

Bail Slip

The Accused/Appellant herein Viz., Iqbal @ Iqbal Khan, S/o. Ajeez Khan Was directed to be released on bail as per order dated 13.6.2008 made in MP.No.1 of 2008 in Crl.Appeal No.300/2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08-10-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal No.300 of 2007

Iqbal @ Iqbal Khan Appellant/Accused

Vs.

State
rep. by the Inspector of
Police, W.23, All Women Police Station
Royapettah, Chennai - 14
(Crime No.2/2005) Respondent/Complainant

Criminal Appeal under Section 374, Cr.P.C., against the judgment of Conviction under Section 376(1), IPC and sentenced to undergo Rigorous Imprisonment (RI) for ten years and to pay a fine of Rs.50,000/- in default of which to undergo RI for two years and the conviction under Section 508, IPC and sentenced to undergo RI for one year and the conviction under Section 506(2), IPC and sentenced to undergo RI for two years made on 12-09-2006 on the file of Sessions Judge, Mahila Court Magalir Neethimandram, Chennai.

For appellant :: Mr. S. Nambirajan
For respondent :: Mr. P. Govindarajan,
Additional Public Prosecutor

JUDGMENT

In the present case, an incipient of 18 years' old damsel under the influence of fake sorcery, has been frequently deflowered by the accused, who has attained the age of 44 and also father of two daughters.

2. The schema of the case of the prosecution is that the prosecutrix along with other family members has resided in Door No.10, Thullukanam Garden, Dr. Natesan Road, Chennai - 5. The father of the prosecutrix has been suffering from cecity, whereas her mother has worked in Kuwait during the relevant

period. The accused has resided in a portion of the said house by way of posing himself as an Astrologer. Since the mother of the prosecutrix has served in Kuwait, during May 2004, the accused used to interact with the prosecutrix on her way to Printing Press work. The accused has used to say that the prosecutrix is having devil effect in her body and her mother is having a cobra on her head and due to that, he directed the prosecutrix to come to his portion for the purpose of removing those defects and accordingly, the prosecutrix has gone to his portion. The accused has applied oil on her head by way of chanting mantra and thereafter, he mixed a powder in water and asked the prosecutrix to consume the same. The prosecutrix has consumed the said powder mixed water and subsequently, she has become unconscious and thereafter, the accused has deflowered her. During the months of September and October, 2004 on New Moon days, the accused has used to deflower her and due to that, the prosecutrix has become pregnant. Further, the accused has directed the prosecutrix not to divulge anybody about her pregnancy, by way of threatening that he would make her parents ineffective. On 17-02-2005, the accused has taken the prosecutrix to the house of his friend, which is situate in Kannaki Nagar, Thorapakkam. On 18-02-2005, he has taken her to Pulianthope and on 25-03-2005, by making the prosecutrix unconscious, he has taken her to Nagore Dargah and subsequently, dropped her at Chennai on 26-03-2005. After the occurrence, the prosecutrix on 27-03-2005 has given a complaint and the same has been registered in Crime No.2 of 2005. The complaint given by the prosecutrix has been marked as Ex-P1.

3. On receipt of Ex-P1, the Investigating Officer viz., P.W.6, has conducted investigation, examined connected witnesses. After completing investigation, P.W.6 has laid a final report on the file of the Judicial Magistrate Court No.18, Saidapet, Chennai and the same has been taken on file in P.R.C.No.133 of 2005.

4. The Judicial Magistrate No.18, Saidapet 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 Sessions Case No.65 of 2006.

5. The Trial Court after hearing arguments of both sides and upon perusing the relevant records has framed the first charge under Section 376(1), second charge under Section 508, third charge under Section 417 and fourth charge under Section 506(ii), IPC 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 6 have been examined and Exs-P1 to P8 have been marked.

7. When the accused has been questioned under Section 313, Cr.P.C., as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been let in on the side of the accused.

8. The Trial Court after hearing the arguments on both sides and after contemplating the evidence available on record has found the accused guilty under Sections 376(1), IPC and sentenced him to undergo ten years' RI and also imposed a fine of Rs.50,000/- with usual default clause. The accused is also found guilty under Section 508, IPC and sentenced to undergo one year RI. He has also been found guilty under Section 506 (ii), IPC and sentenced to undergo imprisonment for two years. 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 compendium of the case of the prosecution is that at the time of occurrence, the prosecutrix has just attained 18 years of age. During the relevant period, her mother has gone to Kuwait in connection with work and her father is a man of cecity. The prosecutrix, her father and others have lived in a house bearing door No.10, Thulukkanam Garden, Dr. Natesan Road, Chennai - 5 and in a portion of the said house from 29-04-2004, the accused has resided by way of posing himself as an Astrologer. The prosecutrix has used to go to one Printing Press in connection with her work and on her way, frequently, the accused has tried to interact with her and he used to say that the prosecutrix has possessed devil effect and her mother is having a cobra on her head and by way of doing mantra, he can remove all those defects and accordingly, during August 2004, he directed the prosecutrix to come to his portion and applied oil on her head and also directed her to consume powder mixed water and accordingly, she consumed the same and after sometime, she has become unconscious and by way of taking advantage of her unconsciousness, the accused has deflowered her and thereafter, in the same year in the months of September, October during New Moon days, the accused has asked her to come to his portion and under the guise of doing sorcery, he raped her and after sometime, he has taken her to various places and due to his coition, the prosecutrix has become pregnant and he threatened her not to cause abortion by way of saying that if she causes abortion her parents would become ineffective.

10. The prosecutrix has been examined as P.W.1 and the concerned Doctors have been examined as P.Ws.3 to 5. The mother of the prosecutrix has been examined as P.W.2. The Trial Court after considering available evidence on record has found the accused guilty under Sections 376(1), 508 and 506 (ii), IPC and imposed sentences as noted down earlier.

11. The learned counsel appearing for the appellant/accused has contended that both the prosecutrix and accused have loved each other and only with her consent, the accused has had carnal copulation and since the accused has not been able to marry the prosecutrix, she has given a false complaint and even at the time of returning from Nagore, the mother of the prosecutrix has been in the house and therefore, the entire case of the prosecution is false and the Trial Court without considering the lack of evidence to the effect that the accused is a sorcerer, has erroneously invited convictions and sentences against him and therefore, the convictions and sentences passed by the Trial Court are liable to be interfered with.

12. In order to controvert the contentions put forth on the side of the appellant/accused, the learned Additional Public Prosecutor has repeatedly contended that at the time of commission of offences, the prosecutrix has just attained 18 years of age and she is nothing but a credulous girl and by way of taking advantage of her innocence, the accused, posing himself as a sorcerer has directed her to come to his portion and made her unconscious and thereafter, he deflowered her very often and due to that, she has become pregnant and even after becoming pregnant, the accused has threatened her, by way of saying that he would make her parents ineffective, if she caused abortion. In fact, the prosecutrix has given a picturesque/credible evidence and her evidence has been clearly corroborated by medical evidence and the Trial Court after considering plethora of evidence available on record has rightly found the accused guilty under Sections 376(1), 508 and 506(ii), IPC and further, it is nothing but an apology to contend that both the prosecutrix and accused have loved each other, since the accused has not been able to marry her, she has given a false complaint and therefore, the arguments put forth on the side of the appellant/accused cannot be accepted.

13. The main contention put forth on the side of the prosecution is that the accused has resided in a portion of the house, where the family members of the prosecutrix have lived. The sum and substance of the contention put forth on the side of the prosecution is that the accused has posed himself as an Astrologer and also doing some sorts of sorcery. It is seen from the evidence that during the relevant period, the mother of the prosecutrix has gone to Kuwait to eke out her livelihood and her father has suffered from cecity. The prosecutrix has gone to a Printing Press in connection with her work.

14. The substratum of the case of the prosecution is Ex-P1, complaint alleged to have been given by the prosecutrix, coupled with her evidence.

15. In Ex-P1, the entire epitome which had happened in betwixt the prosecutrix and accused is clearly mentioned. The prosecutrix has been examined as P.W.1, and her specific evidence is that during the relevant period her mother has gone to Kuwait and her father has suffered from eye disease and due to that, she used to go to a Printing Press in connection with her work and on her way, very often, the accused tried to interact with her and on one day, the accused has told her that she is having devil effect and her mother is having a cobra on her head and both the defects can be removed by way of chanting mantra and due to that, he directed her to come to his place and accordingly, she has gone there and he applied oil on her head and subsequently, directed her to consume powder mixed water and after taking the same, she has become unconscious and taking advantage of her unconsciousness, he deflowered her in the month of August 2004 and during subsequent months on New Moon days, the accused has repeated the same and due to that she has become pregnant and thereafter, she has gone to Doctor Mohana (P.W.3), where she found her pregnancy and asked her to cause abortion. But the accused has firmly refused to cause abortion by way of saying that it is his child. Further, she deposed that the accused has taken her to Nagore for the purpose of conducting marriage and since he has not been able to meet a person, again, he brought her to her house. Further, she has deposed that after knowing the evil design of the accused, she told her mother and thereafter, given the complaint, viz., Ex-P1.

16. The evidence given by the prosecutrix has been clearly corroborated by P.W.3, Dr.Mohana. The specific evidence given by P.W.3 is that on 15-04-2005, she examined the prosecutrix and found five months' pregnancy. Further, the prosecutrix reported her to the effect that one known person has deflowered her.

17. From a cumulative reading of the evidence given by P.Ws.1 and 3, the Court can unflinchingly come to a conclusion that during August 2004, under the guise of doing nihility, the accused has directed the prosecutrix to come to his portion and after making her unconscious, deflowered her. By way of adopting the same methods, he has had coitus with her during the months of September and October 2004 and only due to his overt acts, the prosecutrix has become pregnant.

18. The main defence taken on the side of the appellant/accused is both the accused and prosecutrix have loved each other and since the accused has not been able to marry the prosecutrix, she has given a false complaint viz., Ex-P1.

19. At this juncture, the Court has to meticulously look into the answers given by the accused to the questions posed to him under Section 313, Cr.P.C.. Nowhere it is stated that both the prosecutrix and accused have loved each other.

Further, it is learnt that the accused has already got married and also having two children. Under the said circumstances, the theory of love put forth on the side of the appellant/accused is nothing but a brain wave of his counsel and the same cannot be accepted.

20. The ancillary contention put forth on the side of the appellant/accused is that no materials have been seized to prove that the accused has indulged in doing sorcery. In the prologue of this judgment, it is pointed out that the prosecutrix has been put under fake sorcery. Since the accused has himself posed as an Astrologer and also doing sorcery, it is highly impossible on the part of the prosecution to recover some things relevant. Therefore, the ancillary contention put forth on the side of the appellant/accused is really sans merit.

21. It has already been pointed out that during the relevant period, the prosecutrix has just attained the age of 18 years. The father of the prosecutrix has been suffering from eye disease and her mother has gone to Kuwait. Therefore, the prosecutrix has gone to a Printing Press in connection with her work and on her way, the accused has spread his dragnet and she has become a prey of him. Further, from the evidence adduced by the prosecutrix, the Court can easily deduce that the prosecutrix is a credulous girl and by way of believing attractive/imperative words uttered by the accused, she has been completely under the control/clutches of the accused. Under the said circumstances, she has failed to divulge the overt acts of the accused, earlier.

22. In the instant case, the occurrence has taken place during the months of August, September and October, 2004. Ex-P1 has come into existence on 27-03-2005. It has already been pointed out that during the relevant period, the prosecutrix has been under the complete control of the accused and further, at that point of time, her mother has been in Kuwait. Under the said circumstances, the delay in giving Ex-P1 has occurred and that itself would not impinge the evidence given by the prosecutrix and also other available evidence. Further, it is not an adulation to say that the prosecutrix has adduced trustworthy/believable evidence, so as to come to a conclusion that the accused has committed offences punishable under Sections 376(1), 508 and 506(ii), IPC.

23. Even at the risk of repetition, the court would like to point out that even an iota of material is not available in the present case so as to come to a conclusion that both the accused and prosecutrix have loved each other and only with her consent, the accused has had carnal copulation with her and due to that, she has become pregnant. Therefore, viewing from any angle, the contention put forth on the side of the appellant/accused are not having subsisting force. The Trial Court, after considering the overwhelming evidence available on

record has rightly found the accused guilty under Sections mentioned supra.

24. In view of the discussion made earlier, this Court has not found any infirmity or illegality in the convictions and sentences passed by the Trial Court and altogether, this criminal appeal deserves to be dismissed.

In fine, this criminal appeal is dismissed. The convictions and sentences passed by the Trial Court in Sessions Case No.65 of 2006 are confirmed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

glp
To

1. The Inspector of Police,
W.23, All Women Police Station
Royapettah, Chennai - 14
2. The Sessions Judge,
Mahila Court Magalir Neethimandram,
Chennai.
3. The Metropolitan Magistrate No.XVIII,
Saidapet, Chennai.
4. The Chief Metropolitan Magistrate,
Egmore, Chennai.
5. The Superintendent, Central Prison,
No.I, Puzhal, Chennai.
6. The Public Prosecutor,
High Court, Madras.
7. The Section Officer,
Criminal Section, High Court, Chennai.

Criminal Appeal No.300 of 2007

VGI(CO)
EU 26.10.15