

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	18.11.2020
DELIVERED ON	24.11.2020

CORAM:

THE HONOURABLE MR. JUSTICE **M.NIRMAL KUMAR**

Crl.A.No.402 of 2020

Chandru
S/o.Vediyappan

...Appellant

-Vs-

1.State rep.by
The Deputy Superintendent of Police,
Aroor Sub-Division,
Aroor Dharmapuri District.

2.The Sub-Inspector of Police,
Kottapatti Police Station,
Dharmapuri District.
Crime No.122/19.

3.Selvi
W/o.Vediyappan

... Respondents

Prayer: Criminal Appeal filed under Section 14 (A) of Scheduled Castes & Scheduled Tribes Prevention of Atrocities, Act, 1989, to set aside the order in C.M.P.No.96 of 2020 dated 13.01.2020 passed by the learned Principal Session Judge at Dharmapuri and enlarge the petitioner on bail in Crime No.122 of 2019.

For Appellant : Mr.R.Ramesh

For R1 & R2 : Mr.C.Raghavan
Government Advocate (Crl.Side)

For R3 : No Appearance

J U D G M E N T

The appellant/accused in Crime No.122 of 2019 for the offence under Sections 354-B, 511 r/w 376 and 307 IPC r/w 3(1)(e) of SC/ST Act, 2015 @ 354-B, 511 and 376 and 307 IPC r/w 3(2)(v-a) 3(i)(e) 3(1)(w), 3(2) of POA SC/ST Act 2016 dated 16.12.2019, has moved a bail application before the learned Principal Session Judge at Dharmapuri, in C.M.P.No.96 of 2020 and the same was dismissed on 13.01.2020. Against which the present appeal.

2.The case of the prosecution is that the defacto complainant Selvi lost her husband and living with her three son, two of them were working in Hosur and third son studying eighth standard. The defacto complainant own some agricultural land near Sennamal Kovil, where she used to go regularly for her work. On 14.07.2019, at about 6.45 p.m when she was returning from her work by carrying some coconut on head, a person aged about 20 years restrained her and claimed, he will provide some food. The defacto complainant refused and proceeded. At that time the said unknown person pulled her down and attempted to rape her. The defacto complainant raised alarm, one Thirumala came to rescue of defacto complainant. On seeing her all the three persons ran away from the scene of occurrence. The said Thirumala took the defacto

complainant to the hospital. From the hospital, information sent to the respondent Police. The respondent Police visited the hospital and received complaint from the defacto complainant and registered a case in Crime No.122 of 2019. The respondent Police visited the scene of occurrence prepared observation mahazar, rough sketch, conducted enquiry in the scene of occurrence and during investigation the involvement of the petitioner in the offence was found. On 26.07.2019, keeping track on the petitioner's mobile and search made in various places viz., Singarapettai, Oothangarai, Mathur and Baagur. The respondent Police received information that the petitioner was caught up by some persons in Theerthamalai. On the information the respondent Police gone there and arrested the petitioner. During investigation the defacto complainant and the eye witnesses to the occurrence one Vedyapan and Manjunath gave statement against the petitioner and under Section 164 Cr.P.C. The appellant belongs to Schedule Caste Community and the petitioner belongs to Vanniar Community. After collecting the community certificate and other documents the investigation was transferred to the Deputy Superintendent of Police, Harur, who took up further investigation, visited the scene of occurrence, collected documents and altered the FIR including the offence under Section SC/ST Act. On completion of investigation, filed a charge sheet which is taken on file in S.C.No.3 of 2020 before the District Session Judge,

Dharmapuri.

3. The contention of the learned counsel for the appellant is that the appellant had been falsely implicated in this case. According to the appellant the defacto complainant lodged a complaint only against some unknown persons to have misbehaved with her and the appellant has been falsely implicated based on the confession of the co-accused. The appellant is totally stranger to the defacto complainant and other witnesses. The appellant's arrest in this case is mysterious. The respondent Police falsely implicated the petitioner arrested him and detained him under Goondas Act. The investigation is completed, charge sheet filed. The appellant to defend the case effectively he has to engage the counsel and instruct him. Hence, prayed for bail.

4. Notice was served to the third respondent/defacto complainant on 14.10.2020 by the learned counsel for the appellant and affidavit of service filed before this Court. The respondent Police also served notice to the second respondent on 13.11.2020 and proof of the same has been filed.

5. The learned Government Advocate (Crl.Side) submitted that based on the complaint of the third respondent the above case came to be registered. The

respondent Police on information from the Government Hospital visited the hospital, received a complaint from the defacto complainant. Thereafter the case came to be registered. When the defacto complainant was returning from her field on 14.07.2019, at about 6.45 p.m., the appellant along with two others approached the defacto complainant and informed her that he would provide some food for her. The defacto complainant refused the same and proceeded. At that time, he restrained her, pulled her down and attempted to rape her. The defacto complainant fell on the ground and tried to save her. The petitioner caused injury on her mouth, attempted to turn her. The defacto complainant raised alarm and by hearing that one Thirumala came to rescue her and thereafter the appellant and two others escaped from the scene of occurrence. The defacto complainant admitted in the hospital and took treatment. During investigation the involvement of the appellant came to the light. Thereafter the appellant was kept track through his mobile and later found that he was caught in Theerthamalai. On information the police gone to Theerthamalai and secured him. In the meanwhile, the defacto complainant and other eye witnesses had given statement under Section 164 Cr.P.C disclosing the involvement of the appellant. The defacto complainant belongs to Schedule Caste Community and the appellant belongs to Vanniar Community. After his arrest, statements of witnesses were recorded, medical records obtained, on completion of

investigation charge sheet filed in S.C.No.3 of 2020. Further, the appellant is a notorious person involved in various cases, the act of the appellant is serious in nature against the women, the victim is a elderly person. Hence opposed granting of bail.

6. Considering the rival submission and taking into consideration that the petitioner has been arrayed as accused on the basis of confession of the co-accused and he was arrested on 02.08.2019 and till date he is under confinement for more than a year and the investigation in this case is completed and charge sheet filed, this Court is inclined to grant bail for the appellant, subject to the following conditions:

(a)the appellant shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each within a period of 15 working days from the date of receipt of a copy of this order with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, Aroor failing which, the Criminal Appeal for bail shall stand dismissed and on further condition that;

(b)the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Judge may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(c)the appellant shall appear before the Trial Court on all hearing dates during trial.

(d) the appellant shall not commit any offences of similar nature;

(e) the appellant shall not abscond either during investigation or trial;

(f) the appellant shall not tamper with evidence or witness either during investigation or trial;

(g) on breach of any of the aforesaid conditions, the learned Judicial Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in *P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]*;

(h) if the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

7. In view of the above, the order passed by the trial Court dated 13.01.2020 in C.M.P.No.96 of 2020 is set aside. The appeal is, accordingly, allowed.

24.11.2020

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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M.NIRMAL KUMAR., J.

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To

- 1.The Principal Session Judge,
Dharmapuri.
- 2.The Judicial Magistrate,
Aroor. (Satisfaction Court)
- 3.The Deputy Superintendent of Police,
Aroor Sub-Division,
Aroor Dharmapuri District.
- 4.The Sub-Inspector of Police,
Kottapatti Police Station,
Dharmapuri District.
- 5.The Superintendent,
Central Jail, Salem.
- 6.The Public Prosecutor,
Madras High Court.



Pre-Delivery Judgment in
Crl.A.No. 402 of 2020

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24.11.2020