

Bail Slip

The appellant/Accused No.1 viz, Alagappan, S/o.Azhagudurai, was directed to be released on bail, vide order of this High Court, dt.05.07.2012 made in Crl.MP.No.1/2012 in Crl.Appeal No.389/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.A.No.389 of 2012

Alagappan
S/o.Azhagudurai

Appellant/Accused No.1

Vs.

State represented by
The Inspector of Police,
All Women Police Station,
Perambalur.

Respondent/Complainant

Prayer:

Criminal Appeal filed under Section 374(2) Cr.P.C. against the judgment and order dated 08.06.2012 passed in S.C.No.123 of 2010 on the file of the Sessions Judge, Mahila Court, Perambalur.

For Appellant : Mr.K.Gandhi Kumar

For Respondent : Mrs.P.Kritika Kamal,
Government Advocate
(Crl. Side)

JUDGMENT

This criminal appeal has been preferred seeking to set aside the judgment and order dated 08.06.2012 passed in S.C.No.123 of 2010 on the file of the Mahila Court, Perambalur.

2. Shorn of unnecessary details, the relevant facts leading to the institution of this criminal appeal are stated as under:

2.1 It is the case of the prosecution that Alagappan (A1) promised to marry the victim girl "X" (PW1) (name not disclosed for the sake of anonymity), aged about eighteen years and deflowered her on 05.05.2009, around 12.00 noon, in a secluded place in the bank of a canal on the outskirts of the village and thereafter, refused to marry her. When "X" (PW1) and her family members approached the family of Alagappan (A1) for marriage, his family members viz., Alagudurai (A2), Chinnaponnu (A3), Arjunan (A4), Alagammal (A5) and Selvarani (A6), criminally intimidated the former and said that they will not agree for the marriage.

2.2 Therefore, "X" (PW1) lodged a written complaint (Ex-P1), based on which, Kamala (PW9), Sub-Inspector of Police, registered a case in Crime No.13 of 2009 on 17.09.2009 under Sections 417, 376 (1) and 506 (I) IPC, against Alagappan (A1), Alagudurai (A2), Chinnaponnu (A3), Arjunan (A4), Alagammal (A5) and Selvarani (A6) and prepared the printed FIR (Ex-P7).

2.3 The investigation of the case was taken over by Sivasubramaniam (PW10), Inspector of Police, who went to the place of occurrence and prepared the Observation Mahazar (Ex-P2) and Rough Sketch (Ex-P8).

2.4 Dr. Vishnupratap (PW6) of Government Hospital, Perambalur, conducted medical examination of "X" (PW1) and Alagappan (A1). The Accident Register and the medical report qua X (PW1) were marked as Exs-P3 and P4, respectively. The Accident Register and the medical report qua Alagappan (A1) were marked as Exs-P5 and P6, respectively.

2.5 After examining witnesses and collecting various reports, the Investigating Officer completed the investigation and filed a final report in P.R.C.No.62 of 2009 before the Judicial Magistrate Court, Perambalur, for the offences under Sections 376, 417 and 506 (I) IPC, against Alagappan (A1) and for the offence under Section 506 (I) IPC against Alagudurai (A2), Chinnaponnu (A3), Arjunan (A4), Alagammal (A5) and Selvarani (A6).

2.6 On appearance of the accused, the provisions of Sections 207 Cr.P.C. were complied with and the case was committed to the Court of Session, Perambalur, in S.C.No.123 of 2010 and was made over to the Mahila Court, Perambalur, for trial.

2.7 The Trial Court framed charges under Sections 376, 417 and 506 (I) IPC against Alagappan (A1) and Section 506 (I) IPC against Alagudurai (A2), Chinnaponnu (A3), Arjunan (A4), Alagammal (A5) and Selvarani (A6). When questioned, the accused pleaded "not guilty".

2.8 To prove the case, the prosecution examined ten witnesses and marked eight exhibits.

2.9 When the accused were questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against them, they denied the same. On behalf of the accused, no witness was examined nor any document marked.

2.10 After considering the evidence on record and hearing either side, the Trial Court, by judgment and order dated 08.06.2012, in S.C.No.123 of 2010, acquitted all the accused of the offence under Section 506 (I) IPC; acquitted Alagappan (A1) of the offence under Section 376 IPC, but, convicted him of the offence

under Section 417 IPC and sentenced him to undergo one year rigorous imprisonment and pay fine of Rs.25,000/-, in default to undergo three months simple imprisonment. Challenging the conviction and sentence, Alagappan (A1) is before this Court.

3. Heard Mr.K.Gandhi Kumar, learned counsel for the appellant and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) for the respondent/State.

4. The learned counsel for the appellant contended that the evidence on record at the most shows that Alagappan (A1) and "X'" (PW1) were in love with each other and for some reason, the family members of Alagappan (A1) did not agree for the marriage and that there is no satisfactory evidence to show that Alagappan (A1) had sex with "X'" (PW1) at 12.00 noon on 05.05.2009 in the open canal bank on the promise of marrying her.

5. Per contra, the learned counsel Government Advocate (Crl.Side) refuted the contention of the learned counsel for the accused.

6. This Court gave its anxious consideration to the rival submissions and perused the evidence of "X'" (PW1).

7. In the complaint (Ex-P1), "X'" (PW1) has stated that she was in love with Alagappan (A1) for about five years without the knowledge of her parents and on 05.05.2009, around 12.00 noon, he ravished her in the canal bank, against her wish; when she asked him as to why he did so, he told her that he will marry her and subsequently also, they had sex together and on 11.09.2009, they were found together by Arunachalam (not examined).

8. However, in her examination-in-chief, "X'" (PW1) has stated that, on 05.05.2009, while she was going to collect firewood, the appellant followed her and on the canal bank, he forcibly laid her, stuffed a cloth into her mouth and ravished her, whereas, Mahadevan (PW4) in his evidence, has stated that on 05.05.2009, he saw Alagappan (A1) and "X'" (PW1) enjoying sex in the river bank and they were in their birthday dress. He (PW4) has further stated that he admonished them and reported the matter to "X's'" (PW1's) parents. In the cross-examination, Mahadevan (PW4) admitted that he is the uncle of "X'" (PW1).

9. Both "X'" (PW1) and Mahadevan (PW4) admitted that at 12.00 noon, in the month of May, the river bank will be burning hot and one cannot even walk there without slippers. In the cross examination of "X'" (PW1), she has stated that she had sex with Alagappan (A1) only once, that is, on 05.05.2009. Mahadevan (PW4) has admitted that there will be lot of lorries in the river bank for removing sand.

10. This Court can take judicial notice of the fact that in the month of May in Tamil Nadu most of the river banks will be dry and at 12.00 noon, they will be very hot. Thus, when "X'" (PW1) has categorically admitted that she had sex only on 05.05.2009 and not thereafter, it becomes necessary for this Court to carefully scrutinize her evidence, in order to find out, as to whether she would have had sex with Alagappan (A1) at 12.00 noon, in May 2009, on the river bank. This appears highly improbable. On the one hand, Mahadevan (PW4), the uncle of "X'" (PW1) has stated that he found both of them enjoying sex without clothes at 12.00 noon on the river bank and on the other, "X'" (PW1) has stated that the appellant stuffed a cloth into her mouth and forcibly had sex with her. On the basis of such contradictory versions, it will be unsafe for this Court to hold

that the prosecution has proved the incident that is alleged to have taken place on 05.05.2009.

11. The learned Government Advocate (Crl.Side) submitted that "X'" (PW1) has no motive to foist such a case on Alagappan (A1), for which, the learned counsel for the appellant submitted that Alagappan (A1) and "X'" (PW1) were in love with each other and for some reasons, when Alagappan (A1) did not want to marry "X'" (PW1), a case has been foisted against him that he ravished her (PW1) on 05.05.2009 on the promise of marrying her and reneged.

12. In the cross-examination of "X'" (PW1), it has been suggested that she was found having sex with one Anbarasu, Tractor driver and that Anbarasu was fined Rs.2,000/- by the villagers, for which, of course, "X'" (PW1) has denied the suggestion. This Court cannot give any finding on the character of a prosecutrix, in view of Section 53-A of the Indian Evidence Act, 1872.

13. Be that as it may, this Court is of the view that the evidence on record is insufficient to hold that Alagappan (A1) had sex with the prosecutrix at 12.00 noon on 05.05.2009 on the river bank that is open to the sky. Having a love affair and thereafter, refusing to marry, without anything more, will not attract Section 417 IPC.

In the result, this criminal appeal is allowed and the judgment and order dated 08.06.2012 passed in S.C.No.123 of 2010 on the file of the Mahila Court, Perambalur, is set aside and Alagappan (A1) is acquitted of the charge under Section 417 IPC.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Sessions Judge,
Mahila Court, Perambalur.
2. The Chief Judicial Magistrate,
Perambalur.
3. The Judicial Magistrate,
Perambalur.
4. The Superintendent,
Central Prison,
Trichy.
5. The Inspector of Police,
All Women Police Station,
Perambalur.
6. The Public Prosecutor,
Madras High Court,
Chennai - 104.

copy to:

The Section Officer,
Criminal Section,
High Court, Madras

+1cc to Mr.K.Gandhi Kumar, Advocate SR.NO. 77634

Cr1.A.No.389 of 2012

mr(co)
nr 31/10/2019

सत्यमेव जयते

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