**BAIL SLIP**

The petitioner / Appellant / Accused namely Aravind, S/o.Padmanathan, was released on bail as per order of this Court dated 21.02.2012 made in MP(MD)No.1/2012 in Cr1.A(MD)No.11/2012.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1 A(MD)No.11 of 2012

Aravind

... Appellant / Accused

Vs.

State, rep.by The Inspector of Police,
All Women Police Station, Srirangam,
Tiruchirappalli District.
(Crime No.40 of 2010)

... Respondent / Respondent

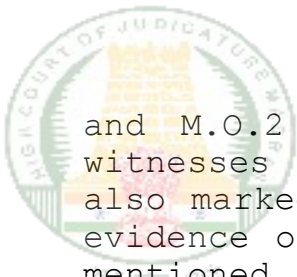
Prayer : This Criminal Appeal is filed under Section 374 of Criminal Procedure Code, to set aside the conviction of sentence passed in S.C No.93 of 2011 dated 23.01.2012 on the file of the Sessions Judge, Mahila Court, Trichy.

For Appellant : Mr.Veera.Kathiravan, Senior Counsel
for Mr.C.Jeganathan
For Respondent : Mr.A.Robinson
Government Advocate (crl.side)

JUDGMENT

The appellant was convicted of the offences under Sections 376 and 417 IPC and sentenced to seven years rigorous imprisonment and one year rigorous imprisonment respectively vide judgment dated 23.01.2012 in S.C No.93 of 2011 on the file of the Sessions Judge, Mahila Court, Tiruchirappalli.

2.The case of the prosecution is that the appellant was running a concern in the name and style of "Inventures Solution". The victim was employed in the said concern since 02.10.2007. The appellant proposed to the victim that he is in love with her and that he wants to marry her. While so, on one evening in the month of March, 2008, the appellant is said to have given an intoxicating drink to the victim. The victim went unconscious. The appellant then had sexual relationship with her. The appellant is said to have assured her that he would marry her and induced the victim to have sexual relationship with him on several occasions. But in the end, the appellant did not marry her. Therefore, the victim/P.W.1 lodged Ex.P1 complaint before All Women Police Station, Srirangam. On the basis of the said complaint, Ex.P10 FIR in Crime No.40 of 2010 was registered for the offences under Sections 417 and 506(i) IPC. Investigation was undertaken and final report came to be filed against the appellant before the Judicial Magistrate, Tiruchirappalli for the offence under Sections 376 and 417 IPC. The case was committed to the Sessions Court in PRC No.14 of 2011. It was made over to the Sessions Judge, Mahila Court, Tiruchirappalli in S.C No.93 of 2011. The appellant pleaded not guilty to the charges framed against him and claimed to be tried. The prosecution examined as many as 13 witnesses and marked Exs.P1 to P.11. M.O.1



and M.O.2 were also marked. On the side of the accused, two witnesses namely DW.1 and DW.2 were examined. Exs.D1 to D3 were also marked. The learned Trial Judge after consideration of the evidence on record, chose to convict and sentence the appellant as mentioned above. Questioning the same, this appeal came to be filed.

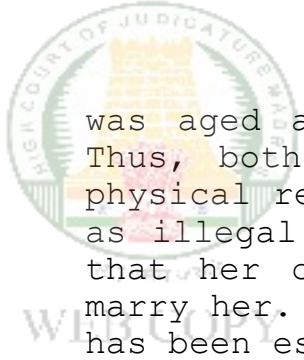
WEB COPY

3. Heard the learned Senior Counsel appearing for the appellant who submitted that the impugned judgment deserves to be set aside and the appellant acquitted. Per contra, the learned Government Advocate (crl.side) submitted that the impugned judgment does not warrant any interference and he wanted this Court to dismiss this appeal.

4. I carefully considered the rival contentions and perused the evidence on record. P.W.1 is the victim. Her case is that she was employed in the concern run by the appellant since October 2007. She would claim that the appellant proposed to marry her on 10.02.2008. She is said to have expressed her unwillingness on the ground that they belong to different religions. The appellant is said to have convinced her. While so, the victim would claim that sometime in the month of March, the appellant gave her an intoxicating drink without her knowledge and when she was in semiconscious state, the appellant had sexual intercourse with her.

5. The question to be considered is whether this version of the victim can be believed or not. Even though the victim would claim that she was raped in May, 2008, she does not appear to have lodged any complaint for very long time. Information before the police came to be lodged only on 06.06.2010. Thus, there is a time gap of two years between the alleged occurrence and the lodging of the information. Even though the parents of the victim claimed to be aware of the said occurrence, they have also not chosen to lodge any complaint. The learned Senior Counsel for the appellant drew my attention to the answers given by the Investigation Officer who was examined as P.W.13. P.W.13 in the cross examination admits that she did not even visit the place where the appellant is said to have had sexual intercourse with the victim. She did not prepare any observation mahazar. She also did not inquire the persons who were the employees of the said concern run by the appellant during the relevant time. Thus, there has been absolute laxity on the prosecution side. No investigation whatsoever was done on this allegation made by the victim.

6. Therefore, I am of the view that the theory of mixing an intoxicating substance in the cool drink has been invented for the purpose of strengthening the case of the victim against the appellant. From a reading of the evidence on record, one can come to the conclusion that there was physical relationship between the appellant and the victim. In fact, the learned Senior Counsel appearing for the appellant would not seriously contest this aspect of the matter. Of course, during the relevant time, the appellant



was aged around 26 years. The victim was aged around 22 years. Thus, both were adults during the relevant time. Therefore, the physical relationship between the two cannot really be characterized as illegal or offending the law. But then, the victim would claim that her consent was procured by giving her a false promise to marry her. Now, the only question to be considered is whether this has been established by the prosecution.

7. The learned Senior Counsel appearing for the appellant took me through the testimony of PW.1/victim and that of her father and brother namely P.W.2 and P.W.3. P.W.2 the father of the victim clearly stated that the appellant and his daughter were in love with each other and that his daughter/P.W.1 victim wanted the appellant to convert to Islam. In fact, PW.1 also admits in her testimony that she and the appellant went to the Registrar's office on 05.01.2010. In fact, both the appellant as well as the victim signed in all the relevant documents. But then, the officials had stated that since they belonged to different religions, the formalities could not be gone through. Of course, the parties could have contracted the marriage only under the Special Marriage Act. For which the formalities are different. P.W.1 would admit that it was this that was the actual reason for the marriage not going through. The specific case of the appellant is that he did not want P.W.1 to convert to Hinduism. Likewise, he also did not want to forsake his mother religion. It was the insistence of P.W.1 that the appellant should convert to Islam which led to the break-up. In fact, the testimony of the father of the victim corroborates the stand taken by the accused.

8. Therefore, the appellant cannot be said to have given a false promise to marry her. He reiterated even during the examination under Section 313 that he would very much marry her. Since the victim wanted the appellant to convert and forsake his religion, there was a breakdown. Few other circumstances also will have to be taken note of. P.W.1 admits that the complaint was prepared with the help of a lawyer. Ex.P.3 was marked on the side of the prosecution. The said document is a marriage agreement. As per the said agreement said to have been executed on 25.12.2009, the appellant was to marry P.W.1 within a period of four months after embracing Islam. The said document further reads that if he is unable to do so, he would pay a sum of Rs.10.00 lakhs as compensation. Even though the appellant would not admit the signature attributed to him in the said document, one cannot forget the fact that the victim swears by the said document. Ex.P.4, cheque for a sum of Rs.10.00 lakhs was also marked.

9. If Ex.P3 & P4 together read would completely undermine the case of the prosecution. Of course, as the learned Senior Counsel for the appellant would point out, the Investigation Officer herself admitted that she did not seize the original cheque and only photo copy was marked. The appellant in his cross examination had suggested that the victim who was working in his office managed to



steal the cheque. Probably that was why the said cheque was never presented for collection.

10. Taking note of these circumstances, I am satisfied that the relationship between the appellant and the victim was purely consensual and that even though the appellant was ready to marry the victim, she insisted that the appellant should embrace Islam. The appellant always stood by his promise to marry PW.1. He did not give any false promise. The right to practice and profess a religion of one's choice is a fundamental right guaranteed under the Constitution. The consensual nature of the relationship and the true reason for the marriage not taking place were not taken note of by the court below. The learned Trial Judge erred in convicting the appellant for the offences under Sections 376 and 417 of IPC. The impugned judgment is set aside. The appellant is acquitted. The bail bond executed by the appellant shall stand cancelled. The fine amount if any remitted by the appellant shall be refunded to him. Accordingly, the criminal appeal is allowed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

Skm

To

1. The Inspector of Police,
All Women Police Station, Srirangam,
Tiruchirappalli District.
2. The Sessions Judge, Mahila Court, Trichy.
3. The Judicial Magistrate III, Trichy.
4. The Superintendent, Central Prison, Madurai.
5. The Superintendent, Central Prison, Trichy.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
7. The Section Officer, Criminal Section, (2 COPIES)
Madurai Bench of Madras High Court, Madurai.

+1 CC to MR.C.Jeganathan, for M/S.VEERA ASSOCIATES, Advocate

Cr1 A(MD)No.11 of 2012
08.08.2019

SMA/25/02/2020/4P/10C