

Bail Slip

That the Appellant/Accused namely Palanisamy S/o Pachamuthu was released on bail as per order of this Court dated 22.03.2013 in Crl. MP No.1/13 in Crl.A.No.167/13.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.03.2020

PRONOUNCED ON : 04.06.2020

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

CRL A.No.167 of 2013

Palanisamy

...Appellant

Vs.

State Rep by
The Inspector of Police
All Women Police Station
Perambalur

...Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the conviction and sentence of the learned Sessions Judge, Mahila Court, Perambalur passed against the appellant on 24.09.2012 in S.C.No.12/2012 wherein the appellant was acquitted for the offences under Section 294 (b) and 506(ii) of IPC, but the appellant was convicted for the offences under Section 376 of IPC and sentenced to undergo rigorous imprisonment for 7 years and to pay a sum of Rs.25,000/- towards fine, in default to under go one year simple imprisonment.

For Petitioner : Mr. C. Mohanraj
for M/s. K. Madhan

For Respondent : Mr. R. Ravichandran
Government Advocate (Crl. side)

JUDGMENT

The appellant / first accused has been convicted by the Sessions Judge, Mahila Court, Perambalur under Section 376 IPC and sentenced to undergo Rigorous Imprisonment for 7 years and to pay a fine of Rs.25,000/-, in default, to undergo Simple

Imprisonment for one year and acquitted him of the offences under Section 294-b and 506(ii) IPC and further acquitted A2 to A6 tried along with the appellant/first accused of the offences under Section 354 and 506(ii) r/w 34 IPC, by judgment dated 24.09.2012 in SC No.12 of 2012.

2. The final report has been laid against the accused persons by the respondent police alleging that A1 & A2 are the sons and A5 & A6 are the daughters of A4 and A3 is the wife of A2 and A1 and the victim were residing in the same locality and were lovers for the past four years and A1 was working abroad and had contacts over phone and on 03.11.2010, at about 2 p.m, when the victim was working alone in the field, A1 with the false promise to marry her, forcibly raped her against her will in a cow shed and pursuant to the same, on the same being apprised by the victim to her father, a panchayat was held on 04.11.2010 and the appellant/first accused agreed to marry her and the marriage was fixed on 12.11.2010 at Ariyalur Perumal temple and on 11.11.2010, at 12 p.m., both the victim and her father went to the house of the appellant / first accused to discuss about the arrangements of the marriage and the appellant came from his house and abused the victim and refused to marry her and A2 pushed her down and kicked her, A3 and A6 pulled her hair and slapped her with broom and also threatened her that they would kill her and A1 went inside the house and came with aruval and threatened her with dire consequences. Thus, according to the respondent police, A1 has committed the offences punishable under Section 376, 506(ii) IPC, A2 to A6 have committed the offences under Sections 354, 355 and 506(ii) r/w Section 34 IPC.

3. The Judicial Magistrate Court, Perambalur, on receipt of the final report, after furnishing the copies of the case materials to the accused, committed the case for trial to the Sessions court and thereafter, the Principal District and Sessions Court, Perambalur had made over the case to the Sessions Judge, Mahila Court for the disposal of the same in accordance with law.

4. The trial court, on an appreciation of the materials placed on record and after hearing the public prosecutor and the counsel for the accused, finding that a prima facie case has been made out against the accused persons, proceeded to frame the charges against the accused, namely, against A1 under Sections 376, 294-b and 506(ii) IPC, against A2 to A6 under Sections 354, 506(ii) read with Section 34 IPC . On being questioned with reference to the charges leveled against them, the accused persons had pleaded not guilty and claimed to be tried.

5. To sustain the charges put forth against the accused, P.Ws.1 to 17 were examined, Exs.P1 to P14 were marked and no M.O. has been marked. After the closure of the prosecution evidence, the accused persons were examined with reference to the incriminating evidence tendered against them by the prosecution witnesses and the accused persons had denied the same. On the side of the accused no oral evidence has been adduced and Ex.D1 has been marked and no M.O. has been marked.

6. On an appreciation of the materials placed on record, the trial court was pleased to convict and sentence A1 alone as aforesaid and acquitted the other accused persons of the charges put forth against them. Impugning the conviction and sentence imposed on him, the Criminal Appeal has been preferred by the appellant/first accused.

7. The victim examined as P.W.1, during the course of evidence, has deposed that on 03.11.2010, while she was working alone in the field, the first accused came and invited her for sex and she having refused to the same and further apprised A1 that she will be willing for the same only after the marriage, however, according to her, the first accused lifted her and took her to the cow shed and raped her forcibly without her consent and went away and thereafter, she had narrated the incident to her father P.W.2 and a panchayat was convened and A1 had agreed to marry her and their marriage had been fixed on 12.11.2010. Further according to her, after they made arrangements for the marriage, however, when they had been to the house of A1 on the previous day of the marriage, A1 had refused to marry her, chased her and assaulted her. Despite the cross examination of the victim, nothing has been culled out by the accused from the victim in support of the defence version. P.W.2, the father of the victim girl has also spoken to about the offences committed by the first accused against his daughter by having forcible sex with her on the date of occurrence and also deposed about the panchayat held subsequent thereto and the acceptance of the first accused marrying the victim and also deposed about the demand of 20 sovereigns of jewels, two wheeler and household articles by the accused and his family members and accordingly, deposed about his acceptance of the same one way or the other and spoke about the marriage fixed between the victim and the first accused and further testified about their approach to speak about the marriage on the previous day and the factum of the first accused refusing to marry the victim and the abuse and the threat made by the accused persons and his evidence has been found to be materially corroborative to the evidence of the victim and furthermore also supported with the evidence of the

panchayatars P.Ws.3 to 5. It is further noted that P.Ws.6 and 7, the signatories of the panchayat Mutchalika marked as Ex.P14, had also spoken about the same and accordingly it is found that the investigation has been done in the matter following the complaint lodged by the victim and the victim was also found to be subjected to medical examination and the accused was also subjected to medical examination to ascertain his potency and the Investigation officer, after examining the various witnesses, accordingly, proceeded to lay the final report against the accused persons.

8. As above pointed out, the appellant/first accused is alleged to have committed the rape on the victim on 03.11.2010 against her consent and will. No doubt, the complaint has been lodged by the victim only on 17.11.2010. It is found that the complaint lodged by the victim has not been registered immediately but only a receipt was issued and only after the enquiry, the FIR had been registered. It is mainly put forth by the counsel for the accused that there is a delay in the lodgment of the complaint and as the delay had not been properly explained, according to him, the same would only expose the falsity of the prosecution case one way or the other and therefore, according to him, on the basis of the inordinate delay in the lodgment of the complaint, the prosecution case should be rejected. However, considering the offence committed by the first accused against the victim and the victim had been subjected to rape by the first accused against her will and consent, taking advantage of they being lovers, and with the false promise of marrying her, accordingly, it is seen that the accused had committed the rape of the victim girl forcibly without her consent on 03.11.2010 and the same having been apprised by the victim to her father, resultantly, it is found that on the intervention of the panchayatars, the first accused had agreed to marry the victim and when as above pointed out, the panchayat convened with reference to the same had been spoken to by P.Ws.2 to 7 and thereafter when the victim and her father had approached the accused and their family members with reference to the arrangement of marriage on the previous day of the marriage, when the victim and her father had been abused and threatened with dire consequences and further when the first accused had refused to marry the victim, in such view of the matter, it is found that left with no other alternative, thereafter, the victim had chosen to lodge the complaint. In the abovesaid background, it is found that as rightly held by the trial court, the prosecution has explained the delay in the lodgment of the complaint and as held by the trial court, in the case of this nature, the delay in the lodgment of the complaint cannot be treated as a ritualistic formula to doubt the victim's case and when it is found that the victim has been subjected to traumatic experience on account of the sexual offence committed

against her, naturally, in villages woman like the victim would be terribly embarrassed to expose the incident by feeling humiliation, stigma and shame and also avoid talking to anyone on account of her family name being brought into controversy contempt and misfortune and accordingly, when as above pointed out, following the occurrence, the victim having narrated the above incident to her father and thereafter the panchayat had been convened and A1 had promised to marry her and believing the same, when the victim and her father had proceeded to arrange the marriage, however, when on the penultimate day, the accused and his family members had disowned the victim and refused to marry her and also abused them and threatened them with dire consequences, in all, being driven to the wall, the victim had chosen to lodge the complaint. In the abovesaid circumstances, the delay aspect projected by the counsel for the accused for rejecting the prosecution case, in my considered opinion, do not merit acceptance and had been rightly rejected by the trial court.

9. The appellant's counsel further contended that the doctor who had examined the victim had not noticed any injuries on the body of the victim and therefore, according to him, it is highly doubtful that the victim would have been subjected to forcible sex on the part of the appellant and on that basis contended that the victim's testimony should be disbelieved and rejected. However, considering the materials available on record, when it is found that the victim had been examined by the doctor concerned nearly 17 days after the occurrence, naturally, as rightly contended by the Government Advocate, there would not be any possibilities to note injuries in the private parts of the victim by the doctor who had examined her and in such view of the matter, the mere non detection of the injuries on the body of the victim would not falsify the case projected by the victim as such. As rightly held by the trial court, the absence of the injuries on the private parts of the victim would not vitiate the prosecution if there is other clinching evidence to prove the case. Equally, merely on the basis of the absence of injuries, it cannot be straightaway held that the accused has not committed forcible sexual intercourse on the victim. As above pointed out, the victim having been subjected to medical examination after 17 days of the occurrence, in such view of the matter, the absence of injuries in her body as informed by the concerned doctor, would not, in any manner throw doubt in the prosecution case.

10. The victim is found to be a major. The doctor who had examined the victim had deposed that the victim had informed her that she had previous intercourse twice. The abovesaid aspect had been pointed out by the counsel for the accused and contended that the victim girl had not deposed anything about

having sexual intercourse with the accused earlier and therefore, the doctor who had examined her having informed that she had been apprised by the victim as having previous intercourse twice, on that footing, would urge that the evidence of the victim should not be accepted and by way of the same, according to the counsel for the accused, the victim may be the consenting party for the incident. However, the abovesaid contention put forth by the counsel for the accused is unacceptable. Insofar as the incident is concerned, according to the victim, when she was in the field, the accused came and had forcible sex with her against her consent. Considering the place of occurrence, it is found that the same is lonely situated and surrounded by various crops and bushes and in such view of the matter, there is no possibility of anyone noticing the incident though the same had occurred in a broad day light. Therefore, it is found that the victim would only be the best witness to speak about the crime committed against her. Though the doctor who had examined the victim girl had stated that she was informed by the victim girl that she had sexual intercourse twice, the doctor had not deposed that the intercourse which the victim had was a voluntary one. In this connection, as held by the trial court, no cross examination had been made to the doctor by the accused. Therefore, as rightly held by the trial court, the mere admission of previous intercourse, by itself, would not lead to the conclusion that the victim may be the consenting party to the incident as sought to be made out by the counsel for the accused. As held by the trial court, the primary question that has to be considered is whether the victim's consent is free and voluntary with reference to the acts committed against her by the accused and considering the evidence adduced by the victim girl, when it is seen that the accused had committed the offence of rape against the victim girl by taking advantage of his acquaintance with her and also by promising that he would marry her, in such view of the matter, it is found that the victim had submitted and subjected her body to the accused and in such view of the matter, merely from the abovesaid evidence of the doctor that the victim had apprised her of having sexual intercourse twice, it cannot be held that the victim girl is the consenting party and thereby the accused had not committed the offence of rape put forth against him.

11. Merely because the victim girl had married subsequently to another person, that by itself, would not lead to the conclusion that the offence leveled against the accused is a false one. As held by the trial court, as far as the offence of rape is concerned, it is the offence committed not only against the victim but against the entire society and in such view of the matter, the above contention put forth by the

counsel for the accused for rejecting the prosecution case does not merit acceptance.

12. As held by the trial court, when the evidence of the victim girl has been materially corroborated by her father P.W.2 and the subsequent events leading to the fixation of the marriage between the victim and the accused had been spoken to by P.Ws.3 to 7 and the Mutchalika also having been entered into between the parties as projected in the matter as Ex.P14 and when there is no ground to show that the victim girl had falsely implicated the accused with the offence of rape and when as above pointed out, prior to the occurrence the victim and the accused had been engaged as lovers and considering the entire evidence adduced in the matter, as held by the trial court, there is no doubt that it is only the first accused who had ravished the victim by falsely promising to marry her and also subsequent to the occurrence, having promised to marry her and thereafter repudiating and disowning to marry her, in all, it is found that the trial court is justified in holding the appellant / first accused guilty of the offence under Section 376 IPC.

13. The counsel for the accused in support of his contentions placed reliance upon the following decisions reported in

- 1) AIR 1996SC 1393 (State of Punjab vs. Gurmit Singh and ors.)
- 2) 2014(4) Crimes 144 (SC) (Munna vs. State of M.P.)
- 3) MANU/TN/9700/2019 (Crl.A.No.110 of 2016 dated 20.11.2019 - High Court of Madras) (Kumar vs. State)

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

14. For the reasons aforesaid, the conviction and sentence imposed on the accused under Section 376 IPC in SC No. 12/2012 vide judgment dated 24.09.2012 on the file of the Sessions Judge, Mahila Court, Perambalur, are confirmed and resultantly, the Criminal Appeal is dismissed. The trial court is directed to secure the presence of the accused and commit him into the prison to undergo the sentence of imprisonment imposed on him as per law.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate,
Perambalur.

2.-Do- Thro the Chief Judicial Magistrate,
Perambalur.

3.The Sessions Judge,
Mahila Court, Perambalur.

4.The Superintendent,
Central Prison, Trichy.

5.The Inspector of Police,
All Women Police station,
Perambalur.

6.The Public Prosecutor,
High Court, Madras.

CRL A.No.167 of 2013

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srg 03/08/2020



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