



BAIL SLIP

Krishnan @ Kittu, Male aged about 36 years S/o. Irulan petitioner/Sole Accused was released on bail vide order of this court dated 09.09.2016 and made in Crl.MP.(MD).No. 4467/2016 in CRL.A.(MD).No. 197 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.09.2021

Pronounced on : 27.09.2021

C O R A M

THE HON'BLE MR.JUSTICE R. PONGIAPPAN

Criminal Appeal (MD) No.197 of 2016

Krishnan @ Kittu

... Appellant /Sole Accused

versus

State, Represented by
The Inspector of Police,
Karaiyur Police Station,
Pudukkottai District.

... Respondent / (Crime No.46 of
2010)Complainant

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the conviction and sentence dated 13.03.2014, passed in S.C.No.27 of 2013, on the file the District Sessions Judge (Mahila Court), Pudukkottai.

For Appellant : Mr.M.Karunanithi

For Respondent : Mr.M.Muthumanikkam

Government Advocate (Crl. Side)

J U D G M E N T

This appeal is directed against the conviction and sentence dated 13.03.2014, made in S.C.No.27 of 2013, on the file of the learned District Sessions Judge [Mahila Court], Pudukkottai.

2.The appellant is the sole accused. He stood charged for the offence under Sections 90 read with 376(1) and 417 read with 415 I.P.C. After full-fledged trial, the learned District Sessions Judge found the accused guilty under Section 376 I.P.C. and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/-, in default, to undergo six months rigorous imprisonment. The trial Court acquitted the accused under Section 235(1) Cr.P.C. for the remaining charges.



3. Aggrieved over the said conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

4. The case of the prosecution is as follows:-

(i) P.W.2 is the victim girl/prosecutrix in this case. P.W.1 - Kumaran is her father. Both of them are doing Coolie work in their Village. The victim girl was working in a Rice Mill situated in her Village, in which, the accused was also working as a Labour. Before the occurrence, after seeing the abnormal size of the abdomen, P.W.1 questioned P.W.2 as to what had happened, for which, P.W.2 said that she had been raped by the accused. Immediately, after knowing the same, P.W.1 requested the accused to marry the victim girl, for which, the accused refused to marry her. Hence, P.W.1 lodged a complaint under Ex.P.1 before the Karaiyur Police Station.

(ii) On receipt of the said complaint, P.W.11 - Karthika, the then Sub-Inspector of Police, Karaiyur Police Station, registered a case against the accused in Crime No.46 of 2010 under Section 376 I.P.C. After registration of the case, a copy of the F.I.R. was handed over to P.W.12 - M.Gunasekaran, the then Inspector of Police, Karaiyur Police Station, for investigation. He visited the scene of occurrence and in the presence of witnesses, he prepared an Observation Mahazar under Ex.P.2. He drew the Rough Sketch and the same has been marked as Ex.P.8. He examined the witnesses and recorded their statements. He arrested the accused and sent him to remand. On 27.04.2010, P.W.12 submitted an application before the learned Judicial Magistrate, wherein he prayed to conduct medical examination to the accused as well as to the victim girl.

(iii) In turn, in view of the proceedings issued by the Court, P.W.7 - Dr.Lakshmi Priya examined the accused and on examination, after taking X-ray, she determined the age of the accused as between 20 and 25 years. She issued an age certificate under Ex.P.3.

(iv) Similarly, P.W.8 - Dr.Rayappan Kumar attached with the Government Hospital, Pudukkottai, examined the accused and issued a certificate under Ex.P.4 stating that there is nothing to suggest that the accused is incapable of performing sexual intercourse.

(v) Further, P.W.9 - Dr.Hyrunnisha attached with the Government Raniyar Hospital examined the victim girl and found the following symptoms:-

'O/E. Conscious, Oriented, BP : 110/80,
PR:88/mt.
CVS / RS - NAD
PA : Uterus 28 - 30 weeks not acting FH good
PV : No dilatations, No show
USG : Single live inter uterine and gestation 29 weeks



EDD : 14.07.10''

In this regard, she issued a certificate under Ex.P.5.

(vi) In continuation of investigation, P.W.10 - Rajendran, the then Inspector of Police, Karaiyur Police Station, examined the Doctors and recorded their statements. He altered the Section of law as 376(1) I.P.C. and forwarded the said report [Ex.P.6] to the Court. After concluding the investigation, he filed a final report as the accused is liable to be convicted under Sections 90, 470, 420 and 376(1) I.P.C.

5.From the above materials, the learned District Sessions Judge [Mahia Court], Pudukkottai, framed charges under Sections 90 read with 376(1) I.P.C. and 417 read with 415 I.P.C. The accused denied the same as false, hence, he was put on trial. In order to prove their case, on the side of the prosecution, 12 witnesses have been examined as P.W.1 to P.W.12 and 8 documents were marked as Ex.P.1 to P.8.

(i) Out of the said witnesses, P.W.1 - Kumaran, who is the father of the victim girl, gave evidence as after knowing the fact that her daughter becomes pregnant, he requested the accused to marry her daughter and the same was refused by the accused. Hence, he lodged a complaint before the respondent Police.

(ii) P.W.2 is the victim girl. She speaks about the occurrence as, she was working as a Coolie in a Rice Mill, situated in her Village. During the relevant point of time, i.e., before the six months from the date of complaint, the accused invited her to the first floor, wherein, he had given coffee with some medicine and thereafter, she fainted and fell on the ground. Then, he lay down on her and had sex. Further, she had given evidence that due to the said occurrence, she becomes pregnant and when she requested the accused to marry her, he refused to consider her request. According to her, the relatives of the accused threatened her not to disclose anything to others. However, after sometime, P.W.2 gave birth to a child and the said child was dead.

(iii) P.W.3 - Mohamed John and P.W.4 - Shanmugam, who are the witnesses to the occurrence, have not given any evidence in support of the case of prosecution. Hence, after getting leave from the Court, they were treated as hostile witnesses.

(iv) P.W.5 - Pugalendhi, who is running a Studio opposite to the Rice Mill, claims that during the relevant point of time, the people found in and around the occurrence place talked about P.W.2 being pregnant.

(v) P.W.6 - Palani, who is the resident of the same Village, gave evidence as the Investigation Officer in this case prepared an Observation Mahazar in his presence.



(vi) P.W.7 - Dr.Lakshmi Priya and P.W.8 - Dr.Rayappan Kumar, who are the Doctors, gave evidence in respect of the medical examination conducted on the accused.

(vii) P.W.9 - Hyrunnisha, who is the Doctor, examined the victim girl, speaks about the details of examination made on the victim girl.

(viii) P.W.10 - Rajendran, P.W.11 - Karthika and P.W.12 - Gunasekaran, who are the Police Officers, speak about the receipt of complaint, registration of the case, examination of the witnesses and about the filing of final report.

6.When the above incriminating materials were put to the accused under Section 313 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.

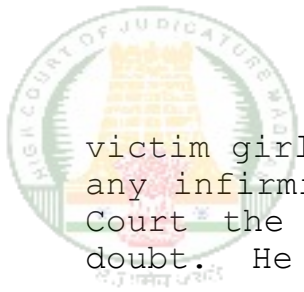
7.Having considered all the materials placed before him and on considering the arguments advanced by the learned counsel on either side, the learned District Sessions Judge (Mahila Court), Pudukkottai, found the accused guilty under Section 376 I.P.C., convicted and sentenced him as stated in Paragraph 2 of this judgment.

8.Aggrieved over the said findings, the appellant/accused is before this Court with this Criminal Appeal.

9.I have heard Mr.M.Karunanithi, learned counsel appearing for the appellant and Mr.M.Muthumanikkam, learned Government Advocate (Criminal side) appearing for the respondent Police.

10.The learned counsel appearing for the appellant would contend that a cursory looking of the complaint alleged to be given by P.W.1 now marked as Ex.P.1 creates a doubt that the same is fabricated after getting signature from P.W.1. Further, the alleged complaint pertains to this case had been lodged with enormous delay. He would further contend that when at the time the victim girl was examined by the Doctor, she reported the occurrence as some unknown person had indulged in sexual activities and due to the same, she becomes pregnant. More than that, the alleged occurrence witnesses, who are all working along with the victim girl, had not supported the case of prosecution. He further submitted that the trial Court without appreciating the evidence in proper perspective, convicted the accused, which is erroneous in law.

11.Per contra, the learned Government Advocate (Criminal side) appearing for the respondent Police would contend that it is settled law that the solitary testimony of Prosecutrix is sufficient to accept the case of prosecution in entirety. Here it is a case, the



victim girl had given evidence in support of the prosecution without any infirmity. Therefore, it cannot be said that before the trial Court the prosecution has not proved its case beyond reasonable doubt. He prayed for dismissal of this Criminal Appeal.

WEB COPY 12.I have considered the rival submissions made by the learned counsel on either side and perused the materials available on record.

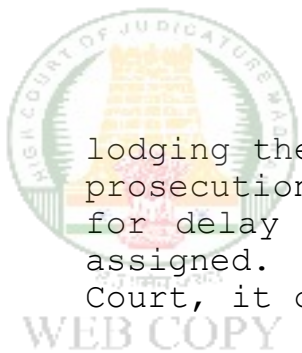
13.Initially, on going through the complaint [Ex.P.1], it seems that after preparing the same, P.W.1 - Kumaran has signed as a complainant. Therefore, it cannot be said that the said complaint is a fabricated one. More than that, in respect of fabrication of the complaint, there was no suggestion made before P.W.1 and P.W.11 as the alleged complaint lodged by P.W.1 is a fabricated one. Therefore, in the said circumstances, without raising any objection before the trial Court and before the author of the document, now arguing as above, do not advance the case in favour of the accused.

14.Secondly, it is an admitted fact that the complaint pertains to this case had been lodged before the respondent police with considerable delay. In respect of the same, P.W.11 - Karthika, the then Sub-Inspector of Police, had given evidence as in respect of the delay, P.W.1 had not offered any explanation in the complaint. In this occasion, on going through the evidence given by P.W.1, it appears that only after seeing the abnormal position of the abdomen of P.W.2, he enquired the same with P.W.2 and thereafter, he came to know that her daughter becomes pregnant and then only, he lodged the complaint. P.W.2 has also stated in her evidence as the relatives of the accused threatened her not to disclose the same to others. Therefore, on considering the status of P.W.1 and P.W.2, it is quite natural that P.W.2 may be silent for some time after the occurrence and only upon enquiry, P.W.1 came to know that P.W.2 becomes pregnant and immediately, he lodged the complaint. Therefore, it cannot be said that the complaint pertains to this case has been lodged with the enormous delay.

15.At this juncture, it would be relevant to see the judgment of our Hon'ble Apex Court in the case of the **State of Punjab and Gurmit Singh and others** reported in **1996 SCC (2) 384**, wherein it has been held that the Courts cannot overlook the fact that in sexual offences delay in lodging of the F.I.R. can be due to variety of reasons particularly the reluctance of the Prosecutrix or her family members to go to the Police and complain about the incident which concerns the reputation of the Prosecutrix and the honour of her family.

16.Further, in the case of **State of Rajasthan Vs. N.K. - the Accused** reported in **2000 (5) SCC 30** [Crl.A.No.1698 of 1996, decided

<https://hcservices3.ecourts.gov.in/06services>



lodging the F.I.R. cannot be a ground itself for throwing the entire prosecution case overboard. The Court has to seek an explanation for delay and test the truthfulness and probability of the reason assigned. If the delay is explained to the satisfaction of the Court, it cannot be counted against the prosecution.

17. Applying the ratio laid down in the above referred judgments, the reason for delay in lodging the complaint stated by P.W.1 is found genuine and inspires the confidence of this Court. Accordingly, I am of the considered opinion that in the present case, the delay in lodging the complaint would not affect the case of prosecution in entirety.

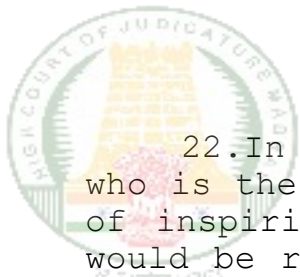
18. Further, it is the submission made by the learned counsel appearing for the appellant that P.W.2 victim girl is a mentally retarded woman, further, at the time, when she was subjected to medical examination, she gave statement before the Doctor as some unknown person had committed rape on her. He would further contend that the Doctor, who examined the victim girl, gave evidence as the victim girl is a mentally retarded woman. Therefore, in the said circumstances, the evidence given by P.W.2 cannot be accepted as a sole basis for convicting the accused.

19. Now, on considering the said submission with the relevant records, it is true that the Doctor [P.W.9], who medically examined the victim girl, while at the time of giving evidence before the trial Court has stated as, P.W.2 was found to be mentally retarded person, further, she has given evidence that when the victim girl was diagnosed, she was found with fetus in the age of 28 to 30 weeks. In this regard, she issued a certificate under Ex.P.5.

20. Now, on going through the said evidence with the contents of the said certificate [Ex.P.5], it seems in the said report P.W.9 has not specifically stated as the victim girl is a mentally retarded woman. In otherwise, she has recorded the statement as follows:-

''Unmarried girl with mental retarded and had sexual conduct with unknown person. History not able to elicit. Live with her father. LMP - Not known.''

21. In the said situation, the Doctor, who recorded the said statement did not say about the person, who had given the said statement. In otherwise, on a careful reading of the said statement, it would reveal the fact that the said statement cannot be given by the victim girl in the above form. Even assuming that the said statement was given by the victim girl, being the reason that the said statement was recorded by the Doctor from other sources, it can be used for contradiction or corroboration. But, in respect of the said statement, nothing has been suggested either before P.W.1 or P.W.2 as P.W.2 is a mentally retarded woman.



22. In fact, on going through the evidence given by P.W.2, who is the victim girl, it appears that her evidence is in the form of inspiring the confidence of this Court. At this juncture, it would be relevant to see the judgment of our Hon'ble Apex Court in the case of **Duraipandi Thevar and others vs. State of Tamil Nadu** reported in **AIR 1973 SC 659**, wherein it has been held that the medical evidence is usually opinion evidence. The medical opinion by itself, however, does not prove or disprove the prosecution case, it is merely of advisory character.

23. Therefore, in the said situation, without eliciting contradictions in respect of the statement given by the Doctor, arguing the case as P.W.2 is a mentally retarded woman, is no way in the aid of the accused.

24. Sections 118 to 134 of the Indian Evidence Act, 1872 speaks about who can testify as a witness, how can one testify, what statements will be considered as testimony, and so on. A witness, who needs to testify the Court, must at least have the capacity to understand the questions that are posed to him/her and answer such questions with rationality. Further, Section 133 of the Indian Evidence Act says that an accomplice to a crime is competent to be a witness against the accused. It is a general rule that goes unsaid that the Court must act on the testimony of a witness even if he/she is the only one and his/her statements are uncorroborated. The purpose of the trial process is to identify the evidence which is reliable and that which is not, whether it comes from an adult or a child.

25. In the said circumstances, as rightly pointed by the learned Government Advocate (Criminal side) appearing for the respondent Police, the statement narrated by the Doctor is not having any evidentiary value. At this juncture, it is relevant to see the judgment of our Hon'ble Apex Court in the case of **Pattipati Venkaiah vs. State of Andhra Pradesh** reported in **1985 Crl LJ 2012** wherein it has been observed as follows:-

''A doctor is not at all concerned as to who committed the offence or whether the person brought to him is a criminal or an ordinary person. His primary effort is to save the life of the person brought to him and inform the police in medico-legal cases. It is well settled that doctors before whom dead bodies are produced or injured persons are brought, both themselves take the dying declaration or hold the post-mortem immediately and if they start examining the informants they are likely to become witnesses of the occurrence which is not permissible.''



26. In yet another decision reported in **1993 Cri LJ 2173**, in the case of **Basheer vs. State by Sub Inspector of Police, Madurai**, it has been held as follows:

"It is advisable that in all cases, it is better for the medical officers, while mentioning about the assailant, note whether he is a known person or unknown person, but they are not expected to note the name of the person."

27. In the case of **P. Babu and Ors. vs. State of Andhra Pradesh** reported in **AIR 1994 SCC 424**, it has been held as follows:

"It is a matter of common knowledge that such entry in the injury certificate does not necessarily amount to a statement. At that stage, the doctor was required to fill up that column in a normal manner and it was not the duty of the doctor to enquire from the injured patient about the actual assailants and that the inquiry would be confined as to how he received the injuries namely the weapons used etc.,"

Accordingly, in view of the judgments referred to above, I am of the considered opinion that the statement recorded by the Doctor alleged to be given by the victim child cannot be taken into account as the same was true one.

28. In the result, this Criminal Appeal is dismissed, confirming the conviction and sentence dated 13.03.2014, passed in S.C.No.27 of 2013, by the learned District Sessions Judge [Mahila Court], Pudukkottai. Bail bond, if any, executed by the appellant / accused shall stand cancelled. The trial Court is directed to secure the appellant / accused and commit him to prison for undergoing the remaining period of sentence.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Smn2

To

1. The District Sessions Judge [Mahila Court],
Pudukkottai.

2. The Inspector of Police,
Karaiyur Police Station,
Pudukkottai District.

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



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

4.The Section Officer, (2C)
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.

Criminal Appeal (MD) No.197 of 2016
27.09.2021

SRR(CO)
KB(04.10.2021) 9P 6C