



Bail Slip

Parameswaran, S/o.Vellaichamy, male aged about 24 years is released on bail vide Court order dated 05/08/2014 made in MP(MD) No.1/2014 in Crl.A(MD)No.229/2014.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved on : 28.02.2020

Judgment Pronounced on : 10.03.2020

CORAM:

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Crl.A(MD)No.229 of 2014

V.Parameswaran

... Appellant / Sole Accused
Vs.

The State
Rep.by Inspector of Police,
Allinagaram Police Station,
Theni,
Theni District.
(Crime No.347 of 2012)

... Respondent / Complainant

PRAYER: Appeal filed under Section 374(2) of Criminal Procedure Code, against the conviction and sentence imposed upon the appellant in S.C.No.120/2013, dated 23.07.2014 on the file of the learned Fast Track Mahila Court, Theni.

For Appellant : Mr.B.Jameel Arasu
For Respondent : Mr.K.Suyambulinga Bharathi
Govt.Advocate (crl.side)

JUDGMENT

The appellant is the single accused in S.C.No.120 of 2013, who was convicted for the offence under Section 376 IPC and sentenced to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.1000/-, in default, to undergo 6 months Rigorous Imprisonment; further convicted for the offence under Section 417 IPC., sentenced to undergo 1 year Rigorous Imprisonment and to pay a fine of Rs.500/-, in default, to undergo 6 months Rigorous Imprisonment, by the Fast Track Mahila Court, Theni, by its Judgment dated 23.07.2014, has preferred this appeal.

2. The gist of the case is as follows:-

(i) P.W.1 / victim and the appellant had love affairs with each other for more than 6 years. The defacto complainant was working in a provision shop and the appellant was employed as a mazon. Both belonged to the same place and they knew each other. Sunday was a holiday for the defacto complainant. Hence, each Sunday, at about 6.00 a.m., both defacto complainant and the appellant used to go to a secluded place in the forest area, near their residence and spent some time.



(ii) In this relationship, the appellant had made advancement towards physical relationship. Initially, the defacto complainant objected to the same and latter, appellant promised to marry her, she acceded to the same and they were having regular physical relationship on several occasions. Due to which, she became pregnant and was taken to a hospital, there the pregnancy was aborted and thereafter, the physical relationship continued.

(iii) On 04.11.2012, the appellant informed the defacto complainant that he has to marry his uncle's daughter Ranjitha and picked up a fight and asked the defacto complainant not to hereafter meet him thereafter or approach him in any manner. The defacto complainant latter came home in the evening hours, unable to bear the deceivment caused by the appellant, took Oleander Seed (Aralikottai), made it paste and consumed the same.

(iv) When P.W.2 / mother of the defacto complainant, came back from her work, she found P.W.1 / defacto complainant vomiting, enquired the reason, thereafter, immediately called 108 Ambulance; P.W.1 got admitted in the Government Medical College Hospital, Theni; from the Hospital, information was sent to respondent Police; P.W.8 / Sub-Inspector of Police, came to the hospital, recorded the statement of P.W.1, registered the case in Crime No.347 of 2012 for the offence under Sections 376, 313 and 417 IPC., on 06.11.2012; Thereafter, the case was forwarded to P.W.9 / Inspector of Police, who took up the investigation, examined the witnesses and filed the charge sheet.

3. In order to prove the case, on the side of the prosecution, as many as 9 witnesses were examined as P.W.1 to P.W.9 and 8 documents were marked as Exs.P1 to P8. On behalf of the defence, no witness was examined and no document were produced.

4. When the appellant was questioned under Section 313 Cr.P.C., about the incriminating circumstances appearing against him, he denied the same.

5. The trial Court, on the basis of the oral and documentary evidence, convicted and sentenced the accused as aforesaid. Challenging the legality of the said conviction and sentence, the present appeal has been filed by the appellant.

6. The learned counsel appearing for the appellant would submit that though P.W.1 had stated that she had consumed Oleander Seed on 04.11.2012 thereafter vomited was admitted in the Government Hospital on the same day, P.W.8 / Sub-Inspector of Police reached the hospital, recorded the statement of P.W.1 only on 06.11.2012, at about 6.00 p.m., and no reason has been given for the delay. Further, there is no witness or any medical records to show that

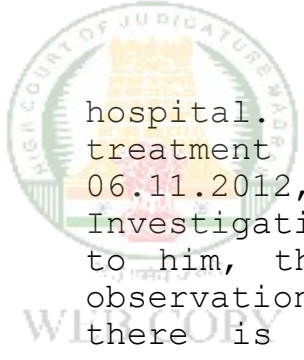
Further, P.W.1 had given an exaggerated complaint stating that she had forced miscarriage and the appellant being the reason. P.W.6 the Doctor, who examined P.W.1, categorically stated that there is nothing to show that P.W.1 had forced miscarriage. P.W.1 was certain that she had lodged a complaint only because the appellant refused to marry her.

7. The learned counsel further submitted that P.W.1 admitted that she studied upto class VIII in the local School. She is aged about 18 years and had attained majority. She was categorical that she knows what she was doing and she had consensually continuing the relationship with the appellant. Further, she is very categorical that till 04.11.2012, nobody knew the relationship between herself and the appellant. P.W.3, who is the relative and neighbour of P.W.1, had stated that she had seen on several occasions both P.W.1 and appellant together, in the remote forest area, and on one occasion, she warned P.W.1 in continuing the relationship with the appellant. Thus, on categorical assertion of PW1 that till 04.11.2012 nobody know the relationship between PW1 and the appellant, P.W.3, a relative and interested witness, is a got up witness. P.W.2 / mother of the victim has stated that she is not aware of the relationship of P.W.1 with the appellant prior to 04.11.2012. Hence, P.W.1 is the only witness to state about her relationship with the appellant.

8. P.Ws.4 and 5, who are witnesses to the observation mahazar and rough sketch / Ex.P2 & Ex.P7, admitted that observation mahazar and rough sketch were prepared in the house of P.W.1. The certain case of P.W.1 that the occurrence had taken place in the remote forest area and hence, the observation mahazar / Ex.P2 is of no consequence. From Ex.P3 it is seen that there is no sign of any witnesses. P.W.4 and P.W.5 categorically stated that they do not know the contents and they had signed on the instruction of police and they are relatives of P.W.1. P.W.7, the witness for arrest and recovery, had not supported the case of the prosecution and he was declared hostile.

9. P.W.6 is the Doctor, attached to the Government Medical College Hospital, Theni. She has stated that on 16.11.2012, she had examined the appellant and issued Ex.P5 the potency certificate. On 17.11.2012, she had examined P.W.1 and given Ex.P4/ medical examination certificate. P.W.6 stated that P.W.1 was aged between 16 to 18 years, without any supporting materials, further stated that hymen was not intact and there is no injury found on P.W.1 both internal and external, suggesting that there was no forced physical relationship. P.W.8 / Sub-Inspector of Police, on receipt of information from the hospital recorded the statement of P.W.1, which is marked as Ex.P1 and registered FIR / Ex.P6.

10. P.W.8 admitted that he has not produced any material to show that he was on duty on 06.11.2012 and no reason has been given for the delay in receiving the complaint. Further, the Doctor in

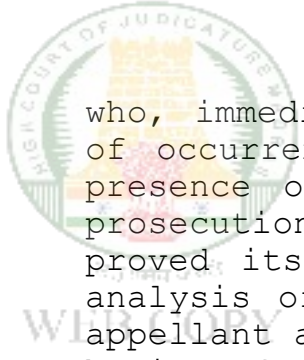


hospital. It is seen that no records from the hospital for the treatment taken as inpatient, by P.W.1, from 04.11.2012 to 06.11.2012, has been produced in this case. P.W.9, the Investigating Officer had gone to the scene of occurrence, according to him, the house of P.W.1 is not in the forest area, prepared observation mahazar. In the observation mahazar it is recorded that there is no incriminating articles seized from the scene of occurrence. In the rough sketch, there is no date and signature found.

11. The learned counsel further submitted that Ex.P3 was prepared to register the case against P.W.1, for attempting to suicide and that is the reason the place of occurrence has been shown as P.W.1's residence and this observation mahazar does not pertain to this case. P.W.9 admitted that no case has been registered against P.W.1, for attempting to suicide. In this case, P.W.1 admitted that she is a major, she had not revealed the relationship to any one till 04.11.2012, she had gone voluntarily with the appellant to the remote area in the forest and the relationship continued for years without any resistance. Further, she had given an exaggerated version that she had a forced miscarriage, which turned to be false from the evidence of P.W.6. Thus, P.W.1 having suffered love failure somehow wanted to implicate the appellant, had given a false complaint. In view of the clear motive being established with corroborative evidence, the appellant ought not to have been convicted and he is entitled for acquittal.

12. The learned Government Advocate (crl.side) submitted that P.W.1 is the victim, who had stated about the relationship between herself and the appellant and the appellant continued the same for quite sometime, on the pretext of marrying her, latter refused to marry her. She consumed Oleander Seed; P.W.2 is the mother, who had stated about her daughter's plight; P.W.3, the neighbour had seen the appellant and P.W.1 in the remote forest area and warned P.W.1 about the same; P.Ws.4 and 5 are the witnesses to the observation mahazar and rough sketch; P.W.6 is the Doctor, who examined P.W.1 and the accused; P.W.7 is the witness for arrest and recovery; P.W.8 is the Sub-Inspector of police; who recorded the statement of PW1 and registered FIR P.W.9 is the Investigating Officer, who, on completion of investigation filed the final report.

13. The learned Government Advocate further submitted that P.W.1, the victim, attempted to end her life due to deception caused by the appellant. P.W.1 was 18 years of age, as on 04.11.2012, P.W.6 is the Doctor, who had confirmed that hymen was ruptured and vagina freely admits two fingers, PW1 is not virgin, leading to inference that P.W.1 was subjected to physical relationship; P.W.8 is the Sub-Inspector of Police, who, on receipt of information from the Government Medical College Hospital, visited the hospital, recorded the statement of P.W.1, registered the same to P.W.9, the Investigating Officer,



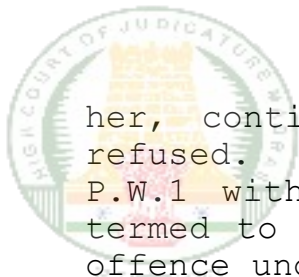
who, immediately, on receipt of information, had visited the scene of occurrence, prepared observation mahazar, rough sketch, in the presence of P.Ws.4 and 5, examined P.Ws.1, 2 and 3. Thus, the prosecution, by examining P.Ws. 1 to 9 and marking Exs.P1 to P8 had proved its case beyond reasonable doubts. The trial Court, on analysis of evidence of the witnesses and materials, convicted the appellant and the well reasoned Judgment of the trial Court need not be interfered with.

14. This Court heard the submissions made on either side and perused the materials available on record.

15. On perusal of the records it is seen that P.W.1 admitted that she is a major and studied upto VIII standard in the Government School. Prosecution had not attempted to collect any school certificate to prove her age, neither referred to Ossification Test to find out the age of the victim. Though in Ex.P4, the Doctor had opined that P.W.1's age could be between 16 and 18 years, there is no material to substantiate the same, no test has been conducted by the Doctor to prove the same. It is to be seen that prior to the Criminal Law Amendment Act, 2013, which came into force on 03.02.2013, the definition for rape under Section 375 was that the victim should be under the age of 16 years. In this case, the age of the victim is 18 years and with the available materials, it cannot be stated that she was less than 16 years, when the physical assault has been committed on her. P.Ws.2 and 3 are the witnesses, who heard from P.W.1 and they are not aware of the happenings prior to 04.11.2012.

16. P.W.1 is categorical that the relationship between P.W.1 and the appellant was kept in secrecy and not known to any one till 04.11.2012. Hence, the only available evidence against the appellant is the evidence of P.W.1. P.W.1 is the person, who had given an exaggerated version as regards to the forced miscarriage committed on her. P.W.6 / Doctor, who examined P.W.1 he stated that she is unable to come to a conclusion, as regards the forced miscarriage and that is the reason Ex.P8 / Alteration Report had been filed by the prosecution. In view of the same, the evidence of P.W.1 has to be viewed with care and caution.

17. From the evidence of P.W.1 it is seen that P.W.1 had consciously continued her relationship with the appellant, she was a person, who was knowing what is happening on her, she is very certain that only after the appellant refused to marry her, she had taken the extreme step of consuming Oleander Seed and thereafter only, she revealed the relationship to every one. In view of the same, it is seen that the refusal of the marriage is the cause for P.W.1 to reveal the relationship and lodging a complaint. Thus, from the above, it is seen that P.W.1 is a person with maturity and



her, continued her relationship till such time the marriage was refused. In view of the same, this Court finds that the act of P.W.1 with the appellant was a consensual one and it cannot be termed to be rape and hence, the conviction of the appellant for offence under Section 376 IPC., is not sustainable and is set aside.

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18. As regards the appellant's conviction under Section 417 IPC., P.W.1 in her evidence had stated that she continued her relationship with the appellant only believing the appellant's words that they would get married. Further, the love affairs between them had been going on for the past several years, only on the strength of getting married. On the materials available on record, this Court finds that the appellant had committed an offence under Section 417 IPC. The trial Court sentenced him to undergo 1 year rigorous imprisonment and to pay a fine of Rs.500/- and the same is hereby confirmed.

19. In view of the development taken place thereafter that the P.W.1 / victim having been married to another person and blessed with a child and is living separately and the appellant is also married to another person blessed with a child and living separately, since the appellant had already undergone about 37 days of sentence, this Court feels that the sentence of 1 year Rigorous Imprisonment imposed on the appellant by the trial Court is modified to the one already undergone, on condition that the appellant, apart from the fine of Rs.500/-, is directed to pay a fine of Rs.1,00,000/- (Rupees One Lakh Only), before the trial Court, within a period of three weeks from the date of Judgement, failing which, the appellant / accused shall undergo six months Simple Imprisonment. The entire fine amount is to be treated as compensation to be paid to P.W.1. P.W.1 shall file a petition before the trial Court and the compensation amount shall be handed over to her by the trial Court.

20. In the result, this Criminal Appeal is partly allowed to the extent indicated above.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MPK
To

1. Fast Track Mahila Court,
Theni.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Inspector of Police,
Allinagaram Police Station,
Theni,
Theni District.

3.The Addl.Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4.The Superintendent, Central Prison,
Madurai.

5. The Record Clerk
Criminal Section 2 copies
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.VISHNU, Advocate (SR-11185[F] dated 11/03/2020)

JUDGMENT MADE IN
Crl.A(MD)No.229 of 2014
10.03.2020

SMA/20/03/2020/7P/8C