



BAIL SLIP

The Appellant/Accused viz., Thalaimalai was released on bail granted order dated 09.12.2015 made in MP(MD)No.1 of 2015 in CrI.A(MD)No.329 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2020

CORAM:

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

CrI.A(MD)No.329 of 2015

Thalaimalai

... Appellant / Sole Accused

Vs.

State Rep. by
The Inspector of Police,
Ottaipatti Police Station,
Theni District
(Crime No.146 of 2013)

... Respondent / Complainant

PRAYER: Appeal filed under Section 374(2) of Criminal Procedure Code, against the conviction and sentence imposed on him by the Sessions Judge, Fast Track Mahila Court, Theni, dated 06.06.2015 made in Special S.C.No.2 of 2014.

For Appellant : Mr.B.Jeyakumar
For Respondent : Ms.S.Bharathi, GA (CrI. Side)

JUDGMENT

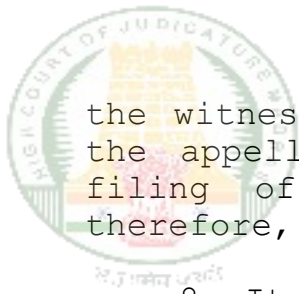
The Appellant / Sole Accused was charged and tried before the learned Sessions Judge, Fast Track Mahila Court, Theni, in Special S.C.No.2 of 2014 and after the trial, the Court below found the appellant guilty and by Judgment, dated 06.06.2015, convicted the appellant under Section 8 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'), and sentenced him to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.3000/- (Rupees Three Thousand Only), in default, to undergo 6 months Rigorous Imprisonment. Aggrieved over the same, the appellant has filed the present appeal.

2. The facts of the case are briefly stated hereunder:-

(i) The case of the prosecution is that on 27.10.2013, at about 5.30 p.m., the accused, who is neighbor of P.W.2 / Minor Victim Girl, went to the open terrace of the house of P.W.2, misbehaved with P.W.2 / Minor victim girl, aged about 14 years, when she was drying the cloths in the terrace, by fondling her breast and called her for intercourse. At that time, P.W.1/Mother of P.W.2 came there hearing the screaming noise of her daughter / P.W.2 and on seeing her, the accused fled away from the scene of occurrence.

from Sexual

7. It is the further submission of the learned counsel that the delay in filing the complaint is fatal to the case of the prosecution, and more so, when it is evidenced from the deposition of



the witnesses that previous enmity existed between the families of the appellant and P.W.1. The said dispute has resulted in the filing of the complaint belatedly, i.e., the next day and, therefore, the said delay is detrimental to the prosecution case.

8. It is the further submission of the learned counsel for the appellant that it is the case of the prosecution that the appellant is aged 73 years on the date of occurrence, at which age, it would be wholly inconceivable for the appellant to have sexually assaulted the victim. The previous enmity between the families of the appellant and the prosecution witnesses, coupled with the delay in the filing the complaint and the appellant is aged slightly short of being an octogenarian, definitely casts a serious doubt as to the veracity of the prosecution case. The trial court has not applied its mind to the materials available on record in proper perspective and has erroneously convicted and sentenced the appellant, which deserves interference at the hands of this Court.

9. Per contra, Ms.Bharathi, learned Government Advocate (Crl. Side), vehemently contended that P.W.2, the victim girl, has categorically deposed as to the sexual acts committed by the appellant on the victim girl and her evidence is materially corroborated by P.W.1, her mother. Though there are minor inconsistencies in the evidence of P.W.s 1 and 2, but that by itself cannot be a ground to discredit the prosecution case, unless the said evidence materially affects the substratum of the prosecution case. It is further submitted by the learned Government Advocate that the case being one under the POCSO Act, witnesses being related to each other cannot be a ground to discard their testimony and that non-examination of independent witnesses in a case of this nature cannot be a ground to doubt the genuineness of the prosecution case. The learned Government Advocate submitted that the prosecution, through clinching and undeniable evidence has clearly established the culpability of the appellant in the commission of the crime and the trial Court, on careful analysis of the evidence before it, has convicted and sentenced the appellant and, therefore, no interference is warranted with the well considered findings recorded by the trial Court.

10. This Court paid its undivided attention to the contentions advanced by the learned counsel appearing on either side and also perused the materials available on record, both oral and documentary.

11. The following questions arise for consideration in the present appeal.

(1) Whether the evidence of P.W.1 finds corroboration with the evidence of P.W.2?

(2) Whether corroboration is a necessary ingredient in accepting the deposition of P.W.2?



(3) Whether the evidence of P.W.1 vis-a-vis the complaint is an improved version?

(4) In the absence of corroboration, whether this Court can interfere with the conviction imposed on the appellant brushing aside the deposition of P.W.2.?

12. The Courts have consistently laid down that the deposition of the victim/prosecutrix is sufficient if it impels the conscience of the court that the said evidence is cogent and convincing. Equally, it is the consistent ratio laid down that the probabilities of the victim to lie is almost negligible in case, where her modesty is at stake.

13. The Hon'ble Supreme Court in **State of Maharashtra - Vs - Chandraprakash Kewalchand Jain (1990 (1) SCC 550)** with regard to necessity for corroboration of the evidence of the victim, Ahamadi, J. (as His Lordship then was), summarised the position of law in the following words :

"A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to Illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of



full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence."

(Emphasis Supplied)

14. Yet again, in **State of U.P. - Vs - Chhotey Lal (2011 (2) SCC 550)**, the Hon'ble Supreme Court has analysed the various scenarios in which the victim normally finds herself in cases of this nature and has codified the following points for consideration :-

"28. This Court went on to observe at SCC pp. 225-26: (Bharwada case [(1983) 3 SCC 217 : 1983 SCC (Cri) 728] , SCC para 10)

"10. Without the fear of making too wide a statement, or of overstating the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban as also rural society. It is also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from amongst the urban elites. Because -

(1) A girl or a woman in the tradition-bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred.

(2) She would be conscious of the danger of being ostracised by the society or being looked down by the society including by her own family members, relatives, friends, and neighbours.

(3) She would have to brave the whole world.

(4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered.

(5) If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family.



(6) It would almost inevitably and almost invariably result in mental torture and suffering to herself.

(7) The fear of being taunted by others will always haunt her.

(8) She would feel extremely embarrassed in relating the incident to others being overpowered by a feeling of shame on account of the upbringing in a tradition-bound society where by and large sex is taboo.

(9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy.

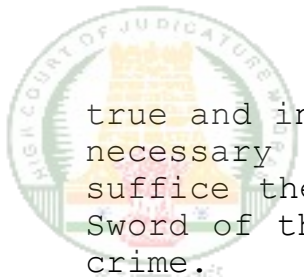
(10) The parents of an unmarried girl as also the husband and members of the husband's family of a married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour.

(11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence.

(12) The reluctance to face interrogation by the investigating agency, to face the court, to face the cross-examination by the counsel for the culprit, and the risk of being disbelieved, acts as a deterrent."

15. As a rule of prudence, in a close knitted society like ours, woman and more so a young unmarried woman will not put her reputation in peril by alleging falsely about forcible sexual assault. A forcible sexual assault brings in humiliation, feeling of disgust, tremendous embarrassment, sense of shame, trauma and lifelong emotional scar to a victim and it is, therefore, most unlikely of a woman, and more so by a young woman, roping in somebody falsely in the crime of rape. The stigma that attaches to the victim of rape in Indian society ordinarily rules out the levelling of false accusations.

16. In the above backdrop of our societal values and the loss of reputation in case of such forcible sexual assaults, the courts have normally let in a word of caution that the victim of such a sexual attack would normally not allow herself to be cast in bad light in the eyes of others and once the victim decide to let the said occurrence in the open, it should not be looked at with a microscope to doubt her version and look for corroboration. This Court is in respectful agreement with the proposition of law laid down by the Hon'ble Apex Court. But, equally, it should be stressed here that the deposition of the victim should be inspiring that it leads to the inescapable conclusion that the words of the victim are



true and in that case, the corroborative circumstances need not be a necessary concomitant to prove the case of the prosecution and suffice the deposition of the victim would be enough to allow the Sword of the Damocles to fall on the head of the perpetrator of the crime.

17. With the above ratio laid down in mind and also the necessary pitfalls that need not be considered to prove the crime on the accused, this Court now proceeds to analyse the evidence available on record to find out as to the culpability of the appellant in the commission of the crime.

18. It is not in dispute that the appellant, on the date of occurrence was aged about 73 years. Equally, it is not in dispute that there were ongoing clashes between the appellant and the family of the victim with regard to some issues pertaining to the use of staircase. The said dispute was brewing on and off between both the families and this aspect is also not in dispute.

19. The trial court has ascertained the status of the victim to give evidence and being fully satisfied that the victim was in full control of her faculties, has allowed her to depose and the victim has also deposed and has also been subjected to cross examination.

20. P.W.1 is the mother of the victim/P.W.2 and the person, who lodged the complaint. P.W.2 is the victim; P.W.3 is the father and P.W.4 is the grandfather of P.W.2. The incident had taken place in broad daylight in an open space in a residential locality.

21. A perusal of the evidence of P.W.2 reveals that while she was drying the clothes in the terrace of her house, the appellant came there and misbehaved with her and sexually assaulted her. It is also her deposition that she had informed P.W.1 about the appellant assaulting her. It is the further deposition of P.W.2 on her raising alarm, her mother, who had just returned from her work, rushed to the terrace and seeing P.W.1, the accused fled from the scene of occurrence. P.W.2 has further deposed that her screams did not bring in any person from the nearby tea shop. P.W.2 has further deposed that on the date of occurrence, there ensued a quarrel between the appellant and the family of the victim and that police came to the place of occurrence and enquired them. P.W.2 has further deposed that on the next day, i.e., 28.10.2013, at about 9.00 a.m., she jumped into the well and was saved by her grandfather and taken to the Government Hospital along with P.W.1, where she was treated as in-patient. P.W.2, in cross examination has categorically deposed that complaint was taken from P.W.1 from the police authorities at the hospital, while she was under treatment.

22. P.W.1 has, in her evidence, materially deposed in consonance with the evidence of P.W.2, however, her evidence, on certain vital aspects, are not in corroboration with the evidence of P.W.2. P.W.1, in her evidence in chief, has deposed that she

witnessed the appellant sexually assaulting P.W.2. P.W.1 has further stated that she went to the police station at about 9.00 a.m. on 28.10.2013 and gave the complaint. P.W.1 has further deposed that there was a free for all fight on 27.10.2013 and on that day, police came to the place of occurrence and enquired them. P.W.1, in her deposition in cross, has deposed that the dispute between her family and that of the accused had been settled long back.

23. P.W.s 3 and 4 have, in sum and substance, generally corroborated the evidence of P.W.1. However, P.W.s 3 and 4 are hearsay witnesses and they have not witnessed anything.

24. In the above backdrop of the evidence, the crucial evidence that requires consideration is that of P.W.s 1 and 2. It is trite that this Court should normally go by the deposition of the victim, P.W.2, however, there are many material discrepancies and many unexplained circumstances in the version of the prosecution, which needs to be looked into holistically in the backdrop of the dispute between the appellant and the family of the victim to arrive at a subjective finding whether it would be prudent to accept the evidence of P.W.2 to confirm the conviction.

25. As stated supra, the house of the victim is situate in a residential locality where there is a tea shop adjacent to the house. It is the deposition of P.W.1 that at any point of time, not less than 10 persons used to be there at the tea shop. It is the evidence of P.W.2 that her parents, P.W.1, P.W.3 and her grandfather, P.W.4 were not available at their residence and that at or about the time when the appellant had misbehaved with her, P.W.1 had returned home and on hearing her cries, P.W.1 came to the terrace and seeing her, the appellant fled away from the scene. P.W.2, while corroborated much of the evidence of P.W.1 upto the point, has hastened to add that she saw the appellant sexually assaulting P.W.2, which is in total variance to the evidence of P.W.2. Definitely, to the mind of this Court, the above version of P.W.1 seeing the appellant sexually assaulting P.W.2 is just an extrapolation to suit the version of P.W.2 and to add credence to her evidence to bolster up the case. In short, to put it clearly, P.W.1 had not seen any misbehaviour of the appellant with P.W.2 when she rushed to the terrace on hearing the cries of her daughter. Upto this point, except for the version of the victim as to the sexual assault of the appellant on her, there is no other evidence corroborating her version. True it is that corroboration is not required, however, the said ratio is subject to just exceptions, as stated supra.

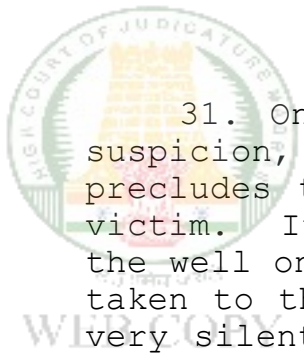
26. However, convincing the deposition of P.W.2 may be at this point, however, the whole pack of cards falls like a ton of bricks in the later part of the testimonies of P.W.s 1 and 2, which prompts this Court to search for corroboration for the testimony of P.W.2.

27. P.W.s 1 and 2, have deposed in unison, that there existed disputes between the appellant and the family of the victim. Their depositions further reveal that on the date of occurrence, there was a clash between the appellant and the family members of the victim. In this regard, the deposition of P.W.1 assumes much importance. P.W.1 has categorically deposed that there was a free for all fight between the group of the appellant and the group of the victim, which led to trading blows. P.W.s 1 and 2 have categorically deposed that police came to the spot on the day of occurrence immediately after the fight and made enquiries. Though looking at it separately, there may not be much importance that could be attached to the said enquiry by the police, however, the delay in lodging the complaint by P.W.1 in the backdrop of the above fight and the presence of the police, necessarily makes the complaint given by P.W.1 a questionable one.

28. According to P.W.1, since there was no bus facility from their place to the police station, which normally takes at least half an hour to reach, the complaint was lodged by her at the police station on the next day, i.e., on 28.10.13. However, the victim, P.W.1, has categorically deposed that the complaint was recorded from her at the hospital on the next day. In the later part of the testimony, P.W.1 has deposed that police came to the hospital and recorded her complaint. The self-contradictory nature of the above evidence of P.W.1 falls short of inspiration and acceptance by this Court for two-fold reasons.

29. P.W.1 has deposed that on the date of occurrence, there was a free for all fight between the appellant and the family of the victim and in pursuant to the same, police came to the spot and made enquiries. In such circumstances, this Court is at a loss to understand as to what prevented P.W.1 or the members of the victim's family from lodging a complaint with the police on the day of occurrence itself as there was no necessity for them to go to the police station and, in the confines of their house, they could have lodged the complaint highlighting the fact that the present free for all fight was on account of the appellant sexually assaulting P.W.2. However, there is no whisper about any such complaint being made in the deposition of P.W.1.

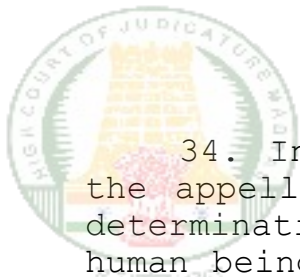
30. Secondly, P.W.1 is said to have gone to the police station and lodged the complaint at 9.00 a.m., on 28.10.2013, i.e., the next day of the occurrence. However, it is the deposition of P.W.2, the victim, that she threw herself into the well and was saved by her grandfather and along with P.W.1, she was taken to the hospital and that the complaint was recorded by the investigating agency at the hospital. P.W.1 in the later part of her testimony concurs with the above deposition of P.W.2. In such a backdrop, the genesis of the complaint itself creates a grave suspicion as to the occurrence proper.



31. Once the genesis of the complaint itself creates a grave suspicion, the sequel in the suspicious circumstance thereafter, precludes this Court from acting upon the deposition of P.W.2, the victim. It is the deposition of P.W.2 that she threw herself into the well on the next day of occurrence only to be saved by P.W.4 and taken to the Government Hospital for treatment. The prosecution is very silent on the said act of P.W.2 and no explanation whatsoever is attached to the said act of P.W.2. Though it could be safely argued that the scar of the happenings of the previous day had made P.W.2 to resort to the said extreme act, however, the same could not be accepted for the reason that the friction between the two families for quite some time may have hastened the family of the victim to put an end to the same by concocting such a story on the appellant, only for P.W.2 to not fall to the said guiles at that point, as her modesty was put at stake making her to take the extreme step.

32. The whole sequence of events, as could be culled out from the testimonies of P.W.s 1 and 2, definitely leaves a sour taste in the mind of this Court that the entire evidence of P.W.2 would have been a tutored version looked at from any angle in the light of the complaint that was lodged belatedly, though the materials reveal that the police authorities were at the scene of occurrence even on the day of the occurrence. However, later in point of time, P.W.2 may have succumbed to the pressure of her family and got along with the said falsity by implicating the appellant, which has been taken to its logical end in the form of trial, but definitely, the whole series of the deposition leaves room for a big doubt as to the happenings as narrated by the prosecution through the evidence of P.W.s 1 and 2.

33. One other curious circumstance, which requires to be borne in mind is that the place of occurrence is a residential locality and even according to the evidence of P.W.1, in the tea shop adjacent to their house, at any point of time, there used to be not less than ten persons. Had the occurrence been really, as projected by the prosecution, as found in the complaint, necessarily on P.W.2 raising an alarm, the persons in the nearby shop would have definitely rushed to the house of the victim to find out the source for such an alarm. However, in the case on hand, the prosecution has not projected such a happening and has not examined any person to remotely suggest that an alarm was raised at or about the time when the occurrence is said to have taken place so as to give a semblance of corroboration to the whole gamut of the prosecution case. The non-examination of any person to prove that such an alarm was indeed heard from the terrace of the house of the victim, leaves a bitter taste in the whole investigative procedure carried out and leaves this Court with no other alternative, but to find that there are many laches in the investigation, which has not been addressed to properly by the prosecution.



34. In this background of the sequence of events, the age of the appellant has also to be borne in mind. Though age is not a determinative factor in case of sensualities cropping up in any human being, but, given the above contradictions in the evidence of the witnesses, as to the happenings leading to the filing of the complaint, the case of the prosecution that the appellant was the aggressor and had misbehaved with the victim by sexually assaulting her, in the backdrop of the contradictions pointed out above, is too huge an ask to be accepted by this Court, which case has been woven by the prosecution on a thin thread of fabric of the evidence of the victim, which in normal circumstances, would have led this Court to the inescapable conclusion of fastening the crime on the appellant, but for the 'n' number of contradictions and discrepancies, which outweigh the prosecution case, this Court is not inclined to circumscribe to the findings arrived at by the court below on the set of materials adverted to above.

35. As held by the Hon'ble Supreme Court in **Chandraprakash's case** (*supra*) in the totality of the circumstances appearing on the record disclose that not only there is strong motive to fasten the crime on the appellant, but equally, the various contradictions pointed out above, outrightly demolish the version of the prosecutrix and, therefore, for this Court to accept her evidence as gospel truth is unfathomable.

36. Though, this Court, as pointed out above, is in respectful agreement with the consistent ratio of the Hon'ble Supreme Court with regard to the appreciation of the evidence of the victim in cases of sexual assault, which does not require any corroboration, however, on the materials available on record, which has been adverted to by this Court and discussed threadbare, contradictions galore in the evidence of the prosecution witnesses, though not defeating the deposition of the victim, but definitely deflating the whole prosecution case and, in such circumstances, it would be wholly unsafe to rely upon the evidence of the victim to find the appellant guilty of the offences. The prosecution, on the whole, has failed to prove the culpability of the accused in the commission of the crime beyond reasonable doubt and, definitely, the said benefit has to enure to the accused. Therefore, on an overall consideration of the entire materials available on record, this Court, extending the benefit of doubt, that enures from the testimonies of the witnesses, to the accused, is inclined to set aside the conviction recorded by the trial court by acquitting the appellant.

37. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed on the Appellant / Accused in Special S.C.No.2 of 2014, by the learned Sessions Judge, Fast Track Mahila Court, Theni, dated 06.06.2015, is set aside and the appellant is acquitted of the charge framed against him. Bail bond,



if any, executed by the appellant shall stand cancelled. Fine amount, if any, paid by the appellant shall stand refunded to him.

Sd/-

Assistant Registrar (CS-II)

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// True Copy //

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Sub Assistant Registrar(CS)

MPK

To

- 1.The Sessions Judge,
Fast Track Mahila Court,
Theni.
2. The Superintendent Central Prison, Madurai.
- 3.The Inspector of Police,
Ottaipatti Police Station,
Theni District
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

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

+1 CC to Mr.B.JEYAKUMAR, Advocate (SR-11971[F] dated 17/03/2020)

Cr1.A(MD)No.329 of 2015

16.03.2020

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