

Bail Slip

The appellant herein Accused viz Kathiravan, S/o.Lakshmanan, was directed to be released on bail as per orders if this court dated 23/12/2010 made in Crl.Mp.1 of 2010 in Crl.A.782/2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.11.2016

Pronounced on : 31.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.782 of 2010

Kathiravan

(Presently undergoing sentence in Central Prison No.I, Puzhal, Chennai)

Appellant

Vs

State rep. by
The Inspector of Police,
All Women Police Station,
Mamallapuram,
Kancheepuram District.
(Crime No.272/2004)

Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to call the records and set aside the judgment of conviction dated 09.12.2010 made in S.C.No.278 of 2009 on the file of the Mahila Court, Chengalpattu.

For Appellant : Mr.P.M.Duraisamy

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

JUDGEMENT

The sole accused in S.C.No.278 of 2009 on the file of the Mahila Court, Chengalpattu, is the appellant herein. He stood charged for the offences under Sections 376 and 506(ii) IPC.

When the appellant was questioned as to the charge, he pleaded not guilty and therefore, he was put on trial. The Mahila Court, Chengalpattu, after full-fledged trial, found him guilty of the offences and convicted the appellant under Section 376 IPC and sentenced him to undergo Rigorous Imprisonment for 7 years and to pay a fine of Rs.2,000/-, in default, to undergo Rigorous Imprisonment for one (1) year and he was found not guilty of the offence under Section 506(ii) IPC. Challenging the 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:-

(i) P.W.1, Nandini aged about 15 years, is a victim girl (minor) in this case. She lodged a complaint before the Inspector of Police, Thirukalukundram Police Station stating that the appellant promised to marry her and he also threatened her that if she is not agreed for intercourse, he will kill her father and her sister. Under the threat, the appellant had intercourse with P.W.1 several times. Hence, she made a complaint before the Thirukalukundram Police Station.

(ii) P.W.8, the Sub-Inspector of Police, All Women Police Station, Mamallapuram, on receipt of the complaint on 19.03.2009 registered a case in Cr.No.4 of 2009 under Sections 376 and 506(ii) IPC. He proceeded to the scene of occurrence and prepared the First Information Report Ex.P.7, Observation Magazar Ex.P.3, Rough Sketch Ex.P.8 and commenced the investigation. He also recorded the statement of P.Ws.1 to 4 and arrested the accused. Thereafter he handed over the case to the Inspector of Police for further investigation.

(iii) P.W.6, who is a Doctor then working in Government Hospital, Chengalpattu, examined the appellant/accused and gave a report Ex.P.4 stating that he is potent. P.W.7, who is the Doctor working as Professor in Government Hospital, Chengalpattu examined P.W.1 and issued Ex.P.5, Medical Certificate stating her opinion that the victim would have had sexual intercourse and Ex.P.6, Certificate of Age, stating her opinion that the age of the victim aged 15 - 16. The Headmaster, Government Higher Secondary School, Thirukkalukundaram issued a certificate Ex.P.11, in respect of age of the victim P.W.1.

(iv) P.W.9, the then Inspector of Police, Mamallapuram Police Station, on receipt of the case, has started further investigation. After completion of investigation, he filed a charge sheet against the appellant for the offences under Sections 376 and 506(ii) IPC.

(v) Based on the above materials, the trial Court, after following the procedures, framed charges as detailed in the first paragraph of this judgment against the appellant. The

appellant pleaded not guilty and denied the charges framed against him. Before the Mahila Court, Chengalpattu, in order to prove the case of the prosecution, on the side of the prosecution, as many as 9 witnesses were examined and 11 documents were marked. No Material Object was exhibited. No witness was exhibited.

(vi)After completion of the prosecution evidence, incriminating materials were put before the appellant under Section 313 Cr.P.C., he denied the same as false. He did not come forward to examine any witness on his side. Since there was no defence witness, after hearing the arguments on either side, the trial Court, found the appellant guilty and convicted him under Section 376 IPC and sentenced him to undergo Rigorous Imprisonment for 7 years and to pay a fine of Rs.2,000/-, in default, to undergo Rigorous Imprisonment for one year and he was found not guilty of the offence under Section 506(ii) IPC. Aggrieved by the order of conviction and sentence passed by the trial Court, the appellant has preferred the present Criminal Appeal.

3.The learned counsel for the appellant submitted that at the time of incident, the victim was 16 years old. As per the evidence of victim, P.W.1, her age was 16 years and as per the evidence of Doctor, P.W.7, the age of the victim was 15 -16 years at the time of occurrence. Further, P.W.7, in her cross-examination has admitted that the age determined as per radiological test may not be accurate and may vary between 6 months to 1 year. Moreover, when there was a consent for sexual intercourse, the offence under Section 376 is not attracted.

4.The learned counsel for the appellant further submitted that the victim/P.W.1 allegedly fell in love with appellant/accused about four months prior to the alleged occurrence and she had sexual relationship with the appellant several times without any protest or complaint. The offence was alleged to have committed in September 2008, but the complaint was admittedly preferred before the respondent police only on 19.03.2009 and there is no explanation for delay in preferring the complaint. Therefore, delay in giving the complaint is fatal to the case of the prosecution.

5.Moreover, the learned counsel for the appellant submitted that the prosecution has not examined any Doctor, who had done abortion to the victim. The evidence of P.W.2, P.W.3 and P.W.5 is not trust worthy and they are only interested witnesses. The prosecution failed to prove that the appellant had sexual relationship with the victim girl and there is no direct evidence to prove the same. The trial Court failed to consider those aspects and simply relied on the prosecution evidence and

convicted the appellant. Hence, the judgment passed by the trial Court is liable to be set aside.

6.The learned Additional Public Prosecutor appearing for the respondent submitted that the victim girl made a complaint before the police station, Mamallapuram and immediately after registering the case conducted the investigation and from the investigation, it came to know that the appellant already married and he suppressed the said fact. The victim girl is aged about 15 years and Ex.P.11 also proved the same. The appellant compelled the victim/P.W.1 to accept his proposal. Since the age of the victim girl is 15 years, even assuming that she has given consent for sexual intercourse, her consent is immaterial and the evidence of victim is sufficient to convict the appellant. Hence, the trial Court has rightly considered these aspects and convicted the appellant. Therefore, the appeal is liable to be dismissed and there is no reason to interfere with the judgment of the trial Court.

7.Heard Mr.P.M.Duraisamy, learned counsel appearing for the appellant and Mr.P.Govindarajan, learned Additional Public Prosecutor appearing for the respondent and perused the records carefully.

8.From the case of prosecution, it is seen from the evidence of P.W.7 and Ex.P.11 that the age of the victim is 15 years. The appellant threatened the victim girl stating that if she is not co-operating for sexual intercourse with him, he will kill her father and sister. Therefore, she agreed for that. Like that, in several occasions, he came to her house and also called her in and around the place of Thirukalukundram Temple and he also had the sexual intercourse with her. Since he threatened the victim girl, she could not make a complaint immediately. Thereafter, she made a complaint subsequently.

9.The prosecution examined as many as 9 witnesses, in which, the most important witness is the evidence of victim girl, P.W.1. In her evidence, she has clearly narrated the incident and deposed that under threat, she had intercourse with the appellant. The complaint, Ex.P.1 and F.I.R. Ex.P.7 would clearly show that the appellant compelled P.W.1 to have sexual intercourse with him. P.W.1 has deposed in her evidence that at the time of occurrence, her age is 16 years. Ex.P.11, the certificate given by the Headmaster, Government Higher Secondary School, Thirukalukundram reveals that at the time of occurrence, she is 15 years. P.W.6, the Doctor, examined the accused/appellant stated that he is fit for doing the sexual intercourse and he is potent. P.W.3 is a local man. In his evidence he has stated that he saw the appellant and P.W.1

together. P.W.4 is also a local man and he is an independent witness. He has stated in his evidence that he saw the appellant and Nandini together in and around the Temple place of Thirukalukundram. P.W.5 is a relative of P.W.1 and P.W.2.

10. From the evidence of P.W.3, it is clear that the appellant had sexual intercourse with the victim/P.W.1. Since the victim girl is below 15 years at the time of occurrence, even if she has given consent without threat also her consent is immaterial. Further in this case, from the evidence of PW1 even assuming that her age is 16 years her consent is obtained by threat. Therefore, the offence under Section 376 IPC is attracted in this case. The evidence of P.W.7 and Ex.P.11, the certificate given by the Headmaster, clearly prove that at the time of occurrence, the victim girl was minor and aged below 15 years. Therefore, the trial Court rightly came to the conclusion that the appellant had committed an offence under Section 376 IPC, but acquitted him under Section 506(ii) IPC. Therefore, there is no reason to interfere with the judgment passed by the trial Court.

11. In the result, the Criminal Appeal is dismissed. The judgment of conviction and sentence passed in S.C.No.278 of 2009, dated 09.12.2010 on the file of Mahila Court, Chengalpattu is confirmed. Since the appellant is on bail, the trial Court is directed to take steps to secure the custody of the appellant to undergo the remaining period of sentence, if any.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

cla/tsh

To

1.The Mahila Court,
Coimbatore.

2.The Superintendent,
Central Prison, No.I,
Puzhal, Chennai.

3.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.P.M.Duraisamy, Advocate sr.no.60404

Crl.A.No.782 of 2010

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nr 28/09/2018



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