

BAIL SLIP

The Accused/Appellant Viz., Amsaraj, Son of Mani @ Mammu was directed to be released on bail as per direction of this Court in M.P.No.1 of 2009 in Crl.A.No.280 of 2009 dated 10.08.2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Crl.A.No.280 of 2009

Amsaraj

... Appellant/Sole Accused

Vs.

State rep. by Inspector of Police,
All Women Police Station,
Kondalampatti,
Salem District.
(Crime No.6 of 2006)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment dated 27.05.2009 in S.C.No.40 of 2008 on the file of the Sessions Court / Mahila Court, Salem.

For Appellant : Mr.B.Vasudevan

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

JUDGMENT

This Criminal Appeal has been filed against the judgment dated 27.05.2009 in S.C.No.40 of 2008 on the file of the Sessions Court / Mahila Court, Salem. By the said judgment, the appellant/accused was convicted for the offence under Section 417 IPC and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo three months rigorous imprisonment; he was also convicted for the offence under Section 506 (Part-2) IPC and sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo three months rigorous imprisonment. The sentences imposed on the appellant/accused

were directed to run consecutively. The appellant/accused was acquitted of the charge under Section 376 IPC.

2. The case of the prosecution is briefly stated hereunder:

(a) About one year prior to 25.09.2005, the appellant/accused, by giving false promise that he would marry P.W.1/de-facto complainant, had sexual intercourse with her. Even afterwards, he had sexual intercourse with her on the said false promise. But the appellant/accused was evading to marry her. In the meanwhile, P.W.1 delivered a female child on 25.09.2005.

(b) P.W.1 informed her father P.W.2 about the appellant/accused. Hence, her father enquired the appellant and his parents, they threatened P.W.1's family and they have also obtained a letter from them stating that the appellant/accused is no way connected to the child delivered by P.W.1. Thereafter, a Panchayat was convened, which ended in vain.

(c) Thereafter, on 23.11.2005, P.W.1 lodged a complaint Ex.P-1 with P.W.11 Sub-Inspector of Police, All Women Police Station, Kondalampatti, Salem District. On receipt of the said complaint, P.W.11 assigned C.S.R.No.479 of 2005. On conducting enquiry, the said C.S.R. was closed by P.W.11. Thereafter, on 23.09.2006, on the basis of the direction of this Court, P.W.1 gave complaint (Ex.P-2) to P.W.12 Inspector of Police, which was registered in Crime No.6 of 2006 for the offences under Sections 417 and 506 (Part-2) IPC. Ex.P-10 is the FIR.

(d) Subsequently, P.W.12 went to the place of occurrence and conducted enquiry; she recorded the statement of the witnesses, namely Muthusamy and P.W.8 Abubakkar. P.W.12 drew Ex.P-11 rough sketch. On 26.09.2006, again P.W.12 went to the place of occurrence and recorded the statement of the witnesses, namely Devaraj, Subramani and Muthusamy. On 14.11.2006, she examined Dr.Irudhaya, Dr.Jain and Dr.Arjunan and recorded their statements. On 12.01.2007, she sent a requisition to the concerned Magistrate for conducting DNA test on P.W.1, accused and the child. On 02.04.2007, the DNA test report, dated 16.03.2007 was received from the Forensic Sciences Laboratory, which confirmed that the appellant/accused is the father of the child born to P.W.1. Thereafter, on 10.07.2007, the offences were altered from Sections 417 and 506 (Part-2) IPC to Sections 376, 417 and 506 (Part 2) IPC. On completion of the investigation, P.W.12 filed charge-sheet before the Court against the appellant/accused for the said offences. The case was taken on file by the trial Court and the trial was conducted in S.C.No.40 of 2008 (Crime No.6 of 2006).

3. In order to prove their case, during the course of trial, the prosecution has examined 12 witnesses and marked 15 documents.

4. When the appellant/accused was questioned under Section 313 Cr.P.C., he denied his complicity in the crime. He neither examined any witness, nor marked any document.

5. Upon hearing the submissions of either side and considering the oral and documentary evidence available on record, the trial Court acquitted the appellant/accused of the charge under Section 376 IPC as no case was made out and convicted the appellant/accused and sentenced him for the offences under Sections 417 and 506 (Part-2) IPC, as stated supra. Challenging the said conviction and sentence, the appellant/accused has filed this Criminal Appeal.

6. When the appeal is taken up for hearing, learned counsel for the appellant/accused submitted that he is mainly arguing the appeal only on the question of sentence of imprisonment imposed on the appellant/accused. The sentences imposed on the appellant for the offences under Sections 506 (Part 2) IPC and 417 IPC, were directed by the trial Court, to run consecutively. He further submitted that the trial Court convicted the appellant/accused on the reasoning that the appellant and his parents threatened P.W.1 and obtained letter from her stating that there is no connection between the child delivered by P.W.1 and the appellant/accused. In this regard, learned counsel for the appellant, by inviting the attention of this Court to the evidence of P.W.1, submitted that in the chief examination of P.W.1, there is no specific allegation against the appellant that he threatened P.W.1. Even in the evidence of P.W.3 (mother of P.W.1), it has been stated that only the parents of the appellant threatened them and not the appellant. Learned counsel therefore submitted that in the absence of any specific evidence against the appellant that he had threatened P.W.1 and obtained the said letter, the conviction and sentence imposed by the trial Court for the offence under Section 506 (Part-2) IPC is not sustainable and therefore, he prayed for setting aside the same.

7. With regard to the conviction under Section 417 IPC, learned counsel for the appellant/accused submitted that the appellant has already been in prison for 83 days and hence, he prayed that considering the age of the appellant, i.e. about 22 years, the sentence imposed under Section 417 IPC may be modified to the period of sentence already undergone by the appellant.

8. Learned Additional Public Prosecutor appearing for the respondent-Police submitted that there is sufficient material to show that the appellant, along with his parents, threatened

P.W.1, and therefore, he submitted that the reasonings assigned by the trial Court are legally sustainable and the same may not be interfered with by this Court and he prayed for dismissal of the appeal.

9. Keeping in mind the above submissions made by learned counsel on either side, I have carefully considered the materials available on record.

10. The main submission of the learned counsel for the appellant/accused is only with regard to the sentence of imprisonment imposed on the appellant for the offence under Section 506 (Part-2) IPC. According to the learned counsel, there is no evidence against the appellant to show that he had threatened P.W.1. In this context, it would be appropriate to extract the relevant portion of the evidence of P.W.1 in her chief examination:

" ... என் அப்பா, எதிரியின் வீட்டிற்கு சென்று எதிரியின் அப்பா, அம்மாவிடம் கேட்டார். அவர்கள் ஒத்துக் கொள்ளவில்லை. ஆட்களை வைத்து என் அப்பாவையும், என் அண்ணனையும் மிரட்டினார்கள். என்னிடம் மிரட்டி கையொப்பம் வாங்கிக் கொண்டார்கள்."

11. Except the above bald and vague statement of P.W.1 in her evidence, there is no specific allegation made against the appellant that he had threatened P.W.1. Even the father of P.W.1, i.e. P.W.2 has stated in his evidence that only the appellant's relatives came and threatened them. The mother of P.W.1, i.e. P.W.3 has stated in her evidence that the parents of the appellant/accused threatened them. As contended by the learned counsel for the appellant/accused, there is no specific evidence available to show that the appellant had threatened P.W.1 and obtained her signature in the letter. Moreover, P.W.5, who is an independent witnesses, has stated in his evidence that at no point of time, P.W.1's family was threatened, but P.W.5's evidence was disbelieved by the trial Court stating that P.W.5 knows the accused and both of them belong to the same village. In my considered opinion, in the absence of any strong and cogent evidence to show that the appellant/accused has criminally intimidated P.W.1 by threatening her, the conviction and sentence imposed on the appellant/accused for the offence under Section 506 (Part-2) IPC is not sustainable and the same is liable to be set aside and accordingly set aside.

12. With regard to the conviction and sentence imposed on the appellant/accused for the offence under Section 417 IPC, I find that the trial Court has imposed the sentence only for a period of one year. Considering the age of the appellant/accused being 22 years, I am of the opinion that at this distant point

of time, it would be appropriate to modify the sentence imposed for the offence under Section 417 IPC to the period already undergone by him. In this connection, learned counsel for the appellant/accused submitted that the appellant was in prison for 83 days. Considering all these factors, while confirming the conviction imposed on the appellant/accused for the offence under Section 417 IPC, this Court modifies the sentence to the period already undergone by him.

13. With the above observations, the appeal is partly allowed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Mahila Court, Salem.
2. The Inspector of Police,
All Women Police Station,
Kondalampatti, Salem District.
(Crime No.6 of 2006).
3. The Judicial Magistrate No.5,
Salem.
4. Do- Through The Chief Judicial Magistrate,
Salem.
5. The Superintendent, सत्यमेव जयते
Central Prison,
Coimbatore.
6. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.B.Vasudevan, Advocate, S.R.No.39344

Cr1.A.No.280 of 2009

BVR(CO)
CA(02/08/2016)