

Bail Slip

The Appellant/Accused namely Arjunan, S/o. Thirumal in S.C.No.62/2013 dated 19.09.2014 on the file of the Learned Mahalir Neethimandram(Fast Track Mahila Court) Tiruppur he was released on bail as per the order of this Hon'ble Court dated 17.10.2014 in Crl.M.P. No. 1/2014 in Crl.A.No.531 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2020

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Criminal Appeal No.531 of 2014

Arjunan

... Appellant

Vs.

The State

Rep. By The Inspector of Police,
Kamanayakan Palayam Police Station,
Tiruppur.

...Respondent

Crime No. 12/2010

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the conviction and sentence passed by the learned Sessions Judge (Fast Track-Mahila Court), Tiruppur, in S.C.No.62 of 2013 dated 19.09.2014.

For Appellant : Mr.Kingsly Solomon

For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

J U D G M E N T

The present Criminal Appeal has been filed to set aside the judgment of conviction and sentence dated 19.09.2014 passed in S.C.No.62 of 2013 by the learned Sessions Judge, (Fast Track-Mahila Court), Tiruppur.

2. The present appellant is the sole accused. He stood charged for the offence under Section 376(2)(f) r/w 511 of IPC. By judgment dated 19.09.2014, the learned Sessions Judge, Fast Track-Mahila Court, Tiruppur convicted the appellant under Section 354 of IPC and sentenced him to undergo two years

rigorous imprisonment and to pay a fine of Rs.20,000/-, in default to undergo rigorous imprisonment for six months. Challenging the said conviction and sentence, the accused is before this Court, by way of filing the present appeal.

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

(i) PW1-Chaya, is the victim girl. At the time of occurrence, she is aged about 10 years and she was residing with her parents, who were employed at VKS Chicken Farm, Tirupur. On the day of occurrence, at about 3.00pm, the victim girl went to milk booth for buying milk for her younger brother, the accused followed her and after closing her mouth compelled for sexual intercourse. During such time, when the victim girl attempted to shout, the accused had beaten her and thereby, blood oozed out from her mouth. At the same time, after seeing some passers-by in that place, the accused left the victim girl. Thereafter, the father of the victim girl was informed of the same and he rushed to the place of occurrence. On the same day, at about 9.00pm, the Inspector of Police, Kamanayakan Palayam Police Station, came there and recorded the statement from the victim girl.

(ii) Before that on 11.01.2012 at about 3.15pm, PW13-Umayaraj, while at the time he was going to the grocery shop, he heard the noise as 'batcha, batcha'. On hearing the same, he went to the place from where the noise came, which is a corn field (சோளக்காடு). There he saw the accused coming and on enquiry, the accused refused to say anything. At the same time, the victim girl also came from that place with some scratch marks (நகக்கீறல்), on her face and blood was oozing out from her nose and mouth. On enquiry, the victim girl told him that the accused herein attempted for sexual intercourse. At the same time, PW4-Parasmeswari and PW5-Sathish Kumar, came there and afterwards, he lodged a complaint in Kamanayakan Palayam Police Station, under Ex.P8.

(iii) On receipt of the said complaint, PW15-Mr.Kulandaivelu, the then Head Constable, Kamanayakan Palayam Police Station, registered a case in Cr.No.12 of 2012 under Section 376 (2)(f) r/w 511 of IPC. The printed FIR is marked as Ex.P11. After the registration of the case, he handed over the case records to PW16-Mrs.Kaleeswari, for investigation.

(iv) On receipt of the case records, PW16-Mrs.Kaleeswari, the then Inspector of Police, in charge of Kamanayakan Palayam, took up the same for investigation and on 11.01.2012, at about 8.30 PM, she visited the scene of occurrence and in the presence of PW6-Mr.Vellingiri, and one Mr.Selvakumar, she prepared an observation mahazar under Ex.P1. She had drawn the rough sketch and the same has been marked as

Ex.P12. She examined the witnesses and recorded their statements. Since PW1, the victim girl and her father PW2-Mr.Sanjay, does not know the Tamil language, with the help of one Shankar [PW-14], she recorded the statements of PW1 and PW2. On 12.01.2012, near to Karadivavi Bus Stop at about 6.00am, she arrested the accused and sent him to the judicial custody. Further, through PW8-Mrs.Shyamala, the then Constable, All Women Police Station, she sent the victim girl for medical examination.

(v) Accordingly, PW12-Dr.Vidhya, attached with Government Hospital, Coimbatore, examined the victim girl and found four scratch marks (nail marks) measuring about 3 to 4mm in the right cheek. According to her, there was no external injuries anywhere in the body and no symptoms for the sexual intercourse. In this regard, she issued an Accident Register Copy under

Ex.P6. Further, she issued a final opinion under Ex.P7. She collected the vaginal smear from the victim girl and sent the same for chemical examination.

(vi) In turn, PW10-Mr.Balashanmugam, Assistant Director, Forensic Science Department, Coimbatore, examined the same and issued a certificate under Ex.P4, that there is no evidence of having had sexual intercourse. Further, PW7-Dr.Saroja, the Radiologist, examined the victim girl and issued a certificate stating that the age of the victim girl is between 10 and 12. The certificate issued by PW7 was marked as Ex.P2.

(vii) In the meantime, PW16, sent a requisition to the Judicial Magistrate, Palladam, for examining the accused in respect to his potency. In this regard, after receiving the proceedings from the Judicial Magistrate, Palladam, PW10-Dr.Gajendran, attached with Coimbatore Government Medical College and Hospital, examined the accused Arjunan and issued a certificate under Ex.P3 as there is nothing to suggest that the person is impotent.

(viii) In continuation of the investigation, PW16, examined the Doctors and recorded their statements. He came to the positive conclusion that the accused committed the offence under Section 376 (2)(f) read with 511 of IPC and filed a final report, accordingly.

4. Based on the above materials, the trial Court framed charge under Section 376 (2)(f) read with 511 of IPC and the accused denied the same. In order to prove their case, on the side of the prosecution, as many as 16 witnesses have been examined as PW1 to PW16 and twelve documents were marked as Exs.P1 to P12.

(i) Out of the said witnesses, PW1-Chaya, is the victim girl. At the time of occurrence, she is aged about 10 years. She speaks about the occurrence that on the fateful day, when at the time she was going to buy milk for her younger brother, the accused followed her and after closing her mouth, he took her to the nearby corn field (சோளக் காடு) and attempted for sexual intercourse. While at the time, one man and woman passed by and on seeing them, the accused ran away from the occurrence place.

(ii) PW2-Mr.Sanjay, is the father of PW1. He had been informed the occurrence by the persons, who passed by the occurrence place, during the relevant point of time.

(iii) PW3-Mr.Myilsamy, the resident of Melanayakan Palayam, has stated in his evidence that on the day of occurrence, when at the time he was near to the place of the occurrence, the present accused by holding his lungi, came from corn field (சோளக் காடு). Following him, PW1, the victim girl along with blood stains in her face came crying from the said place. On enquiry, she has told the occurrence as stated by the prosecution. PW4-Mrs.Parameswari and PW5-Mr.Sathishkumar, gave evidence as stated by PW3. PW6-Vellingiri speaks about the preparation of observation mahazar and rough sketch by the investigation officer.

(iv) PW7-Dr.Saroja, the Radiologist attached with Government Hospital, Tiruppur, speaks about the examination of the victim girl in respect to the fixation of her age. According to her, the age of the victim girl is between 10 and 12 years. PW8-Mrs.Shyamala, Police Constable attached to All Women Police Station, Palladam, speaks about the details in respect to the production of the victim girl before the Doctor for medical examination.

(v) PW9-Mr.Senthil, who is also a Constable, speaks about the production of accused before the Doctor for getting potency certificate.

(vi) PW10, Dr.Gajendran, attached with Government Medical College and Hospital, Coimbatore, has deposed about the examination of accused. He has issued a potency certificate to the accused. PW11-Mr.Balashanmugam, Assistant Director, attached with Forensic Science Department, Coimbatore, has stated in his evidence that on 21.02.2012, he received the samples collected from the victim girl, with regard to Crime No.12 of 2012 on the file of the Kamanayakan Palayam Police Station. He examined the same and has stated that there was no semen found in the vaginal smear.

(vii) PW12-Dr.Vidhya, attached with Government Hospital, Tiruppur, speaks about the examination of the victim girl and about the issuance of the certificate in respect to the injuries sustained by the victim girl.

(viii) PW13-Mr.Umayaraj, is alleged to be another occurrence witness. He speaks about the occurrence as stated by PW1. Further, he has stated that for the said occurrence, he lodged a complaint before the police. PW14-Mr.Shankar is the resident of Velaappanaikanpalayam. He speaks about the translation of statements given by the PW1 and PW2 from Hindi to Tamil.

(ix) PW15-Mr.Kulandaivelu and PW16-Mrs.Kaleeswari, are the police officers. They have spoken about the receipt of the complaint from PW13, examination of witnesses, securing the accused, producing the victim girl before the Doctor for medical examination and about the filing of the final report.

5. When the above incriminating materials were put to the accused, under Section 313 Cr.P.C., he denied the same as false. However, in order to prove his case, he neither produced any witness on his side nor marked any documents.

6. The learned Sessions Judge, (Fast Track-Mahila Court), Tiruppur, after perusing all the above materials and on considering the arguments advanced by either side, convicted and sentenced the accused as stated supra. Aggrieved over the conviction and sentence, the appellant is before this Court, with the present appeal.

7. I have heard Mr.Kingsly Solomon, the learned counsel appearing for the appellant/accused and also Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the State.

8. The learned counsel for the appellant/accused would contend that the evidence given by the prosecution witnesses are having lot of contradictions. The evidences put forth by PW1 to 4, 13 and 14 creates a doubt whether the accused took the victim girl to corn field (சோளக்காடு) and committed the offence as stated in the case of the prosecution. He would specifically contend that in respect to the arrest of the accused, the evidence given by the independent witnesses, vary from the evidence given by the investigation officer and therefore, on that score alone, the prosecution fails in its attempt to prove the case and accordingly, he prayed to allow the appeal and set aside the conviction and sentence awarded by the trial Court.

9. Per contra, the learned Additional Public Prosecutor would contend that the evidence given by PW1 to PW16, would clearly establish the case of the prosecution, as well as about

the intention having by the accused. If really the accused not committed any offence, there is no necessity for him to run away from the place, where he was secured by the public. Since the evidence given by the prosecution witnesses, does not relate to the offence of rape, the findings arrived at by the trial Court that the accused is guilty of offence under Section 354 of IPC is found correct. Accordingly, he prayed to dismiss the appeal.

10. I have considered the rival submissions made on either side and perused the records carefully.

11. The first and foremost submission made by the learned counsel appearing for the appellant/accused is that the Doctor who examined the victim girl, has stated in her evidence that the victim girl sustained only, scratchings (நகக் கீறல்) that too in the size of 3 to 4mm. In the said circumstances, considering the nature of injuries sustained by the victim girl, there is no possibility of the blood oozing out from the mouth of the victim girl and therefore, the evidence given by the medical officer, is not corresponding to the evidence given by the occurrence witnesses and therefore, it cannot be said that the accused committed the offence under Section 354 of IPC.

12. On considering the said submission with the relevant records, before the trial Court, all the occurrence witnesses, including the victim girl, has stated the during the time of occurrence, the accused attempted to close the mouth of the victim girl. Since the same was resisted by the victim girl, the accused attacked her, resultantly, blood was oozing out from the mouth of the victim girl. In this regard, the Doctor, who examined her did not say anything, in respect to the injury sustained by the victim girl in her mouth. Since the age of the victim girl is between 10 and 12, it is probable that the victim girl has not stated about the injuries, where the blood was oozing out. Further, the victim girl does not know the tamil language and the same may be one of the reason for non disclosing all the injury before the Doctor.

13. In otherwise, even assuming that there was a contradiction arisen in respect to the injury sustained by the victim girl, the same is not in the form to materially, affect the root of the case. All the occurrence witnesses had stated before the trial Court that at the time of occurrence, both the victim girl and the accused were seen coming from the corn field (சோளக் காடு). Since the victim girl is a minor, it is easy for the accused to take the victim girl to corn field (சோளக் காடு). Therefore, the minor contradiction now indicated by the counsel appearing for the appellant/accused is not sufficient to hold that the entire prosecution case is a false one. In otherwise, this Court is of the firm opinion that the evidence given by the

victim girl is fully corroborated through the evidence given by the medical officer.

14. Secondly, in respect to the arrest of the accused, the counsel appearing for the appellant/accused would contend that PW16, the Investigation Officer has stated that she alone secured the accused. On the other hand, the occurrence witnesses examined on the side of prosecution has stated that on the day of occurrence itself, after examining them the police officer took the accused for custody.

15. Now, on considering the said submission, it is true that at the time of giving evidence as PW2, the father of the victim girl has stated that on the date of occurrence itself at about 9 PM, the police secured the accused. On the other hand, PW3-Myilsamy in his cross examination has stated that immediately after the occurrence, the accused ran away from the scene of occurrence. Apart from that PW16, gave evidence that on 12.01.2012, she alone secured the accused in Karadivavi Bus Stop. Therefore, from the above three evidences, it is clear that in respect to the arrest of the accused, three different versions were put forth by the prosecution witnesses.

16. However in the present case, after the arrest of the accused, the investigating officer has not recorded the confession statement. Further, on the strength of the confession statement, nothing was recovered under Section 27 of the Indian Evidence Act. Therefore, though there are different versions in respect to the arrest of the accused, the same would not materially affect the case of the prosecution. Mere lapse on the part of the investigating agency could not be enough to throw out a overwhelming evidence, clearly establishing the case of the prosecution.

17. Herein also, since the evidences given by the occurrence witnesses are all in support of the prosecution without any contradiction, the lacunae found in the prosecution case, in respect to the arrest of the accused, is immaterial and therefore, this Court is of the opinion that the same cannot be taken into account for considering this appeal. Ultimately, it was concluded that the evidence given by the victim girl is corroborated through the evidence of medical officer. Further, the said evidences is also corroborated through the evidence given by the occurrence witnesses viz., PW3, PW4, PW13 and PW14.

18. More than that, since the age of the victim is between 10 and 12 years, and that too she is a hindi speaking girl, it is not necessary to test her testimony thoroughly. The minor contradictions found in her evidence, would no way affect the case of the prosecution. In otherwise, in respect to the

occurrence and also in respect to the registration of the case, nothing was suggested, on the side of the accused that alleged occurrence had not happened, as stated by the prosecution witnesses.

19. Therefore, this Court is of the opinion that the findings arrived at by the trial Court that the appellant is found guilty for the offence under Section 354 of IPC is found correct. Therefore, the interference of this Court is not necessary in the findings arrived at by the trial Court.

20. Now coming to the quantum of punishment, the learned counsel appearing for the appellant/accused would contend that the appellant herein was facing this case from the year of 2012. Further during the time of trial proceedings, he was in the custody nearly for a period of two months and therefore, he prayed for a lesser punishment.

21. In this regard, on considering the said submission with the relevant records, it is true, the accused is facing this case for the past eight years. Further, the offence under Section 354 of IPC is not a grave offence and hence, this Court is inclined to modify the sentence awarded by the trial Court.

22. In the result, the Criminal Appeal is dismissed and the conviction and sentence imposed upon the appellant/Accused for the offence under Section 354 of IPC, by the learned Sessions Judge (Fast Track-Mahila Court), Tirupur, is modified as follows:

"(i) the sentence of two years of rigorous imprisonment is reduced to that of one year of rigorous imprisonment.

(ii) the fine imposed by the trial Court i.e. Rs.20,000/- and in default to undergo rigorous imprisonment for six months, is confirmed.

(iii) Since the appellant/accused is on bail, the trial Court shall take steps to secure the appellant/Accused, to commit him in prison to serve out the remaining period of sentence. The period of sentence already undergone by the appellant/accused, shall be set off under Section 428 of the Code of Criminal Procedure.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Judicial Magistrate
Palladam

2.The Chief Judicial Magistrate
Tiruppur

3.The Superintendent
Central Prison, Coimbatore

4.The Sessions Judge,
Fast Track-Mahila Court,
Tiruppur.

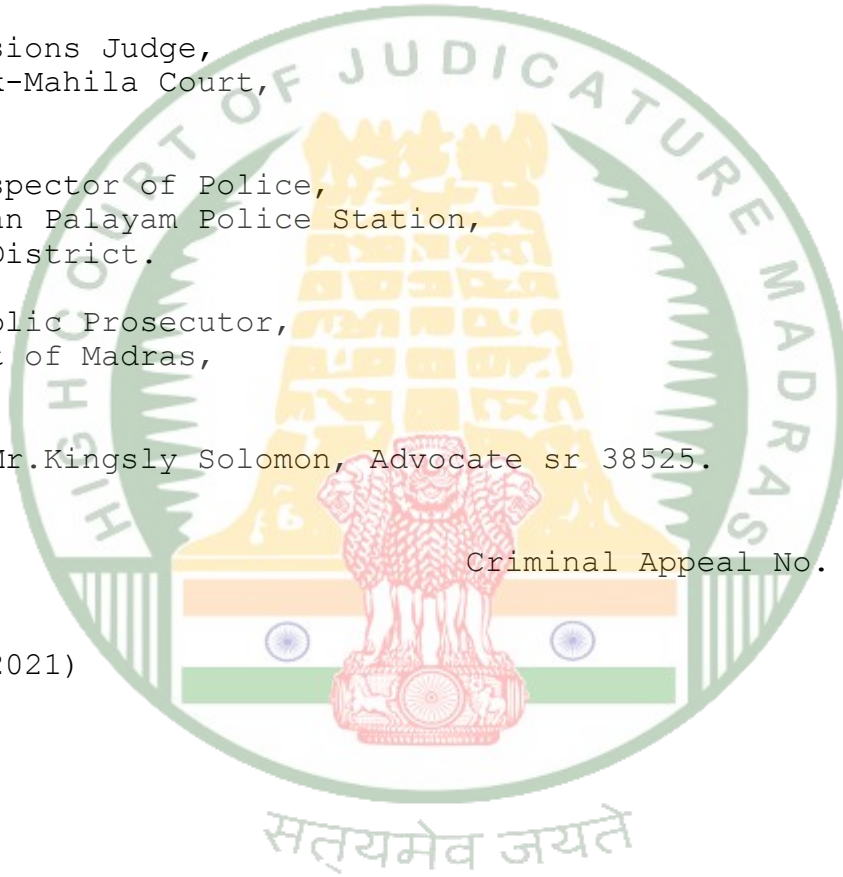
5. The Inspector of Police,
Kamanayakan Palayam Police Station,
Tiruppur District.

6. The Public Prosecutor,
High Court of Madras,
Madras.

+1 Cc to Mr.Kingsly Solomon, Advocate sr 38525.

Criminal Appeal No. 531 of 2014

AJB (CO)
SP(29/01/2021)



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