

Bail Slip

The Petitioner/Accused viz MURUGAN aged 27 years, S/o.Gopal was directed to be released on bail as per order of this court dated 27.04.2007 and made in MP.1 of 2007 in Crl A. No.399/2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.399 of 2007

Murugan

... Appellant

Vs

The State rep. by
The Deputy Superintendent of Police,
Kallakurichi Taluk,
Villupuram District,
Crime No.40/2002

Respondent

Prayer:- Criminal Appeal filed under Section 374 of Cr.P.C., to set-aside the order of conviction and sentence passed against the appellant on 19.01.2007 in S.C.No.185 of 2004 by the learned Special Judge,(Principal Sessions Judge), Villupuram Sessions Division, Villupuram.

For Appellant : Mr. S.Saravanakumar

For Respondent : Mrs.M.F.Shabana,
Govt. Adv. (Crl. Side)

JUDGEMENT

The first accused in S.C.No.185 of 2004 on the file of the Special Judge(Principal Sessions Judge) Villupuram Sessions Division, Villupuram, is the appellant herein. Totally, there are two accused. A1 stood charged for the offences under Sections 376, 506(ii), 417 r/w.34 IPC and 3(1)(xii) of Scheduled

Castes and Scheduled Tribes (Prevention of Atrocities) Act , 1989 and A2 stood charged for an offence under Section 417 r/w.34 IPC. Pending trial, the second accused, who is sister of the first accused died, and A1 alone faced the trial. By judgment, dated 19.01.2007, the trial court convicted the appellant/A1 under Section 417 IPC, and sentenced him to undergo rigorous imprisonment for one year and convicted him under Section 376 IPC, and sentenced him to undergo rigorous imprisonment for 10 years and also to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for 3 months, also convicted him under Section 3(1)(xii) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989 and sentenced him to undergo rigorous imprisonment for 3 years and also to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for 3 months and acquitted the appellant/accused under Section 506(ii) IPC. Challenging the above said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

P.W.1 is the victim in this case. The appellant and P.W.1 are resident of same village, and P.W.1 belongs to a schedule caste "Harijan" community, the appellant belongs to a backward class community. In the year 2001, one day at about 7.00 p.m., while P.W.1 was returning from his work, the appellant waylaid her and forcibly took her and raped her. Thereafter, he promised to marry P.W.1, and he had sexual intercourse with her and P.W.1, got pregnant. After coming to know about it, A1 along with his sister/A2 and some other relatives of A1, took her to a private hospital and aborted her pregnancy and the appellant asked her to stay in his sister's house at Chenguchi for 10 days, when P.W.1 asked the appellant to marry her, he refused, then P.W.1, informed the same to her relatives. Thereafter, she has lodged a complaint before the respondent police.

3. P.W.12, Sub-Inspector of Police, attached to the respondent police, on receipt of the complaint, registered a case in Crime No.40 of 2002 for the offences under Sections 376, 417, 506(ii) IPC and prepared First information Report, Ex.P.14 and sent the same for further investigation. P.W.11, Sub-Inspector of Police, on receipt of the First Information Report, proceeded to the scene of occurrence and prepared an Observation Mahazar, Ex.P.2, and Rough Sketch, Ex.P.9, in the presence of the witnesses and recorded the statements of the witnesses. On 06.02.2002, at about 6.00 p.m., arrested the appellant and sent the appellant and P.W.1 for medical examination. Then, he altered the First Information Report including offence under

Section 3(1)(xii) SC/ST (P.A) Act, and the alteration report, Ex.P.13 and sent the case to P.W.13.

4. P.W.13, Deputy Superintendent of Police, on receipt of the alteration report, commenced investigation and proceeded to the scene of occurrence and prepared an Observation Mahazar, Ex.P.3 and drew a Rough Sketch, Ex.P.15 and recorded the statements of the witnesses. He also obtained community certificate for the accused as well as P.W.1 from the revenue authorities.

5. P.W.7, Doctor, working in the Government Hospital, Villupuram, examined the appellant and has given certificate that he is potent.

6. P.W.10, Doctor, working in the Government Hospital, Villupuram, examined P.W.1 and has given a report (Ex.P.8) and he was of the opinion that the age of P.W.1 would be above 20-21 years.

7. Then P.W.13, recorded the statements of the Doctor and other witnesses and after completion of investigation, he laid the charge sheet against the accused.

8. Based on the above materials, the trial Court framed charges as mentioned in the first paragraph of the judgment and the accused denied the same. In order to prove its case, on the side of the prosecution, as many as 13 witnesses were examined and 15 documents were exhibited.

9. Out of the witness examined, P.W.1 is the victim in this case. According to her, she belongs to schedule caste community and the appellant belongs to backward community, and when she was returning back from her work, the accused waylaid her and forcibly took her and raped her and thereafter, the appellant promised to marry her, and she got pregnant, then the accused took her to a private hospital for abortion, subsequently, when P.W.1 asked the appellant to marry her, he refused to marry her, and then she lodged the complaint.

10. P.W.2 is the brother of P.W.1. According to him, he came to know about the occurrence through P.W.1. With the help of an advocate and some other people belonging to their community, went to the police station and lodged the complaint. P.W.3 is the sister-in-law of P.W.1. According to her, P.W.1 told her that when she was three months pregnant, the accused took her to a private hospital and aborted the fetus. P.W.4 also belongs to the same village. According to her, P.W.1 told

her that she was pregnant and P.W.4 advised her to marry A1. P.W.5 is the witness to the Observation Mahazar and Rough Sketch. P.W.6 is the Head Constable, who took the accused for medical examination. P.W.7, Doctor, examined the appellant. P.W.8 is the Tahsildar, issued community certificate for the appellant. P.W.9, Head Constable, who submitted the First Information Report to the Judicial Magistrate Court, Ulundurpet. P.W.10, Doctor, working in the Government Hospital, Villupuram, examined P.W.1 and has given report Ex.P.8. P.W.11, Sub-Inspector of Police, working in the respondent police, conducted investigation and arrested the accused and altered the case into one 3(1)(xii) of SC/ST Act and sent the case for further investigation to P.W.13. P.W.12, Sub-Inspector of Police, registered the case and sent the same to the jurisdictional magistrate and also to his higher officials. P.W.13, Deputy Superintendent of Police, continued the investigation and recorded the statements of the Doctor and other witnesses and after completing investigation, he laid charge sheet against the accused.

11. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not chose to examine any witness or mark any documents.

12. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

13. We have heard Mr.S.Saravanakumar, learned counsel appearing for the appellant and Mrs.M.F.Shabana, learned Gov.Adv. (Crl.Side) appearing for the State and also perused the records carefully.

14. P.W.1 is the prosecutrix in this case. According to her, initially, the appellant forcibly took her and raped her. When she questioned the appellant, he promised that he will marry her, and also threatened her, believing his words, she continued to have sexual intercourse with the appellant and she got pregnant. At that time, the appellant once again promised her that he will marry her, and along with her sister, and others, he took her to a private hospital, where she had undergone abortion. Then, P.W.1 was taken to the house of the appellant's sister and she was staying there for 10 days, thereafter, he refused to marry her. But, in the cross examination, she has stated that at the first instance, the accused has told her that he will marry her and believing his words, she had intercourse with him frequently and then she

became pregnant, and she was contradicted that at the first instance the appellant did not forcibly raped her. In her cross examination she further stated that the appellant/accused never refused to marry her and his relatives also never refused for their marriage. Thereafter, after one year she has given a complaint on 06.02.2002, with the help of one Elango , who belongs to her community.

15. P.W.10, Doctor, working in the Government Hospital, Villupuram, examined P.W.1, to whom P.W.1 has stated that she was forced to abort her pregnancy. P.W.13 investigating officer also in his cross-examination has stated that P.W.1 told the doctor that she has voluntarily undergone abortion and from the evidence of P.W.4, who is known to the accused as well as P.W.1, in his cross examination has stated that P.W.1 told him that he had intercourse with the appellant/accused and thereafter she got pregnant and both of them were living like husband and wife. P.W.3, is sister-in-law of P.W.1. According to her, she was aware about the intimacy between the accused and P.W.1 and P.W.1 herself told her that she got pregnant and from the above evidence, it could be seen that P.W.1 is only a consenting party and the appellant did not had sexual intercourse with P.W.1 against her will.

16. It is also clear from the evidence of P.W.1 that the prominent reason which lead her in agreeing for the sexual intimacy with the appellant is that he promised P.W.1 to marry her. P.W.1 is aged about 21 years at the time of occurrence and she was fully aware of the consequences, hence, at any rate, it cannot be construed as a rape.

17. The next question is whether there is any fraudulent or dishonest inducement by the appellant to have a sexual intercourse and made a false promise to marry P.W.1, and on that promise, P.W.1 agreed to have a sexual intimacy with him. But, there is no evidence from which it can be convincingly inferred against the appellant. Even P.W.1 admitted in her cross examination that the appellant never refused to marry her and her relatives also did not oppose for their marriage. In the above circumstances, the prosecution failed to prove none of the ingredients required to constitute the offence of cheating, which is punishable under Section 417 IPC.

18. Apart from that even though the occurrence took place in the year 2001, P.W.1 did not take any steps to give a complaint and she has given a complaint only on 06.02.2002, nearly one year after the occurrence, that too at the instance of some of the community people, hence, the delay in filing the complaint also creates doubt in the prosecution case. From the above circumstances, I am of the view that the prosecution

failed to prove the charge under Section 376 IPC and 417 IPC beyond any reasonable doubt. Since the charge under Sections 376 and 417 IPC are not proved, the offence under Section 3(1) (xii) of the SC/ST Act is also liable to be set aside.

19. In the above circumstances, since the prosecution failed to prove the charges against the appellant/accused, beyond any reasonable doubt, the appellant is entitled for acquittal.

20. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant in S.C.No.185 of 2004 are set aside. The appellant/accused is acquitted of all the charges. The fine amount, if any, paid by the appellant/accused is directed to be refunded. Bail bond, if any, executed by the accused, shall stand cancelled.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mrp

To

1. THE SPECIAL JUDGE,
(PRINCIPAL SESSIONS JUDGE),
VILLUPURAM SESSIONS DIVISION, VILLUPURAM.
- 2 THE JUDICIAL MAGISTRATE NO.II, ULUNDURPET.
- 3 THE CHIEF JUDICIAL MAGISTRATE VILLUPURAM.
- 4 THE SUPRINTENDENT OF POLICE CENTRAL PRISON, CUDDALORE.
- 5 THE DEPUTY SUPERINTENDENT OF POLICE,
KALLAKURICHI TALUK,
VILLUPURAM DISTRICT. CR.NO.40/02
- 6.THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

+1cc to Mr.S.SARAVANA KUMAR Advocate, S.R.No. 10903

Cr1.A.No.399 of 2007

MP(CO)
TR(08/12/2017)