

BAIL SLIP

The Appellant in Crl.A.No.304 of 2018 viz., Basavamuthan S/o Muthappa aged 32 years was directed to be released on Bail as per order of this Court dated 30/05/2018 made in Crl.Mp.No.7194 of 2018 in Crl.A.No.304 of 2018.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.12.2020

Pronounced on:30.12.2020

CORAM

THE HON'BLE JUSTICE MR.G.CHANDRASEKHARAN

CRL.A.No.304 of 2018

Basavamuthan

.. Appellant

Vs.

State Represented by
Sub Inspector of Police,
Anchetty Police Station,
Anchetty.

..... Respondents

Prayer: This Criminal Appeal is filed Under Section 374(2) of Cr.P.C to set aside the Judgment of the Learned Sessions Judge, Fast Track Mahila Court, Krishnagiri in S.C.No.74 of 2016 dated 09.05.2018.

For appellant : Mr.P. Ezhil Nilavan

For Respondents: Mr. K. Madhan
Government Advocate

JUDGMENT

This Criminal Appeal is preferred against the Judgment of the learned Sessions Judge, Fast Track Court, Mahila Court, Krishnagiri in S.C.No.74 of 2016.

2.The respondent police has laid a final report against the appellant under sections 323, 376 and 511 of I.P.C and Section 4 of Tamil Nadu Prevention of Women Harassment Act in Anchetty Police Station Crime No.26 of 2013.

3.After the accused entered appearance, copies of the documents filed along with final report were given to accused free of cost under Section 207 of Cr.P.C. Since there are materials to frame charges against the accused under Sections 376 r/w 511, 323 and Section 4 of Prevention of Women

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Harassment Act, charges were framed against the accused under these sections and the accused was questioned about the charge. Accused denied the charges and claimed to be tried. During the trial the prosecution had examined 1 to 13 witnesses and marked Ex.Ps. 1 -13 documents. There was no evidence on the side of the accused.

4. The case of the prosecution as seen from the prosecution witnesses, in brief, is as follows:

P.Ws.1 and 2 are sisters-in-law. P.W.5 is the husband of P.W.1. P.W.4 is the brother of P.W.1 and husband of P.W.2. Both the accused and P.W.1 belong to Kottaiyur Village. P.W.1 is running a tea stall in Kottaiyur. Her husband is engaged in selling mosquito net and he used to go to various places and sell mosquito net and come home once in a month. She has two children Sasikala and Arun Kumar. She knows the accused. On 25.03.2013, the accused started a fight with the PW1/defacto complainant when she was in her tea stall and made sexually overt advances to her. P.W.4 came there and scolded the accused. PW1 had also informed the incident to others in the village and also to the father of the accused Muthappa.

5. On 25.03.2013 at about 9.00 p.m when she went to pick up grass to feed the buffalo, Shivagantha (PW2) was accompanying her. Accused came from behind and lifted her. When she shouted, Shivagantha questioned the accused as to why he was lifting her. Accused hit Shivagantha and she fell down. On hearing the noise of PW1, persons nearby came and she informed them about the incident. She informed her husband about the incident. Next morning, she gave Ex.P.1 complaint to the police. P.W.2 corroborated the evidence of P.W.1 with regard to the manner in which the occurrence had happened. P.W.4 had also corroborated the evidence of P.W.1 with regard to the previous incident involving the accused in creating trouble in the tea stall and scolding him. P.W.5, the husband of P.W.1, had spoken about knowing the occurrence through his wife and accompanying his wife to the police station for giving complaint. P.W.11 was working as Sub Inspector of Police in Anchetty police station. On 26.03.2018 at about 14:30 hours, P.W.1 came to police station and gave a written complaint. She registered a case in Crime No.26 of 2013 Under Sections 294(b), 323, 376 and 511 of I.P.C and Section 4 of Prevention of Women Harassment Act. The F.I.R is Ex.P.6.

6. P.W.12 was working as Inspector of Police in Anchetty Police Station. She took up this case for investigation and visited the scene of occurrence at about 16:30 hours and prepared Ex.P.7 Observation Magazar and Ex.P.8 Rough Sketch in the presence of P.W 6 and PW7. She sent P.W.1 for medical examination. P.W.9 was the Chief Doctor in Government Hospital, Thenthani Kottai. On 01.04.2013 P.W.1 was brought for medical examination. She informed the Doctor that on 25.03.2013 at about 4.00.p.m she was sexually harassed near her house. She had no

external injuries. Vaginal smear and pubic hair had been collected for chemical examination. The biological report shows that "there is no semen or spermatozoa" detected. The accident register is Ex.P.4. The biological report is Ex.P.5. In continuation of investigation, P.W.12 arrested the accused on 13.05.2013 at 8.00 p.m and recorded his confessional statement in the presence of witnesses Nagaraj and Babu. She sent the accused to judicial custody.

7. Investigation Officer sent requisition letter to the medical examination of the accused through Ex.P.9 letter. P.W.8 was working as head constable of Anjetty police Station. On 25.03.2013 he took the accused from Central Prison, Salem to Government Hospital Dharmapuri for medical examination and after completing the medical examination, he handed over him to the Central Prison, Salem.

8. P.W.12 Doctor Sathish Kumar was on duty at Government Hospital, Dharmapuri. As per the requisition letter from the Judicial Magistrate, he conducted medical examination on the accused on 21.05.2013 and found that there is nothing to suggest that the accused is impotent and incapable of performing sexual intercourse. The certificate is Ex.P.12. The accused is aged about 22 years and less than 25 years. The age certificate is Ex.P.13. Investigation Officer sent the request for recording 164 statement of P.W.1 through Ex.P.10 letter. The 164 statement of PW1 is Ex.P.1. After completing the investigation she filed final report against the accused Under Sections 323, 376 r/w 511 IPC and Section 4 of Prevention of Women Harassment Act.

9. When the accused was questioned about the incriminating evidence found in the evidence of prosecution witnesses u/s 313 Cr.P.C, the accused denied the evidence as false. He did not examine any witnesses on his side.

10. On consideration of oral and documentary evidence in this case, the learned Trial Judge found that there is no sufficient material to convict the accused under sections 376 r/w 511 of I.P.C and acquitted the accused from this charge. The learned Trial Judge found the accused guilty under Section 352 instead of Section 323 of I.P.C and also under section 4 of Prevention of Women Harassment Act and imposed a fine of Rs.500/- under section 352 of I.P.C, in default to pay the fine to undergo simple imprisonment for one month and imposed one year simple imprisonment under section 4 of Prevention of Women Harassment Act and to pay a fine of Rs.10,000/- in default to pay fine simple imprisonment for two months. Against the said Judgment, this criminal appeal is filed.

11. The point for consideration in this appeal is whether the Judgment of Trial Court suffers from any incorrectness, illegality or impropriety in convicting and sentencing the accused under Sections 352 of I.P.C and under Section 4 of

Harassment of Women Act.

12. The learned counsel for the appellant submitted that the material witnesses namely P.Ws.1,2,4 and 5 are close relatives and interested witnesses. There are contradictions in the evidence of P.Ws 1 to 3 with regard to the timing of the occurrence and with regard to the manner in which the alleged attempt to commit rape on PW1 had happened. Whether the accused tried to rape her or whether he pulled P.W.1 from behind or whether he lifted her from behind? Each witness says differently. It creates the strong suspicion in the evidence of these interested witnesses as to whether the offence as alleged had happened at all?.

13. it is further submitted by him that the case of the prosecution is that P.W.2 accompanied P.W.1 at the time of occurrence can not be believed. Had P.W.2 accompanied P.W.1, she would not have cried for help from others, but would have shouted the name of P.W.2 only for her help. There is also contradiction as to whether she had given written complaint or an oral statement before the police. It is seen from the evidence of Doctor that there was no external injuries to P.W.1. There was delay in despatching the F.I.R to the Court. The witnesses were not promptly examined. Infact, there was previous enmity between the accused and P.W. 4 and PW5 with regard to Mosquito business and borrowing of Rs.25,000/- by P.W.4 from the accused. When the accused demanded Rs.25,000/- from P.W.4 he and P.W.5 instigated P.W.1 and to give false complaint. Therefore, the learned counsel for the appellant submitted that, in view of the material contradictions in the evidence of prosecution witnesses, omissions and lapses, the prosecution has failed to prove the case against beyond reasonable doubt and prayed for setting aside the Judgment of the Trial Court and acquitting the accused by allowing this Criminal appeal.

14. Per contra, the learned public prosecutor submitted that there may be loan transaction between P.W.4 and the accused; P.W.5 and the accused may be doing mosquito business. There is no reason for P.W.1 on her own volition or at the instigation of P.W.4 and P.W.5 to come to police station and give a false complainant to jeopardize her reputation. No woman would come forward to give a false complainant alleging sexual harassment in public and invite an adverse publicity. Therefore, the reasons stated by the learned counsel for the appellant and the argument advanced by him that this case is a false case given at the instigation of P.W 4 and PW 5 has to be rejected at the out set. All the above contradictions pointed out by the learned counsel for the appellant are only minor contradictions and that will no way affect the case of the prosecution. If there are no contradictions, there is a case for suspicion with regard to the occurrence. Contradictions are bound to occur when narrating an event after a long time from the date when it had happened.

15. Further he submitted that the incident concerned in this case had happened in 2013, but the witness were examined only in 2018. That was the reason for the contradictions in the evidence of witnesses. When the witnesses are from the village with no educational background, the rustic village eyewitnesses are prone to give some contradictory answers without really understanding the question. Therefore, these minor contradictions cannot be given much importance. The evidence of P.W.1 is clear and cogent with regard to the manner in which the incident had happened and it was clearly corroborated by P.W.2. Therefore, the learned public prosecutor submitted that the prosecution has proved the case beyond any reasonable doubt. The Trial Court rightly recorded the conviction and imposed suitable sentence. The fact that the Trial Court acquitted the accused from the charges under sections 376 read with 511 IPC and altered the charge under section 323 altered to section 352 of I.P.C shows that the learned Trial Judge has meticulously shuffled the evidence and came to the correct conclusion. Therefore, the learned public prosecutor prayed for confirming the Judgment of the trial Court and dismissing this criminal appeal.

16. True it is that it is seen from the evidence of P.W.4 that he borrowed a sum of Rs.25,000/- from the accused. It seems that loan is not supported by the execution of any document. PW4 stated that he repaid that amount. When P.W.4 stated that he repaid the amount, then it is for the accused to prove that he had not received the amount lent and the loan was subsisting at the time of the occurrence and this case was foisted against him for demanding the repayment. The accused has not produced any material to show that he demanded PW4 to repay the loan. Therefore, the submissions of the learned counsel for the appellant that the complaint was given when the appellant demanded PW4 to repay the loan can not be accepted. As rightly pointed by the learned public prosecutor no one woman would come forward to give a false complaint against a person that he committed rape or attempted to commit rape on her, for the reason that it would expose her in a bad light in the eyes of the public. There would be unnecessary publicity in the news papers, television and social media. Therefore, the submission of the learned counsel for the appellant that P.W.1 has given this false complainant at the instigation of P.W.4 and PW5, when the accused demanded PW4 to repay the loan and because of business rivalry between accused and PW5, cannot be accepted.

17. One important contradiction in this case brought to the notice of this court is the timing of the occurrence informed to P.W.9 Doctor. It is seen from the evidence of P.W.9. P.W.1 informed her that the occurrence had happened at 4.p.m on 25.03.2013. Even in Ex.P.4 the time of the occurrence is entered as 4.00 p.m. Obviously this is a mistake committed by the Doctor, when every other document like the complaint and F.I.R refer the time of occurrence as only 9 p.m on 25.03.2013. When

that be the case, the mistaken reference in Ex.P4 about the time of occurrence as 4.00 p.m on 25.03.2013 has to be considered only as a mistaken entry made by the Doctor.

18. With regard to the alleged contradiction as to whether PW1 gave written complaint or oral statement, it is seen that Ex.P.1 is a written complainant. PW1 deposed that the complaint was written by a person as per her instructions. Therefore, there is nothing to doubt the veracity of the complaint.

19. It is seen from the evidence of Doctor P.W.9 and Exs.P.4 and P5 that P.W.1 had no external injuries and she was not subjected to sexual intercourse. Even as per the evidence of P.W.1 the accused had attempted to commit rape on her and she resisted his attempt. That was the evidence of P.W.2 also. The learned trial judge has also found that the appellant is not guilty under sections 376 r/w 511 IPC and acquitted him from this charge. However, P.W.1 has categorically stated about the continuous harassment meted out to her by the accused in clear terms and also the attempt to molest her by assaulting or using criminal force against her. Of course, there are certain contradictions with regard to the timing of the occurrence and the manner in which the occurrence had happened in the evidence of P.W1 and PW2. However, these are only natural contradictions. If a person is asked to recount about an incident long after the incident, there bound to occur certain contradictions. These are only natural contradictions. Only if a witness is reproducing her/his previous statement like a parrot while giving evidence, it would look like unnatural and tutoring can be assumed. Natural contradictions will be bound to occur in the evidence of prosecution witness. Especially in this case, the witnesses had been examined at length 5 years after the occurrence. Therefore, the presence of contradictions in the evidence of prosecution witnesses is common. What we have to consider is whether these contradictions are material contradictions cutting at the root of the case. In the considered opinion of this Court, the contradictions pointed out by the learned counsel for the appellant are not material contradictions affecting the case of the prosecution.

20. Thus, the analysis of the oral and documentary evidence clearly makes out that the charges against the accused for the offences under sections 352 of I.P.C and Section 4 of women Harassment Act are proved beyond any reasonable doubt. The learned Trial Judge correctly appreciated the evidences in this case and rightly convicted the accused under Sections 352 of I.P.C and Section 4 of Women Harassment Act and imposed proper sentence. This Court finds no reason to interfere with the Judgment of the Trial Court and in this view of the matter, this Court confirms the Judgment of the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri in S.C.No.74 of 2016 dated 09.05.2018 and the conviction recorded and the sentence imposed

thereon.

21.In the result,this Court finds no reason to interfere with the Judgment of the Trial Court and in this view of the matter, this Court confirms the Judgment of the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri in S.C.No.74 of 2016 dated 09.05.2018 and the conviction recorded and sentence imposed thereon. This Criminal appeal is dismissed. The trial court is directed to issue warrant against the accused to undergo the sentence.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

- 1.The Sessions Judge,
Fast Track Mahila Court, Krishnagiri.
- 2.The Principal Sessions judge,
Krishnagiri.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Sub Inspector of Police,
Anchetty Police Station, Anchetty.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras.

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CRL.RC.No.304 of 2018

PM(CO)

CB(02/02/2021)

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