

Bail Slip

The Petitioner/Accused viz Selvadurai S/o. Lakshmikanthan be and hereby was directed to be released on bail as per order of this Court dated 07.08.2014 and made in CrI.M.P. No. 1/2014 in CrI.A.No.360 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.11.2020

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CrI.A.No.360 of 2014

Selvadurai

... Appellant/Accused

Vs

The Inspector of Police,
E1 Mylapore Police Station,
Chennai 600 004.
(Crime No.403 of 2011)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (1) of Criminal Procedure Code praying to set aside the Judgment dated 15.05.2014 made in S.C.No.395 of 2012 on the file of the Mahila Court, Chennai.

For Appellant: Mr.N.S.Sivakumar.

For Respondent:Mr.S.Karthikeyan,
Additional Public Prosecutor.

J U D G M E N T

The matter was heard through "Video Conference".

2.The present Criminal Appeal has been filed to set aside the Judgment of conviction and sentence passed by the learned Sessions Judge, Mahila Sessions Court, Chennai dated 15.05.2014 in S.C.No.395 of 2012.

3.The appellant is the sole accused. He stood charged for the offence under Sections 366A and 376 of Indian Penal Code. The learned Sessions Judge, Mahila Court, Chennai, by judgment dated 15.05.2014 convicted the appellant under Section 366A of Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.10,000/-, in

default to undergo simple imprisonment for six months and further convicted for the offence under Section 376 of Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for six months.

4.Challenging the said conviction and sentence, the appellant / accused is before this Court by filing the present Criminal Appeal.

5.The case of the prosecution in brief is as follows:

(i) PW3 viz., Vijitha is the victim girl. PW1 viz., Gopal and PW2 viz., Santhi are her parents. PW3 was born on 05.05.1995. Initially the accused is the friend of PW3, in the aftermath, the friendship turned into love and thereby they ran away from their respective houses and the accused herein took PW3 to pondicherry and to various places, wherein he cohabited with her.

(ii)Upon learning the news that the daughter was missing, PW1 lodged complaint on 27.02.2011 at about 10.30 P.M. before the Inspector of Police, E1 Mylapore Police Station which has been marked as Ex.P.1. On receipt of the same, one Rajasekar, the then Inspector of Police, E1 Mylapore Police Station registered the case in Crime Number 403 of 2011 under the head 'girl missing'. The printed FIR dated 27.02.2011 has been marked as Ex.P.12. After the registration of the case, he examined the witnesses viz., PW1, PW2 and one vijesh, brother of the victim girl and recorded their statements. He visited the scene of occurrence and in the presence of PW4 viz., Sundar, he prepared the observation mahazar under Ex.P.4. Further, he had prepared a rough sketch which has been marked as Ex.P.13.

(iii)In the mean while, on 02.03.2011, the victim girl herself returned to her home and made statement before PW1 and PW2 that the accused herein made sexual intercourse with her. After hearing the same, the same was informed to the Investigation Officer, in turn, the said Investigation Officer recorded statement from the victim girl and on the same day at about 12 P.M., in R.K.Madam Road, he secured the accused and recorded confession statement from him in the presence of one Vishwanathan and Chandrasekar. Based on the confession statement given by the accused, the said Inspector of Police recovered a nighty (M.O.1) which has been wore by the victim under seizure mahazar which has been marked as Ex.P.11, further, he recovered a lungi (M.O.2) which have been found in the house of the accused under the cover of mahazar as Ex.P.14.

(iv)In continuation of investigation, after completing the above formalities, the section of Law has been altered from the head

of 'girl missing' to offence under Sections 366A and 376 of Indian Penal Code and the said alteration report has been marked as Ex.P.15, further based on the requisition letter given by the Investigation Officer, the XVIII Metropolitan Magistrate, Chennai sent letters to the Dean, Rajiv Gandhi Government General Hospital, Chennai for conducting medical examination to the victim girl and to the accused. The letters sent by the Magistrate have been marked as Ex.P.5 and Ex.P.8 and in turn, the PW6 viz., Dr.Seethalakshmi attached to the said hospital examined PW3 and found injury in the vagina. However, there was no semen found in the vaginal smear collected from the victim girl. She issued a medical certificate dated 09.03.2011 which has been marked as Ex.P.9 and age certificate of the victim girl was marked as Ex.P.10, that the victim girl is aged between 16 to 18 years. Similarly, PW5 viz., Dr.Saravanan, attached to the said hospital examined the accused and issued a medical certificate dated 09.03.2011 which has been marked as Ex.P.6 stating that there is nothing to show that the accused is incapable of performing sexual intercourse, further the age certificate issued to the accused has been marked as Ex.P.7 certifying that the accused is aged above 25 years and below 40 years.

(v)Subsequently, after receiving the certificates issued by the doctors viz., PW5 and PW6 and also after perusing the medical examination report, PW8 came to the positive conclusion that the accused has committed an offence under Sections 366A and 376 of Indian Penal Code and accordingly, he filed a final report against the accused for the above said offences.

6.Based on the above materials, the learned Sessions Judge, Mahila Court, Chennai framed charges for the offence under Sections 366A and 376 of Indian Penal Code. The accused denied the same and therefore, in order to prove the case of prosecution, eight witnesses have been examined as PW1 to PW8 and fifteen documents were marked as Ex.P.1 to Ex.P.15 besides two material objects (M.O.1 and M.O.2).

7.Out of the said witnesses, PW1 viz., Gopal and PW2 viz., Shanthi who are the parents of the victim girl speaks about the missing of their daughter and about the lodging of complaint before the then Inspector of Police, El Mylapore Police Station and about the identification of victim girl in the police station. According to them, the police secured the victim girl along with the accused.

8.PW3 viz., Vijitha, who is the victim girl had deposed about the occurrence. According to her, both herself and the accused are having love affair and therefore, both of them ran away from their respective houses, without the consent of their

parents and made sexual intercourse. PW4 viz., Sundhar is the neighbour of PW1. He has stated about the preparation of observation mahazar and rough sketch by the then Inspector of Police.

9.PW5 viz., Dr.Saravanan attached to the Rajiv Gandhi Government General Hospital speaks about the medical examination of the accused and about the issuance of age certificate to the accused. Similarly, PW6 viz., Dr.Seethalakshmi attached to the Rajiv Gandhi Government General Hospital speaks about the medical examination of PW3 and about the issuance of age certificate to PW3.

10.PW7 viz., Albert has deposed that he is the resident of Nochikuppam, where PW1 and PW2 resides, he speaks about the arrest of the accused and about the confession statement given by the accused, and also about the recovery of material objects viz., M.O.1 and M.O.2 from the house of the accused. PW8 viz., Mohandoss is the police officer who has deposed about the receiving of complaint, from PW1, registration of the case, securing the victim girl, arrest of the accused and about the filing of final report.

11.When the above incriminating materials were put to the accused under Section 313 of Criminal Procedure Code, the accused denied the same as false. However, he neither chose to examine any witnesses nor mark any documents on his side. The learned Sessions Judge, after perusing all the above materials and on considering the arguments advanced by either side, convicted the appellant / accused and sentenced to imprisonment as stated supra. Aggrieved over the said conviction and sentence, the appellant is before this Court.

12.The learned Counsel appearing for the appellant would contend that for proving the alleged occurrence, the evidence of the victim girl is very much necessary since she alone is the person who knows the entire occurrence, but, here, it is the case that the evidence given by PW3 is very clear that entire occurrence narrated by the prosecution is false. According to her, only after getting consent from the prosecutrix, the accused made sexual intercourse with her. In the said circumstances, the above incidents do not constitute the offence under Section 366 A and 376 of Indian Penal Code. The trial Court without considering the same, convicted the accused which is against the principles of law as stated supra. According to him, the prosecution has not proved the case beyond reasonable doubt.

13.On the other hand, the learned Additional Public Prosecutor appearing on behalf of the respondent would submit

that though the evidence given by the victim girl is not in favour of the prosecution that alone is not sufficient to hold that the entire case of prosecution is false one, he vehemently opposed the contentions raised by the learned Counsel appearing for the appellant.

14.I have heard Mr.N.S.Sivakumar, learned Counsel appearing for the appellant and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the respondent and I have also carefully perused the records.

15.Initially on going through the evidence given by the victim girl as PW3, it is made clear that during the time of occurrence, the victim girl spontaneously runs away from home and has sex. Till the date on which the evidence of PW3 was recorded, she has not raised any allegation against the accused. In fact she did not claim to have been abducted and raped against her will. She has stated before the trial Court that before the occurrence both herself and the accused are fall in love with each other and ran away with the accused because her parents protested. She has further stated, we both had sex with full consent. She did not say that the accused would do something specific to her before engaging in sexual intercourse. More than that, the prosecution is very clear that consent given by the prosecutrix is not under misconception of fact. Therefore, at any cause, evidence given by the victim girl is not in support of the case of prosecution, but, the Court below, without considering the same in perspective manner, convicted the accused which is liable to be set aside.

16.Accordingly since, evidence given by PW3 is not in support of the case of prosecution, analyzing the evidence of other prosecution witnesses is no way helpful to the case of prosecution and therefore, I am of the view that the prosecution fails in their attempt to prove the case beyond reasonable doubt and therefore, this Court is inclined to allow the appeal filed by the appellant / accused.

17.In the result, the appeal is allowed and the conviction and sentence imposed on the appellant/accused by the Trial court are set aside and he is acquitted of all the charges. Fine amount, if any, paid, shall be refunded to the appellant/accused.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ay

To

1.The Inspector of Police,
E1 Mylapore Police Station,
Chennai 600 004.

2.The Sessions Judge,
Mahila Sessions Court,
Chennai.

3.The Public Prosecutor,
High Court of Madras,
Chennai.

4.The Metropolitan Magistrate No. XVIII
Saidapet, Chennai 600 015.

5.The Chief Metropolitan Magistrate
Egmore, Chennai 600 008.

6.The Superintendent Central Prison
Puzhal, Chennai

Copy to
The Section Officer
Criminal Section
High Court, Madras 104.

+1 CC to Mr.N.S.Sivakumar, Advocate sr 36526.

Cr1.A.No.360 of 2014

PA(CO)
SP(06/01/2021)

WEB COPY