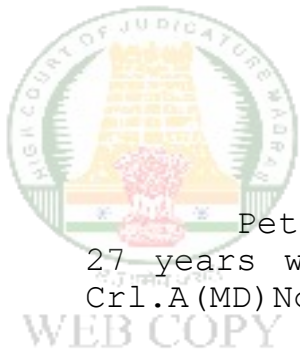




BAIL SLIP

Petitioner/Appellant namely Prabhu, S/o.Jeyaraman aged about 27 years was released on bail vide order in MP(MD)No.1 of 2014 in Crl.A(MD)No.81 of 2014.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.11.2019

PRONOUNCED ON : 31.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A(MD)No.81 of 2014

Prabhu ... Appellant / Sole Accused

Vs.

State Represented by
The Inspector of Police,
Memisayal Police Station,
Pudukkottai District.
[Crime No.14 of 2011]

... Respondent/ Complainant

PRAYER: Appeal filed under Section 378(4) of the Code of Criminal Procedure, to call for the records in S.C.No.94 of 2011 on the file of the learned District Sessions Judge (Mahila Judge), Pudukkottai, Pudukkottai District and set aside the judgment dated 27.12.2013 and acquit the appellant.

For Appellant : Mrs.T.Seeni Syed Amma
Legal Aid Counsel

For Respondent : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor

JUDGMENT

This appeal is filed as against the conviction and sentence imposed on the appellant by the learned District Sessions Judge (Mahila Judge), Pudukkottai, Pudukkottai District in S.C.No.94 of 2011.

2.The appellant is the sole accused and he was tried for the offence under Sections 376 r/w 511, 307 of IPC and under Section 4 of Tamil Nadu Prohibition of Women Harassment Act and the trial Court by judgment dated 27.1.2013 convicted and sentenced the appellant as follows:



Section of Law	Sentence of imprisonment	Fine amount
354	To undergo rigorous imprisonment for two years	Rs.1000/- in default to undergo imprisonment for six months
324 IPC	To undergo rigorous imprisonment for three years.	Rs.1000/- in default to undergo rigorous imprisonment for six months
4 of TNPWH Act	To undergo rigorous imprisonment for three years.	Rs.10,000/- in default to undergo rigorous imprisonment for six months.

However, the appellant was acquitted from the charge under Sections 376 r/w 511 and 307 IPC.

3.The case of the prosecution in a nutshell is as follows:

3.1.The complainant / injured was residing at Kattimedu, Sekal, Thiruthuraipoondi and the appellant was residing at Eyembakottai. On 11.02.2011 at about 7.00 pm, the complainant came to the Bazar at Mimisal for going to her uncle's house at Claravayal. At that time, as there was no transportation either to go to her uncle's house or to return home, she slept in a shop opposite to Kalyana Ramar Temple at Mimisal. Around 1.00 am, the appellant had attempted to molest the complainant and when she raised noise, the appellant with an intention to kill her attacked on her head with an iron rod, which was available nearby. On hearing the noise the persons nearby came and sent her through 108 Ambulance and she was admitted in Government Hospital at Manalmelkudi. On receipt of information, on 12.02.2011 at about 10.00 am, the Inspector of Police [PW6], Nannilam, visited the Government Hospital at Manalmelkudi and recorded the statement [Exp1] of the injured and based on the statement a case in Crime No.14 of 2011 on the file of the respondent Police was registered under Sections 324 and 506 (ii) IPC against the appellant.

3.2.The printed First Information Report is marked as Exp5 and the same was sent to the Judicial Magistrate Court on 12.02.2011 at about 1.05.pm.

3.3.Upon receipt of the FIR, the Investigating Officer [PW6] went to the place of occurrence at 12.00pm and prepared the observation mahazar [Exp2] and rough sketch [Exp6] in the presence of PW3 and recovered a blood stained iron rod [MO1. He also recorded the statement of the complainant and other witnesses and altered the Section to that of under Section 307 and Section 4 of TNPWH and the



alteration report is marked as Exp.7. Thereafter, on 13.02.2011 at about 6.00pm, PW6 arrested the appellant and he was remanded into judicial custody. He also obtained the accident register copy of the complainant and recorded the statement of the Doctor. After completion of the investigation, he filed a charge sheet against the appellant under Sections 324 and 307 IPC and Section 4 of TNPWH Act, before the Judicial Magistrate, Aranthangi and the same was taken on file in PRC No.27 of 2011 and committed to the Court of Session.

4. During the trial on the side of the prosecution six witnesses were examined and seven documents were marked and one material object was produced.

5. The available prosecution evidence are as follows:

(i) PW1 is the complainant / victim. She has spoken about the occurrence and the manner of the occurrence. She also stated about the treatment provided in Government Hospital at Manalmelkudi and about the complaint [Exp1] and identified the iron rod [MO1].

(ii) PW2 is the nearby resident at the occurrence place as well as he is running a TV service centre near that place. He speaks about seeing the complainant/ victim with bleeding on the head and the appellant standing with log.

(iii) PW3 is a resident of Karavayal and he knew the appellant. He speaks about his arrival to the place of occurrence and the enquiry conducted by the Police. He is also a witness to the observation mahazar [Exp2] and recovery mahazar [Exp3].

(iv) PW4 is the Doctor, who had given treatment to the victim at the Government Hospital at Manalmelkudi and he has spoken about admitting the victim in the Hospital on 12.02.2011 at 1.30am and giving treatment to her and he had also referred the victim to the Government Hospital at Pudukottai for further treatment. Through him the accident register copy [Exp4] was marked.

(v) PW5 is a resident of Mimisal and he has been treated as hostile witness.

(vi) PW6 is the Investigating Officer and he has spoken about recording of complaint [Exp1] from the victim at Government Hospital at Manalmelkudi. He has further spoken about the registration of FIR, preparation of observation mahazar [Exp2], rough sketch [Exp6], recovery mahazar [Exp3], recovery of iron rod [MO1] and recording of statements from the witnesses and laying of final report.

6. The incriminating materials were put before the accused under Section 313 CrPC and he denied the same as false and on the



side of the accused, no witness has been examined and no document was marked.

7. In conclusion of the trial, the trial Court found the appellant guilty under Sections 354 and 324 IPC and Section 4 of TNPWH Act convicted and sentenced him as stated supra and as against the conviction and sentence, the present criminal appeal has been filed.

8. Heard Mrs.T.Seeni Syed Amma, learned Legal Aid Counsel appearing for the appellant and Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor.

9. When the matter was taken up for hearing on 17.07.2019, the learned Counsel appearing for the appellant filed a memo reporting no instruction and hence, notice was ordered to the appellant, however, Court notice was returned as unserved and therefore, this Court appointed Mrs.T.Seeni Syed Amma, who is having experience in criminal side, as Legal Aid Counsel to proceed with the appeal.

10. The learned Counsel for the appellant has raised the following grounds:

(i) The victim had stated in her evidence that the appellant had attempted to molest her. But, in her cross examination, she has stated that somebody had beaten her and she had only described physical features of the assailant and in the First Information Report also it is stated that accused is not known and it is mentioned that he is short, fat and having wheat complexion. But, in order to identify the assailant, no identification parade was conducted in this case.

(ii) The evidence of PW2 is contrary to the prosecution case. According to PW2, the accused assaulted the victim with a wooden log, whereas, the prosecution has produced an iron rod [MO1].

(iii) The First Information Report [Exp5] was registered on 12.02.2011 at 11.30 am, but, it reached the Court only on 14.02.2011 at 1.05 pm and therefore, there is a delay in the First Information Report reaching the Court and there is no proper explanation for such delay.

(iv) PW1 has disowned the contents of Exp1 and therefore, the very occurrence itself is doubtful.

(v) The presence of PW2 and PW3 are doubtful and therefore, their evidence cannot be relied upon and has to be discarded and therefore, the learned Counsel prayed for setting aside the conviction and sentence imposed by the trial Court.

11. Per Contra, the learned Additional Public Prosecutor has submitted that PW1 has clearly deposed about the offence committed on her and the injury caused to her and PW2 has stated about his presence at the place of occurrence. PW3 is the witness to the



observation mahazar and recovery mahazar. PW4 is the Doctor, who has clearly stated about admitting the victim and has noted down the injuries sustained by the victim and the treatment given to her. The physical features described by the complainant about the accused has been confirmed by the trial Court on the appearance of the accused before the trial Court and therefore, there is no necessity to conduct test identification parade and moreover, this is an offence of sexual assault and therefore, the prosecution has established its case beyond reasonable doubt and the trial Court has rightly convicted the appellant and imposed sentence.

12.This Court has paid its anxious consideration to the rival submissions made on either side and also perused the materials placed on record.

13.PW1 is the injured witness in this case. According to her she came to the Mimisal bus stop to go to her uncle's house at Claravayal at 7.00pm on 11.02.2011 she missed the bus and therefore, in order to find a safer place, she went to a nearby temple, where the door was locked and therefore she stayed near the temple. At that time, the accused, who is an Auto Driver, attempted to molest her and when she protested, he assaulted her with a wooden log.

14.The occurrence has taken place at 00.30 hours and immediately, at the intervention of the PW2 and PW6, 108 ambulance was called and the victim was sent to the Government hospital. The Doctor PW4, who attended the victim girl on the date of occurrence issued Accident Register [Exp4] and through his evidence he would state that the victim girl was brought with injuries on the date of occurrence and he noted down the following injuries:

"O/E.5 Laceration on the scalp

1)4X2X1cm & 2) 7X2X1cm laceration over occipital region 3)4X2X1cm, 4) 6X2X1cm over both parietal region. 5) 4X4X1cm in frontal region."

15.The fact remains that the victim girl is a married woman and there was a problem in her family and therefore, at the time of lodging the complaint, she did not disclose about the attempt made on her modesty. However, during the investigation, she has stated about the attempt made by the accused to assault her modesty. PW2 a nearby shop owner has witnessed the occurrence and also deposed before the Court.

16.PW2 is a TV Mechanic and he is having a TV Mechanic shop nearby the place of occurrence and the place of occurrence can be viewed from the shop. He is aware of the victim girl as well as the accused. On the date of occurrence at about 00.30 hours when the appellant assaulted the victim girl, PW2 witnessed the same and he has also deposed about the occurrence. However, he has stated about



the weapon used by the accused at the time of occurrence as a wooden log, whereas an iron rod has been recovered and marked as MO.1.

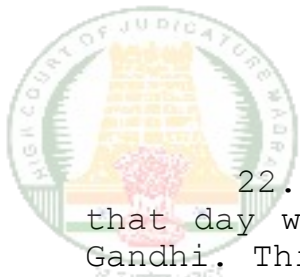
17.This contradiction with regard to the weapon alone cannot be taken as a ground to disbelieve the case of the prosecution. When the occurrence has taken place in midnight at about 00.30 hours as well as the evidence was taken after considerable time. The accused has not shattered the evidence of PW2 during the cross examination and has not attributed any motive for PW2 to speak against him. PW2 is a natural witness in this case and also appears to be Trustworthy.

18.The evidence of PW1 is corroborated by the evidence of PW2 and the injury sustained by her has been spoken by the Doctor, who treated the victim girl on the date of occurrence.

19.The learned Counsel for the appellant has taken a specific stand on the delay in the FIR reaching the Court. The case was registered on 12.12.2011 and FIR reached the Court only on 14.02.2011 after two days and therefore, the prosecution case according to him is doubtful. It is true for the occurrence took place on 12.12.2011, the FIR was registered only on 14.02.2011. But the FIR was registered only for the offence under Section 324 and 506(i) IPC and therefore, it was not treated as express FIR. But the complaint ExP1 was received on 12.02.2011 at 11.30am by the respondent Police Station and was duly registered in Crime No.14 of 2011 on the very same date. The fact remains that immediately after the occurrence, the victim girl was taken to the hospital in 108 Ambulance and admitted in the Government Hospital at Srivilliputhur at about 1.00am and therefore, there is no delay in reporting the incident. However, the delay in the FIR reaching the Court, as discussed above cannot be a ground to disbelieve the case of the prosecution, when the case was originally registered for minor offences.

20.The further contention of the learned Counsel appearing for the appellant that in the absence of identification parade, the case of the prosecution cannot be accepted and is not sustainable.

21.The identification parade is not a substantial piece of evidence and it cannot be a sole ground to disbelieve the case of the prosecution. This is a case based on eye witness, wherein PW2, who knows about the accused and also who is having a shop near the place of occurrence has witnessed the incident and he has also spoken about the occurrence. The accused has not shattered the evidence by attributing any motive for his evidence. PW2 is an independent witness and also a natural witness in this case and his evidence corroborates the evidence of PW1 and the Doctor PW4. Therefore, this Court is not inclined to interfere with the orders of the trial Court.



22.The day a woman can walk freely on the roads at night, that day we can say that India has achieved independence - Mahatma Gandhi. This incident on the victim [PW1] would show that we are far away from achieving the real independence as said by Mahatma Gandhi.

23.In the result, the criminal appeal is dismissed. The conviction and sentence imposed in S.C.No.94 of 2011 on the file of the learned District Sessions Judge (Mahila Judge), Pudukkottai, Pudukkottai District is hereby confirmed. The bail bonds executed if any, by the appellant shall stand cancelled and the trial Court is directed to secure the appellant to undergo the remaining period of sentence.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Dsk

To

- 1.The District Sessions Judge (Mahila Judge),
Pudukkottai,
Pudukkottai District.
- 2.The Judicial Magistrate, Aranthangi.
- 3.The Chief Judicial Magistrate,Pudukkottai
- 4.The Inspector of Police,
Memisayal Police Station,
Pudukkottai District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 6.The Section Officer,(2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

Cr1.A(MD)No.81 of 2014

31.01.2020