



BAIL SLIP

The Petitioners/Accused viz., 1.Anbazhagan, S/o. Kuppusamy, 2.Rajeshwari, W/o.Anbazhagan was released on bail as per Order of this Court dated 25.11.2021 in Crl.M.P.No.11949 of 2021 in CRL.A.No.574 of 2021 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2022

CORAM : JUSTICE N.SESHASAYEE

CRL.A.NO.542 & 574 OF 2021

AND

CRL.M.P.NO.11602 OF 2021

1. Prabu

... Appellant in Crl.A.No.542 of 2021

2. Anbazhagan

... 1st Appellant in Crl.A.No.574 of 2021

3. Rajeshwari

... 2nd Appellant in Crl.A.No.574 of 2021

Vs.

The State rep.
The Inspector of Police,
All Women Police Station,
Virudhachalam,
Cuddalore District
(Crime No.24 of 2017)

... Respondent in Crl.A.Nos.542 & 574/2021

COMMON PRAYER: Criminal Appeals filed under Sections 374(2) and 378 of Criminal Procedure Code, to set aside the conviction and sentence of the appellants by the judgment dated 23.07.2021 in Sessions Case No.176 of 2019, on the file of the Court of Sessions Judge, Mahila Court, Cuddalore and acquit the appellants.

For Appellant /Appellants : Mr.T.Saikrishnan
(in both cases) for Mr.B.Balavijayan

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl.side)



COMMON ORDER

These Criminal Appeals have been filed by all the three accused persons in S.C.No.176 of 2019 on the file of Mahila Court, Cuddalore.

2. Crl.A.No.542 of 2021 was filed by A1, whereas Crl.A.No.574 of 2021 was filed by A2 and A3. They were convicted and sentenced by the Sessions Court vide its judgment dated 04.12.2019 and the details are as follows:

Accused	Provision under which convicted	Sentence
A1	Section 376(1) IPC	Ten years rigorous imprisonment and also to pay a fine of Rs.30000/- in default to undergo simple imprisonment for a period of two(2) years
	Section 312 IPC	Two years rigorous imprisonment and also to pay a fine of Rs.10000/- in default to undergo simple imprisonment for a period of six(6) months
	Section 417 IPC	One year rigorous imprisonment and also to pay a fine of Rs.10000/- in default to undergo simple imprisonment for a period of three(3) months
A2 and A3	Section 294(b) IPC	Three years simple imprisonment and also to pay a fine of Rs.5000/- in default to undergo simple imprisonment for a period of three(3) weeks each
A1 to A3	Section 506(i) IPC	Two years rigorous imprisonment and also to pay a fine of Rs.5000/- in default to undergo simple imprisonment for a period of six(6) months each
A2 and A3	Section 506(i) IPC	Two years Simple imprisonment and also to pay a fine of Rs.5000/- in default to undergo simple imprisonment for a period of six(6) months each
		Total fine Rs.75,000/- (A1-Rs.55,000, A2-Rs.10,000/- and A3 Rs.10,000/-)



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Accused	Provision under which convicted	Sentence
		Out of the fine amount Rs.55,000/-, payment of which has been ordered to be made by A1, as part of the sentence, a sum of Rs.30,000/- (Rupees thirty thousand only) is ordered to be paid to P.W.1, the victim in the case, under Section 357(1) (b) Cr.P.C.

3. The case of the prosecution can be summarised:

- On 12.11.2017, PW1, a woman aged around 28 - 29 years, had preferred a complaint to the respondent police, wherein she has alleged that she and A1 were loving for about 5 years prior to the date of the complaint, that during the said period A1 would regularly visit her house, and that he had intercourse with her on a promise that he would marry her. Some three years prior to the date of the complaint, PW1 had conceived, and that A-1 had got her some medicine consuming which she aborted and thus A1 had forced a miscarriage on P.W.1.
- Even thereafter, A1 continued to have sexual intercourse with her. While so, A1 got a permanent job as a night-watchman in the District Judiciary. Thereafter, he chose to avoid PW1. In this backdrop, on 19.06.2017, at about 9.00 a.m, PW1 with her family members visited A1 at the latter's house. There, A1 along with his parents (A2 and A3) and his brother Bharani were there. All the accused persons abused PW1 and others. They also pulled P.W.1's hair, abused and driven them away. P.W.1 felt bad about the whole turn of events and she attempted to commit suicide, and was admitted in a hospital. In the hospital, the family members of A1 visited her, and requested her not to prefer any complaint. Hence, no complaint was preferred by PW1 regarding these incidences.
- Thereafter, on 10.11.2017, at about 02.00 p.m, PW1 accompanied by her parents PW3 and PW4 and her sister P.W2, again went to the house of A1. All the three accused were there and they again abused PW1 and poured kerosene on PW1, attempted to strangle PW1. While this was happening, PW5, the aunt of P.W.1 intervened and immediately A1 and A2 assaulted her too, owing to which, she suffered some injuries in her right hand. They also abused her in a filthy language. The accused persons



demanded 50 sovereigns of gold jewelery and 2 wheeler worth Rs.1.5 lakhs to get her married to A1.

- P.W.1 would now file Ext.P-1 complaint. On receiving the complaint, PW9, the Inspector of Police registered an FIR for offence under Sections 417, 376, 312, 294(b) and 506 (ii) of IPC and took up the investigation. She would then cause PW1 to be examined by PW7, a lady doctor, visited the Scene of Occurrence (henceforth SOC) namely the house of PW1, and prepared exhibit Ext.P2 (Observation Mahazar) and Ext.P-6 rough sketch, and then proceeded to arrest A1 to A3. The Investigating Officer also caused medical examination of A1 to assess his potency by PW.8, Dr.Dineshbabu, who after such examination gave Ext.P-4, potency test report.
- In the meantime, the Investigating Officer also examined and recorded the statements of PW1 to PW6, and after completing the investigation, he laid the final report, upon which the case was committed to Sessions Court. The learned Sessions Judge framed charges against all the 3 accused as mentioned above.

4. The matter went to trial. The witnesses who have been examined during trial and the materials/documents which prosecution relied on have already been introduced. On appreciating the evidence before the court, the learned Sessions Judge found the accused persons guilty of the offences and sentenced them as indicated in the opening paragraph.

5. The judgement of the Sessions Court is now in challenge. The learned counsel for the appellants submitted that this case demonstrates how prosecution can bungle the investigation, and still how unfortunate the accused persons are. Elaborating his arguments, the learned counsel contended that the testimony of PW1 suffers from certain material inconsistencies vis-a-vis the statements she had made before the Investigating Officer. Even if these inconsistencies are kept aside, the improbability of an offence such as that which was alleged to have been committed can be gathered from the following facts:

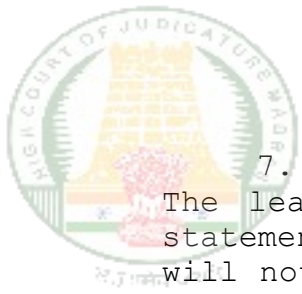
- According to PW1, A1 used to visit her regularly for about 5 years prior to the FIR, and that he chose day time to visit her. She specifically says that A1 would visit her after her parents, who are agricultural labourers, have gone for their daily occupation. She also states that her house is surrounded by the houses of one Subburaya Pillai, the Village headmen, certain Kolanji Naidu, Iyappan, Suresh, Saraswathi, Siva kumar. These houses are located



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either on the same street or adjacent to the SOC. And, on to its rear side are situated the houses of Mani, Kumar, Muthukanan and Natarajapillai. If only A1 was visiting her, an unmarried woman regularly for about five years, that too when her parents are not in the house, it would have been known to any of these neighbours. However, not one among them was interrogated by the Investigating Officer. Indeed, the SOC is not in a multi-storied apartment in a city, and as per Ex.P6 rough sketch, it is an independent house located in a village. Therefore, it will be highly improbable that the routine visits of A-1 to the house of P.W.1 as alleged by the prosecution would have escaped the notice of all those in the neighbourhood. It is indeed surprising that not even PW2, the sister of PW1, and PW3 and PW4, the parents of P.W.1 were unaware about the frequent visits of A1 in all these five years. And, here the conduct of PW4 and PW5 are entirely inconsistent with the ordinary course of human behaviour.

- The second point alleged by P.W.1 is that some three years after A1 began to have sexual intercourse with her, she conceived, and that the pregnancy was force-terminated at the instance of A1. According to PW1, A1 gave some medicines consuming which, she got aborted. This goes tangential to the medical evidence of PW7, the lady doctor who examined her and gave her opinion in the Medical Report of Victim(Ex.P3), to the effect that she did not notice any signs of earlier pregnancy. She repeats this in her cross-examination as well.
- The third aspect which PW1 projects is that on 19.06.2017, she visited the house of A1 where A1 to A3 and A1's brother, Bharani have all abused her badly, which forced her to attempt to commit suicide by consuming some locally brewed poison, and that she was hospitalised for treatment. There is however, no evidence other than the statements of PW1 to PW5 that P.W.1 indeed had attempted to commit suicide. In fact, she had made a further statement that the family members of A1 visited her at the hospital and requested her not to prefer any police complaint. This implies that she indeed was admitted in some hospital, but PW9, the Investigating Officer did not choose to locate this hospital where PW1 was admitted. Again, on the aspect of attempted suicide, P.W.1 to P.W.5 come up with multiple and conflicting versions. Again to prove that an incident such as this had happened, no independent witnesses examined.



7. The submissions on rival sides are carefully weighed. The learned Government Advocate has been fair when he made a statement that the charges against A1 on an allegation of rape will not constitute rape unless an offence under Sec. 417 IPC is made out. After all, P.W.1, the victim of the alleged crime and A1 have attained the age of majority, and even P.W.1 has asserted that the physical relationship she had with A1 was consensual. The only aspect that converts what would have been a consensual sexual act into a rape is any proof that A1 has made any representation amounting to a promise to marry P.W.1, and if P.W.1 has yielded to the carnal desires of A-1 as she believed the promise so made.

8. The learned counsel for the appellants have listed out a set of circumstances (which have been bullet-pointed in paragraph 5 above). First turning to the medical evidence part of it, P.W.7, the doctor who examined P.W.1 has opined that P.W.1 may have been accustomed to intercourse. It is in her cross-examination, she has testified that she found no sign of any earlier conception of P.W.1. If the allegation of earlier conception made by P.W.1, if filtered as an embellishment, still if physical intercourse coupled with a promise of marriage is proved, then it establishes the culpability of A1. Now, whether A1 has held out any such promise, is something which is very personal to P.W.1. and this Court necessarily has to examine it on the basis of evidence made available, to arrive at the most probable conclusion if at all there was a possibility for A1 to make a promise to marry P.W.1.

9. Even as the Court makes provision for protecting the victims of heinous crimes such as rape, it still it does not dispense with the need to weigh the entire evidence available on record to arrive at a conclusion beyond reasonable doubt that the charges are proved. Turning to evidence, P.W.1 fixes the place where A-1 had physical relationship with her. It is not anywhere at a place away from either of the house of P.W.1 or that of A1. She fixes the SOC as her house, and confined it only to her house. Therefore, if at all there was a sexual act between A1 and P.W1, that could be only in the house of P.W.1, P.W.3 and P.W.4. Her allegation is that A1 would regularly visit her after her parents had gone for agricultural work. This implies that the alleged offence had taken place in the day time. And P.W.1 proceeds to state that A1 was visiting her almost for about five years before she lodged Ext.P1, complaint. If an young man visits a young unmarried woman during day time regularly for five years in village-circumstances, it will be an extraordinary feat if none in the neighborhood had failed to observe it. To repeat, it is not an one off occurrence, but a regular feature in the lives of A1 and P.W.1, if only the



testimony of P.W.1 were to form the basis, but P.W.9, the Investigating Officer has not cited a single witness from the neighborhood to prove it. Does it imply that A1 has not been visiting P.W.1 regularly, or even occasionally, or is it just that the Investigating Officer has chosen to ignore a critical fact? Here it must be underscored that it is not the case of the prosecution that A1 was a relative of P.W.1. If assuming A1 is the relative of P.W.1, it is possible to infer that those in the neighborhood may have ignored it for there might not be any suspicion about a relative visiting another relative, no matter even if their genders are opposite. Here, the odds are clearly against the prosecution, and the advantage goes to the appellants.

10. The second aspect of P.W.1's case is that A1 has made a promise to marry her. If the alleged regular visits of A1 itself is hung in suspicion, it is nigh difficult to conclude that A1 might have made a promise to marry her. If atleast the alleged visits of A1 to P.W.1's house is proved, there might have been a probability to believe it from other attending circumstances. Then, to add strength to her case, P.W.1 states that some about three years after her relationship with A1, she was conceived and the same was aborted at the instance of A1, but P.W.7, the doctor has testified that on her examination, P.W.1 did not find any trace of earlier conception. In this context, all the witnesses cited are interested witnesses, and their evidence on material aspects are contradictory. Hence it is nigh difficult to conclude that A1 might have seduced P.W.1 into having a physical relationship with him on a promise of marriage.

11. There are other ancillary facts that may now be focused. P.W.1 to P.W.4 cite atleast two incidents, one on 19.06.2017 and the other on 10.11.2017. These, in the context of the case, partly relate to the charge of rape coupled with a promise to marry and partly on other charges. So far as the incident on 19.06.2017 is concerned, the critical allegation was that P.W.1 attempted to commit suicide after she and her family members were insulted by the accused persons herein. It was also her further case that she was admitted in the hospital where the family members of A1 met her and requested not to lodge a complaint to the police. If these were true, then her failure to lodge a complaint to the police immediately after the alleged incident on 19.06.2017 is inexplicable. However, when she finally gave a complaint some five months later, she knew that there was hardly any hope in expecting A1 to marry her. Therefore, her failure to mention the name of the hospital where she was admitted or the failure of P.W.9, the Investigating Officer to investigate about the hospital where she was treated



for her attempt to commit suicide become significantly material. Secondly, when a young unmarried women attempted to commit suicide, it would be difficult to hush it up in village circumstances. The Investigating Officer has colossally failed to investigate this angle. This is followed by a second incident on 10.11.2017. Here P.W.1 would say that the accused persons have poured kerosene on her and also assaulted P.W.2. Still no complaint was instantly lodged.

12. The evidence available on record, if collated together, does not inspire the confidence of the court either about the proof of any individual segment of the prosecution case on any specific fact, nor the whole of them. Here it may have to be stated that while lapses in memory of a witness can be appreciated as a consequence of human frailty, but not an attempt to improve a case with new facts. An instance of lapse in memory hence cannot be equated with an effort to improve a case, since the former relates to a failure to state a fact that has happened the way it has, but improving a fact amounts to introducing a fact which has never happened, something that belongs to the realm of imagination. Here this Court spots that the prosecutrix has attempted to improve her case which taints her case with a coat of suspicion. When facts, whose proof does not inspire confidence, then it will be perilous for the prosecution. Consequently, it will be dangerous for the Court to enter a finding against the accused persons. Viewed from every conceivable angle, this Court does not find that the prosecution was able to prove the guilt of the appellants on any one of the charges that are framed against them. Surely, the accused are entitled to be acquitted, which this Court does now.

13. In conclusion, this Court holds that the prosecution has not proved the guilt against the accused persons. Consequently, the charges fail and both the appeals are allowed and the appellants are directed to be set free. The judgment of the learned Sessions Judge, Mahila Court, Cuddalore dated 23.07.2021 in Sessions Case No.176 of 2019 is set aside. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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1. The Sessions Judge,
Mahila Court
Cuddalore.

- Copy To

+1cc to Mr.N.U.Pressanna, Advocate, S.R.No.12619

NRL (CO)
RLP (17/05/2022)