



Bail Slip in CrI.A.541/2013

The Petitioners/Accused Viz., 1. Premkumar male aged 22 years S/O.Ganesan 2. Govindan aged 29 Years Male, S/O.Avarampoo were directed to be released on bail vide order dated 20/08/2013 in CrI.MP.No.1/2013 in CrI.A.541/2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.09.2021

PRONOUNCED ON : 12.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CrI.A.No.541 of 2013

(Through Video Conferencing)

1.Premkumar
2.Govindan

Appellants/A1,A2

Vs

The State by the Inspector of Police,
Periathachur Police Station,Tindivanam Taluk,
Villupuram District.

Respondent

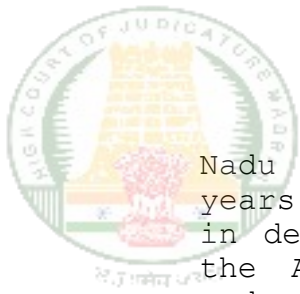
Prayer:- This Criminal Appeal is filed under Section 374 of Cr.PC to set aside the judgement of conviction and sentence, dated 10.07.2013 made in SC.No.32 of 2013 by the I Additional District and Sessions Judge, Tindivanam, Villupuram District.

For Appellants : Mr.K.Balakrishnan

For Respondent : Mr.J.C.Duraiaraj, Government Advocate
(CrI.Side)

JUDGEMENT

1.This Criminal Appeal is filed, against the judgement of conviction and sentence, dated 10.07.2013, made in SC.No.32 of 2013 by the I Additional District and Sessions Judge, Tindivanam, Villupuram District, thereby convicting and sentencing (a) the Appellant/A1 for the offence under Section 341 of IPC to undergo one month Simple Imprisonment and to pay a fine of Rs.500/-, in default to undergo one month Simple Imprisonment and for the offence under Section 4 of the Tamil



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Nadu Prohibition of Harassment of Women Act to undergo two years Simple Imprisonment and to pay a fine of Rs.10,000/-, in default to undergo one month Simple Imprisonment and (b) the Appellant/A2 for offence under Section 341 of IPC to undergo one month Simple Imprisonment and to pay a fine of Rs.500/-, in default to undergo one week Simple Imprisonment.

- 2.The case of the Prosecution has arisen on the basis of Ex.P1 complaint given by the Victim Girl, PW.1, aged about 15 years, at the time of the incident, alleging that when on 28.11.2011 at 21.10 hours, she was coming after attending nature calls, near CSI Church, Brammadesam Colony, the Appellant/A1 had questioned her as to from where she was coming and the Appellant/A2 pulled her, asking her to come with him to enjoy and that since the victim denied, both the accused forcibly took her, by pulling her hand, to the back side of the CSI Church and that while the Appellant/A2 was standing near the Church, the Appellant/A1 took her to the nearby velikathan bush and misbehaved with her, by pressing her chests and that the victim was unable to make noise and the Appellant/A1 removed her cloths and also his clothes and in this situation, the victim got giddiness and sat down. Hence, the Appellants/A1 and A2 were charge sheeted for the offences punishable under Sections 341, 376, 511 of IPC read with Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act.
- 3.The case was taken on file in SC.No.32 of 2013, by the I Additional Sessions Judge, Tindivanam and necessary charges were framed. The accused had denied the charges and sought for trial. In order to prove the charges against the accused, the Prosecution had examined PW.1 to PW.9 and also marked Exs.P1 to P6. On completion of the evidence on the side of the Prosecution, the accused were questioned under Section 313 of Cr.PC as to the incriminating circumstances found in the evidence of the Prosecution witnesses and the accused had come with the version of total denial and stated that they have been falsely implicated in this case. The court below, after hearing the arguments advanced on either side and also looking into the materials available on record, found the accused/appellants guilty and awarded punishments, as referred to above, by the impugned judgement, which is challenged in this Criminal Appeal.
- 4.This court heard the submissions of the learned counsel on either side.
- 5.The learned counsel for the Appellants has assailed the impugned judgement of conviction and sentence, contending that since the victim was a minor at the time of occurrence, the complaint Ex.P1 itself is not sustainable and that PW.1 turned



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hostile and that when PW.2 and PW.3, who are the mother and sister of PW1, are not the eye witness and also interested witnesses, whose evidence is contradictory in nature, when Ex.P1 complaint does not constitute any offences as alleged and when the Appellants/ accused were not found guilty of the offences under Sections 376, 511 and 109 of IPC, the Trial Court erred in convicting and sentencing the Appellants/ accused, without any convincing reasons, for the other offences, viz. Section 341 of IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act and that the Prosecution has failed to prove its case beyond all reasonable doubts by valid evidence and hence, he would pray for acquittal of the Appellants/ accused.

- 6.I have given my careful and anxious consideration to the contentions put forward by the learned counsel on either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction and sentence.
- 7.On the other hand, the learned Government Advocate for the Respondent would submit that the Prosecution has proved its case beyond all reasonable doubts, by convincing, valid and cogent evidence, both oral and documentary and hence, the impugned judgement of conviction and sentence does not warrant any interference by this Court.
- 8.Now, it is to be seen as to whether the Prosecution has proved its case beyond all reasonable doubts to base conviction on the Appellants/ accused, by valid and cogent evidence or whether the Appellants/ accused are entitled for acquittal, for which, a thorough scrutiny of the evidence, both oral and documentary is necessary and it is done as under.
- 9.The manner, in which the alleged incident had happened, need not again be gone into. When PW.8 Doctor had examined the Victim Girl, she had stated to him about the entire incident and also to PW.2 and PW.3, who are the mother and sister of PW.1. PW.2 and PW.3 had also deposed about the happenings after the incident. However, PW.8 had deposed that there was no evidence to prove the offence of rape and PW.5 Forensic Expert had also deposed that there is no evidence to show that the victim was raped.
- 10.At the time of chief examination on 14.06.2013, PW.1 had narrated about the entire incident. From the evidence of PW.2 and PW.3, who have spoken in one voice in respect of the happenings after the incident and the other evidence, it is clear that the offences under Sections 341 of IPC and 4 of the Tamil Nadu Prohibition of Harassment of Women Act, were



proved by the Prosecution, beyond all reasonable doubts, which was rightly accepted by the court below and accordingly, punishment was awarded as stated above, by the impugned judgement, which is proper.

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11. In so far as the discrepancies pointed out by the learned counsel for the Appellants/ accused is concerned, it is well settled that merely because of the reason that the eyewitnesses are closely related to the Victim, their evidence cannot be discarded, but the test of careful scrutiny has got to be applied. In this case, after exercising the test, the evidence of the eyewitnesses inspires the confidence of the Court. Though there are minor discrepancies, these minor discrepancies will not shake or tilt the case of the Prosecution or the truth and rigour of the case.
12. Further, this Court is unable to find any rebuttal evidence let in by the Appellant/ accused to discard the conviction and sentence imposed on them. On the other hand, the evidence let in by the Prosecution as discussed above is sufficient to sustain the conviction and sentence imposed on the Appellants/ accused by the court below and there is no perversity or infirmity or illegality in the impugned judgement of the court below.
13. In fine, this Criminal Appeal is dismissed. However, considering the age of the accused and the facts and circumstances of the case, while confirming the conviction and sentence for the offences under Section 341 of IPC imposed on the appellants/accused and also the sentence of fine for the offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, imposed on the appellants/ accused, the sentence of imprisonment for the offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act imposed on the Appellant/A1 alone is reduced from two years to one year Simple Imprisonment.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Srcm

To

1. The Additional District and Sessions Judge,
Tindivanam, Villupuram District.



2.The Judicial Magistrate No.II,
Tindivanam

3.The Chief Judicial Magistrate
Villupuram (for Information)

4.The Public Prosecutor
High Court, Madras.

5.The Inspector of Police
Periathachur Police Station,
Tindivanam Taluk,
Villupuram District.

6.The Section Officer,
Crl.Section, High Court, Madras.

Crl.A.No.541 of 2013

PMK(CO)
SB(09/02/2022)