



BAIL SLIP

The Appellant/Accused namely A.Vijay @ Vijayakumar S/o.Amul Raj was directed to be released on bail in and by the order of this Court dated 30.07.2020 and made in Crl.M.P.No.15053/2019 in Crl.A.No.459/2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :27.10.2021

PRONOUNCED ON: 04 .02.2022

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.A.NO.459 OF 2019

A.Vijay @ Vijayakumar

...Accused/ Appellant

Vs.

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

... Complainant/Respondent

PRAYER:

Criminal Appeal filed under Section 374 (1) of the Code of Criminal Procedure, 1973, to set aside the conviction and sentence passed against the appellant/accused on 30.05.2019 in S.C.No.39 of 2018, Mahila Court, Perambalur.

For Appellant : Mr.P.G.Perumal Pandiyan
(Legal aid Counsel)

For Respondent : Mr.S.Sugendran
Government Advocate, (Criminal Side)

JUDGMENT

This Criminal Appeal has been filed to set aside the conviction and sentence passed against the appellant/accused on 30.05.2019 in S.C.No.39 of 2018, Mahila Court, Perambalur.



2.The respondent police registered a case against the appellant/accused in Crime No.17 of 2017 for the offence under Sections 294(b), 417 and 506(ii) of IPC and subsequently, after altering into Sections 294(b), 417, 506(i) and 376 of IPC. After completing investigation, laid a charge sheet before the learned Judicial Magistrate, Perambalur and the learned Magistrate taken the charge sheet on file in P.R.C.No.2 of 2018 and after completing the formalities, committed the case to the Principal District and Sessions Judge, Perambalur, since the offense is exclusively triable by a Court of Session and the Case was committed to the Court of Session. The learned Sessions Judge taken the case on file in S.C.No.39 of 2018 and made over to the case to the Mahila Court, Perambalur, since the offence is against the women. The learned Special Judge after receiving the case records and completing the formalities and framed the charges against the appellant for the offence under Sections 417, 376, 294(b) and 506(i) IPC.

3.After completing the formalities, in order to substantiate the charge, during the trial, on the side of the prosecution, as many as 15 witnesses were examined as P.W.1 to P.W.15 and 10 documents were marked as Ex.P.1 to Ex.P.10 and no material object was exhibited. After completing the examination of the prosecution witnesses, incriminating circumstances culled out from the evidence of prosecution witnesses were put before the appellant/accused, by questioning under section 313 Cr.P.C, he denied the same as false and pleaded not guilty. On the side of the defence, no oral evidence was produced. However, one document was marked as Ex.R.1 and no material object was produced.

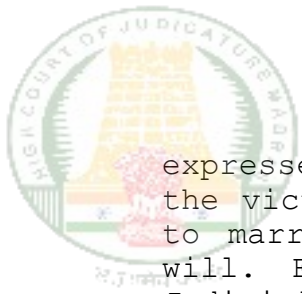
4.On completion of trial, after hearing the arguments advanced on either side, the trial Court, found guilty of the appellant/accused for the offence punishable under sections 417 and 376 IPC and however, not found guilty of the appellant/accused for the offence under Sections 294(b) and 506 (i) IPC and the appellant was convicted and sentenced to undergo one year rigorous imprisonment and pay fine of Rs.2,000/-, in default, to undergo simple imprisonment for further period of three months for the offence under Section 417 IPC and also convicted and sentenced to undergo 12 years rigorous imprisonment and pay fine of Rs.5,000/-, in default to undergo simple imprisonment for the further period of three years for the offence under Section 376 IPC. Challenging the said judgment of conviction and sentence, the appellant/accused has filed the present appeal before this Court.

5.The learned counsel appearing for the appellant/accused would submit that the medical evidence does not support to the case of the prosecution. The Doctor, who examined the victim



girl, has given a report that the victim girl was subjected to rape. There are material contradictions from the evidence of P.W.1, P.W.3, P.W.6, P.W.9, P.W.10, P.W.14 and P.W.15. The prosecution witnesses P.W.3, P.W.6 and P.W.14 are the close relatives and P.W.9 is the close friend of the victim girl. Therefore, all the evidence have to be brought carefully and based on the relative witnesses/interested witnesses, conviction cannot be granted automatically and that has to be looked into carefully. If at all any forcible sexual assault or forcible rape, certainly the victim should have sustained any injury, but, the Doctor does not state about the injuries. The Investigating Officer suppressed the material facts and there is no material to show that the appellant/accused forcibly made sexual assault or rape on the victim. The prosecution failed to prove its case beyond all reasonable doubts. Though the trial Court rightly appreciated the evidence and found that the appellant/accused not guilty for the offence under Sections 294 (b) and 506(i) of IPC and wrongly convicted the appellant/accused for the offence under Sections 417 and 376 IPC. The victim girl/P.W.1 gave statement before the learned Magistrate and the same was recorded under Section 164 of Cr.P.C., which is contradicted with each other and therefore, the trial Court failed to appreciate the material contradictions and erroneously convicted the appellant/accused, which warrants interference by this Court.

6.The learned Government Advocate(Crl.side) appearing for the State would submit that the appellant had fell in love with the victim and he made a false promise to her that he would marry her. On believing his words, the victim has also expressed her love and taking advantage of that, the appellant/accused took the victim to the forest area and forcibly made sexual intercourse against her will. Subsequently, when the victim asking the appellant/accused about her marriage, he refused to marry her and also scolded her with filthy language and also threatened her with dire consequences. Therefore, the victim girl gave a complaint before the respondent police against the appellant/accused. The respondent police registered a case and laid a charge sheet. The learned counsel would further submit that P.W.3 is the Aunt of the victim and P.W.9 is the friend of the victim and they have clearly stated about the love affairs between the appellant/accused and the victim and also they have stated that they were seen together. The Doctor/P.W.10, who conducted the medical examination of the victim, stated that two fingers easily entered into the vaginal part of the victim and hymen was not intact and further stated that there is no external injuries. The victim herself stated that the appellant/accused promised to marry her and expressed his love and initially, she hesitated and accepted his love. Since the appellant/accused strongly made a promise to marry her, she



expressed her love. On 05.11.2017, the appellant/accused took the victim to the forest area and stated that since he is going to marry her, he forcibly made sexual intercourse against her will. Even the victim was also examined before the learned Judicial Magistrate and recorded the statement under Section 164 Cr.P.C, and also the victim stated that the appellant/accused forcibly made sexual intercourse on the victim against her will. Further, the learned Government Advocate would submit that the prosecution has proved its case beyond all reasonable doubts and the trial Court rightly convicted the appellant/accused for the offence under Sections 317 and 376 IPC and found not guilty for the offence under Sections 294(b) and 506(i) IPC and therefore, there is no merit in the appeal and hence, the appeal is liable to be dismissed.

7.Heard Mr.P.G.Perumal Pandiyan, learned counsel appearing for the appellant and Mr.S.Sugendran, learned Government Advocate (Crl.side) appearing for the State and perused the materials placed before this Court.

8.The case of the prosecution is that the appellant/accused made a false promise to the victim girl that he would marry her and expressed his love and on believing his words, the victim girl also expressed her love. On taking advantage of that, on 05.11.2017, the appellant/accused took the victim girl to the forest area and forcibly made sexual intercourse against her will and thereafter, the appellant/accused refused to marry her. Therefore, the victim girl lodged a complaint before the respondent police against the appellant/accused.

9.The Appellate Court is the final Court of fact finding, has to re-appreciate the entire evidence and give independent finding. The trial Court framed the charges against the appellant/accused for the offence under Sections 417, 376, 294 (b) and 506(i) IPC. Though the trial Court convicted the appellant/accused only for the offence under Sections 417 and 376 IPC and however, acquitted the appellant/accused for the offence under Sections 294(b) and 506(i) IPC. Against the acquittal, either the State or the victim has not filed any appeal and only the appellant/accused has filed an appeal challenging the conviction and sentence passed by the appellate Court for the offence under Sections 417 and 376 IPC.

10.In order to substantiate the charges before the trial Court, on the side of the prosecution, totally examined 15 witnesses and marked 10 documents. Out of 15 witnesses, the victim was examined as P.W.1 and her Aunt was examined as P.W.3 and her friend was examined as P.W.9 and the other witnesses P.W.4 to P.W.8 are the relatives, neighbours and magazar witnesses. On a careful reading of the evidence of P.W.1, it is



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seen that the grand-mother of the appellant/accused introduced the victim to the appellant/accused and subsequently, they talked each other through phone and one day, the appellant/accused expressed his love. Though the victim girl initially hesitated to accept his love, the appellant/accused continuously talking through phone and also expressed his love and wanted to meet her. The appellant/accused made a promise that he would marry her and therefore, the victim also expressed her love. On 05.11.2017 took the victim to Murukkankudi forest area and on reaching there, all of sudden, the appellant/accused pulled the victim and she refused the appellant and he told her that he would marry her shortly within a week and against her will, he forcibly had a sexual intercourse. Therefore, the appellant/accused forcibly made sexual intercourse, against her will, which amounts to a rape.

11. Even in the evidence of the victim girl/P.W.1, it is seen that the appellant/accused promised to marry her and subsequently forcibly made sexual intercourse, against her will and subsequently, when the victim asked about the marriage to the appellant/accused, he refused to marry her and therefore, he has committed the offence under Sections 417 and 376 IPC. P.W.3 corroborated the evidence of P.W.1 and the victim was examined by P.W.9 and she has categorically stated that the appellant/accused and the victim loved each other and she had seen both together for some time. However, the independent witnesses also stated that they seen the appellant and the victim together frequently. The evidence of Doctor/P.W.10, clearly shows that the vaginal part of the victim admitted two fingers easily and the hymen of the victim was not intact. During the investigation, the victim had produced before the learned Judicial Magistrate and recorded the statement under Section 164 Cr.P.C, in which, she also clearly stated that the appellant/accused loved the victim and also made promise to marry her and on the date of occurrence, ie, on 05.01.2017, he took the victim to Murukkankudi forest area and at that time, he forcibly made sexual intercourse with her and when the victim girl questioning the same, the appellant/accused said that he is going to marry her within a short period and after that the victim approached the appellant/accused to marry her, but he refused it and subsequently, he stopped talking with her and therefore, she made a complaint before the respondent police.

12. From the reading of the evidence of P.W.1, P.W.3, P.W.9, P.W.10 and Ex.P.2 and the statement recorded under Section 164 Cr.P.C, Ex.P.6/the medical report of the victim and also Ex.R.1/the marriage invitation of the appellant/accused, which clearly shows that the appellant/accused is known person, who is also distant relative of the victim. As he made a false promise, the victim had fell in love with him and forcibly made



sexual intercourse/rape and subsequently, he failed to marry her and married another woman. Therefore, from the oral and documentary evidence, the prosecution has proved the charges that the appellant/accused made false promise and had sexual intercourse with her and subsequently failed to marry her and therefore, he committed the offence under Sections 417 and 376 IPC.

13. In view of the above, this Court has come to the conclusion that the appellant/accused has committed both the offence under Sections 417 and 376 IPC and there is no merit in the appeal and the same is liable to be dismissed. Accordingly, this criminal Appeal is dismissed. The trial Court is directed to secure the accused to serve for remaining period of concerned sentence imposed by the trial Court.

Sd/-

Assistant Registrar(CS II)

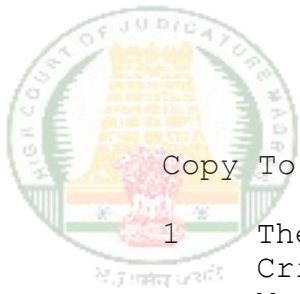
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Sub Assistant Registrar

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To

1. The Sessions Judge,
The Mahila Court,
Perambalur.
2. Do-thro The Principal Sessions Judge,
Perambalur.
3. The Inspector of Police,
All Women Police Station,
Perambalur District.
4. The Superintendent,
Central Prison,
Trichy.
5. The Public Prosecutor,
Madurai Bench of Madras High Court,
Madras.



Copy To

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

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- 2 The Secretary,
High Court Legal Aid Committee,
High Court, Madras.

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KSM(CO)
PM/15/02/2022