

BAIL SLIP

The Appellant/Accused namely Raja, S/o.Kanniappa Gounder (in S.C.No.90 of 2011 dated 29.10.2014 on the file of Mahila Court at Chengalpattu) was directed to be released on bail by Order of this Court dated 22.06.2015 and made in CrI.M.P.No.1 of 2015 in CrI.A.No.591 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.12.2020

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CRL.A.NO.591 OF 2014

Raja

... Appellant/Accused

Vs

State By:

Inspector of Police,

G-7, Choonambedu Police Station,

Kanchipuram District.

(Crime No.451 of 2010)

... Respondent/Complainant

PRAYER:

Criminal Appeal filed under Section 374 (1) of Criminal Procedure Code praying to set aside the Judgment dated 29.10.2014 made in S.C.No.90 of 2011 on the file of the Mahila Court, Chengalpattu.

For Appellant : Mr.R.Rajasekaran.

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

J U D G M E N T

(through Video Conference)

The present Criminal Appeal has been filed to set aside the Judgment of conviction and sentence passed by the learned Sessions Judge, Mahila Court, Chengalpattu dated 29.10.2014 in S.C.No.90 of 2011.

2.The appellant is the sole accused. He stood charged for the offence under Sections 376 and 506(ii) of Indian Penal Code. By Judgment dated 29.10.2014, the learned Sessions Judge, Mahila

Court, Chengalpattu convicted the appellant under Section 376 of Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for a period of one year and further convicted for the offence under Section 506(ii) of Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of one year.

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

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

(i)PW2, Nadhiya is the prosecutrix in this case. PW1, Elumalai is her father. Before two years from the date on which PW2 gave evidence before the trial Court, one day, when at the time she went to her field for mowing the grass, the present accused lifted her from that place and after removing the dresses worn by her, sexually assaulted her. Further, he made life threat to the prosecutrix as if the same was reported to her parents, he would kill her. The said occurrence is repeated second time and thereafter, PW2 became pregnant. Subsequently, when PW2 appeared tired, PW1 made enquiry wherein PW2 reported the entire occurrence to PW1. Immediately, PW1 took the prosecutrix to doctor wherein the doctor confirmed the pregnancy of PW2. The said incident was reported in the village wherein PW2 narrated the entire happenings. Thereafter, the village people advised PW1 for approaching the police and hence, PW1 lodged complaint before the Chunambedu Police Station under Ex.P.1.

(ii)On receipt of the said complaint, PW14, Sudhakar issued C.S.R.No.74 of 2010 and placed the said complaint before his superior officers. The C.S.R. receipt issued by PW14 was marked as Ex.P.11. In turn, after enquiry, PW15, Balasubramaniam, Inspector of Police, Chunambedu Police Station registered the case against the appellant in Crime No.451 of 2010 under Sections 376 and 506(i) of Indian Penal Code. The printed First Information Report was marked as Ex.P.12. After the registration of the FIR, he took the same for investigation. He examined the witnesses and recorded their statements. On 16.06.2010 at about 9 a.m., he visited the scene of occurrence and in the presence of PW11 and PW12, he prepared the observation mahazar under Ex.P.13. He drawn the rough sketch under Ex.P.14. On the next day, at about 10.30 a.m., he examined PW2 and recovered the dresses worn by her during the time of occurrence in presence of PW7.

(iii)Before that, PW8, Dr.Rajini, who running Aarthi Clinic at Tindivanam examined PW2 and confirmed her pregnancy.

Further, as per the request made by investigation officer on 21.06.2010, PW6, Dr.Parasakthi, attached with Government Hospital, Chengalpattu examined the prosecutrix and found that the foetus found in the PW2 is aged about 16 to 18 weeks. In this regard, he issued a certificate under Ex.P.2. Further, she issued age certificate under Ex.P.3 stating that the prosecutrix is aged about 20 to 22 years. She also issued certificate in respect of the blood group of PW2 under Ex.P.4. As per the said certificate, the prosecutrix belongs to "A1B" positive. Further, the very same doctor examined the accused and issued age certificate under Ex.P.5 stating that the accused is aged above 18 years and below 19 years. Similarly, PW9, Dr.Aravindhan, attached with Government Hospital, Chengalpattu examined the accused in respect of his potency and issued an opinion under Ex.P.7 stating that nothing appears to state that the individual is impotent.

(iv) In continuance of the investigation, on 26.06.2010 at about 10.15 p.m., PW15 arrested the accused and sent him to remand. He sent requisition to the Chief Judicial Magistrate, Chengalpattu for recording the statements from witnesses under Section 164 of Criminal Procedure Code. Thereafter, his successor Aravindhan continued the investigation and filed final report against the accused under Sections 376 and 506 (i) of Indian Penal Code.

5. Based on the above materials, the learned Sessions Judge, Mahila Court, Chengalpattu framed the charges under Sections 376 and 506(ii) of Indian Penal Code. The accused denied the same and opted for trial. Therefore, in order to prove their case, on the side of prosecution, as many as fifteen witnesses have been examined and fourteen documents were marked as Ex.P.1 to Ex.P.14 besides two material objects (M.O.1 and M.O.2).

6. Out of the said witnesses, PW1, Elumalai is the father of the prosecutrix. He has stated that before lodging complaint, one day, the prosecutrix was found tired and hence, he brought her to the doctor wherein after medically examining the prosecutrix, the doctor has stated that his daughter is pregnant. In respect to the same, the prosecutrix has stated that the accused herein had sexual intercourse with her. Hence, in respect of the said occurrence, panchayat was held wherein the accused denied the allegation and therefore, he lodged the complaint before the police.

7. PW2, Nadhiya is the prosecutrix in this case. She speaks about the occurrence as during the relevant point of time, when she was in the field, the accused lifted her and removed the dresses worn by her and thereafter, he forcibly made a sexual intercourse with her and the same was continued for two times.

Further, the accused threatened the prosecutrix that if the same was reported to others, he would finish her. She has also stated about the panchayat which was held in the village.

8.PW3, Kanniammal is the mother of the prosecutrix. She speaks about the occurrence similar to the evidence of PW1 and PW2.

9.PW4, Iyyanar is the relative of prosecutrix. He gave evidence stating that during the relevant point of time, both the PW2 and the accused quarreled with each other and thereafter, he came to know that PW2 became pregnant due to the act committed by the accused.

10.PW5, Subramani is the resident of the same locality. He speaks about the Panchayat which was held in the village as per the request made by PW2. Only as per the decision of the Panchayat, PW2 lodged the complaint against the accused as he had committed sexual assault on his daughter. Further, he has stated that, he only instructed the PW1 for lodging complaint.

11.PW6, Dr.Parasakthi, attached with Government Hospital, Chengalpattu had spoke about the examination of the prosecutrix. According to him, PW2 is a normal girl, further foetus found in the PW2 is aged about 16 to 18 weeks.

12.PW7, Rajagopal was working as a Village Administrative Officer in the said village. He speaks about the recovery of dresses from PW2 under the cover of mahazar.

13.PW8, Dr.Rajini is the doctor, running the clinic in the name Aarthi Clinic at Tindivanam. She examined the prosecutrix and found that she is a pregnant girl.

14.PW9, Dr.Aravindhan, attached with Government Hospital, Chengalpattu speaks about the medical examination of the accused. According to him, at the time of occurrence, the appellant herein is the potent man.

15.PW10, Vijayakumar, the then District Munsif cum Judicial Magistrate, Uthiramerur speaks about the recording of statements from witnesses under Section 164 of Criminal Procedure Code.

16.PW11 and PW12 viz., Devaraj and Murugan, who have been cited as witnesses for preparing observation mahazar have not supported the case of the prosecution. Hence, they were treated as hostile witnesses.

17.PW13, Kumar is the Sub Inspector of Police, Chunambedu Police Station speaks about the enquiry made in C.S.R.No.74 of

2010 which relates to the present case.

18.PW14, Sudhakar, Head Constable speaks about the receipt of complaint and about the issuing C.S.R.No.74 of 2010. He placed the records before PW15 for enquiry.

19.PW15, the then Inspector of Police speaks about the registration of the case, examination of witnesses, securing of accused and about the filing of final report.

20.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 came to the conclusion that the appellant is found guilty for the offence under Sections 376 and 506(ii) of Indian Penal Code and convicted the appellant / accused and sentenced to imprisonment as stated supra. Aggrieved over the said conviction and sentence, the appellant is before this Court.

21.I have heard Mr.R.Rajasekaran, learned Counsel for the appellant and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the respondent and have carefully perused the materials available on record.

22.The learned Counsel for the appellant would contend that from the evidence given by PW1 who is none other than the father of the prosecutrix, it shows that the prosecutrix is a mentally disordered person and thereby, without examining her mental status, recording evidence from her is against the settled proposition of law. He would further contend that the evidences given by the prosecution witnesses are having lot of contradictions in respect of the alleged occurrence.

23.Per contra, the learned Additional Public Prosecutor appearing on behalf of the State would contend that the evidence given by PW2 is more than sufficient to hold that the accused is found guilty for the offence under Sections 376 and 506(ii) of Indian Penal Code. According to him, interference of this Court is not necessary in the findings arrived by the trial Court.

24.On considering the rival submissions made by the learned Counsel appearing on either side, it is true that when at the time of giving evidence as PW1, father of the prosecutrix has stated that her daughter is having some mental illness. Though the said evidence is in support of the accused, it appears that while at the time of examining the prosecutrix, the trial Court put various questions to PW2 and after that, the learned trial

Judge has come to the conclusion that the prosecutrix is having mental fitness for giving evidence and only thereafter, the evidence of PW2 has been recorded.

25. More than that, PW6, Dr. Parasakthi who examined the prosecutrix has stated in her evidence that during the time of examining the prosecutrix, she found that the prosecutrix is a normal girl with full consciousness. Therefore, the said circumstances reveals the fact that PW2 is capable of giving evidence and therefore, there is no fault in recording the evidence of PW2. Only because of the reason that PW1 has stated as above in his evidence, it cannot be said that the prosecutrix is mentally ill person. The said submission made by the appellant was falsified through the procedure adopted by the Court as well as by the evidence of the doctor.

26. Secondly, on going through the evidence given by prosecutrix in respect of the occurrence, in her chief examination, she has clearly narrated the occurrence that during the time of occurrence, when she was in the field, the accused herein had sexually assaulted her. The evidence given by doctors would prove that at the time of examining the PW2, she is pregnant and therefore, it is probable that only due to the act committed by the accused, PW2 becomes pregnant and therefore, the evidence given by the prosecutrix appears to be true and inspires the confidence of this Court.

27. In this regard, the learned Counsel appearing for the appellant would contend that to prove the occurrence except PW2, none have been examined on the side of the prosecution as eye witness and therefore, believing the evidence of PW2 alone is not correct.

28. On considering the said submission with the relevant records, it is true that for proving the occurrence, except PW2, none have been examined on the side of the prosecution as eye witness. At this juncture, it is relevant to see the Judgment of our Hon'ble Apex Court in the case of "Vijay Alias Chinee -vs- State of Madhya Pradesh" reported in "(2010) 8 SCC 191", it has been held as follows:

"11. In State of Punjab v. Gurmit Singh, this Court held that in cases involving sexual harassment, molestation, etc., the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking

corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof."

29. Therefore, applying the ratio laid down by the Hon'ble Apex Court in the above referred Judgment, here in this case, though the evidence of prosecutrix is not corroborated through the evidence of other witnesses, it cannot be held that the accused is innocent person. As already observed, the solitary testimony of the prosecutrix alone is sufficient to hold that the accused herein committed the offence of rape and criminal intimidation. Therefore, the submission made by the learned Counsel for the appellant is not having any much force by way of appealing the case of the prosecution. Moreover, the said occurrence had happened against the will of PW2.

30. Coming to the quantum of compensation, the trial Court awarded seven years rigorous imprisonment for the offence under Section 376 of Indian Penal Code with fine and in this regard, the learned Counsel for the appellant would contend that during the time of occurrence, the accused is aged about 19 years and therefore, due to the age factor, he would have committed the said offence and he prayed that some leniency may be shown in the quantum of punishment awarded.

31. On considering the said submission with relevant records, though the said submission is reasonable, considering the gravity of offence committed by the accused, the question of sympathy does not arise. However, considering the other facts and circumstances of the case, this Court is inclined to modify the sentence awarded to the accused under Section 376 of Indian Penal Code to five years.

32. In the result, the appeal is partly allowed. The conviction and sentence imposed on the appellant/accused by the Trial court under Section 376 of Indian Penal Code is modified and the appellant is sentenced to five years rigorous imprisonment. On the other hand, the fine amount imposed on the accused under Section 376 of Indian Penal Code and the conviction and the sentence imposed on the accused under Section 506(ii) of Indian Penal Code are confirmed. Both the sentences are ordered to run concurrently. Bail bond, if any executed by

the appellant/accused, shall stand cancelled. The trial Court is directed to take effective steps to secure the custody of the appellant/accused to undergo the remaining period of sentence.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ay

To

- 1.The Sessions Judge,
Mahila Court,
Chengalpattu.
- 2.The Judicial Magistrate,
Madurantakam.
- 3.The Superintendent,
Central Prison,
Puzhal, Chennai.
- 4.Inspector of Police,
G-7, Chunambedu Police Station,
Kanchipuram District.
- 5.The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.R.Rajasekaran., Advocate, S.R.No.42948

CrI.A.No.591 of 2014

SV(CO)
CS/03/02/2021

WEB COPY