



Bail Slip

Petitioner/Appellant/Accused No.1 namely Murugan, S/o.Veluthevar, aged about 31 years was released on bail in and by the order of this Court Dt.07.03.2011 made in MP.(MD)1/2011 in Crl.A(MD) No.62/2011.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.07.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A. (MD)No.62 of 2011

Murugan

... Appellant

Vs.

State represented by,
The Deputy Superintendent of Police,
Samayanallur,
Nagamalai Pudukkottai Police Station,
Madurai District.
(Crime No.44 of 2006)

... Respondent

Prayer: Criminal Appeal is filed under Section 374(2) of Cr.P.C, to call for the records in Spl.S.C.No.147 of 2008, judgment dated 18.02.2011, on the file of the learned III Additional Sessions Judge (PCR), Madurai, and set aside the order of conviction and to allow the appeal.

For Appellant : Mr.S.Chandrasekar

For Respondent : Mr.A.Robinson
Government Advocate (Crl. Side)

J U D G M E N T

The appellant was tried along with three others in Spl.S.C.No.147 of 2008, on the file of the learned III Additional Sessions Judge (PCR), Madurai, vide judgment dated 18.02.2011. The appellant was convicted for the offence under Section 417 of I.P.C. and Section 3(1)(xii) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act), 1989 and sentenced to undergo one year rigorous imprisonment for each offence. He was also sentenced to pay a sum of Rs.10,000/- as fine. The other accused were acquitted. Questioning the same, this criminal appeal has been filed.

2.The prosecution case is that the appellant/Murugan had physical intimacy with the victim on the promise that he will marry her. But he went back on his words. As a result of the



appellant's conduct, the marriage that was scheduled to be performed between the victim and her relative was also stopped. In this regard, victim lodged Ex.P.1/complaint. Based on the same, Crime No.44 of 2006 was registered on the file of Nagamalai Pudukkottai Police Station for the offence under Sections 376, 417 and 312 of I.P.C. and Section 3(1)(xii) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act), 1989. Since the offences under Scheduled Caste and Scheduled Tribe were also involved, the investigation was done by the Deputy Superintendent of Police, Samayanallur. Final report was filed before the learned Judicial Magistrate No.VI, Maduari. The case committed to Sessions Court in P.R.C.No.116 of 2006 and was taken up for trial in Spl.S.C.No.147 of 2008, on the file of the learned III Additional Sessions Judge (PCR), Madurai. Charges were framed against all the accused as follows:-

"1st charge : Cheating by the 1st accused by false representations that he would marry the complainant and thereby punishable u/s 417 IPC against 1st accused,

2nd charge : Committing rape of the complainant by 1st accused u/s 376 IPC against the 1st accused,

3rd charge : Committing criminal breach of trust by selling 4gm gold stud belonging to the complainant, punishable u/s 406 IPC against 1st accused,

4th charge : Committed an offence of cheating by misrepresenting the complainant regarding causing miscarriage punishable u/s 417 IPC against A1 to A4,

5th charge : Against A2 to A4 committed an offence causing miscarriage to the complainant punishable u/s 312 IPC,

6th charge : Against A1 to A4 intentionally insulted a member of Scheduled Caste/Scheduled Tribe and the complainant being a woman belonging to the Scheduled Caste/Scheduled Tribe, exploited her sexually to which she would not have agreed punishable u/s 3(1)(x) and 3(1)(xii) of SC/ST(PA) Act."

Accused pleaded not guilty and claimed to be tried.

3.The prosecution examined as many as 15 witnesses and marked Exs.1 to 13. On the side of the accused no evidence was adduced.

4.The learned Trial Judge after a detailed consideration of the evidence on record acquitted A2 to A4 but convicted and



sentenced the appellant herein as mentioned above. The victim was examined as P.W.1. Her testimony evokes the confidence of this Court. The victim belongs to a notified Scheduled Caste community. The appellant belongs to Kallar community. The victim was working in the field of the appellant's father. In this background, the Court below chose to find the appellant guilty of the offence under Section 3(1)(xii) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act), 1989. Section 3 (1)(xii) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act), 1989, reads as under:-

"Being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have other agreed;"

5.The learned counsel appearing for the appellant brings it to my notice that apart from Section 3(1)(xii) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act), 1989, the appellant was charged for offence of rape. The appellant was also acquitted of the charge under Section 376 of I.P.C. He therefore contends that when once the appellant is acquitted of the charge of rape, the charge under Section 3(1)(xii) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act), 1989, also has to go as a natural corollary. In this regard, the learned counsel for the appellant drew my attention to a decision of the Honourable Kerala High Court made in ***Crl.A.No.865 of 2006, (Thomas Kashy Vs. State of Kerala)*** dated 06.03.2013 in paragraphs 10 and 13 of the said decision, the Honourable High Court held that when the finding is to the effect that there was no rape or forceable sexual assault, it becomes difficult to understand how the victim can be sexually exploited. In fact the Kerala High Court followed an earlier decision of the Madras High Court in Raman @ Ramu Vs. State (2009 STPL (LE-Crime) 30382 MAD). In the said case also it was held that when the case ends in acquittal for the offence under Section 376 of I.P.C., then the offence under Section 3(1)(xii) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act), 1989, shall not survive. I therefore find force in the submission of the appellant's counsel that the Court below erred in convicting the appellant under Section 3(1)(xii) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act), 1989. Therefore, the impugned judgment has to be set aside insofar as it convicts and sentences the appellant for the offence under Section 3(1)(xii) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act), 1989.

6.Now comes the question as to whether the conviction imposed on the appellant under Section 417 of I.P.C. will have to be maintained. As already submitted, this Court is inclined to believe the testimony of P.W.1. The learned counsel for the



appellant also submitted that having regard to the evidence on record, he would not challenge the conviction imposed on the appellant under Section 417 of I.P.C. He only wants leniency to be shown in the matter of punishment. The appellant appears to have spent 45 days in prison. The appellant also comes forward to pay a sum of Rs.30,000/- as compensation to the victim. The appellant also undertakes to execute an affidavit conveying his unconditional apology to the victim for what he has done. The appellant is directed to deposit a sum of Rs.30,000/- to the credit of Spl.S.C.No.147 of 2008, on the file of the learned III Additional Sessions Judge (PCR), Madurai, within a period of four weeks from the date of receipt of a copy of this judgment. The Court below shall hand over the compensation amount of Rs.30,000/- to the victim along with a copy of affidavit of apology to be executed by the appellant. This Court condemns the appellant for having taken a false defence before the Court below that he never had any relationship with the victim. That is why a direction to execute an affidavit of apology has been issued. If the appellant fails to comply with the direction now given namely., deposit of compensation of Rs.30,000/- within a period of four weeks from the date of receipt of a copy of this judgment and execution of the affidavit of apology, the sentence imposed by the Court below for the offence under Section 417 of I.P.C. will stand restored. Criminal Appeal is partly allowed.

Sd/-

Assistant Registrar (CRL.SIDE)

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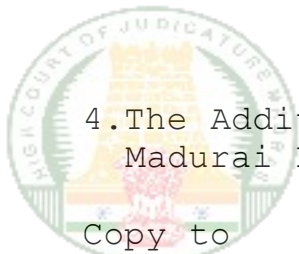
/ /2020

Sub Assistant Registrar(CS)

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To:

- 1.The III Additional Sessions Judge (PCR), Madurai.
- 2.The Judicial Magistrate No.VI, Madurai.
- 3.The Deputy Superintendent of Police,
Samayanallur,
Nagamalai Pudukkottai Police Station,
Madurai District.



4.The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai.

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The Section Officer,
Criminal Section(Records)
Madurai Bench of Madras High Court, Madurai-2 copies

+1 CC to Mr.S.THIRUPATHY, Advocate (SR-76499[F] dated
19/07/2019)

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