

Bail Slip

The Appellant/Accused namely Somu @ Somasundararajan (in S.C.No.238 of 2013 on the file of Sessions Judge, Mahila Court, Chennai) was directed to be released on bail by order of this court dated 15.10.2014 and made in M.P.No.1 of 2014 in CRL A.No.468 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 14.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CRL.A.No.468 of 2014

Somu @ Somasundararajan
No.19, Tagore Nagar,
2nd Street, Ayanavaram,
Chennai - 600 023.

...Appellant/Accused

Vs

The State rep. by
The Inspector of Police,
K2, Ayanavaram Police Station,
Chennai.

...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C., praying to set aside the conviction and sentence awarded by the Sessions Judge, Mahila Court, Chennai in S.C.No.238 of 2013 on 11.08.2014.

For Appellant : Mr.K.Venkateswaran

For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

J U D G M E N T

The present appeal has been filed to set aside the judgment of conviction and sentence dated 11.08.2014 in S.C.No.238 of 2013 passed by the learned Sessions Judge, (Mahila Court), Chennai.

2. The appellant is the sole accused. By judgment dated 11.08.2014, the learned Session Judge, Mahila Court, Chennai convicted the appellant for the offence under Section 366A of IPC and sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.10,000/- in default to undergo simple

imprisonment for six months. Challenging the above said conviction and sentence, the appellant/accused is before this Court with the present Criminal Appeal.

3. The case of the prosecution, in brief, is as follows :-

(i) P.W.1 Vijaya is the mother of the victim girl. P.W.2 Jothika is her sister and P.W.3 Prakash, is the father to the victim girl. During the time of occurrence, P.W.4 Sangeetha, who is the victim girl was studying in Government Girls Higher Secondary School, Perambur. Since the victim girl refused to go school, P.W.1 assaulted her and therefore, P.W.4 went to her stepmother's house and stayed there for three years. Thereafter she returned to her parents house. Subsequent to that due to the difference of opinion arose between P.W.4 and P.W.1, P.W.4 left her parents' house and stayed in the house of the accused. However, after three days, the parents of the accused brought the victim girl to the police station.

(ii) In the mean time, P.W.1 Vijaya on 29.02.2012 went to the Ayanavaram Police Station and lodged complaint under Ex.P.1. On receipt of the complaint given by P.W.1, P.W.12 Jayavanitha, the then Sub Inspector of Police, Ayanavaram Police Station, registered a case in Crime No.232 of 2012 under the head of "Girl missing". The printed FIR has been marked as Ex.P.10. After the registration of the case, she handed over the copy of the FIR to P.W.13 the Inspector of Police, Ayanavaram for investigation.

(iii) P.W.13, Kanagaraj, the then Inspector of Police, Ayanavaram, on 29.02.2012 took the case records for investigation and examined P.W.1 Vijaya and P.W.3 Prakash, he recorded their statement under Section 161 of Cr.P.C. On 06.03.2012, P.W.1 had brought the victim girl to the Police Station. Further she has produced the birth certificate of the victim girl (Ex.P.2) On production of victim girl, P.W.13 again examined P.W.1 and recorded her further statement. After recording the statements from the victim girl, he altered the Section of law from Girl Missing to 366A and 376 of IPC. The alteration report has been marked as Ex.P.11.

(iv) On 06.03.2012, P.W.13 arrested the accused Somu @ Soma sundararajan. In the presence of P.W.8 Karunanithi and one Mohan, he recorded the confession statement of the accused. He sent a requisition to Protective Home for keeping the victim girl in a safe custody. On 07.03.2012, P.W.13 sent a requisition to the learned Judicial Magistrate under Ex.P.12 series for the medical examination of the victim girl and the accused.

(v) In turn, P.W.11 Dr.Mohanapramila, attached with Keepauk Medicial College Hospital examined the victim girl and on

examination she found that there was no external injury on the body of the victim girl. She collected the vaginal smear of the victim girl for chemical examination. In the chemical examination there was no spermatozoa found in the vaginal smear. Therefore, P.W.11 has not given any definite opinion that the victim girl was physically assaulted by means of sexual intercourse. In this regard, she issued Accident register under Ex.P.8 and medical certificate under Ex.P.9.

(vi) Similarly, P.W.9 Dr.Jithender Singh, upon the proceedings issued by the learned Magistrate, examined the accused and issued certificate as there is nothing to suggest that the accused is impotent. The report given by him was marked as Ex.P.5. P.W.13 examined the Doctors and recorded their statements.

(vii) In continuation of the investigation, P.W.13 also obtained certificate from the Head Mater as the victim girl has not attended the school from 14.02.2012 (Ex.P.13). Thereafter he altered the Section of law as Sections 363, 366 and 376 of IPC and sent the same to the jurisdictional Magistrate under Ex.P.14. At the end of the investigation, he came to the positive conclusion that the accused has committed the offences under Sections 363, 366 and 376 of IPC. He filed final report accordingly.

4. Based on the above materials, the learned Sessions Judge, (Mahila Court), Chennai, framed charge under Sections 366A and 376 of IPC. The accused denied the same as false. He opted for trial. Hence, in order to prove their case, on the side of the prosecution as many as 13 witnesses have been examined as P.W.1 to P.W.13 and 14 documents were marked as Ex.P.1 to Ex.P.14.

(i) Out of the above said witnesses, P.W.1 is the mother of the victim girl. She has spoken about the missing of the victim girl. According to her, prior to the occurrence the victim girl was stayed in her sister's house for the period of three years. Thereafter due to the misunderstanding, the victim girl left her parental home for which a complaint has been lodged before the Police Station. After registration of the case, the parents of the accused produced the victim girl before the Police Station and on enquiry the victim girl stated that she was staying along with the parents of the accused.

(ii) P.W.2 Jothika is the sister of the victim girl. She deposed that during the relevant point of time, P.W.4 the victim girl made quarrel with P.W.1 and left the home and stayed with the parents of the accused. P.W.3 Prakash is the father of the victim girl. He speaks about the lodgement of the complaint

before the Police Station. He did not say anything about the occurrence in support of the case of the prosecution.

(iii) P.W.4 Sangeetha is the victim girl and she has stated that during the time of occurrence she voluntarily went to the house of the accused and stayed there for three days along with the parents of the accused. According to her she was brought to the police station by the parents of the accused. In respect of the allegation levelled against the appellant, she did not say anything before the trial Court. Even during the time of cross examination by the learned Additional Public Prosecutor, she has not supported the case of the prosecution.

(iv) P.W.5 Shanthi and P.W.7 Rani are the neighbours of P.W.1. They have not supported the case of the prosecution. P.W.6 alleged to be the eye witness to the occurrence has also not supported the case of the prosecution. P.W.8, Karunanithi, cited as witness during the confession statements recorded from the accused, has also not supported the case of the prosecution. P.W.9, Dr.Jithender Singh speaks about the examination of the accused and about the issuance of certificate. According to him, nothing to suggest that the accused is impotent.

(v) Further P.W.10 Subulakshmi, Deputy Director of Forensic Department speaks about the examination of smear. According to her no spermatozoa found in the vaginal smear which collected from the victim girl. P.W.11 Dr.Mohanapermilla attached with Government Hospital, Keelpauk speaks about the examination of victim girl. She has not given any definite opinion that the victim girl is subjected to sexual assault.

(vi) P.W.12 Jayavanitha and P.W.13 Kanagaraj are the Police Officers. They speak about the receipt of the complaint from P.W.1, registration of the case, examination of the witnesses, securing the victim girl as well as the accused and also about the filing of final report after completion of medical examination of victim girl and the accused.

5. When the above incriminating materials were put to the accused, under Section 313 Cr.P.C., he denied the same as false. However, the accused did not choose to examine any of the witnesses on his side and not marked any documents. Having considered the above materials, the trial Court convicted the accused as stated above in the second paragraph of this Judgment. Challenging the above sentence and conviction, the appellant /accused is before this Court.

6. I have heard Mr.K.Venkateswaran, learned counsel appearing for the appellant and Mr.S.Karthikeyan, learned

Additional Public Prosecutor appearing for the respondent and perused the records carefully.

7. The first and foremost contention raised by the learned counsel appearing for the appellant is that without any iota of single evidence the Court below convicted the accused. He has further submitted that in respect of the offence under Section 376 of IPC, nothing has been stated either by the victim girl or by the Doctor who conducted the medical examination on the victim girl. Therefore he prayed to allow the appeal.

8. Per contra, the learned Additional Public Prosecutor appearing for the State would submit that the prosecution has proved its case beyond all doubts and therefore, he prayed for dismissal of this appeal.

9. Upon considering the arguments advanced by the learned counsel appearing on either side, in this case none of the witnesses examined on the side of the prosecution has stated before the Court below in respect of the occurrence narrated by the prosecution. P.W.4 Sangeetha is the victim girl in this case. She has specifically stated only due to the misunderstanding had happened with her mother, she left her parents home and stayed along with the parents of the accused. Apart from the said evidence she has not raised any allegations against the accused.

10. In fact, the evidence put forth by the prosecution is very clear that the victim girl is brought to the police station only by the parents of the accused. Though there is a evidence that the victim girl was stayed in the house of the accused for the period of three days, in respect to the sexual assault, the Doctor who conducted the medical examination to the victim girl has specifically stated that there is no symptoms found in the body of the victim girl as she was had sexual intercourse before the occurrence.

11. In the said circumstances, I don't understand under what circumstances, the learned Session Judge, Mahila Court, Chennai, came to the conclusion that the accused found guilty for the offence under Section 366(A) of IPC. In the judgment rendered by the Court below, the learned Session Judge has clearly held that all the witnesses examined on the side of the prosecution have not supported the prosecution. Even after knowing the same, she convicted the accused for the reasons best know to her. Without understanding the criminal law and without knowing the onus of proof, the learned Sessions Judge convicted the accused, which is nothing but erroneous in law. In fact as already observed, no material is available from the evidence of the prosecution witnesses alleged that the accused herein

kidnapped the victim girl and committed the offence of rape. Therefore, I am of the considered opinion that the convicting the appellant/accused is against the principles of law.

12. Therefore, In the light of the above discussion, this Court came to the conclusion that the prosecution has not proved its case beyond reasonable doubts and therefore, conviction and sentence awarded by the learned Session Judge, Mahila Court, Chennai is liable to be set aside.

13. Accordingly, this Criminal Appeal is allowed . The conviction and sentence imposed by the learned Session Judge, Mahila Court, Chennai in S.C.No.238 of 2013 dated 11.08.2014 is hereby set aside. The appellant/accused is acquitted of all charges. Fine amount, if any paid, shall be refunded to the appellant forthwith. Bail bonds, if any executed, shall stand cancelled.

Sd/-

Assistant Registrar

//True Copy//

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Sub Assistant Registrar

To

1. The Sessions Judge,
Mahila Court, Chennai.
2. V Metropolitan Magistrate,
Egmore, Chennai-8.
3. do The Chief Metropolitan Magistrate,
Egmore, Chennai.
4. The Superintendent, सत्यमेव जयते
Central Prison, Puzhal,
Chennai.
5. The Inspector of Police,
K2, Ayanavaram Police Station,
Chennai.
6. The Public Prosecutor,
High Court, Madras.

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

+1cc to Mr.K.Venkateswaran, Advocate, S.R.No.41130

CRL.A.No.468 OF 2014

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rv(12/02/2021)



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