

Bail Slip

The Appellant/Accused viz., V.Senthil Kumar S/o.Sri Viswanathan(in SC.No.54/2009, dated 10/02/10 on the file of the Sessions Judge, Mahila Court, Perambalur was directed to be released on bail as per the order of this court dated 03/03/2010 made in(MP.No.1/10 in Crl.A.No.141/2010).

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA
Crl.A.No.141 of 2010

V.Senthil Kumar ... Appellant

/Vs/

The State

Rep by Inspector of Police,
All Women Police Station, Ariyalur,
Perambalur District.

(Crime No.2/2009)

... Respondent

PRAYER: Criminal Appeal filed under section 374 (2) of the Criminal Procedure Code, set aside the Judgement dated 10.02.2010 passed in S.C.No.54 of 2009 on the file of the learned Sessions Judge, Mahila Court, Perambalur.

For Appellant : Mr.A.Saranraj

For Respondent : Mr.C.Raghavan
Government Advocate

* * * * *

J U D G M E N T

This Criminal Appeal is filed, against the judgement of conviction and sentence, dated 10.02.2010 passed in S.C.No.54 of 2009 on the file of the learned Sessions Judge, Mahila Court, Perambalur, acquitting the appellant for the offence under Section 376 of IPC and convicting and sentencing him for the offence, under Section 417 of IPC to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.1000/-, in default, to undergo three months Rigorous Imprisonment.

2. The case of the Prosecution has arisen on the basis of the complaint, Ex.P1, given by PW.1, victim girl, Amsavalli, alleging that since the Appellant/ accused and the victim girl are living in the same village, they were friendly for several years and due to such friendship, the Appellant/ accused, on the

false promise to marry her, induced her and had physical relationship, with her several times, however, he refused to marry the victim girl and that on coming to know about their relationship, on 17.2.2009, the parent of the victim girl demanded the Appellant/ accused to marry her and even thereafter, the Appellant/ accused refused to marry her. Hence, the Appellant/ accused was charge sheeted for the offences under Sections 417 and 376 of IPC.

3. The case was taken on file in S.C.No.54 of 2009 by the learned Sessions Judge, Mahila Court, Perambalur and necessary charges were framed. The accused had denied the charges and sought for trial. In order to bring home the charges against the accused, the prosecution examined PW.1 to PW.11 and also marked Exs.P1 to P7.

4. PW.1 is the victim girl, who gave the complaint Ex.P1. PW.2 and PW.3 are the father and mother of the victim girl, respectively. PW.4, PW.6 and PW.7 are the friends of PW.2. PW.5 is the Uncle of PW.1. PW.8 is the friend of PW.1. PW.9 is the Doctor, attached to the Government Hospital, Ariyalur, who examined the victim girl and prepared medical certificate, Ex.P2. PW.10 is the Head Master of the School, where the victim girl was studying. PW.11 is the Investigating Officer, who conducted the investigation and filed the charge sheet against the Appellant under Sections 417 and 376 of IPC.

5. Ex.P1, dated, 18.2.2009 is the complaint given by PW.1. Ex.P2, dated, 20.02.2009, is the accident register copy of PW.1. Ex.P3, dated, 20.2.2009 is the copy of accident register of the Appellant/ accused. Ex.P4, dated, 1.6.2000 is the school registration certificate of PW.1. Ex.P5, dated, 31.3.2002 is the school registration certificate of PW.1. Ex.P6, dated, 18.2.2009 is the printed First Information Report. Ex.P7, dated, 25.4.2009 is the alteration report.

6. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused has come with the version of total denial and stated that he has been falsely implicated in this case.

7. The court below, after hearing the arguments advanced on either side and also looking into the materials available on record, while acquitting the Appellant/ accused for the offence under Section 376 of IPC, found the accused/appellant guilty under Section 417 of IPC and awarded punishments, as referred to above, which is challenged in this Criminal Appeal.

8. This court heard the submissions of the learned counsel

on either side.

9. The learned counsel for the Appellant has assailed the impugned judgement of conviction and sentence, on the following infirmities, discrepancies and grounds:-

a. Though the Trial Court came to the conclusion that the allegations are false in respect of the charges under Section 376 of IPC, it committed an error in acting on the same false set of facts to convict the Appellant under Section 417 of IPC. The trial Court ought not to have convicted the appellant / accused for the offence under Section 417 of IPC based on the uncorroborated evidence of P.W.1, which is self contradictory in other aspects.

b. The evidence of the prosecutrix is not clear and specific and the same is suffering from material inconsistencies and contradictions with the other evidence on record. There is no evidence on record to suggest that the appellant, on the false pretext of marriage with the prosecutrix and in furtherance of his intention from the very beginning, induced her to surrender to him for sexual intercourse. The accused and the victim girl were in a close relationship for two years.

c. The Prosecution has failed to prove all the ingredients of Section 417 of IPC and hence, the appellant cannot be convicted for the offence of cheating punishable under Section 417 IPC.

10. The learned counsel for the Appellant has ultimately contended that the impugned judgement of conviction and sentence is against law, weight of evidence and probabilities of the case and that the Prosecution has failed to prove its case beyond all reasonable doubts by cogent evidence and that the Trial Court is not correct and justified in convicting and sentencing the Appellant/accused and hence, the Appellant/accused is entitled for acquittal. In support of his contentions, he would rely on the decision of Honourable Supreme Court rendered in the case of Tilak Raj Vs. State of Himachal Pradesh reported in (2016) 4 SCC 140.

11. The learned Government Advocate for the Respondent would contend that though there was a consensual relationship, the prosecutrix has agreed for sexual intercourse only on the inducement and promise. However, he would fairly submit that as per the evidence of PW.9, there is no material and that there is no evidence to show that the prosecutrix was pregnant at the time of examination.

12. I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record and also

perused the impugned judgement of conviction.

13. At the outset, it is pertinent to state that the Trial Court, while acquitting the appellant / accused for the offence under Section 376 of IPC, on the same set of facts, convicted the appellant/accused for the offence under Section 417 of IPC. On an overall analysis of the evidence, both oral and documentary, it is seen that the case of the Prosecution wholly rests on the testimony of PW.1, victim girl and the evidence of PW.1 is self contradictory in other aspects. There is no evidence on record to suggest that the appellant, on the false promise to marry the prosecutrix, induced her and had sexual intercourse with her.

14. As rightly contended by the learned Counsel for the appellant, a bare reading of the complaint Ex.P1 itself would suggest that no case was made out against the appellant/accused either for the offence under Section 376 or for the offence under Section 417 of IPC. It is the admitted case of PW.1 that both the appellant/accused and PW.1 were residents of the same village and that they were friendly with each other for two years and that two years earlier, the appellant/accused had promised her to marry her and had sexual intercourse with her and thereafter, when she had asked him to marry her, the appellant/accused was stated to have told her that he will marry her after getting a job as a Driver in the Government and thereafter, he was dragging on and that fearing that it will cause humiliation, she has not informed anybody.

15. Further averment is that three months prior to the complaint, the appellant/accused was constructing a house and that he had called PW.1 to work as a helper in the house and that once again, on the promise of marrying her, had compelled her and had sexual intercourse with her, due to which she was two months pregnant and that on 17.02.2009 at 3.00 p.m., when she had asked him to marry her, the appellant/accused and his paternal uncle were stated to have threatened her and that the paternal uncle of the appellant/accused had threatened her to abort and come and take money from him and thereafter, she had given the complaint.

16. The complaint Ex.P1 and the evidence of the prosecutrix in Court, would suggest that at no point of time, the appellant/accused had induced or cheated the prosecutrix and that a case of consensual relationship has been falsely projected as a case of rape and cheating.

17. The age of the victim girl is 20 years. The falsity of the prosecutrix regarding rape and conception is exposed by the evidence of PW.9, Doctor, who had conducted the medical

examination on the prosecutrix. When he had examined the prosecutrix, she was stated to have informed to him that she had sexual intercourse with a known person with consent about six times. PW.9 had also stated that after test, there was no indication that the prosecutrix was pregnant and in the cross examination, the Doctor had stated that at the time of examination, the prosecutrix has told her that the sexual intercourse was only with her consent.

18. The evidence of PW.2 and PW.3 would also suggest that there was enmity between the two families and that they have stated that PW.1 is pregnant, whereas, the medical evidence is totally contradictory to the evidence of PW.2 and PW.3.

19. Thus, the evidence as a whole, including the First Information Report, testimony of the prosecutrix and the story of the prosecutrix, regarding sexual intercourse on false pretext of marrying her and she becoming pregnant cannot be believed, since it is the admitted case of the prosecutrix P.W.1 that she was in a relationship with him. Further, the evidence of P.W.2 and P.W.3, who are the parents of P.W.1 are contradictory and did not support the case of the prosecution.

20. Thus, it is seen that the evidence of the prosecutrix is not clear and specific and the same is suffering from material inconsistencies and contradictions with the other evidence on record. The discrepancies in the evidence of the prosecutrix is incompatible with the credibility of her version and hence, her version has to be out rightly rejected. In the absence of any corroboration, the evidence of the prosecutrix has to be rejected. Thus, one can infer that it is a case of consensual relationship and not a case as alleged by the Prosecution.

21. In the decision relied on by the learned counsel for the appellant reported in (2016) 4 SCC 140 (Tilak Raj Vs. State of Himachal Pradesh) , it was laid that since the Prosecution has failed to prove all the ingredients of Section 417 of IPC, the appellant cannot be convicted for the offence of cheating punishable under Section 417 IPC.

22. In so far as the conviction of the appellant under Section 417 is concerned, a close scrutiny of evidence of the prosecutrix PW.1 along with other prosecution witnesses is done by this Court, as above.

23. Section 417 IPC prescribes punishment for the offence of cheating as defined under Section 415 IPC. Section 415 IPC reads thus:-

"415. Cheating - Whoever, by deceiving any person, fraudulently or dishonestly induces the person so

deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'.

Explanation. - A dishonest concealment of facts is a deception within the meaning of this section:-."

24. The ingredients required to constitute the offence of cheating have been discussed by the Honourable Supreme Court in its decision reported in 1970 2 SCC 740 (Ram Jas Vs. State of U.P) as under:-

"(i) there should be fraudulent or dishonest inducement of a person by deceiving him;

(ii) (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 omit to do anything which he would not do or omit if he were not so deceived ; and

(iii) in cases covered by (ii) (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, reputation or property."

25. In the case on hand, a careful reading of the evidence on record clearly shows that there is no evidence against the appellant/accused, from which it can be conclusively inferred by this Court that there was any fraudulent or dishonest inducement of the prosecutrix by the appellant/accused to constitute an offence under Section 415 IPC. For conviction of the appellant/accused for the above said offence, it is important that all the necessary ingredients constituting an offence under the said section must be proved beyond reasonable doubt. In the instant case, the appellant/accused cannot be convicted for the offence of cheating punishable under Section 417 IPC, as the prosecution has failed to prove all ingredients of the said offence beyond reasonable doubt.

26. From the aforesaid facts and analysis of evidence, it is clear that the evidence of the Prosecution is neither believable nor reliable to bring home the charges levelled

against the appellant/accused. This Court is of the considered opinion that the impugned judgement of conviction and sentence passed by the Trial Court is not based on a careful reappraisal of the evidence on record and there is no material evidence on record to show that the appellant/accused is guilty of the charges offence, i.e. offence of cheating punishable under Section 417 of IPC and consequently, the appellant/accused is entitled for acquittal.

27. In the result, this Criminal Appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant/accused is acquitted of all the charges levelled against him. The bail bond, if any, executed by the Appellant/accused, shall stand cancelled. The fine amount, if any, paid by the appellant/accused shall be refunded to him.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Sessions Judge, Mahila Court, Perambalur.
- 2.The Judicial Magistrate,
Ariyalur.
- 3.The Chief Judicial Magistrate,
Perambalur.
4. The Inspector of Police,
All Women Police Station, Ariyalur,
Perambalur District.
5. The Public Prosecutor,
High Court of Madras.

+1cc to M/s.N.Nithianandam, Advocate sr.16958

Cr1.A.No.141 of 2010

gp(co)
nr 04/04/2019