



Bail Slip

That the Appellant/Accused namely Srinivasan S/o.Velayutham was released on bail as per order of this Court dated 25.10.2017 made in CrI.M.P.No.12901/2017 in CrI.A.No.645 of 2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2022

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.A.No.645 of 2017

Srinivasan

... Appellant

Vs

State :

Inspector of Police,
All Women Police Station,
Panruti, Cuddalore District.
(Cr. No.3/2013)

... Respondent

PRAYER: This Criminal Appeal is filed under Section 374 (2) Cr.P.C., against the conviction and sentence made in S.C.No.280 of 2014 on the file of the District Mahila Sessions Court, Cuddalore by order dated 26.09.2017.

For Petitioner : Mr.S.Balasubramanian
for Mr.G.Dhanasekaran

For Respondent : Mr.S.Udaya Kumar
Government Advocate (CrI.Side)

JUDGMENT

The appeal is filed by the appellant/1st accused against the judgment of conviction and sentence made in S.C.No.280 of 2014 on the file of the District Mahila Sessions Court, Cuddalore by order dated 26.09.2017. The appellant was convicted for offences under Section 376 (1) & 417 IPC. For the offence under Section 376 (1) IPC, he was sentenced to undergo R.I. for 10 years and to pay a fine of Rs.5,000/-, in default, 1 year R.I., and for the offence under Section 417 IPC, he was sentenced to undergo R.I., for 6 months.



2. The brief facts of the case are that:

The defacto complainant aged about 36 years, spinster developed intimacy with the 1st accused aged around 55 years a married man with 3 adult children, while grazing the cattle believing his promise that he would marry her, she had consented for sexual intercourse. As per her complaint, the affair continuing from 2012 to January 2013, but, in cross-examination, she admitted that the relationship with the 1st accused was for four years. When the defacto complainant became pregnant, she asked the 1st accused, appellant to solemnize the marriage. The 1st accused gave Rs.4,000/- to abort the child and refused to marry her. On coming to know about affair and her pregnancy, the 2nd and 3rd accused who are mother and sister of the 1st accused assaulted her. The defacto complainant gave birth to a child subsequently.

3. The trial Court on appreciating the oral and documentary evidence on the side of the prosecution viz., PW1 to PW9 and Exs.P1 to P8, held the appellant herein guilty of offence under Section 417 IPC and 376(1) of IPC and sentenced him as stated above.

4. The learned counsel appearing for the appellant placed his arguments on a short point that PW1, the defacto complainant was a grown up adult, had consensual sex with A1 and there is no evidence to show that it was by force or violence. The evidence of PW1 as well as the other witnesses only speaks about the promise given by the 1st accused to marry the defacto complainant and his breach of promise. No evidence available for the act of sexual intercourse without consent or consent obtained by force or threat. At the most, the consent obtained by deceit and made to do an act of causing harm and this breach will only attract the ingredient of Section 417 IPC and not 376 (1) IPC.

5. The deposition of PW1 as it is recorded clearly shows that she was a consented party for the act of sex. She has conceived and also given birth to a male boy. The D.N.A. report marked as Ex.P8 indicates that A1 is the biological father of the child. To attract offence under Section 376(1) either the consent given by the victim should have been on a false claim that the man with whom he had sex was believed to be her husband or the consent must have been obtained by putting her in fear of death or hurt.

6. In this case, the case of the prosecution is that PW1 consented for intercourse on the promise made by A1 that he marry her. It was a voluntary consent induced by a false promise to marry her. The defacto complainant and the appellant are not



(vi) Since the appellant / 1st accused is on bail, the trial Court is directed to take steps to secure him and commit him to prison to undergo the remaining period of sentence imposed under Section 417 IPC.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

ssn

To

1. The Judicial Magistrate NO.I,
Ponruti.
2. -do-Through The Chief Judicial Magistrate,
Cuddalore.
3. The District Mahila Sessions Court,
Cuddalore.
4. The Inspector of Police,
All Women Police Station,
Panruti, Cuddalore District.
5. The Superintendent,
Central Prison, Cuddalore.
6. The Public Prosecutor,
High Court, Madras.

+3ccs to Mr.G.Dhana Sekaran, Advocate SR.No.327742

CRL.A.No.645 of 2017

MG(CO)
GMY(30/06/2022)