



Bail Slip

The Petitioner/1st Accused Mr.M.Petchimuthu, Male, 26 years/2015 S/o.Mariappan, South Street, South Aathikulam, Kovilpatti Taluk, Thoothukudi District, was released on bail in CrI.MP(MD)No.1 of 2015 in CrI.A(MD)266 of 2015 as per the Order of this Court dated 06.10.2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CrI.A. (MD)No.266 of 2015

M.Petchimuthu : Appellant/1st Accused

v.

State rep. by
The Inspector of Police,
Kayathar Police Station,
Kayathar,
Thoothukudi District.
(Cr.No.191 of 2013)

: Respondent/Complainant

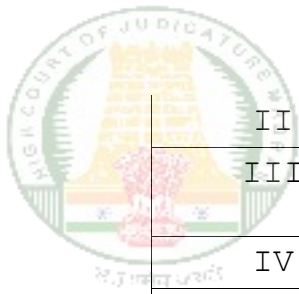
PRAYER: Appeal filed under Section 374(2) of the Criminal Procedure Code to call for the records in connection with the judgment passed by the Sessions Judge, Mahalir Neethimandram, Fast Track Mahila Court, Thoothukudi, in S.C.No.99 of 2015, dated 26.08.2015 and quash the same.

For Appellant : Mr.C.M.Arumugam
for M/s.R.Rajamohan
For Respondent : Mr.A.Robinson,
Government Advocate (CrI. Side)

JUDGMENT

The appellant / A1 along with three others were tried before the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi, in S.C.No.99 of 2015, as follows:

Charge	Accused	Section
I	A1	376(1) IPC



II	A1	342 IPC
III	A2 & A4	4 of Tamil Nadu Prohibition of Harassment of Woman Act
IV	A3	294(b) IPC
V	A2 to A4	506(ii) IPC

The trial Court, in conclusion of the trial, found the accused nos.2 to 4 not guilty for the offence, for which they stood charged and also found this appellant / A1 not guilty for the offence under Section 342 IPC, however, found this appellant / A1 guilty for the offence under Section 376(1) IPC, and by judgment dated 26.08.2015, convicted and sentenced him to undergo rigorous imprisonment for seven years, with a fine of Rs.2000/-, in default, to undergo rigorous imprisonment for three months. Aggrieved over the conviction and sentence, the appellant / A1 has preferred the present appeal.

2. The brief facts of the prosecution case, in a nutshell, are as follows:

2.1. The appellant / A1 and PW1 are distant relatives and this appellant was working at Chennai, as an Auto Driver. He rarely visits his native village, namely, South Aathikulam Village, Kovilpatti Taluk, Tuticorin District. PW1 is also a resident of the same village and whenever the appellant / A1 visits the village, he used to move closely with PW1 and both of them developed a love affair. On 15.06.2013, the appellant / A1 came to his native village to attend a marriage function. On that day, around 07.00 pm, PW1 went to a shop at Krishnankovil Street to purchase some snacks. At that time, the appellant / A1 came to the place, invited PW1 to his house. PW1 refused to go to his house, but the accused insisted her and taken her to his house by pulling her hand and also by saying that if she is not coming, he would not marry her. The fourth accused was in the house at that time and the first accused took PW1 inside the house and committed sexual intercourse forcibly. On the same day, they had sexual intercourse for two more times and she was left free on the next day, on 16.06.2013 at about 04.00 am. The appellant / A1 himself has brought PW1 and left her in her house.

2.2. During the relevant period, the appellant / A1 was aged about 23 years and the victim [PW1] was aged about 19 years. PWs.2 & 3, the parents of the victim [PW1] referred this incident to a Village Headman, namely, Chelliah [PW4] and PWs.4 to 6, the villagers, are said to have enquired the appellant and his family. But the appellant and their family denied the incident and therefore, PW1 along with her father [PW2] went to the Kayathar Police Station and lodged the complaint on 19.06.2013 at about 04.30 pm, before the Inspector of Police [PW10].



2.3. Thiru Ponnarasu, the Inspector of Police, received the complaint [Ex.A1] and registered the same in Kayathar Police Station Crime No.191 of 2013, as against this appellant for the offence under Sections 342 & 376 IPC in Ex.A6. The printed FIR reached the Judicial Magistrate Court No.I, Kovilpatti, at about 08.15 pm. After forwarding the complaint [Ex.A1] and the printed FIR [Ex.A6], the Inspector of Police [PW10] went to the place of occurrence around 05.30 pm on 19.06.2013, prepared an observation mahazar [Ex.A7] and a rough sketch [Ex.A8] in the presence of one Velusamy and Mariyappan. He also examined the victim girl [PW1], namely, Muthulakshmi, through a Woman Constable and recovered a rose colour nighty [MO3] worn by the victim at the time of occurrence, under a cover of mahazar. He also examined PWs.2 & 3, the parents of the victim [PW1] and the witnesses, Veluchamy and Mariyappan, in whose presence the observation mahazar was prepared. He also referred the victim girl for medical examination to the Doctor [PW7], through a Grade I Woman Constable, Catherin Doriya Capsin.

2.4. Dr.Kavitha [PW7], Assistant Medical Officer, Kovilpatti Government Hospital, examined the victim [PW1] on 19.06.2013 at about 09.00 pm, and according to her, the victim [PW1] was produced along with a requisition letter from the learned Judicial Magistrate for medical examination. After examining the victim girl [PW1], the Doctor has recorded her observations in the Wound Certificate [Ex.A2] that on 15.06.2013 from 06.00 pm to 04.00 am on 16.06.2013, a known person has raped the victim in the house of the accused at Krishnankovil Street, South Aathikulam. She has also observed that the patient was conscious oriented; there was no external injuries; hymen was ruptured; vagina admits two fingers easily. She has also gave her final opinion that there is no evidence to say that there is any recent intercourse.

2.5. The appellant / A1 surrendered before the Judicial Magistrate Court No.II, Thoothukudi and therefore, the Investigation Officer [PW.10] made a request for police custody. He has also examined the appellant / A1 in the police custody, in the presence of one Muthuraman, Village Administrative Officer [PW9] and Iyappan, in the police station on 30.07.2013 and recorded his confession statement. Pursuant to his confession statement, the Investigation Officer has recovered a lungi [MO1] and a jatti [MO2] under a cover of mahazar Ex.A5. He also made a request for chemical examination of the material objects through the concerned Court and also referred the appellant / A1 for medical examination to the Doctor [PW8].

2.6. Dr.Sreedharan [PW8], after examining the appellant / A1, issued a certificate in Ex.A3 with his opinion that there is nothing to suggest that the appellant / A1 is impotent. After examining the Doctors [PWs.7 & 8] and after collecting the medical certificates, the Investigation Officer [PW10] filed the final report as against this appellant / A1 and three others on 08.10.2013 for the offence



under Sections 294(b), 506(ii), 342, 376(1) IPC and under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act.

2.7. During the trial, on the side of the prosecution, ten witnesses were examined and eight documents were marked, besides three material objects. PW1, Muthulakshmi, is the victim girl and she speaks about the occurrence and her complaint [Ex.A1]. PWs.2 & 3, the parents of the victim girl, have stated about their attempt to inform the panchayat and the lodging of the complaint. PWs.4 to 6 are the residents of South Aathikulam Village and they were examined for the purpose of their intervention in the episode to convince the accused family for a marriage between the appellant / A1 and the victim girl. But they did not support the case of the prosecution and they were treated as hostile. PW7, Dr.Kavitha, is the Doctor who examined the victim girl and issued the Wound Certificate [Ex.A2]. PW8, Dr.Sreetharan, is the Doctor who examined the appellant / A1 and issued the medical report [Ex.A3]. PW9 is the Village Administrative Officer in whose presence the material objects were recovered and PW10 is the Inspector of Police, who registered the case, conducted the investigation and filed the final report.

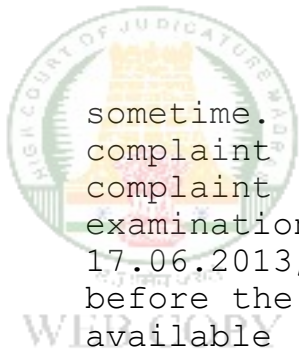
3. After the prosecution evidence was closed, the incriminating materials were put to the accused as per Section 313 Cr.P.C and the accused denied the same. Though the accused has stated that there are evidence in support of their case, they have not examined any witness, either oral or documentary. In conclusion of the trial, the trial Court found this appellant / A1 guilty, convicted and sentenced him as stated supra. Aggrieved, the appellant / A1 has preferred this criminal appeal.

4. Heard Mr.C.M.Arumugam, learned Counsel for the appellant / A1 and Mr.A.Robinson, learned Government Advocate (CrI. Side) for the respondent / State.

5. Mr.C.M.Arumugam, learned Counsel for the appellant / A1 made his submissions as follows:

5.1. The very first document, namely, the complaint [Ex.A1] itself is doubtful and there are so many anomalies in the complaint and therefore, it cannot be taken into account as a material document to sustain the conviction.

5.2. Though the occurrence was taken place on 15.06.2013, at about 06.00 pm, the complaint was lodged only on 19.06.2013, after four days. Though in the complaint [Ex.A1], it is mentioned that it was lodged on 19.06.2013, PW1, in her evidence, admitted that she lodged the complaint before the Police Station on 16.06.2013 itself and the Police has also examined the accused in the police station and the appellant / A1 has also admitted the commission of offence before the police. But the prosecution case proceeds as if that the accused / A1 surrendered before the Judicial Magistrate Court after

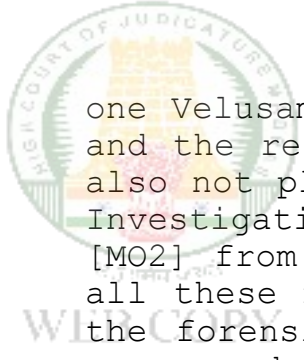


sometime. The prosecution has purposely suppressed the earlier complaint of PW1 dated 16.06.2013 and therefore, the subsequent complaint cannot be acted upon. That apart, PW1, in her cross examination, has stated that while lodging the complaint on 17.06.2013, she went along with her parents and lodged the complaint before the Police. Therefore, three different dates for complaint is available from the evidence of PW1. One on 16.06.2013, as per her chief examination; and on 17.06.2013, as per her cross examination; and the another on 19.06.2013 as per Ex.A1. Since the prosecution has not come up clean hands, the trial Court ought to have extended the benefit of doubt to the appellant / A1.

5.3. There is a delay of four days in lodging the complaint and according to the prosecution, PW2, the father of the victim was working in Kerala and only after his arrival and after some negotiation, they have lodged the complaint and therefore, the delay occurred. But, in the complaint [Ex.A1] itself, it is mentioned that on 16.06.2013, at about 04.00 am, when PW1 returned to her house, she informed the occurrence to her parents. That apart, the villagers, who were examined as witnesses for the purpose of establishing the negotiation part, did not support the case of the prosecution. Therefore, the reasoning projected by the prosecution for this delay of four days in lodging the complaint is highly doubtful.

5.4. The place of occurrence, as projected by the prosecution, has not been established beyond any reasonable doubt. As per the complaint [Ex.A1], the occurrence was said to have taken place in the house of the appellant / A1. But, as per the evidence of PW1, the occurrence was taken place in the house of the fourth accused. In the Wound Certificate [Ex.A2], the Doctor [PW7], who examined the victim girl [PW1] on 19.06.2013, recorded that she informed about the occurrence that on 15.06.2013 at about 06.00 pm, the accused taken her to his house at Krishnankovil Street, South Aathikulam. But, contra to this statement, the prosecution has prepared the observation mahazar [Ex.A7] and rough sketch [Ex.A8] wherein, the place of occurrence is shown as Middle Street of South Aathikulam Village. Therefore, according to the learned Counsel for the appellant, four different places have been shown as occurrence place, namely, the house of the appellant / A1; the house of the fourth accused; the house of the appellant / A1 at Krishnankovil Street; and the house at Middle Street.

5.5. By relying upon the judgment of the Hon'ble Supreme Court in **Santhosh Prasad @ Santhosh Kumar v. State of Bihar**, reported in **(2020) 3 SCC 443**, the learned Counsel would submit that the evidence of PW1 is not corroborated by any other material evidence and the Doctor, who examined the victim girl, has also stated that there is no evidence to say that there is any recent intercourse and no injury was noted by the Doctor. Though the investigation agency has recovered the nighty [MO3] of the victim [PW1] in the presence of



one Velusamy and Mariyappan, both these witnesses were not examined and the recovery mahazar for the recovery of this nighty [MO3] was also not placed before the Court. Apart from this nighty [MO3], the Investigation Officer has also recovered a lungi [MO1] and a jatti [MO2] from the appellant / A1 and also stated in his evidence that all these material objects were sent for chemical examination. But the forensic report has not been placed before the Court. Without any corroborating materials, the contradictory evidence of PW1 alone is not sufficient to sustain the conviction on the appellant / A1 and therefore, he prays for interference.

6. Per contra, the learned Government Advocate (Crl. Side) made his submissions as follows:

6.1. The evidence of PW1 is clear and she narrated the incident in a cogent manner. The appellant / A1, a close relative of the victim girl, taken advantage of his position as a relative, gave false promise of marriage and under misconception, committed the offence. The father of the victim was working in Kerala and therefore, after his arrival and after some negotiation with the parents of the appellant / A1, they have lodged the complaint after four days. Therefore, the delay of four days in lodging a complaint of this nature cannot be a ground to disbelieve the case of the prosecution.

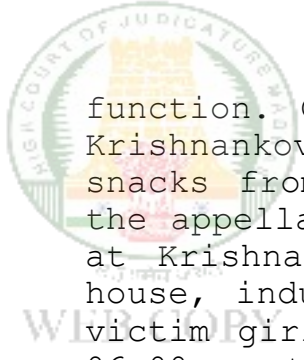
6.2. There is no dispute with regard to the place of occurrence. In all the four places, as averred by the learned Counsel for the appellant / A1, it is mentioned that the occurrence was taken place only at the house of the accused and whether the fourth accused was also available at the time of occurrence or not cannot be a ground to disbelieve the place of occurrence.

6.3. The material objects were recovered only after four days, since the complaint was lodged after four days and therefore, the prosecution was not in a position to establish the case scientifically. However, the Doctor [PW7] admitted that the Hymen of the victim girl was not intact and she had sexual intercourse. The trial Court has considered the evidence in a proper manner and has rightly convicted this appellant / A1 for the offence under Section 376 IPC and there is no reason to disbelieve the case of the prosecution.

6.4. He has also relied upon the judgment of the Hon'ble Supreme Court in **Anurag Soni v. State of Chhattisgarh**, reported in **2019 Cri.L.J. 2508**.

7. This Court has paid it's anxious consideration to the rival submissions and also to the available materials.

8. The appellant is working as an Auto Driver at Chennai during the relevant period and he visited the occurrence place on the date of occurrence on 15.06.2013 for the purpose of attending a marriage



function. On that day, the appellant / A1 met the victim girl at Krishnankovil Street, when the victim girl went to purchase some snacks from a shop. Therefore, even according to the prosecution, the appellant / A1, accidentally, met the victim girl [PW1] in a shop at Krishnankovil Street and at that time, he invited her to his house, induced her and had sexual intercourse for three times. The victim girl remained in the house of the accused from 15.06.2013, 06.00 pm to 16.06.2013, 04.00 am. Thereafter, she returned to her house and informed her parents and her parents have also made certain negotiations for arranging marriage with the appellant / A1, through the villagers [PWs.4 to 6] and only thereafter, lodged the complaint [Ex.A1] after four days on 19.06.2013.

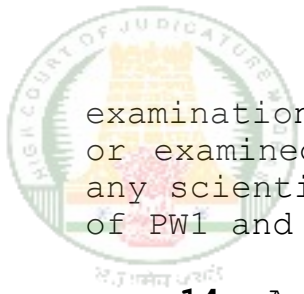
9. For lodging the complaint after four days, the prosecution has relied upon the evidence of the victim's father, PW2 and the evidence of the villagers, PWs.4 to 6. According to the prosecution, PW2, at the relevant time, was working at Kerala and on information, he returned to the South Aathikulam Village, arranged for a panchayat and thereafter, lodged the complaint on 19.06.2013. But, the victim girl in her chief examination has stated that they went to the police station and lodged the complaint on the next day itself, i.e., on 16.06.2013 and in her cross examination, she has stated that they lodged the complaint on 17.06.2013. The villagers [PWs.4 to 6] also did not support the case of the prosecution and therefore, they were treated as hostile witnesses.

10. PW3, the mother of the victim girl in her cross examination has admitted that she was not aware of the exact date on which the complaint was lodged. But, she, on her memory, admitted that on the day next to the occurrence, they went to the police station and lodged a complaint and in that complaint, her thumb impression was also obtained.

11. In this case, apart from the appellant / A1, three others, viz., the Parents and the Grandfather of the appellant / A1 were also added as accused, as if they have abused, criminally intimidated and also insulted the victim and her family. The trial Court, in conclusion of the trial, found them not guilty and acquitted the other accused by extending the benefit of doubt.

12. The victim girl was also subjected for medical examination on 19.06.2013 and the Doctor [PW7] who examined the victim girl, in her Wound Certificate [Ex.A2] as well as in her evidence, has stated that there is no external injury on the victim and there is no evidence to say that there is any rape as well as any recent intercourse. However, she admits that the victim's hymen was not intact.

13. The investigation agency, though said to have recovered the nighty [MO3] of the victim as well as a lungi [MO1] and a jatti [MO2] of the appellant / A1 and also send the same for scientific



examination, neither the report nor the analyst were produced and / or examined in support of the prosecution case. In the absence of any scientific evidence, the only available evidence is the evidence of PW1 and it needs to be carefully analyzed.

14. According to PW1, on 15.06.2013, when she went to purchase some snacks, the appellant / A1 invited her, took her to his house and committed the offence, repeatedly, thrice. In her evidence, she admits that when they went to the accused house, the fourth accused was also present in the house. She also admitted that without her consent, there cannot be any sexual intercourse and the occurrence took place only on her consent and that she was aware that prior to marriage, there cannot be any sexual intercourse. Despite that, according to her, there was a consensual intercourse between the appellant / A1 and her, on the misconception that he would marry her. On this ground, the learned Government Advocate (Crl. Side) has relied upon the judgment of the Hon'ble Supreme Court in **Anurag Soni**'s case (supra), wherein, the Hon'ble Supreme Court has held as follows:

"14. Considering the aforesaid facts and circumstances of the case and the evidence on record, the prosecution has been successful in proving the case that from the very beginning the accused never intended to marry the prosecutrix; he gave false promises/promise to the prosecutrix to marry her and on such false promise he had physical relation with the prosecutrix; the prosecutrix initially resisted, however, gave the consent relying upon the false promise of the accused that he will marry her and, therefore, her consent can be said to be a consent on misconception of fact as per Section 90 IPC and such a consent shall not excuse the accused from the charge of rape and offence under Section 375 IPC. Though, in Section 313 CrPC statement, the accused came up with a case that the prosecutrix and his family members were in knowledge that his marriage was already fixed with Priyanka Soni, even then, the prosecutrix and her family members continued to pressurise the accused to marry the prosecutrix, it is required to be noted that first of all the same is not proved by the accused. Even otherwise, considering the circumstances and evidence on record, referred to hereinabove, such a story is not believable. The prosecutrix, in the present case, was an educated girl studying in B. Pharmacy. Therefore, it is not believable that despite having knowledge that the appellant's marriage is fixed with another lady Priyanka Soni, she and her family members would continue to pressurise the accused to marry and the prosecutrix will give the consent for physical relation. In the deposition, the prosecutrix specifically stated that initially she did not give her consent for relationship, however, on the appellant's promise

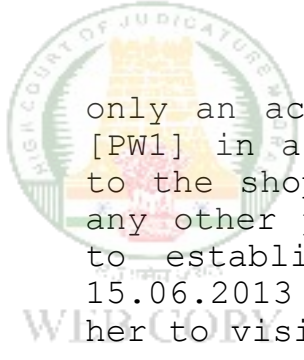


that he would marry her and relying upon such promise, she consented for physical relationship with the appellant-accused. Even considering Section 114-A of the Evidence Act, which has been inserted subsequently, there is a presumption and the court shall presume that she gave the consent for the physical relationship with the accused relying upon the promise by the accused that he will marry her. As observed hereinabove, from the very inception, the promise given by the accused to marry the prosecutrix was a false promise and from the very beginning there was no intention of the accused to marry the prosecutrix as his marriage with Priyanka Soni was already fixed long back and, despite the same, he continued to give promise/false promise and alluded the prosecutrix to give her consent for the physical relationship. Therefore, considering the aforesaid facts and circumstances of the case and considering the law laid down by this Court in the aforesaid decisions, we are of the opinion that both the courts below have rightly held that the consent given by the prosecutrix was on misconception of fact and, therefore, the same cannot be said to be a consent so as to excuse the accused for the charge of rape as defined under Section 375 IPC. Both the courts below have rightly convicted the accused for the offence under Section 376 IPC."

15. In the aforesaid decision, it is a case where there was a consensual sex between the accused and the prosecutrix, whereas, in this case, the appellant / A1 has denied the occurrence and that there was no such occurrence on 15.06.2013. The accused has specifically denied the occurrence and has also raised a defense that in order to coerce him and his family members to marry the victim [PW1], the entire family members were roped in as accused.

16. According to PW1, the accused and the victim loved each other and on the date of occurrence, he compelled her to visit his house that if she is not visiting his house, he would not marry her. On that compulsion only, she came to his house, where the offence was committed. But, no material has been placed on record that there was an affair between the appellant / A1 and PW1. Even the parents of the victim, viz., PWs.2 & 3, are not aware of the same. The villagers [PWs.4 to 6], who were examined for the purpose of establishing the negotiation episode, also turned hostile. Though PW1 stated that they, frequently, had mobile phone conversations, those call details have not been recovered to substantiate that there was any such frequent contacts between the appellant / A1 and the victim [PW1].

17. The appellant / A1 is working as an Auto Driver at Chennai and visited the occurrence village only on the date of occurrence, is on 15.06.2013. Even according to the prosecution case, it is



only an accidental meet between the appellant / A1 and the victim [PW1] in a shop at Krishnankovil Street, when the victim girl went to the shop for purchasing some snacks. Neither the shop owner nor any other persons nearby the shop were examined by the prosecution to establish that the appellant / A1 met the victim girl on 15.06.2013 at or near the snacks shop and also invited or induced her to visit his house.

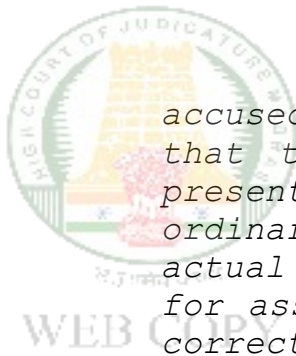
18. In the complaint [Ex.A1], it is mentioned that the appellant / A1 has taken her to his house around 06.00 pm on 15.06.2013, retained her in the house till 04.00 am on 16.06.2013, committed rape, thrice. Apart from this incident, no other incident of sexual intercourse has been stated by the prosecutrix. The appellant / A1 is also having parents and a grandfather and they are also arrayed as accused in this case, as if they have abused, intimidated and insulted the victim and her family, subsequent to the occurrence when there was a negotiation for marriage. But, there is no evidence available as to what happened to the parents of the accused at the time of occurrence when the accused has retained the victim girl in his house from 06.00 pm to 04.00 am, on the next day morning. PW1 has also stated in her evidence that the appellant / A1 has taken her to his grandfather's house [A4's house] on the date of occurrence and at that time, according to her, the fourth accused was also present. But, there is no evidence as to how the fourth accused allowed both PW1 and the appellant / A1 to have sexual intercourse in his house, when he is very much available in the house.

19. When PW1 was produced before the Doctor on 19.06.2013, she has stated that the occurrence was taken place in her house and thereafter, it was struck down and inserted that it was in the accused house. In the Wound Certificate [Ex.A2], the place of occurrence is shown as Krishnankovil Street. But, in the observation mahazar [Ex.A7] and rough sketch [Ex.A8], it is mentioned that the occurrence was taken place in the Middle Street of South Aathikulam Village. As rightly pointed out by the learned Counsel for the appellant / A1, there are contradictions, both as to the place of occurrence and as to the date of complaint.

20. In the decision relied upon by the learned Counsel for the appellant / A1, in **Santhosh Prasad's** case (cited supra), the Hon'ble Supreme Court has held as follows:

"5.4.1. In Raju [Raju v. State of M.P., (2008) 15 SCC 133 : (2009) 3 SCC (Cri) 751] , it is observed and held by this Court in paras 11 and 12 as under: (SCC p. 141)

"11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of

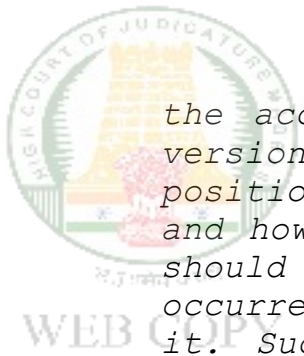


accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.

12. Reference has been made in Gurmit Singh case [State of Punjab v. Gurmit Singh, (1996) 2 SCC 384 : 1996 SCC (Cri) 316] to the amendments in 1983 to Sections 375 and 376 of the Penal Code making the penal provisions relating to rape more stringent, and also to Section 114-A of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape. It is however significant that Sections 113-A and 113-B too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualised as the presumption under Section 114-A is extremely restricted in its applicability. This clearly shows that insofar as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth. Additionally, her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined."

5.4.2. In Rai Sandeep [Rai Sandeep v. State (NCT of Delhi), (2012) 8 SCC 21 : (2012) 3 SCC (Cri) 750] , this Court had an occasion to consider who can be said to be a "sterling witness". In para 22, it is observed and held as under: (SCC p. 29)

"22. In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua

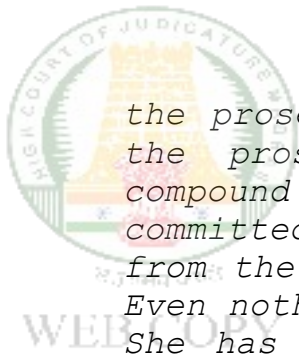


the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

5.4.3. In *Krishan Kumar Malik v. State of Haryana* [Krishan Kumar Malik v. State of Haryana, (2011) 7 SCC 130 : (2011) 3 SCC (Cri) 61] , 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 the 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 PW 5, 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, PW 5 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 the accused is to be given the benefit of doubt."

21. In view of the contradictions pointed above, this Court is of the opinion that the available evidence in this case falls within the ambit of the ratio laid down in Santhosh Prasad's case (supra). The appellant / A1 has specifically denied that there was any relationship whatsoever with the victim girl [PW1] and the prosecution has also failed to establish the existence of any such relationship. The ratio laid down in Anurag Soni's case (supra) is not applicable to the facts and circumstances of the case on hand.

22. In view of the foregoing discussions and reasonings and the decision of the Hon'ble Supreme Court in Santhosh Prasad's case (supra), this Court is of the opinion that the prosecution has not established its case beyond any reasonable doubt and the appellant / A1 is entitled for the benefit of doubt.

23. Accordingly, the judgment of conviction and sentence passed by the learned Sessions Judge, Mahalir Neethimandram, Fast Track Mahila Court, Thoothukudi, in S.C.No.99 of 2015, dated 26.08.2015, is set aside and the appellant / first accused is acquitted from the charges levelled against him. Fine amount, if any, paid shall be refunded and bail bonds, if any, executed shall stand terminated.



In fine, this Criminal Appeal is allowed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

WEB COPY

/ /2020

Sub Assistant Registrar(CS)

gk

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Sessions Judge, Mahalir Neethimandram,
Fast Track Mahila Court, Thoothukudi.
- 2.The Judicial Magistrate No.II, Kovilpatti.
- 3.The Chief Judicial Magistrate, Thoothukudi District.
- 4.The Superintendent,
Central Prison, Palayamkottai.
- 5.The Inspector of Police,
Kayathar Police Station,
Kayathar, Thoothukudi District.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to: The Record Keeper / Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2)

+1 CC to Mr.R.RAJAMOHAN, Advocate (SR-16318[F] dated 09/09/2020)

CrI.A. (MD)No.266 of 2015
09.09.2020

CS(16.09.2020) 14P 10C