



Bail Slip

The Appellant/Accused viz Rajanna @ Rajappa S/o Seekalapa was directed to be released on bail as per order dated 19/04/11 in MP.no.1/11 in Crl.R.C.No.522/11 on the file of this court.

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.08.2018

PRONOUNCED ON : 27.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.R.C.No.522 of 2011
and
M.P.No.1 of 2011

Rajanna @ Rajappa

.. Petitioner/Appellant/Accused

-vs-

State Represented by,
The Inspector of Police,
Thally Police Station,
Krishnagiri District.
(Crime No.126 of 2003)

.. Respondent / Respondent /
Complainant

PRAYER: Criminal Revision Case filed under Sections 397 r/w 401 Cr.P.C., praying to call for the entire records connected in C.A.No.53 of 2008 dated 31.01.2011 on the file of the learned Additional Sessions Judge, Krishnagiri, confirming the judgment delivered by the learned Assistant Sessions Judge, Krishnagiri in S.C.No.248 of 2005, dated 19.07.2008 and set aside the conviction of the accused to undergo 1 year RI and fine of Rs.5000/- in default, 6 months RI for an offence u/s.417 of IPC.

For Petitioner : Mr.M.Erajasimhan
for M/s.Ezhil Nilavan

For Respondent : Ms.Kritika Kamal.P
Government Advocate (Criminal side)

ORDER

Convicted sole accused is the revision petitioner herein. This revision petition is filed against the judgment



made by the learned Additional Sessions Judge, Krishnagiri in C.A.No.53 of 2008 dated 30.01.2011 in which he confirmed the judgment delivered by learned Assistant Sessions Judge, Krishnagiri in S.C.No.248 of 2005 dated 19.07.2008 and dismissed the appeal in C.A.No.53 of 2008.

2. After completion of investigation, the respondent police filed charge sheet against the accused alleging that on 15.01.2002 at about 06.00 a.m., in the Jasmine Field of the accused at Alevoor the accused committed rape of PW1-Nagammal without her consent and against her will and in consequence of the same, she became pregnant and delivered a female baby on 17.04.2003. In this connection PW1 lodged complaint before the respondent police and the respondent in turn registered an FIR in Crime No.126 of 2003 against the accused for the offences under Sections 417, 376 and 506(ii) IPC.

3. After committal, the case was taken up as S.C.No.248 of 2005 and made over to the learned Assistant Sessions Judge and charges against the accused are framed under Sections 376 and 506 (ii) IPC and on examination and the proper analysis of the evidence, the trial Court found the accused guilty under Section 417 IPC and accordingly convicted him under Section 417 IPC and sentenced him to under one year rigorous imprisonment and to pay a fine of Rs.5000/-, in default, to undergo six months rigorous imprisonment and acquitted him from the charges under Sections 376 and 506(ii) IPC. On appeal, the same was confirmed and hence this revision.

4. The learned counsel for the revision petitioner contended that the Courts below ought to have considered that PW1 and PW2 have very clearly deposed that PW1 and the accused/the petitioner herein had love affair, as a result they cohabit themselves. This fact has not been considered by both the Courts below. The FIR-Ex.P.1 was registered only on 20.05.2003, eventhough the alleged occurrence was said to have taken place on 15.01.2002. The prosecution has not given any satisfactory explanation for the inordinate delay in lodging the complaint. The Courts below have failed to appreciate the cross examination of PW.3 that she has deposed that PW.1 knows well that the accused was already married and she had sexual intercourse by consent. The trial Court has failed to see that PW.3 deposed that Ex.P1 complaint is false as PW1 and the accused liked each other and they had sexual intercourse. In Ex.P.1, it is stated that the alleged occurrence was taken place at Jasmine garden belonging to the accused, whereas in Ex.D1 it is stated by PW1 that when she was doing sundry works in the house of the accused, the accused had intercourse with PW1. It is not the case of PW.1 that before having sexual intercourse, the accused promised to marry her. But PW.1 stated that only during panchayat, the accused promised



to marry her. Therefore, the petitioner/accused cannot be punished under Section 417 IPC. Further, PW.1 admitted that the petitioner was already married and got child and she was well aware of the fact that it is not possible to marry the petitioner, inspite of that she has started to cohabiting with the petitioner. Therefore the consent given by PW.1 cannot be said to be given under misconception of fact, because she also desired for it, as reported in 2003 Criminal Law Journal 1539 (SC).

5. Heard the learned counsel for the revision petitioner and the learned Government Advocate (Criminal side) and perused the records.

6. The learned Government Advocate (Criminal side) made submission in support of the judgment of the trial Court.

7. After hearing the rival submissions, the point for determination in this revision is whether the order of conviction under Section 417 IPC is sustainable in law? and whether the sentence awarded is excessive?

8. It is seen from the records that in order to buttress the charges, the prosecution examined PW.1 to PW.13 and marked 9 documents on behalf of the accused, they examined two witnesses and D1 and D2 were marked. The victim girl was examined as PW.1, who has clearly narrated that she was doing the coolie work in the Jasmine Garden of the accused and the accused has made a promise to marry her and wanted to have physical relationship. She has specifically deposed that the accused wanted a male child and against her will, he had sexual intercourse forcibly and on false promise to marry PW.1, he induced her to have sexual intercourse with him. PW.2 is the father of PW.1. PW.3 is the mother of PW.1 while PW.4 is the independent witness.

9. It is seen that since PW.1 has delivered a female baby on 17.04.2003, they have subjected to DNA test and PW.10-Scientific officer working in Chennai Forensic Science Department marked Ex.P6 regarding the DNA report, wherein it is stated that the female baby was born to PW.1 and the accused. Hence, it is clear that PW.1 is the biological mother and the accused is the biological father of the baby as per Ex.P.6. From the chief and cross examination of PW.1, it is seen that nothing in the cross-examination to disbelieve the evidence with regard to the act of the accused on the body of PW.1 and she has specifically deposed that on a false promise to marry her, he compelled her to have sexual relationship with the accused and he made her pregnant. During the investigation, it is revealed that the P.W.1 delivered the female baby and as per the evidence of the forensic expert-



PW.10, who had issued Ex.P6- DNA report, the accused is said to be the father of the child. The other prosecution witnesses have deposed regarding the lodging of the complaint and registration of FIR.

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10. On going through the evidence of PW.1, this Court is unable to accept the contention of the learned counsel for the revision petitioner/accused that PW.1-victim girl has voluntarily submitted herself to the accused out of love and infatuation and her evidence that the accused has promised to marry suffers from embellishment being spoken only at the witness box. However, on perusal of the evidence of PW.1-victim girl along with the police witness, this Court finds that on promise to marry her, the accused had sexual relationship with her and thus the said contention of the revision petitioner does not stand for consideration. Further more in the absence of any infirmity or contradiction to disbelieve the evidence of PW.1, both the Courts below have come to the conclusion that the evidence of PW.1 inspired the confidence of the Court. Further more, PW.1 has stood the cross examination for two each occasions also lends credence. From the evidence of the PW.1 and PW.2, it is clear that the accused owned a flower garden and PW.1 was working there for plucking Jasmine flowers. By taking advantage of the economical condition of PW.1, being below poverty line, the accused misrepresented to her that he wanted to have a male child and cohabited with PW.1. Her evidence both in Ex.P1-complaint and pervious statement are clear and cogent and nothing in the cross examination to disbelieve her evidence. This Court held that the evidence of PW.1 is reliable and trustworthy and as per Ex.P5, it is categorically recorded that the accused is the biological father of the female child.

11. Thus this court finds that the prosecution has proved the charge under Section 417 IPC and the conviction laid by both the Courts below is sustainable in law and sentence of one year rigorous imprisonment is commensurate with the charge and the same cannot be assumed as excessive and accordingly, the conviction and sentence passed by the trial Court is hereby confirmed. This criminal revision case is dismissed accordingly. The Trial Court is directed to secure the revision petitioner/accused and commit him to prison to undergo the remaining period of sentence. Bail bond if any executed by him, shall stand cancelled.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar



pjl

To

1. The Additional Sessions Judge,
Krishnagiri.

2. The Assistant Sessions Judge,
Krishnagiri.

3. The Inspector of Police,
Thally Police Station,
Krishnagiri District.

4. The Public Prosecutor,
High Court, Madras.

CRL.R.C.No.522 of 2011

KK(CO)
GMY(19/12/2018)