

The Appellant/Accused Viz., R.Inbaraj, was released on bail as per the order of this Court dated 11.08.2006, in CrI.M.P.No.1 of 2006 in CrI.A.No.620/2006.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.620 of 2006

R.Inbaraj

... Appellant/Accused

vs.

State rep. by
The Inspector of Police,
All Women Police Station
Salem 1

... Respondent /Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the conviction and sentence by the judgment dated 30.6.2006 passed in S.C.No.142 of 2005 on the file of the First Additional District and Sessions Court, (Mahila Court), Salem.

For appellant : Mr.N.R.Elango, Senior Counsel
for Mr.K.Govi Ganesan

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

JUDGMENT

Challenge in this Criminal Appeal is to the conviction and sentence dated 30th day of June, 2006 passed in Sessions Case No.142 of 2005 by the First Additional District and Sessions Court (Mahila Court), Salem.

2. The sum and substance of the case of the prosecution is that the prosecutrix is the daughter of the defacto complainant by name Palanisami and on 7.8.2003 at about 2 a.m., the accused has entered into the house of the defacto complainant and without the consent of the prosecutrix, he deflowered her. After occurrence, the defacto complainant has given the complaint in question on 11.1.2004 and the same has been registered in Crime No.3 of 2004 by the Investigating Officer, who has been examined as P.W.10. The complaint alleged to have been given by the defacto complainant has been marked as Ex.P.1.

3. On receipt of Ex.P.1, P.W.10, Investigating Officer has taken up investigation, examined the connected witnesses and also made arrangements to conduct potential test to the accused and accordingly Dr.Ravishankar, P.W.9 has conducted potential test to the accused and further P.W.5 Dr.Radhika has examined the prosecutrix and issued Ex.P.2. After completing the investigation, the Investigating Officer has laid a final report on the file of the Judicial Magistrate No.1, Salem and the same has been taken on file in P.R.C.No.17 of 2004.

4. The Judicial Magistrate No.1, Salem, 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.142 of 2005.

5. The trial court, after hearing arguments of both sides and upon perusing the relevant documents, has framed first charge under section 450 of Indian Penal Code, second charge under section 376 of Indian Penal Code against the accused 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 10 have been examined and Exhibits P.1 to P.9 have been marked.

7. When the accused has been questioned under Section 313 of the Criminal Procedure Code, 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 arguments of both sides and after contemplating the available evidence on record, has found the accused guilty under Section 417 of the IPC and sentenced him to undergo one year Rigorous Imprisonment and also imposed a fine of Rs.20,000/- with usual default clause. The trial court has acquitted the accused in respect of the charges framed under sections 450 and 376 of IPC. Against the conviction and sentence passed by the trial court under section 417 of IPC, the present Criminal Appeal has been preferred at the instance of the accused as appellant.

9. The crux of the case of the prosecution is that on 7.8.2003 at about 2 a.m., the accused has trespassed into the house of the defacto complainant and without the consent of the prosecutrix, he deflowered her.

10. As pointed out earlier, the trial court has disbelieved the charges framed under sections 450 and 376 of Indian Penal Code and consequently acquitted the accused under the said sections. However, the trial court has found the accused guilty under section 417 of

Indian Penal Code.

11. The learned senior counsel appearing for the appellant/accused has befittingly contended that the accused has faced two charges punishable under sections 450 and 376 of IPC and no specific charge has been framed under section 417 of IPC, but the trial court has erroneously found the accused guilty under the said section and sentenced him to undergo one year rigorous imprisonment and also imposed a fine of Rs.20,000/-. Under the said circumstances, the conviction and sentence passed by the trial court under section 417 of IPC are liable to be set aside.

12. The learned Additional Public Prosecutor has fairly conceded that there is no specific charge framed under section 417 of the Indian Penal Code.

13. It is an admitted fact that the entire case of the prosecution is that on 7.8.2003, at about 2 a.m., the accused has entered into the house of the defacto complainant and without the consent of the prosecutrix, he deflowered her. Since no mention has been made to the effect that the accused has given false promise to an extent of marrying the prosecutrix, it is needless to state that the conviction and sentence passed by the trial court under section 417 of IPC are not factually and legally sustainable.

14. It is a settled principle of law that without framing a charge, an accused cannot be punished under any section of law. In the instant case, as anim adverted to earlier, even without framing a charge under section 417 of IPC, the trial court has erroneously invited conviction and sentence under the said section against the appellant/accused. Under the said circumstances, the contention put forth on the side of the appellant/accused is really having subsisting force and altogether the present Criminal Appeal is liable to be allowed.

In fine, this Criminal Appeal is allowed. The conviction and sentence passed against the appellant/accused in Sessions Case No.142 of 2005 by the I Additional District and Sessions Court (Mahila Court), Salem are set aside. The accused/appellant is acquitted. The bail bond, if any executed by the accused/appellant, shall stand cancelled. Fine amount if any paid by him is ordered to be refunded forthwith.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

ajr

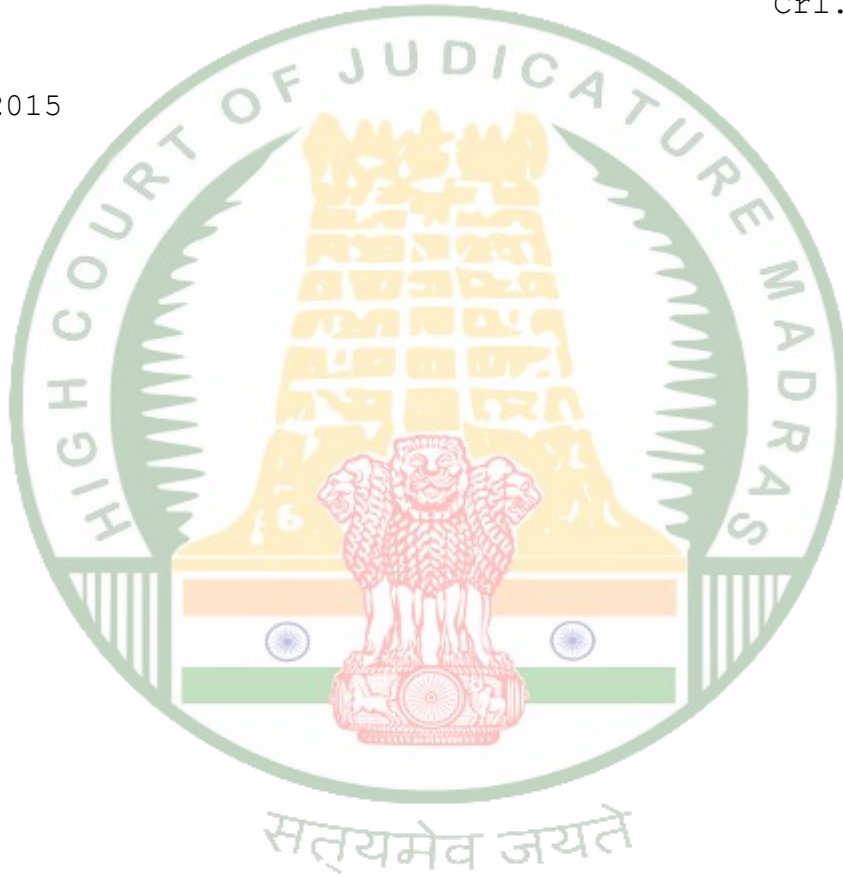
To :

1. First Additional District and Sessions Court (Mahila Court), Salem
2. The Inspector of Police, All Women Police Station, Salem 1
3. The Public Prosecutor, High Court, Chennai.
4. The Judicial Magistrate No.I, Salem
5. The Chief Judicial Magistrate, Salem

1 cc to M/s.T.K.S.Gandhi , Advocate Sr.No.53006

CrI.A.No.620 of 2006

rsk(co)
pmk.1.10.2015



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