

**Bail Slip**

Periyasamy (Male/25 Years) S/o. Duraisamy, Karuthalampatti, Musiri, Thiruchirappalli District (Appellant/Sole Accused) was released on bail of this Court order dated 04.06.2010 made in MP (MD) No.1 of 2010 in CrI.A (MD) No.167 of 2010.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED : 08.08.2019****CORAM:****THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN****CrI A (MD) No.167 of 2010**

Periyasamy

... Appellant/Accused

Vs.

State, rep. by The Inspector of Police,
All Women Police Station, Musiri,
Tiruchirappalli District.

... Respondent/Complainant

(Crime No.5 of 2006)

Prayer : This Criminal Appeal is filed under Section 374 of Criminal Procedure Code, to set aside the judgment and conviction passed by the learned Sessions Judge, Mahila Court, Tiruchirappalli in S.C No.124 of 2007 dated 21.05.2010.

For Appellant : Mr.S.Velpandian

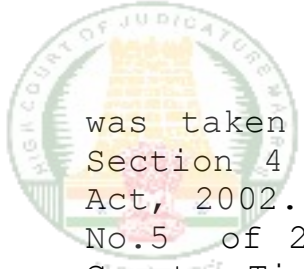
For Respondent : Mr.A.Robinson

Government Advocate (crl.side)

JUDGMENT

The appellant was convicted of the offences under Sections 376 and 417 IPC vide judgement dated 21.05.2010 in S.C No.124 of 2007 on the file of the Sessions Judge, Mahila Court, Tiruchirappalli.

2.The case of the prosecution is that the appellant had given a false assurance of the marriage to the victim/P.W.4 and had sexual intercourse with her on several occasions. On one such occasion ie., 07.07.2006 at about 11.00 P.M, when the appellant was having sexual relationship with the victim, it came to the knowledge of the victim's parents. A panchayat was convened and the appellant had agreed to accept the victim as his wife. He had even tied Thali on her. Thereafter, the appellant drove away the victim. In these circumstances, Ex.P1 complaint came to be lodged before the All Women Police Station, Musiri by the father of the victim. Investigation was undertaken and final report was filed before the Judicial Magistrate, Musiri not only against the appellant but also against his parents. Cognizance of the offence



was taken under Sections 376 and 417, 294(b) and 342 IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002. The case was committed to the Sessions Court in PRC No.5 of 2007. It was made over to the Sessions Judge, Mahila Court, Tiruchirappalli. Charges were framed and the accused denied the charges and claimed to be tried. The prosecution examined 18 witnesses and marked Exs.P1 to Ex.P11. M.O.1 was also marked. The learned Trial Judge by judgment dated 21.05.2010 acquitted A2 and A3 but convicted this appellant for the offence under Sections 376 and 417 IPC and sentenced to undergo seven year rigorous imprisonment and one year rigorous imprisonment respectively. Challenging the same, this appeal came to be filed.

3.The learned counsel appearing for the appellant submitted that the case of the victim stands falsified by medical evidence. He drew my attention to the testimony of P.W.13. It is true that P.W.13 who had examined the victim had stated that there was no indication that the victim was raped. The doctor had not opined that the victim did not have any sexual intercourse. Therefore, I am of the view that this will not advance the case of the appellant.

4.I carefully went through the testimony of P.W.14. She had clearly and categorically deposed that believing the words of the appellant that he would marry her, she had sexual intercourse with him on several occasions in the year 2005. The testimony of the victim commands the confidence of this Court. Her testimony has not at all been shaken during the cross examination. P.W.1 is the father of the victim. He had also stated that on the occurrence date, he saw the accused lying on his daughter and that they convened a panchayat and in the panchayat, the appellant had even tied Thali on the victim. But, few days later, the appellant not only harassed the victim but later sent her away. The court below in the light of the testimony of P.W.1 as well as P.W.4 rightly came to the conclusion that the charges against the appellant have been established beyond reasonable doubt.

5.Having regard to the evidence on record, the learned counsel appearing for the appellant does not challenge the finding of guilt. He only wanted this Court to show some leniency in the matter of punishment. He pointed out that the appellant is now married and is having three children. Likewise, the victim has got married to somebody else and she is having two children. The appellant's counsel asserts before this Court that the relationship between the two was only consensual and that he would even produce the victim before this Court to show his bonafide. The appellant is also willing to pay a sum of Rs.25,000/- as compensation to the victim. The occurrence had taken place more than 13 years ago. If I confirm the sentence imposed by the



trial court that will ruin the appellants family and cause hardship to his wife and to the young children.

6. Therefore, for these adequate and special reasons, even while sustaining the conviction, I modify and reduce the sentence of imprisonment to the period already undergone by the appellant. The appellant shall also deposit a sum of Rs.25,000/- to the credit of S.C No.124 of 2007 on the file of the Sessions Judge, Mahila Court, Tiruchirappalli within a period of four weeks from the date of receipt of a copy of this judgment. He will also execute an affidavit of apology expressing his regret and remorse. The trial judge while disbursing the compensation amount shall also hand over the affidavit of apology to be executed by the appellant. If the appellant fails to adhere to the direction of this court, he will have to undergo default sentence of one year rigorous imprisonment.

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

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

Skm

To

1. The Judicial Magistrate, Musiri

2. The Chief Judicial Magistrate, Trichy

3. The Sessions Judge, Mahila Court, Tiruchirappalli.

4. The Inspector of Police, All Women Police Station, Musiri,
Tiruchirappalli District.

5. The Superintendent
Central Prison, Trichy

copy to

The Government Advocate (Crl.side)
Madurai Bench of Madras High Court
Madurai

+1 CC to M/s.M.KARUNANITHI, Advocate (SR-81018[F] dated
09/08/2019)