



BAIL SLIP

The Appellant/Accused Thiru.S.Murugan, S/o.Subbaiah, was released on bail by order of this Court Dated 22.04.2016 made in CrI.M.P.(MD)No.2886 of 2016 in CrI.A(MD)No.106 of 2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:24.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.A.(MD)No.106 of 2016

S.Murugan

: Petitioner/Appellant

Vs.

The State Rep by its
Inspector of Police,
Kayathar Police Station,
Tuticorin District.
(Crime No.339/2013)

: Respondent/Respondent

PRAYER: This Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, to call for the records in S.C.No.150 of 2014 dated 19.01.2016 on the file of the Sessions Judge, Mahalir Neethimandram (Fast Track Court) Tuticorin and allow this appeal and acquit the appellant from the charge by setting aside the impugned judgment dated 19.01.2016.

For Appellant

: Mr.Aayiram K.Selvakumar

For Respondent

: Mr.M.Muthumanikkam,

Government Advocate (crl.side)

JUDGMENT

This present criminal appeal is directed against the conviction and sentence dated 19.01.2016 passed in S.C.No.150 of 2014 on the file of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Court), Tuticorin.

2.The appellant is the sole accused. He stood charged for the offence punishable under Sections 450 and 376 r/w 511 of IPC. After full-fledged trial, the learned Sessions Judge, Mahalir Neethimandram (Fast Track Court), Tuticorin, came to the conclusion that the appellant is found guilty for the offence under Sections 450 and 376 r/w 511 of IPC and accordingly, the appellant was convicted under Section 450 of I.P.C and sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month rigorous imprisonment. Further he has been convicted under Section 376 r/w 511 of I.P.C and sentenced to undergo 5 years rigorous imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo six months rigorous imprisonment.



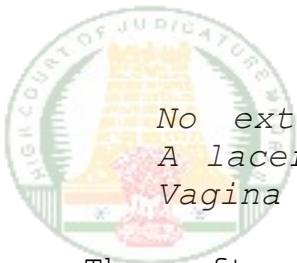
Challenging the conviction and sentence, the appellant is before this Court with the present Criminal Appeal.

3.The case of the prosecution in brief is as follows:-

(i) The victim Madathi is no more. Due to her death, she has not been examined as witness before the trial Court. Both PW1 and PW2 are close relatives to the victim girl. On 06.10.2013 around 7.00 p.m while at the time the victim girl came out from her residence to attend the natural call, the appellant/accused pulled her hands, for which she had pushed of his hands and went to her house. Thereafter, by following the victim, the accused entered into the victim's house, pulled her hand, removed her dress, pressed her breast and after pouring the coconut oil on her vagina, he sexually assaulted the victim girl. After the said occurrence, on the next day morning around 06.00 am the same was reported to PW1 by the victim. Immediately, PW1 informed the said occurrence to the peoples, who are residing in the said village and ultimately, the victim along with PW1 went to the police station, wherein the police persons obtained a left hand thumb impression from the victim. In the said complaint, PW1 signed as a witness. The said complaint given by the deceased Madathi, was marked as Ex.P1.

(ii) PW7-Ponnarasu, the then Inspector of Police, Kayathar Police Station, on 07.10.2013 while at the time he was in police station, received the information from the Government Hospital, Kovilpatti, in respect to the alleged occurrence, rushed to the Hospital, examined the victim girl and recorded the statement. After recording the statement as above, around 23.00 hours, he returned to the police station and registered a case against the accused in Crime No.339 of 2013 under Sections 450 and 376 r/w 511 of I.P.C. The printed FIR is marked as Ex.P5. Immediately, after registration of the case, around 23.30 hours, he visited the scene of occurrence and prepared an observation mahazar and rough sketch under Ex.P6 and Ex.P7 respectively. He examined the witnesses and recorded their statements. In the presence of the same witnesses, he recovered 50 ml VVD coconut oil (M.O.1) under a cover of seizure mahazar, Ex.P8.

(iii) In continuation of investigation, on 08.10.2013 around 08.30 a.m in Rajaputhukudi bus stand in the presence of PW6-Mariappan and one Joseph, he arrested the accused and recorded the confession statement given by the accused. Thereafter, he made arrangements for sending the accused to the remand. He submitted an application before the Court for sending the accused to the Medical examination. In turn, PW5-Dr.Moses Paul attached with Government Hospital, Kovilpatti, examined the victim girl and issued Accident Register under Ex.P4 stating that there was no symptoms to say that the accused is impotent. Similarly in view of the requisition given by the Investigation Officer, PW4-Dr.Sudha examined the victim girl and found the following injuries:-



*No external injuries seen over her breast or monsputis.
A lacerated injury of 2x0.5x0.5 cm present over perineum.
Vagina admits two fingers tightly.*

Thereafter, she collected the cervical smear and the vaginal smear and sent the same for chemical examination and in the chemical examination, no spermatozoa is detected and thereafter, he issued the certificate under Ex.P3. Ultimately, on 06.02.2014, PW7 concluded the investigation and filed a final report alleging that the accused herein is liable to be convicted under Sections 450 and 376 (1) of I.P.C.

4. Based on the materials available on record, the trial Court framed the charges for the offences under Sections 450 and 376 r/w 511 of I.P.C. The accused denied the charges and opted for trial. Therefore, all the accused was put on trial.

5. During the course of trial proceedings, in order to prove their case, on the side of the prosecution, as many as 7 witnesses were examined as PW1 to PW7 and 8 documents were exhibited as Ex.P1 to Ex.P8 besides one material object (M.O.1).

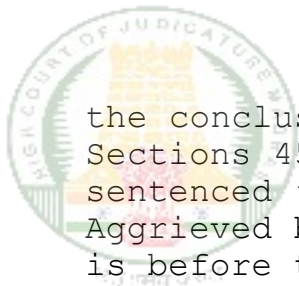
6.(i) Out of the above said witnesses, PW1-Rebeckal, who is the relative of victim Madathi, speaks about the occurrence as on the next date of occurrence, the victim Madathi came to her house and reported the matter which had happened in the yesterday night. PW2-Sudalai, who is the husband of PW1 gave evidence similar to the evidence given by PW1. PW3-Kannan, who is signed in the observation mahazar and rough sketch, had not supported the case of prosecution. Hence, he was treated as hostile witness.

(ii) PW4-Dr.Sudha, who examined the victim speaks about the injury sustained by the victim and about the issuance of certificate. PW5-Dr.Moses Paul, who is also the Doctor examined the accused and issued the certificate as the accused is not a impotent.

(iii) PW6-Mariappan, speaks about the previous enmity had between PW2 and the accused. PW7- the then Inspector of Police speaks about the receipt of complaint, manner of investigation conducted and the arrest of the accused and about the filing of final report.

7. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., the accused denied the same as false. However, he did not choose to examine any witness nor mark any document on his side.

8. Having considered all the above, the learned Sessions Judge, Mahalir Neethimandram (Fast Track Court) Tuticorin, came to



the conclusion that the accused herein found guilty of offence under Sections 450 and 376 r/w 511 of I.P.C and accordingly, convicted and sentenced the accused as stated in paragraph No.2 of this judgment, Aggrieved by the said conviction and sentence, the appellant/accused is before this Court with this appeal.

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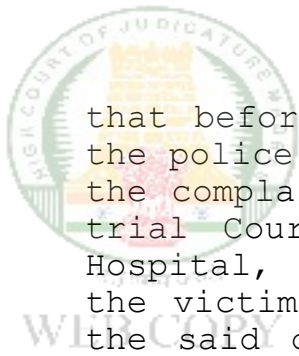
9.I have heard Mr.Aayiram K.Selvakumar, learned counsel appearing for the appellant/accused and Mr.M.Muthumanikkam, learned Government Advocate (crl.side) appearing for the State and also perused the records carefully.

10.The learned counsel appearing for the appellant would contend that in respect to the lodging of complaint before the Police, PW1 has stated two different versions, hence, to clarify the same, it is necessary to examine the author of the said document, but unfortunately the victim, who is the author of the document, is no more. Further, being the reason that the alleged occurrence had happened in the night hours, the competent person to say the occurrence is only the victim. Further, though there were a lot of residential houses available in and around the occurrence place, the Investigation Officer has not examined any body who are residing in the said locality. According to him, the said lapses found in the case of the prosecution create a doubt whether the alleged occurrence had happened as alleged by the prosecution or not.

11.Per contra, the learned Government Advocate (Crl.side) appearing for the State would contend that though the victim has not been examined as witness, the evidence given by PW1 and PW2 and the evidence given by the Doctor, who examined the victim, are sufficient to hold that at the time of occurrence with an intention to commit the offence, the accused committed an offence of house trespass and attempted to commit rape. Only by considering the other circumstances, the trial Court has held that the accused is guilty under Sections 450 and 376 r/w 511 of IPC. According to him, interference of this Court in the finding arrived at by the trial Court does not require.

12.I have considered the rival submissions made by the learned counsel appearing on either side.

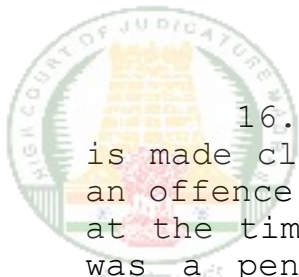
13.It is an unfortunate case that after filing the charge sheet when at the time the case is posted for trial, the victim died due to some other reasons. Therefore, only the persons, who heard the occurrence from the victim have been examined as PW1 and PW2 to say about the occurrence. First of all, in respect to the lodging of complaint, PW1 who attested in the alleged complaint gave evidence as immediately after getting information from the victim, she along with the victim went to the police station and reported the same. She has further stated that after reporting the incident, the police personnel obtained left hand thumb impression from the victim. Accordingly, the evidence given by PW1 is made clear



that before taking treatment, the complaint has been lodged before the police station. On the other hand, in respect to the receipt of the complaint, PW7, who registered the case gave evidence before the trial Court that after the receipt of the information from the Hospital, he rushed to the hospital and obtained a complaint from the victim girl. Therefore, in the said circumstances, to resolve the said contradiction, it is necessary to get evidence from the author of the said document. In this connection, though it was stated on the side of the prosecution that the victim/prosecutrix is no more, in order to substantiate the same, before the trial Court, the Death Certificate pertaining to the victim has not been produced. Therefore, it is quite clear that the Investigation Officer in this case, without taking any necessary effects proceeded the trial before the trial Court. Accordingly, I am of the view that in respect to the lodging of complaint itself, the case of the prosecution is having some lapses.

14. In matrimonial matters, it is significant that Sections 113-A and 113-B were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death, have been raised against the accused. These two sections, thus, raise a clear presumption in favour of the prosecution, but no similar presumption with respect to rape, is visualized as the presumption under Section 114-A is extremely restricted in its applicability. This clearly shows that insofar as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable, but it can never be presumed that her statement should, without exception, be taken as the gospel truth. Additionally, her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely.

15. It is well settled law that the sole testimony of prosecutrix is sufficient to accept the case of the prosecution in respect to the offence like rape. But in this case, as already stated that the prosecutrix is no more. However, it is a case, in which after the occurrence the victim girl was admitted in the hospital and thereafter, she was subjected to the medical examination. In this regard, PW4 who is the Doctor examined the victim girl, has stated in her evidence that there was an injury in the perineum area of the victim girl. In other words, the area between the anus and the vulva is called as perineum. Accordingly, the said evidence coupled with the evidence given by PW1, is in support of the prosecution that there may be a possibility to commit the offence by the accused at the time of occurrence. However, being the reason that in criminal cases the prosecution is having the duty to prove their case beyond reasonable doubt. Mere possibility found in favour of the prosecution is not sufficient to hold that the entire occurrence is a true one.



16.Secondly, now on go through the evidence given by PW1, it is made clear that at the time of occurrence, the accused committed an offence of rape. On the other hand, the learned trial Judge when at the time of deciding the case came to the conclusion that there was a penetration on the victim girl in full, but the medical evidence would go to show that there was no penetration either in full or in part. Only after observing as above, the trial Court has held that the accused is liable to be convicted under Section 376 r/w 511 of IPC. In this aspect also, to identify the real issue, the evidence of victim girl is necessary. In the said circumstances, with the absence of evidence in respect to the offence under Section 376 r/w 511 of IPC, the question of convicting the accused under Section 450 of IPC also goes away.

17.In view of the above discussions stated supra, I am of the opinion that the prosecution has not proved the case beyond reasonable doubt. But the trial Court without appreciating the said issue presumed that the evidence given by the Doctor is sufficient to accept the case of the prosecution as the accused is liable to be convicted under Sections 450 and 376 r/w 511 of IPC.

18.In fine, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused, by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Court) Tuticorin, dated 19.01.2016, is set aside and the appellant/accused is acquitted of all the charges. The fine amount, if any, paid by him, shall be refunded to him. The appellant/first accused is directed to be released forthwith, unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar (CS I)

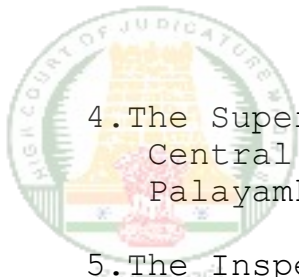
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Sub Assistant Registrar(CS)

To:-

- 1.The Sessions Judge,
Mahalir Neethimandram (Fast Track Court)
Tuticorin.
- 2.The Judicial Magistrate No.II,
Kovilpatti.
- 3.Do Through The Chief Judicial Magistrate,
Tuticorin District.



4.The Superintendent,
Central Prison,
Palayamkottai.

5.The Inspector of Police,
Kayathar Police Station,
Tuticorin District.

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

7.The Section Officer,
Criminal Section records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

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24.08.2021

RS (06.09.2021) 7P 9C