



**BAIL SLIP**

Muthuraj, S/o.Shanmugam, male Aged about 55 years/2015 (Single Accused) was released on bail vide order dated 26/08/2015 made in MP(MD)No.1 of 2015 in Crl A(MD)108 of 2015.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.10.2020

CORAM:

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

Crl.A(MD)No.108 of 2015

Muthuraj

... Appellant

Vs

State Represented by,  
Inspector of Police,  
Ottapidaram Police Station,  
Cr.No.242/2009,  
Thoothukudi District.

... Respondent

**PRAYER:** Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records from the lower Court and to duly set aside the Judgment passed by the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi in S.C.No.20/2011, dated 24.03.2015.

For Appellant : Mr.K.Prabhu

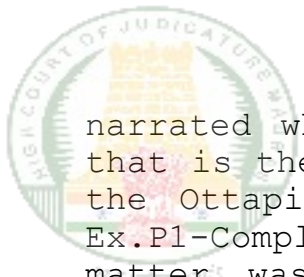
For Respondent : Mr.S.Chandrasekar  
Additional Public Prosecutor

**JUDGMENT**

Heard the learned Senior Counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent.

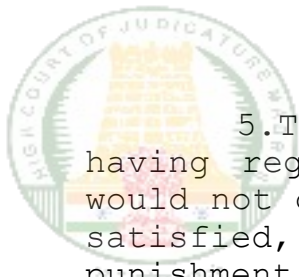
2.This appeal is directed against the Judgment dated 24.03.2015 in S.C.No.20 of 2011 on the file of the Sessions Court/Mahalir Neethimandram, Thoothukudi, convicting the appellant for the offences under Section 376 of IPC r/w Section 511 of IPC and sentencing him to rigorous imprisonment for five years and to pay a fine of Rs.3,000/- and default sentence was also imposed.

3.The case of the prosecution is that on 29.12.2009, at about 01.00 pm., the appellant induced the victim child to go to his house and perpetrated the offence in question on her. The victim girl was aged about seven years. When the child came out of the house of the appellant, the mother of the appellant was not there. She came home at around 3.30 p.m. She found the child crying and the child



narrated what happened. The victims' mother informed her husband that is the father of the victim and after his arrival, she went to the Ottapidaram police station at about 09.00 p.m., and lodged Ex.P1-Complaint. It was registered as Crime No.242 of 2009. The matter was investigated and final report was filed before the Judicial Magistrate, Vilathikulam. The case was committed to the Sessions Court in P.R.C.No.15 of 2010. It was then made over to the Mahalir Neethimandram, Thoothukudi and taken up for trial in S.C.No.20 of 2011. Against the appellant, two charges were framed. One under Section 376 of IPC r/w Section 511 of IPC and the other under Section 506(ii) of IPC. The appellant denied the charges and claimed to be tried. In support of the prosecution, as many as 12 witnesses were examined. Ex.P1 to Ex.P9 were marked. M.O.1 to M.O.4 were also marked. On the side of the accused, no evidence was adduced.

4.The mother of the victim was examined as P.W.1. She categorically deposed against the appellant herein. Though she was examined at length, her testimony could not be shaken. The victim child was examined as P.W.2. The learned Trial Judge put questions to her and was satisfied that the victim was eligible to be examined as witness. The Victim also categorically and clearly narrated what happened to her. Her testimony also could not be shaken in the cross examination. The sister of the victim was examined as P.W.3. P.W.4 is the mahazer witness. P.W.5-Dr.Balan spoke about the potency of the appellant. P.W.6 was the police official who received Ex.P1 and registered Ex.P4-FIR. P.W.7 is the mahazer witness. P.W.8 is the another mahazer witness. But he turned hostile. P.W.9 also turned hostile. P.W.10 is the Doctor who examined the victim. She had stated that she did not find any injury in the private parts of the victim. She further stated that victim did not have any pain in her stomach. She also did not notice any injury on the person of the victim. P.W.11 was the Investigation Officer. He stated that he took up investigation at about 1.45 am., on 30.12.2009 and went to the spot and prepared observation mahazer and also the rough sketch. He examined the relevant witnesses and arrested the appellant at about 3.30 a.m. P.W.12 took over the investigation from P.W.11 and filed the final report. The appellant was examined under Section 313 of Cr.P.C., and all the circumstances appearing against him were put to the appellant. The appellant denied circumstances and though the appellant claimed that he has witness to examine on his behalf, he did not adduce any evidence. The trial Judge, after a detailed consideration of the evidence on record, came to the conclusion that while the appellant was entitled to be acquitted of the charge under Section 506(ii) of IPC, the prosecution case for the offences under Sections 376 r/w 511 of IPC was established beyond reasonable doubt and sentenced him as mentioned above.



5.The learned Senior Counsel appearing for the appellant, having regard to the testimony of the victim, submitted that he would not challenge the finding of guilt and stated that he would be satisfied, if substantial leniency is shown in the matter of punishment. The learned Senior Counsel submitted that the occurrence had taken place way back in December 2009 and that, more than 11 years have elapsed. He also pointed out that the accused is aged about 58 years now. The accused is said to be suffering from certain serious ailments. The appellant is said to belong to scheduled caste community and is eking out his livelihood by doing only coolie work. He also pointed out that he had never come under adverse notice either before or after. This appears to be a solitary occurrence.

6.My conscience is satisfied that the learned trial Judge rightly found the appellant guilty. However, the offence attributed to the appellant is only one of attempt to commit rape. The victim has not suffered even scratch of an injury. Therefore, taking note of these mitigating circumstances, I am of the view that the sentence imposed on the petitioner can be reduced. The petitioner is said to have spent about 70 days in jail already. Having regard to these aspects, the sentence is reduced from five years rigorous imprisonment to two years rigorous imprisonment. The period of sentence already undergone by the appellant will not be set off.

7.With this direction in the matter of sentence, this criminal appeal is partly allowed.

Sd/-

Assistant Registrar (CS III)

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/ /2020

Sub Assistant Registrar(CS)

rmi  
To

1.The Sessions Judge,  
Mahalir Neethimandram,  
Fast Track Mahila Court, Tuticorin.

2.The Judicial Magistrate,  
Vilathikulam,  
Tuticorin.

3.The Chief Judicial Magistrate,  
Tuticorin.



4.The Inspector of Police,  
Ottapidaram Police Station,  
Thoothukudi District.

5.The Superintendent,  
Central Prison, Palayamkottai.

6.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

Copy to:

The Section Officer,  
Criminal Section,  
Madurai Bench of Madras High Court,  
Madurai.(2 Copies)

Crl.A(MD)No.108 of 2015  
05.10.2020

ac(CO)  
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