



Bail Slip

The Appellant / Accused viz., Kumar was released on Bail in M.P.No. 1 of 2007 in CrI.A.No.23 of 2007 dated 09.01.2007 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.23 of 2007

Kumar

...Appellant/Accused

vs.

The State by
The Deputy Superintendent of Police
Arakkonam Division
Vellore District
Cr.No.127/2005

...Respondent/Complainant

Criminal Appeal filed under Section 397 and 401 of Cr.P.C., against the judgment dated 7.12.2006 made in Spl.S.C.No.5 of 2006 on the file of Principal Sessions Court, Vellore District.

For appellant : Mr.V.Krishnamoorthy for
Mr.P.Krishnan

For Respondent : Mr.P.Govindarajan,
Addl.Public Prosecutor.

JUDGMENT

The convictions and sentences dated 07.12.2006 passed in Special Sessions Case No.5 of 2006 by the Principal District and Sessions Court, Vellore are being challenged in the present criminal appeal.

2. The sum and substance of the case of the prosecution is that the prosecutrix belongs to Scheduled Caste, whereas, the accused belongs to Most Backward Community. On 17.06.2005, at about



6.00 a.m., near Motor Pumpset of the accused, in Vadakandigai Village, the accused has tried to rape the prosecutrix. After occurrence, the prosecutrix herself has given a complaint and the same has been registered in Crime No.127 of 2005. The complaint alleged to have been given by the prosecutrix has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigating Officer, viz., P.W.12, has taken up investigation, examined connected witnesses and also made arrangements to conduct medical examination to the prosecutrix. After his transfer, his successor in office, viz., P.W.14, has conducted further investigation and after completing the same, laid a final report on the file of Judicial Magistrate Court, Arakkonam and the same has been taken on file in P.R.C.No.44/2005.

4. The Judicial Magistrate, Arakkonam, after considering the facts that the offences alleged to have been committed by the accused are triable by sessions court, has committed the case to the trial court and the same has been taken on file in Special Sessions Case No.5/2006.

5. The trial court, after hearing both sides and upon perusing the relevant documents has framed the first charge against the accused under Section 376 read with Section 511 of the Indian Penal Code (hereinafter called as "IPC"); second charge against him under Section 3(1)(xi) of SC/ST Act; third charge under Section 3(1)(xii) of ST/ST Act, 1999 and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 14 have been examined and Exhibits P.1 to P.22 and Material Objects 1 to 5 have been marked.

7. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. On the side of accused, D.W.1 has been examined.

8. The trial court, after hearing arguments of both sides and upon perusing the relevant evidence available on record has found the accused guilty under Section 376 read with Section 511 IPC and also under Sections 3(1)(xi) of SC/ST Act and under Section 3(1)(xii) and 3(2)(5) of ST/ST Act, 1999 and imposed sentence as mentioned in the judgment. Against the convictions and sentences passed by the trial court, the present criminal appeal has been preferred at the



instance of the accused as appellant.

9. The learned counsel appearing for the appellant/accused has befittingly contended that the trial court has not posed certain questions under Section 313 of the Criminal Procedure Code, 1973 to the accused in consonance with the available evidence on record and under the said circumstances, the entire convictions and sentences passed by the trial court are liable to be interfered with.

10. In fact, this court has closely perused the evidence adduced by the prosecutrix, who has been examined as P.W.1. In fact, in Question Nos.3, 4 and 9, certain words have not been uttered by the prosecutrix. Therefore, it is quite clear that certain questions posed to the accused under Section 313 of the Criminal Procedure Code, 1973 are not in consonance with the evidence available on record. Since certain questions posed under Section 313 of the Criminal Procedure Code, 1973 are not in consonance with the available evidence on record, it is needless to state that the entire convictions and sentences passed by the trial court are liable to be set aside and matter is liable to be remitted to the file of the trial court.

In fine, this criminal appeal is allowed. The convictions and sentences passed by the trial court are set aside and Special Sessions Case No.5 of 2006 is remitted to the file of the trial court. The trial court is strictly directed to frame questions under Section 313 of the Criminal Procedure Code, 1973 in consonance with the available evidence on record. The trial court is also directed to dispose of the Special Sessions Case No.5/2006 before the end of December 2015. The fine amounts paid by the appellant/accused are ordered to be refunded forthwith. The Registry is directed to send all records.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

nvsri



To

1.The Principal Sessions Judge,
Vellore District.

2.The Judicial Magistrate,
Arakkonam.

3.The Chief Judicial Magistrate,
Vellore (For information)

4.The Superintendent,
Central Prison,

5.The Deputy Superintendent of Police
Arakkonam Division
Vellore District
Cr.No.127/2005

6.The Public Prosecutor,
High Court, Madras.

7.The Section Officer,
Criminal Section,
High Court, Madras.

1CC to Mr.P.Krishnan, Advocate, SR 52236

Crl.A.No.23 of 2007

PVR (CO)
PSI (07.10.2015)