



Bail slip

The Petitioner/Accused/Viz; Suresh, S/o.Chinnasamy age 32/2016 was released on bail as per the Order of this Court dated 07/03/2018 in CrI.MP.No.13181/2016 in CrI.A.No.806/2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.04.2022

PRONOUNCED ON : 12.05.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CrI.A.No.806 of 2016

Suresh ... Appellant/Accused 1
Vs.

State represented by
the Inspector of Police,
Palacode Police Station,
Crime No.91 of 2014.

... Respondent/Complainant

PRAYER: This Criminal Appeal has been filed under Section 374 Cr.P.C. to set aside the judgment of conviction and sentence against the appellant herein dated 06.10.2016 in Special Sessions Case No.24 of 2015 on the file of the Fast Track Mahila Court, Dharmapuri.

For Appellant :Mr.M.G.Udaya Shankar
for Ms.S.Shanthakumari

For Respondent :Mr.J.Subbiah
Govt. Advocate (CrI. Side)

JUDGMENT

Accused (A1) in Special Sessions Case No.24 of 2015 on the file of the Fast Track Mahila Court, Dharmapuri, is the appellant herein.

2.The Inspector of Police, Palacode Police Station, prosecuted the appellant/accused along with his father A2 and mother A3 for having trespassed into the house of the victim



girl and made her to believe that he will marry her and committed penetrated sexual assault and thereafter, cheated. Besides, the accused made criminal intimidation and threatened her attracting the offences punishable under sections 448, 417, 506(ii) IPC along with section 5(1) r/w 6 of the Protection of Children from Sexual Offences Act, 2012.

3. In the trial Court, the prosecution examined 15 witnesses PW1 to PW15 and filed 11 documents Ex.P1 to P11. On the accused side, no witnesses were examined and no documents were filed.

4. The trial Court, on considering the oral and documentary evidence, found that all the accused were not guilty of under Section 506(ii) IPC and acquitted and found the charge on the first accused was proved under Sections 417, 448 IPC along with 5(1) r/w 6 of POCSO Act and sentenced him to undergo 1 year rigorous imprisonment each for the offence under Sections 448 & 417 IPC and for the offence under Section 5(1) r/w 6 of POCSO Act, 10 years rigorous imprisonment was imposed on him along with fine of Rs.5000/- in default to undergo six months imprisonment. The sentences were directed to run concurrently. Aggrieved by this conviction and sentence, the appellant filed this criminal appeal.

5. The case of the prosecution, in short, is that the appellant /first accused is the son of second and third accused and they were living at Thottampatti village. The victim girl (name is not mentioned) belongs to the same village and on 18.12.2013 when the parents of the victim girl went to outstation to attend their relative's marriage, the victim girl was alone in the house and at about 11.00 p.m., the appellant/first accused trespassed into the house of victim girl and closed her mouth and raped her. Thereafter, he threatened her not to disclose the incident to any one. The victim girl had to go to her school through the appellant/first accused house. The appellant/first accused made the victim girl to believe that he will marry her and also frequently had sexual relationship with her. After three months, the victim girl felt that her menstruation period was postponed. Fearing this, she informed her mother PW3 Shala and PW3 informed the fact to her husband Umapathy PW2. Immediately, the parents of the victim girl PW2 & PW3 tried to negotiate with the family of the first accused for marriage but they refused. Panchayat was conducted by Gopal (PW7) because the accused family refused for marriage. Since the menstruation period was postponed, she was brought to the hospital and on medical examination, the victim girl was found



to be pregnant. Even thereafter, the accused family refused for marriage. The victim girl and their parents went to the police Station and the victim girl gave a complaint Ex.P4 at Palacode Police Station.

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6.PW10, Surumbaarkuzhali, Sub Inspector of Police, Palacode Police Station received the complaint Ex.P4 and registered a case in crime No.91 of 2014 under Sections 376, 417, 506(ii) IPC and 3 r/w 4 of POCSO Act, 2012, registered FIR Ex.P5. After registering the FIR, she placed it before the Inspector of Police, Thiru. Somanrajan (PW15).

7.PW15 Somanrajan, Inspector of Police, Palacode Police Station, after receiving the complaint and FIR, went to the place of occurrence and prepared Observation Mahazer Ex.P1 and Rough Sketch Ex.P10 in the presence of witnesses Moorthy PW6 and Sekar PW14 and on the next day i.e. on 19.03.2014, he sent the victim girl for medical examination through Usha, constable and one Selvam Head constable.

8.PW8 Dr.G.Manimegalai, Palacode Government Hospital examined the victim girl and found no external injuries on the genital part of the victim girl and based on the urine test, suspected pregnancy and referred for medical further test and issued accident register Ex.P2.

9.PW9 Dr.Balasubramaniam, Palacode Government Hospital examined the victim girl and took scan and suspected some sores on her uterus. He referred her for further test to Dharmapuri Head Quarters Government Hospital, where, scan was taken and found that she was not pregnant and she sustained some sores on her uterus and gave the medical report Ex.P3.

10.PW15 Somanrajan Inspector of police arrested the appellant/first accused Suresh on 10.10.2014 at 9.30 a.m near Palacode Government Hospital in the presence of the witnesses Ajithmurugan PW5 and Gopal PW7. On enquiry, the first accused gave a confession statement. Thereafter, he was sent for medical examination.

11.PW11 Dr.Arun Prabhu Dharmapuri Government Hospital examined the first accused and gave certificate that he was



first accused to marry their daughter. Since the accused and his father and mother refused to marry her, falsely lodged the complaint. The trial Court failed to appreciate the fact in the absence of any evidence to prove that the first accused trespassed into the house of the victim girl on 18.12.2013, he cannot be convicted for the offence under Section 448 IPC. Further, there is no evidence that the first accused had sexual intercourse with the victim girl and made her to believe that he will marry her and also there is no evidence to show that the accused made aggravated penetrate sexual assault upon the victim girl. The only evidence of PW1 is not reliable and doubtful because during her chief examination, she did not disclose, when the occurrence first happened. According to the charge, it happened only on 18.12.2013 but in the statement before the Judicial Magistrate recorded under Section 164 statement, the victim girl stated the occurrence took place in the month of December 2012. In this circumstance, the infirmity goes to the root of the prosecution case. In the absence of clear evidence against the first accused, he cannot be convicted for the abovesaid charges and the first accused is entitled for acquittal and pleaded to allow the appeal.

15.To support the argument, the learned counsel for the appellant/first accused placed reliance on the decisions in Hari majhi Vs. The State reported in 1990 CrI.L.J.650, Maharajan Vs.State represented by the Inspector of Police, All Women Police Station, Pudukottai, Thoothukudi District reported in 2020-2-L.W.(CrI.) 929, State of Karnataka by Nonavinakere Police Vs.Shivanna @ Tarkari Shivanna reported in 2014-2-L.W.(CrI) 441, Santosh Prasad Alias Santosh Kumar Vs. State of Bihar reported in (2020) 2 Supreme Court Cases (CrI) 77, Tuka Ram and another Vs. State of Maharashtra reported in 1979 AIR 185, Banshilal Makhan Chandrakar Vs. State of Madhya Pradesh reported in 2017 CrI.L.J.1202 and Uday Vs. State of Karnataka reported in 2003 Supreme Court Cases (CrI) 775.

16.The learned counsel for the State supported the judgment of the trial Court. The evidence of the victim girl is enough to prove the guilt against the first accused and the victim girl clearly deposed before the Court that the sexual assault was made by the first accused. There is no reason to disbelieve the evidence of the victim girl. As a General rule, a Court may act on the testimony of a single witness though uncorroborated. The trial Court rightly acted upon the evidence of the victim girl. There is no reason to interfere with the finding of the trial Court and prayed to confirm the conviction



and sentence imposed by the trial Court and dismiss the appeal.

17. Point for consideration is, whether the charge against the first accused is proved by the prosecution evidence beyond reasonable doubt.

18. In this case, I considered the matter in the light of the evidence and perused the records available on record.

19. In this case, the victim girl PW1's date of birth is 15.04.1997 as seen from the evidence of P.W.13, Chitra, Headmistress. It is her further evidence that the victim girl studied in Palacode Government Girls Higher Secondary School and studied up to 12th standard during the academic year 2013 - 2014 and issued the school certificate Ex.P9. Therefore, it is clear that the victim girl is a child under the POCSO Act.

20. I have gone through the charge against the first accused. Initially the appellant/first accused was prosecuted along with his father and mother/ A2 and A3. Against the appellant/first accused, charges under Sections 448, 417 and 506(ii) IPC and 5(1) r/w 6 POCSO Act were framed and his father and mother were charged for the offence under Section 506(ii) IPC. The trial Court, considering the oral and documentary evidence, acquitted all the accused of the offence under Section 506(ii) IPC but convicted the appellant/first accused for the charges under Sections 448, 417 IPC and 5(1) r/w 6 of POCSO Act.

21. According to the prosecution story, the appellant/first accused trespassed into the house of the victim girl on 18.12.2013 at about 10.00 p.m. while the parents of the victim girl went out of the village to attend their relative's marriage. In this regard, I have gone through the prosecution witnesses. The victim girl PW1, while deposing before the trial Court, did not state that the first accused trespassed into her house on 18.12.2013 at 10.00 p.m. She stated when her parents went to Vellore to attend their relative's marriage, she was in her house alone. The first accused entered into the house and asked where her parents and she replied they went to attend a marriage. Immediately, he tried to misbehave with her and closed her mouth with his hands and had sexual intercourse with her. Thereafter, he threatened her not to inform others. She had to go to School through the accused house. At that time, he had sexual intercourse with her. Since her menstruation period was postponed for three months, thereafter, she informed the fact to her parents and her parents took her to the hospital for medical



examination and Doctor informed that she was pregnant. Her parents informed the fact to the first accused and he refused to marry her. Due to frequent visit to the hospital and police station, her pregnancy was aborted. Thereafter, she gave the complaint Ex.P4. This is her evidence.

22. In her evidence, she did not mention any specific date, when the first accused had sexual intercourse with her and she did not mention when she went to hospital for medical test and when she went to police station and when she gave a complaint. Therefore, the evidence of the victim girl before the trial Court is not clear about the date when the first accused trespassed into her house and made aggravated penetrate sexual assault upon her and threatened her. I have gone through the 164 statement of the victim girl recorded by the Judicial Magistrate Dharmapuri, K.R.Jothi, PW12 and the 164 statement is marked as Ex.P8. On perusal of the statement, it is noticed that the victim girl deposed before the Judicial Magistrate that during the month of December 2012 i.e. on 12, 13 & 14 date, while her parents went to the marriage of her uncle Moorthy, she was alone in her house and the first accused entered into the house and raped her. Thereafter, while she was returning from School, the first accused took her to his house and had sexual intercourse with her. After postponing of her period, she informed her mother PW2 Shala and she took her for medical examination and found she was three months pregnant. Thereafter, a Panchayat was conducted and requested the first accused to marry her. Since he refused, the complaint was lodged. Thus, the evidence of the victim girl is totally inconsistent about the incident. Before the Court, she did not depose when the first accused committed the sexual assault upon her. In her 164 statement, she had stated that during the month of December 2012 i.e. on 12th, 13th & 14th, the accused had sexual intercourse and subsequently, while she was returning home, he had sexual relationship with her. Thus the evidence of the victim girl is not cogent and becomes doubtful about the incident. While the specific charge against the accused is that on 18.12.2013, he trespassed into the house of the victim girl and raped her, there should be some evidence on the prosecution side to support the charge that on 18.12.2013, he trespassed into her house and raped her. There is no evidence on the side of the prosecution to show that the first accused trespassed into the house of the victim girl on 18.12.2013 and also there is no evidence that the first accused entered into the house of the victim girl in the month of December 2012 i.e. on 12th, 13th and 14th and raped her. The complaint was given on 18.03.2014. If the victim girl's



statement before the Judicial Magistrate is true that the first accused entered into the house of the victim girl in the month of December 2012 and informed her mother after postponing of her period after three months, is true, she would have immediately gone for medical test within three months from December 2012, but deposed before the Court in the month of December, 2013 and complaint was given on 18.03.2014. Such a long delay raises a serious doubt. On record, the medical test was conducted by PW8 Dr.G.Manimegalai on 19.03.2014. Therefore, the evidence of PW1 victim girl is not a credible one.

23.The other prosecution witnesses, PW2 Umapathy, PW3 Shala have only deposed on the information furnished by the victim girl. Further, prosecution witness PW4 Parimala did not depose about the incident. There are no other witnesses. PW5 Ajith Murugan, PW6 Moorthy are the witnesses to mahazar prepared by the police and further, PW5 Ajith Murugan was not supporting the prosecution case and he was treated as hostile witness. PW6 Moorthy did not depose anything about the incident. PW7 Gopal deposed about the panchayat conducted between the accused and the victim girl for the marriage. He also did not speak about the incident. Remaining witnesses are official witnesses.

24.I have considered the other aspect of the victim girl's evidence that she became pregnant. According to the victim girl's evidence, she became pregnant because of the sexual intercourse made by the first accused but the medical evidence on record falsifies her evidence. According to PW8 Dr.G.Manimegalai, while examining the victim girl on 19.03.2014 based on the urine test, she suspected pregnancy, hence, referred for further medical test. The victim girl went through the other medical tests. PW9 Dr.Balasubramaniam, after considering all the medical test, found that she was not pregnant and she was suffering from sore in her uterus. His report is Ex.P3. Therefore, the medical evidence on record does not support the prosecution theory that the victim girl became pregnant due to the sexual intercourse by the accused. In this regard also, the prosecution story is not proved by the medical evidence and the evidence of the victim girl is also not supported by the medical evidence.

25.No doubt, it is well settled that the victim girl's evidence is enough to convict the accused. If it is found to be worthy of credence, reliable and requires no corroboration, the Court may convict the accused on the sole testimony of the



victim girl. In the present case, it is seen that PW1, the victim girl's evidence is found not reliable because with regard to the incident, her evidence is not reliable. Before the Court, she did not depose, when the accused made aggravated penetrate sexual assault, specifically on which date, the occurrence happened. The victim girl stated before the Judicial Magistrate that the accused made penetrate sexual assault in the month of December 2012 and it makes the testimony of the victim girl doubtful.

26. Further, in the instant case, the medical evidences PW8 and PW9 is of no support to the prosecution story, PW9 Dr. Balasubramaiah had stated that she was not pregnant and she suffered from sore in uterus and gave the medical certificate Ex.P3.

27. In a criminal trial, an accused person starts with the presumption of innocence in his favour and the presumption holds the field till the prosecution succeeds in establishing the guilt of the accused beyond all reasonable doubt. A moral conviction regarding the guilt of an individual has no place in criminal jurisprudence. The prosecution must give satisfactory proof that the offence has been committed by the accused. But in this case, prosecution failed. Therefore, the conviction and sentence passed by the trial Court has to be set aside and the accused is entitled for acquittal.

In the result, the criminal appeal is allowed and the conviction and sentence passed by the trial Court is hereby set aside and the first accused is acquitted and the bail bond, if any, executed by him is ordered to be cancelled and fine amount, if any, paid ordered to be refunded. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

sms



1.The Inspector of Police,
Palacode Police Station,
Crime No.91 of 2014.

2.The Sessions Judge,
Fast Track Mahila Court, Dharmapuri.

3.The Superintendent
Central Prison, vellore.

4.The Public Prosecutor,
High Court, Madras

5.The Section Officer,
Criminal Section (Records)
High Court, Madras-104.

Crl.A.No.806 of 2016

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