

Bail Slip

The Appellan herein/accused namely Saravanan S/o.Maliarasu was directed to be released on bail as per order of this Court dated 27.08.2019 made in CrI.MP.No.12057/19 in CrI.A.No.547/19 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.A.No.547 of 2019

Saravanan ... Appellant/Accused

-Vs-

Inspector of Police,
H6, R.K.Nagar Police Station,
Chennai-600 021.
Crime No.570 of 2015. ... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Code of Criminal Procedure, to call for the records in S.C.No.317/2015 on the file of Mahila Sessions Judge, Chennai, pursue the same, hear the appeal and acquit the appellant.

For Appellant : Mr.B.Maheswaran

For Respondent : Ms.T.P.Savitha,
Government Advocate (CrI. Side)

JUDGMENT

This Criminal Appeal has been filed against the Judgment of conviction and sentence imposed by the Sessions Judge, Mahila Court, Chennai (Mahalir Neethimandram, Chennai) in S.C.No.317 of 2015.

2.The respondent Police have registered a case in Crime No.570 of 2015, for offence under Sections 376 and 511 IPC against the appellant on the complaint given by PW.1/defacto complainant. After completing the investigation, the respondent Police laid a charge sheet before the learned XV Metropolitan Magistrate, Chennai and the same was taken on file as P.R.C.No.62 of 2015. After completing the formalities under Section 207 Cr.P.C., the learned XV Metropolitan Magistrate, Chennai committed the case to the learned Principal Judge, Chennai, since the offence committed by the appellant is exclusively triable by the Court of Session. The learned Principal Judge, Chennai has taken the case on file in

S.C.No.317 of 2015 and made over the same to the learned Sessions Judge, Mahila Court, Chennai (Mahalir Neethimandram, Chennai). Since there was a prima facie material to frame charges against the appellant, the learned Sessions Judge framed charges for offence under Sections 450, 324, 376 r/w 511 IPC.

3.After completing the trial and hearing the arguments advanced on either side and also considering the oral and documentary evidence, the learned Sessions Judge found guilt of the appellant for the offence under Sections 451, 323 and 354 IPC and convicted and sentenced as follows:-

- For offence under Section 451 IPC, the appellant shall undergo 1 year Simple Imprisonment and to pay a fine of Rs.10,000/-, in default to undergo further period of three months Simple Imprisonment.
- For offence under Section 323 IPC, the appellant shall undergo six months Simple Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo further period of one month Simple Imprisonment.
- For offence under Section 354 IPC, the appellant shall undergo two years Simple Imprisonment and to pay a fine of Rs.20,000/-, in default to undergo further period of six months Simple Imprisonment.

4.Challenging the above said Judgment of conviction and sentence, the appellant has filed the present appeal before this Court.

5The learned counsel for the appellant would submit that the victim women (PW.1) has foisted a false case against the appellant and the appellant did not commit any offence as charges framed against him. The learned counsel would further submit that during the year 2014, the appellant lost his tooth in the bike accident and he corrected his denture by placing ceramic caps for his front teeth. On the date of occurrence i.e., on 03.04.2015, at about 01.00 p.m., when the appellant was going to the shop, due to medicine consumed, he got fainted and tempted to vomit, so he went and vomited near the tank. Since it fell on the ladies who sat on the tank, they scolded the appellant and attacked and also handed over him to the Police. Without conducting any enquiry about the occurrence, the respondent Police foisted the above false case against him. The learned counsel for the appellant would further submit that as if the appellant attempted to commit a rape with the victim woman (PW.1), who was aged about 91 years, it is very strange to state that a person who has got a certificate in NCC alleged to have committed such an offence, that to 91 years old lady. Further, there are material contradictions between the prosecution witnesses, the trial court failed to consider the same.

6.The learned counsel for the appellant would further submit that the Doctor (PW.7) has stated that the victim informed a known person assaulted her and he noticed a lacerated injury over her upper and lower lips and made entries in the Accident Register (Ex.P4) that the injury is simple in nature. The Doctor (PW.7) has stated that except injury on the lips of the victim (PW.2), no other injury was found on her. Even though, the Advocate before the trial Court did not cross examine the prosecution witnesses, the appellant had filed a petition under Section 311 Cr.P.C., for cross examination of the prosecution witnesses. Considering the age of the victim woman (PW.1), the trial Judge did not allow the petition under Section 311 Cr.P.C., and did not give any opportunity to the appellant for cross examination of the prosecution witnesses. The brother (PW.4) of the victim woman has stated that the appellant was arrested by the Police immediately after the occurrence, whereas the Investigating Officer, who conducted the investigation has stated that since the appellant was absconding, he arrested him on the next day. Hence, there are material contradictions between the prosecution witnesses and the medical evidence (PW.7) also not supported the case of the prosecution. Though the trial Judge rightly appreciated the evidence and not found guilt of the appellant for offence under Section 376 r/w 511 IPC, erroneously came to the conclusion that the appellant molested the victim woman and convicted him under Sections 451, 323 and 354 IPC. Further, the prosecution did not produce any materials to show that the appellant trespassed into the house of the victim woman and committed rape or attempted to commit rape. Therefore, the conviction and sentence imposed on the appellant for offence under Section 354 IPC is unwarranted and the same are liable to be set aside.

7.The learned counsel for the appellant would further submit that the entries in the Accident Register (Ex.P4) made by the Doctor (PW.7) shows that an unknown person attacked the victim woman (PW.1) on 03.04.2015. But the evidence of the victim (PW.1) and the Doctor (PW.7) show that the victim (PW.1) was assaulted by a known person. Thus, there are material contradictions between the oral and documentary evidence and without considering the same, the trial Court convicted and sentenced the appellant based on presumption and assumptions. In every stage, there are improvements and contradictions and also change of versions and therefore, the evidence and documents produced by the prosecution are not trustworthy. Therefore, the prosecution has failed to substantiate the charges framed against the appellant and the trial Court also failed to appreciate the oral and documentary evidence, more particularly the defence evidence and documents and also statement given by the appellant while questioning under Section 313 Cr.P.C. The Judgement of conviction and sentence rendered by the learned trial Judge are liable to be set aside.

8. Ms. T. P. Savitha, Government Advocate (Crl. Side) appearing on behalf of the respondent Police would submit that the victim woman was examined as PW.1 and she was aged about 91 years at the time of occurrence. On 03.04.2015, at about 04.00 p.m., when the victim woman (PW.1) was lying in the cot inside the house, the appellant opened the door and trespassed into the house and laid on her, scratched her chest with his nails and also bite her lips and tried to rape her. When the victim (PW.1) was shouted, the neighbours came and the appellant escaped from the scene of occurrence. Subsequently the victim woman (PW.1) was taken to hospital for treatment and information was sent to the Police Station. The respondent Police after receiving the complaint (Ex.P1), registered an FIR (Ex.P6) in Crime No.570 of 2015, for offence punishable under Sections 376 and 511 IPC against the appellant and arrested the appellant and after completion of investigation, the respondent Police laid the charge sheet before the concerned Court.

9. The learned Government Advocate (Crl. Side) would further submit that during trial, the victim woman/injured witness was examined as PW.1 and she has narrated the entire facts happened on 03.04.2015, that when she was lying in the cot inside the house, the appellant trespassed into the house, laid on her, scratched her chest with his nails and also bite her lips. The Doctor, who examined as PW.7 has stated that he gave treatment to the victim woman (PW.1) and found injuries on her lips and made entries in Accident Register (Ex.P4) to that effect. Therefore, the medical evidence corroborated the evidence of the victim woman (PW.1) and therefore, the prosecution has established its case beyond reasonable doubt and the trial Court rightly appreciated the oral and documentary and rightly convicted the appellant. Since the appellant has not committed any offence of attempting to commit rape, the learned trial Judge altered the Section of 376 r/w 511 IPC to 354 IPC and convicted him under Section 354 IPC. Since the appellant trespassed into the house of the victim woman (PW.1) when she was sleeping, the appellant was convicted under Section 451 IPC. Since the appellant caused the injuries on the victim woman and same are grievous in nature, he was convicted under Section 323 IPC. Therefore, the trial Court rightly convicted the appellant, which does not require interference of this Court and there is no merit in the appeal and the appeal is liable to be dismissed.

10. Heard the learned counsel appearing for the appellant and the learned Government Advocate [Crl. Side] appearing for the respondent and also perused the materials available on record.

11. The case of the prosecution is that at the time of occurrence, the victim (PW1) was 91 years of age. On 03.04.2015, at about 04.00 p.m., when the victim (PW.1) was

sleeping in her home, the appellant, who was in a drunken mood, trespassed into her house, laid on her and scratched on her chest with his nails and also bite her lips and caused simple injuries and attempted to commit rape. Immediately, the victim (PW.1) screamed and on hearing the noise, the neighbours came and the appellant escaped from the scene of occurrence. Subsequently the victim (PW.1) was taken to the hospital for treatment and information was sent to the Police Station. Thereafter, the victim (PW.1) lodged the complaint (Ex.P5) before the respondent Police.

12. Based on the complaint (Ex.P5) given by the victim (PW1), an First Information Report (Ex.P6) in Crime No.570 of 2015 was registered, for offence under Sections 376 r/w 511 IPC. After completing investigation, the respondent Police laid a charge sheet before the learned XV Metropolitan Magistrate, Chennai and the same was taken on file in P.R.C.No.62 of 2015. After completing the formalities under Section 207 Cr.P.C., the learned XV Metropolitan Magistrate, Chennai committed the case to the learned Principal Judge, Chennai, since the offence committed by the appellant is exclusively triable by the Court of Session. The learned Principal Judge, Chennai has taken the case on file in S.C.No.317 of 2015 and made over the same to the learned Sessions Judge, Mahila Court, Chennai (Mahalir Neethimandram, Chennai). Since there was a prima facie material to frame charges against the appellant, the learned Sessions Judge framed charges under Sections 450, 324, 376 r/w 511 IPC.

13. During the trial, on the side of the prosecution, as many as 8 witnesses were examined as PW1 to PW8 and 8 documents were marked as Exs.P1 to P8 and two material objects were exhibited. After completing the examination of prosecution witnesses, when incriminating circumstances were culled out from the evidence of prosecution witnesses put before the appellant, he denied the same as false. On the side of the defence, 1 witness was examined as DW1 and 14 documents were marked as Exs.D1 to D14.

14. After completing trial and hearing arguments advanced on either side, the learned Sessions Judge vide judgment, dated 14.08.2019 in S.C.No.317 of 2015 convicted and sentenced the appellant as stated above.

15. This Court, being an Appellate Court, is a fact finding Court, which has to necessarily re-appreciate the entire evidence and give an independent finding and accordingly, this Court has re-appreciated the entire oral and documentary evidence produced before this Court and come to the independent finding.

16. A perusal of the records, during trial, the learned trial Judge framed charges for the offence under Sections 450, 324 and 376 r/w 511 IPC against the appellant. In order to substantiate the charges framed against the appellant, the

prosecution has examined 8 witnesses and marked 8 documents and exhibited two Materials Objects. Out of 8 witnesses, the victim/injured witness was examined as PW.1.

17.A reading of the evidence of the victim (PW.1), on 03.04.2015, at about 04.00 p.m., when the victim (PW.1) was lying in the cot inside the house, the appellant opened the door and trespassed into the house and laid on her, scratched her chest with his nails and also bite her lips and tried to rape her. When the victim (PW.1) shouted, the neighbours rushed to the scene of occurrence and the appellant escaped from the scene of occurrence and the victim was admitted in the hospital.

18.The Doctor one, who gave treatment to the victim was examined as PW.7. A reading of the evidence of the Doctor (PW.7), the Doctor has stated that the victim informed him that a known person assaulted her with hand on 03.04.2015. The victim during chief examination has also stated that she was assaulted by a known person. But, the Doctor (PW.7) made entry in the Accident Register (Ex.P4) as if she was assaulted by unknown person. Therefore, there are material contradictions between the evidence of the victim and the Doctor (PW.7) who gave treatment for her.

19.According to the prosecution, the occurrence took place on 03.04.2015, at about 04.00 p.m., and immediately after the occurrence, the victim was taken to the hospital for treatment and she admitted in the hospital at about 07.55 p.m., at that time, she stated before the Doctor (PW.7) that one unknown person assaulted her with hand. But in the complaint (Ex.P5), the victim has stated all other things. Based on the complaint, an First Information Report (Ex.P6) in Crime No.570 of 2015 was registered. Even the complaint (Ex.P5) and the First Information Report (Ex.P6) are not encyclopaedia, but prior to registering the complaint (Ex.P5), the victim during treatment gave statement before the Doctor (PW.7), who is a common man and also a Government Servant, neutral to all, made entry in the Accident Register (Ex.P4) that the victim was assaulted by unknown person with hand. Therefore, the statement given before the Doctor (PW.7) is contradictory to the deposition given before the learned trial Judge during trial.

20.Further, a reading of the statement given by the victim under Section 161 Cr.P.C., before the Investigating Officer and a reading of the deposition of the prosecution witnesses, there are contradictions and improvements. Though the statement recorded under Section 161 Cr.P.C., is not admissible in evidence, it can be used for contradiction on the side of the defence. Therefore, the prosecution has not come with true version and they have changed and improved the case in every stage.

21. During investigation, the victim in the statement recorded under Section 161 Cr.P.C., stated that after hearing the noise, his son (PW.2) was available in the home and he rushed there. But in chief examination, PW.2 has stated that at the time of occurrence, he was not in the house and he was informed by his wife about the occurrence, then only he came to the scene of occurrence and by the time, the neighbours had taken her mother (PW.1) to the hospital for treatment, then he went to the hospital and saw the injuries sustained by her mother. Further, the brother of the victim women (PW.4) has stated that after hearing the noise, everyone rushed to the house of the victim and he also went and saw the appellant was lying in the house of the victim and he did not have consciousness and neighbours took him and laid on the street and thereafter, the respondent Police came and took him to the Police Station, even at that time also he was unconscious. Therefore, the evidence of PW.1 to PW.4 & the Doctor (PW.7) are contradictory to each other.

22. Therefore, the evidence of the victim women (PW.1) is highly doubtful and the same is not corroborated by the medical evidence (PW.7) and the entry made in the Accident Register (Ex.P4). Even though there is any contradiction between the ocular evidence and the medical evidence, the ocular evidence will prevail over the medical evidence. But however, in this case not only the entry made in the Accident Register (Ex.P4), the statement given by the victim before the Doctor (PW.7) is otherwise. Therefore, under these circumstances, this Court finds that the version of the prosecution is highly doubtful and not trustworthy.

23. There is no concrete evidence to prove that the appellant trespassed into the house of the victim. Except the evidence of the victim (PW.1), no other witnesses have stated that they have seen the appellant in the house of the victim. Therefore, this Court does not find that the prosecution has proved charge framed against the appellant under Section 451 IPC and therefore, the conviction and sentence recorded under Section 451 IPC are liable to be set aside and, are set aside.

24. As far as the offence under Section 354 is concerned, as already stated, in the statement made before the Doctor (PW.7), she has stated that she was assaulted by known person with hand. None of the witnesses have spoken that the appellant molested the victim and no eye witness in this case. As already stated, the evidence of the victim is contrary to the statement made before the Doctor (PW.7) also the statement made before the Police Officer under Section 161 Cr.P.C. Therefore, the evidence of the victim is unreliable and suspicious and the benefit of doubt is extended to the appellant. The prosecution has failed to prove the charge framed for the offence under Section 354 IPC and thus, the conviction and sentence recorded under Section 354 IPC are also liable to be set aside and, are set aside.

25.As far as Section 323 IPC is concerned, the victim stated before the Doctor (PW.7) that she was assaulted by a known person and the appellant during questioning under Section 313 Cr.P.C., he admitted that at the time of occurrence he was there, since he vomited near the tank and it fell on the persons nearby and there was wordy quarrel at that time. Further, the Doctor (PW.7) examined the victim and made entry in the Accident Register (Ex.P4) for the injuries sustained by her that a lacerated injury over her upper and lower lips. Therefore, the evidence of the Doctor (PW.7) and also the entry made in the Accident Register (Ex.P4) proved that the victim was sustained injury at the time of occurrence and the appellant has committed the offence under Section 323 IPC.

26.Considering the age and nature of the offence and injury sustained by the victim, this Court comes to the conclusion that the appellant has committed the offence punishable under Section 323 IPC and the same is hereby confirmed. The sentence of imprisonment imposed on the appellant for offence under Section 323 IPC by the trial Court is six months Simple Imprisonment.

27.In this case, there was no previous motive or premeditation between the appellant and the victim women. It is only all of sudden due to wordy quarrel, the occurrence had happened. Further, the evidence on the side of the defence and documents show that the appellant was certified under the National Cadet Corps (NCC). Therefore, the sentence already undergone by the appellant is enough for offence under Section 323 IPC which will meet ends of justice.

28.With the above modification, this Criminal Appeal is partly allowed. The fine amount, if any, paid by the appellant for offence under Sections 451 and 354 IPC shall be refunded. The appellant is directed to be released, if he is inside, unless his presence is not required in any other case/proceedings.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

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To

1.The Sessions Judge, Mahila Court,
(Mahalir Neethimandram, Chennai),
Chennai.

2. The XV Metropolitan Magistrate,
Chennai.
3. do Through The Chief Metropolitan Magistrate
Egmore, Chennai-8
4. The Inspector of Police,
H6, R.K.Nagar Police Station,
Chennai-600 021.
5. The Public Prosecutor,
High Court, Madras.
6. The Director General of Police
Mylapore, Chennai.
7. The District Collector,
Chennai

Copy To

The Section Officer,
Criminal Section,
High Court, Madras-104

GMR (CO)
GMY (08/07/2021)

Crl.A.No.547 of 2019



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