



BAIL SLIP

Ellappa, aged 28 years, Petitioner/Appellant, son of Govindappa in Cr.No.7/12 on the file of the Inspector of Police, Uthampalli Police Station, Hosur and in SC.No.57/2015 on the file of FTC Mahila Court, Krishnagiri was enlarged on Bail vide order dated 28.04.2018 made in Crl.M.P.No.6333 of 2018 in Crl.A.No.263 of 2018.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order 23.09.2021	Date of Pronouncing Order 22.11.2021
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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.263 of 2018

Ellappa

.. Appellant

Vs.

The Inspector of Police,
Uthamappali Police Station,
Hosur.

.. Respondent

PRAYER : Criminal Appeal is filed under Section 374(ii) of Criminal Procedure Code, to set aside the judgment dated 28.02.2018 passed by the learned Fast Track Mahila Court, Krishnagiri, in S.C.No.57/2015 convicting the appellant for the offence committed under Section 376 IPC and imposing a punishment of seven years rigorous imprisonment and a fine of Rs.1,000/- in default six months rigorous imprisonment.

For Appellant : Mr. E. Om Prakash,
Senior Advocate
for Mr. K. Moorthy

For Respondent : Mr. S. Vinoth Kumar,
Government Advocate



J U D G M E N T

The matter is heard through "Video Conference".

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2. Convicted sole accused is the appellant herein.

3. This criminal appeal is filed against the judgment dated 28.02.2018 passed by the learned Fast Track Mahila Court, Krishnagiri, in S.C.No.57/2015 convicting the appellant for the offence committed under Section 376 IPC and imposing a punishment of seven years rigorous imprisonment and a fine of Rs.1,000/- in default six months rigorous imprisonment

4. The case of the prosecution in brief is that

(i) on 28.12.2021 and 30.12.2021 against the will and without the consent of P.W.1/victim, the accused has committed the offence of rape and subsequently, on 04.01.2012, he had made a promise to marry her and went to the Madhanagiri Muniyappan Temple and tied Thaali (Yellow Thread) after the intervention of Panchayadarars. Panchayant was conducted by the Panchayadarars/P.W.6, P.W.7 and P.W.8 in the presence of 100 people. He stayed there for a night and thereafter, in the early hours, he flee from the village, which, resulted in filing the FIR.

5. After investigation, the respondent-police filed charge sheet against the accused in Crime No.07/2012 on 09.08.2012 for the alleged offence on the file of All Women Police Station, Hosur. Initially, the case was registered for the offence under Section 417, 376 and 506(ii) of IPC and final report is laid.

6. During trial, on the side of the prosecution, P.W.1 to P.W.14 witnesses were examined and Exs.P1 to P16 were marked. No oral or documentary evidence was marked on the side of the accused.

7. The learned Fast Track Mahila Court, acquitted the appellant from the charge under Section 417 and 506(ii) of IPC in terms of 235(1) of Cr.P.C. However, held that the prosecution has proved the charge under Section 376 of IPC and accordingly, convicted the accused and passed sentence of seven years rigorous imprisonment with fine of Rs.1,000/- in default to undergo six months rigorous imprisonment.

8. Mr.Om Prakash, learned Senior Advocate appearing for the appellant/accused would contend that the evidence of P.W.1, P.W.2 and P.W.3, does not attract the offence under Section 375 of IPC. The evidence of P.W.1/defacto complainant is only con-sexual act of sex and she has given her consent for the same.



The age of the victim girl is 18 to 16 years.

8(i) Further contended that the age of the defacto complainant was 18/19 years as on 29.08.2012. The entire evidence proves that there was a marriage on 04.01.2012 and that the accused stayed with the victim in her house on 04.01.2012 and had sexual relationship. The child was born on 30.12.2012. The allegations made in the complaint of alleged rape is after a long delay, as the alleged incident is said to have occurred on 28.12.2011 and on 30.12.2011, whereas the alleged complaint was given only on 09.08.2012, while the preceding complaint did not allege any offence of rape.

8(ii). Further contended that the first complaint was given on 14.07.2012 before All Women Police Station and the same was taken on record in C.S.R.No.135/2012. On the first complaint the complainant has requested the police officer to make arrangements for the complainant to live with the accused. There is no allegation of 'rape' by the defacto complainant in the first complaint. As an afterthought since the appellant was not ready to live with the defacto complainant, a second complaint was given on 09.08.2012, FIR registered (Crime No.07/2012) and in the second complaint, the defacto complainant alleged 'rape'.

8(iii). Since the accused and complainant lived together, had sexual relationship for one day. Though, the accused is already married, the ingredients under Section 375 of IPC, (rape) is not made out and hence, prayed that the conviction under Section 376 of IPC is unsustainable in law.

9. At the outset, the trial Court has taken the evidence of P.W.1, for the rape and based upon the DNA Report/Ex.P16 confirmed the parentage of the accused and rendered a finding of rape against the accused. The relevant records of the birth of the child, evidence of Doctor, as to the loss of virginity and subsequent pregnancy and delivery of a girl baby thereafter, has been taken note of by the Sessions Judge for laying conviction under Section 376 of IPC.

10. Whether, the order of conviction is sustainable in law. Whether, the quantum of sentence awarded by the trial Court is excessive. The accused is charged for the offence under Section 417, 376 and 506(ii) of IPC. For 506(ii) and 417, he was acquitted. The sole charge is now stands against the appellant/accused is 376 of IPC.

11. P.W.1 is victim girl. The chief examination was recorded on 19.09.2016. The cross examination was conducted after filing an application under Section 311 of Cr.P.C., to



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recall P.W.1 for cross examination and cross examination was conducted on 17.08.2017, nearly, after one year. Even during the cross examination, her evidence of the victim girl/P.W.1, is clear and cogent and unshaken by the various questions confronted by her by the defence counsel.

12. On combined reading of chief and cross examination of P.W.1, I find that with regard to the alleged occurrence on 28.12.2011 and 30.12.2011, the same remains unchallenged in the cross examination, assumes significance. The alleged eye wash marriage has to make-it, believe the P.W.1 and to silence the parents, said to have been taken place on 04.01.2012, he tied Thalli (Yellow Thread) before the Temple.

13. On combined reading of version of P.W.1 and independent witnesses P.W.6, P.W.7 and P.W.8, I find out during the panchayat, held by Panchayadars/P.W.6, P.W.7 and P.W.8, attended by more than 100 persons in the Village, it appears that the accused has admitted the commission of the crime and also tying of the Thalli, despite the fact, he is already married. He only pleaded for time to convince his first wife and after dissolution of the Panchayadars, on the next day, early morning, under dark of dawn, he fled from the village.

14. It is the specific evidence of P.W.1 that she was studied up to 8th Std, at the time of occurrence she was 17 years. The cross examination of P.W.1/victim, P.W.2, P.W.3 P.W.4 viz., family members, are only on the line that there was a marriage and to support accused argument that Section 376 of IPC is not attracted. The act of the accused in having Sexual relationship against the will and without consent of P.W.1, on 28.12.2011 and 30.12.2011, were remained unchallenged in the cross examination of P.W.1, assumes significance.

15. On combined reading of the version of private prosecution witnesses (P.W.1 to P.W.4), this Court finds that the accused was in possession of native talent to cheat the rustic women and her family and their village and made an eye wash of tying of Thalli (Yellow Thread), around the neck of P.W.1. After dissolution of the Panchayat conducted by P.W.6, P.W.7 and P.W.8, in the Village and early morning he fled from the Village. Such an action of the accused clearly shows that it is not a marriage, in the true sense of the term much less legal term it is only a ruse to excuse and to safeguard from the assault of the village people while conducting the Panchayat.

15(i) After dissolution of the Panchayat, on the dispersal of the members of the village on the following night and early morning he fled from the village and ran away and hence, the entire conduct adopted by the accused goes to show that it is



Ex.P6/Medical Report, wherein the victim is found to be 18-20 weeks of pregnant and subsequently, P.W.1 gave birth to baby girl and the registration of birth of the child of P.W.1 is marked as Ex.P12 by P.W.12 and the medical evidence of P.W.14/Deputy Director Scientific Officer of Forensic Department under Ex.P15, as I find that the accused is the biological father and hence, I find that the prosecution has proved the charge beyond reasonable doubt and accordingly, the conviction laid by the learned Fast Track Sessions Judge is just and proper.

21. Mr.Om Prakash, the learned Senior Advocate for the appellant would contend that the first complaint under Ex.P1, the victim has asked for the re-union of the husband/accused since he had already tied the Thalli and hence, would contend that the charge under Section 376 of IPC is not made out.

22. This Court has given its anxious consideration and unable to uphold for the multiple reasons discussed supra. For the reason stated in the preceding paragraphs, this Court has held that the accused has in order to escape from the Village and also escaped from the warmth of the village people which has resulted in the Village Panchayat, has made a stage drama as if, he tied Thalli making P.W.1 as his wife in front of the village and within a day or two when the entire village is sleeping, has found his way and fled from the village and therefore, the said factum is not a marriage in the eye of law. It is only an ruse to escape from the village and hence, the same need not be taken into consideration.

23. The next contention is that it was consensual sex. From the evidence of P.W.1, I find that there is no suggestion to P.W.1 or any prosecution witness. Accordingly, both the contention raised by the Senior Advocate stands negatived.

24. As observed earlier, at the risk of repetition, for the sake of clarity, the specific allegation by P.W.1, on 28.12.2011 and 30.12.2011 against her will and without her consent, the accused had sexual relationship with her and subsequently, on 04.01.2012, he made a stage managed, as if, he performed marriage. The said contention of P.W.1 was remain unchallenged in the cross examination, not challenged before any of the private prosecution witnesses also forces this Court to held that the suggestive case of the defence is only an after thought.

25. Accordingly, this Court holds that the suggestive case was not probabilised and charge was proved by the prosecution behind reasonable doubt. Accordingly, the conviction and sentence is held to be valid in law and sustainable.



26. Accordingly, the criminal appeal is dismissed. The order dated 28.02.2018 made in S.C.No.57/2015 on the file of the learned Fast Track Mahila Court, Krishnagiri is hereby confirmed. The Trial Court is directed to secure the accused and make him undergo the remaining period of sentence.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

AT

To

1. The Sessions Judge,
Fast Track Mahila Court,
Krishnagiri.
2. The Inspector of Police,
Uthamappali Police Station,
Hosur.
3. The Superintendent,
Central Prison,
Vellore.
4. The Judicial Magistrate,
No.2, Hosur.
5. The Public Prosecutor,
High Court of Madras.
6. The Section Officer,
Criminal Section (Records),
High Court, Madras.

+1cc to M/s.K.Moorthy, Advocate, S.R.No.60095

Crl.A.No.263 of 2018

RGN(CO)
SU(03/12/2021)