



Bail Slip

The Appellant/Accused viz., namely Subramanian, S/o.Vairavan, was released on bail, as per order of this Court dated 06.06.2014 and made in MP(MD)No.1 of 2014 in Crl.A(MD) No.109 of 2014.

BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Dated : 16.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

CRL.A. (MD) No.109 of 2014

Subramanian .. Appellant/Accused No.1
- Vs -

State rep.by
The Inspector of Police,
All Women Police Station,
Thiruppathur Taluk,
Sivagangai District.
(Crime No.3 of 2011)

.. Respondent/Complainant

Prayer : Appeal filed u/s 374 (2) of the Code of Criminal Procedure, to set aside the judgment passed in S.C.No.116 of 2012, dated 17.03.2014 on the file of the Court of Sessions Cum Mahalir Neethi Mandram, Sivagangai, acquit the appellant herein.

For Appellant : Mr.N.Mohideen Basha
For Respondent : Mr.M.Chandrasekaran,
Additional Public Prosecutor.

JUDGMENT

This Criminal Appeal is arising out of conviction and sentence imposed by the Court of Sessions Cum Mahalir Neethi Mandram, Sivagangai, S.C.No.116 of 2012, dated 17.03.2014, and acquit the appellant.

2.The appellant is accused No.1 in S.C.No.116 of 2012 and he has been charged for the offence as follows:

Penal Provision	Punishment
376 IPC	10 years Rigorous Imprisonment with fine of Rs.15,000, in default 1 year Rigorous Imprisonment.
498 (A)	3 years Rigorous Imprisonment, with fine of Rs.10,000/- in default 6 months Rigorous Imprisonment.



3. The facts of the case are briefly stated hereunder:-

The defacto complainant/P.W.1 and the appellant/A1 are close relatives. The defacto complainant's mother (P.W..2) and appellant's father are siblings. In such circumstances, the appellant made false promise to marry the defacto complainant and had physical relationship with her on several occasions. Due to which, she was pregnant and the appellant also took her for taking treatment for aborting the pregnancy. When, the issue came to know, P.W.2 scolded the defacto complainant and drove out from the house. After that, she was living at the appellant's house, at that time, appellant's parents abused the defacto complainant with filthy language and demanded dowry from P.W.1. Due to which, she lodged a complaint before the All Women Police Station, Thiruppathur. The Inspector of Police, All Women Police Station, Thiruppathur registered a case as against the appellant/ A1 for the offence under Sections 417, 376, 498(A) and 294(b), 506(ii) and as against the A2 to A4 registered the case for the offence under Sections 498(A) of IPC and a charge sheet was filed against the accused persons. The learned Judicial Magistrate taken on file in P.R.C.No.8 of 2012 and as per Section 209(A) of Cr.P.C, the case was transferred to the Sessions Cum Mahalir Neethi Mandram, Sivagangai and numbered as S.C.No.116 of 2012.

4. After completion of trial, the trial Court acquitted the Accused Nos.2 to 4 and convicted Accused No.1 as cited above.

5. Aggrieved over the same, the present Appeal has been filed.

6. In order to prove the case of the prosecution, on the side of the prosecution 18 witnesses were examined as PW.1 to PW.18 and 6 documents were marked as Ex.P.1 to Ex.P.6. No material objects were marked. On the side of the accused, no witness was examined nor any document was marked.

7. The available evidences from the prosecution side are as follows:

(i) P.W.1 is the victim and the appellant is her close relative. She lodged the complaint (Ex.P.1). She speaks about the occurrence.

(ii) P.W.2 and P.W.3 are parents of P.W.1. P.W.2 and the appellant's father are siblings. P.W.2 speaks about the marriage conducted between the appellant and P.W.1.

(iii) P.W.4, P.W.5 and P.W.6 are neighbors of the appellant. They speak about the marriage conducted between the appellant and P.W.1.

(iv) P.W.7 is examined as witness , but she turned hostile.

(v) P.W.8 is examined as witness and she is close relative of P.W.1.



(vi) P.W.9 is Doctor attended P.W.1 and issued the certificate Ex.P.2.

(vii) P.W.10 is also Doctor, she attended P.W.1 and issued certificate Ex.P.3.

(viii) P.W.11 is Doctor, he attended the appellant and issued the certificate Ex.P.4.

(ix) P.W.12 is A2 Constable. After medical examination, he put the accused in jail.

(x) P.W.13 took the appellant to Thiruppathur Government Hospital for medical examination.

(xi) P.W.14 is examined as witness , but she turned hostile.

(xii) P.W.15 is Doctor, he examined the appellant and issued certificate Ex.P.5.

(xiii) P.W.16 is Head Constable, took P.W.1 to the hospital for medical examination.

(xiv) P.W.17 is the Inspector of Police, registered the case (Ex.P.1) and examined the witnesses P.W.1 to P.W.3.

(xv) P.W.18 is the Inspector of Police conducted further investigation and examined all witnesses and filed the charge sheet.

8. The learned counsel appearing on behalf of the appellant submitted that at that time of occurrence the defacto complainant aged about 18 years and it was only a consensual act. Both of them are close relatives. The appellant and P.W.1 got married with blessings of both the family members. They were living as husband and wife, nearly six months happily. Due to some misunderstanding, P.W.1 left her matrimonial home and stayed with her parents. Thereafter, she had filed a private complaint as against the appellant and his family members.

9. He further submitted that the matrimonial dispute was given a criminal colour and a false case has been registered against the appellant and his family members. The trial Court acquitted the appellant's family members A2 to A4 from all charges. Therefore, on the same set of evidence, the appellant may be acquitted.

10. Per contra, the learned Additional Public Prosecutor appearing on behalf of the respondent Police submitted that P.W.17 registered the case and handed over the investigation to P.W.18. After completion of investigation, charge sheet was also filed before the trial Court. The trial Court, perusing all the evidence and materials placed before the Court and convicted the appellant.

11. It is also admitted that now the appellant had filed H.M.O.P.No.111 of 2014 before the Sub-Court, Sivagangai and obtained divorce. During the divorce proceedings, an understanding entered between them and also a joint compromise memo has been filed to that effect. Due to which, the appellant has agreed to pay a sum of Rs.2,00,000/- to the defacto complainant. As per joint compromise memo, the appellant initially paid a sum of Rs.1,50,000/- to the



defacto complainant and the balance amount of Rs.50,000/- was paid on 14.12.2019.

12. P.W.1 that she admits that the appellant is her uncle's son and they were loved each other. The appellant had physical relationship on defacto complainant with her consent. Further, as per radiologist report, the victim's age is between 18 and 19 and she also admits that the complaint lodged by her for the purpose of joining with the appellant, who is her husband. P.W.1 to 3 admit about the marriage between the appellant and the defacto complainant, solemnized at Sivan Temple. Thereafter, PW.1 and the appellant were living as husband and wife.

13. The complaint (EX.P.1), dated 25.12.2010, two years prior to the complaint, she had physical relationship with the appellant with her consent on several occasions. Thereafter, panchayat was held and as per the decision in the Panchayat, the appellant married the defacto complainant (P.W.1) and they were living together as husband and wife. At this point of time, it is relevant to extract Section 376 (i) of IPC, which reads as follows:

“Section 376 (i) IPC is extracted hereunder:

(i) commits rape on a woman when she is under sixteen years of age; or”

14.The occurrence took place in the year 2010, the offence of rape would not be attracted for a person being more then 16 years, as per evidence and materials it is seen that the age of the victim was above sixteen years.

15.P.W.1 gave a complaint on 25.12.2010 for the reason that when her parents arranged the marriage with the appellant, it was refused by the appellant. Thereafter, the marriage had taken place, they were lived as husband and wife. Due to some misunderstanding, the appellant had filed a H.M.O.P.No.111 of 2014 before the Sub Court, Sivagangai.

16.Now, a compromise has been arrived at between them and as per the terms of compromise memo, the appellant agreed to pay a sum of Rs.2,00,000/- to the defacto complainant (P.W.1). The appellant already paid a sum of Rs.1,50,000/- to the defacto complainant and the balance amount of Rs.50,000/- paid to her on 14.12.2019.

17.Today, (i.e., 16.12.2019) the appellant and the victim / P.W.1 appeared before this Court and they were identified by the Sub-Inspector of Police, All Women Police Station along with their respective counsels. This Court also enquired both the parties and was satisfied that the parties have come to an amicable settlement between themselves.



18.Further, the defacto complainant expressed her willingness to settle the issue. She also admits about her marriage and thereafter, due to some misunderstanding, she had obtained divorce by mutual consent, now they are living separately.

19.In view of the above, the appellant had physical relationship on defacto complainant with her consent, it is the consensual act and the offence of rape would not attract and the compromise entered between them, this Court is inclined to acquit the appellant of all charges. Accordingly, this Criminal Appeal is allowed and order dated 17.03.2014 passed by the Court of Sessions Cum Mahalir Neethi Mandram, Sivagangai in S.C.No.116 of 2012 is set aside and the appellant is acquitted of the charge framed against him. The bail bonds, if any, executed by the appellant shall stand cancelled. Fine amount, if any, paid shall be refunded to him.

Sd/-

Assistant Registrar

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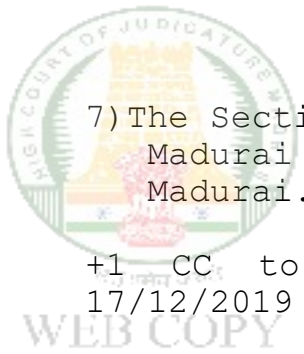
/ /2020

Sub Assistant Registrar(CS)

Das

To

- 1) Sessions Cum Mahalir Neethi Mandram,
Sivagangai.
2. The Judicial Magistrate,
Thiruppathur
3. -Do-Thro' the chief Judicial Magistrate,
Sivagangai
4. The Superintendent,
Central Prison, Trichy
- 5.The Inspector of Police,
All Women Police Station,
Thiruppathur Taluk,
Sivagangai District.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



7)The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to Mr.N.MOHIDEEN BASHA, Advocate (SR-105279[F] dated
17/12/2019)

JUDGMENT IN
CRL. A. (MD) NO. 109 of 2014
Dated: 16.12.2019

MK (08.01.2020) 6P 10C