



BAIL SLIP

Sri Kumar, age about 28 years/2011 is released on bail of vide Court Order dated 22.06.2011 made in MP(MD)No.1 of 2011 in CRL A(MD)No.167 of 2011.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.08.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)No.167 of 2011

Sri Kumar

... Appellant/Accused No.1

Vs.

State rep by
Inspector of Police,
Puthukottai All Women Police Station,
Thoothukudi.
(Crime No.3 of 2009)

... Respondent

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C, to set aside the judgment of conviction passed in S.C.No.60 of 2011, dated 25.05.2011 by the learned Additional Sessions Judge Cum Fast Track Court No.I, Thoothukudi.

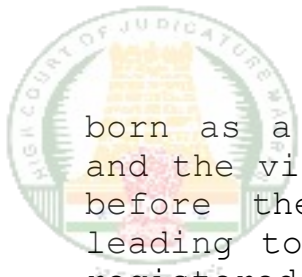
For Appellant : Mr.R.Anand

For Respondent: Mrs.S.Bharathi
Government Advocate (Crl. Side)

J U D G M E N T

The appellant was convicted for the offence under Section 376 of IPC and sentenced to rigorous imprisonment for a period of seven years and also to pay compensation of Rs.50,000/- to the victim vide Judgment dated 25.05.2011 in S.C.No.60 of 2011 on the file of the Additional Sessions Judge/Fast Track Court No.1, Thoothukudi.

2.The prosecution case is that the appellant Srikumar promised to marry the victim and induced her to have physical relationship with him. This was on 09.01.2009. However, the appellant did not honour his words. In fact, a child was also



born as a result of the physical intimacy between the appellant and the victim. In this regard, the victim lodged Ex.P1-Complaint before the Pudukkottai All Women Police Station, Thoothukudi, leading to registration of Crime No.3 of 2009 (Ex.P7). FIR was registered for the offences under Sections 417, 420 and 294(b) of IPC. Investigation was undertaken. During the course of investigation, vide Ex.P20, the provisions were altered and Section 376 of IPC was also incorporated. Final report came to be laid before the Judicial Magistrate No.1, Thoothukudi not only against the appellant but also against his sister as well as his brother-in-law. The case was committed to the Sessions Court in P.R.C.No.20 of 2010. It was made over to the Fast Track Court No.1, Thoothukudi for trial in S.C.No.60 of 2011. As many as four charges were framed against the accused. The appellant herein was charged with having committed the offences under Sections 417, 376 and 420 of IPC. As against A2 and A3, the charge was one under Section 294(b) of IPC. The accused pleaded not guilty to the charges and claimed to be tried. The prosecution examined as many as 11 witnesses and marked Ex.P1 to Ex.P20. The learned trial Judge, by the impugned Judgment, acquitted the other two accused but convicted the appellant for the offence under Section 376 of IPC and sentenced him as mentioned above. Questioning the same, this appeal came to be filed.

3.The learned counsel appearing for the appellant reiterated the contentions set out in the appeal memorandum and wanted this Court to acquit the appellant.

4.Per contra, the learned Government Advocate (Crl.side) submitted that the impugned Judgment does not warrant any interference and wanted this Court to dismiss this appeal.

5.The primary contentions urged by the learned counsel appearing for the appellant is that the offence under Section 376 of IPC is not at all made out. According to him, the appellant and the victim had only consensual physical relationship. He took me through the evidence of P.W.1, in which, it has been stated that on several occasions, the victim had physical relationship with the appellant. It is true that as contended by the appellant's counsel that the victim had consented for having physical relationship with the appellant. But then, the question is what was the nature of consent. The Hon'ble Supreme Court in **Anurag Soni Vs. State of Chhattisgarh (2019 O AIR(SC) 1857)**, held as follows:-

"12.The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an



assurance by the accused that he would marry her, on a misconception of fact as per Section 90 of the IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Section 375 of the IPC and can be convicted for the offence under Section 376 of the IPC."

6.Applying the principles laid down by the Hon'ble Supreme Court, one can safely come to the conclusion that the act committed by the appellant herein clearly amounts to the offence of rape punishable under Section 376 of IPC.

7.The victim had stated that she is a permanent resident of South Street in Allikulam Village. She knew the appellant. The appellant was working as a overhead tank operator. The victim and the appellant were known to each other for about four years prior to the occurrence. According to the victim, the appellant offered to marry her and induced her to have relationship with him. The appellant had asked the victim to come to the field of one Sundararaj on 09.01.2009. The victim had clearly stated that without her consent, the appellant had forcibly sexual intercourse with her. The appellant became pregnant as a result. The child was born on 28.09.2009 as a result. In the cross examination, the victim had clearly deposed that since the appellant promised to marry her, she believed the same and that is how, there was a physical relationship between the two. After the child was born, the parties underwent DNA test. Ex.P14 is the report of the Scientific Officer. The conclusion of Ex.P14 is that the appellant is the biological father of the male child born to the victim. The Scientific Officer was examined as P.W.9. Ex.P14 report was marked through P.W.9. It is noted where that P.W.9 was not even cross examined by the appellant. The conduct of the appellant has to be noted. The incriminating circumstances were put to the appellant during the examination under Section 313 of Cr.P.C. To a specific question as to what he wanted to say in respect of Ex.P14-DNA report and the testimony of P.W.9-Scientific Officer, the appellant stated that it was false.

8.P.W.2 is the mother of the victim. She had stated that that since her daughter was vomiting, she took her daughter to the Hospital and that, the Doctor stated that the daughter of P.W.2 was four months pregnant. She would state that P.W.1/victim told her that the appellant committed rape on her. The appellant is said to have offered Rs.10,000/- for carrying out abortion. Thus, the testimony of P.W.2 corroborates the testimony of P.W.1. P.W.3 is the doctor, who examined the victim. P.W.4 examined the appellant and issued potency certificate. P.W.5 is the mahazer witness. P.W.6 is the police constable who produced the victim for examination. P.W.7 was the Sub Inspector of Police



who registered the FIR. P.W.8 is the Serologist. P.W.9 is the Scientific Officer who conducted the DNA Test. P.W.10 is the Sub Inspector of Police who conducted the initial part of the investigation. P.W.11 is the Inspector of Police who concluded the investigation and filed a final report. The prosecution case rests on the testimony of the victim. The victim had stood her ground and supported the prosecution case in *toto*. The victim hails from Allikulam Village. She was aged about 24 years at the time of occurrence. The appellant was aged about 26 years. Unless the accused had agreed to marry her, there is a very little possibility of the victim/unmarried women to have agreed for such a consensual relationship. In this case, the victim had also conceived and got pregnant, when the FIR in question was lodged. Unless, the appellant had given a promise to marry her, it is not possible for the victim would have agreed to submit herself to the carnal desires of the appellant. The appellant had chosen to go back on his words after having sexual relationship with the victim. As laid down by the Hon'ble Supreme Court in the aforesaid decision, the acts committed by the appellant clearly constitute the offence of rape. The conduct of the appellant is aggravated by denial of the paternity of the child born to P.W.1 as a result of the physical relationship between the appellant and the victim. For the last 10 years, the appellant had not done anything to undo the irreparable harm caused to the victim. More than the victim, a fatherless child is growing up. It is this conduct of the appellant in denying even the paternity of the child that led the learned trial Judge to come to the conclusion that no leniency should be shown to the appellant. The finding of guilt rendered by the Court below is confirmed.

9. Now comes the question of sentence. The appellant as well as the victim appeared before me in person. The appellant agreed to pay a sum of Rs.4,00,000/- as compensation to the victim. The victim has received the said amount of Rs.4,00,000/- before me. The appellant shall file an affidavit before this Court affirming that he is the biological father of Bharathraj. The appellant agrees to pay a sum of Rs.3,000/- as monthly maintenance for his son. The victim shall furnish her bank account details to the appellant. The appellant shall remit a sum of Rs.3,000/- from the month of October 2019, towards monthly maintenance of his son, Bharathraj. The appellant also agrees that he shall make such remittance for a period of 12 more years. The appellant also agrees to affix his signature in any application form that may be required for furthering the educational prospects of his son. Bharathraj is entitled to mention the name of the appellant/Sri Kumar as his biological father. Since the interest of child will have to be protected, I am inclined to modify and reduce the sentence of imprisonment to

<https://hdsrespcourtscivilservices.com>



10. With this modification in the matter of sentence, this criminal appeal is partly allowed.

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Sd/-

Assistant Registrar(Writs)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

rmi/ias

To:

1. The Additional Sessions Judge Cum
Fast Track Court No.I, Thoothukudi.
2. The Judicial Magistrate No.1, Tuticorin.
3. The Chief Judicial Magistrate, Tuticorin.
4. The Superintendent, Central Prison,
Tuticorin.
5. The Inspector of Police,
Puthukottai All Women Police Station,
Thoothukudi.
6. The Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.A. (MD) No.167 of 2011

13.08.2019

ss (CO)

TR(23.03.2020) 5P 7C