

BAIL SLIP

The Appellant/Accused Ganesan, S/o.Karuppanan was released on bail granted as per order dated 03.03.2016 made in CRL MP(MD).810 of 2016 in CRL A(MD).37 of 2015.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.08.2020

CORAM:

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

Crl.A. (MD) No.37 of 2015

Ganesan : Appellant/Sole Accused

Vs.

State rep. by
The Inspector of Police,
Tiruchuli Police Station,
Virudhunagar District.
Crime No.342/2011

: Respondent/Complainant

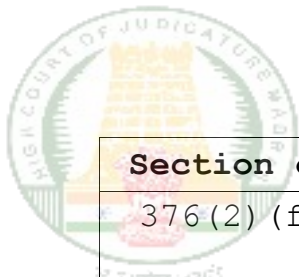
PRAYER: Appeal filed under Section 374(2) of the Criminal Procedure Code to call for the records in connection with the order passed by the learned Assistant Sessions Judge, Aruppukottai, in S.C.No.86 of 2012, dated 24.09.2014 and quash the same.

For Appellant : Mr.S.Mahendrapathy
for Mr.M.Vasanthan

For Respondent : Mr.A.Robinson,
Government Advocate (Crl. Side)

JUDGMENT

This is a very unfortunate case, wherein, a three year old child was raped. The appellant was tried for the offence under Sections 376(2)(f) and 307 IPC, with an allegation that the appellant, taking advantage of his position as a relative of the victim child, has taken the child to a remote place and committed rape on the child. The trial Court, namely, Assistant Sessions Court, Aruppukottai, found him guilty for the offence under Sections 376(2)(f) and 307 IPC in S.C.No.86 of 2012, and by judgment dated 24.09.2014, convicted and sentenced him as follows:



Section of Law	Punishment
376(2) (f) IPC	To undergo rigorous imprisonment for ten years and to pay a fine of Rs.5000/-, i/d to undergo rigorous imprisonment for one year.
307 IPC	To undergo rigorous imprisonment for four years and to pay a fine of Rs.5000/-, i/d to undergo rigorous imprisonment for one year.

The period already undergone was given set off as per Section 428 Cr.P.C. Aggrieved over the same, the present appeal is filed by the appellant.

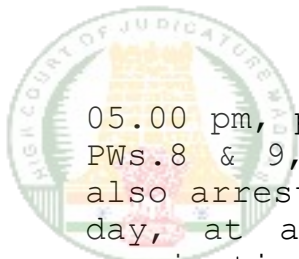
2.The case of the prosecution, in brief, is as follows:

2.1.PWs.2 & 3 are sisters. The accused is the husband of PW3 and PW1 is the husband of PW2. PW2, the younger sister of PW3, is having two female children and is living with her husband [PW1] at Meenakulam Village in Tiruchuli Taluk. The accused and PW3 invited PWs.1 & 2 for the pongal festival to their village at Thotiyangulam. On the invitation of the accused and PW3, PWs.1 & 2 went to Thotiyangulam on 19.10.2011 at about 11.00 am. On that evening, around 07.00 pm, the accused took the child of PWs.1 & 2, namely, Parameshwari [victim child]. The other family members did not doubt the same, as they were under the impression that the accused, being the uncle of the victim child, took her for getting some toffies for her. But, they did not return even after two hours and therefore, they started to search for the accused and the victim girl. During the search, around 10.00 pm, near Krishnapuram Road, they hear a crying sound of a child and went to the place of occurrence, where, they found the accused, without any dress, is attempting to have penetrated sex with the victim girl. On seeing PWs.1 & 2 and others, the accused fled away from the place of occurrence and they found blood injuries on the private parts of the victim child as well as on her Anus. Immediately, they took the victim child to a Private Nursing Home, namely, Fathima Hospital and thereafter, took the child to Government Hospital, Aruppukottai on the next day. From Government Hospital, Aruppukottai, the victim child was referred to Government Rajaji Hospital, Madurai, for further treatment.

2.2.On the intimation from the Government Rajaji Hospital, Madurai, the Sub-Inspector of Police [PW13] went to the Hospital on 20.10.2011, recorded the statement of the father of the victim child, namely, Vellai [PW1] around 01.30 pm, returned to Tiruchuli Police Station and registered a case in Crime No.342 of 2011, under Sections 376 and 307 IPC. PW13 then forwarded the printed First Information Report [Ex.P9] to the concerned Judicial Magistrate and to the Higher Officials.

2.3.Thiru Kannan, Inspector of Police [PW14], on receipt of the intimation, visited the place of occurrence on 20.10.2011 around

<https://hcservices.ecourts.gov.in/hcservices/>

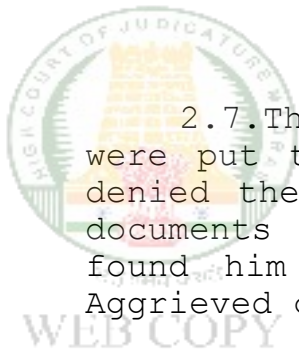


05.00 pm, prepared an observation mahazar [Ex.P4] in the presence of PWs.8 & 9, recorded their statements. The Inspector of Police has also arrested the accused near Moolakarampatti Bus Stop, on the same day, at about 06.30 pm. PW14 also made a request for chemical examination of the accused and accordingly, the accused was produced before Dr.Jeyasimhan [PW12], Government Hospital, Aruppukottai. The Doctor [PW12], after examining the accused, opined that the accused is a potent and the report of the Doctor [PW12] is marked as Ex.P7.

2.4.The Inspector of Police [PW14], also examined Dr.Nagaraja Gurumoorthy [PW11], who provided treatment to the victim child at Government Hospital, Aruppukottai, and Dr.Hemanth Kumar [PW7], who provided treatment to the victim child at Government Rajaji Hospital, Madurai. The Doctors [PW11 & PW7], in the Accident Registers cum Wound Certificates, viz., in Ex.P5 & Ex.P2, respectively, opined that the injuries sustained by the victim child are grievous in nature.

2.5.After examining the other witnesses and completing the investigation, PW14 filed the final report as against the appellant / accused before the learned Judicial Magistrate, Aruppukottai, for the offence under Sections 376(2)(f) and 307 IPC. The learned Judicial Magistrate took the same in P.R.C.No.18 of 2012 and committed to the Court of Sessions. The learned Assistant Sessions Judge, Aruppukottai, took the case in S.C.No.86 of 2012 and during the trial, the prosecution has examined 14 witnesses and marked 11 exhibits.

2.6.The available evidence from the prosecution witness is the evidence of PWs.1 & 2, who have deposed about their relationship with the accused and PW3; and the invitation for pongal festival on 19.10.2011. They have also witnessed the occurrence and are examined as eye witnesses. PW3, the wife of the accused and PW4, a relative of the accused, were also examined by the prosecution that they went in search of the victim child along with PWs.1 & 2, but, they did not support the case of the prosecution. PWs.5 & 6, the residents of Thotiyangulam Village [accused's village], were also examined in this line, but, they have also turned hostile. PW7 is the Doctor, who treated the victim child at Government Rajaji Hospital, Madurai and issued the Wound Certificate [Ex.P2]. PWs.8 & 9 were examined for the purpose of spot mahazar, but, both of them turned hostile. PW10 is the Constable, who took the accused to the Doctor [PW12] to ascertain the potency of the accused. PW11 is the Doctor, who treated the victim child at Government Hospital, Aruppukottai and issued the Wound Certificate [Ex.P5]. PW13 is the Sub-Inspector of Police, who went to the Government Rajaji Hospital, Madurai, on medical intimation, recorded the statement of PW1 and registered the case in Crime No.342 of 2011. PW14 is the Inspector of Police, who conducted the investigation and filed the final report.



2.7. The mitigating circumstances from the prosecution witness were put to the accused under Section 313 Cr.P.C and the accused denied the same. He neither examined any witness nor produced any documents on his side. In conclusion of the trial, the trial Court found him guilty, convicted and sentenced him as stated supra. Aggrieved over the same, the appellant has filed the present appeal.

3. Heard Mr. Mahendrapathy, learned Counsel representing Mr. M. Vasanthan, learned Counsel on record for the appellant and Mr. A. Robinson, learned Government Advocate (Crl. Side) for the respondent / State.

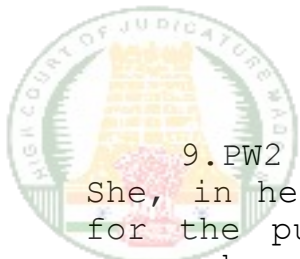
4. Mr. Mahendrapathy, learned Counsel submits that excepting the evidence of PWs. 1 & 2, the interested witnesses, there is no other independent witness in support of the prosecution case and it is not proper to rely on this interested witnesses to sustain the conviction on the appellant. PW2, the mother of the victim child, admits that they are not in good terms with PW3 and the accused; and therefore, the trial Court ought to have viewed the evidence of PWs. 1 & 2 in a careful manner.

5. The learned Counsel further submits that according to the evidence of PWs. 1 & 2, the victim child was initially taken to a Private Hospital, namely, Fathima Hospital. But, neither the Doctor nor the Wound Certificate issued at Fathima Hospital was examined / marked before the trial Court. He also pointed out the delay in reporting the incident to the Police and therefore, prays for interference.

6. Per contra, Mr. A. Robinson, learned Government Advocate (Crl. Side) submits that the victim child is aged about three years and the accused, who invited PWs. 1 & 2 for the pongal festival, taking advantage of his position as a relative, took the child to a remote place, sexually abused the child and consequently, the child suffered injuries on her private parts as well as on her Anus. The evidence of PWs. 1 & 2 is corroborated with the evidence of the Doctors [PWs. 11 & 7] and according to the Doctors, the victim child suffered grievous injuries on her private parts and on her Anus and therefore, the prosecution has proved its case beyond any reasonable doubt. There is no reason to interfere with the order of the trial Court and he prays for dismissal.

7. This Court paid it's anxious consideration to the rival submissions and also to the materials placed on record.

8. PW3, the wife of the accused, though did not support the case of the prosecution and treated as hostile, has admitted in her evidence that PW2 is her sister, residing with PW1 at Meenakulam village and they have been invited by her and her husband / the accused for pongal festival, two years back. She also admitted that



9.PW2 is non-other than the sister of the accused's wife [PW3]. She, in her evidence, stated that she went to Thotiyangulam village for the purpose of pongal festival on the request made from the accused and PW3; and after the pongal festival, they stayed in the house of PW3 on 19.10.2011. On the said date, around 07.00 pm, the accused took her child, but not returned even after two hours and therefore, they went in search of the child and the accused, along with others. On hearing the child's cry, they went to a remote place near Krishnapuram Road Bridge and found the accused, without any dress, attempting to have sex with the victim child. On seeing them, the accused fled away from the occurrence place. They also found blood injuries on the private parts as well as Anus of the victim child and therefore, took the child immediately to a private hospital, namely, Fathima Hospital and thereafter, to the Government Hospital, Aruppukottai, on the next day. On the reference made by the Government Hospital, Aruppukottai, the victim child was taken to the Government Rajaji Hospital, Madurai, for further treatment.

10.PWs.1 & 2 went to the occurrence village as a guest of the accused. PWs.1 & 2, being the parents of the victim child, were with the child continuously during the treatment at the private hospital as well as at the Government Hospital, Aruppukottai and Government Rajaji Hospital. We cannot expect PWs.1 & 2 to leave the victim child of three years old in the hospital, without any assistance and rush to the police station to set the law in motion. Here in this case, as discussed supra, on the intimation from the Government Rajaji Hospital, Madurai, the Sub-Inspector of Police [PW13], Tiruchuli Police Station went to the Hospital around 01.30 pm and also recorded the statement of PW1 and registered the case at about 03.30 pm. Moreover, the printed First Information Report [Ex.P9] has also reached the Court on the same day at 03.30 pm. Therefore, there is no delay in reporting the incident.

11.No doubt, the investigation agency has not examined the Doctor from Fathima Hospital, who provided first aid treatment for the victim child on 19.10.2011. But the investigation agency has examined the Doctors, PWs.11 & 7, from the Government Hospital, Aruppukottai and Government Rajaji Hospital, Madurai and also placed the Accident Registers cum Wound Certificates issued by them in Ex.P5 & Ex.P2, respectively. Dr.Nagaraja Gurumoorthy [PW11], in Ex.P5, has recorded that the victim child was produced before him on 20.10.2011 at about 10.30 am and it is mentioned in Ex.P5 that 'alleged to have been sexually abused around 07.00 pm on 19.10.2011 by a known person at Thotiyangulam'. Considering the nature of injury, he provided the basic treatment and referred the victim child to the Government Rajaji Hospital, Madurai, on the same day, for further treatment. The observations of Dr.Nagaraja Gurumoorthy [PW11] in Ex.P5 as well as Dr.Hemanth Kumar [PW7] in Ex.P2 show that the victim child suffered grievous injuries. In fact, the victim



child has not only suffered injury on her private parts, but also on her Anus. The appellant / accused was also subjected for medical examination and the Doctor [PW12] gave a certificate that the accused is potent.

12. Though the Investigation Officer [PW14] arrested the accused on the very next day, he did not recover the cloths of the accused as well as the victim child. But, even according to the prosecution case, when they have witnessed the occurrence, the accused is having sex with the child by removing his cloths and the child's cloth. Therefore, the non-recovery of the cloths of the child as well as the accused cannot be a material defect in this case. Similarly, the non-examination of the Doctor, who provided treatment at Fathima Hospital, is also not a material defect, when the medical evidence is supported by two Doctors [PWs.11 & 7] and the Accident cum Wound Certificates [Ex.P5 & Ex.P2].

13. The contention raised by Mr.S.Mahendrapathy, learned counsel for the appellant that the available prosecution witnesses, namely, PWs.1 & 2, were closely related to one another and no independent witness, who had seen the crime, was examined does not cut much ice with this Court, because, the law does not lay down any separate parameter for appreciating the evidence of a relative, vis-a-vis, the evidence of a person not related to the victim. In **State of Andhra Pradesh Vs. S.Rayappa**, reported in **2006 AIR SCW 929**, the Hon'ble Supreme Court has observed as follows:-

"On the contrary, it has now almost become a fashion that the public is reluctant to appear and depose before the Court, especially, in criminal case, because of varied reasons. Criminal cases are kept dragging for years to come and the witnesses are harassed a lot. They are being threatened, intimidated and at the top of all, they are subjected to lengthy cross-examination. In such a situation, the only natural witness available to the prosecution would be the relative witness. The relative witness is not necessarily an interested witness. On the other hand, being a close relation to the deceased, they will try to prosecute the real culprit by stating the truth. There is no reason as to why a close relative will implicate and depose falsely against somebody and screen the real culprit to escape unpunished. The only requirement is that the testimony of the relative witnesses should be examined cautiously. The High Court has brushed aside the testimony of PW-1 and PW-2 on the sole ground that they are interested witnesses being relatives of the deceased".

14. In **Chakali Maddilety and others, Vs. State of Andhra Pradesh**, reported in **2010 (12) SCC 72**, the Hon'ble Supreme Court has been held that the depositions of close relatives cannot be discarded merely because they are relatives, but, their evidence



has to be considered with due care and caution.

15. Admittedly, PWs.1 & 2 are close relatives of the accused and they have categorically stated about the occurrence and their availability in the accused's village, on his invitation for participating in the village pongal festival. PWs.3 & 4 are non-other than the accused's wife and a relative of the accused and they did not support the case of the prosecution. But, PW3 admitted in her evidence about their relationship with PWs.1 & 2 and the invitation for pongal festival and their availability for the pongal festival and her strained relationship after the pongal festival. PWs.5 & 6, though independent witnesses, are also from the village of the accused. PWs.1 & 2 are strangers to the village, but, on the other hand, the accused is from their village and they did not support the case of the prosecution. The evidence of PW1 & PW2, coupled with the evidence of the Doctors, viz., PW11 & PW7, clearly establish the case of the prosecution, without any iota of doubt and therefore, this appeals deserves to be rejected.

16. In view of the foregoing discussions and reasonings, this Court is not inclined to interfere with the judgment passed by the learned Assistant Sessions Judge, Aruppukottai, in S.C.No.86 of 2012, dated 24.09.2014 and accordingly, the same stands confirmed. Bail bonds, if any, executed by the appellant / accused stands terminated and the trial Court is directed to secure the appellant / accused and commit him to prison to undergo the remaining period of sentence.

In fine, this Criminal Appeal is dismissed.

Sd/-

Assistant Registrar(CS-II)

// True 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 Assistant Sessions Judge,
Aruppukottai.
2. do through the principal sessions Judge,
Virudhunagar at srivilliputhur.
3. the Judicial Magistrate, Aruppukkottai.
4. The Superintendent, Central Prison, Madurai.
5. The Inspector of Police,
Tiruchuli Police Station,
Virudhunagar District.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

COPY TO

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

Cr1.A. (MD) No.37 of 2015
13.08.2020

SCR(CO)
TR(08.09.2020) 8P 9C