



Bail Slip

That the accused viz Manikandan S/o.Ayyasamy was released on bail in Crl.MP.No.9122/2016 in Crl.R.C.No.1069/2016 dated 23.11.2016 order of the Hon'ble High Court as against the Judgment a made in Crl.A.No.1/2008 dated 12/04/2016 on the file of the learned sessions Judge, Thiruvannamalai.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.01.2022

CORAM :

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.R.C.No.1069 of 2016

Manikandan

.. Petitioner / Accused-1

Vs.

State rep.by
The Sub Inspector of Police,
All Women Police Station,
Chengam.
Crime No.15 of 2005

.. Respondent / Complainant

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to call for the records relating to the judgment made in Crl.A.No.1 of 2008 dated 12.04.2016 on the file of the learned Sessions Judge, Thiruvannamalai, confirming the trial Court judgment passed in S.C.No.26 of 2007 dated 17.12.2007 on the file of learned Additional Assistant Sessions Judge (i/c) Principal Assistant Sessions Judge, Thiruvannamalai and set aside the same.

For Petitioner : Mr.M.G.Udayashankar

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.side)

ORDER

This Criminal Revision Case has been preferred challenging the judgment of the learned Sessions Judge, Thiruvannamalai, dated 12.04.2016 made in C.A.No.1 of 2008, which was confirmed by the judgment of the learned Additional Assistant Sessions Judge, Thiruvannamalai, dated 17.12.2007 made in S.C.No.26 of 2007.



2. The revision petitioner before me was the 1st accused before the trial Court. The short facts of the prosecution is that PW.4/ the victim girl was an orphan, living under the custody of her grand father/PW.5. Somewhere in the year 2004, while the victim girl was playing in the village temple during Deepam festival, the accused 1 to 3 took her to a nearby society building and committed the offence of rape on her, one by one. By taking advantage of her vulnerability, they have committed the said offence on several occasions. They also threatened her that if revealed it to anyone, they would do away with her. Even on a subsequent day, the 1st accused came to her house during night hours and committed the offence of rape. When she shouted, her grand father had caught hold of the accused; but the accused managed and escaped from there; they cannot get any legal relief by way of lodging a complaint because of the pressure given from various circles. Even the complaint given to the Sathanur police station in this connection was withdrawn by her uncle /PW.6 on 24.09.2005. However the complaint was given again on 30.09.2005 to the All Women police station, Chengam. Based on the complaint, a case was registered in Crime No.15 of 2005 by PW.8 /Leela Bai/ the Inspector of police and she prepared the F.I.R. Since her investigation disclosed the commission of the offence as alleged by the prosecutrix, she completed her investigation and filed a charge sheet against the accused for the offence under Section 376 and 506(ii) IPC.

3. The case was taken on file by the learned Judicial Magistrate, Chengam, in P.R.C.No.26 of 2007. After complying the legal mandates, the case was committed to the learned Principal Sessions Judge, Thiruvannamalai. From there it was assigned to the file of the Assistant Sessions Judge, Thiruvannamalai for trial. On being satisfied with the materials available on record, the learned trial Judge framed the charges against the accused under Sections 363, 366, 376(2)(g) and 506(ii) r/w. 34 IPC. The accused were questioned about the charges, they pleaded innocence and claimed to be tried.

4. During the course of trial, on the side of the prosecution, eight (8) witnesses were examined as PW.1 to PW.8 and fourteen (14) documents have been marked as Ex.P.1 to Ex.P.14. After completing the prosecution evidence, when the incriminating materials found on the prosecution evidence were put to the accused under Section 313 Cr.P.C., they denied the same. No witness was examined on their side, however one document has been marked as Ex.D1 during the cross examination of PW.4.

5. After the conclusion of the trial and on consideration of the materials available on record, the learned trial Judge found the 1st accused guilty for the offence under



Section 376 IPC, convicted and sentenced the accused as follows:

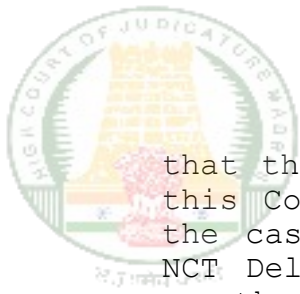
Rank of the accused	Charges	Findings of the trial Court	Punishment
1 st accused	U/s 376 IPC	Guilty	convicted and sentenced to undergo 7 years Rigorous Imprisonment and imposed with a fine of Rs.10,000/-, in default to undergo 6 months Simple Imprisonment.
	U/s.366 and 506(ii) IPC	Not guilty	Acquitted
A2 and A3	U/s.366, 376 and 506 (ii) IPC	Not guilty	Acquitted

6. The appeal filed by the 1st accused in C.A.No.1 of 2008 was also dismissed on 12.04.2016. Aggrieved over the said dismissal, 1st accused had preferred the present Criminal Revision Case.

7. Heard the learned counsel for the revision petitioner /1st accused and the learned Government Advocate (Crl.side) for the prosecution.

8. The learned counsel for the revision petitioner submitted that despite an earlier complaint was withdrawn and closed, the prosecution had once again taken up a fresh case on the second complaint and it is illegal; the evidence of the victim/PW.4 is not trustworthy and reliable and it is wrong on the part of the Courts below to convict the 1st accused based on the evidence of PW.4; the age of PW.4 was determined basing on the radiological examination and it cannot be taken as her true age; the other accused viz. A2 and A3 were found not guilty and they have been acquitted and the same benefit ought to have been given to the 1st accused also; hence the revision case should be allowed.

9. The learned Government Advocate (Crl.side) for the prosecution submitted that the victim was a girl of below 16 years at the time of occurrence; even her medical age did not show that she was a major; the evidence of PW.4 would clearly show that the 1st accused had committed the offence of rape and her evidence is very much reliable; when the evidence of the victim itself is trustworthy and convincing, it is not necessary to look for any other corroborative evidence. Hence, the Courts below have rightly convicted the 1st accused for committing the rape.



that the victim was 13 to 14 years. He invited the attention of this Court to the judgment of the Delhi High Court rendered in the case of Shweta Gulati & Anr. Vs. The State Government of NCT Delhi, to sustain his contention. There is no disagreement on the point that the determination of age through medical examination is inconclusive. Even the Hon'ble Supreme Court has stated in several decisions that there can be marginal error and the age cannot be assessed through radiological assessment and the error can be two years on either side. When the age of the victim is not known and there are no documentary proof available to show her age, the one and only option left to determine her age is through medical examination only.

15. In the decision of the Hon'ble Supreme Court rendered in State of Madhya Pradesh Vs. Anoop Singh [(2015) 7 SCC 773]. In the said judgment and it is held as below:

"10. We believe that the present case involves only one issue for this Court to be considered, which is regarding the determination of the age of the prosecutrix.

11. In the present case, the central question is whether the prosecutrix was below 16 years of age at the time of the incident. The prosecution in support of their case adduced two certificates, which were the birth certificate and the middle school certificate. The date of birth of the prosecutrix has been shown as 29.08.1987 in the Birth Certificate (Ext. P/5), while the date of birth is shown as 27.08.1987 in the Middle School Examination Certificate. There is a difference of just two days in the dates mentioned in the abovementioned Exhibits. The Trial Court has rightly observed that the birth certificate Ext. P/5 clearly shows that the registration regarding the birth was made on 30.10.1987 and keeping in view the fact that registration was made within 2 months of the birth, it could not be guessed that the prosecutrix was shown as under-aged in view of the possibility of the incident in question. We are of the view that the discrepancy of two days in the two documents adduced by the prosecution is immaterial and the High Court was wrong in presuming that the documents could not be relied upon in determining the age of the prosecutrix.

12. This Court in the case of Mahadeo S/o Kerba Maske Vs. State of Maharashtra and



age would be either 11 or 16. When two views are possible about a matter, the view which is favourable to the accused should be taken up for consideration. By adopting the said principle, the age of the victim can be taken as 16. Since the occurrence had taken place before the Criminal Law amendment 2009, this case is governed by the old Criminal Law. Under the old law, the man is said to have committed the crime of rape with a woman with or without her consent when she is under 16 years of age.

17. PW.3 is the doctor who examined the victim on 02.10.2005. Her evidence would reveal that her hymen was absent. So the learned counsel for the revision petitioner drew the attention of this Court that the above evidence of the doctor and claimed that the victim had repeated sexual exposure and hence no much credence can be given to her evidence. The previous life style of sexual victim is immaterial for the offence of rape committed on a victim who is 16 years. So the evidence of the victim has to be appreciated irrespective of her past sexual history, if any. The victim who was examined by PW.4 has stated in her evidence that even prior to the occurrence she was molested by the 1st accused and his friends on several occasions.

18. On the specific date of the occurrence, which is referred in the present complaint, the 1st accused came to PW.4's house and committed the act of rape once again. When she shouted, her grand father attempted to catch hold of the 1st accused, but he managed to escape. Thereafter, her grandfather went and questioned the father of the accused. But they were compelled not to go to police. Even after victim's uncle / PW.4 came to her village, he was also not able to pursue any criminal action and he took the victim to his village and kept her under his custody. Only subsequent to that, a case was registered by the police and the investigation was conducted. In these back ground of the case, the withdrawal request marked as Ex.D1 cannot be given much significance and hence the evidence of PW.4 can not be discarded.

19. The learned counsel for the revision petitioner submitted that the delay in giving the complaint would cause doubt on the prosecution. It is needless to say that the dire consequences which was faced by the victim and her family was the major factor in approaching the police and set the law in motion.

20. In sexual offences the delay in registering the FIR cannot be viewed seriously. The above position of law has been once again confirmed in the decision of the Hon'ble Supreme Court reported in the case of karnel Singh Vs. State of Madhya Pradesh [(1995) 5 SCC 518] as under:



4.The Public Prosecutor,
High Court, Madras.

5.The Superintendent
Central Prison,
Vellore.

6.The Judicial Magistrate Court,
Chengam.

+1cc to Mr.M.G.Udaya Shankar, Advocate, S.R.No.4058

Cr1.R.C.No.1069 of 2016

RK(CO)
SB(15/02/2022)