



BAIL SLIP

The Appellant/ Accused namely Nagadoss S/o. Balaraman was directed to be released on bail by order of this Court 05/03/2014 made in MP No.1/2014 in CrI.A.No.104/2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.09.2021

PRONOUNCED ON : 12.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CrI.A.No.104 of 2014

(Through Video Conferencing)

Nagadoss ...Appellant/Accused

Vs

The State, by the Inspector of Police,
All Women Police Station, Gummidipoondi
Tiruvallur District. ...Respondent/Complainant

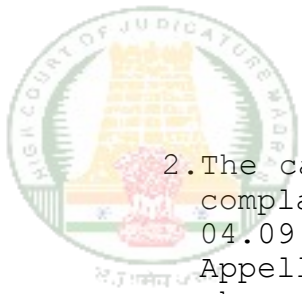
Prayer:- This Criminal Appeal is filed, under Section 374 of Cr.PC, to set aside the judgement of conviction and sentence, dated 22.01.2014, made in SC.No.472 of 2005, by the Sessions Judge, Magalir Needhi Mandram, Tiruvallur.

For Appellant : Mr.S.N.Arunkumar

For Respondent : Mr.J.C.Duraiaraj,
Government Advocate

JUDGEMENT

1.This Criminal Appeal is filed, against the judgement of conviction and sentence, dated 22.01.2014, made in SC.No.472 of 2005, by the Sessions Judge, Magalir Needhi Mandram, Tiruvallur, thereby convicting and sentencing the Appellant/Accused, for the offence under Section 376 of IPC to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.25,000/-, in default, to undergo one year Rigorous Imprisonment and for the offence under Section 506(ii) of IPC to undergo two years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default to undergo six months Rigorous Imprisonment and ordering the sentences to run concurrently.



2.The case of the Prosecution has arisen on the basis of Ex.P1 complaint given by the victim, PW.1, Jeeva, alleging that on 04.09.2002 at 12.00 noon at Sompattu Colony Anna Nagar, Appellant/Accused, with an intention to rape the victim, when she was not well, gave tablet to her, stating that her father gave some tablets for her illness and after consuming the tablet, she became unconscious and at that stage, the accused raped her without her consent and that on 15.01.2003 at 5.00 p.m. when PW.1 told him about her pregnancy and asked him to marry her, he threatened her at the knife point, stating that he will murder her and her family. Hence, the Appellant/Accused was charge sheeted for the offences punishable under Sections 376 of IPC and 506(ii) of IPC.

3.The case was taken on file in SC.No.472 of 2005 by the Sessions Judge, Magalir Needhi Mandram, Tiruvallur and necessary charges were framed. The accused had denied the charges and sought for trial. In order to prove the charges against the accused, the Prosecution had examined PW.1 to PW.9 and also marked Exs.P1 to P5. On completion of the evidence on the side of the Prosecution, the accused was questioned under Section 313 of Cr.PC as to the incriminating circumstances found in the evidence of the Prosecution witnesses and the accused had come with the version of total denial and stated that he had been falsely implicated in this case. The court below, after hearing the arguments advanced on either side and also looking into the materials available on record, found the Appellant/Accused guilty and awarded punishments, as referred to above, by the impugned judgement, which is challenged in this Criminal Appeal.

4.This court heard the submissions of the learned counsel on either side.

5.The learned counsel for the Appellant has assailed the impugned judgement of conviction and sentence, on the infirmities and discrepancies in the case of the Prosecution that since PW.1, having intimate relationship with the appellant, she became pregnant and as such, the occurrence was not occurred as stated by her and that there are also discrepancies as to when the victim regained consciousness, inasmuch as PW.1 has stated that she gained conscious only on the next day, whereas she stated before the Investigating Officer that she gained conscious on the very same day i.e. on 04.09.2002 and that there is also discrepancy in the evidence of PW.4, who is a hearsay witness and that there is no evidence to prove as to the type and nature of tablet allegedly given by the Appellant to the victim and that since PW.1 was a consenting party, consensual relationship would not amount rape against her will and on such infirmities, he would pray for acquittal of the Appellant.



WEB COPY

6. On the other hand, the learned Government Advocate for the Respondent would submit that the Prosecution has proved its case beyond all reasonable doubts, by convincing, valid and cogent evidence, both oral and documentary and hence, the impugned judgement of conviction and sentence does not warrant any interference by this Court.

7. I have given my careful and anxious consideration to the contentions put forward by the learned counsel on either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction and sentence.

8. Now, it is to be seen as to whether the Prosecution has proved its case beyond all reasonable doubts, by valid and cogent evidence.

9. At the outset, it is pertinent to state that the Honourable Supreme Court in a catena of decisions, had held that nobody be convicted on surmises and conjectures. Similarly, nobody be convicted on mere suspicion, however strong it may be. Similarly, it had been held that the evidence can be rejected, if it suffers from any serious infirmities or if there is any inherent inconsistency in the testimony. At the same time, if there is intrinsic merit in the evidence of the witnesses, the same cannot be rejected. Discrepancies and contradictions if found material and substantial are in respect of vital aspects of facts, then the entire testimony cannot be discarded. Bearing in mind, the aforesaid principles, the rival submissions made by the parties are to be analysed and a detailed and proper analysis of the evidence is essentially required.

10. In this case, PW.1 victim herself is the complainant. As per the medical record Ex.P2 issued by PW6 Doctor, the accused did not deny that he was not an impotent. As per Ex.P4, medical report, issued by PW.7 Doctor, on 14.02.2003, when he examined PW.1, he found that the victim became pregnant in between 24 to 26 weeks. PW.1 gave birth to a male child. As per Ex.P5, DNA Test Report, the Appellant/Accused is the biological father of the child and it remain undisputed by the Appellant/Accused.

11. The Appellants did not dispute his frequent visit to the house of PW.1, particularly, the visit on 04.09.2002 at around 12.00 noon and giving tablets to her, stating that her parents had given tablets to him to hand over their daughter and on believing the same, she had taken the tablets at 02.00 p.m. and had gone to sleep. The testimony of PW.1 reveals that in the next day morning, she found that she was not in a good condition and hence, on enquiry, the accused stated that he had given a tablet and he had intercourse with her and agreed to marry her and not to disclose the same to any one. The evidence of PW.8 reveals



WEB COPY

through the cross examination of PW.1, it reveals that when she was there at the Village lake, the accused came there and threatened her with dire consequence by showing her knife. As such, it cannot be said that the testimony of PW.1 coupled with the evidence of PW.2, is unreliable. Thus, the offence under Section 506(ii) has been proved by the Prosecution beyond a reasonable doubt.

17. In this case, the delay in lodging the complaint is satisfactorily explained. Merely because of the reason that the eyewitnesses are closely related to the Victim, their evidence cannot be discarded, but the test of careful scrutiny has got to be applied. In this case, after exercising the test, the evidence of the eyewitnesses, particularly, the evidence adduced by the victim with the surrounding circumstances, inspire the confidence of the Court. Though there are minor discrepancies, these minor discrepancies will not shake or tilt the case of the Prosecution or the truth and rigour of the case.

18. It is seen from the entire evidence that the victim was unsoundness by consuming the tablet given by the accused, the victim was raped and having known the same, when she questioned him, the accused informed the victim that he will marry and later when the victim asked him to marry her, the accused refused threatened her with dire consequences. Thus, the offences under Section 376 and 506(ii) of IPC levelled against the Appellant/Accused were proved by the Prosecution, beyond all reasonable doubts, by valid and cogent evidence, which was rightly accepted by the court below and accordingly, punishment was awarded as stated above, by the impugned judgement, which is proper.

19. Further, this Court is unable to find any rebuttal evidence let in by the Appellant/ accused to discard the conviction and sentence imposed on them. On the other hand, the evidence let in by the Prosecution as discussed above is sufficient to sustain the conviction and sentence imposed on the Appellant/ accused by the court below and there is no perversity or infirmity or illegality in the impugned judgement of the court below.

20. In fine, this Criminal Appeal is dismissed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar



To

1. The I Additional District and Sessions Judge,
Tindivanam,
Villupuram District.
2. The Judicial Magistrate No.1,
Ponneri.
3. The Chief Judicial Magistrate, (for information)
Tiruvallur.
4. The Superintendent,
Central Prison,
Puzhal,
Chennai.
5. The Inspector of Police,
All Women Police Station, Gummidipoondi
Tiruvallur District.
6. The Sessions Judge,
Fast Track Mahila Court,
Tiruvallur District.
7. The Public Prosecutor,
High Court, Madras.

Copy to:

The Section Officer,
Criminal Section,
High Court,
Madras.

+1cc to Mr.S.N.Arunkumar, Advocate SR. No.2489

Cr1.A.No.104 of 2014

GPL (CO)
PR (08/03/2022)