

Bail Slip

The Peititioner/Accused Viz., M.Karthik S/o Maniarasan was released on bail as per order of this Court dated 01/10/2012 in Crl.M.P.No.1 of 2012 in Crl.A 644 of 2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.A.No.644 of 2012

M.Karthik Appellant/Accused

Vs.

State represented by
The Inspector of Police,
All Women Police Station,
Settiathoppe,
Cuddalore District.

Cr.No.12 of 2011 Respondent/Complainant

Criminal Appeal filed under Section 374 (2) Cr.P.C. against the judgment and order dated 24.09.2012 passed in S.C.No.54 of 2012 on the file of the Additional District and Sessions Judge, Mahila Court, Cuddalore.

For Appellant : Mr.R.Karthikeyan

For Respondent : M/s.G.Ramar
Government Advocate
(Crl. Side)

JUDGMENT

Challenge in this criminal appeal is to the judgment and order dated 24.09.2012 passed in S.C.No.54 of 2012 on the file of the Additional District and Sessions Mahila Court, Cuddalore.

2. The concentrated facts of the case that are distilled from the records flow as under:

2.1 It is the case of the prosecution that the victim girl "X" (name not disclosed for the sake of anonymity) and the

appellant were in love; on 14.09.2010, around 9.00 p.m., the appellant ravished her in the garden behind her house on the promise of marrying her; thereafter also, the appellant threatened her and had sex with her, but, refused to marry her.

2.2 On the complaint (Ex-P1) lodged by "X", Lusy (PW7), Sub-Inspector of Police, registered a case in Crime No.12 of 2011, on 07.11.2011 at 19.00 hours, for the offences under Sections 376 and 417 IPC and prepared the printed FIR (Ex-P7).

2.3 The investigation of the case was taken over by Chandrababu (PW8), Inspector of Police, who went to the place of occurrence and prepared the observation mahazar (Ex-P6) and rough sketch (Ex-P8).

2.4 Dr.Latha (PW2), who medically examined "X" on 09.11.2011, in her evidence as well in the medical report (Ex-P2), opined as follows:

- "(1) The victim girl is clinically aged bout 18-20 years.
- (2) She is not virgin.
- (3) She might have had intercourse."

Dr.Latha (PW2), who conducted radiological examination of "X" on 09.11.2011, in her evidence as well in the report (Ex-P3), has stated that vaginal smears show no evidence of single spermatozoa, "X" was not pregnant and "X" had completed twenty years.

2.5 The appellant was arrested and sent to the Government Hospital, Cuddalore, where, Dr.Senthil Kumar (PW3) medically examined him on 12.11.2011 and opined that there is nothing to suggest that the appellant is impotent and his age was determined as twenty four years.

2.6 After examining witnesses and collecting various reports, the Investigating Officer (PW8) completed the investigation and filed a final report in P.R.C.No.2 of 2012 before the Judicial Magistrate No.II, Chidambaram, for the offences under Sections 376 and 417 IPC, against the appellant.

2.7 On appearance of the appellant, 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.54 of 2012 and was made over to the Additional District and Sessions Mahila Court, for trial.

2.8 The trial Court framed charges for the offences under Sections 376 and 417 IPC, against the appellant. When questioned, the appellant pleaded "not guilty".

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

2.10 When the appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same, but gave a written statement, wherein, he stated that "X" was madly in love with him; since he did not reciprocate, she has filed a false case. On behalf of the accused, two witnesses viz., Selvamani (DW1) and Ravi (DW2) were examined and four exhibits were marked.

2.11 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 24.09.2012 in S.C.No.54 of 2012, convicted and sentenced the appellant as under:

Provision under which convicted	Sentence
Section 376 IPC	Seven years rigorous imprisonment and fine of Rs.5,000/-, in default to undergo six months rigorous imprisonment.
Section 417 IPC	One year rigorous imprisonment.

The aforesaid sentences were ordered to run concurrently.

2.12 Challenging the above conviction and sentences, the appellant has preferred the present appeal.

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

4. The entire case rests on the oral testimony of "X" (PW1).

5. "X" (PW1), in her evidence, has stated that she has studied XII standard; she knows the accused (appellant); since 2007, the accused was in love with her; she did not accept his love initially; since the accused started pestering her ("X") again and again, she also started loving him; her mother came to know about it and put her ("X") in a girls' hostel at Tambaram for pursuing nursing course in Chennai; when she came to her village for quarterly examination leave, when she was in the garden of her house, the accused called her by saying that he wanted to speak to her; at that time, it was 9.00 p.m.; the accused was drunk and he was in the habit of consuming liquor; the accused called her for physical relationship, but, she stoutly refused; the accused told her that he will surely marry her, but, she did not oblige; he started threatening her by saying that he will kill her family members; saying so, he

forcibly ravished her; at that time, her ("X's") younger brother Srikanth (PW4) came to the garden in search of her and found them together; on seeing her brother (PW4), the accused ran away; her brother (PW4) slipped her and in retaliation, she also beat him; her brother (PW4) went into the house and attempted to commit suicide by hanging; she was getting ready to go to the hospital to see her brother (PW4); on coming to know of it, the accused came to the bus stop and told her that she should not go to the hospital, because, she will be made responsible for her brother's suicide and her mother will beat her; so, the accused asked her to come with him; the accused further told her that if she does not come, he will consume poison and commit suicide and so, she went along with the accused to his aunt's house in Athipattu; on the way, the accused threatened her by saying that he will finish her family if she does not listen to what he says; from his aunt's house, the accused took her to Poombuhar; at Poombuhar, he had physical relationship with her forcibly and made her stay there for two days; from Poombuhar, he took her to Erode and got her employment in a textile mill; he collected the salary from the textile mill. Beyond this also, "X" (PW1) has stated the various places, where, the accused took her. Ultimately, "X" (PW1) has stated that the father of the accused informed her ("X") that her mother has given a complaint for "girl missing", on which, the police have registered a case and were looking out for both of them; the accused and his father pleaded with her to go and surrender to the police and say that she had gone to her friend's house and not gone with the accused; accordingly, she went and surrendered before the Inspector of Police, Kumaratchi Police Station, on 25.10.2010.

6. "X" (PW1) has been subjected to grilling cross-examination by the defence, wherein she has stated about the various places she went along with the accused. In the cross-examination, "X" (PW1) has stated that she and the accused passed through several police stations en route, but, she did not choose to make a hue and cry or seek the help of the relatives in whose house she was lodged.

7. The next important piece of evidence in this case is that of Srikanth (PW4), younger brother of "X" (PW1).

8. Srikanth (PW4), in his evidence, has stated that "X" (PW1) is his elder sister; he knows the accused (appellant); he was studying in X standard; on 14.09.2010, around 9.00 p.m., he was in his house studying and his sister was standing outside the house; a little later, he did not find his sister and so, he went in search of her to the garden area behind his house and found his sister and the accused together; on seeing him, the accused fled; he slipped her sister and told her that he was

ashamed of her; he resolved not to look at her (sister's) face and decided to end his life by hanging; he went inside the house and hanged himself; thereafter, he gained consciousness only in Natraj Hospital, where, the police came and examined.

9. If the evidence of "X" (PW1) is seen in the backdrop of the evidence of Srikanth (PW4), it is clear that the appellant and "X" (PW1) were having a consensual relationship on 14.09.2010 in the darkness of the garden, which was seen by Srikanth (PW4). The fact that Srikanth (PW4) saw "X" (PW1) and the appellant together, fleeing of the appellant, Srikanth (PW4) slipping "X" (PW1), etc., have been spoken to by "X" (PW1) also in her evidence. Thus, "X" (PW1) and Srikanth (PW4) corroborate each other on this aspect.

10. Fearing that she ("X") will be made responsible for her brother's (PW4's) suicide, "X" (PW1) ran away with the appellant and was missing from 14.09.2010. "X's" mother lodged a complaint on 24.10.2010, which has been marked as Ex-D1, based on which, the police registered a case in C.S.R.No.169 of 2010 for "girl missing".

11. The fact that, "X" (PW1) surrendered to the police, has been established by the defence by marking the statement given by "X" (PW1) in Ex-D2. It is seen that Ex-D2 is not a statement recorded under Section 161 (3) Cr.P.C., because, no FIR was registered for "girl missing" and only a C.S.R. was registered. Of course, "X" (PW1) has also admitted that on coming to know that her mother had given a police complaint against her and the appellant, she surrendered to the police on 25.10.2010.

12. In order to support the defence theory that "X" (PW1) was unilaterally in love with the appellant, Selvamani (DW1) and Ravi (DW2) were examined.

12.1 Selvamani (DW1), who was aged about 66 years, has stated that he is the village head and knows the family of the appellant; betrothal for the marriage of the appellant with one Kavitha was solemnized on 02.10.2011 in the house of the appellant, which, he attended; betrothal 'Muchalika' was marked as Ex-D3; in the betrothal, the marriage date was fixed as 22.01.2012; since "X" (PW1) wanted to marry the appellant and since the accused did not accede, she ("X") lodged a false complaint against him.

12.2 Ravi (DW2), in his evidence, has stated that he is the father of Kavitha and he gave his daughter Kavitha in marriage to the appellant.

12.3 The trial Court has rightly rejected the evidence of these two witnesses.

13. The defence theory that "X" (PW1) was unilaterally in love with the appellant militates against the overwhelming evidence on record viz., the evidence of "X" (PW1) and her brother Srikanth (PW4). The fact that "X" (PW1) went missing from the date of incident viz., 14.09.2010, "X's" mother giving complaint to the police vide C.S.R.No.169 of 2010 and the surrender of "X" (PW1) to the police have been established by the appellant himself by marking Exs-D1 to D3.

14. Though the assertion of "X" (PW1) that she was forcibly ravished by the appellant does not cut ice with this Court, yet, the evidence on record clearly shows that the young girl was seduced to submit herself to the carnal pleasures of the accused on the promise of marriage. Had the appellant forcibly ravished "X" (PW1), she would have given a complaint either immediately or a little later, instead, the complaint in this case (Ex-P1) has been given only on 07.11.2011, after coming to know about the betrothal of the appellant with Kavitha.

15. In such perspective of the matter, the conviction and sentence slapped on the appellant for the offence under Section 376 IPC is hereby set aside and the appellant is acquitted of the said charge. However, the conviction and sentence imposed on the appellant for the offence under Section 417 IPC stands confirmed.

In fine, the criminal appeal is partly allowed. The trial Court is directed to secure the appellant and commit him to prison to serve out the remaining period of sentence.

Sd/-

सत्यमेव जयते
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge, Mahila Court, Cuddalore.

2. The Inspector of Police,
All Women Police Station,
Settiathoppe,
Cuddalore District.

3. The Public Prosecutor,
Madras High Court,
Chennai - 600 104.

4. The Deputy Registrar
(Crl.Section),
Madras High Court,
Chennai - 600 104.

} with a direction to return the
original records to the trial
Court

5. The Superintendent,
Central Prison,
Cuddalore.

6.The Judicial Magistrate No.II,
Chidambaram,
Cuddalore District.

7. The Chief Judicial Magistrate,
Cuddalore.

Crl.A.No.644 of 2012

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srg 10/01/2020

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