



Bail Slip

The Appellant/Accused viz., Chinnu, S/o.Chinnakaruppan, was released on bail (accused not in jail) granted on 10.03.2014 made in MP(MD)No.1/2014 in Crl.A(MD)No.96/2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 21.08.2019

CORAM

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

Crl.A.(MD)No.96 of 2014

Chinnu

: Appellant/Sole Accused

Vs.

State rep. by its
Inspector of Police,
Ponnamaravadi Police Station,
Pudukkottai District.
(in Crime No.39/2006)

: Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374(2) of the Code of Criminal Procedure against the judgment passed by the Sessions Judge, Mahila Court, Pudukkottai in SC No.25 of 2013, dated 14.02.2014.

For Appellant : Mr.P.Ganapathi Subramanian
For Respondent : Mr.APG.Ohm Chairma Prabhu
Government Advocate (Crl.side)

J U D G M E N T

This Criminal Revision has been filed against the judgment passed by the Mahila Court, Pudukkottai in SC No.25 of 2013, dated 14.02.2014.

2.The case of the prosecution is that on 28.04.2006, the accused rapped the victim. The Inspector of Police attached to Ponnamaravadi Police Station, Pudukkottai District, has filed a final report against the accused examining the witnesses.

3.In the trial court, 13 witnesses were examined and 6 Exhibits were marked. When the accused was questioned about the incriminating circumstances, he denied the same. On the side of the accused, no witness was examined and no document was marked. The trial court convicted the appellants/accused to undergo 2 years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for a further period of 3 months.



Aggrieved by the judgment of the trial court, the appellant is before this court.

4. Heard both sides and perused the materials available on record.

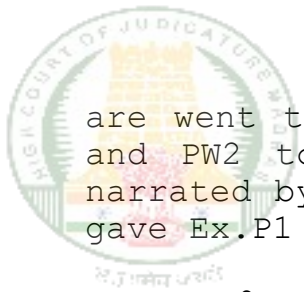
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5. The main contention raised on the side of the appellant/accused is that PW1 and PW2 categorically deposed that PW1 lodged a complaint with the respondent police on the very same date of occurrence and PW1 categorically stated that she went to the police station on the date of occurrence at about 2.30 pm and the complaint was prepared by one Kumar and PW1 signed the same and in this case, the complaint was lodged only on 01.05.2006 and this discrepancy creates a reasonable doubt regarding the very genesis of the case and the learned Sessions Judge failed to appreciate the fact that PW2 also deposed that she was examined by the police on the date of occurrence and she signed the same and hence, the prosecution failed to prove the complaint Ex.P1 in a manner known to law and there is every possibility of suppressing the earlier complaint in order to suite the claim of the prosecution case and the oral evidence of PW1 is not corroborated with the medical evidence and when PW1 and PW2 demanded money for the injuries sustained by them from the accused and when the accused refused to give the same, they falsely foisted the case and prays that the appellant/accused is entitled to acquittal.

6. PW1 is the mother of the victim and her husband gave Ex.P1 complaint. PW1 in her evidence stated that she was suffering from heart ailment and hence, she left her daughter in home and on 28.04.2006 at 11.00 am, the accused came to her mother's house and raped her daughter Veerammal and her daughter became unconscious and after recovery, she asked her who has committed the crime and for that, Veerammal replied that the accused raped her and after she returning from her work, her mother narrated the occurrence to her husband and thereafter her husband went to the police station and gave Ex.P1 complaint.

7. PW2 is the victim. PW2 deposed that on 28.04.2006 at 11.00 am, she and one Abi were sleeping in a cat in the workshop nearer to her house and at that time, the accused came and pulled her hand and when she resisted, he pressed the cloth in her mouth and raped her and Abi's mother came and the accused run away and then she narrated the occurrence to Selvi, the mother of Abi and after her mother returning from her work, she stated the occurrence to her and her father came to their house on 30.04.2006 and her mother stated the occurrence to her father and her father went to the police station and gave the complaint.

8. PW3 is the grand-mother of the victim. PW3 deposed that on the date of the occurrence at 8.00 am, the accused came to her house and she was sleeping in their house and for that, she replied that all



are went to do work and in the evening, she returned to her house and PW2 told that the accused raped her and the occurrence was narrated by PW1 and PW2 and after the father of the victim came, he gave Ex.P1 complaint to the police.

9.PW4 is the father of PW2. PW4 deposed that after he came to his village on 30.04.2006, his wife narrated the occurrence to him and then they went to the police station and gave the complaint. Hence, the evidence of PW2 is corroborated with the evidence of PW1, PW3 and PW4.

10.In this case, the Doctor, who gave treatment to PW2 was examined as PW11. PW11 deposed that on 04.05.2006, when she was on duty, PW2 was brought by the police and PW2 told her that on 28.06.2004 one person attempted to rape her and after examination, she gave Ex.P5 the Accident Register.

11.On perusal of Ex.P5, it is stated as follows:-

"No evidence of rape as there is no evidence of violence over the body or Ext. genetalia and also vaginal smear report given by Forensic Science Department, Regional Forensic Science Lab, Trichy, no evidence semen, Dated 13.06.06 RT No.211/2006 Bio/Tri/107/2006.

1.Presence of spermatozoa or semen in the vagina....

2.Presence of injuries on genitals.....

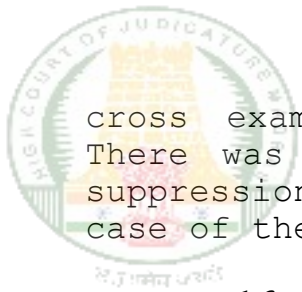
3.Presence of marks of violence on the other parts of body....."

12.In this case, PW11 the Doctor, who examined the victim stated that no external injuries were found on the body of the victim and further, there was no symptom for rape. But PW2 categorically stated the accused pulled her hand and and when she shouted, he pressed the cloth on the mouth of the victim and raped her. But the Doctor found no symptom for rape. From the evidence of PW2, it reveals that the accused outrage her modesty.

13.The learned counsel for the appellant/accused argued that earlier complaint was given by PW1, but it was suppressed by the prosecution and the suppression of earlier complaint is fatal to the prosecution.

14.In this case, PW1 to PW4 categorically stated that after PW4 returned to the home from the work and he came to understand the occurrence and then, he , PW1 and PW2 went to the police station and PW1 gave Ex.P1 complaint.

15.In this case, PW1 only gave the complaint. PW1 during her



cross examination admitted that Kumar was given the complaint. There was no earlier complaint was given. Hence, there was no suppression of earlier complaint and hence, it is not fatal to the case of the prosecution.

16. On careful perusal of the evidence of PW11, Doctor, it reveals that there was no evidence for rape. But as per the evidence of the victim, it reveals that the accused outraged her modesty.

17. Even though, the learned counsel appearing for the appellant/accused argued on merits, but he pleads some leniency on the appellant/accused and seeks modification of the punishment, since the accused is aged about 89 years.

18. In this case, the date of occurrence is 28.04.2006. The amendment Act only came into force in the year of 2011. In this case, the occurrence took place 13 years back and the accused is aged about 89 years.

19. For all the reasons stated above, this court is of the considered view that the trial court, after proper appreciation of the entire materials available on record, has given a correct finding, which does not require any interference by this court. However, considering the facts and circumstances of the case and also considering the age of the appellant/accused, the punishment imposed on the appellant/accused requires modification.

20. In the result, this Criminal Appeal is **partly allowed**. The punishment imposed on the appellant/accused for the offence under Section 354 IPC is reduced to 3 months RI. In other aspects, the findings of the trial court is confirmed. The period of sentence, if any already undergone by the appellant/accused shall be given set off under Section 428 of Cr.P.C. The appellant/accused, after adjusting the period of imprisonment already undergone, shall undergo imprisonment for the remaining period.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Sessions Judge,
Mahila Court,
Pudukkottai.



2. The Judicial Magistrate,
Thirumayam
3. The Inspector of Police,
Ponnamaravadi Police Station,
Pudukkottai District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Section Officer,
Criminal Section/Records,
Madurai Bench of Madras High Court,
Madurai(2 copies)

+1 CC to Mr.P. GANAPATHI SUBRAMANIAN, Advocate (SR-82979[F] dated
22/08/2019)

Judgment made in
Crl.A.(MD)No.96 of 2014
21.08.2019

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MK (12.11.2019) 5P 8C