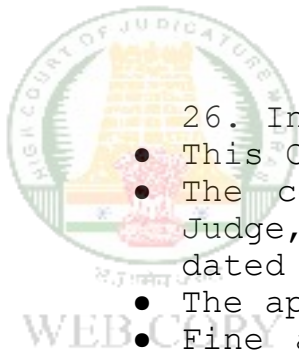


22. According to the doctor the age of the victim girl, as on date of the examination was 23 years. The Sub-Inspector of Police (P.W.9) in her evidence would admit that her enquiry with P.W.1 reveal that they had physical relationship only with consent and therefore, the offence under Section 376 IPC was not added, when the case was registered. However, the Inspector of Police, who filed the final report has added the offence under Section 376 IPC as if the accused had sexual relationship with false promise. But, the available evidence is that the victim girl had sexual relationship with her relative/first accused with her consent on three occasions and the complaint was also lodged after lapse of four months.

23. The prosecution has projected that on account of their sexual relationship, the victim girl got pregnant and in order to abort the pregnancy, they also approached a private Doctor, namely, Gandhimathi of GKM Hospital at Manapparai through the evidence of P.W.1 and P.W.4. The said private Dr.Gandhimathi though examined by P.W.10 on 18.11.2011, she was not shown as a witness in the final report. As pointed by the learned Senior Counsel the non examination of the Dr.Gandhimathi is a material defect on the side of the prosecution.

24. P.W.4 is a relative of P.W.1 and she said to have witnessed the accused and the P.W.1 in the GKM Hospital at Manapparai, by chance, when they came to the hospital for aborting the child. The conduct of P.W.4, in not disclosing to any one till her examination by police is doubtful. Moreover, there is a material contradiction in her evidence, where she met the P.W.1 and the accused on 17.05.2011. According to P.W.1, P.W.4 met them at Hospital, by chance, but the evidence of P.W.4 is that she met them at Chathiram bus stand, Trichy and all went together to Manapparai, when the victim/P.W.1 and the first accused went to the hospital for the purpose of aborting the pregnancy, the possibility of accompanying P.W.4 to the hospital from Trichy is highly doubtful. Further the purpose P.W.4 to visit Manapparai is to get treatment to her child but, P.W.4 is not aware whether the Dr.Gandhimathi is a siddha practitioner or an Allopathy practitioner.

25. The accused Nos.2 and 3 are added as one of the accused in this case that when P.W.1 to P.W.3 went to the house of the accused to insist for the marriage between P.W.1 and the first accused and at that time, the accused Nos.2 and 3 have refused to arrange the marriage and also intimidated. But there is no evidence when this occurrence had taken place and there is a contradiction whether they went along with the brother of P.W.2 or not. More over the complaint was lodged after 4 months from the date of occurrence. In the absence of date of occurrence as well as the belated complaint, it is not safe to convict the accused Nos.2 and 3 with the available evidence for the offence under Section 506(ii) IPC. A person who allege intimidation must have felt the same, but when the complaint was lodged after 4 months the conviction under Section 506(ii) IPC



26. In the result,

- This Criminal Appeal is allowed;
- The conviction and sentence imposed by the learned Sessions Judge, Mahila Court, Tiruchirappalli, in S.C.No.53 of 2013 , dated 20.02.2014, is set aside;
- The appellants / accused are acquitted of all charges;
- Fine amount, if paid, shall be refunded to the appellants / accused; and
- Bail bonds shall stand terminated.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

- 1.The Sessions Judge,
Mahila Court, Tiruchirappalli.
- 2.The Inspector of Police,
All Women Police Station,
Manapparai, Trichy District.
- 3.The Judicial Magistrate,
Manapparai, Tiruchirappalli District.
- 4.The Superintendent of Central Prison, Trichy.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Section Officer
Criminal Records
Madurai Bench of Madras High Court, Madurai. (2 - Copies)

+1 CC to M/s.AL .GANTHIMATHI, Advocate (SR-99580[F] dated 20/11/2019)

CRL.A(MD)No.82 of 2014
18.11.2019

das
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