

Bail Slip in Crl.A.No.233/13

The Accused viz., Kolanji @ Paramasivam S/o.Natesan was released on bail vide Crl.M.P.No.2 of 2013 in Crl.A.No.233 of 2013, dated 25.04.2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.01.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.A.No.233 of 2013

State rep. by
The Inspector of Police
All Women Police Station
Perambalur

... Petitioner/
Complainant

Vs

Kolanji

... Respondent/
Accused

Criminal Revision preferred under Section 378 Cr.P.C. to set aside the judgment and order dated 20.07.2012 passed by the Sessions Judge, Mahila Court, Perambalur in S.C.No.125 of 2011.

For Petitioner : Mrs.P.Kritika Kamal
Govt. Advocate (Crl. Side)

For Respondent : Mr.E.C.Ramesh (No Appearance)

सत्यमेव जयते
O R D E R

This Criminal Revision has been preferred challenging the judgment and order dated 20.07.2012 passed by the Sessions Judge, Mahila Court, Perambalur in S.C.No.125 of 2011.

2.It is the case of the prosecution that the victim girl 'X' and the accused were in love with each other for over five years and three years prior to 13.07.2011 (on which date the complaint was lodged), it is alleged that the accused deflowered her and thereafter also, they continued with their intimacy. When

things stood thus, on 19.05.2011, the accused forcibly raped her in the night hours in the garden behind her house and thereafter, refused to marry her.

3. On these allegations, 'X' gave a complaint (Ex.P1) on 13.07.2011, based on which, the police registered a case in crime No.9 of 2011 under Section 417 and 376 IPC.

4. 'X' and the accused were subjected to medical examination and the report (Ex.P3) qua 'X' shows that she was 24 to 26 years of age as on 15.07.2011. She was not pregnant.

5. After examining witnesses and collecting various reports, the police completed the investigation and filed a final report in P.R.C.No.46 of 2011 before the Judicial Magistrate, Perambalur for the offence under Sections 417 and 376 IPC against the accused.

6. On appearance of the accused, 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.125 of 2011 and was made over to the Mahila Court, Perambalur, for trial. The trial Court framed charges for the offence under Sections 417 and 376 IPC against the accused and when questioned, he pleaded "not guilty".

7. To prove the case, the prosecution examined 12 witnesses, marked 8 exhibits. When the accused was questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against him, he denied the same. No witness was examined from the side of the accused nor any document marked.

8. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 20.07.2012 in S.C.No.125 of 2011, acquitted the accused of all the charges. Challenging the said acquittal, the State has preferred the present appeal after obtaining special leave.

9. Heard Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent/State and Mr.E.C.Ramesh, learned counsel for the respondent/accused.

10. The whole case of the prosecution rests on the evidence of 'X'. 'X' was not a minor then. At the time of medical examination, she was 24 to 26 years old. In her chief examination, she has stated that, she and the accused loved each

other for five years and that, three years prior to the giving of the complaint, the accused deflowered her. Thereafter, when she asked him to marry her, he agreed. Again on 19.05.2011, he had sex with her and when she asked him to marry her, he refused.

11. In the cross examination, 'X' has clearly stated that, she went on her own accord with the accused to cinemas and parks. Similarly, she also admitted in the cross examination that, she had consensual sex with the accused. Thus, a complete reading of her evidence shows that she was not raped by the accused, but they have had consensual sex as they were in love with each other.

12. As regards the offence under Section 417 IPC, evidence of 'X' shows that only after they had sex, the accused promised to marry her. She has not stated that, she gave herself up to the accused on the promise made by him that he would marry her. That part, Mookkan (P.W.4), uncle of 'X', has clearly stated that, when they came to know of the affair, they called the accused and asked him whether he would marry 'X', for which, he agreed. The evidence on record shows that, it was the parents of the accused who were looking out for a bride for the accused and it was they, who were the stumbling block for the marriage of 'X' with the accused.

13. It is trite that in an appeal against acquittal, when two views are possible, the view that favours the accused merits acceptance. In this regard, it may be relevant to refer to the judgment in Arulvelu and another Vs. State [(2009) 10 SCC 206], wherein, the Supreme Court has held as follows:

"36. Careful scrutiny of all these judgments lead to the definite conclusion that the Appellate Court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The Trial Court judgment cannot be set aside because the Appellate Court's view is more probable. The Appellate Court would not be justified in setting aside the Trial court judgment unless it arrives at a clear finding on marshaling the entire evidence on record that the judgment of the Trial Court is either perverse or wholly unsustainable in law."

Ex consequenti, this Court does not find any merit in this appeal and accordingly, this appeal stands dismissed. The Registry is directed to transmit the original records if any, to the trial Court forthwith.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gya

To

1.The Sessions Court
Mahila Court, Perambalur

2.The Inspector of Police
All Women Police Station
Perambalur.

3.The Superintendent,
Central Prison,
Trichy.

4.The Public Prosecutor,
High Court, Madras-104.

Copy to:

1.The Section Officer,
Criminal Section,
High Court, Madras-104

2.The Deputy Registrar
Criminal Side
High Court, Madras

cp(co)
nr 17/02/2020

CRL.A.No.233 of 2013