

BAIL SLIP

Thiagarajan, S/o.Parthiban, Accused in SC.No.222/2009 on the file of Additional District and Sessions Judge Fast Track Court, Thirupathur Vellore District has been released on bail by this Hon'ble Court by order dated 30.07.2010 in CrI.MP.No.1/2010 in CrI.A.No.451/2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on: 03.11.2016

Judgment Pronounced on: 11.07.2017

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.451 of 2010

Thiagarajan Appellant/Accused

Versus

State represented by
The Inspector of Police,
All Women Police Station,
Vaniyambadi, Vellore District. ... Respondent/Complainant

Criminal Appeal filed under Section 374 of the Criminal Procedure Code, challenging the conviction for an offence under Section 376 r/w 511 IPC and sentence of 7 years RI and a fine of Rs.2000/- i/d to undergo 6 months SI imposed by the Judgment dated 20.07.2010 in S.C.No.222 of 2009 by the Additional Sessions Judge-Fast Track Court, Thirupattur, Vellore District.

For Appellant .. Mr.A.M.Rahamath Ali
For Respondent .. Mr.P.Govindarajan,
Additional Public Prosecutor.

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JUDGMENT

The case of the prosecution as per the charge sheet is that on 24.01.2008, at about 7.00 A.M., at Sivasankaran Thoppu at Natrampalli, the accused with the intention of committing rape upon the victim Manimegalai deceitfully called her in the said thoppu for talks, while the said victim reached the said thoppu the said accused sometime after talking with her, with the

intention of committing rape, embraced her and kissed her and after that he removed her dress inspite of her resistance and committed rape upon her against her will and consent. After that on 29.01.2008 at about 7.00 A.M., in front of the house of the accused while the victim questioned about his attitude and insisted him for marriage. At that juncture, the said accused with the intention of intimidating the said victim, had criminally intimidated her with the words that if she failed to leave the place he would kill her. Thus, on the above said facts the accused appears to have committed an offence punishable under Section 376(1) I.P.C., and an offence punishable under Section 506(ii) I.P.C.

2.On the basis of the complaint given by the victim girl before the Vaniyambadi All Women Police Station, the Inspector of Police, All Women Police Station, Vaniyambadi has registered a case against the accused for the offences punishable under Sections 376(1) and 506(ii) IPC in Crime No.1/2008.

3.After completion of investigation, the Inspector of Police, All Women Police Station, Vaniyambadi, has laid a charge sheet before the Judicial Magistrate-IV, Thirupattur. The Judicial Magistrate No.IV, Thirupattur, has taken the case on file in P.R.C.No.20/2008 and committed the same to the District and Sessions Court, Vellore. The District & Sessions Court Vellore, in turn taken the case on file in S.C.No.222/2009 and made over the same to the Additional Sessions Judge (Fast Track Court), Thirupattur. The Additional Sessions Judge after receipt of the same, framed charge against the accused for the offence punishable under Sections 376(1) and 506 (ii) IPC.

4.In order to prove the case of the prosecution, on the side of the prosecution, 13 witnesses were examined as P.W.1 to P.W.13 and 14 documents were marked as Ex.P1 to Ex.P14. P.W.1, is the victim girl, who has spoken about the occurrence. P.W.12 is the Inspector of Police, All Women Police Station, Vaniyambadi who has spoken about the reception of the complaint, registration of First Information Report against the accused and investigation done by her. P.W.9 is the Doctor, who has examined the accused and spoken about the examination of the accused about his potency; P.W.10 is the Doctor who has examined the victim girl and spoken about the medical examination done by her on the victim girl. The other witnesses were turned hostile. After completion of the examination of prosecution witnesses, in respect of the incriminating circumstances found in the evidence of the witness, the accused was examined under Section 313 of Cr.P.C. The accused denied the same. On the side of the accused neither oral evidence nor documentary evidence was produced.

5.The learned trial Judge after hearing the arguments of both the counsel and perusal of the records, acquitted the

accused of the charge under Section 506(ii) IPC but held the accused guilty of an offence punishable under Section 376 r/w 511 IPC and convicted and sentenced him to undergo a period of 7 years RI and a fine of Rs.2000/- i/d to undergo a further period of 6 months SI. Aggrieved by the conviction and sentence passed by the trial Court, the accused is before this Court by way of filing this appeal.

6. On perusal of the evidence and entire records, the case of the prosecution is that P.W.1 and the accused are neighbours at the time of the occurrence; P.W.1 was aged about 21 years; both of them were loving with each other for a period of six years; the accused promised to marry the victim girl-P.W.1 and had sexual intercourse with her; subsequently he refused to marry her; when she questioned the same, he threatened with dire consequences. Therefore, she preferred a complaint before the All Women Police Station, Vaniyambadi. The All Women Police Station registered a case in Crime No.1/2008 for the offences punishable under Sections 376 and 506(ii) IPC against the accused. After investigation, the Inspector of Police, All Women Police Station filed a charge sheet. Subsequently, the said case was taken on file by the Judicial Magistrate No.IV, Thirupattur in PRC No.20/2008 and committed the case to the District and Sessions Court, Vellore. The District and Sessions Court, Vellore, taken the case on file in S.C.No.222 of 2009 and in turn made over the case to the Additional Sessions Court (Fast Track Court), Thirupattur. The learned Additional Sessions Court (Fast Track Court), Thirupattur, acquitted the accused of the charge under Section 506(ii) IPC but held the accused guilty of an offence punishable under Section 376 r/w 511 IPC and convicted and sentenced him to undergo for a period of 7 years RI and a fine of Rs.2000/- i/d to undergo a further period of 6 months SI.

7. Heard Mr.A.M.Rahamath Ali, learned counsel appearing for the appellant and Mr.P.Govindarajan, learned Additional Public Prosecutor.

8. The learned counsel for the appellant would submit that the ingredients of Section 376 r/w 511 IPC are not made out as the evidence of P.W.1 was contrary to the statement in the complaint and the statement given by her before the police. There is no evidence to prove that the accused has committed rape on the victim girl and also attempt to commit rape. Therefore, neither rape nor attempt to rape has been made out by the prosecution. Except the evidence of P.W.1 there is no evidence to corroborate the evidence of P.W.1. The trial Court has failed to consider the ingredients of Section 376 r/w 511 IPC, probably convicted the accused. Therefore, the conviction and sentence are liable to be set aside.

9. On the other hand, the learned Additional Public Prosecutor would submit that the victim girl was examined as P.W.1. She has categorically narrated the incident and the promise made by the accused to marry her and instead of her resistance, forcibly had sexual intercourse and later on he refused to marry her and when she questioned him, he threatened her with dire consequences. Therefore, she has filed the complaint. That apart, the investigation reveals that P.W.1 victim girl has substantiated in her version that the accused has committed the offence. Though the trial Court has come to the conclusion that there is relationship between both the parties, but failed to consider the version of the victim girl that the accused had forcibly had sexual intercourse, however, concluded that the accused has made attempt to rape and convicted the accused for the offence punishable under Section 376 r/w 511 IPC. Therefore, there is no reason to interfere with the conviction recorded by the trial Court. Hence, the appeal is liable to be dismissed.

10. Heard the rival submissions made by both the counsel for the parties and perused the records produced before the trial Court and also the judgment passed by the trial Court and the grounds raised by the appellant before this Court and the available documents.

11. As already stated, the case of the prosecution is that the accused promised to marry the victim girl-P.W.1 and forcibly had sexual intercourse with her. Through her, the prosecution has established the case before the trial Court. The conviction and sentence passed by the trial Court is in order. P.W.1-victim girl was examined as P.W.1 has spoken that P.W.1 and the accused are neighbours at the time of the occurrence, both of them were loving with each other for a period of six years, the accused promised to marry the victim girl-P.W.1 and attempted to have sexual intercourse, when she resisted, he promised to marry her, she refused to succeed his attempt subsequent two times and later on she came to know that he is going to marry his relative and he will not marry the victim girl. When she questioned the same, he threatened with dire consequences. Therefore, she preferred a complaint before the All Women Police Station. P.W.9 is the Doctor who has examined the potency of the accused. P.W.10 is the Doctor who has examined the victim girl and says positive symptom of sexual intercourse. Other witnesses of course turned hostile. However, the evidence of other witness narrates the promise made by the accused to the victim girl to marry her and the attempt made by the accused for having sexual intercourse with the victim girl.

12. Now, the point arises for consideration is:

Whether the offence under Section 376 is made out against the appellant or not?

13. The Point:- Perusal of the evidence of P.W.1 coupled with

the evidence of P.W.10, show that there is possibility of sexual intercourse by the victim girl. Whether the accused had sexual intercourse by giving false promise or with free consent of the victim girl is the question arise for consideration. From the evidence of P.W.1 she has categorically spoken that when the accused made several attempts to have sexual intercourse , she resisted by stating that after marriage she will allow all these things. However, the accused made promise to marry her and forcibly had sexual intercourse. Like this offence this Court cannot expect any other corroborative evidence and other eye-witnesses they only disowned the disputed fact that both are neighbours. Therefore, under these circumstance there is no reason to discard the evidence of P.W.1-victim girl as reiterated time and again this Court and also the Supreme Court in various decisions. In this case, the evidence of victim girl alone is sufficient to prove the case of the prosecution. On perusal of the cross-examination of P.W.1 nothing has been shaken by the defence counsel in cross-examination. Therefore, this Court believes that the accused has given false promise to marry the victim girl and had sexual intercourse with her, later he had refused to marry her. Therefore, the main defence taken by the learned counsel for the appellant is that in the complaint and earlier version she has not spoken about the forcible sexual intercourse. After which the victim girl has spoken during examination the victim disclosed these facts are also given in the complaint due to apprehension that media will publish referring about the reputation of her and also her family. Therefore, she has not revealed the fact either in the complaint or in the earlier occasion about the sexual intercourse. Believing these words that the case like this if the particulars of the girl would be sent out the reputation or future of the girl also be affected. In these circumstances non-disclose of the fact of sexual intercourse in the complaint and in the earlier occasion will not vitiate case for the the offence under Section 376 IPC.

14. In this regard it is relevant to place reliance on the decision in State of H.P. v. Asha Ram, reported in (2005) 13 SCC 766 the Hon'ble Supreme Court placing reliance on a number of earlier decisions such as in the decisions of Rafiq v. State of U.P. (1980) 4 SCC 262; Bharwada Bhoginbhai Hirijibhai v. State of Gujarat (1983) 3 SCC 217; Madan Gopal Kakkad v. Naval Dubey (1992) 3 SCC 204; Ranjit Hazarika v. State of Assam (1988) 8 SCC 635; State of Punjab v. Gurmit Singh (1996) 2 SCC 384; and State of Rajasthan v. N.K. (2000) 5 SCC 30; have held as follows:-

"It is now a well-settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of

sexual assault is vital, unless there are compelling reasons which necessitate looking for corroboration of her statement. The courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is also a well-settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under the given circumstances. Minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be ground for throwing out an otherwise reliable prosecution case."

Under the above said circumstances, this Court has come to the conclusion that the accused had a sexual intercourse with P.W.1 by giving false promise to marry her.

15. Now, the question to be decided is as to whether the accused promised to marry the victim girl and had sexual intercourse with her would attract offence under Section 376 IPC.

16. In this regard, it is relevant to place reliance on the decision of Saleha Khatoon vs. State of Bihar, reported in 1989 CrL.L.J. Page 202 wherein it was held that it was a fraud that was practised on her that she was deceived by giving false assurance. Consent obtained by deceitful means is no consent and the offence comes within the ambit of ingredients of the definition of rape.

17. he promise to marry may follow forcible sexual intercourse. In such circumstances it is rape. Subsequent promise is of no consequence.

18. Further it is placed reliance on the decision of Addapatti Settibabu vs. State of A.P. [1994 CrL.L.J.1420 (AP)], wherein it was held that the accused gained intimacy with the prosecutrix and with the false promise to marry committed rape on her to which her mother did not object and she allowed them to sleep together in her house. When subsequently the accused refused to marry her she filed a complaint before the police and criminal proceedings were started against him in which lower court acquitted the accused of the charge under Section 417 but convicted him under Section 376. On appeal, High Court confirmed the conviction of the trial Court and observed that the accused had obtained the consent of the girl by misrepresentation which was no consent under the law. Since it was not a consent, it could be said that the accused had committed rape without her consent.

The evidence of the prosecutrix was reliable and inspired the confidence and subsequent conduct of accused resiling from assurance of actual marriage with the prosecutrix showed that consent was obtained by deceitful manners and that was no consent. Conviction of accused was upheld.

19. In another case of Vikki @ Vijaykumar Vs. State of Harihar Town, Represented By its S.P.P [2008 0 CrLJ 3787] it is held that the accused became friendly with the prosecutrix and one day took her to a scheduled place and committed sexual intercourse with promise to marry her but next day refused to honour his commitment. FIR was lodged and evidence given by the prosecutrix was corroborated by medical report. Minor infirmities and discrepancies not affecting the core of testimony of the prosecutrix were disregarded and conviction was upheld.

"It is clear from the testimony of the prosecutrix that the accused forcibly committed rape on her and he did not permit her even to talk as he had closed her mouth with the cloth. The prosecutrix has given the details of the incident in her evidence. A plain reading of which will leave no doubt in any one's mind about the accused having had forcible intercourse with the prosecutrix and that too without her consent. In the instant case, the medical evidence on record clearly mentions that vagina admits two fingers and Doctor also deposing to the effect that the hymen was found ruptured and further the said evidence of the two doctors being consistent with the testimony of the prosecutrix, there is no infirmity in the prosecution case so as to disbelieve the natural and trustworthy testimony of the prosecutrix. As far as the capability of the accused is concerned, the evidence of Doctor confirms that the accused is capable of having intercourse. Order of conviction Justified."

20. In this case also though the victim girl and the accused fell in love for 6 years, from the evidence of P.W.1 it is very clear that he made several attempt to sexual intercourse with her and failed at last he succeeded only with the false promise. Therefore, under these circumstances, the act of the accused falls under Section 376 of IPC.

21. Further, from the evidence of victim girl-P.W.1 and the evidence of Doctor-P.W.10 clearly proved the accused had sexual intercourse with her offering false promise to marry her. However, the trial Court has miserably failed to appreciate the evidence of P.W.1 and also the proposition of law laid down by the Apex Court, came to the conclusion that the case does not fall under Section 376 of IPC. Of course the trial Court found

guilty of the accused for attempt to rape and convicted him under Section 376 r/w 511 IPC, and sentenced him to undergo 7 years RI in default further period of 6 months. Further, the trial Court acquitted the appellant under Section 506(ii) IPC. This Court finds that the offence committed by the appellant falls under Section 376 r/w 511 IPC. However, the State has not preferred any appeal against the findings of the learned trial Judge. Therefore, there is no reason to interfere with the sentence passed by the trial Court.

22. On re-appreciation of the evidence on record this Court also finds that there are clear, cogent and convincing evidence against the appellant to have committed the rape on the victim (P.W.1). For the above reasons, finding of conviction in this regard needs no interference. So far as the sentence imposed is concerned, the same being minimum also needs no interference inasmuch as no adequate and special reasons are there in favour of the appellant, to reduce the same.

23. In the result, this criminal appeal fails and is dismissed accordingly. The conviction and sentence imposed on the accused are confirmed. The bail bond if any executed shall stand cancelled. The trial Court is directed to take steps to secure the custody of the accused to undergo the remaining period of sentence.

Sd/-
Deputy Registrar

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Sub Assistant Registrar

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To

1. Additional Sessions Judge-Fast Track Court, Thirupattur, Vellore District.
2. The Inspector of Police, All Women Police Station, Vaniyambadi Vellore District.
3. The Judicial Magistrate IV Tiruppur

4. The superintendent
Central Prison Vellore

5.The Superintendent of Police
Vellore district

6.The Public Prosecutor High Court
Madras

+1 cc to M/s.A.M. Rahmath Ali Advocate sr 48233
+1 cc to the Government pleader sr 50641

CRL.A.NO.451 OF 2010

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