

Bail Slip

The Petitioner/Accused, namely Premkumar S/o.Elumalai was directed to be released on bail as per order dated 31.08.2012 in MP.NO.1/12 IN CRL A.NO.426/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 06.12.2019
PRONOUNCED ON : 19.12.2019
CORAM
THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.A.No.426 of 2012

Premkumar

.. Appellant/

Accused

Vs.

State of Tamil Nadu
Inspector of Police
Pallikaranai
(Crime No.1639/2008)

.. Respondent/

Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the judgment and order dated 27.06.2012 passed by the Sessions Judge (Mahila Court), Chengalpattu in S.C.No.88 of 2010.

For Appellant : Mr.R.Sankarasubbu
For Respondent : Mrs.P.Kritika Kamal,
Govt. Advocate (Crl. Side)

J U D G M E N T

This criminal appeal is directed against the judgment and order of conviction and sentence dated 27.06.2012 passed by the Sessions Judge (Mahila Court), Chengalpattu in S.C.No.88 of 2010.

2.The long and short of the facts giving rise to the filing of this case is as under :

2.1.The family of the accused was a tenant in the house of Rajasekaran (P.W.1) in door No.2177, 11th Street, Om Sakthi Nagar. The victim girl 'X' is the daughter of Rajasekaran (P.W.1) and Kuppammal (P.W.3). The accused who was aged around 22 years, proposed to 'X' and seduced her on the promise of marrying her, resulting in she conceiving. 'X' underwent dilation and curettage (for brevity "D&C") in Hindu Mission Hospital on 08.09.2008, which was done by Dr.Anusuya

(P.W.5). The accused and his family members quietly vacated the house and became scares.

2.2.On the complaint dated 17.10.2008 (Ex.P2) given by Rajasekaran (P.W.1), Dinakaran (P.W.7), Inspector of Police, registered a case in Crime No.1639 of 2008 under Section 376 IPC and prepared printed F.I.R. (Ex.P7).

2.3.Dr.Gitanjali (P.W.4), Assistant Professor, Department of Forensic Medicine, Government Villupuram Medical College, examined 'X' on 21.10.2008 and in her evidence as well in the examination report (Ex.P3), has stated that "the victim girl is accustomed to sexual intercourse and there is no evidence of general bodily injuries". She also performed radiological examination on 'X' and has opined that the age of 'X' is above 16 and below 18 as on 17.11.2008 vide Ex.P4. Dr.Vedanayagam (P.W.6) examined the accused and in his evidence as well in the examination certificate (Ex.P6), has stated that the accused was potent.

2.4.After examining witnesses and collecting various reports, Dinakaran (P.W.7) completed the investigation and filed a final report in P.R.C.No.100 of 2009 before the Judicial Magistrate, Alandur under Section 376 IPC against the accused.

2.5.On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.88 of 2010 and was made over to the Mahila Court, Chengalpattu, for trial. The trial Court framed charges under Section 376 IPC against the accused and when questioned, he pleaded "not guilty".

2.6.To prove the case, the prosecution examined 7 witnesses and marked Exs.P1 to P10. When the accused was questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against him, he denied the same. No witness was examined nor any document marked on the side of the defence.

2.7.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 27.06.2012 in S.C.No.88 of 2010, convicted the accused of the charge under Section 376 IPC and sentenced him to undergo 7 years rigorous imprisonment and pay compensation of Rs.25,000/- to 'X'. Challenging the conviction and sentence, the accused is before this Court.

3.Heard Mr.R.Sankarasubbu, learned counsel for the appellant and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent State.

4.The victim girl 'X' (P.W.2), in her evidence, has stated that she was born on 14.08.1992 and her birth certificate was marked as Ex.P1, which shows her date of birth as 14.08.1992. She has further stated that while she was studying in the 11th standard, the family of the accused became their tenant; the accused proposed her and said that he was intensely in love with her; she accepted the proposal; on one day, he seduced her, on the promise to marry her; thereafter, he continuously had sex with her; on 18.10.2008, she vomited; when she was taken to the hospital, it was found that she had conceived; the family of the accused vacated the house and their whereabouts were not known; she underwent D&C in the hospital and was discharged two days later; when her parents questioned the uncle of the accused, he abused them and stated that the accused was not responsible for her pregnancy.; therefore, her father lodged a complaint to the police.

5.In the cross-examination, she ('X') has stated that the accused had sex with her, when there was no one in her house. She has further stated in the cross-examination that three or four days prior she was admitted in the hospital, the family of the accused vacated the house. She has further stated that she did not complain to her parents because, the accused told her that he would marry her. Ultimately, it was suggested to her that the accused was not responsible for her pregnancy, which suggestion, she denied.

6.Dr.Anusuya (P.W.5), has stated that she was attached to Hindu Mission Hospital; on 08.09.2008, one 'X', D/o.Rajasekaran (P.W.1) was admitted in the hospital; she examined her and found that she was pregnant; since her health was very frail, D&C was performed, after getting consent from her parents. The medical records were marked as Ex.P5.

7.In the cross-examination of this witness, it was not even suggested to her that she did not perform D&C. This Court has no reasons to disbelieve Dr.Anusuya (P.W.5) nor suspect the medical reports (Ex.P5). Rajasekaran (P.W.1) and Kuppammal (P.W.3), parents of 'X' have stated that the family of the appellant was a tenant in their house and when 'X' started vomiting on 08.10.2008, they took her to Hindu Mission Hospital and learnt that 'X' had conceived. When they asked 'X', she told them that the appellant had seduced her, on the promise of marriage. The defence was not able to make any serious dent in the testimony of Rajasekaran (P.W.1), victim girl 'X' (P.W.2) and Kuppammal (P.W.3), except suggesting that the appellant was not responsible for the pregnancy.

8.The prosecution has proved the date of birth of 'X' beyond cavil via Ex.P1 and through the evidence of 'X'. The discharge summary (Ex.P5) dated 10.09.2008 shows 9 to 10 weeks of pregnancy. Keeping her date of birth as 14.08.1992, it is clear that the appellant has had sex with a girl, who was less than 16 years of age and therefore, consent is irrelevant. At this juncture, 'X' appeared before this Court and pleaded that she has married one Arun Kumar and has two children through him and that the appellant has also got married and has children and therefore, the matter may be compromised. She filed an affidavit dated 06.12.2019, which reads as follows :

"2.I submit that I got married on 30.08.2014 to one Mr.Arunkumar, aged about 28 years and due to the wedlock, two children were born - Jay Akash 4 years old, daughter Arsitha one year old. I am a house wife, living peacefully at Kovilampakkam, Chennai. The complaint against the appellant was preferred by my father Rajasekar who was examined as P.W.1, I was examined as P.W.2. Due to the passing of time and due to family circumstances and to avoid further mental agony and torture, I resolved to settle the matter amicably.

Hence, it is prayed that this Hon'ble Court may be pleased to accept the compromise and deal with the accused in accordance with law and render justice."

9.An offence under Section 376 IPC is non compoundable and therefore, this Court cannot entertain the request of 'X'.

10.Mr.Sankarasubbu contended that adolescent infatuation had resulted in a mishap and prayed for leniency in sentence. The incident in this case had taken place sometime in the middle of 2008, when unamended Section 376 IPC was in force. Under the Proviso to Section 376(i) IPC (prior to the amendment), the Court, for adequate and special reasons, can impose a sentence of imprisonment for a term of less than 7 years. This is not a case where 'X' was forcibly ravished. But, is a case of teenage love. Now, 'X' submitted to this Court that before marriage, her husband Arun Kumar was apprised of this case and still, he married her.

11.In view of the above, this Court is of the view that interests of justice will be served, if the sentence of imprisonment is reduced from 7 years to 3 years rigorous imprisonment.

In the result, this appeal is partly allowed. The conviction under Section 376 IPC, stands confirmed and the substantive sentence of imprisonment imposed on the appellant by the trial Court alone is reduced from 7 years to 3 years rigorous imprisonment. The trial Court is directed to secure the presence of the appellant to undergo the remaining period of sentence, if any. Registry is directed to transmit the original records to the trial Court forthwith.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate,Alandur.
- 2.Do thro the Chief Judicial Magistrate,,Chengalpattu.
- 3.The Sessions Court (Mahila Court),
Chengalpattu
4. The Superintendent,Central prison, Puzhal ,Chennai.
5. The Inspector of Police
Pallikaranai
- 6.The Public Prosecutor,
High Court, Madras.
- 7.The The Director General of Police, Chennai.
- 8.The District collector,chengalpattu.
- 9.The Deputy Registrar,
Criminal Side,
High Court, Madras.

A.SK(07/02/2020)

CRL.A.No.426 of 2012