



Bail Slip

The Appellants/Accused Namely 1.N.Veerendran S/o, Nagaraj, (A1), 2.Santhosh S/o, Seenivasamurthy (A2) were directed to be released on bail as per order of this court dated 22/07/2019 made in Crl.MP.8947 of 2019 in Crl.A.No.408 of 2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.03.2021
PRONOUNCED ON : 05/07/21

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.408 of 2019

1. N.Veerendran
2. Santhosh ...Appellants
3.

Vs.

The Inspector of Police,
All Women Police Station,
Denkanikottai,
Krishnagiri District.
(Crime No.26 of 2015) ...Respondent

This Criminal Appeal is filed under Section 374 of Cr.P.C. against the conviction and consequential sentence passed by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court, Krishnagiri) in S.C.No.171 of 2016, by judgment dated 05.02.2019.

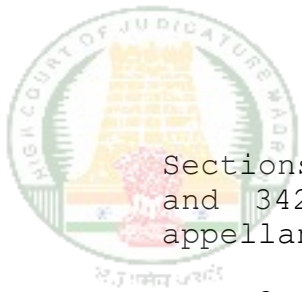
For Appellants : Mr.R.Bharath Kumar

For Respondent : Mrs.T.P.Savitha
Government Advocate (Crl.Side)

JUDGMENT

The criminal appeal has been filed against the judgment of conviction and sentence passed in S.C.No.171 of 2016 dated 05.02.2019 by the learned District Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Krishnagiri.

2 The respondent police registered a case in Cr.No.26 of 2015 against the appellants for the offence punishable under



Sections 354(B) and 376(1) of IPC against the first appellant and 342, 376(1) r/w Section 109 of IPC against the second appellant.

3 After completing investigation, the respondent police laid a charge sheet before the learned District Munsif cum Judicial Magistrate, Denkanikottai, which was taken on file in P.R.C.No.6 of 2016. The learned District Munsif cum Judicial Magistrate, since the charged offences against the appellants are exclusively triable by the Court of Session, had committed the case to the learned Principal District and Sessions Judge, Krishnagiri. The learned Principal District and Sessions Judge, Krishnagiri, had taken the case on file in S.C.No.171 of 2016 and made over the same to the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court, Krishnagiri), for disposal.

4 Before the trial Court in order to prove the case of the prosecution, P.Ws.1 to 21 were examined and Exs.P1 to 33 were marked besides Material Objects 1 to 9. After completing examination of prosecution witnesses, when incriminating circumstances culled out from the prosecution witnesses were put before the accused by questioning under Section 313 Cr.P.C., they denied as false and pleaded not guilty. On the side of the defence, no one was examined and no document was marked.

5 The learned District Judge, after trial and hearing arguments advanced on either side, by judgment dated 05.02.2019, convicted both the accused and sentenced the first accused to undergo rigorous imprisonment for a period of four years with fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for a period of six months for the offence punishable under Section 354(B) of IPC, to undergo rigorous imprisonment for a period of ten years with fine of Rs.15,000/-, in default, to undergo rigorous imprisonment for a period of one year for the offence punishable under Section 376(1) of IPC and sentenced the second accused to undergo rigorous imprisonment for a period of one year with fine of Rs.1000/-, in default, to undergo rigorous imprisonment for a period of one month for the offence under Section 342 of IPC and sentenced to undergo rigorous imprisonment for a period of ten years with fine of Rs.5000/-, in default, to undergo rigorous imprisonment for a period of six months for the offence under Section 376(1) r/w Section 109 of IPC. Aggrieved against the said judgment of conviction and sentences, both the accused have preferred this criminal appeal.

6 The learned counsel appearing for the appellants/accused would submit that as per evidence of P.W.14, the Doctor and Medical Certificate Ex.P.13, the victim girl, who



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was examined as P.W.19 was admittedly suffering from mental retardation-moderate to severe type. It is to be noted that Section 118 and 119 of the Indian Evidence Act clearly says that before examination of a mentally retarded person, whether the witness is rational to answer the question, but the trial Court miserably failed to test the rational of P.W.19 and hence the trial Court committed grave illegality in convicting the appellants. Even assuming that the trial Court found P.W.19, the victim girl is a fit person for tendering evidence, during cross examination, she had clearly stated that what she stated in the chief examination is tutored by the respondent police and she was coerced by the respondent police. Therefore it is clearly established that the victim girl was tutored and forced by the respondent police to tender evidence against these appellants.

6.1 The learned counsel further argued that the respondent police took much time to tutor P.W.19, the victim girl and hence only she was not examined along with P.W.1, the mother of the victim or soon after examination of P.W.1. The statement of the victim girl recorded under Section 164 Cr.P.C. cannot be considered, since it is the version of P.W.1, the mother of the victim, who had assisted the victim child at the time of recording statement and hence it is not admissible in evidence. Further, P.W.1, the mother of the victim herself turned hostile and P.W.2 to 7 and P.W.9 also turned hostile, which itself shows that false case has been foisted against the appellants and the victim girl has not identified the second appellant. Further, P.W.8, the Village Administrative Officer, is only a hearsay evidence and he has clearly stated that he heard that a complaint has been lodged by P.W.1 against these appellants and hence he does not have any knowledge about the occurrence. Even, Ex.P.33, forensic report, shows negative for spermatozoa and P.W.10, the Doctor has admitted that there is a chance of sustaining injuries on thigh by felling down. The learned counsel further contended that the scribe of the complaint, which was translated from Urdu to Tamil was not examined and the trial Court has miserably failed to consider and appreciate the above facts and erroneously convicted the appellants only based on the medical evidence, which is not at all corroborated by any other evidence. Hence the trial Court, based on the contradictory evidence, recorded conviction against these appellants, which warrants interference of this Court.

7 The learned Government Advocate (CrI.Side) appearing for the respondent police would submit that the victim girl was aged about 19 to 20 years at the time of occurrence and on the date of occurrence, she had gone to fetch water in the public tap near the house of the second appellant. At that time, the second appellant dragged the victim girl to the house of the first appellant and the first accused committed sexual assault

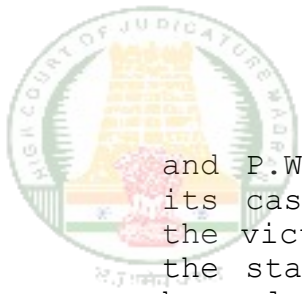


on the victim girl. Since, the victim girl, did not return home within a reasonable time, her mother P.W.1, searched her and she found sandal of the victim girl in front of the home of the first accused. P.W.1 went to his house and she came to know that her daughter P.W.19 was sexually assaulted by the appellants. Thereafter, she immediately lodged complaint and went to Government Hospital, Denkanikottai, where, P.W.12, the Doctor, who admitted in the Hospital made entry in the Accident Register, which was marked as Ex.P8. P.W.13, the Assistant Surgeon, who examined the victim girl has clearly stated that there was a contusion on the left thigh of the victim and hymen was not intact and her report was marked as Ex.P9. Evidence of Doctors, P.Ws.11 to 16, would clearly show that the victim was subjected to sexual assault. Hence trial Court has rightly appreciated the evidence produced by the prosecution and rightly convicted the appellants, which does not call for any interference of this Court.

8 Heard the learned counsel for the appellants and the learned Government Advocate (Crl.Side) appearing for respondent police and perused the materials available on record.

9 Case of the prosecution is that on the date of occurrence, when P.W.19, the victim girl gone to fetch water in public tap situated near the house of the appellants, the second appellant dragged her into the house of the first appellant, where the first appellant committed sexual assault on her. P.W.1, her mother, since the victim did not return to house within reasonable time, searched her and found sandal of the victim in front of the house of the first appellant. P.W.1 knocked door of the first appellant's house and she came to know that her daughter P.W.19 was subjected to sexual assault by the appellants. Hence the complaint.

10 It is contended by the learned counsel for the appellants that P.W.19, the victim girl was tutored by the respondent police and P.Ws.1 to 7 and 9 have turned hostile and not supported the case of the prosecution. As per evidence of P.W.14, the Psychiatrist and Ex.P.13, it is clear that P.W.19, the victim girl is a mentally retarded person and hence we cannot expect the victim girl to speak same words at every time. P.W.19, before the Judicial Magistrate P.W.18 at the time of recording statement under Section 164 of Cr.P.C has stated that these appellants had committed rape on her. P.W.1 also in her evidence has clearly stated that when she knocked the door of the first appellant's house, the first appellant escaped through main door and second appellant ran through the back side door and her daughter told that she was raped by the appellants. Even though, P.W.1, subsequently has not supported the case of the prosecution, on a combined reading of evidence of P.Ws.12 to 16



and P.W.19 and Exs.P8, this Court finds prosecution has proved its case beyond reasonable doubt. It is further contended that the victim girl has not identified the second appellant, but, in the statement recorded under Section 164 of Cr.P.C. the victim has clearly stated two persons made sexual assault on her and P.W.1 also in her evidence has stated she saw these appellants and hence there is specific overt act against the second appellant also. Further evidence of P.W.19 and the statement under Section 164 of Cr.P.C was corroborated with the medical evidence. This Court, as an appellate Court, has re-appreciated the entire evidence on record and finds no perversity in the judgment of conviction recorded by the trial Court.

11 In the result, the appeal is dismissed and judgment of conviction and sentence passed by the trial Court is hereby confirmed. The trial Court is directed to secure the appellants/accused to undergo remaining period of sentence.

Sd/-
Assistant Registrar(CCC)

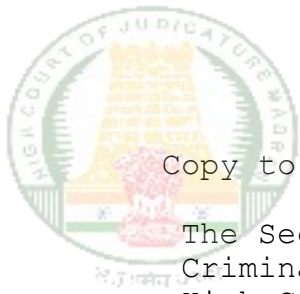
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Sub Assistant Registrar

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To

1. The Sessions Judge, Magalir Neethi Mandram
(Fast Track Mahila Court, Krishnagiri).
2. The Principal District and Sessions Judge,
Krishnagiri.
3. The Superintendent, Central Prison,
Vellore.
4. The Inspector of Police,
All Women Police Station,
Denkanikottai, Krishnagiri District.
5. The Public Prosecutor,
High Court of Madras.



Copy to

The Section Officer,
Criminal Section,
High Court, Madras.

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+1cc to Mr.R.Bharath Kumar, Advocate, S.R.No.31268

Pre-Delivery Judgment
in
Crl.A.No.408 of 2019

LN(CO)
HS(22/07/2021)