

BAIL SLIP

The Appellant/Accused Viz., Neelakandan, S/o.Sivasankaran was released on bail as per Order dated 24.04.2008 made in M.P.No.1 of 2008 in CrI.A.No.319 of 2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.319 of 2008

Neelakandan

... Appellant

Vs.

The State
rep. By Inspector of Police,
All Women Police Station
Vridhachalam
Cuddalore District

... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment passed by the Sessions Judge, Mahila Court, Cuddalore, Cuddalore District in S.C.No.351/2007 dated 02.04.2008.

For appellant : Mr.S.Saravana Kumar

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

JUDGMENT

Challenge in this Criminal Appeal is to the conviction and sentence dated 02.04.2008 passed in Sessions Case No.351 of 2007 by the District and Sessions Court (Mahila Court) Cuddalore.

2. The sum and substance of the case of the prosecution is that the first accused by name Neelakandan is the son of the accused Nos.2 and 3. The first accused and the prosecutrix have loved each other

and even without her consent, the first accused has raped her. Further, the first accused has promised to marry her and subsequently refused to keep up his promise. The accused 2 and 3 have directed the prosecutrix to abort pregnancy of the prosecutrix and also threatened her. Under the said circumstances, the prosecutrix has given a complaint and the same has been registered by the Investigating Officer viz., P.W.10 in Crime No.2/2007. The complaint alleged to have been given by the prosecutrix is marked as Ex.P.6.

3. On receipt of Ex.P.6, P.W.10-Investigating Officer has taken up investigation and also made arrangements to conduct Potential Test to the first accused and accordingly doctor Saravanakumar (P.W.2) has done potential test to the first accused. Likewise, doctor Vijay Ananda Thanbaiyah (P.W.3) has examined the prosecutrix and after completing investigation, P.W.10 has laid the final report on the file of Judicial Magistrate Court No.2, Vridhachalam and the same has been taken on file in P.R.C.No.29/2007.

4. The Judicial Magistrate No.2, Vridhachalam, after considering the facts that the offences alleged to have been committed by all the accused are triable by the sessions court has committed the case to the trial court and the same has been taken on file in Sessions Case No.351 of 2007.

5. The trial court, after hearing the arguments of both sides and upon perusing the relevant documents has framed first charge against the first accused under Section 376 of the Indian Penal Code (hereinafter called as "IPC"); second charge against him under Section 417 of the IPC; the third charge against accused 2 and 3 under Section 4 of the Tamil Nadu Prohibition of Women Harassment Act; fourth charge against them under Section 506(ii) of the IPC and the same has been read over and explained to them. The accused have denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 10 have been examined and Exhibits P.1 to P.11 have been marked.

7. When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

8. The trial court, after hearing arguments of both sides and upon perusing the relevant evidence available on record has found the

first accused guilty under Section 417 of the IPC and sentenced him to undergo one year rigorous imprisonment and also imposed a fine of Rs.10,000/- with usual default clause. Further, the trial court has directed that fine amount of Rs.10,000/- should be given to the prosecutrix by way of compensation. The trial court has acquitted the remaining charges framed against the first accused and Accused Nos.2 and 3. Against the conviction and sentence passed by the trial court, the present criminal appeal has been preferred at the instance of the 1st accused as appellant.

9. The learned counsel appearing for the appellant/1st accused has befittingly contended that the trial court, without considering the overall evidence adduced by the prosecutrix has erroneously found the appellant/1st accused guilty under Section 417 of the IPC and therefore, the conviction and sentence passed by the trial court are liable to be interfered with.

10. Per contra, the learned Additional Public Prosecutor has contended that even in the complaint, it has been clinchingly stated to the effect that the first accused has promised to marry the prosecutrix and subsequently, he refused to keep up his promise. Under the said circumstances, he has committed the offence punishable under Section 417 of the IPC and the prosecutrix has also given clear evidence to that effect and the trial court, after considering the plenitude of evidence available on record, has rightly invited the conviction and sentence against the first accused/appellant and the same do not warrant interference.

11. The only point that has to be decided in the present criminal appeal is as to whether the conviction and sentence passed by the trial court against the first accused under Section 417 of the IPC are factually and legally sustainable ?

12. For considering the divergent submissions made on either side, the court has to necessarily look into the evidence given by the prosecutrix. The prosecutrix has been examined as P.W.5. The complaint alleged to have been given by her has been marked as Ex.P.6. In the evidence given by the prosecutrix, it is clearly stated to the effect that the first accused is a close relative of the prosecutrix and she knows very well that the first accused has already got married and he has also been blessed with a child. Further, she has clearly deposed to the effect that conducting second marriage is not possible.

13. From a close reading of the evidence given by the prosecutrix, the court can easily deduce that the prosecutrix knows the marriage of the first accused and she also knows that conducting second marriage is not possible. Since the prosecutrix herself has given such kind of evidence, it is needless to state that the first accused would not have given any promise to marry the prosecutrix as his second wife. Since the first accused has not given such kind of promise, question of cheating does not arise. The trial court, without considering the evidence given by the prosecutrix has erroneously come to a conclusion that the first accused has committed an offence punishable under Section 417 of the IPC. In view of the discussion made earlier, this Court has found considerable force in the argument put forth on the side of the first accused/appellant and altogether, the criminal appeal is liable to be allowed.

In fine, this criminal appeal is allowed. The conviction and sentence passed in Sessions Case No.351 of 2007 passed by Sessions Judge, Mahila Court, Cuddalore are set aside. The appellant/first 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

nvsri

To :

1. The Inspector of Police,
All Women Police Station
Vridhachalam
Cuddalore District

2. The Sessions Judge,
Mahila Court,
Cuddalore,
Cuddalore District

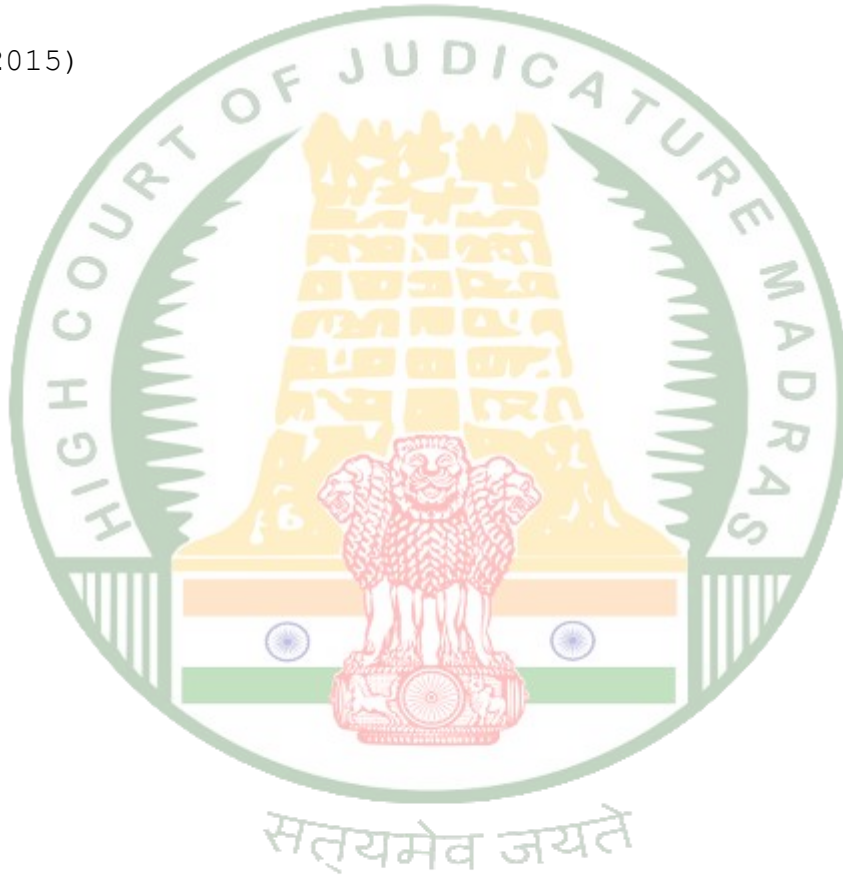
3. The Judicial Magistrate No.II,
Vridhachalam.

4. The Public Prosecutor,
High Court, Madras

+1cc to Mr.S.Saravanakumar, Advocate, S.R.No.51256

Crl.A.No.319 of 2008

GP (CO)
CA(07/10/2015)



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