

BAIL SLIP

That the Appellant herein/Accused viz. Ravikumar was directed to be released on bail as per the order of this Court in Crl.M.P.No.1 of 2008 in Crl.A.No.210 of 2008 and made herein.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.210 of 2008

Ravikumar ... Appellant/Accused

vs.

State

Rep. By Inspector of Police

All Women Police Station

Ariyalur

Perambalur District

Crime No.8 of 2007

... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment dated 06.03.2008 in S.C.No.116 of 2007 on the file of Sessions Judge, Mahila Court, Perambalur.

For appellant :

Mr.Ilanthiraiyan

for M/s.Sai Bharath & Ilan

For respondent :

Mr.P.Govindarajan,

Additional Public Prosecutor.

JUDGMENT

Challenge in this criminal appeal is to the conviction and sentence dated 6th day of March, 2008 passed in Sessions Case No.116 of 2007 by the District and Sessions Mahila Court, Perambalur.

2. The case of the prosecution is that the victim has attained only 15 years of age. On 19.04.2007, at about 8 p.m., in the backside of house of one Pushpavalli, by way of giving false promise of marrying the victim, the accused has deflowered her. Even prior to 19.04.2007, on several occasions, by way of giving the same promise, the accused has had carnal copulation with the victim and subsequently, refused to marry her. After knowing the evil design of the accused, the prosecutrix has given the complaint in question and

the same has been registered in Crime No.8/2007. The complaint alleged to have been given by the prosecutrix has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigating Officer viz., P.W.12 has taken up investigation, made arrangements to conduct Potential Test to the accused and also made arrangement to examine the prosecutrix and after completing the investigation, laid a final report on the file of the Judicial Magistrate court, Ariyalur and the same has been taken on file in P.R.C.No.22/2007.

4. The Judicial Magistrate, Ariyalur, after considering the facts that the offences alleged to have been committed by the accused are triable by the Sessions Court has committed the case to the trial court and the same has been taken on file in Sessions Case No.116 of 2007.

5. The trial court, after hearing arguments of both sides and upon perusing the relevant records has framed first charge under Section 376 of the Indian Penal Code (hereinafter called as "IPC"), second charge under Section 417 of the IPC and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 12 have been examined and Exs.P.1 to 8 have been marked.

7. When the accused has been questioned under Section 313 of the Criminal Procedure Code, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. However, no oral and documentary evidence have been let in on the side of the accused.

8. The trial court, after hearing arguments of both sides and upon perusing the relevant evidence available on record has found the accused guilty under Section 417 of the IPC and sentenced him to undergo 12 months Rigorous Imprisonment and also imposed a fine of Rs.1800/- with usual default clause. The trial court has acquitted the accused from the charge framed under Section 376 of the IPC. Against the conviction and sentence passed by the trial court, the present Criminal Appeal has been preferred at the instance of the accused as appellant.

9. The learned counsel appearing for the appellant/accused has raised the following points so as to supplant conviction and sentence passed by the trial court:-

(a) Even though the occurrence has taken place on 19.04.2007, the complaint has been given on 26.04.2007 and no explanation has been given on the side of the prosecution for such delay.

(b) On 25.04.2007, the prosecutrix has given the 1st complaint, wherein, it is prayed to direct the accused to marry her and immediately, the next day, i.e., on 26.04.2007, Ex.P.1 complaint has been given.

(c) The Prosecution Witnesses viz., P.Ws.2 to 4 have consistently stated in their evidence that birthday of the Prosecutrix falls only on 18.04.2007 and therefore, the occurrence, alleged to have taken place on 19.04.2007 is false.

(d) The Prosecution Witnesses viz., P.Ws.2 to 4 have stated in their evidence that the place of occurrence is nothing but thicket and no way is available and therefore, the occurrence alleged to have taken place on 19.04.2007 is false.

10. In order to controvert the contentions put forth on the side of the appellant/accused, the Additional Public Prosecutor has contended that in the instant case, the Prosecutrix has been examined as P.W.1 and her parents have been examined as P.Ws.2 and 3 and her maternal aunt has been examined as P.W.4 and apart from their evidence, P.Ws.8 and 9 have given evidence about the alleged factum of promise made by the accused and the trial court, after having proper evaluation of the available evidence on record has rightly found the accused guilty under Section 417 of the IPC and therefore, the conviction and sentence passed by the trial court are not liable to be interfered with.

11. The first and foremost charge framed against the accused is that on 19.04.2007, at about 8 p.m., on the backyard of house of one Pushpavalli, the accused, by way of giving false promise of marrying prosecutrix has deflowered her. The second charge framed against him is that even prior to 19.04.2007, on several occasions, by way of giving identical promise, he has had coition with the prosecutrix.

12. At this juncture, it would be apropos to look into the evidence given by the prosecutrix, who has been examined as P.W.1 and her specific evidence is that even prior to 19.04.2007, on several occasions, by way of giving very same promise, the accused has had carnal copulation with her.

13. Further, the doctor, who examined the prosecutrix has been examined as P.W.6 and her specific evidence is that she has not found any symptom of recent sexual intercourse, but the prosecutrix has been subjected to sexual intercourse earlier. Therefore, it is quite clear that the prosecutrix has been subjected to sexual intercourse even prior to 19.04.2007.

14. The only motive attributed on the side of the accused is that the mother of the prosecutrix viz., P.W.2 is living with other person, whereas, her husband P.W.3 is living with another woman and

the same has been questioned by the mother of the accused and due to that as a measure of taliation, Ex.P.1 has been given by the victim. Even this court has scanned the entire evidence on record and no positive evidence is available on the side of the prosecution to prove the above factual aspects. Even assuming without conceding that the parents of the victim are having such kind of relationship, definitely they would not have come forward to utilise the prosecutrix for the purpose of taking vengeance against the mother of the accused. Therefore, the motive attributed on the side of the appellant/accused cannot be accepted.

15. The first and foremost contention put forth on the side of the appellant/accused is that even though occurrence has taken place on 19.04.2007, the complaint in question viz., Ex.P.1 is dated 26.04.2007. It is seen from the evidence that after 19.04.2007, on several occasions, third persons have intervened by way of saying that the accused should marry prosecutrix and further in a case like this, it is an archaic principle of law that mere delay in lodging the First Information Report is not fatal to the case of prosecution. Therefore, the first contention put forth on the side of the accused is of no use.

16. The second contention put forth on the side of the accused is that on 25.04.2007, the complaint has been given by the prosecutrix, wherein, it is prayed to direct the accused to marry her. It is available from the evidence that on 25.04.2007, the prosecutrix has given the complaint, wherein, she prayed to direct the accused to marry her. Unless she is having some relationship with the accused, she would not have given complaint dated 25.04.2007 and under the said circumstances, the court cannot come to a conclusion that the Ex.P.1, complaint dated 25.04.2007 is a false.

17. The third contention put forth on the side of the appellant/accused is that the Prosecution Witnesses P.Ws.2 to 7 have stated in their evidence that the birthday of the prosecutrix falls on 18.04.2007 and therefore, the occurrence alleged to have been taken place on 19.04.2007 is false. It is seen from their evidence that they have stated to the effect that the birthday of the prosecutrix falls on 18.04.2007. As stated earlier, the first charge framed against the appellant/accused is that on 19.04.2007, at about 8 p.m., such occurrence has taken place. Since the occurrence mentioned in the first charge has taken place on 19.04.2007, simply on the basis of flimsy mistake committed by P.Ws.2 to 4, the court cannot belittle the concrete/trustworthy evidence given by the prosecutrix with regard to occurrence. Therefore, the third contention also goes out without merit.

18. The fourth contention put forth on the side of the appellant/accused is that P.Ws.2 to 4 have given evidence to the effect that the place of occurrence is nothing but thicket and no way

is available so as to enter into the same and therefore, the occurrence alleged to have taken place on 19.04.2007 is false.

19. Even assuming without conceding that the occurrence dated 19.04.2007 is false or even not established on the side of the prosecution, the court can meticulously look into the second charge framed against the accused.

20. The specific evidence given by the prosecutrix is that even prior to 19.04.2007, by way of giving false promise of marrying her, on several occasions, the accused has had coition with her. Since prosecutrix has given credible evidence with regard to said aspect, the fourth contention put forward by the appellant/accused cannot be accepted.

21. The learned counsel appearing for the appellant/accused has drawn the attention of this court to the decision of the Honourable Apex Court reported in 2003 Supreme Appeals Reports (Criminal) [Uday Vs. State of Karnataka], wherein, the Honourable Apex Court, has held that in the case of 376 of the IPC, strait jacket formula cannot be applied.

22. It is a well known principle of law that each and every case has to be decided in accordance with factual situations. In the instant case, as noted down earlier, motive attributed on the side of the appellant/accused has not at all been established. Further, the prosecutrix has given picturesque evidence, where the cheating alleged to have been committed by the appellant/accused found place. Therefore, viewing from any angle, the contention put forth on the side of the appellant/accused cannot be accepted.

23. The trial court, after considering the available evidence on record has rightly found the accused guilty under Section 417 of the IPC. In view of the foregoing elucidation of both factual and legal aspects, this court has not found any illegality in the conviction and sentence passed by the trial court.

24. The learned counsel appearing for the appellant/accused has advanced his residual contention to the effect that the accused has already got married and been blessed with a child and in the said circumstances, some leniency may be shown in awarding sentence.

25. The trial court has awarded 12 months rigorous imprisonment under Section 417 of the IPC and also imposed fine of Rs.1800/- with usual default clause. Considering the marital status of the accused, this court is of the view that some leniency can be shown in awarding sentence and to that extent, this criminal appeal is liable to be allowed in part.

In fine, this Criminal Appeal is allowed in part. The conviction passed under Section 417 of the IPC by the trial court in Sessions

Case No.116 of 2007 is confirmed. However, the quantum of sentence imposed by the trial court is modified as follows:-

"The appellant/accused is sentenced to undergo 4 months rigorous imprisonment instead of 12 months. No modification with regard to fine amount."

nvsri

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Inspector of Police
All Women Police Station
Ariyalur, Perambalur District
Crime No.8 of 2007
2. The Sessions Judge, Mahila Court, Perambalur.
3. do thro the Principal Sessions Judge,
Perambalur District.
4. The Judicial Magistrate,
Ariyalur.
5. do thro The Chief Judicial Magistrate,
Perambalur.
6. The Public Prosecutor,
High Court, Madras.

+ 1 cc to M/s.Sai Bharath and Ilan, Advocate SR 52815

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Crl.A.No.210 of 2008

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