



BAIL SLIP

The Appellant/Accused Namely, Ganesh, male A/29 Years S/o. Mohanraj was directed to be released on bail by the order of this court dated 05.07.2017 and made in Crl.MP.No.3526/2017 in Crl.A.No.122 of 2017 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR
Crl.A.No.122 of 2017

Ganesh,
S/o. Mohanraj

... Appellant

V/s.

The State, represented by
Inspector of Police,
All Women Police Station,
Arakonam,
Vellore District.
(Crime No.10 of 2015)

... Respondent

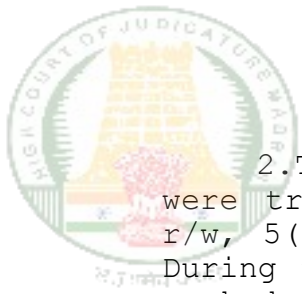
PRAYER: The Criminal Appeal is filed under Section 374 of Cr.P.C, to set aside the conviction and sentence imposed in Spl.S.C.No.1 of 2016 dated 07.02.2017 on the file of Sessions Judge, Magilir Neethimandram, (Fast Track Mahila Court) Vellore and set aside the same as illegal.

For Appellant : Mr.Sankarasubbu

For Respondent : Mr.R.Krishnakumar
Government Advocate

J U D G M E N T

The appellant A1 in Spl.S.C.No.1 of 2016 was convicted by the trial Court for the offence under Section 6, r/w.5(1) of POCSO Act and sentenced to undergo Rigorous Imprisonment for ten (10) years and to pay a fine of Rs.50,000/- in default to undergo one (1) year Simple Imprisonment, against which, he has filed an appeal.



2.The appellant along with his mother, father and sister were tried by the trial Court for the offence under section 6 r/w, 5(1) of POSCO Act, 506(ii), 341, 294-b, and 352 I.P.C. During trial, P.W.1 to P.W.7 were examined and Ex.P.1 to Ex.P.9 marked. On the side of the defence DW1 was examined and Ex.D1 marked. The trial Court on conclusion of the trial had acquitted A2 to A4.

3.Gist of the case is that the P.W.2 is the victim in this case. P.W.1. the father of P.W.2 had lodged a complaint stating that his minor daughter who was studying class XII at Kaveripakkam Government Girls Higher Secondary School, had love affair with the appellant who is his neighbour. This love affair was not known to anyone except the appellant and the victim. Taking advantage of the love relationship, the appellant forcibly taken the victim to a nearby isolated place near the oil machine and sexually abused her. This abuse continued in the house of the appellant as well as in the house of the victim. On 1st May 2015, when the schools were closed for vacation, the appellant took the victim to Rathinagiri temple and taken her to the isolated place and again committed sexual assault on her and their relationship continued from 16.01.2014 to 01.05.2015. The appellant promised to marry the victim and sexually assaulted her and thereafter deceived her. When the victim insisted for marriage, the appellant informed that he would be marrying his uncle's daughter and not the victim. The victim informed the same to her mother and later to her father. When they questioned the accused and his family, they used abusive words and threatened them and also attacked the victim's family on 21.07.2015, when P.W.1 was proceeding to lodge a complaint with All Women Police Station, Arakonam, P.W.1 and others were restrained, abused and assaulted. On receipt of complaint, P.W.6 registered F.I.R and thereafter P.W.7 took up investigation, examined P.W.1 to P.W.4, arrested the accused, subjected both the accused and the victim for medical examination. Thereafter statement under Section 164 Cr.P.C was recorded by the learned Judicial Magistrate, Walajapet. On completion of investigation, final report filed before the trial Court. On completion of trial, the trial Court found the accused / appellant guilty as stated above.

4.The contention of the appellant is that both the appellant and the victim belong to same social status and community, they are neighbours. They were in love with each other for quite sometime. The victim was madly in love with the appellant and forced the appellant to inform his parents immediately about their love affair and conduct marriage, which the appellant resisted and not inclined at that time. P.W.2, on her own assumed that the appellant was evading the marriage and disowning her, informed her parents hastily. Hence, P.W.1 lodged



to confirm the compromise. He further submitted that after the appellant was granted bail, on 15.09.2017 the marriage between the appellant and the victim taken place at, Srirama Bajanai Thirumana Mandapam, Walajapet. Both the families jointly invited everyone for the marriage function and the marriage was conducted with everyone's participation, blessings and wishes. After that on 02.11.2017, the marriage was registered in Reg.No.210 of 2017 before the S.R.O Walajapet. Out of wedlock, the appellant and the victim P.W.2 have two children born to them namely G.Haritha born on 07.02.2020 and G.Dhanyasri born on 19.08.2021 both at Government Medical College Hospital, Vellore. In support of the same, he produced compromise deed, marriage invitation, marriage registration certificate and the birth certificates of their children. Both the appellant and the victim along with their parents appeared before the Court.

8.Learned Government Advocate submits that at the time of offence, the victim was a minor. Now, the marriage between the victim and the appellant performed and they have two children which is not disputed. They are living as husband and wife happily which is also not in dispute. Before the trial Court, P.W.1 the father, P.W.2 the victim, both had stated about appellant having physical relationship with the victim when she was minor on the promise of marriage, later resiled from his promise, hence, a case came to be registered. The Doctor, though was not certain about the time and manner of rupture in hymen, in other aspects, she confirms the sexual assault made on the victim. The trial Court considering all these aspects has rightly convicted the appellant and now the victim and the appellant are living happily as husband and wife with two infants. Both the families hail from the same social status and they are neighbors and they are living happily.

9.Considering the rival submissions and perusal of materials, this Court finds P.W.1 is the father of the victim who lodged the complaint Ex.P.1 through him Ex.P2 Transfer Certificate marked. P.W.1 admits that he is uneducated person, does not know to read and write. P.W.2, the minor victim girl had given herself to the appellant due to the love affair and promise of marriage. Later, when the appellant refused to marry, she informed her parents and the complaint registered. Now, the victim and the appellant are living together having two infants born out of their marriage, the appellant is the only bread winner in his family and they are sustaining themselves with his income. The victim, who was present before the Court in categorical terms submitted that in the event is the appellant suffers incarceration, she and her two infants would be left in street without any support and the future of their children would become questionable one. They would be subjected to untold sufferings and misery.



10. In this case, it is not in dispute that the victim has got no birth certificate, her age is decided based on Ex.P.2. Transfer Certificate which is marked through P.W.1. Admittedly, in this case no school authorities examined, likewise, P.W.5 the Doctor who examined the victim opined that she cannot confirm whether rupture in hymen was due to sexual assault or cycling. P.W.2 riding a cycle daily to school is an admitted fact. It is a known fact that cyclist and Sports person are prone Hymen tear.

11. Be that as it may. Today, before this Court, the appellant and the victim along with their children and parents appeared and confirmed the compromise and also reiterated that they are living happily as husband and wife with their children. There is no much difference between them both in economic and social status, the conviction would do more harm to the victim and her children than doing good. The welfare of the victim and two infants are the paramount consideration.

12. This Court in the case of "Sabari Vs. Inspector of Police reported in 2019(2) MLJ CrL.110", had observed that during the adolescent age, boys and girls got involved in a relationship, such relationship would be the result of mutual innocence and biological attraction, which cannot be construed as an unnatural one or alien to between relationship of opposite sexes.

13. In a similar situation in the case of "Kumar @ Tennish Vs. The Inspector of Police, Latheri Police Station, Katpadi Taluk, Vellore and another in CrL.O.P.No.16648 of 2018", this Court had quashed the proceedings on the compromise arrived between the accused and defacto complainant.

14. Considering the facts and circumstances of the case and in the right of the above directions, it could be seen that during the adolescent age, boys and girls got involved in a relationship, such relationship would be the result of mutual innocence and biological attraction. This Court in a similar situation, quashes the FIR as well as the proceedings against the accused in several cases. The same analogy can be followed herewith.

15. In view of the same, this Court is inclined to accept the contention of the appellant and the victim by allowing the appeal.

16. In the result, the criminal appeal is allowed and the impugned judgment of conviction and sentence imposed on the appellant / accused by the trial Court in Spl.C.C.No.01 of 2016 vide Judgment dated 07.02.2017 are hereby set aside. The



appellant / accused is acquitted from all charges levelled against him. Fine amount, if any paid, shall be refunded to him.

WEB COPY

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Sessions Judge,
Magilir Neethimandram,
(Fast Track Mahila Court)
Vellore.

2.The Judicial Magistrate No.1,Walajapet.

3.The Superintendent,Central Prison,Vellore.

4.The Inspector of Police,
All Women Police Station,
Arakonam,
Vellore District.

5. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.R.Sankarasubbu ., Advocate Sr.NO. 21932

Crl.A.No.122 of 2017

MT(CO)

A.SK(13/04/2022)