

Bail Slip

The Petitioner/Appellant/Accused namely Murugan male aged 28 years S/o. Raji, was directed to be released on bail by the order of this Court dated 18.09.2009 and made in Crl.MP.NO.1 of 2009 in Crl.A.559/2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 08.06.2018

JUDGMENT PRONOUNCED ON : 25.07.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.A.No.559 of 2009

Murugan ... Appellant / Accused-1

versus

State rep. by Inspector of Police,
All Women Police Station,
Tindivanam. ... Respondent / Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the order of conviction and sentence dated 03.09.2009 made in S.C.No.9 of 2008 by the learned Additional District and Sessions Judge [Fast Track Court No.I], Tindivanam.

For Appellant : Mr.S.Ashok kumar,
Senior Counsel for
Mr.P.Palaninathan
For Respondent : Mr.G.Raman
Government Advocate [Criminal Side]

J U D G M E N T

The first accused in S.C.No.9 of 2008 on the file of the learned Additional District and Sessions Judge [Fast Track Court No.I], Tindivanam, is the appellant herein. He stood charged for offences under Sections 417, 376 and 506[i] of IPC. The accused denied the charges and opted for trial. Therefore, he was put on trial on the charges. After full-fledged trial, the learned Additional District and Sessions Judge found him guilty of offence under Section 417 of IPC. The accused was accordingly

convicted and sentenced to undergo imprisonment for one year with a fine of Rs.50,000/-, in default to undergo three months imprisonment, however, he was acquitted of the other charges under Sections 376 and 506[i] of IPC. Challenging the conviction and sentence, the accused is before this Court with the present criminal appeal.

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

2.1. P.W.1 [Revathi] was residing in Ambedkar First Street, Siruvadi Village. The appellant was residing opposite to the house of P.W.1. On 11.07.2006 at about 12.00noon, the appellant came to the house of P.W.1 and requested to come over to his house. Complying the said request made by the appellant, P.W.1 went to the house of the appellant, at that time, he closed the doors, windows and on promise to marry her, removed the dresses worn by the P.W.1 and committed the offence of rape. Further, he threatened the P.W.1 if the same was disclosed to anybody, he would kill her. In consequence to the said act, P.W.1 got pregnant and on 03.03.2007 she lodged a complaint before the All Women Police Station, Tindivanam under Ex.P.1.

2.2. On receipt of the complaint given by the P.W.1, P.W.13 [B.Parijatham], the then Inspector of Police, All Women Police Station, Tindivanam, registered a case in Crime No.4 of 2007 for the offences under Sections 417, 376 and 506[i] of IPC. Ex.P.7 is the printed copy of the First Information Report.

2.3. After the registration of the case, P.W.13 rushed to the scene of occurrence and prepared an Observation Mahazar under Ex.P.2. Thereafter, she draw the rough sketch under Ex.P.8. Further, she examined the witnesses Annamalai [P.W.7] and Marimuthu [P.W.9] and recorded their statements. On 05.03.2007 at about 7.00a.m. She arrested the appellant and made arrangement for sending him to the judicial custody.

2.4. Thereafter, P.W.13 produced the victim [P.W.1] before the jurisdictional Magistrate, with a request to refer her for medical examination. Similarly, she made a request to the Court to forward the accused for medical examination. P.W.10 [Dr.Shankar], when he was working as Assistant Surgeon in the Government Hospital, Tindivanam, examined the potential nature of the appellant and issued a report under Ex.P.3. Likewise, P.W.11 [Dr.Sakthipriya], when she was working as Assistant Surgeon in the Government Hospital, Villupuram, examined the victim [P.W.1] and found that the P.W.1 was in the stage of pregnancy with the fetus aged about 30 weeks. Further, in this regard she issued a report under Ex.P.4. After completion of the medical examination, P.W.1 was handed over to the mother of P.W.1.

2.5. In the meantime, P.W.1 gave birth to a male child and thereafter, on 03.02.2009, the appellant, P.W.1 along with the child are subjected to DNA test. P.W.12 [N.Vanaja] after conducting the formalities to be adopted during the time of DNA examination issued a report stating that the appellant is the biological father of the child [Pradeepraj]. The said report is exhibited as P.6. After concluding the investigation, P.W.13 laid a final report for the offences stated in the First Information Report.

2.6. After receiving the final report, the learned Judicial Magistrate No.II, Tindivanam, has taken the case on file as P.R.C.No.17 of 2007. Thereafter, he committed the same to the Court of Session, Tindivanam.

2.7. In the Court of Session, a case number was assigned as S.C.No.9 of 2008 and made it over to the learned Additional District and Sessions Judge [Fast Track Court No.I], Tindivanam, for disposal. During the time of trial, the appellant was questioned with the allegation levelled in the final report, for which, he pleaded not guilty, further, the charges have been framed for the offences under Sections 376, 417 and 506[i] of IPC. Subsequent to the framing of charges, in order to prove the case, 13 witnesses were examined as P.W.1 to P.W.13 on the side of the prosecution, besides 8 documents were exhibited as P.1 to P.8.

2.8. Out of the said witnesses, P.W.1 is the victim stated in her evidence about the physical relationship between the appellant as well as the stage of pregnancy. Further, she stated about the lodging of complaint before the police officer. P.W.7 and P.W.9 alleged to be the eye-witnesses to the occurrence had not stated anything in support of the prosecution.

2.9. P.W.10 and P.W.11 are the Doctors attached with the Government Hospital, Tindivanam and Villupuram respectively stated in their evidences about the medical examination done on P.W.1 and the appellant. P.W.12 is the Scientific Officer, attached with the Forensic Sciences Department deposed about the DNA test conducted to the appellant, P.W.1 and the child. P.W.13 is the Inspector of Police gave evidence with regard to the registration of the case, investigation and about the laying of final report.

2.10. The learned trial Judge with reference to the incriminating materials adduced by the prosecution questioned the accused under Section 313 of Cr.P.C., for which, he pleaded not guilty, however, he did not choose to examine any witnesses nor did he mark any documents on his side.

2.11. After concluding the trial, the learned Additional District and Sessions Judge [Fast Track Court No.I], Tindivanam, came to the conclusion that the appellant is found guilty of offence under Section 417 of IPC and sentenced him as stated above. Now, challenging the said conviction and sentence, the appellant is before this Court.

3. Today, when the appeal is taken up for hearing, I have heard the arguments of Mr.S.Ashok Kumar, learned senior counsel appearing for the appellant, Mr.G.Raman, learned Government Advocate [Criminal Side] appearing for the State and also perused the records carefully.

4. The learned senior counsel appearing for the appellant submitted that the prosecution case rests mainly on the testimony of the P.W.1. Further, he submits that the P.W.1 had fallen in love with the appellant and consulted for physical contact for a period of two years upto the lodging of the complaint before the P.W.13. At that time, the prosecutrix had full faith on the appellant but it appears that the matter got complicated on account of the prosecutrix becoming pregnant and also, on account of the pressure made by the family members, P.W.1 lodged a complaint. In the said situation, the consent given by the prosecutrix is not under the misconception of fact. Even after knowing the position of the appellant, she had frequently contacted the appellant and gave her consent for the lust of appellant, thereby, the act committed by the appellant is not constituted the offence under Section 417 of IPC, thereby, he prayed to allow this appeal.

5. On considering the arguments advanced by the learned senior counsel appearing for the appellant, the ingredients required to constitute offence of cheating under Section 417 of IPC are as follows:

"(1) there should be fraudulent or dishonest inducement of a person by deceiving him,
(2)(a) the person so deceived should be induced to deliver any property to any person or to consent that any person shall retain any property, or (b) the person so deceived should be intentionally induced to do or not to do anything which he could not do or until he were not so deceived, and
(3) in cases covered by 2(b), the act or omission should be one which causes, or is likely to cause, damage or harm to the person induced in body, mind or property."

6. In this occasion, when at the time of giving evidence, the prosecutrix admitted that she had contact with the appellant from the year 2004. Further, she stated that both of them had fallen in love with each other. Moreover, only at the time when she was in the stage of 7 months pregnancy, she intimated the same to her family members before that both of them having the physical contact in every week for the past 7 months.

7. In the said evidence it is clearly established that only after getting consent from the prosecutrix, the appellant had a physical contact with her. In the said situation, reliance is placed on the judgment of this Court in MANSOOR ALI KHAN vs. STATE BY INSPECTOR OF POLICE reported in (2008) 1 MLJ (CRL) 450 wherein, it has observed as follows:

"When the prosecutrix freely, voluntarily and consciously consented to having sexual intercourse with the accused, and her consent was not in consequence of any misconception of fact, the offence under Section 417 of Indian Penal Code, 1860 is not attracted."

8. Further, in the celebrated judgment of our Honourable Apex Court in UDAY vs. STATE OF KARNATAKA reported in AIR 2003 SC 1639 wherein, it has held as follows:

"The consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a 'misconception of fact'.

9. In the said circumstances, the prosecution has not adduced sufficient materials to prove that the appellant had promised to marry the P.W.1 and then only based on that promise, he continued the sexual relationship with P.W.1. Accordingly, the consent given by the prosecutrix obtained by the appellant is not under a misconception of fact.

10. However, on going through the result of the D.N.A. Test, the paternity of the appellant to the child has been well established by the prosecution by subjecting him to DNA test. Further, the learned senior counsel clearly conceded that the appellant may be liable to pay damages to the victim and made submission before this Court that the appellant is willing to pay some amount to the P.W.1 as well as to the child born to them.

11. Now, considering the position of the appellant, there is no evidence adduced on the side of the prosecution to prove that the appellant is suitably employed and earned much money. However, the evidence of P.W.1 discloses that at the time of refusing to marry her, the appellant was the president of the Panchayat, the said fact is not disputed on the side of the appellant. Accordingly, the position of the appellant shows that he is having sufficient money, thereby, this Court ordered the appellant to deposit Rs.2,00,000/- [Rupees Two Lakhs only] before the trial Court, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the said amount shall be deposited in the name of the minor child, in any one of the Nationalised Banks, in interest bearing Fixed Deposit, till the child attains majority. The victim [P.W.1] being the mother of the minor child is permitted to withdraw the quarterly interest from the said deposit.

12. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed upon the appellant by the learned Additional District and Sessions Judge [Fast Track Court No.I], Tindivanam, in S.C.No.9 of 2008, dated 03.09.2009 are hereby set aside and the appellant is acquitted. Bail bonds executed, if any, shall stand terminated. Fine amount paid, if any, is directed to be refunded to the appellant.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

sri

To

1. The Judicial Magistrate No.II, Tindivanam.
2. The Chief Judicial Magistrate, Villupuram.
3. The Additional District and Sessions Judge [Fast Track Court No.I], Tindivanam.
4. The Inspector of Police, Government of Tamil Nadu, All Women Police Station, Tindivanam.
5. The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr. P. Palaninathan, Advocate Sr.50096

CrI.A.No.559 of 2009

VGII(CO)
EU(09/08/2018)