

Bail Slip

The Petitioner/Accused No.1, namely Raji aged 30 years S/o.Suriya prakash is directed to be released on bail as per order dated 08.10.2012 and made in MP.NO.1/12 IN CRL A.NO.651/2012 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated 16.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Appeal No.651 of 2012

Raji

Appellant/Accused No.1

Vs

State Rep by,
Inspector of Police
Thiyagadurugam Police Station,
Crime No.37 of 2006
(Cr No.Amended as per order
dated 15.10.2012 in MP.3/12)

Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374(ii) of the code of Criminal Procedure, to call for the records pertaining to the judgment rendered by the III Additional District and Sessions Court, Kallakurichi in S.C.No.35 of 2009 dated 25.09.2012 and set aside the same.

For Appellant : Mr.A.G.Rajan

For Respondent : Mr.T.Shanmugarajendran
Government Advocate (Criminal Side)

J U D G M E N T

This Criminal Appeal has been filed to call for the records pertaining to the judgment rendered by the III Additional District and Sessions Court, Kallakurichi in S.C.No.35 of 2009 dated 25.09.2012 and set aside the same.

2 The respondent police registered a case against the appellant and eight other persons for the offence under Sections 376, 417 and 506(ii)IPC, in Crime No.37/2006. After completing the investigation, the respondent police laid charge sheet before the Judicial Magistrate Kallakurichi, Villupuram District. The learned Judicial Magistrate Kallakurichi taken the charge sheet on file in P.R.C.No.66/2007. After completion of the formalities, since the offences are triable by the Court of Sessions, the case was committed to the learned Principal District and Sessions

Judge, Kallakurichi, Villupuram District. The learned Principal District and Sessions Judge, Kallakurichi taken the case in file in S.C.No.35/2009 and made over the case to the learned III Additional District and Sessions Judge Kallakurichi.

3 After completion of the procedural formalities, the learned III Additional District and Sessions Judge, Kallakurichi came to the conclusion that the accused had committed the above said offences and convicted as follows

SI.NO	Offences	Conviction
1.	u/S 417 IPC	Sentenced him to undergo 6 months rigorous imprisonment
2.	u/S 376 IPC	Sentenced him to undergo 7 years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo 3 months rigorous imprisonment
3.		To pay a sum of Rs.25000 to the victim/PW2 as a compensation.

Challenging the said judgement of the learned III Additional District and Sessions Judge, the appellant has preferred the present appeal before this court.

4 The learned counsel for appellant would submit that at the time of occurrence, the victim girl completed the age of 18 years and the date of birth of victim girl was 07.02.1987. Even at the time of the deposition in the year of 2011, the victim girl herself has stated that 5 years before, she had a illegal intimacy with the appellant. The appellant promised to marry her, therefore both of them had physical relationship at several times, subsequent to that, the appellant failed to marry the victim girl. The victim girl herself given a consent for the illegal intimacy with the appellant therefore under Section 376 IPC will not be attracted and there is no allegation that the accused cheated by promising to marry the victim, hence, Section 417 IPC was not made out. Even the parents of the victim PW 1 and 3 were aware of this fact and also the pregnancy of the victim. Both the Courts below have failed to consider the aspects, that the victim herself has admitted that 5 years before she had illegal intimacy with the appellant and at that time she completed 18 years. The Doctor has not denied the suggestion put forth by the defense, which shows that the prosecution has not proved its case beyond reasonable doubt, which warrant interference by this court.

5 The learned Government Advocate (Criminal Side) would submit that P.W.2 is the victim and she has established that when she went to pump-set at that time, the appellant came to that place and forcibly committed rape and subsequently, the victim asked to marry her and the appellant also promised to marry her. Thereafter, she had physical relationship with the appellant for several times, out of which she got pregnant. After that, the appellant refused to marry her. Therefore, the evidence of the victim girl shows that at the time of occurrence, the victim was studying 10th standard. The appellant frequently approached the victim and promised to marry her and had illegal intimacy with her for several times. Subsequently, the victim got pregnant and the appellant refused to marry the victim girl. Therefore, the victim gave a complaint. The delay in filing FIR, is not fatal to the case of the prosecution. The learned Additional District and Sessions Judge, rightly appreciated the evidence of the Doctor one who examined the victim, who certified that the age of the victim girl was 17 years and also confirmed the pregnancy. P.W.6/Doctor further deposed that during the time of medical examination, she was pregnant between 32 to 36 weeks. Thus, the prosecution has proved its case beyond reasonable doubt and there is no need to interfere with the decision of the trial Court.

6 Heard the learned counsel for the appellant and the learned Government Advocate (Criminal side) appearing for the respondent and perused the materials available on records.

7 Admittedly, P.W.2 is the victim girl and she was studying 10th standard. As per the evidence of P.W.2/victim, the appellant went to the place where the victim was taking bath in the well pump-set. Wherein, the appellant had forcible intercourse with her. Subsequently, he promised to marry her, therefore she had intimacy with her. Subsequently, at consent both had physical relationship. But they have not intimated the same to their parents. Since the victim girl become pregnant, the same was informed to the parents of the victim girl and the appellant. The family members of the appellant refused to marry her and threatened the victim girl. Thereafter the appellant family members trespassed into the victim's house and set fire on the house. Therefore, they constrained to file a complaint before the respondent police. The respondent police registered a case in Crime No.37 of 2006 and after completion of investigation, filed a charge sheet before the learned Jurisdictional Magistrate.

8 In order to prove the case of the prosecution, on the side of the prosecution, 9 witnesses were examined. P.W.2 is the victim P.W.1 and P.W.3 are the parents of the victim girl. In her evidence, P.W.2 clearly stated that she was studying 10th standard at the time of occurrence, the appellant

<https://hcservices.courtsoln/hcservices/> intercourse with her. Subsequently, he promised

to marry her, therefore, she did not reveal the truth to anybody. Both of them had illegal intimacy on several occasions, out of which she got pregnant. When she informed the same to the appellant, the appellant refused to marry her. Therefore, the mother of the victim girl filed a complaint before the respondent police.

9 On reading of the evidence of the victim girl, it appears that she narrated the fact that at the time of occurrence, she was studying 10 standard and that five years prior to the date of giving the deposition before the trial Court, when she went to Pump-set, the appellant came to the place and forcefully committed rape. The doctor one who has examined the victim also clearly stated that at the time of examination, she was aged about 17 years only. Therefore admittedly, P.W.2/ victim stated that in the year 2005, the appellant had committed rape and he promised to marry her. Even during the cross examination, she admitted that the appellant had illegal intimacy with the victim. The only defence taken by the appellant is that the date of birth of the victim girl is 07.02.1987 and that she had completed 18 years. There is no evidence to prove that the appellant promised to marry the victim girl.

10 On conjoint reading of evidence of P.W.2, P.W.4 and P.W.6, this Court finds that the prosecution has proved its case beyond reasonable doubt. The learned Additional District and Sessions Judge, has also rightly appreciated the evidence of the prosecution and found that at the time of occurrence the victim girl has not completed the age of 18 years. Even assuming that she gave a consent for intimacy, the same cannot be treated as consent.

11 Therefore, under these circumstances, this Court finds that the appellant has committed the offence under Section 376 IPC. Since the accused promised to marry her, the victim girl has not informed about the forcible rape committed by the appellant to her parents immediately. The evidence also shows that at the time of medical examination, she was pregnant for about 30 to 36 weeks and she did not inform the same to her parents. There is no reason to discard the evidence of victim girl. Therefore, the offence under Section 417 is also made out. Therefore, this Court is of the view that the trial Court has rightly appreciated the evidence and convicted the accused and finds no valid reason to interfere with the judgment of the trial Court.

12 In the result, the Criminal Appeal stands dismissed.

The Court is directed to secure the appellant to undergo

the remaining period of sentence, if any.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sbn
To

- 1.The Judicial Magistrate, Kallakurichi.
 - 2.Do thro the Chief Judicial Magistrate,Villupuram District.
 - 3.The III Additional District and Session Judge,
Kallakurichi.
 - 4.The Superintendent,Central prison,Cuddalore
 5. The Inspector of Police
Thiyagadurugam Police Station,
 6. The Public Prosecutor
High Court,Madras
- +1cc to Mr.A.G.Rajan , Advocate SR.No. 70749
Criminal Appeal No.651 of 2012
- A.SK(03/02/2020)

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