

BAIL SLIP

Appellant in CrI.A.No.307 of 2008 (Accused in SC.No.18/2008 dated 25.3.2008 on the file of the Addl. District Sessions Judge, Ranipettai, FTC II, was directed to be released on bail as per order of this Court dated 7.7.2008 in M.P.No.2 of 2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.307 of 2008

Senthil @ Gowthaman Appellant/Petitioner.

v.

State by
Inspector of Police
Kaveripakkam Police station
Vellore District

... Respondent /Complainant

Criminal Appeal filed under Section 374 of Cr.P.C., to call for the records and to set aside the judgment and sentence dated 25.3.2008 imposed in S.C.No.18 of 2008 on the file of the learned Additional Sessions Judge, Fast Track Court II at Ranipettai.

For appellant : Mr.R.Vivekanandan for Mr.A.Stalin

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

JUDGMENT

The convictions and sentences dated 25.03.2008 passed in Sessions Case No. 18 of 2008 by the Additional District and Sessions Judge, Fast Track Court No.II, Ranipettai are being challenged in the present Criminal Appeal.

2. The crux of the case of the prosecution is that on 25.10.2007, at about 1.00 p.m., while the prosecutrix has been proceeding towards a land bearing Survey No.98, the accused has chased and caught hold of her, gagged her mouth and subsequently raped her. After occurrence, the prosecutrix has given the complaint in question and the same has been registered in Crime No.32 of 2007. The complaint alleged to have been given by the prosecutrix has been marked as Ex.P1.

3. On receipt of Ex.P.1, the Investigating Officer, has conducted investigation, examined the connected witnesses and also made arrangements to conduct potential test to the accused and further, the prosecutrix has also been subjected to medical examination. After completing investigation, laid a final report on the file of the Judicial Magistrate Court, Wallajapet and the same has been taken on file in P.R.C.No.5 of 2007.

4. The Judicial Magistrate, Wallajapet, 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 Court of Sessions, Vellore Division and the same has been taken on file in Sessions Case No. 18 of 2008.

5. The Trial Court, after hearing the arguments of both sides and upon perusing the relevant documents, has framed a combined charge under sections 376 and 342 of Indian Penal Code 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 22 have been examined, Exs.P1 to P.31 and Material Objects 1 to 7 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. No oral evidence has been adduced on the side of the accused and Exs. D1 and D2 have been marked.

8. The trial court, after hearing arguments of both sides and after contemplating the available evidence on record, has found the accused guilty under Section 342 of Indian Penal Code and sentenced him to undergo six months rigorous imprisonment. Further, the Trial Court has found the accused guilty under Section 376 of Indian Penal Code and sentenced him to undergo 7 years Rigorous Imprisonment and also imposed a fine of Rs.10,000/- with usual default clause. 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 specific case of the prosecution is that on the date of occurrence while the prosecutrix has been proceeding towards a land bearing Survey No.98, the accused has wrongfully restrained her and subsequently deflowered her. The Trial Court has found the accused guilty under section 342 of Indian Penal Code, but in the charge necessary materials are not available so as to constitute the offence punishable under section 342 of Indian Penal

Code and therefore, the charge framed by the Trial Court is totally erroneous and consequently the convictions and sentences passed by the Trial Court are liable to be set side.

10. The learned Additional Public Prosecutor has fairly conceded that in the instant case, the first charge has been framed under section 342 of Indian Penal Code. But, the Trial Court has clubbed two sections viz., 376 and 342 together and framed a charge and that too without sufficient materials so as to constitute the offence punishable under section 342 of Indian Penal Code .

11. It is seen from the charge that on 25.10.2007, at about 1.00 p.m., while the prosecutrix has been proceeded towards the land bearing Survey No.98, the accused has chased and caught her and subsequently gagged her mouth and thereafter deflowered her. In fact, no materials are available so as to constitute the offence punishable under section 342 of Indian Penal Code. Without sufficient materials under the said section, the Trial Court has simply added the said section along with section 376 of Indian Penal Code. Therefore, it is quite clear that the charge framed by the Trial Court is totally bereft of particulars in respect of section 342 of Indian Penal Code. Under such circumstances, the conviction and sentence passed by the Trial Court are not factually and legally sustainable 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.18 of 2008 by the Trial Court are set aside and Sessions Case No.18 of 2008 is remitted to the file of Trial Court. The Trial Court is strictly directed to frame a charge under section 342 of Indian Penal code by way of furnishing necessary particulars. The fine amount paid by the appellant/accused is ordered to be refunded to the appellant/accused forthwith. The trial court is also strictly directed to dispose of Sessions Case No.18 of 2008 before the end of January 2016 and report the matter to the Registry without fail. Registry is directed to send all the records to the trial court immediately.

Rj

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To :

1. The Judicial Magistrate No.1,
Wallajah.

2. -do- thro'the Chief Judicial Magistrate,
Vellore.

3.The Addl District and Sessions Judge,
Fast Track Court II at Ranipettai.
(to dispose the case and report before
this registry at the end of January,2016)

4.The Superintendent,
Central Prison, Vellore.

5.Inspector of Police
Kaveripakkam Police station
Vellore District

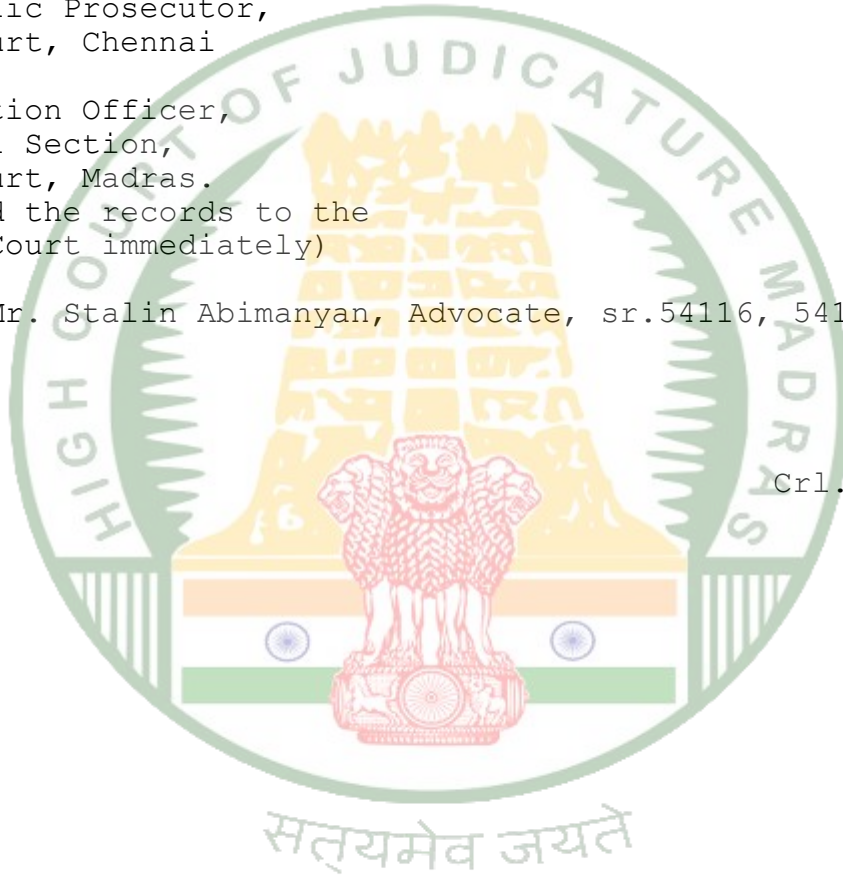
6.The Public Prosecutor,
High Court, Chennai

7.The Section Officer,
Criminal Section,
High Court, Madras.
(to send the records to the
trial Court immediately)

+2 cc to Mr. Stalin Abimanyan, Advocate, sr.54116, 54184 (16/10/2015)

tej(co)
prk6/10

Crl.A.No.307 of 2008



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