



BAIL SLIP

The Appellant/Sole Accused namely Durai @ Sappani Muthu, S/o.Murugan, aged 32, was directed to be released on bail as per the order of this Court dated 31.07.2015 in MP(MD).1 of 2015 in CRL A (MD).167/2015 on the file of this Court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.A. (MD) No.167 of 2015

Durai @ Sappani Muthu ... Appellant / Sole Accused

-Vs-

State represented by
The Inspector of Police,
Murappanadu Police Station,
Thoothukudi District.
(Crime No.53 of 2011)

... Respondent / Complainant

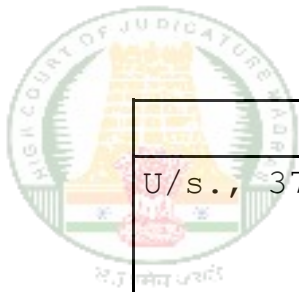
PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, praying to set aside the judgment and conviction dated 14.07.2015 by the learned Sessions Judge, Mahalir Neethimandram, (Fast Track Mahila Court), Thoothukudi in S.C.No.115 of 2013 and acquit the appellant.

For Appellant : Mr.S.Deenadhayalan

For Respondent : Ms.S.Bharathi,
Government Advocate (Crl.Side).

JUDGMENT

The appellant / sole accused was charged and tried before the learned Sessions Judge, Mahalir Neethimandram, (Fast Track Mahila Court), Thoothukudi, in S.C.No.115 of 2013, for the offences under Sections 376 r/w 511 and 506(2) IPC. The trial Court, vide the impugned judgment dated 14.07.2015, has convicted and sentenced the appellant as under :-



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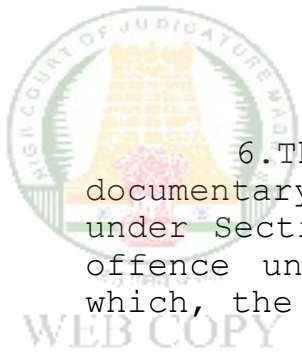
Section	Sentence
U/s., 376 r/w 511 IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of five [5] years and to pay fine amount of Rs.2,000/-, in default to undergo six months rigorous imprisonment.

2.However, the trial Court has acquitted the appellant in respect of the offence under Section 506(2) IPC. The appellant, aggrieved by the conviction and sentence awarded by the trial Court, vide the impugned judgment referred supra, has filed the present appeal. For the sake of convenience, the appellant will be referred to as the accused.

3.The case of the prosecution is that on 16.02.2011, at about 4.00 p.m., when P.W.1 Duraichi was in the house, the accused called her and asked her to purchase soap and after purchasing, she went to the house of the accused to give the same. At that time, the accused locked the door, embraced her and made her lie down and kissed her on the face and cheeks. When she raised an alarm, he gagged her mouth with a towel and threatened her with a knife. Then he inserted his penis into her vagina and committed rape. She was unable to bear the pain while passing urine. The next date ie., on 17.02.2011, she went to school. When her teacher Muthurani interacted with her, she narrated the incident to her and the teacher told the same to her uncle Nainar and he took her from school to the house and on 18.02.2011, her grand mother has lodged a complaint Ex.P.8 to the Sub Inspector of Police P.W.8, thereafter, P.W.8 registered First Information Report Ex.P.9. The First Information Report and the complaint were forwarded to the learned Judicial Magistrate, Srivaikuntam and also a copy was sent to the Inspector of Police P.W.9 and P.W.9 went to the scene of occurrence and prepared rough sketch and mahazar and filed final report for the offences under Sections 376 and 506(2) IPC.

4.The accused was furnished with the relied upon documents under Section 207 Cr.P.C. and the case was committed to the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court) Thoothukudi, for trial, after framing charges for the offences under Sections 376(1) and 506(2) IPC. When the accused was questioned, he pleaded not guilty.

5.In order to prove the prosecution case, P.W.1 to P.W.9 were examined and Exs.P.1 to P.12 were marked. When the trial Court examined the accused under Section 313(1) of Cr.P.C., in respect of incriminating the evidences available against him, he denied the same as false. Neither he choose to examine any witness nor to exhibit any document.



6.The trial Court upon consideration of both oral and documentary evidence, has acquitted the accused from the offence under Section 506(2) I.P.C., however, convicted the accused for the offence under Section 376 r/w 511 IPC as stated above. Against which, the present Criminal Appeal is filed by the accused.

7.The learned counsel appearing for the appellant would submit that in the present case in order to prove the prosecution case, no witnesses were examined, except P.W.1 victim girl. P.W.1 in her deposition stated that the accused inserted his penis in the vagina of P.W.1. However, P.W.3, Doctor, who conducted clinical examination, has deposed that there is no external or internal injuries and hymen is intact. Hence, the evidence of P.W.1 was not corroborated with P.W.3 doctor's evidence. Further, though the incident was occurred on 16.02.2011, the complaint was lodged on 18.02.2011 by the grand mother of the victim girl and she is also not an eye witness and further, the complaint and First Information Report were sent to the Court after four days of the complaint ie., on 22.02.2011 and there is no proper explanation for the delay of lodging complaint and for the delay in sending the First Information Report to the Court. In the absence of any proper explanation, the trial Court has granted conviction and sentence, which has to be set aside. Further, P.W.1 specifically alleged that her mouth was closed by towel and she was threatened by knife. However, both the towel and knife were not recovered from the accused and the same were not marked as material objects. In order to prove the prosecution, immediately after the incident, no confession was recorded by the law enforcing agency. The victim girl was not produced before the doctor immediately after the occurrence. Hence, he prayed for acquittal.

8.In support of his submission, he relied upon the decision reported in **AIR 2004 SC 85 (State of Karnataka Vs. Mapilla P.P.Soopi)**. The relevant paragraph is extracted hereunder:-

"4.Undue delay in lodging the complaint without acceptable evidence has also contributed to the doubt in the prosecution case. Hence, the High Court was justified in allowing the appeal."

9.He would further submit that in the present case, there is no eye witness corroborating with the evidence of the victim girl and the trial Court has convicted the accused solely on the solitary evidence of P.W.1 victim girl, which is unsustainable one. To that effect, the learned counsel appearing for the appellant has relied upon the unreported judgment in **Crl.A.No.264 of 2020, arising out of SLP (Criminal) No.3780/2018 (Santhosh Prasad @ Santhosh Kumar Vs. The State of Bihar)**. The relevant paragraphs are extracted hereunder:-

"5.4.3 In the case of Krishna Kumar Malik v. State of Haryana (2011) 7 SCC 130, it is observed and



held by this Court that no doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

5.5 With the aforesaid decisions in mind, it is required to be considered, whether is it safe to convict the accused solely on the solitary evidence of the prosecutrix? Whether the evidence of the prosecutrix inspires confidence and appears to be absolutely trustworthy, unblemished and is of sterling quality?

6. Having gone through and considered the deposition of the prosecutrix, we find that there are material contradictions. Not only there are material contradictions, but even the manner in which the alleged incident has taken place as per the version of the prosecutrix is not believable. In the examination-in-chief, the prosecutrix has stated that after jumping the fallen compound wall accused came inside and thereafter the accused committed rape. She has stated that she identified the accused from the light of the mobile. However, no mobile is recovered. Even nothing is on record that there was a broken compound wall. She has further stated that in the morning at 10 O'clock she went to the police station and gave oral complaint. However, according to the investigating officer a written complaint was given. It is also required to be noted that even the FIR is registered at 4:00 p.m. In her deposition, the prosecutrix has referred to the name of Shanti Devi, PW1 and others. However, Shanti Devi has not supported the case of the prosecution. Therefore, when we tested the version of PW5 -prosecutrix, it is unfortunate that the said witness has failed to pass any of the tests of sterling witness. There is a variation in her version about giving the complaint. There is a delay in the FIR. The medical report does not support the case of the prosecution. FSL report also does not support the case of the prosecution. As admitted, there was an enmity/dispute between both the parties with respect to land. The manner in which the occurrence is stated to have occurred is not believable. Therefore, in the facts and circumstances of the case, we find that the solitary version of the prosecutrix PW5 cannot be taken as a gospel truth at face value and in the absence of any other supporting evidence, there is no scope to sustain the conviction and sentence imposed on the



appellant and accused is to be given the benefit of doubt."

10. Per contra, the learned Government Advocate (Crl.Side) appearing for the respondent would submit that at the time of occurrence, the age of the victim girl is 11 years and she is studying at 4th standard in Ghandimathi Higher Secondary School, Palayamkottai and her parents are residing in Bombay and she stayed with her grand mother, who subsequently, passed away. On 16.02.2011, she was committed rape by the appellant and the said incident was not revealed by the victim girl to her grand mother or her paternal uncle, however, when she was crying in the school, P.W.6 school teacher interacted with the victim girl, thereafter, P.W.1 narrated the incident to P.W.6, thereafter, P.W.6 informed the same to P.W.7, who is the paternal uncle of P.W.1. Immediately thereafter, the criminal machinery is set in motion to snap the accused and other proceedings were initiated. The innocent girl, in view of social responsibility, has not revealed anything to her grand mother, however, the same was informed to the school teacher on the next day. Hence, there is no delay in lodging the complaint. Further, if at all the First Information Report is not forwarded immediately, it cannot vitiate the entire prosecution case.

11. She would further submit that in the present case the evidence of P.W.1 is sufficient to implicate the accused and her evidence is clearly corroborated by P.W.6, who is an independent witness. Hence, the prosecution has clearly established the guilt against the accused. Further, there is a contradiction between P.W.1 victim girl and the evidence of doctor, with regard to the hymen intact. Hence, the trial Court has given the benefit of doubt in favour of the accused, however, convicted the accused under Section 376 r/w 511 IPC. Even the penetration is not established by the prosecution, however, attempt is established before the trial Court by way of examining P.W.3 doctor. Hence, this Court need not interfere with the judgment and conviction of the trial Court and she prayed for dismissal of the appeal.

12. In support of his submission, she relied upon the decision reported in **(2006) 1 SCC 283 (Vishnu Alias Undrya Vs. State of Maharashtra)**. The relevant paragraphs are extracted hereunder:-

"24. The accused in Section 313 Cr.P.C. statement has completely denied that he had any sexual intercourse with the prosecutrix. Question No. 19 (page 154 of original record) was put to him about the statement of the prosecutrix regarding forcible intercourse with her on the fateful day, to which he replied, "This is false". Question No. 64 (page 167 of original record) was put to him as to whether he wished to say anything more in his defence, to which he replied, "I am innocent and falsely involved in this case." How he was falsely implicated has not been explained.



25. The statement of the prosecutrix, in our view, is quite natural, inspires confidence and merits acceptance. In the traditional non-permissive bounds of society of India, no girl or woman of self respect and dignity would depose falsely implicating somebody of ravishing her chastity by sacrificing and jeopardizing her future prospect of getting married with suitable match. Not only she would be sacrificing her future prospect of getting married and having family life, but also would invite the wrath of being ostracized and outcast from the society she belongs to and also from her family circle. From the statement of the prosecutrix, it is revealed that the accused induced her to a hotel by creating an impression that his wife was admitted in the hospital and that he would see her first and then drop the prosecutrix at her residence whereas, in fact, she was not admitted in the hospital. On the pretext of going to Nanawati hospital, he took her to a hotel, took her inside a room, closed the door of the room, threatened her to finish her if she shouted and then forcibly ravished her sexually. In our view, a clear case of rape, as defined under Section 375 clause thirdly of IPC has been established against the accused. It is now a well-settled principle of law that conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence."

13. Heard the learned counsel appearing for the appellant, the learned Government Advocate (Crl.Side) appearing for the respondent and perused the materials available on record carefully.

14. The issues involved in the present case are as follows:-

"(i) whether the prosecution established the necessary ingredients required under Section 376 IPC or not?;

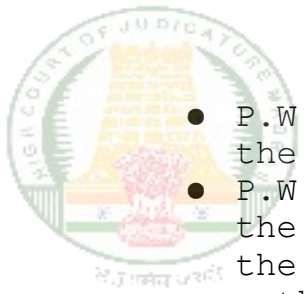
(ii) whether the evidence of P.W.1 victim girl and P.W.6 school teacher is sufficient to prove the prosecution case or not?;

(iii) whether the delay in lodging the complaint and non-recovery of the towel and knife could vitiate the prosecution case or not?; and

(iv) what relief the accused is entitled?."

15. The prosecution witnesses are as follows:-

- P.W.1 is the victim girl;
- P.W.2 is the doctor, who has examined the accused with regard to the penetration test;
- P.W.3 is the doctor, who has conducted medical examination of the victim girl on 22.02.2011 and her certificate is marked as Ex.P.4;

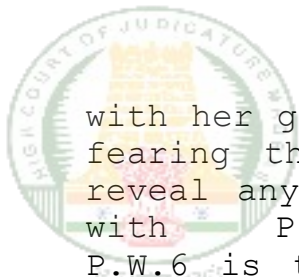


- P.W.4 is the radiologist, who has conducted physical test for the victim girl and ascertained her age;
- P.W.5 is the paternal uncle of the victim girl, who received the information from P.W.7 with regard to the incident and the same was passed to his mother and thereafter, his mother / grand mother of P.W.1, has lodged complaint before the law enforcing agency;
- P.W.6 is the school teacher in Ghandimathi Higher Secondary School, Palayamkottai, where the victim girl is studying 4th standard;
- P.W.7 is the paternal uncle of P.W.1 victim girl, who received information from P.W.6 and taken the victim girl from the school to house;
- P.W.8 is the Sub Inspector of Police, who received complaint from the grand mother of the victim girl and registered First Information Report Ex.P.9; and
- P.W.9 is the Inspector of Police, who has investigated the case and filed final report.

16.All those evidences are unnecessary except P.W.1 and P.W.6. The entire prosecution case revolves between P.W.1 and P.W.6.

17.This Court paid its undivided attention to the perusal of evidences of P.W.1 and P.W.6. It is clearly corroborated with each other and there are some contradiction between the evidences of P.W.1 / victim and P.W.3 / Doctor with regard to the rape committed by the accused. No doubt, P.W.1 victim girl in her evidence has clearly deposed that the accused inserted his penis to her private part. However, P.W.3 doctor has deposed that the hymen is intact and further, in the present case, though the doctor has stated that the hymen is intact, the victim girl narrated the entire incident happened on the said date. Merely because the hymen is intact, the same will not sufficient to disprove the evidence of victim girl. Further, this Court has also perused the cross examination of P.W.1, wherein the learned counsel, who appeared for the accused before the trial Court, has cross examined the victim girl as due to civil dispute the complaint was lodged. In order to prove the civil dispute and previous enmity in between the family of the victim girl and the accused, no records were adduced on the side of the defence side and further, at the time of questioning the accused under Section 313 Cr.P.C., the accused has not raised any grounds, he was silent. In the absence of any materials with regard to the previous enmity, thereby, the complaint was lodged, this Court is unable to accept the argument of the learned counsel appearing for the appellant.

18.Further, the decisions referred by the learned counsel appearing for the appellant are not applicable to the facts of the present case on the simple ground that P.W.1 is aged about 11 years and she did not reveal the incident and she is residing



with her grand mother and the next house is the accused's house, by fearing the consequences in revealing the incident, she did not reveal anything, however, when the school teacher P.W.6 interacted with P.W.1 and she revealed all those things to her and further, P.W.6 is the independent witness and she has no enmity with the accused. Hence, this Court has no hesitation to believe the words of the school teacher P.W.6 and the victim girl P.W.1. Further, the decision relied upon by the learned Government Advocate (Crl.Side) is clearly applicable to the present case.

19.The trial Court after consideration has arrived at a conclusion that there was an attempt of rape and therefore, awarded punishment, which is half of long term punishment as stated under Section 511 of IPC, in which, this Court does not call for any interference. Therefore, the judgment and conviction dated 14.07.2015 passed in S.C.No.115 of 2013 by the learned Sessions Judge, Mahalir Neethimandram, (Fast Track Mahila Court), Thoothukudi, is confirmed.

20.Accordingly, this Criminal Appeal is dismissed. The trial Court shall take steps to secure the accused / appellant to commit him in prison to serve out the remaining period of sentence. Bail bond executed by the appellant and the sureties shall stand cancelled. The period of sentence already undergone by the appellant shall be set off under Section 428 of the Code of Criminal Procedure.

Sd/-

Assistant Registrar(Crl. side)

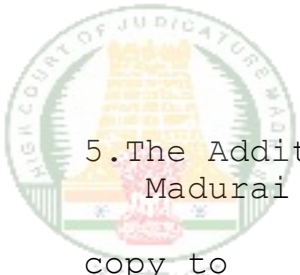
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Sub Assistant Registrar(CS)

MyrTo

- 1.The Sessions Judge,
Mahalir Neethimandram, (Fast Track Mahila Court),
Thoothukudi.
- 2.The Inspector of Police,
Murappanadu Police Station,Thoothukudi District.
- 3.The Superintendent,
Central Prison, Palayamkottai.
- 4.The Headmaster,
Panchayat Union Primary School,
Murappanadu, Thoothukudi District.



5.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)

+1 CC to M/s.S.DEENADHAYALAN, Advocate (SR-11176[F] dated
11/03/2020)

CRL.A. (MD) No.167 of 2015

10.03.2020

NA (CO)

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