

BAIL SLIP

The sole accused namely sargunam @ sarguharaj s/o. Natarajan was released on bail as per order dated 21.04.2008 in MP. 1 of 2008 in Crl A. No.153 of 2008 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.A.No.153 of 2008

Sargunam @ Sargunaraj
S/o.Natarajan

.. Appellant/Accused

Vs

State: rep.by
The Inspector of Police,
Nellikuppam Police Station,
Cuddalore District.

... Respondent/Complainant

Criminal Appeal filed under section 374 (2) of Criminal Procedure Code against the judgment dated 06.02.2008 passed in S.C.No.256 of 2007 by learned Sessions Judge (Mahila Court), Cuddalore.

For Appellant : Mr.R.Sankarasubbu
For Respondent : Mr.V.Arul,
Additional Public Prosecutor

JUDGEMENT

This appeal arises against the judgment of learned Principal Sessions Judge, Namakkal, passed in S.C.No.256 of 2007 on 06.02.2008.

2. Prosecution case is that PW-2, Soundari, victim girl at the time of occurrence, was aged 17 and studying 10th standard. The accused was her neighbour. One night, when she was in her house, the accused represented that PW-1, her father was unwell and took her to his relative's house at Kodikalkuppam. By compulsion, a yellow thread was tied to her neck in front of a Pillaiyar Temple. She stayed there for 13 days. During such time, the accused, against her will and without her consent, committed rape. PW-1, Nagaiyan had one son named Soundarapandiyan and two daughters, named Soundari (PW-2) and Sankari. In May 2005, he went to attend a Grahapravesam function at Sorapur village. On the next day, his son

Soundarapandiyan came to Cuddalore bus stand and informed that the accused trespassed into his house and committed theft. Therefore, PW-1, Nagaiyan gave a complaint before Nellikuppam Police Station. The accused was arrested and subsequently, there was a compromise. It was due to such enmity that the accused kidnapped PW-2, his daughter Soundari. Thereafter, he gave complaint in Ex.P1 at the Nellikuppam Police Station. On 15.09.2006 at about 14.15 hrs., PW-9, Sub Inspector of Police, Nellikuppam registered a case in Crime No.818 of 2006 for offence under Section 366(A) IPC and forwarded the same to PW-10, The Inspector of Police, Nellikuppam. Upon receipt of FIR, Ex.P10, PW-10 took up investigation and visited the place of occurrence. Upon receiving information, he went to Thiruvanthipuram bridge along with PW-7 and another and secured the accused and the victim girl. He recorded the statement of accused in the presence of PW-7 and others. He produced accused and victim girl before learned Judicial Magistrate. He submitted requisition letter before the learned Judicial Magistrate for conduct medical examination of the accused and victim girl, Certificates whereof were marked as Exs.P11 and P12. He examined PWs-1, 2 and 7 and recorded their statements. On transfer, he handed over investigation to PW-11 Inspector of Police. On 16.09.2006, PW-11, Inspector of Police, took up investigation, examined PW-6 and another and recorded their statements. On 30.09.2006, he examined PWs.3, 5 and 8 and recorded their statements. He examined PW-4 and obtained school certificate of PW-2. On completion of investigation, PW-11 filed charge sheet informing commission of offences u/s.366 and 376(i) IPC. Upon committal, the case was tried in S.C.No.256 of 2007 on the file of Sessions Judge, Mahila Court, Cuddalore.

3. Before trial Court, prosecution examined P.Ws.1 to 11 and marked 12 exhibits. Defence examined DW-1 and on the side of defence, no exhibits were marked. On questioning u/s.313 Cr.P.C., accused denied charges. On appreciation of materials before it, trial Court, under judgment dated 06.02.2008, convicted accused for the offences u/s.366 and 376(1) IPC and sentenced him to undergo 7 years Rigorous Imprisonment and fine of Rs.1,000/-, in default 3 months Rigorous Imprisonment for the offence u/s 366 IPC and 7 years Rigorous Imprisonment and fine of Rs.5,000/-, in default 3 months Rigorous Imprisonment for the offence u/s 376(i) IPC. Trial Court directed both sentences imposed on the accused to run concurrently. There against, the present appeal has been filed.

4. Heard learned counsel for appellant and learned Additional Public Prosecutor for respondent.

5. The alleged occurrence had taken place in the year 2006. It is admitted prosecution case that PW-2/victim was aged about 17 years at the time of occurrence. Prior to the Criminal Law Amendment Act, 2013 (13 of 2013) in force from 03.02.2013, sex with a female, aged 16 years or above, did not amount to rape. Prosecution case, is one of an admitted love affair between accused and PW-2 and the same having been objected to by parents. It is the specific evidence of PW-2 that she has taken residence with the accused at the house of DW-1, aunt of the appellant. The case is of one consensual sex, which is borne out from the fact that PW-2 has spoken to knowledge of complaint preferred by parents and there upon accompanying the accused with the intention of falling at their feet and seeking forgiveness.

6. In the circumstances, this Court holds that neither of the offences are made out against the accused. Appeal shall stand allowed. The conviction and sentence imposed on the appellant/accused shall stand set aside. Appellant is acquitted of all charges. Fine amount, if any, paid by him shall be refunded. Bail bonds, if any, executed by him shall stand cancelled.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Mahila Court,
Cuddalore.
2. The Judicial Magistrate, No.I, Cuddalore.
3. do -thro- the chief judicial magistrate, cuddalore.
4. The Inspector of Police,
Nellikuppam Police Station,
Cuddalore District.
5. The Public Prosecutor,
High Court, Madras.

6. The Superintend,
central prison, cuddalore.

+1cc to Mr.R.SANKARASUBBU Advocate, S.R.No. 54465

Crl.A.No.153 of 2008

RK (CO)
TR(13/12/2017)



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