

BAIL SLIP

The Appellant/Accused namely Selvaraj, aged about 28 years S/o.Ponnusamy, Sc.75/2012 on the file of the Mahila Sessions Judge, (FTC) Erode, was directed to be released on bail as per order of this court dated 02.07.2014 in M.P.No.1/2014 in CrI.A.164 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.03.2020

PRONOUNCED ON : 18.03.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

CRL A.No.164 of 2014

Selvaraj

...Appellant

Vs.

State Rep by
Inspector of Police
Nambiyur Police Station
Erode District

...Respondent

Prayer:

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the conviction and sentence imposed on the appellant by the judgment dated 18.02.2014 passed in SC No.75/2012 on the file of Mahila Sessions Judge (FTC), Erode.

For Petitioner : Ms.N.Premalatha
for M/s.Nalliyappan

For Respondent : Mr.R.Ravichandran
Government Advocate (CrI. Side)

JUDGMENT

The appellant/accused has been convicted by the Mahila Sessions Judge/Fast Track Court, Erode for the offences punishable under Section 376(1) IPC and sentenced to undergo Rigorous Imprisonment for 7 years and also to pay a fine of Rs.10,000/- , in default, to undergo Simple Imprisonment for one year and Section 417 IPC and sentenced to undergo Rigorous

Imprisonment for one year and the sentences of imprisonment imposed on the accused had been ordered to run concurrently by judgment dated 18.02.2014 passed in SC No.75 of 2012. Impugning the same, this Criminal appeal has been preferred by the accused.

2. Briefly stated, the prosecution case leveled against the accused is that 8 months prior to 10.12.2009, on one day, at about 12 PM, the accused dishonestly deceived the victim girl working in Banian company along with him that he would marry her and so enticing her, committed rape on her several times against her will and consent and on account of the same, the victim girl became pregnant and gave birth to a female baby by name Dhanusree and thus the accused has committed offences punishable under Sections 417 and 376(1) IPC.

3. The Criminal law in this matter had been set in motion based on the complaint lodged by the victim girl 10.12.2009 marked as Ex.P1. On that basis, the case had been registered against the accused under Sections 417 and 376(1) IPC and the printed FIR being marked as Ex.P10 and thereafter it is noted that the officer who had conducted the investigation proceeded to the scene of occurrence and prepared observation mahazar and the rough sketch in the presence of the witnesses and examined the victim and various other witnesses and subjected the victim girl to medical examination and also the victim girl having given birth to the female baby, also endeavoured to determine the parentage of the female baby through DNA test and also arrested the accused and recorded his confession and thereafter, the investigation was concluded and resultantly the final report had been laid against the accused for the aforesaid offences.

4. To sustain the prosecution case, P.Ws 1 to 23 were examined and Exs.P1 to P12 were marked and no M.O has been marked. On conclusion of the prosecution evidence, the accused was examined under Section 313 of Cr.P.C. qua the incriminating evidence tendered against him by the prosecution witnesses and he had denied the same and according to the accused he has not committed the offence. On the side of the accused, no oral and documentary evidence has been adduced and no M.O. has been marked.

5. On an appreciation of the oral and documentary evidence and the materials projected, the trial court was pleased to convict and sentence the accused as above pointed out. Challenging the same, the Criminal Appeal has been preferred.

6. According to the prosecution, the occurrence is stated to have taken place 8 months prior to 10.12.2009 in the banian Company where the accused and the victim girl were working. It is found that as per the prosecution case, the victim used to

work in the company at night hours and making use of the same, according to the prosecution, the accused dishonestly deceived her by promising to marry her and so luring and captivating the victim, it is put forth that the accused, against her will, had intercourse with the victim girl several times and on account of the same, the victim girl having got conceived and later coming to know that the accused is a married person with children and finally coming to know that she had been deceived by the accused, it is found that at the stage when she was 8 months pregnant, the victim girl had chosen to prefer the complaint against the accused on 10.12.2009, marked as Ex.P1.

7. To sustain the prosecution case, the victim girl has been examined as P.W.1 and P.W.1 during the course of her evidence has clearly testified that she used to work in the night hours in the banian company and at that point of time, the accused promised to marry her and so attracting and tempting her, against her consent and will, committed rape on her and further according to the victim girl, on the basis of the same representation, the accused had been continuously committing rape on her and it is her further case that she having conceived on account of the acts committed by the accused and on the same being informed to the accused, it is stated by the victim girl that the accused had endeavoured to abort the child by giving medicines, however, the same ended in vain and thus it is the evidence of the victim girl that the accused had been repeatedly promising and assuring her that he would marry her and believing his words, it is put forth that the victim girl had subjected to his carnal desires and only after 8 months pregnancy, on coming to know that the accused is a married person with children, according to the victim girl, she had chosen to prefer a complaint against the accused. The above evidence of the victim girl has not been shown to be unacceptable, unreliable and untrustworthy on the part of the accused despite cross examining her in extenso, on the other hand, on considering the evidence adduced by the victim girl during the course of cross examination also, in toto, it is found that the accused, only on the false promise of marrying the victim girl, had subjected her to sexual intercourse against her consent and on that representation, it is found that he had been repeatedly having intercourse with her and believing his words, the victim girl is also found to have submitted herself to the accused and therefore only on the belief that the accused would marry her, eventually, it is found that the victim girl had not chosen to lodge the complaint against the accused immediately and on the other hand, the accused having left her in the midst of her pregnancy, it is found that the victim girl coming to know that the accused had deceived her intentionally on the premise of false marriage, had chosen to prefer the complaint and in the light of the abovesaid factors, as rightly determined by the

trial court, though there is a delay in lodging of the complaint on the part of the victim, considering the abovesaid facts, in toto, it is seen that the delay had been properly explained and on that score, the case projected by the prosecution, as such, cannot be rejected.

8. The counsel for the accused mainly contended that the victim girl and the accused only had consensual sex and the victim girl being 17 years of age at the time of occurrence, according to her, the consensual sex, which they had, cannot fall within the purview of the definition of rape as defined under Section 375 of the Indian Penal Code and therefore, according to her, the trial court erred in convicting the accused under Section 376 IPC. However, as rightly put forth by the Government Advocate, the victim girl had subjected her body to the accused only on the belief that the accused would marry her as promised by him and in such view of the matter, the victim girl being 17 years of age at the relevant point of time, naturally it is found that she would have fallen prey to the desire of the accused, particularly believing his promise to marry her and in such view of the matter, merely because the victim girl and the accused had sexual intercourse on several occasions, by the same, it cannot be construed that no rape had been committed by the accused on the victim girl and that they had been only having repeated sexual intercourse with mutual consent. The point to be considered in this case is that the victim girl had been made to subject her body on the belief that the accused would marry her and only later on, coming to know that the accused is a married person with children, the victim girl came to know about her fate and accordingly, chose to lay a complaint against the accused and in such view of the matter, the arguments put forth by the counsel for the accused that the victim girl and the accused only had consensual sex and that the accused had not committed rape on the victim girl, as such, cannot be countenanced.

9. From the evidence of P.Ws.4 to 7, it is found that the victim girl and the accused were closely moving with each other in the company where they had been working and accordingly it is seen that the accused taking advantage of the acquaintance developed between them and on the false assurance that he would marry her, accordingly, is found to have committed rape on her against her will by deceiving her on the false promise. Therefore, the contention that the victim girl had consented to sexual intercourse on the part of the accused cannot be accepted in any manner and merely because the victim girl had lodged the complaint belatedly, on that score, it cannot be held that there has been only consensual sex between the parties and the accused had not committed the offence.

10. The victim's parents had been examined as P.Ws.3 and 4 and they have deposed about the victim girl having informed about the relationship which she had with the accused very belatedly, that is, at the advance stage of pregnancy and therefore according to them they had chosen to lodge the complaint against the accused. Pointing to the evidence, according to the counsel for the accused, the parents having come to know about the pregnancy of the victim girl, if there had been any forcible sex committed by the accused, would not have waited till the advance stage of pregnancy and on the other hand, would have immediately lodged the complaint against the accused. Further it is put forth that the victim girl could not have concealed her pregnancy from her parents till the stage of 8 months pregnancy. However, the point to be considered in this matter is that the victim girl and her parents had not chosen to prefer the complaint immediately, believing that the accused would come forward to marry her and on that premise, it is found that they had been waiting for the accused and only on coming to know that the accused had deceived her and further coming to know that the accused is a married person with children, in such a scenario, it is found that the victim girl and her parents had chosen to prefer the complaint against the accused.

11. As above pointed out, even on the date of lodgment of the complaint, the victim girl was pregnant and accordingly it is found that she had given birth to a female child and the prosecution had endeavoured to ascertain the parentage of the baby girl born to the victim and from the evidence adduced by the medical officers examined as P.Ws.14 and 15 and the officer of the Forensic Science Lab examined as P.W.16 and the DNA test report marked as Ex.P6 as well considering Ex.P7 regarding delivery of the baby child by the victim and when it is noted that as per Ex.P6, DNA report, it is only the accused who is the biological father of the female child born to the victim girl and the same has been clearly spoken to by P.W.16, in such view of the matter, it is found that the prosecution has established that the victim girl had conceived only due to the sexual intercourse which the accused had with her and as above pointed out, when the accused had forced the victim girl to have sexual intercourse with him against her will only on the false promise of marrying her and thereby having deceived her intentionally and further as above noted left the victim girl in the midst of her pregnancy and having not married her and on the other hand, when the facts divulged that the accused is already a married person with children, in such view of the matter, as held by the trial court, the accused is found to have committed the offence of rape against the victim girl by deceiving her and thus, in toto, it is seen that the accused has committed both the offences leveled against him by the prosecution.

12. The counsel for the accused put forth the contention that there is no direct evidence that the accused had promised to marry the victim girl and on that premise endeavoured to have sexual intercourse with her and further it is put forth that the other witnesses examined in the side of the prosecution had only heard about the occurrence much later and therefore, it is stated that the prosecution case should not be accepted. Insofar as the proof of the commission of rape is concerned, it has been held consistently that the same can be held to have been established based on the solitary evidence of the victim girl, provided the victim girl's testimony is convincing and trustworthy and in the light of the abovesaid position of law, when considering the evidence of the victim girl and when she has clearly stated that she had been forced to have sex against her will by the accused only on the false promise of marrying her and accordingly when it is seen that the victim girl had submitted her body to the accused believing his promise and on that score when it is further noted that the accused had been repeatedly having intercourse with her and in such view of the matter, when the evidence of the victim girl is found to be not shattered by the accused during the course of cross examination and on the other hand, when the evidence of the victim girl is found to be wholly convincing and acceptable, as rightly contended by the Government Advocate, based on the sole testimony of the victim girl, this Court should only uphold the conviction and sentence imposed on the accused. The above argument put forth by the Government Advocate seems to be acceptable.

13. In the light of the abovesaid discussions, I do not find any valid reason to dislodge the conviction and sentence imposed on the accused by the trial court. Accordingly, the conviction and the sentence imposed on the accused by the trial court are confirmed.

14. In conclusion, the Criminal Appeal fails and is accordingly dismissed. The Trial court is directed to secure the presence of the accused and commit him to prison to undergo the sentence imposed on him as per law.

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Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

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To

1. The Mahila Sessions Judge (FTC), Erode.
2. The Judicial Magistrate No.II, Erode.
3. The Chief Judicial Magistrate, Erode.
4. The Superintendent, Central Jail,
Coimbatore.
5. The Inspector of Police,
Nambiyur Police Station,
Erode District.
6. The Public Prosecutor,
High Court, Madras.
7. The Section Officer, Criminal Section,
Madras High Court, Chennai.
8. The Judicial Magistrate II,
Gobichettipalayam.
9. The Superintendent of Police,
Erode.

+1cc to M/s.Nalliyappan, Advocate, S.R.No.23981

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LN(CO)
CS/21/07/2020

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