

Bail Slip

The Appellant/Petitioner/Accused namely Manimaran S/o Kanniyappan was released on bail vide order dated:111/11/2013 in CrI M.P.1/2013 in CrI.A.733/2013 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

|                          |                           |
|--------------------------|---------------------------|
| Reserved on : 15.12.2016 | Delivered on : 05.01.2017 |
|--------------------------|---------------------------|

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

Criminal Appeal No.733 of 2013

Manimaran .... Appellant/Accused

vs.

The State  
rep. By Inspector of Police,  
All Women Police Station  
Gingee  
Crime No.6/2012

.... Respondent/Complainant

Criminal Appeal filed under Section 374 of Cr.P.C., against the judgment dated 8<sup>th</sup> October 2013 passed in Sessions Case No.123 of 2013 by the II Additional District and Sessions Judge, II Additional District Court, Tindivanam.

For appellant : Mr.P.T.Geotom

For Respondent : Mr.E.Raja, Additional Public Prosecutor

JUDGMENT

The appellant who faced trial for the offences under Sections 376 and 417 IPC was acquitted by the trial court for the alleged offence under Section 376 IPC but was found guilty and convicted under section 417 IPC, has come forward with the above criminal appeal, seeking to set aside the conviction and sentence imposed by the trial court for the offence under Section 417 IPC.

2. Admittedly, the appellant/accused and the victim girl/complainant/P.W.1-Reetarani belongs to the same village and they came into contact with each other and met at the house of one Moorthy, who resided in the same street, where, the appellant/accused as well as the victim girl also resided.

According to the prosecution, the appellant/accused, by making a false promise of marrying her, had physical relationship with her and subsequently failed to keep up his promise and failed to marry her, thereby, committed the alleged offence under section 376 and 417 IPC.

3. According to the prosecution, the complainant/P.W.1/Reetarani and accused belonged to the same village and the victim girl was aged about 18 years. Both the accused as well as the victim girl used to visit the house of one Moorthy, wherein, they met each other and became friends, thereafter, they kept in touch with each other through cellphone and the accused used to go to the house of the victim girl, when parents of the victim girl were away and at that times, induced the victim girl to have physical relationship with him by making false promise of marrying her. Like that the accused had physical relationship with the victim girl for more than 4 times and subsequently, the same was intimated by the victim girl to P.W.2, her uncle, who in turn informed the parents of P.W.1 about the affair. Thereafter, the parents of the victim girl went to the house of appellant/accused and requested his parents to arrange for marriage of the accused with the victim girl, but they denied to do so. Thereafter, the victim girl P.W.1 went to the All Women Police Station, Gingee, and lodged Ex.P.1-complaint. The same was received by P.W.9, Sub Inspector of Police and she registered the case in Crime No.6 of 2012 under Section 376 and 417 IPC and the said FIR is produced as Ex.P.9. Thereafter, investigation was taken up and P.W.9-Sub Inspector of Police, who also visited the occurrence spot and prepared observation mahazar/Ex.P.2 and Rough Sketch/Ex.P.10, in the presence of P.W.4/Elumalai and another witness. Subsequently, the accused was arrested by P.W.9/Sub Inspector of Police, on the date of complaint itself. Subsequently, as per Ex.P.8/Requisition, medical examination of the accused was done by P.W.6/Doctor Manoj, who issued Potency Certificate of the accused and the said medical report is Ex.P.5 and Radiological Report is Ex.P.6. Subsequently, the Sub Inspector of Police/P.W.9, gave requisition/Ex.P.7 for medical examination of victim girl and accordingly she was examined by P.W.5/Dr.Shanthi, who gave Radiological Report/Ex.P.3 and Medical Report/Ex.P.4. After completion of investigation, final report was filed by the Police against the accused herein for the offences under Section 376 and 417 IPC.

4. To substantiate the allegation against the accused, prosecution produced oral evidence of P.Ws.1 to 9 and documentary evidence Exs.P.1 to P.10. On the basis of the said evidence, the trial court found the accused not guilty under Section 376 IPC, whereas, found him guilty for offence under

Section 417 IPC and sentenced him to undergo R.I., for 6 months and to pay fine of Rs.10,000/- in default to undergo, 1 month S.I. for one month. Thus, aggrieved over the said finding of the trial court, the accused has preferred this appeal, seeking to set aside the conviction and sentence imposed on him by the trial court.

5. According to the appellant/accused, the prosecution failed to produce sufficient evidence to prove the relationship between himself and the victim girl. Apart from P.W.1, no other eyewitness was examined by the prosecution. Further it is contended that except the uncle and mother of the prosecutrix, who deposed as P.Ws.2 and 3, no other independent witness was examined by the prosecution. According to the appellant, the trial court failed to consider that there was no evidence to prove the allegation of false promise of marriage made by the accused to the victim girl. Likewise, the trial court failed to appreciate the contradiction in the evidence of P.W.1. There is no evidence to prove the plea of cheating alleged against the accused and the trial court failed to appreciate the materials placed before it properly, which resulted in the miscarriage of justice and the accused seeks to set aside the same by allowing this appeal.

6. As stated above, the accused herein has been charged for the offences under section 376 and 417 IPC., who faced trial, was found not guilty under Section 376 IPC and acquitted in that regard. State has not preferred any appeal against that finding of the trial court. The conclusion arrived at by the trial court holding the accused guilty of offence under Section 417 IPC alone is challenged by the accused by preferring this appeal.

7.1. The trial court has categorically held in its finding in paragraph 21 of its judgment that the victim girl indulged in the act of sex repeatedly with the accused and the same was not induced by misconception of the fact. The finding of the trial court in paragraph 21 of its judgment is as under:-

" 21. As per the principle laid down in the above ruling the victim girl consents to the act of sexual intercourse on a promise of marriage and continued to indulge in such activity number of times. It is an act of promiscuity and not an act induced by misconception of fact. Hence it is concluded that the act of accused does not come under misconception of fact and hence the consent has been given by the victim girl freely, voluntarily and consciously. Hence, it has to be concluded that the accused has not committed an offence under Section 376 IPC. The offence under Section 376 is not made out from the facts and circumstances of this case."

7.2. After holding as such, the trial court proceeded to analyse the evidence let in by the prosecution and thereafter arrived at the conclusion that the accused committed offence of cheating of the victim girl and thereby induced to have physical relationship with her. The trial court found that the accused, from the beginning, acted in a fraudulent and dishonest manner and induced the victim girl to give consent for the physical relationship with him.

7.3. The finding of the trial court is that the accused visited the house of P.W.1 only during the absence of her parents to have physical relationship and this itself will go to prove that he acted with dishonest intention from the beginning. On that basis, the trial court concluded that the accused induced the victim girl to have intercourse and had given a false promise of marriage and the same caused damage and harm to the victim's body, mind and reputation.

8.1. It is pointed out by the learned counsel for the appellant that after the conclusion arrived at by the trial court in paragraph No.21 of the judgment, holding that there was no misconception of fact and the victim girl was not induced to have sex with the accused, on that ground, the subsequent finding, whereby the accused was found guilty of cheating is unsustainable and the said conclusion arrived at by the trial court is not proper. In the case on hand, the victim girl who deposed as P.W.1, has stated as follows:-

“ இது போன்று உறவு வைத்துக்கொண்டால் ஊரில் அசிகமாகி விடும் திருமணம் செய்துக் கொண்டு உறவு வைத்துக் கொள்ளலாம் என கூறினேன் 2வது முறை அதே மாதத்தில் அவருடன் உறவு வைத்துக் கொண்டேன், என் பெற்றோர்கள் இல்லாத போது அது போன்று வீட்டில் உறவு வைத்துக் கொண்டோம் இது போன்று 6 முறை உடல் உறவு வைத்துக் கொண்டோம்.”

8.2. It is therefore clear from the said admission of P.W.1 that she voluntarily consented to have sexual intercourse with the appellant and there is nothing on record to arrive at the conclusion that the victim girl was deliberately cheated by the accused, by making false promise to marry her. Further P.W.1 stated in his evidence that, herself and accused met at the house of one Moorthy and became friends. However, the said Moorthy is not examined by the prosecution before the court. However, it is admitted by P.W.9/Sub Inspector of Police, in her evidence that nothing was stated by P.W.1 in the statement given by her, about getting acquainted with the accused at the house of Moorthy. P.W.1 stated that only the said Moorthy know about the relationship with the accused and nobody else knew about it. In such circumstances, non examination of the said Moorthy, as rightly pointed out by the learned counsel for the appellant is fatal to the prosecution.

8.3. Further P.W.1 stated in her evidence that she had physical relationship with the accused for 4 times at her house

only. In the cross examination, she stated that she had physical relationship with the accused 6 times and the same was stated by her during enquiry by the Police. She also stated that nobody else had seen the accused coming to her house and she did not conceive after having physical relationship with the accused. According to P.W.9/Sub Inspector of Police, nothing was mentioned in Ex.P.1/complaint, about the place, wherein the accused and victim girl had physical relationship with the accused. In such circumstances, doubt arises as to whether physical relationship took place at the house of the victim girl as claimed by her. Further, according to the victim girl, after she informed her uncle/P.W.2/Anthony, about the relationship with the accused, he in turn informed her parents and immediately her parents went to the house of the accused and asked them to arrange for their marriage, but the same was refused. Neither the complainant who deposed as P.W.1 nor her uncle P.W.2 went to the house of the accused, but only Sahaya Mary, the mother of the victim girl, who deposed as P.W.3 and her husband went to the house of the accused. According to P.W.3 they went to the house of the accused seeking to arrange for the marriage of the accused and victim girl and the accused parents demanded 20 sovereigns of gold jewels as dowry and stated that the marriage will not be fixed, if the said claim is not complied with. P.W.1 also admitted in her cross examination, that she did not mention about having sexual contact with the accused in her house in her complaint and also during police enquiry. Further, P.W.9/Sub Inspector of Police, in her evidence, stated that nothing was reported during her investigation as to when the accused refused to marry the victim girl. P.W.9 further stated that she did not enquire about the reason for refusal of accused to marry the victim girl. She also stated that nothing was stated by P.Ws.1 and 3 about the demand of dowry by the parents of the accused, as condition precedent to agree for marriage. Thus, there is nothing on record to show that the accused made promise of marrying the victim girl initially and subsequently refused to do so.

8.4. Further, as rightly pointed out by the learned counsel for the appellant, even when the accused and the victim girl went to the temple at Melmalaiyanur, and returned after the accused failed to agree to marry the victim girl, they are having friendly relationship and that itself, would go to show that, there was no act of cheating by the accused and the physical contact continued at the voluntary consent of the victim girl and as such, the plea of the prosecution that the accused committed an offence under Section 417 IPC is unsustainable and the conclusion arrived at by the trial court holding the accused guilty of the said offence is not based on reasonable and acceptable evidence.

9.1. In the light of the above said discussion, it is clear that the prosecution has miserably failed to establish the fact of the accused giving false promise of marriage and thereby inducing the victim girl to have physical relationship with him. Further as admitted by P.W.9, no independent witnesses has been examined to substantiate the claim of the prosecution about the refusal to marry the victim girl. The prosecutrix/P.W.1, in her evidence stated that after she informed her uncle P.W.2, he in turn, informed her parents and they informed the Village Chief and Counsellor and the Panchayat was held in the presence of village elders. In the Panchayat, the accused expressed his unwillingness to marry her since she was not highly educated. The said averment of P.W.1 is totally contrary to the claim of P.W.3/her mother, who stated that the parents of the accused demanded 20 sovereigns of jewels as dowry and refused to marry if the same is not complied with.

9.2. As stated earlier, nothing is stated in the complaint or during the investigation of police on the above said demand of the parents and the statement of the accused in the Panchayat. Further, the uncle of the victim girl who deposed as P.W.2 stated that he did not enquire or inform about the affair to the Village Elders and he did not enquire about the affair from anybody else in the village. The mother of the victim girl, while deposing as P.W.3, stated that the village panchayat was not informed regarding demand made by the accused and she did not inform her husband about her girl having affair with the accused. P.W.3 further stated that some one from the accused house told her over phone, if marriage is to take place, jewels should be given, but she added that she do not know as to who spoke over phone like that. Thus, it is clear from the above said evidence that the prosecution witnesses have not come forward with clear and true statement on the alleged act of the accused herein. Further the allegation of denial of accused to marry the victim girl is not established. In such circumstances, the claim of the prosecution that the accused deliberately cheated the victim girl, by making false promise and indulged in physical relationship with her, is not proved beyond reasonable doubt and the case of the prosecution has to fail on that account. In such circumstances, the finding of the trial court that the accused is guilty of offence under section 417 IPC, is unsustainable and the same is liable to be set aside. The point is answered accordingly.

10. In the result, this Criminal Appeal is allowed. The conviction and sentence passed in Sessions Case No.123 of 2013 passed by II Additional District and Sessions Judge (II Additional District Court), Tindivanam, is set aside. The

appellant/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/  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The II Additional District & Sessions Judge, Tindivanam.
  - 2.The Judicial Magistrate, No-II,  
Villupuram.
  - 3.The Chief Judicial Magistrate, Villupuram.
  - 4.The Inspector of Police, All Women Police Station, Gingee.  
(Crime No.6/2012)
  - 5.The Public Prosecutor Office, High Court, Madras.
  6. The Section Officer,  
Vernacular Record Section, High Court, Madras.
- +2cc to Mr.P.T.Geotom Advocate, SR.No.1138/17.

SR(CO)  
GN(03/02/2017)

Cr1.A.No.733 of 2013

सत्यमेव जयते

WEB COPY