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BAIL SLIP

That the Appellant/Accused namely Uthirasamy S/O.Ramagounder, was directed to be released on Bail as per the order of this Court dated 12.01.2007 and made in MP.NO.1/2007 in Crl.A.No.72 of 2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 4.8.2015.

CORAM

THE HON'BLE MR.JUSTICE A.SELVAM

Criminal Appeal No.72 of 2007

Uthirasamy

Appellant

vs.

State by Inspector of Police,
Ammapettai Police Station,
Crime No.30 of 2004,
Erode District.

Respondent

Criminal Appeal against the judgment dated 29.12.2006 made in S.C.No.75 of 2006 on the file of the Additional District Sessions Judge (Fast Track Court No.4), Bhavani.

For appellant : Mr.N.Manokaran

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

JUDGMENT

Challenge in this Criminal Appeal is to the conviction and sentence dated 29.12.2006 passed in S.C.No.75 of 2006 by the Additional District and Sessions Court (Fast Track Court No.4), Bhavani.

2. The nubble of the prosecution case is that both the prosecutrix and accused are neighbours. By way of giving false promise of marrying the prosecutrix during the festival occasion in the year 2006, the accused has had carnal copulation with the prosecutrix. The accused had abducted the prosecutrix on 26.1.2004 and thereafter, raped her without consent. After occurrence, the mother of the prosecutrix, by name Annakodi, as de facto complainant, has given a complaint to the Inspector of Police (PW12) and the same



has been registered in Crime No.30 of 2004. The complaint given by the de facto complainant has been marked as Ex.P1.

3. On receipt of of Ex.P1, the investigating officer (PW12) has taken up the investigation, examined connected witnesses and after his transfer, his successor in office (PW13) has conducted further investigation and after completing the same, laid a final report on the file of the Judicial Magistrate Court, Bhavani and the same has been taken on file in P.R.C.No.3 of 2006.

4. The Judicial Magistrate, Bhavani, after considering the fact 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, Erode Division and the same has been taken on file in S.C.No.75 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 the first charge against the accused under section 366 of the Indian Penal Code and second charge against him under section 376(1) of the Indian Penal Code and the same have been read over and explained to him. The accused denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 13 have been examined and Exs.P1 to P11 and M.Os.1 to 7 have been marked.

7. When the accused has been questioned under section 313 of the Code of Criminal Procedure, 1973 in respect of the incriminating materials available in evidence against him, he denied his complicity in the crime. On the side of the accused, no oral evidence has been adduced. But, Exs.D1 to D3 have been marked.

8. The Trial Court, after hearing the arguments of both sides and upon perusing the relevant available evidence, has found the accused guilty under section 366 of the Indian Penal Code and sentenced him to undergo 5 years rigorous imprisonment and the accused has also been found guilty under section 376(1) of the Indian Penal Code and sentenced to undergo 7 years rigorous imprisonment. Against the conviction and sentence passed by the Trial Court, the present criminal appeal has been preferred at the instance of the accused as appellant.

9. The learned counsel appearing for the appellant/accused has contended that the prosecutrix has been examined as PW8 and even in chief examination, she has not supported the case of the prosecution and further, in cross-examination, she has categorically admitted to the fact that eight months prior to the date of occurrence, both of them have loved each other and only with her consent, the accused has married her. Under the said circumstances, the accused cannot be mulcted with the liability under section 366 and 376 (1) of the Indian Penal Code and the Trial Court, without considering the



10. In order to substantiate the conviction and sentence passed by the Trial Court, the learned Additional Public Prosecutor has repeatedly contended that in the chief examination of prosecutrix, it has been specifically stated to the effect that the accused has had carnal copulation with the prosecutrix against her will during festive occasion in a temple and therefore, the accused has committed the offence punishable under section 376(1) of the Indian Penal Code and in the said circumstances, the conviction and sentence passed by the Trial Court are perfectly correct and the same do not warrant any interference.

12. Even though on the side of the prosecution, P.Ws.1 to 13 have been examined, the evidence given by the prosecutrix (PW8) plays a pivotal role.

14. The Trial Court, without considering the fragile and rickety type of evidence adduced by the prosecutrix (PW8), has erroneously found the accused guilty under sections 366 and 376(1) of the Indian Penal Code. In view of the above, this court is of the view that conviction and sentence passed by the Trial Court are not factually and legally sustainable and the same are liable to be set aside.

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sentence passed by the Trial Court are set aside and the appellant/accused is acquitted. Bail bonds, if any, executed by him shall stand cancelled.

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Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

ssk.
To

- 1.The Judicial Magistrate, Bhavani
 - 2.-do-Thro The chief Judicial Magistrate,
Erode (for Information)
 3. Additional District Sessions Judge
(Fast Track Court No.4), Bhavani.
 4. Inspector of Police,
Ammapettai Police Station,
Erode District.
 5. The Public Prosecutor, High Court,
Madras
 - 6.The Superintendent, Central Prison,
Coimbatore,
 - 7.The District Collector, Erode,
- +1 cc to Mr.N.Manoharan, Advocate sr.40298

Crl.A.No.72 of 2007

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