

Bail Slip

The Appellant/Accused namely Pappu @ Gnaanasekaran, aged 26 Years, S/O Neelamagam, was directed to be released on bail by the order of this Court in Crl.M.P.No. 1 of 2010 in Crl A No.718/2010 dated 10/12/2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

Crl.A.No.718 of 2010

Pappu @ Gnanasekaran ... Appellant/Single Accused

Vs.

State rep.by

The Inspector of Police,
Pallavaram Police Station,
Chennai - 600 043.

Crime No.515 of 2007

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, against the order of conviction dated 10.11.2010 in S.C.No.119 of 2009 on the file of the learned Sessions Judge, Mahila Court at Chengalpattu.

For Appellant : Mr.M.Sasikumar

For Respondent : Mr.G.Ramar
Government Advocate (crl. Side)

J U D G M E N T

The appellant is the sole accused in S.C.No.119 of 2009 on the file of Sessions Judge, Mahila Court, Chengalpattu. He stood charged for the offences under Sections 417, 376, 506 (ii) IPC. By a judgment dated 10.11.2010, the trial Court convicted him under Section 417 IPC and sentenced to undergo 1 year R.I. and to pay a fine of Rs.10,000/- in default to undergo 6 months R.I. In respect of other charges, the trial Court acquitted the same. 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:-

i) P.W.1 Arulmary is the mother of victim Amul. P.W.2 is the husband of P.W.1. P.W.3 Charles is the son born to P.Ws.1 and 2. Before the occurrence, the victim Amul and the appellant had fallen in love with each other. Being the friend of P.W.3., the appellant frequently came to the house of victim and as a result, he created an opportunity to see the victim and afterwards the victim went up to the hands of appellant.

ii) At the time of occurrence, the appellant after making promise that he would marry her, physically contacted with her. Subsequently, the victim and the appellant had sexual relationship frequently in the Pallavaram hills. As a result of the said contact, the victim got pregnant. Therefore, the parents of the victim and their well wishers have attempted to solemnise the marriage between the victim girl and the appellant. The attempt made by the parents of the victim ended in futile. So the victim Amul on 29.08.2007 at about 6.00 pm lodged a complaint before P.W.6. After receiving the complaint, a case has been registered in Pallavaram Police Station in Crime No.515/2007 under Section 417, 376 and 506(ii) IPC. Ex.P.2 is the printed FIR.

iii) After the registration of the case, on the same day at about 7.30 pm, the appellant was arrested and sent to the remand. Further, on the same date at about 21.30 hours P.W.6 visited the scene of occurrence and prepared an observation mahazar in the presence of P.W.5 Raja and one Abi. Ex.P.1 is the observation mahazar, he drew a rough sketch under Ex.P.3. Further, he examined the witnesses P.W.1 to P.W.5 and recorded the statements.

iv) In continuation of the investigation, she gave a requisition to the Judicial Magistrate, Tambaram and made arrangements for sending the victim and the appellant for medical examination. During the time of medical examination, P.W.7 Dr.Gokularamanan attached with Salem Kumara Mangalam Hospital examined the appellant and issued a certificate stating that he is potent and capable of doing physical contact with ladies. On the same day, P.W.8 Dr.Andal attached with Kasturba Government Hospital examined the victim girl and issued a certificate that she is the pregnant lady, and the age of the foetus found in her ovary is 22 weeks. Ex.P.7 is the certificate issued by P.W.8.

v) After receiving medical certificates, P.W.6 handed over the case records to P.W.9 for further examination. After receiving the case records, P.W.9 the then Assistant

Commissioner, Pallavaram Police Station, laid a final report against the accused for the offence under Sections 417, 376 and 506(ii) IPC.

vi) Based on the above materials, the trial Court framed the charges and the accused denied the same, in order to prove the case on the side of the prosecution as many as 9 witnesses were examined as P.Ws.1 to 9 and 8 documents were marked as Ex.P.1 to P.8.

vii) Out of the said witnesses P.W.1 Arulmary is the mother of the victim girl Amul. She has stated prior to the occurrence, the present accused has fallen in love with the victim for that he frequently came to her house. She further stated even after raising objection to the said love, the victim girl has refused to disconnect the relationship with the accused, resultantly, the victim got conceived. After hearing the news, the same was intimated to her brother and finally, panchatyar were arranged. She furthermore stated in the panchayat the accused refused to marry the victim girl, so the victim girl lodged a complaint in Pallavaram Police Station. After registration of the case, the victim went to the stage of insanity and died one day after giving birth to one male child.

viii) P.W.2 Ganapathy is the father of the victim girl, he has stated in his evidence about the love affair of the accused with her daughter. He has further stated after got pregnant, the accused refused to marry her. In the meanwhile, the victim girl went to the stage of insanity and after giving birth to one male child she died.

ix) P.W.3 is the brother of the victim has stated in his evidence that the present accused is his close friend. He further stated that previous to the occurrence, his sister and the accused have fallen in love with each other, since the accused refuse to marry her, after giving birth to one male child his sister died.

x) P.W.4 is the resident of Eashwari Nagar, Pallavaram has stated that prior to the occurrence, he frequently saw the accused and the victim near to the Pallavaram Hills.

xi) P.W.5 Raja has stated in his evidence, on 29.08.2007 the investigating officer in this case had visited the occurrence place and prepared an observation mahazar.

xii) P.W.6 the then Inspector of Police, Pallavaram Police Station has stated about the receiving of complaint from the victim girl, registration of the case and details of investigation. He has further stated after completing the

portion of investigation, he handed over the case records to his successor for further investigation.

xiii) P.W.7 and 8 are the Doctors has stated in their evidence about the examination conducted on the accused as well as to the victim girl. According to them, the accused is a potent man and the victim is having the foetus aged about 18 to 20 weeks.

xiv) P.W.9 is the Inspector of Police has stated about the perusal of document and filing of final report.

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

3. Today, I have heard the arguments of Mr.M.Sasikumar, learned counsel for the appellant and Mr.G.Ramar, learned Government Advocate (Crl. Side) for the respondent.

4. It is an admitted fact that after giving birth to one male child, the victim girl died. So in the trial Court, the victim has not been examined as witness.

5. In order to challenge the conviction and sentence, the learned counsel appearing for the appellant would contend that the alleged offence had happened only after getting consent from the victim girl. Further, he contended that the appellant had no intention to deceive the victim girl. In order to prove the offence under Section 417 IPC., the prosecution must prove the intention which had by the accused to cheat the victim, but the trial Court without discussing those aspects, convicted the appellant for the offence under Section 417 IPC is erroneous one. Accordingly, he prayed to allow the appeal.

6. In this regard, it is necessary to see whether the appellant is having intention to deceive the victim girl (now deceased) for the purpose of sexual contact or not. Now on going through the evidence given by P.Ws.1 to 3, all of them have stated in their evidence as before knowing the pregnancy of the victim, all are aware that the victim had love affair with the appellant. So, the knowledge with regard to the love affair of the victim girl with the appellant is known to her entire family (P.W.1 to P.W.3).

7. Now, on going through the evidence given by P.W.4 who is the independent witness, the appellant and the victim

girl frequently often together found in Pallavaram Hills. In this regard, the evidence given by P.W.4 is clearly corroborated through the evidence of P.W.5. Therefore, it is necessary to decide whether the victim gave consent to the appellant for sexual relationship is under misconception of fact or voluntarily. In this regard, it is necessary to borne in mind that at the time of committing offence, the victim is aged about 24 years.

8. In the said circumstances, the ingredients required to constitute offence of cheating under Section 417 I.P.C. 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."

9. Accordingly to prove the offence under section 417 IPC, the prosecution must show that the appellant is fraudulently or dishonestly induces the victim girl for completing his lust. However, in order to know the dishonest inducement of the accused and to find out whether the consent is obtained from the victim under misconception of fact or not, the evidence of victim girl is necessary. It is an unfortunate case before framing the charge in the trial Court the victim girl was died. Even though P.W.1 and P.W.2 has stated as due to this occurrence, the victim went to the stage of insanity, in order to prove the same no material was placed on the side of the prosecution. So without seeing any material, we cannot come to the conclusion that only due to refusal by the accused for the marriage the deceased became the insanity.

10. In the instant case as already discussed, no evidence is available on the side of the prosecution to prove the accused herein has cheated the victim girl after making false promise. The trial Court without considering these aspects, convicted the accused.

11. In the said circumstances, before the death of victim, particularly before knowing the pregnancy of victim girl, P.W.1 to P.W.3 had a knowledge about the love affair of victim girl with the accused. Further, the victim girl

frequently contacted the appellant in hills of Pallavaram. So it does not denote that the alleged offence had happened only by the misconception of fact. In this regard, reliance is placed in the judgment of our Hon'ble Apex Court in Uday Vs. State of Karnataka reported in AIR 2003 Supreme Court 1639 in which it was 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'."

12. Accordingly, the evidence of victim girl is very much necessary to know the nature of relationship with the accused. Therefore, this Court is not in a position to hold that the alleged offence was committed by the appellant with the intention to deceive the victim girl in fraudulent manner.

13. In the light of the discussion stated supra, the judgment rendered by the learned Sessions Judge, Mahila Court needs interference.

14. In the result, the criminal appeal is allowed and the conviction and sentence imposed upon the appellant in S.C.No.119 of 2009 dated 10.11.2010 by the learned Sessions Judge, Mahila Court, Chengalpattu is set aside and the appellant/accused acquitted of the charges. The bail bond, if any, executed by the appellant/accused shall stand cancelled. The fine amount, if any, paid by appellant/accused shall be refunded to him.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

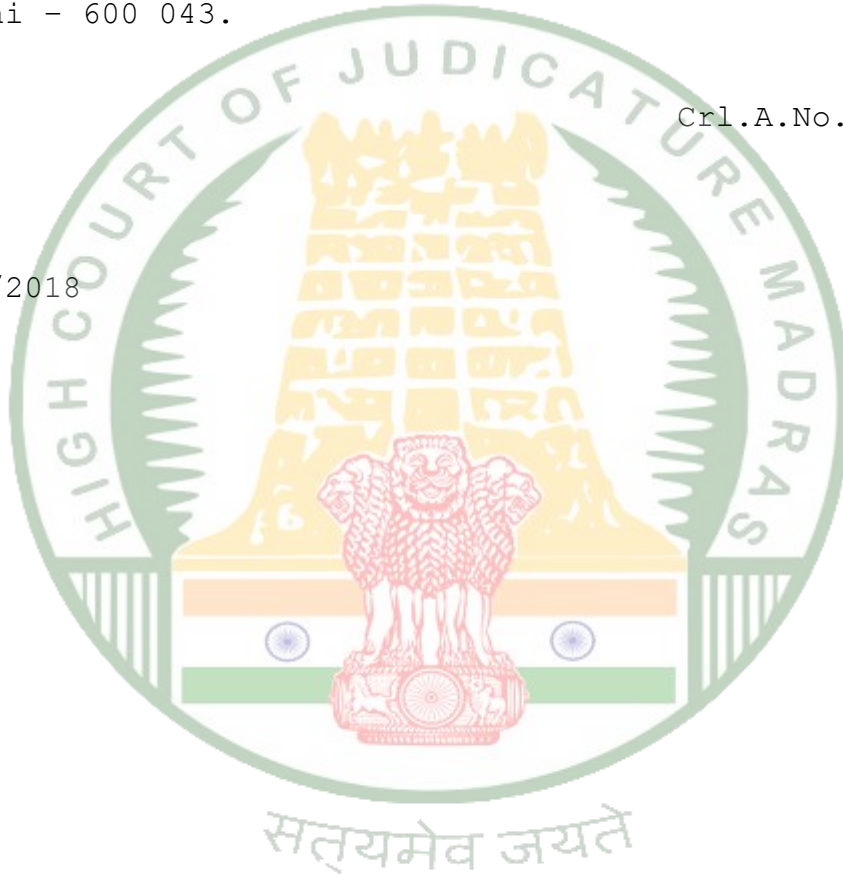
AT
To

1. The Sessions Judge, Mahila Court,
Chengalpattu.
2. The Chief Judicial Magistrate,
Chengalpattu (for Information)

3. The Judicial Magistrate,
Tambaram.
4. The Public Prosecutor,
High Court, Madras.
5. The Inspector of Police,
Pallavaram Police Station,
Chennai - 600 043.

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