



BAIL SLIP

The Appellant/Accused Namely, Selvam S/o.Periyathambi was released on bail as per the order this Court dated 23.01.2018 and made in CrI.MP.No.14630/2017 on the file of this Court.

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Criminal Appeal No.734 of 2017

Selvam .. Appellant/Accused
Vs.
State, Represented by
The Inspector of Police,
Karipatti Police Station,
Salem District.
Crime No.287/14. .. Respondent/Complainant

PRAYER: This Criminal Appeal filed under Section 374 (2) Cr.P.C., against the judgement of conviction and sentence dated 31.10.2017 in S.C.No.134/2015 on the file of the Sessions Judge, Mahila Court, Salem.

For Appellant : Mr.E.C.Ramesh

For Respondent : Mr.A.Gopinath

Government Advocate(CrI.Side)

JUDGMENT

This Criminal Appeal has been preferred by the appellant/accused to set aside the conviction and sentence made in S.C.No. 134/2015 on the file of the learned Sessions Judge, Mahila Court, Salem, dated 31.10.201

2. The case of the prosecution is that on 05.06.2014 at about 5.00 pm., the accused had trespassed into the house of the defacto complainant, while she was sleeping along with her children, hugged her and attempted to rape her. On the complaint (Ex.P.1) given by PW.1 on 06.06.2014, P.W.7-Krishnan, Special Sub Inspector of Police, registered an FIR (Ex.P.2) in Cr.No.287/2014 of Kariyapatti Police Station for the offence under Sec.376 r/w 511, 506(I) IPC.

2.1. P.W.10-Kandavel, Inspector of Police took up the case for investigation and went to the place of occurrence and prepared the observation mahazar (Ex.P.3) and rough sketch (Ex.P.4) in the presence of the witnesses P.W.8- Kasthuri and P.W.9-Perumal. He examined the defacto complainant and other



witnesses and recorded their statements. On the same day itself, he arrested the accused and sent him to remand. After completing the Investigation, he filed the charge sheet against the accused under Sec.376 r/w 511 and 506(I) IPC.

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2.2. After the case was taken on file and after observing the legal mandates, the learned trial Judge framed the charges against the accused under Sec.450, 376 r/w 511 and 506(I) IPC and read over to the accused. The accused denied his involvement in the offences and claimed to be tried.

2.3. During the course of the trial, on the side of the prosecution 10 witnesses have been examined as PW.1 to 10 and Exs.P1 to 5 were marked. The incriminating circumstances appearing from the evidence of the prosecution were put to the accused through the questions put under Sec.313 Cr.P.C. and he denied the questions put to him. On the side of the defense, no witness was examined and no documents were marked.

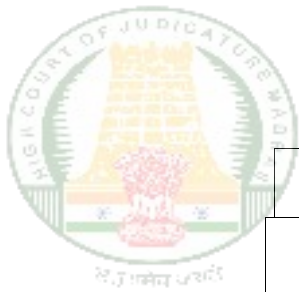
3. The evidence of the prosecution in brief:

P.W.1-Sumathy is the de facto complainant and she has spoken about the occurrence. P.W.2-Periyammal is the relative of PW.1, who was present at the time of the occurrence; but however he did not support the case of the prosecution. P.W.3-Sarasu, is the mother of PW.1. She heard about the occurrence through phone and stated about the same in her evidence. P.W.4-Velusamy, is the husband of PW.1. He also heard about the occurrence through phone and came home the next day. He has stated about the earlier occurrence in which the accused tried to misbehave with PW.1.

3.1. P.W.5-Suresh, is the brother of PW.1. He also accompanied P.W.3 after hearing about the occurrence. PW.6-Vishal, is the son of PW.1 who was present at the time of occurrence and he stated about the occurrence. P.Ws. 8 & 9 who stood as witnesses for observation mahazar (Ex.P.3). But he did not support the case of the prosecution.

4. At the conclusion of the trial and on consideration of the materials placed before the Court, the learned Sessions Judge found the accused guilty and convicted and sentenced him as under:

Sl.No	Provision under which convicted	Sentence
1	Section 450 IPC	To undergo 10 years of rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo six months simple imprisonment



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Sl.No	Provision under which convicted	Sentence
2	Sec.376 r/w 511 IPC	To undergo 3 years and 6 months of rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo six months simple imprisonment
3	Sec.506(I) IPC	To undergo 2 years of rigorous imprisonment and to pay a fine of Rs.2,000/-, in default to undergo three months simple imprisonment

Aggrieved over the same, the appellant/ accused has filed this appeal.

5. Heard, the submissions of Mr E.C.Ramesh, learned Counsel for the Appellant and Mr.A.Gopinath, learned Government Advocate (crl.side) appearing for the respondent State.

6. The learned counsel for the appellant has submitted that there is no corroboratory evidence and the learned trial Judge has convicted the accused basing on the evidence of PW.1. alone; the learned Trial Judge had overlooked the contradictions in the evidence of PW.1 and did not appreciate the absence of any other supporting evidence; a false case has been foisted against the accused, in view of the previous motive with him and the family of the de facto complainant. By making such submissions, he prayed that the judgement of the trial Court should be set aside and the accused should be acquitted.

7. The learned Government Advocate (Crl.Side) appearing for the respondent State has submitted that the evidence of PW.1 is elaborate about the occurrence and there is nothing to create suspicion; PW.6 is the minor son of PW.1. He has also stated about the occurrence in a very consistent manner and there is no reason to reject his evidence. The events that had preceded and followed the occurrence have also been proved through the prosecution evidence and the learned trial Judge has appreciated the evidence in record in a correct perspective; hence, the impugned judgment, does not require any interference.

8. The point for consideration is

Whether the conviction and sentence of the accused for the offences under Sec.450, 376 r/w 511 and 506(I) IPC by the learned Sessions Judge is fair and proper?

9. Point:- PW.1 is the victim and the de facto complainant. Her complaint is Ex.P1. On perusal of Ex.P.1-



compliant, it is seen that at about 5.00 pm., on 05.06.2014 when she was sleeping along with her minor child in her house, the accused trespassed into her house, gagged her mouth, undressed her and attempted to commit sexual assault on her; on seeing this, her child shouted and cried; and on hearing the noise of the child, the neighbours Periyammal and Kanammal rushed to the house; on seeing them the accused ran away. The de facto complainant was examined as PW.1.

10. She has stated about the occurrence in her evidence. She has stated that after gagging her mouth, the accused held her tightly and threatened her that he would kill her if she shouted. She has also stated that the child also got disturbed and cried ; on hearing the noise, the neighbours rushed into the house and thereafter, the accused ran away. Her above evidence is consistent with her complaint and the case of the prosecution.

11. Her son PW.6 is an important witness who was present in the place of occurrence. He is a child witness. But his evidence would reveal that he had understood the Court proceedings and deposed evidence. Even during his cross examination, he had asserted what he stated in the chief examination and the whole reading of his evidence would reveal that he was not tutored by anyone.

12. Per contra, the learned counsel for the appellant submitted that at that time of occurrence, the appellant was staying in the house of his grandmother and he was not available at the place of occurrence. But PW.6 has asserted twice during the cross examination that during the relevant time he was available with his mother only and they were sleeping in the house. When he was confronted that normally no one won't sleep at 5'o clock, he replied that only at that time his mother returned from cooli her work and tired; and hence they fell asleep.

13. The learned counsel for the appellant submitted that as per the evidence of the boy he studied 1st or 2nd standard at his grandmother's house and there was no possibility for him to be present in the place of occurrence. A boy of 7 years need not lie about a serious matter and P.W.1 also will not opt to say that her son was present. Just because the boy has stated that he has studied 1st or 2nd standard at his grandmother's house, that does not mean that he could not have been present in his mother's house on any day.

14. A combined reading of the evidence of PW.1 and PW.6 would confirm the fact that on the day of occurrence PW.6 was also very much present in the place of occurrence. Despite PW.3 and 4 were present at the place of occurrence, they had come to



the house of PW.1 on hearing the occurrence. PW.3 being the mother and PW.4 being the husband of PW.1 it is quite natural and spontaneous for them to come and visit PW.1 immediately, after knowing about the untowardness that had happened on the previous day. So the events that had followed the occurrence also appear to be very natural and believable. PW.4 has recalled in his evidence about the earlier instance, when the accused had misbehaved with his wife and got warned.

15. A whole reading of the evidence on record does not reveal that the de facto complainant's family had any motive against the accused to give a false complaint against him. Even during Sec.313 Cr.P.C., questioning the accused has not stated anything of this sort. So it is difficult to appreciate the submission of the learned counsel for the appellant that there is no sufficient corroboration for the evidence of PW.1. When PW.1 was sleeping alone with her child and the occurrence had occurred at that time, it is impossible for anyone, except her child, to witness the occurrence. The corroborative factors can be inferred from the evidence of the other witnesses who have spoken about the events that had preceded and followed the occurrence.

16. The learned trial Judge had evaluated the evidence on record in a correct perspective and convinced to record the guilt of the accused. However, it is seen from the cross examination of PW.1 that the accused had hugged her and gagged her. But she has not stated that he pulled her saree and blouse. So the above act of the accused will only attract the ingredients for the offence under Sec.354 IPC and not under Sec.376 r/w 511 IPC. Sec.354 IPC reads as under:

"354. Assault or criminal force to woman with intent to outrage her modesty
Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

17. The accused trespassed into the house of PW.1 with an intention of committing an offence and he had used force to gag her mouth and hugged her from behind. Such an act of the accused would amount to committing assault with an intention of outraging the modesty of PW.1, knowing well that it would embarrass her and cause shame and fear in her mind. In that context the accused ought to have been punished for the offence under Sec.354 I.P.C only. Since the learned trial Judge had



chosen to convict the accused for the offence under Sec.376 r/w 511 IPC, I feel it has to be modified appropriately.

In the result this appeal is partly allowed and the judgement of the Appellate Court is modified and the accused is found guilty for the following offences and punished as under:

Sl.No	Provision under which convicted	Sentence
1	Section 450 IPC	To undergo 2 years of rigorous imprisonment and to pay a fine of Rs.10,000/- in default to undergo six months simple imprisonment
2	Sec.354 IPC	To undergo 1 year of simple imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months of simple imprisonment
3	Sec.506(I) IPC	To undergo 1 year of rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months simple imprisonment

If the fine amount has already been paid pursuant to the Judgement and order of the trial Court, it is not necessary for the appellant to pay it once again. Periods of incarceration so far undergone by the appellant shall be set off as per Section 428 Cr.P.C. The connected miscellaneous petitions if any are also closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

jrs

Copy to

1.The Sessions Judge, Mahila Court, Salem.

2.The Sessions Judge, Coimbatore.

3.The Judicial Magistrate, Mahila Court, Salem.

4.The Superintendent, Central Prison, Coimbatore.

5. The Director General of Police, Mylapore, Chennai 4.



6. The Inspector of Police,
Karipatti Police Station,
Salem District.

7. The Public Prosecutor,
High Court, Madras.

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

+1 cc to Mr.E.C.Ramesh, Advocate Sr.NO. 61170

Criminal Appeal No.734 of 2017

SMI (CO)

A.SK(27.12.2021)