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BAIL SLIP

The Petitioners/Accused/Viz, MARIMUTHU, S/o.Rathinam, was released on bail as per the Order of this Court Dated 29/02/2016 in Crl.M.P.No.71 of 2016 in Crl.A.No.8 of 2016, on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order	Date of Pronouncing Order
27.07.2021	11.08.2021

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.8 of 2016

Marimuthu ...Appellant

Vs.

The State rep.by
The Inspector of Police,
Poombuhar Police Station,
Nagapattinam District.
(Crime No.4/2012) ...Respondent

PRAYER : Criminal Appeal is filed under Section 374(ii) of Criminal Procedure Code, to set aside the judgment of convicting the appellant for the offence alleged under Section 354 and 506 (ii) of IPC and for the offence under Section 354 of IPC the accused is convicted and sentenced to undergo two year Rigorous Imprisonment and for the offence under Section 506(ii) of IPC the accused is convicted and sentenced to undergo Rigorous Imprisonment for four years and to pay a fine of Rs.1,000/- in default to undergo Simple Imprisonment for a period of one year and the period of sentence should run concurrently passed in S.C.No.86/2013 dated 18.12.2015 on the file of the learned Sessions Judge, (Fast Track Mahila Court), Nagapattinam and consequently thereby allow this criminal appeal.

For Appellant : Mr. B. Sundarapandian
for Mr. A. Rajesh Kanna

For Respondent : Mr. R. Vinoth Raja,
Government Advocate

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J U D G M E N T

The matter is heard through "Video Conference".

2. Convicted sole accused is the appellant herein.

3. Challenging the judgment dated 18.12.2015, the appellant has convicted for the offence under Sections 354 and 506(ii) of I.P.C and for the offence under Section 354 of IPC, the accused is convicted and sentenced to undergo two yeas of rigorous imprisonment and for the offence under Section 506(ii) of I.P.C., the accused is convicted and sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for a period of one year.

4. The respondent/Police filed a final report and laid charge sheet against the accuse stating that the accused is the resident of the opposite house of Chellammal of Mealaiyur, Vayalveli Street, who is elder sister of defacto complainant Rajendran, father of victim Rahini aged about 7 years. On 04.01.2012 at 11.00 a.m., when Rahini was alone, infront of the house of her aunty, the accused had committed rape on Rahini in his house. On seeking his act, when the defacto complainant Rajendran asked the accused, he criminally intimidated him to cause death of him by showing Aruval. So, the accused was charge sheeted under Section 376 and 506(ii) of IPC.

5. After observing the formalities, the case was taken of file as PRC No.5/2013 and committed to sessions and made over to FTC, Mahila Court, Nagapattinam in S.C.No.86/2013.

6. During trial, on the prosecution side P.W.1 to P.W.11 were examined and Exs.P.1 to P.8 have been marked. No material object was marked.

7. The trial Court has framed the charges for the alleged offence under Section 376 and 506(ii) IPC. Father of the victim girl is examined as P.W.1 and victim girl is examined as P.W.2, Aunt of the victim girl is examined as P.W.3 and Uncle is P.W.4. Doctor who has conducted medical examination of the victim girl is P.W.5 and Forensic Assistant Director is examined as P.W.6 and the report is marked as Ex.P3 and P.W.8 and P.W.9 are the attestor of the observation mahazar who are turned hostile. P.W.7, P.W.10 and P.W.11 are police witnesses who could depose regarding the discharge of their official duty of registration of the FIR, taking the victim girl for medical examination and filing of the charge sheet after investigation.

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8. On consideration of the answer elicited in the cross examination of P.W.1 and P.W.2 with Doctor/P.W.5, the learned Sessions Judge has come to the conclusion that the ingredients of the offence under Section 376 IPC and 506(ii) are not made out. However, converted the charge into 354 of IPC and convicted and sentence as stated supra. Hence, the appeal by the accused.

9. The learned counsel for the appellant would contend that both P.W.1 and P.W.2 turned hostile, ultimately the very root of the complaint itself become doubtful and it arose a question that whether such an alleged offence was took place.

10. The learned counsel for the appellant/accused would contend that the prosecution witnesses viz., P.W.1 and P.W.2, have turned hostile and hence, the case of the prosecution cannot be relied upon in its entirety and also draw my attention to the evidence of P.W.6/Scientific Officer, who has conducted examination of items for Spermatozoa and Semen and marked Ex.P3/Scientific Report for the victim, wherein he did not detect Semen in item No.I & II. In the absence of non seizure of the material object namely Aruval and in the absence of any explanation from the investigation as to the non production of material object, charge for the offence under Section 506(ii) IPC is not sustainable and further, as to the conviction laid under Section 354 Cr.P.C., essential features has not been made out and accordingly, prayed for acquittal.

11. The learned Government Advocate (Crl.side) would contend that originally P.W.1 to P.W.6 were examined in chief and cross examination was not done. Accordingly, after few months, cross examination recorded by the Sessions Court on a petition to recall P.W.1, P.W.2 and P.W.4, they were cross examined and in the cross examination, they turned hostile.

12. P.W.1 is the father of P.W.2; P.W.2 is the victim girl and P.W.4 is the maternal uncle of the victim girl. It appears that the accused was not subjected for medical examination and hence, even though the charges were framed under Section 376 and 506(ii) of IPC, the learned trial Judge has convicted the accused for the offences under Sections 354 and 506(ii) of IPC.

13. After going through the cross examination of P.W.1 and P.W.2, the victim and her father, they have denied the alleged incident and presence of the accused and they have also stated that they are totally disowned the statement made before the police.

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14. P.W.3 is the sister of the mother of P.W.2/victim. Her evidence is in support of the prosecution. During the cross examination, she had categorically admitted that civil dispute is existing between the accused and her husband (P.W.3) assumes significance. It remains to be stated that the accused is the younger brother of the husband of P.W.3. Civil dispute with regard to the property is pending before the civil Court and hence, as contended by the learned counsel for the appellant, her evidence has to be considered in a careful manner, as there is a possibility of her enmity being reflected in her evidence. The victim girl/P.W.2 was declared hostile by the prosecution. So also the father of the victim girl, P.W.1 assumes significance.

15. A perusal of the cross examination of P.W.2/victim girl, P.W.1/father of the victim, they have denied the presence of the accused in the occurrence place at the time of the occurrence. Further, they have stated they do not know about the occurrence and further stated the police have obtained the thump impression in the blank paper. As exhibited by the police, they deposed in chief examination. The defacto complainant himself has denied his own complaint and hence, I find that the case of prosecution has collapsed. Furthermore, P.W.2 has also disowned her statement according to her they have never visited the accused house.

16. At this juncture, it remains to the stated that P.W.3 is the sister of the mother of P.W.2, she is also the wife of the brother of the accused. When P.W.3 and accused are having a pitched battle in the Court regarding the civil dispute, it is highly improbable that the family members of P.W.3 have gone to the accused house at 11.00 am and hence due to the previous enmity, (as admitted by P.W.3 in the cross examination), this Court finds that the scene of the occurrence projected by the prosecution viz., in the accused house is highly improbable. When they are in the loggerhead of class of civil dispute with each other and hence, I find that it is a fit case to accept the answer elicited in the cross examination of P.W.1 and P.W.2 and further, this Court finds that the evidence of P.W.3 appears to be tainted with malafide to cause the vengeance against the accused.

17. Yet another point is that the answers elicited in the cross examination of P.W.5 assumes significance, in her cross examination, she has admitted that there were chances for tearing the hymen by some other instances by cycling, running etc. But in her report she has stated that her hymen was ruptured. As per evidence of P.W.6, who is the Scientific Officer, there is no semen and sperms in the items 1 and 2. Her report is marked as Ex.P.3.

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18. On a cumulative reading of evidence of victim(P.W.2), her father (P.W.1) and her uncle (P.W.4) coupled with medical evidence of Doctor (P.W.5) and evidence of Scientific Officer (P.W.6), it cause serious doubt as to the case of prosecution. P.W.7 also gives a doubt as to the alleged occurrence when the accused is convicted for offence under Section 354 of IPC, in view of the answer elicited in the cross examination of P.W.1, P.W.2, P.W.5 and P.W.6 as extracted supra, I find that it is not sufficient enough to lay a conviction under Section 376 of IPC or under Section 354 of IPC and hence, in this view of the matter, I find that the order of conviction passed by the Sessions Judge under Section 354 of IPC is not legally sustainable and the same is hereby set aside.

19. At the risk of repetition, however, for the purpose of clarity, it is to be stated that both P.W.1 (the father of the victim girl) and P.W.2(victim) turned hostile and stated that no such occurrence has took place. In view of the admitted position, as stated supra and also in view of the answer elicited from the cross examination of P.W.10/police witness that there exist a previous enmity between the P.W.3 and the accused and P.W.3 is the sister-in-law of the accused, which is duly stands corroborated by the answer elicited in the cross examination of P.W.1 and P.W.2, that due to previous enmity between the accused and P.W.3/husband, a false case has been foisted against them and I find that the suggestive case of the defence appears to be more probable.

20. The material object namely weapon of the crime alleged to have been used by the accused, the evidence P.W.1 and P.W.2 are clearly stated that the accused has not criminally intimidated P.W.1 by Aruval and further, the Aruval was not seized by the investigation officer and hence, I find that the prosecution has not proved the charge beyond reasonable doubt. By operation of law, benefit of doubt goes to the accused. Giving benefit of doubt to the accused is acquitted from the charges and also the conviction and sentence laid by the Sessions Court under Section 354 and 506(ii) of IPC are set aside and he was set at liberty.

21. In the result, the criminal appeal is allowed. The conviction and sentence as against the appellant/accused in the judgment dated 18.12.2015 in S.C.No.86 of 2013 passed by the learned Sessions Judge (Fast Track Mahila Court), Nagapattinam, are set aside. The appellant/accused is acquitted from the

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charges under Sections 354 and 506(ii) of IPC. The fine amount, if any, paid by him is ordered to be refunded to him. The bail bonds executed by him, shall stand terminated/discharged.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

AT

To

1. The Sessions Judge, (Fast Track Mahila Court),
   Nagapattinam.

2. The Judicial Magistrate No.I,
   Tiruchirapalli.

3. Do-Thro The Chief Judicial Magistrate,
   Tiruchirapalli.

4. The Inspector of Police,
   Poombuhar Police Station,
   Nagapattinam District.

5. The Public Prosecutor,
   High Court of Madras.

Crl.A.No.8 of 2016

GSM(CO)
LS(06/09/2021)

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