Bail Slip

The Appellant herein namely John Gnanaraj, S/O (Late) Solomon Raja in S.C.No.46 of 2011 dated 7/3/2015 on the file of the Special Court and Principle Sessions Court, Villupuram, was released on bail on 15/04/2015 in Crl.M.P.No.1 of 2015 in Crl.A.No.135 of 2015 on the file of this Court.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.135 of 2015

John Gnanaraj .. Appellant

- Vs -

State rep by
Dy. Superintendent of Police,
Villupuram.
(Cr.No.11 of 2010) .. Respondent

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the Special Court (Principle Sessions Court), Villupuram in S.C.No.46 of 2011 dated 07.03.2015.

For Appellant : Mr.N.Chandrasekhar

For Respondent : Mr.T.Raja
Additional Public Prosecutor

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J U D G M E N T

(Judgment of the Court was delivered by S.Nagamuthu, J.)

The appellant is the sole accused in S.C.No.46 of 2011 on the file of the Special Court (Principal Sessions Court), Villupuram. He stood charged for offences under Section 417 I.P.C. and Section 376 I.P.C. r/w Section 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. By judgment dated 07.03.2015, the trial Court

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convicted him under all the charges and sentenced him to undergo rigorous imprisonment for one year for offence under Section 417 I.P.C. and to undergo imprisonment for life and pay a fine of Rs.1,00,000/- in default to undergo rigorous imprisonment for one year for the offence under Section 376 I.P.C. r/w Section 3 (2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

2. The case of the prosecution in brief is as follows:

2.1. P.W.1, the alleged victim was a spinster. She was 23 years old at the time of occurrence. She was residing at Irruvelapatti village in Villupuram district. She was working as a data entry operator in a computer center at Villupuram on the Trichy Main Road. She admittedly belonged to Scheduled Caste. The accused belongs to Vellallar community, which is a Backward Caste. The accused was also working in the same company.

2.2 During the year 2009, when they both were working in the same concern, the accused, proposed that he had developed a love for her. Initially P.W.1 refused to accept the said love. But after 4 – 5 months, according to her, she responded positively and she also expressed her love for the accused. Therefore they discussed among themselves and decided to marry. They decided to marry before August 15th 2009. But the marriage did not take place.

2.3. On 15.08.2009, when the accused and P.W.1 were in their office, around 11.30 a.m. the accused extended sexual overtures towards her. Though initially P.W.1 was not inclined to have sexual intercourse with him, within a short while, she agreed to have sex with him because the accused gave a promise that he would marry her. Thus on 15.08.2009 at the computer center itself, the accused and P.W.1 had sexual intercourse.

2.4. Again, on 25.04.2009 (this is the date mentioned by P.W.1 in her deposition) at around 04.30 p.m. at the office itself, the accused and P.W.1 had sexual intercourse. In the month of October 2009, it came to light that on account of the sexual intercourse they had, P.W.1 became pregnant. When she disclosed the same to the accused, the accused assured to marry her after securing B.A. Degree by him. He further requested her to undergo abortion. The accused and P.W.1 went to one Dr.Mohana at Villupuram with a request to abort the fetus. But they did not meet the doctor because they found the cousin of P.W.1 working in the said hospital. Then the accused gave her some tablets and on consuming the same, the fetus was aborted. These incidents were not informed to any one either by P.W.1 or the accused.

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2.5. After the abortion also on few occasions, the accused and P.W.1 had sexual intercourse. P.W.1 believed that the accused would marry. But later on, when she insisted the accused to marry her, he was evasive. Then, she informed her employers P.Ws.5 and 6 about the above facts. They enquired the accused. The accused confessed to them that he had sexual intercourse with P.W.1.

2.6. Then, one Rajangam a family friend of both the accused and P.W.1 intervened. He assured P.W.1 that he would persuade the parents of the accused and to arrange for marriage between P.W.1 and the accused. Accordingly, Mr.Rajangam approached the parents of the accused. But they refused to arrange for marriage between the accused and P.W.1. The parents of the accused told them that they would give money to P.W.1 and P.W.1 should give up the claim for marriage.

2.7. On 09.08.2010, P.W.1 made a representation to the employer of the father of the accused. He also intervened and few more well wishers also intervened. But they all told that the accused was a young boy, who has not settled down in life and therefore there was no scope to arrange for the marriage. At last, P.W.1 made complaint to the police.

2.8. P.W.14 the then Sub Inspector of Police of All Woman Police Station, Villupuram on receipt of the complaint registered a case in Crime No.11 of 2010 under Sections 417 and 376 I.P.C r/w Section 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Ex.P1 is the complaint and Ex.P7 is the F.I.R.

2.9. The investigation was taken over by P.W.16 the then Deputy Superintendent of Police. He examined P.W.1, her family members and few more witnesses and recorded their statements. He arrested the accused on 30.11.2010 at 03.30 p.m. The accused and P.W.1 were sent for medical examination. The reports revealed that P.W.1 had undergone frequent sexual intercourse and that the accused was capable of performing penile sexual intercourse with a woman. On completing the investigation, he laid chargesheet against the accused.

2.10. Based on the above materials, the trial Court framed charges against the accused as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case, on the side of the prosecution as many as 16 witnesses were examined and 10 documents were marked.

2.11. Out of the said witnesses, P.W.1, the victim, has stated about the facts which we have already narrated herein above. P.W.2 the father of P.W.1 has stated that P.W.1 told him

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about the occurrence and thereafter he made a complaint to a pastor. P.W.3 is the mother of P.W.1. She has also spoken about the same facts as spoken by P.W.2. P.W.4 is a villager of Pannampattu village. He knew the accused. He only got employment for the accused in the computer center. He has stated that on few occasions, he had seen P.W.1 and the accused moving closely. He has further stated that P.W.1 once told him that the accused had sexual intercourse with her and he was refusing to marry her. He has further spoken about the subsequent talks he made with the parents of the accused.

2.12. P.Ws.5 and 6 are the proprietors of the computer center where the accused and P.W.1 were working. They have spoken about the enquiry they made with the accused, in which the accused accepted that he had sexual intercourse with P.W.1 P.W.7 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.8 has spoken about the medical examination conducted on P.W.1 and her opinion that P.W.1 had undergone frequent sexual intercourse. But she did not find any symptom that P.W.1 had undergone abortion. P.W.9 the Tahsildar has stated that P.W.1 belongs to Scheduled Caste, for which he had issued a certificate under Ex.P5.

2.13. P.W.10 was a pastor. He has stated that the father of P.W.1 came and met him once and told him that the accused was refusing to marry P.W.1 after having sex with her. According to him, he spoke to the father of the accused but he did not agree for marriage. P.W.11 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.12 is a villager, who has stated that once the father of P.W.1 told him that the accused had refused to marry P.W.1 after having sex with her. P.W.13 Dr.Annaraj has spoken about the medical examination conducted on the accused. He has stated that the accused was capable of performing penile sexual intercourse with a woman. P.W.14 has spoken about the registration of the case on the complaint of P.W.1. P.W.15 has spoken about the certificate issued by him to the R.D.O. to the effect that the accused belonged to backward class. P.W.16 has spoken about the investigation done and the final report filed.

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3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. On his side, one Mr.John Joseph Raj has been examined as D.Ws.1. He is the brother of the accused. He has stated that the complaint against the accused has been made falsely out of some enmity. On his side a pamphlet issued by an anonymous person was marked as Ex.D1.

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4. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment and that is how, he is before this Court with this appeal.

5. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and also perused the records, carefully.

6. In this case, P.W.1 the prosecutrix, at the time of occurrence, even according to her own admission, was aged 25 years. She was working in a computer center as a Date Entry Operator. Thus P.W.1 is an educated woman. According to her, the accused was also working there and they were friends for sometime. Then, the accused expressed his love for her. The said proposal was not initially agreeable to her. She has further stated in her chief examination that after four or five months of the said proposal, she volunteered and told that she had also fallen in love with him and she propose to marry the accused. It is her further evidence that they discussed on their future and both of them mutually agreed to marry each other.

7. According to P.W.1, the first act of sexual intercourse happened at the computer center itself on 15.08.2009 at around 11.30 a.m. Subsequently also, on few occasions, they had sexual intercourse. It is sated that on account of the same, she became pregnant. This would only indicate that as admitted by P.W.1, the accused and P.W.1 had free sex on several occasions in the office. Though it is stated by P.W.1 that she agreed to have sexual intercourse with P.W.1 because he promised to marry her, we find it difficult to accept the said evidence of P.W.1. The narration of the facts by P.W.1 herself would go to show that being a grown up woman, on account of her desire to have sex, she had voluntarily shared sex with the accused. We find it difficult to accept the theory that but for the promise made by the accused, she would not have agreed for sex with the accused. The agreement to marry was mutual. We do not find any connection with this agreement and the sexual intercourse P.W.1 had with the accused. As we have already pointed out, actuated by her desire to have sex, out of her own volition, P.W.1 had sex with the accused. Thus, she was a consenting party for the sexual intercourse. Therefore, in our considered view, the act of the accused in having sexual intercourse with P.W.1 would not amount to rape as defined in Section 375 of I.P.C.

8. Now turning to the conviction for the offence under Section 417 I.P.C, we find that the prosecution has proved the case. As we have already pointed out when the initial proposal for marriage was made by the accused, P.W.1 did not positively

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respond to the same. After 4 – 5 months thereafter, it was only the P.W.1 who proposed for marriage by extending her love for the accused. The accused then responded positively. Thus, at the very inception, there was no deception played by the accused at all. They had sexual intercourse on several occasions. The medical evidence also corroborates the evidence of P.W.1. Subsequently, after she became pregnant, it appears that P.W.1 wanted the accused to marry her. The accused should have married P.W.1 because he was the biological father of the child in the womb. But he wanted her to abort the fetus, which P.W.1 also did. This, in our considered view was done with an evil mind. After abortion had taken place, the accused had taken a different stand though it is in evidence that his parents refused to arrange for marriage that would not have deterred the accused to marry P.W.1. Thus, at the time when he wanted P.W.1 to abort, he started playing deception by his subsequent acts in refusing to marry would amount to an offence of cheating. But for the promise made by the accused, P.W.1 would not have undergone abortion. Thus, this act of the accused would amount to an offence under Section 417 I.P.C.

9. Now turning to the quantum of sentence, the maximum punishment provided for an offence under Section 417 I.P.C. is one year rigorous imprisonment. Having regard to the gravity of the offence, we are inclined to impose the maximum punishment of rigorous imprisonment for one year. The trial Court has not imposed any fine for the said offence and therefore we are unable to impose fine.

10. In the result, the appeal is partly allowed on the following terms:

> (i) The conviction and sentence imposed on the appellant/accused by the trial Court for the offence under Section 376 I.P.C. r/w Section 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is set aside and he is acquitted. However, the conviction and sentence imposed on the appellant/accused for the offence under Section 417 IPC is confirmed.
>
> (ii) It is directed that the period of detention already undergone by the accused shall be given set off under Section 428 Cr.P.C.

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(iii) The fine amount, if any paid, shall be refunded to the appellant.

(iv) Bail bond, if any, executed by the appellant shall stand stands cancelled. The Trial Court shall take steps to secure the accused and commit him to prison so as to undergo the remaining period of sentence.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate,
No.1, Villupuram.

2.-Do- Thro' The Chief Judicial Magistrate,
Villupuram.

3.The Principle Sessions Judge,
Villupuram.

4.The Deputy Superintendent of Police,
Villupuram.

5.The Public Prosecutor,
Madras High Court.

6.The Special Court and Principle Sessions Court,
Villupuram.

7.The Superintendent,
Central Prison, Cuddalore.

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8.The District Collector,
Villupuram.

9.The Director General Of Police,
Mylapore, Chennai-4.

+1cc to Mr.B.Rabu Manohar, Advocate Sr.43695

Crl.A.No.135 of 2015

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srg 22/10/2016

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