

BAIL SLIP

The Appellant Accused namely R.Elumalai, S/o.Ramalingam was directed to released on bail as per the order of this court dated 11.04.2012 made in Crl.MP.No.1/2012 in Crl.A.No.222 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.A.No.222 of 2012

R.Elumalai

... Appellant/Accused

Vs.

State represented by

The Inspector of Police,

W-21, All Women Police Station,

Guindy, Chennai - 600 032.

... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) & 382 Cr.P.C. against the judgment and order dated 27.02.2012 passed in S.C.No.257 of 2008 on the file of the Sessions Court (Mahalir Neethimandram), Chennai.

For Appellant : Mr.M.Krishnamurthy

For Respondent : Mrs.P.Kritika Kamal
Government Advocate

(Crl. Side)

JUDGMENT

Challenge in this criminal appeal is to the judgment and order dated 27.02.2012 passed in S.C.No.257 of 2008 on the file of the Sessions Court (Mahalir Neethimandram), Chennai.

2. The facts in brief leading to the filing of this case are as under:

2.1 The victim girl "X" (PW1) (name not disclosed for the sake of anonymity) is the adopted daughter of Mary (PW2) and Pandurangan (PW4), who were construction workers and were residing at door no.2725, Velachery West, Bhavani Nagar, Chennai.

2.2 The appellant, who was known to the family of "X" (PW1), also resided with them and was working as construction supervisor in the site, where, Mary (PW2) and Pandurangan (PW4) were working.

2.3 The appellant and "X" (PW1) fell in love. On 24.09.2006, the appellant took "X" (PW1) to a desolate place behind the construction site and seduced her. "X" (PW1) informed this to her parents (PW2 and PW4). When the appellant was questioned, he admitted his mistake and agreed to marry "X" (PW1). Accordingly, the appellant and "X" (PW1) got married on 10.11.2006 in Sri Mundagakanni Amman Temple, Bhavani Nagar. After marriage, the appellant and "X" (PW1) resided at door no.96, Bhavani Nagar, Velachery.

2.4 It is alleged that the appellant used to come home drunk, beat his wife "X" (PW1) and demand a sum of Rs.5,00,000 and twenty sovereigns of gold as dowry. It is further alleged that when "X" (PW1) was not able to comply with the demand, the appellant left her and went to his village on 01.01.2007. Thereafter, the appellant sent a lawyer's notice dated 03.01.2007 to "X" (PW1) levelling certain allegations, for which, a suitable reply notice dated 11.01.2007 was issued by "X" (PW1) refuting the allegations. Thereafter, it is alleged that the appellant started intimidating "X" (PW1) and her parents (PW2 and PW4) and therefore, on 26.04.2007, "X" (PW1) gave a complaint to the Inspector of Police, W-21, All Women Police Station, on which, an enquiry was conducted.

2.5 The police called both sides and during enquiry, the appellant deposited a sum of Rs.20,000/- in the name of "X" (PW1) in Post Office towards marriage expenses incurred by the parents of "X" (PW1). After depositing so, the appellant started harassing "X" (PW1) and her parents for return of the said sum. However, the appellant became scarce and his whereabouts were not known to either "X" (PW1) or her parents. Hence, "X" (PW1) gave a written complaint (Ex-P1), based on which, Nithyakumari (PW8), Sub-Inspector of Police, All Women Police Station, registered a case in Crime No.6 of 2007 on 19.09.2007 at 18.00 hours for the offences under Sections 376, 498-A and 506 (II) IPC.

2.6 The appellant was arrested on 19.09.2007 and was subjected to medical examination on 08.10.2007 by Dr.Gokularamanan (PW7), who, in his evidence as well in the medical report (Ex-P2), has opined as follows:

"Opinion: There is nothing to suggest that he is impotent."

2.7 "X" (PW1) was subjected to medical examination on 09.10.2007 by Dr.Parimala (PW9), who, in her evidence as well in the medical report (Ex-P5), has opined as follows:

"Opinion: I am of the opinion that "X" (PW1) D/o. Pandurangan is used to sexual intercourse."

The age of "X" (PW1) was medically determined by Dr.Parimala (PW9) as falling between 18 - 20 years as on 09.10.2007 vide age certificate (Ex-P6).

2.8 After examining witnesses and collecting various reports, Parijatham (PW11), Inspector of Police, completed the investigation and filed a final report in P.R.C.No.47 of 2008 before the IX Metropolitan Magistrate, Saidapet, Chennai, for the offences under Sections 376, 498-A and 506 (II) IPC, against the appellant.

2.9 On appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.257 of 2008 and was made over to the Sessions Court (Mahalir Neethimandram), Chennai, for trial.

2.10 The trial Court framed charges for the offences under Sections 376, 498-A and 506 (II) IPC and when questioned, the appellant pleaded "not guilty".

2.11 To prove the case, the prosecution examined eleven witnesses and marked six exhibits.

2.12 When the appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. The appellant produced one Annadurai (DW1), whose examination-in-chief was recorded on 31.01.2012. The Public Prosecutor sought time for cross-examination of the said witness, which was granted by the trial Court. However, the appellant did not produce the said Annadurai (DW1) for cross-examination by the Public Prosecutor.

2.13 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 27.02.2012, acquitted the accused of the offences under Sections 376 and 506 (II) IPC, but, convicted him of the offence under Section 498-A IPC and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.25,000/-, in default to undergo three months simple imprisonment. The fine of Rs.25,000/- was ordered to be given to "X" (PW1) as compensation.

2.14 Challenging the above conviction and sentence, the appellant is before this Court.

3. Heard Mr.M.Krishnamurthy, learned counsel for the appellant and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) for the respondent/State.

4. The State has not chosen to file any appeal challenging the acquittal of the appellant of the offences under Sections 376 and 506 (II) IPC.

5. The prosecution has proved beyond cavil the relationship between the parties.

6. The short point that falls for determination is whether there are sufficient materials to confirm the conviction of the appellant under Section 498-A IPC.

7. "X" (PW1), in her evidence, has stated that the appellant was living in her house; one day, the appellant took her behind the building site and ravished her; she complained the same to her parents (PW2 and PW4); when her parents questioned the appellant, he admitted his mistake and agreed to marry her ("X"); accordingly, she got married to the appellant on 10.11.2006 in Sri Mundagakanni Amman Temple, Bhavani Nagar and they lived at door no.96, Bhavani Nagar, Velachery; after a few days of marriage, the appellant started coming home drunk, beat her and demand a sum of Rs.5,00,000/- and twenty sovereigns of gold; he also sent a lawyer's notice making unsubstantiated allegations, for which, she sent a reply notice. This evidence of "X" (PW1) has been corroborated by her parents (PW2 and PW4).

8. The trial Court was perfectly justified in acquitting the appellant of the offence under Section 376 IPC, because, the evidence on record shows that "X" (PW1) was aged about eighteen years and she had had consensual sex with the appellant, since she was in love with him. Similarly, the finding of the trial Court that there was no material to convict the appellant of the offence under Section 506 (II) IPC also cannot be said to be

incorrect.

9. The learned counsel for the appellant submitted that when the trial Court has disbelieved "X" (PW1) with regard to the allegations of rape and intimidation, her evidence with regard to the allegations that the appellant used to come home drunk and beat her should have been rejected. This Court is unable to concur with his submission, since the principle falsus in uno falsus in omnibus, does not apply here.

10. The evidence of the witnesses including Sundari (PW3), Shakila (PW5) and Selvaraj (PW6), who are "X's" (PW1's) neighbours, consistently show that the appellant had inflicted cruelty on his wife ("X") after consuming liquor. In such perspective of the matter, this Court does not find any infirmity in the finding arrived at by the trial Court.

11. In all fairness, the prosecution should have either investigated into the allegations or counter allegations made in the lawyer's notices' or should have at least made them a part of the prosecution papers especially when there is a reference to them in the complaint (Ex-P1) that was given by "X" (PW1).

12. Coming to the quantum of sentence for the offence under Section 498-A IPC, this Court is of the view that interests of justice will be served, if the substantive sentence of one year rigorous imprisonment imposed by the Trial Court is reduced to the period of sentence already undergone by the appellant and it is ordered accordingly. However, the conviction of the appellant of the offence under Section 498-A IPC is confirmed. The sentence of fine and the default sentence shall remain the same.

In the result, this criminal appeal is partly allowed.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

nsd
To

1. The Sessions Judge,
(Mahalir Neethimandram),
Chennai.

2.The IX Metropolitan Magistrate
Saidapet Chennai

3.The Chief Judicial Magistrate
Egmore Chennai

4.The District Collector
Chennai

5.The Director General of Police
Mylapore Chennai

6. The Inspector of Police,
W-21, All Women Police Station,
Guindy, Chennai - 600 032.

7. The Public Prosecutor,
Madras High Court,
Chennai - 600 104.

8. The Section Officer (Crl.Side) with a direction to return
the original records to the
Madras High Court, Court below concerned
Chennai -104.

+1 cc to Mr.Krishnamoorthy Advocate sr200

Crl.A.No.222 of 2012

aa28/02/2020

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