



Bail Slip

That the Appellants (Narasimhan @ Lakshmi Narayanan, S/o. Madhavan in Crl.A.No.32 of 2007 and T.Kotteeswaran @ Kotti, S/o. V.Sundarajan) in Crl.A.No.257 of 2007 (2nd Accused in Crl.A.No.32 of 2007 and 1st Accused in Crl.A.257 of 2007) in S.C.No.131 of 2006 on the file of the Additional District and Sessions Judge, Fast Track Court No.I, Tindivanam) were released on bail as per order of this court dated 10.01.2007 in M.P.No.1 of 2007 in Crl.A.32 of 2007 and 23.04.2007 in M.P.No.1 of 2007 in Crl.A.No.257 of 2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal Nos.32 and 257 of 2007

Narasimhan @ Lakshmi Narayanan

...Appellant
in Crl.A.32 of 2007 (A2)

T.Koteeswaran @ Kotti

... Appellant
in Crl.A.257 of 2007 (A1)

vs.

State
Inspector of Police
Bramhadesam Police Station
Tindivanam
(Crime No.270/2005)

... Respondent in
both the Criminal Appeals (Complainant)

Criminal Appeals filed under Section 374(2) of Cr.P.C., against the judgment and conviction dated 14.12.2006 in S.C.No.131 of 2006 passed by the Additional District and Sessions Judge, Fast Track Court-I, Tindivanam.

For appellants : Mr.R.Karunakaran in Crl.A.32/2007
Mr.Arun Anbumani in Crl.A.257/2007
for N.Raja Senthoo Pandian
For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor.



COMMON JUDGMENT

These Criminal Appeals have been directed against the convictions and sentences dated 14.12.2006 passed in Sessions Case No.131 of 2006 by the Additional District and Sessions Judge, Fast Track Court No.I, Tindivanam.

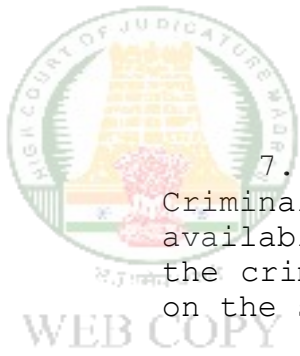
2. The epitome of the prosecution case is that on 31.05.2005, the prosecutrix has not attained majority; with intention to commit rape, the accused 1 and 2 have kidnapped her from her house and subsequently she has been taken to the house of the second accused, which situates in Arpichampalayam village, wherein, the first accused has raped her. After occurrence, the father of the prosecutrix, by name Krishnasamy Naidu has given a complaint dated 03.06.2005 in Bramhadesam Police Station and the same has been registered in Cr.No.270/2005 and the same has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigating Officer viz., P.W.16, has taken up investigation, examined connected witnesses and also arrested the accused and subsequently made arrangements to undergo medical check up and subsequently, both the first accused and prosecutrix are subjected to medical examination. After completing investigation, P.W.16 has laid a final report on the file of Judicial Magistrate Court, No.2, Tindivanam and the same has been taken on file in P.R.C.No.39/2005.

4. The Judicial Magistrate No.2, Tindivanam, after considering the facts, has found that the offences committed by both the accused are triable by the Sessions Court, committed the case to the Court of Sessions, Villupuram and the same has been taken on file in Sessions Case No.131 of 2006 and subsequently, made over to the trial court.

5. The trial court, after hearing both sides and upon perusing the relevant records has framed first charge against both the accused under Section 366 (A) of the Indian Penal Code and second charge against first accused under Section 376 of the Indian Penal Code (hereinafter called as "IPC") and the same have 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 16 have been examined and Exs.P.1 to 14 have been marked.



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

8. The trial court, after contemplating the available evidence on record has found the first accused guilty under Section 366(A) of the IPC and sentenced him to undergo 3 years Rigorous Imprisonment and also imposed a fine of Rs.1000/- with usual default clause and he has also been found guilty under Section 376 of the IPC and sentenced to undergo 7 years Rigorous Imprisonment and also imposed a fine of Rs.2000/- with usual default clause. The trial court has found the second accused guilty under Section 366(A) of the IPC and sentenced to undergo 3 years Rigorous Imprisonment and also imposed a fine of Rs.1000/- with usual default clause. Against the conviction and sentence passed by the trial court, the first accused has preferred Criminal Appeal No.257 of 2007 and the second accused has preferred Criminal Appeal No.32 of 2007 on the file of this Court.

9. The sum and substance of the case of the prosecution is that during minority of the prosecutrix, on 31.05.2005, both the accused have kidnapped her from her house and subsequently brought her to the house of the second accused, whereby, the first accused has raped her.

10. The trial court, after considering the available evidence on record, has found both the accused guilty under Section 366(A) of the IPC and found the first accused guilty under Section 376 of the IPC and imposed sentences as stated supra.

11. The learned counsel appearing for the appellants have meticulously contended that the prosecutrix has been examined as P.W.3 and her specific case is that after alleged kidnapping on 02.06.2005, marriage has been performed in a Temple and subsequently, the first accused has had coition with her and the trial court without considering the nature of evidence adduced by the prosecutrix, has erroneously found both the accused guilty under Section 366(A) of the IPC and the first accused under Section 376 of the IPC and therefore, the convictions and sentences imposed by the trial court are liable to be set aside.



12. The learned Additional Public Prosecutor has also equally contended that in the instant case, during minority of the prosecutrix, she has been kidnapped by both the accused and subsequently lodged in the house of the second accused and thereafter, the first accused has raped her and in order to substantiate the case of the prosecution, the prosecutrix has given picturesque evidence and further her evidence has been fortified by way of adducing relevant medical evidence and the trial court, after considering the overwhelming evidence available on the side of the prosecution has rightly found both the accused guilty under Section 366(A) of the IPC and the first accused under Section 376 of the IPC and therefore, the convictions and sentences passed by the trial court against the appellants/accused are not liable to be interfered with.

13. During pendency of these criminal appeals, in Criminal Appeal No.257 of 2007, an application has been filed in M.P.No.1 of 2015 under Section 391 of the Criminal Procedure Code, 1973, so as to receive certain documents as additional evidence. In fact along with M.P.No.1 of 2015, certain photographs have been annexed, wherein, the first accused has tied thali around the neck of the prosecutrix.

14. The main argument put forth on the side of the appellant in Criminal Appeal No.257 of 2007/first accused is that the marriage between the first accused and prosecutrix has been performed in the presence of some relatives on 02.06.2015 and the same has been candidly admitted by the prosecutrix, but the trial court has not considered the same.

15. In fact, this Court has groped the evidence given by the prosecutrix (P.W.3) and her specific evidence is that on 02.06.2005, the first accused has married her and subsequently both of them have had sexual intercourse.

16. It has already been pointed out that along with M.P.No.1 of 2015, certain photographs taken during the time of marriage performed in between the first accused and prosecutrix are filed. Since the prosecutrix herself has admitted in her evidence about the factum of marriage, the photographs filed along with M.P.No.1 of 2015 are very much essential for rendering proper justice in the present case.

17. It is true that on the side of the first accused, photographs filed along with M.P.No.1 of 2015 have not been marked at the time of trial and that itself cannot be a basis for rejecting the contentions put forth on his side.



18. Further, it is seen from records that in the second charge, no specific date has been mentioned with regard to the offence punishable under Section 376 of the IPC. It is not an exaggeration to say that the second charge is totally bereft of necessary particulars. Under the said circumstances, for marking the photographs filed along with M.P.No.1 of 2015 through the proper witnesses and also for amending the second charge properly, this Court is of the view to remand the matter to the trial court and therefore, the convictions and sentences passed by the trial court against the appellants/accused are liable to be set aside.

19. In fine, these Criminal Appeals are allowed. The convictions and sentences passed against the appellants/accused are set aside and the Sessions Case No.131 of 2006 is remanded to the file of the trial court. In the trial court, the first accused is directed to file proper petition for marking the documents (photographs) filed along with M.P.No.1 of 2015 by way of recalling the concerned witnesses.

20. The Registry is directed to return all the photographs to the appellant/1st accused filed along with M.P.No.1 of 2015 in CrI.A.No.257 of 2007. The trial court is specifically directed to dispose of Sessions Case No.131 of 2006 before the end of October 2015 and report the same to the Registry without fail. The Registry is also directed to send all the records forthwith.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Additional District and Sessions Judge,
Fast Track Court-I,
Tindivanam.



2.-Do- Through The Principal Sessions Judge,
Villupuram.

3.The Judicial Magistrate I,
Tindivanam.

4.The Judicial Magistrate No.II,
Tindivanam.

5. 3 & 4 -Do- Through The Chief Judicial Magistrate,
Villupuram.

6.The Inspector of Police
Bramhadesam Police Station
Tindivanam.

7.The Superintendent,
Central Prison, Vellore.

8.The Public Prosecutor,
High Court, Madras.

9.The District Collector,
Vellore.

10.The District Collector,
Villupuram.

11.The Director General of Police,
Chennai - 4.

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

2 CCs to M/s. N.Raja Senthool Pandian, Advocate, SR 40887

1 CC to Mr.R.Karunakaran, Advocate SR.No. 40297

Cr1.A.Nos.32 and 257 of 2007

NM (CO)
PSI (24.08.2015)