

BAIL SLIP

Appellant in Crl.A.No.291 of 2007 (Accused in S.C.No.105 of 2004 dated 14.03.2007 on the file of the District and Sessions Judge, (Special Judge for SC/ST Cases) Namakkal) was directed to be released on bail as per order of this Court dated 26.03.2007 in Crl.M.P.No.1 of 2007 in Crl.A.No.291 of 2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.291 of 2007

Murugesan

... Appellant/Accused

Vs.

State by Deputy Superintendent of Police
Tiruchengode
(Elachipalayam Police Station)

... Respondent/Complainant

Criminal Appeal filed under Section 374 of Cr.P.C., against the judgment and conviction made in S.C.No.105 of 2004 dated 14.03.2007 on the file of the District and Sessions Judge (Special Judge for SC/ST Cases), Namakkal.

सत्यमेव जयते

For appellant : Mr.C.D.Johnson

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

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JUDGMENT

The convictions and sentences dated 14.03.2007 passed in Sessions Case No.105 of 2004 by the Principal District and Sessions Court, Namakkal are being challenged in the present Criminal Appeal.

2. The sum and substance of the case of the prosecution is that the accused has used to lend money to the husband of the prosecutrix. On 14.7.2003 at about 10 a.m., the accused has come to the house of the prosecutrix and shown a blank paper, wherein the signature of her husband is found and threatened her by way of saying that if her husband has not discharged the entire amount, he would abduct the daughter of the prosecutrix and finally he directed her to come to Rasipuram bus stand and accordingly the prosecutrix has gone there and subsequently abducted her and thereafter he placed the prosecutrix in the house of one Papu, which situates in Renganayakanpalayam and thereafter, the accused has raped her. After occurrence on 8.11.2003, the prosecutrix herself has given a complaint and the same has been registered in Crime No.240 of 2003. The complaint alleged to have been given by prosecutrix has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigating Officer, P.W.16, has conducted investigation, examined the connected witnesses and also made arrangements for having medical examination of the prosecutrix. After completing investigation, he laid a final report on the file of the Judicial Magistrate, Tiruchengode and the same has been taken on file in P.R.C.No.10 of 2004.

4. The Judicial Magistrate, Tiruchengode, after considering the facts that the offence alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the Court of Sessions, Namakkal Division and the same has been taken on file in Sessions Case No.105 of 2004.

5. The trial court, after hearing both sides and upon perusing relevant records has framed the first charge against the accused under section 366, second charge under section 344, third charge under section 376(1) of Indian Penal Code, fourth charge under section 3(1)(xii) of SC & ST Act, 1989, fifth charge under section 3(2)(v) of the said Act and the same have been read over and explained to the accused. The accused has denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 16 have been examined and Exhibits 1 to 21 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 on record, he denied his complicity in the crime. On the side of the accused, D.Ws.1 and 2 have been examined.

8. The trial court, after hearing arguments of both sides and upon perusing the available evidence on record has found the accused guilty under Section 366 and 344 of IPC and also under section 3(1) (xii) of SC & ST Act, 1989 and sentenced him to undergo imprisonment and also imposed fine amounts as mentioned in the judgment. The trial court has acquitted the accused in respect of charges framed under section 376(1) of Indian Penal Code and also under section 3(2) (v) of SC & ST Act, 1989. Against the convictions and sentences passed by the trial court, the present Criminal Appeal has been filed at the instance of the accused as appellant.

9. The learned counsel appearing for the appellant/accused has contended that the alleged occurrence has taken place on 14.07.2003 and First Information Report has come into existence on 8.11.2003 and even in the first charge, it has been clearly stated that the accused has made threat on the date of occurrence at about 10 a.m., and in pursuance of such threat, the prosecutrix has gone to bus stand, Rasipuram at about 4 p.m., on the same day, during interregnum period, she has not made attempt to report the matter to her husband or somebody else or go to Police Station. Under the said circumstances, the entire case of the prosecution is highly artificial and the court below without considering the conduct of the prosecutrix has erroneously found the accused guilty under the sections mentioned in the judgment and therefore, the convictions and sentences passed by the court below are liable to be interfered with.

10. The learned Additional Public Prosecutor has contended that in the instant case, the prosecutrix has been examined as P.W.1 and some independent witnesses have been examined as P.Ws 5 and 7 and all of them have stated about the threat alleged to have been made by the accused in the house of the prosecutrix and further the prosecutrix has given clear evidence with regard to abduction and also wrongful restraint and the court below, after considering the evidence available on record, has rightly found the accused guilty under the sections mentioned in the judgment and therefore, the convictions and sentences passed by the trial court do not require any interference.

11. It is seen from the records that the occurrence has taken place on 14.07.2003. During the course of occurrence, on the same day at about 10 a.m., the accused has come to the house of the prosecutrix and threatened her by showing the blank paper, which bears the signature of her husband and ultimately directed her to come to bus stand, Rasipuram and on the same day at about 4p.m., she has gone there and thereafter she has been brought to house of P.W.6 by name Papu.

12. Even from a mere reading of the first charge, the Court can easily deduce that the initial occurrence has taken place on 14.7.2003 at about 10 a.m. If really such occurrence has taken place, since on the same day at about 4 p.m., the prosecutrix, as directed by the accused, has gone to bus stand, Rasipuram, during interregnum period, she would have conveyed everything either to her husband or to somebody else. But, in the instant case, the said aspect is completely lacking. Therefore, it is quite clear that the genesis of the case of the prosecution cannot be believed in.

13. The second charge put forth on the side of the prosecution is that after abduction, the prosecutrix has been taken to the house of P.W.6, but unfortunately, P.W.6 has not supported the version of prosecution. Since P.W.6 has not supported the case of the prosecution, the second charge framed against the accused remains unproved.

14. The learned Additional Public Prosecutor has contended with great vehemence that P.Ws.5 and 7 are neighbours and they have spoken about the threat alleged to have been made by the accused on the date of the occurrence. As pointed out earlier, if such occurrence has taken place, as spoken by the prosecution, definitely the prosecutrix would not have remained silent without informing to her husband or to others. Since, as stated earlier, the said aspect is completely lacking on the side of the prosecution and since no explanation has been given by the prosecutrix, it is needless to state that the entire case of the prosecution is nothing but farce and the same cannot be believed in.

15. The trial court, without considering the veracity of the prosecutrix and other connected witnesses, has erroneously come to the conclusion that the appellant/accused has committed the offence punishable under sections 366 and 344 of Indian Penal Code and also under section 3(1)(xii) of SC & ST Act, 1989 and in view of the discussions made earlier, this Court has found considerable force in

the contentions put forth on the side of the appellant/accused and altogether, the present Criminal Appeal is liable to be allowed.

In fine, this Criminal Appeal is allowed. The convictions and sentences passed in Sessions Case No.105 of 2004 by the Principal District and Sessions Court (Special Court for SC/ST Act), Namakkal are set aside. The appellant/accused is acquitted. Bail bond, if any executed by him, shall stand cancelled. Fine amount, if any paid by him, is ordered to be refunded forthwith.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ajr

To :

1. The Judicial Magistrate,
Thiruchengode
2. - do - The Chief Judicial Magistrate,
Namakkal.
3. Principal District and Sessions Court
(Special Court for SC/ST Act), Namakkal
4. The Superintendent,
Central Prison,
Salem.
5. Deputy Superintendent of Police
Tiruchengode (Elachipalayam Police Station)
6. The Public Prosecutor,
High Court, Chennai

+1cc to Mr.C.D.Johnson, Advocate, S.R.No.48012

TEJ(CO)
CA(21/09/2015)

Cr1.A.No.291 of 2007