

Bail Slip

The Appellant herein namely Manikandan accused in SC 42/06 on the file of the Chief Judicial Magistrate/ Assistant Sessions Judge, Villupuram was released on bail by order of this Court dated 25.4.2007 and made in CrI.M.P.No.1/07.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.336 of 2007

Manikandan ... Appellant

vs.

The State rep.by
The Station House Officer
Kedar Police Station
Villupuram District

... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment and sentence passed by the Chief Judicial Magistrate, Assistant Sessions Judge at Villupuram in S.C.No.42 of 2006 dated 22.3.2007.

For appellant : Mr.A.Sasidharan

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor.

JUDGMENT

The convictions and sentences dated 22.03.2007 passed in Sessions Case No.42 of 2006 by the Chief Judicial Magistrate/Assistant Sessions Judge, Villupuram are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that prior to six months from 18.09.2004, the first accused and prosecutrix have loved each other. The first accused has given promise of marrying her. On the basis of assurance given by the first accused, both of them have had carnal copulation on many occasions and subsequently he refused to marry the prosecutrix. On 17.09.2004,

the accused 2 and 3 have hurled invectives by using filthy words against the prosecutrix and further the second accused has also threatened her. After occurrence, the prosecutrix has given a complaint and the same has been registered in Crime No.200 of 2004. The complaint 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, examined connected witnesses and also made arrangements for conducting medical examination to both the first accused and prosecutrix and after completing the investigation, laid a final report on the file of the Judicial Magistrate Court No.2, Villupuram and the same has been taken on file in P.R.C.No.25 of 2005.

4. The Judicial Magistrate No.2, Villupuram, after considering the facts that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the Court of Sessions, Villupuram Division and the same has been taken on file in Sessions Case No.42 of 2006 and subsequently transferred to the file of the trial court.

5. The trial court, after hearing arguments of both sides and upon perusing relevant records has framed first charge against the first accused under section 417, second charge against him under section 376, third charge against accused Nos.2 and 3 under section 294(b) and fourth charge against the second accused under section 506(ii) of Indian Penal Code and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 13 have been examined and Exhibits P.1 to P.14 and Material Objects 1 and 2 have been marked.

7. When the accused have been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence have been adduced 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 first accused guilty under Section 417 of IPC and sentenced him to undergo 1 year Rigorous Imprisonment and he has been also found guilty under Section 376 of IPC and sentenced to undergo 10 years Rigorous Imprisonment and imposed a fine of Rs.5,000/- with usual default clause. The trial court has acquitted the accused 2 and 3. Against the convictions and sentences passed by the trial court, the present Criminal Appeal

has been filed at the instance of the first accused as appellant.

9. The sum and substance of the case of the prosecution is that prior to six months from 18.9.2004, both the first accused and prosecutrix have acquainted with each other. The first accused has given an assurance of marrying her. By way of believing the words of the first accused, both of them, on several occasions, have had sexual intercourse. On 17.9.2004 at about 7 p.m., the accused 2 and 3 have berated the prosecutrix by using filthy words. On the same day, the second accused has also threatened the prosecutrix.

10. The entire case of the prosecution hinges upon Ex.P.1, Complaint, alleged to have been given by the prosecutrix.

11. On the side of the prosecution, the prosecutrix has been examined as P.W.1, her parents have been examined as P.Ws.2 and 3. The concerned Doctors have been examined as P.Ws.8 to 10. The trial court, by way of believing the evidence given by the witnesses mentioned supra, has invited convictions and sentences against the appellant/first accused under sections 417 and 376 of IPC.

12. The learned counsel appearing for the appellant/first accused has contended that the trial court, without considering the available evidence on record, has erroneously found the appellant/first accused guilty under sections 417 and 376 of IPC and in fact, for invoking the said sections, absolutely there is no evidence on the side of the prosecution and therefore, the convictions and sentences passed by the trial court are liable to be interfered with.

13. Per contra, the learned Additional Public Prosecutor has contended that in the instant case, the prosecutrix has been examined as P.W.1 and her specific evidence is that from inception of love, the first accused has given an assurance of marrying her and by way of believing his words, she has given consent for having sexual intercourse with him and due to that, she has become pregnant and since the first accused has had acted with evil design and also sinister motive from inception, the Court can very well invoke section 376 of IPC and the trial court, after considering the overall evidence available on record, has rightly found the first accused guilty under sections 417 and 376 of IPC and therefore, the convictions and sentences passed by the trial court are not liable to be interfered with.

14. As adverted to earlier, the prosecutrix has been examined as P.W.1. In fact, this Court has closely perused the entire testimony given by her. During the course of chief

examination, she has clearly stated to the effect that both of them have acquainted with each other and the first accused has given an assurance of marrying her and due to that, both of them have had coition on several occasions and due to that, she has become pregnant and subsequently he refused to marry her.

15. On the basis of the divergent submissions made on either side, the Court has to meticulously analyze as to whether the convictions and sentences passed by the trial court under sections 417 and 376 of Indian Penal Code against the appellant/first accused are factually and legally sustainable?

16. For considering the said aspects, the Court has to look into the evidence given by the prosecutrix (P.W.1). In fact, this Court has perused the entire evidence adduced by P.W.1, wherein it has been clearly stated that both of them have loved each other and since the first accused has given assurance to marry her, she has also started to love him and on many occasions, both of them have gone to the house of senior mother of the first accused and have had sexual intercourse. During the course of cross-examination, she has candidly admitted to the effect that only due to intervention of relatives of the first accused, he has not been able to marry her.

17. At this juncture, a nice legal question arises as to whether the conduct of the first accused would come within the purview of provisions of Sections 90, 417 and 376 of Indian Penal Code, in view of the evidence given by the prosecutrix.

18. The Hon'ble Supreme Court has had an occasion to deal with similar cases and also similar factual situations.

19. In 2005 SC (Cri) 253 (Deelip Singh vs. State of Bihar), the Hon'ble Supreme Court has held that consent given by a woman believing man's promise to marry her would fall within the expression "without her consent" only if it is established that from the very inception the man never really intended to marry her and the promise was a mere hoax.

20. In 2013 CrI.L.J.2990, (Deepak Gulati v. State of Haryana) in paragraph 18, the Hon'ble Apex Court has observed as follows:

"18. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the Court must very carefully examine whether the accused had actually wanted to marry the

victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly, understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love

and passion for the accused, and not solely on account of mis-representation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently."

21. In the instant case, as adverted to earlier, both the first accused and prosecutrix (P.W.1) have loved each other, believing their marriage would be performed. The specific evidence given by P.W.1 is that only due to intervention of relatives of the first accused, he has not been able to marry her.

22. The Hon'ble Apex Court has clearly observed in the decision reported in 2013 CrI.L.J.2990, (Deepak Gulati v. State of Haryana) that if the accused would not have married the prosecutrix due to unforeseen circumstances, beyond his control, such cases must be treated differently and the same would not come within the purview of Section 376 of Indian Penal Code.

23. Even at the risk of repetition, the Court would like to point out that it is not the specific case of the prosecution that all of a sudden, the first accused has raped the prosecutrix (P.W.1). But the case of the prosecution is that both the prosecutrix and first accused have loved each other believing that they would marry in future. The specific evidence given by the prosecutrix during the course of cross-examination is that only due to intervention of relatives of the first accused, he has not been able to marry her. Therefore, it is quite clear that conduct of the first accused would not come within the purview of giving false hope and the prosecutrix (P.W.1) has acted under misconception.

24. The trial court, without considering the complete evidence given by the prosecutrix, has simply found the first accused guilty under sections 417 and 376 of Indian Penal Code,

in view of the evidence given by the prosecutrix. Therefore, viewing from any angle, the convictions and sentences passed by the trial court are not factually and legally sustainable and altogether, the present Criminal Appeal is liable to be allowed.

In fine, this Criminal Appeal is allowed. The convictions and sentences passed against the appellant/first accused in S.C.No.42 of 2006 by the trial court are set aside. The appellant/first accused is acquitted. Bail bond, if any executed by him, shall stand cancelled. Fine amount, if any paid by him, is ordered to be refunded forthwith.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrarajr

To :

- 1.The Chief Judicial Magistrate,
Assistant Sessions Judge, Villupuram
 2. The Judicial Magistrate No.II, Villupuram
 - 3 The Station House Officer, Kedar Police Station
Villupuram District
 4. The Superintendent, Central Prison, Cuddalore
 5. The Public Prosecutor, High Court, Chennai.
 6. The Section Officer, Criminal Section,
High Court, Madras
- 1 cc to Mr.A. Sasidharan, Advocate, Sr. 1142

KR/7/1/16

WEB COPY

CrI.A.No.336 of 2007