



Bail Slip

The Sole Appellant/Accused P.Behin S/o,Pethiru was directed to be released on bail of this Court order dated 28/02/2017 and made in CrI MP(MD).No.1715 of 2017 in CrI A.(MD).No.65 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.07.2021

DELIVERED ON : 23.12.2021

CORAM

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

CRL.A.(MD)No.65 of 2017

P.Behin
S/o.Pethiru : Appellant/Sole Accused
-vs-

The Inspector of Police,
Colachel Police Station,
Kanyakumari District.
(In Crime No.325 of 2006) : Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, to allow this appeal and acquit the appellant from all the charges by setting aside the impugned judgment passed by the learned Sessions and Fast Track Mahila Court, Nagercoil in S.C.No.54 of 2007, dated 12.08.2016.

For Appellant : Mr.C.Kishore

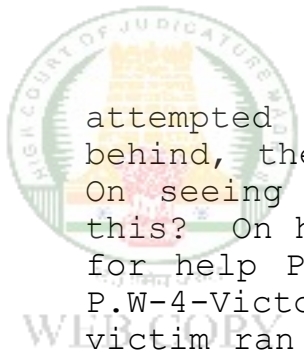
For Respondent : Mr.T.Senthil Kumar
Government Advocate (CrI. Side)

JUDGMENT

This case has been filed against the judgment of the learned Sessions Judge, Fast Track Mahila Court, Nagercoil in Sessions Case No.54 of 2007, dated 12.08.2016.

2. The brief facts, which are relevant for consideration in this appeal as per the Prosecution case, are as follows:

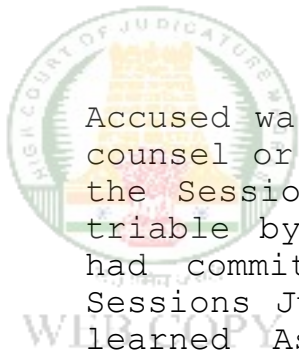
2.1. On the date of occurrence i.e., 01.10.2006, the victim/P.W-1 alleged to have gone to attend bible class. While she was nearing the Church at Tsunami Nagar within the local jurisdiction of Colachel Police Station, a person from behind caught-hold of her neck and dragged her to the bush nearby and



attempted to sexually assault her. When he attacked her from behind, the bible and the books as well as her dupatta fell down. On seeing the book and dupatta, somebody asked whose dupatta is this? On hearing such voice, she cried for help. Hearing her cries for help P.W-4-Victor came to the place of occurrence. On seeing P.W-4-Victor, the stranger who attempted to sexually assault the victim ran away from the scene of occurrence. Since the victim was injured, P.W-4-Victor took her to Hospital. The victim lodged a complaint under Ex.P-1.

2.2. P.W-5-Arakoyam, who is an acquaintance of P.W-3, stated that he along with one Prona, S/o.Soosaimarian, David, S/o.Stephen and Siluvaithas, searched for the Accused. At that time, the Accused was hiding behind the bush. Therefore, they caught-hold of the Accused and handed him over to the Pastor. As per the instructions of the Pastor, they handed over the Accused to the Inspector of Police, Colachel Police Station. Based on the complaint under Ex.P-1, P.W-14-Ganesan - Inspector of Police had registered a case in Cr.No.325 of 2006 under Sections 376, 511, 506 (i) of IPC. P.W-14 had proceeded to the place of occurrence and prepared observation mahazar under Ex.P-21 and Rough Sketch under Ex.P-22 in the presence of witnesses viz., Jayaseelan and Prince and had seized M.O-1 to M.O-5. He had forwarded the victim girl along with P.W-11-Nalinakumari-Woman Constable to the Government Hospital for medical examination with the requisition letter under Ex.P-6 to the learned Judicial Magistrate. The learned Judicial Magistrate had sent requisition letter under Ex.P-7 to the Duty Medical Officer to examine the victim and to issue medical certificate. P.W-8-Dr.Pebincy had examined the victim, issued Accident Register under Ex.P-3 and Wound Certificate under Ex.P-4. He had arrested the Accused and forwarded him to the Court of the learned Judicial Magistrate, Eraniel with remand request. He had sent requisition letter under Ex.P-8 to the learned Judicial Magistrate to subject the Accused to medical examination. Accordingly, the Accused was forwarded to the Duty Medical Officer, Government Hospital along with requisition letter under Ex.P-9. P.W-9-Dr.Rajesh had examined the Accused and issued medical certificate under Ex.P-5. The Investigation Officer-P.W-14 had recorded the statements of witnesses and the Doctor who had examined P.W-1 and Accused and had completed the investigation. After completion of the investigation, P.W-14 had laid final report of the investigation under Section 173 of Cr.P.C., before the Court of the learned Judicial Magistrate, Eraniel.

2.3. On receipt of the final report of the investigation conducted by P.W-14, the learned Judicial Magistrate, Eraniel had taken cognizance of the offence under Sections 376, 511, 506 (I) of IPC @ 323, 506 (ii), 376 r/w. 511 of IPC and numbered the case as P.R.C.No.2 of 2007. On taking cognizance, the learned Judicial Magistrate had issued summons to the Accused and on appearance of



Accused was questioned regarding his financial capacity to engage a counsel or to appoint the State Counsel to defend him effectively in the Sessions Court. Since the offences alleged in this case are triable by the Court of Sessions, the learned Judicial Magistrate had committed the case to the Court of the learned Assistant Sessions Judge, Padmanabapuram and sent the records to the Court of learned Assistant Sessions Judge, Padmanabapuram.

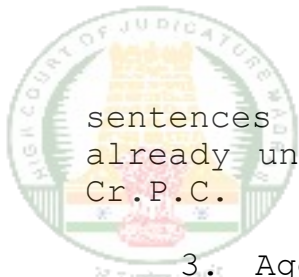
2.4. On receipt of records from the learned Judicial Magistrate, Eraniel in P.R.C.No.2 of 2007, the learned Assistant Sessions Judge, Padmanabapuram had taken cognizance of the offence and numbered the case as S.C.No.54 of 2007. Since the offence alleged was against woman, the case was made over to the Court of learned Sessions Judge, Fast Track Mahila Court, Nagarcoil. The Accused was also bound over to the Court of the learned Sessions Judge, Fast Track Mahila Court, Nagarcoil.

2.5. On appearance of the Accused and after hearing the prosecution and defence, the learned Sessions Judge, Fast Track Mahila Court, Nagarcoil, had framed charges under Sections 323, 506 (ii), 376 r/w. 511 of IPC against the Accused. The Accused pleaded not guilty and claimed to be tried. Therefore, the learned Sessions Judge had ordered trial.

2.6. During trial, the prosecution had examined witnesses P.W-1 to P.W-14 and marked documents Ex.P-1 to Ex.P-23 and M.O-1 to M.O-6.

2.7. After closing of the prosecution evidence, the incriminating evidence available from the deposition of P.W-1 to P.W-14 were put to the Accused under Section 313 of Cr.P.C. The Accused denied the incriminating evidence against him. The Accused had not let in any evidence. Therefore, the prosecution advanced the arguments and defence replied to the prosecution arguments.

2.8. After hearing arguments of the prosecution and denfence and on assessment of evidence of the witnesses viz., P.W-1 to P.W-14 and Ex.P-1 to Ex.P-23 and M.O-1 to M.O-6, the learned Sessions Judge, Fast Track Mahila Court, Nagarcoil by Judgment dated 12.08.2016 had found the Accused guilty to the charges under Sections 323, 506 (ii) and 376 r/w. 511 of IPC and convicted the Accused for the above offences and sentenced him to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one and half months Simple Imprisonment for the offence under Section 323 of IPC and sentenced him to undergo 2 years of Simple Imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo three months Simple Imprisonment for the offence under Section 506 (ii) of IPC and sentenced him to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.80,000/-, in default, to undergo one year Rigorous Imprisonment for the offence under Section 376 r/w. 511 of IPC and to pay a compensation of Rs.80,000/- to the victim under Section 357 of Cr.P.C. All the



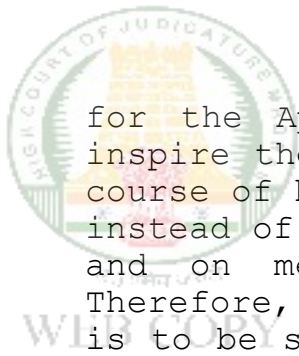
sentences were ordered to run concurrently. The remand period already undergone by the Accused was set off under Section 428 of Cr.P.C.

3. Aggrieved by the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Nagarcoil, the Accused had preferred this appeal before this Court.

4. Mr.Kishore, learned counsel for the Appellant/Accused invited the attention of this Court to the list of witnesses and the list of documents. There had been contradictions between the witnesses among themselves regarding the occurrence as narrated by P.W-1. There had been contradictions as narrated by her mother/P.W-2-Anitha Mary, as narrated by her father-P.W-3 and as narrated by her uncle/Victor-P.W-4. Whereas, as per the accident register of the Kanyakumari Medical College Hospital under Ex.P-3, it was her father/Nicholas, who took her to Hospital. Therefore, the learned counsel for the Appellant/Accused submits that the occurrence as narrated by P.W-1 does not inspire confidence. P.W-7/Dr.Arumugam had also stated that the victim was brought by her father/Nicholas/P.W-3. It is the further submission of the learned counsel for the Appellant/Accused that the Accused herein was caught-hold by the neighbours on mere suspicion and he was retained in the Church till 9 O' clock and only after 10 O' clock, the complaint/Ex.P-1 was registered with the police. The Investigation Officer had visited the place of occurrence by 11.00 p.m., in the night. In short, this is a cooked up case by the Church and its people against the Accused herein. There are lot of contradictions as stated by P.W-1, which is not at all supported by medical evidence.

5. He further submitted that when P.W-4 was deposing evidence before the Court, the presiding Judge put a question under Section 165 of Indian Evidence Act to P.W-4, as to why they have not gone to the police station before proceeding to the Hospital? For which, he had answered that they had not gone to the police station and after registering the case, they had gone to the police station. Instead, they had gone to the Hospital first and there was no injury found on the body of the victim. The villagers had reported the matter to the police and only then, police came to scene of occurrence. There are ample contradictions in the evidence. The evidence of the victim is not cogent, believable and trustworthy. Therefore, the case of the prosecution had to be thrown out. On mere surmises and conjunctures, the learned trial Judge had convicted the Accused and sentenced him to undergo seven years imprisonment with fine.

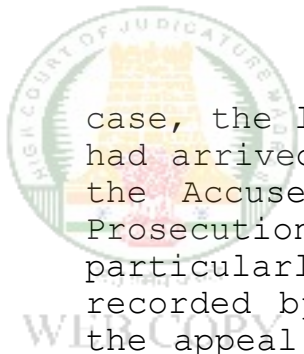
6. Apart from all those facts, the so-called stranger after the date of occurrence was seen by the victim only in the Court. The investigation itself was not conducted in proper manner and identification parade was not conducted. P.W-1 alone identified the Accused by stating that apart from the scene of occurrence, she saw



for the Appellant/Accused, the case of the prosecution does not inspire the confidence. When it is analyzed/assessed in the normal course of human conduct, it is not cogent. The learned Trial Judge, instead of disbelieving the case, had on wrong appraisal of evidence and on mere conjunctures and surmises convicted the Accused. Therefore, the finding of guilt recorded by the learned trial Judge is to be set aside and the appeal is to be allowed and the Accused is to be acquitted.

7. Mr.T.Senthil Kumar, learned Government Advocate (Crl. Side) submitted that it is a case of conviction and the appellant, who is the sole Accused, was convicted and sentenced to undergo one year Rigorous Imprisonment along with fine of Rs.1,000/- for the offence under Section 323 of IPC, two years Simple Imprisonment along with fine of Rs.2,000/- for the offence under Section 506 (ii) of IPC and seven years Rigorous Imprisonment for the offences under Section 376 r/w. 511 of IPC and to pay compensation of Rs.80,000/- (Rupees Eighty Thousand Only) to the victim. As per the submissions of the learned Government Advocate (Crl. Side), the arguments put forth by the learned counsel for the Appellant/Accused regarding the benefit of lapses on the part of investigation cannot be extended to the Accused. The victim of the crime/P.W-1 had cogently narrated the incident as per the complaint and as per the FIR. Added to that, P.W-7-Dr.Arumugam and P.W-8-Dr.Pebinsy had corroborated the medical evidence. P.W-7 had treated the victim, P.W-8 had examined the victim on the requisition of the Investigation Officer, based on which the learned Magistrate had addressed the medical Officer concerned to conduct the examination. P.W-4-Victor had taken the injured from the place of occurrence to the Hospital. Also, the learned Judge had discussed the evidence available before the learned trial Judge and the conduct of the Accused in not co-operating with the trial Court, thereby, delaying the verdict. Therefore, the Court can draw adverse inference from the conduct of the Accused. The learned Sessions Judge had appreciated the evidence available before the trial Court as well as the conduct of the Accused. It is also considered as evidence and had arrived at a just conclusion that the evidence of the victim inspires confidence in the learned trial Judge.

8. He further submitted that as per the settled proposition of law laid down by the Hon'ble Supreme Court, the Appellate Court has all the powers to re-assess the evidence available before the learned trial Judge. At the same time, if the trial Court had on assessment of the evidence, as per the Evidence Act arrives at a opposite conclusion, the learned Appellate Judge on the same set of evidence, still the learned Appellate Judge shall not disturb the finding of fact by the learned trial Judge. This is because the learned trial Judge has the advantage of observing the demeanour of the witnesses before the learned trial Judge which advantage is not available to the learned Appellate Judge. Therefore, the finding of



case, the learned trial Judge had *in extenso* discussed the facts and had arrived at a logical conclusion that the charges framed against the Accused by the learned trial Judge had been proved by the Prosecution through the evidence of victim and other witnesses, particularly, the Doctors. Therefore, the judgment of conviction recorded by the trial Judge does not warrant any interference and the appeal has to be rejected. The conviction and sentence imposed by the learned trial Judge has to be confirmed.

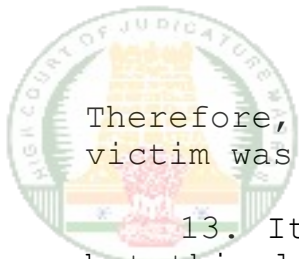
9. Point for Consideration:-

Whether the judgment of Conviction and sentence of imprisonment awarded by the learned Sessions Judge, Fast Track Mahila Court, Nagarcoil dated 12.08.2016 in S.C.No.54 of 2007 is to be set aside as perverse by this Court as Appellate Court?

10. Heard the arguments of the learned counsel for the Appellant/Accused and the learned Government Advocate (Crl. Side) for the Prosecution and perused the Judgment of the learned trial Judge in S.C.No.54 of 2007 dated 12.08.2016 and the evidence of the witnesses P.W-1 to P.W-14 and Ex.P-1 to Ex.P-23.

11. On perusal of the judgment by the learned trial Judge, the evidence of P.W-1 had to be given due weightage as nothing had been illustrated from the cross-examination of the victim in favour of the Appellant/Accused. This is a case where there was no direct evidence except the victim. As per her evidence, the Accused came from behind and caught hold her and dragged her when she was going to attend catechist class (Sunday school).

12. P.W-4-Victor had seen the pair of chapels and duppatta and note-book lying scattered on the path way leading to Church. On suspicion, he took up the same and proceeded on the same way where he found the girl shouting at the top of her voice seeking help, she was in the grip of the Accused. On seeing this, P.W-4 had raised alarm and moved towards Accused. On hearing the cries for help, people from nearby, came running and on seeing people, the Accused ran away, by that time because of tension and slab given by the Accused on the face of the victim, she felt giddy and P.W-4 had taken the victim to the Hospital where the Doctors in the Hospital had directed them to take her to Kannyakumari Medical College Hospital, Asaripallam. There is a difference in the version of P.W-1 and P.W-7. P.W-1 states that P.W-4 has taken her to hospital but P.W-7 states that the father of the victim accompanied her that cannot be taken as the Prosecution has not proved. As the victim was under giddy state of mind, she was not aware who was taken her to Hospital, in the Hospital P.W-7-Doctor, who had examined her, had stated that she was in the state of shock. He had clearly stated about the injuries on the chick and on the neck of the victim.

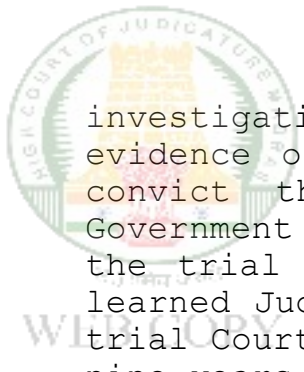


Therefore, that much is sufficient to come to a conclusion that the victim was attacked by a stranger from behind.

13. It is true that there had been lapses in the investigation but this lapses cannot be extended to the Accused. Here, it is case of no identification parade held. The Accused was chased by the villagers and caught him and handed over to the Police. But still the victim had identified the Accused, she had identified the Accused in Court that will be sufficient. P.W-4 who had seen the Accused also identified the Accused in the Court. Therefore, the not conducting the identification parade by the Prosecution will not cause damage to the charge sheet or final report laid by the Investigation Officer or the case of the Prosecution regarding the charge against the Accused. In cases related to crime against women and children, even if there are lapses in the investigation, the evidence of the victim of crime before the Court alone will be sufficient to convict the Accused. In this case, the Investigation Officer had not conducted identification parade. P.W-7 has stated that the father of the victim had taken her to Hospital but, P.W-4 stated that he took her to Hospital. Probably, the victim being in a state of shock and being giddy may not be able to recognize who took her to Hospital. That will not help the Accused to wriggle out of the acts committed by him against the victim. Apart from all these things, the learned trial Judge had in the Judgment given the conduct of the Accused in paragraph No.29 in not cooperating with the trial Court and attempting to flee from justice. That gives strong presumption regarding the intention to the Accused to wriggle out of the case as she stated that the Accused cannot succeed in his defence before the trial Court, the Court can draw adverse inference under Section 114 of Indian Evidence Act. Therefore, the Judgment of the learned trial Judge and the logical deduction arrived at by the learned trial Judge in Paragraph No.29 is sufficient to reject the arguments of the learned counsel for the Appellant/Accused.

14. In the light of the above discussion, the arguments put forth by the Prosecution is accepted and the arguments of the learned counsel for the Appellant/Accused is rejected. The learned trial Judge considered the rulings of the Hon'ble Supreme Court and Hon'ble High Court relied on by the appearing counsels and discussed the same. The learned trial Judge had distinguished the Judgment cited by the learned counsel for the Appellant/Accused in **2014 (1) MNW (Cr.) 150 (DB) in the High Court of Madras (Madurai Bench) and 1993 SCC (Cri) 1059** and the Judgment cited by the Prosecution in **2012 (Crl. Law Journal) 3688, 2010 1 SCC (Cri) 1441 and (2009) SCC 537**.

15. The learned Government Advocate (Crl. Side) had relied on the Rulings in **2012 (Crl. Law Journal) 3688, 2010 1 SCC (Cri) 1441 and (2009) SCC 537** in support of the argument regarding rejection of the defence of the Accused that the Court cannot rely on shoddy



investigation and convict the Accused. It is sufficient that the evidence of the victim alone inspires confidence of the Court to convict the Accused. As rightly pointed out by the learned Government Advocate (Crl.Side), the conduct of the Accused before the trial Court has also been considered in Paragraph No.23. The learned Judge had pointed out the conduct of the Accused before the trial Court by delaying the Judgment and delaying the trial for over nine years.

16. While granting bail, the Appellate Court either High Court or the Sessions Court insist the Accused in criminal case to cooperate with the pending investigation and also to cooperate during trial. This condition is given to protect the society from criminal activities of anti-social and also for the civil society to have faith in the Judicial system and also to guarantee of fair trial to the citizens of this country.

17. The Accused who are granted bail and who are released on bail take it for granted that they can cause havoc to the criminal Justice system at the earlier stage in the investigation and at on later stage in the trial. This is a case of glaring example of the Accused who had been released on bail with condition to cooperate with the pending investigation and with the trial Court not complying the conditions instead causing havoc to the fair system of trial. Therefore, the condition imposed in the bail can be taken as a weapon during the trial against the Accused by adverting to the conduct of the Accused and the demeanour of the Accused before the trial Court that had been rightly recorded by the learned Sessions Judge in Paragraph No. 23. The conduct of the Accused recorded by the learned Sessions Judge is to be appreciated. Under those circumstances, the arguments of the learned counsel for the Appellant/Accused is to be rejected. Therefore, the arguments of the learned Government Advocate (Crl. Side) is accepted and the argument of the learned counsel for the Appellant/Accused is rejected.

18. Point for consideration is answered in favour of the prosecution/respondent and against the appellant/Accused. The judgment of conviction recorded by the learned Sessions and Fast Track Mahila Court, Nagercoil in S.C.No.54 of 2007, dated 12.08.2016 is not perverse warranting interference by this Court.

This Criminal Appeal is dismissed.

The Judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Nagercoil in S.C.No.54 of 2007, dated 12.08.2016 is confirmed. The learned Sessions Judge, Fast Track Mahila Court, Nagercoil is directed to issue warrant against the Accused to forward him to Prison to undergo the remaining period of sentence imposed on the Accused by judgment dated 12.08.2016 in



S.C.No.54 of 2007. The period of detention already undergone by the Appellant/Accused is set off under Section 428 of Cr.P.C.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To

- 1.The Sessions Judge,
Fast Track Mahila Court,
Kanyakumar @ Nagercoil.
- 2.The Superintendent,
Central Prison,
Palayamkottai.
- 3.The Inspector of Police,
Colachel Police Station,
Kanyakumari District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Record Keeper,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.C.KISHORE, Advocate (SR-40503[F] dated 27/12/2021)

CRL.A. (MD)No.65 of 2017
23.12.2021

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