

Bail Slip

The Appellant/Accused namely Stephen Selvaraj was directed to be released on bail in and by the order of this court dated 08.07.2014 made in Mp.1/2014 in CrI.Appeal No.273/2014.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.273 of 2014

Stephen Selvaraj .. Appellant/Accused

- Vs -

State rep by Inspector of Police,
All Women Police Station,
Sooramangalam,
Salem District.
(Cr.No.14 of 2011)

.. Respondent/Complainant

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Sessions Judge, Mahila Court, Salem in S.C.No.124 of 2012 dated 21.04.2014.

For Appellant : Mr.S.Sarath
for Mr.V.Raghavachari

For Respondent : Mr.E.Raja
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by S.Nagamuthu, J.)

The appellant is the sole accused in S.C.No.124 of 2012 on the file of the learned Sessions Judge, Mahila Court, Salem. He stood charged for offences under Section 376 (1) I.P.C., Section 417 I.P.C. and Section 4 of the Sexual Harassment of Women At Workplace (Prevention, Prohibition and Redressal) Act, 2013. By judgment dated 21.04.2014, the trial Court convicted him under Sections 376 (1) and 417 I.P.C. However, acquitted him from the charge under Section 4 of the Sexual Harassment of Women At Workplace (Prevention, Prohibition and Redressal) Act, 2013. The trial Court sentenced him to undergo imprisonment for life and pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months for the offence under Section 376(1) I.P.C and to

undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- in default to undergo simple imprisonment for one month for the offence under Section 417 I.P.C. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

2. The case of the prosecution in brief is as follows:

2.1. P.W.1 is the alleged victim in this case. At the time of occurrence, she was a woman aged 28 years. She was a spinster. She was working as a Home Guard in the City Armed Reserve Police. The accused was working as a police constable in the City Armed Reserve Police section. The accused was a Writer in the Station. It was his duty to allot duties for the Home Guards. Similarly, the salaries were to be disbursed only by the accused. In such a way, P.W.1 got introduced to the accused. In due course, it developed into a friendship. Later on, the accused proposed that he liked her very much and had a love for her. He further told that he would marry her provided she was agreeable for the same. He further told her that he would approach her parents in this regard and soon make arrangement to marry her. P.W.1 believed these words and she also positively responded to the said love.

2.2. It is further alleged that during the year 2007, on one day, the accused wanted her to come to his house. Accordingly, she went to the house of the accused. She found that there was nobody else in the house except the accused. The accused, using the loneliness of P.W.1, had sexual intercourse with her. Subsequently, on many occasions at her office itself, the accused and P.W.1 had sexual intercourse.

2.3. In the year 2008, during Deepavali festival, the accused came to the house of P.W.1 and spoke to her parents requesting them to give P.W.1 in marriage to him. But her parents rejected the said proposal because P.W.1 is a Hindu whereas the accused is a Christian by religion.

2.4. Thereafter, P.W.1 on one occasion had gone to Pudupalayam village and stayed at her aunt's house. From Pudupalayam, P.W.1 spoke to the accused in connection with her office work. The accused came there. At the house of her aunt, she was alone as others had gone to the temple. Utilising the loneliness, again the accused had sexual intercourse with P.W.1. Soon thereafter, her aunt returned home. She enquired as to why the accused had come there to her house. P.W.1 told that he had come there in a friendly manner as the accused was a co-worker.

2.5. In the year 2008, on several occasions, at her office itself, the accused and P.W.1 had sexual intercourse. On few occasions, the accused and P.W.1 went to Coimbatore, Cinnasalem, Kalakurichi and Palani where also the accused had

sexual intercourse with her. P.W.1 used to visit the house of her friend by name Rani. On few occasions, the accused came to the house of Rani when P.W.1 alone was there and had sexual intercourse with her.

2.6. On one occasion, the accused told her that if the different religion to which they belong could be a hindrance for their marriage, she could convert herself as a Christian and thereafter they could marry. P.W.1 agreed for the same. Accordingly, she along with the accused went to a Church and converted herself as a Christian. After such conversion also on two or three occasions, they had sexual intercourse. After conversion on 09.09.2008, P.W.1 changed her name as Christina, thereby indicating that she is a Christian. Thereafter, the accused was assuring to marry her. Thus, P.W.1 and the accused had free sex for about four years.

2.7. On 29.06.2011 the accused informed P.W.1 that he was going to marry some other girl. On hearing this, P.W.1 decided to commit suicide. She collected arali seeds and made a paste of it to consume. She informed the accused that she would consume the same. The accused did not bother. Then she consumed the paste of arali seeds, she was taken to the hospital, where she was admitted as in-patient. Due intimation was given to the police. On receiving the said intimation, P.W.10 the then Sub Inspector went to the hospital and recorded the statement of P.W.1. On returning to the police station, she registered a case in Crime No.14 of 2011 under Sections 417 and 376 I.P.C. Ex.P1 is the complaint and Ex.P14 is the F.I.R.

2.8. P.W.14 took up the case for investigation. She examined P.W.1 and few more witnesses. On 01.07.2011, she arrested the accused. The accused as well as P.W.1 were sent for medical examination. The reports revealed that the accused was capable of performing penile sexual intercourse with a woman and P.W.1 was not a virgin and she had been subjected to sexual intercourse. The investigation was continued by P.W.15 who laid the chargesheet against the accused.

2.9. Based on the above materials, the trial Court framed charges against the accused as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case, on the side of the prosecution as many as 15 witnesses were examined and 16 documents were marked.

2.10. Out of the said witnesses, P.W.1 is the victim, who has vividly spoken about the entire occurrence as we have already narrated. P.W.2 is the mother of P.W.1, she has stated that during Deepavali festival in the year 2008 the accused came and proposed to marry P.W.1, but she and her husband refused. She has further stated that P.W.1 had consumed arali

seeds in an attempt to commit suicide. P.W.3 is the father of P.W.1 he has also spoken about the same facts as spoken by P.W.2.

2.11. P.W.4 is the friend of P.W.1, she has stated that four years prior to her giving evidence, once the accused and P.W.1 came in the morning, stayed in their house and returned in the evening. P.W.5 is the aunt of P.W.1 and she has stated that in the year 2008 once when P.W.1 was at her house, the accused came to her house and when she enquired P.W.1, she told that she is going to marry the accused.

2.12. P.W.6 has stated that he examined the accused and gave opinion that he was capable of performing penile sexual intercourse with a woman. P.W.7 has stated that she examined P.W.1 and gave opinion that she would have had sexual intercourse frequently. P.W.8 has stated that on examination he found that the accused must be around 34 years of age. P.W.9 has stated that on 29.06.2011, when she was on duty at the Government Mohan Kumaramangalam Hospital at Salem, P.W.1 was brought for treatment for having consumed the paste of arali seeds. She has further spoken about the treatment given to P.W.1.

2.13. P.W.10 has spoken about the complaint made by P.W.1 and the case registered on the same by her. P.W.11 has spoken about the X-ray taken on P.W.1 and the accused to ascertain their age. P.W.12 a police constable has stated that she took P.W.1 to the Doctor for medical examination. P.W.13 the Special Sub Inspector of Police has stated that he went to the hospital where P.W.1 was taking treatment. Since she was unconscious, he could not record the statement of P.W.1. P.Ws.14 and 15 have spoken about the investigation done.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. On his side, two witnesses were examined as D.Ws.1 and 2. D.W.1 was working in the Home Guard along with the accused. He has stated that P.W.1 used to bring her boyfriends to the office. She was reprimanded for the said action. He has further stated that P.W.1 used to make false complaints of sexual harassment against her superior officers. In the year 2004, she made one such complaint against one Mr.Ramesh, who was the area commander. D.W.2 is the accused himself. He denied all the allegations made against him. He has stated that P.W.1 was irregular in duty and he reprimanded her on many occasions. He has further stated that he never proposed to marry her and that he never had sexual intercourse with her.

convicted the accused as detailed in the first paragraph of this judgment and that is how, he is before this Court with this appeal.

5. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and also perused the records, carefully.

6. P.W.1 has given a long narration of the sexual relationship between her and the accused, which went on for about four years. She has stated that the accused had fallen in love with her and he also went to the extent of proposing to marry her. P.W.1 was not in her tender age at that time. She was aged about 28 years. She was working as a Home Guard in a Government Department. Such a matured woman, who had allegedly free sex with the accused, cannot claim at this length of time that she was raped by the accused. The conduct of P.W.1 as narrated by herself in visiting many places, staying with the accused together at many places and having free sexual intercourse with him would all go to only prove that she was a fully consenting party for the said affair. Thus, we hold that even assuming that the evidence of P.W.1 speaks only the truth, the act of the accused would not constitute either an offence under Section 376 I.P.C. or an offence under Section 417 I.P.C.

7. The accused had examined himself as D.W.2 and he has denied that he had any affair with P.W.1. His evidence also deserves to be treated like that of the evidence of anybody else. Though, he has been cross examined at length, nothing has been elicited to disbelieve him. At the same time, between the evidences of P.W.1 and D.W.2, the evidence of P.W.1 needs preference because she is the prosecutrix. But, going by the evidence of D.W.1, he has stated that P.W.1 was in the habit of making such false complaint of sexual harassment against her superiors and one such complaint has been made against one Mr. Ramesh. But, unfortunately neither the said complaint nor the consequential proceedings have been summoned and proved in evidence. Therefore, we find it difficult to accept the evidence of D.W.1. Therefore, the evidence of the prosecutrix namely P.W.1 needs preference. As we have already pointed out, even if we accept the evidence of P.W.1, as we have already concluded, the act of the accused would not make out either an offence under Section 376 I.P.C. or Section 417 I.P.C. Though it is stated by P.W.1 that the accused had sexual intercourse with her by making a false promise of marriage, absolutely there is no acceptable evidence to this fact. The narration of facts made by P.W.1 would all go to show that she willingly had sexual intercourse with the accused on several occasions at several places. Therefore, we hold that the prosecution has failed to prove

either the charge under Section 376 I.P.C. or under Section 417 I.P.C. Hence, the accused is entitled for acquittal.

8. In the result,

(i) The appeal is allowed, the conviction and sentence imposed on the appellant by the learned Sessions Judge, Mahila Court, Salem in S.C.No.124 of 2012 dated 21.04.2014 is set aside and he is acquitted.

(ii) The fine amount, if any paid, shall be refunded to him.

(iii) The bail bond, if any executed, by him, shall stand discharged.

Sd/-

Assistant Registrar()

//True Copy//

Sub Assistant Registrar

To

1. The Sessions Judge,
Mahila Court, Salem.
2. The Inspector of Police,
All Women Police Station,
Sooramangalam,
Salem District.
3. The Public Prosecutor,
Madras High Court.
4. The Judicial Magistrate,
No.II salem
5. The Superintendent,
Central prison Coimbatore,
6. The Chief Judicial Magistrate,
Salem.
7. The Director General toling hylopee chennai
8. The District collector coimbatore.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.43670

Cr1.A.No.273 of 2014

CO (TRM)

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