

Bail Slip

The Petitioner/Accused Viz., Madan Kumar was directed to be released on bail as per order of this Court dated 15.11.2011 and made in M.P.No.1/2011 in CrI.A.No.78/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.A.No.718 of 2011

Madan Kumar

...Appellant/Accused 1

Vs

State Rep., by,
The Inspector of Police,
W.10, All Women Police Station,
Flower Bazaar,
Chennai.

Crime No.2 of 2009

...Respondent

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, to set aside the conviction and sentence passed by the learned Sessions Judge, Mahalir Neethimanram, Chennai and made in S.C.No.48 of 2010 by judgment dated 31.10.2011.

For appellant : Mr.Ganeshrajan

For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate (Criminal Side)

O R D E R

The respondent police registered a case against the appellant for the offence under Sections 376, 417 and 506(ii) IPC and Section 4 of Tamilnadu Prohibition of Harassment of Women Act, 1998 in Crime No.2 of 2009. After completion of the investigation, the respondent police laid a charge sheet before the learned III Metropolitan Magistrate, George Town, Chennai. The learned III Metropolitan Magistrate, George Town, Chennai, taken the case on file in P.R.C.No.116 of 2009, thereafter the learned III Metropolitan Magistrate, George Town, Chennai, has committed the case to the learned Principal District and Sessions, Judge, Chennai, which was taken on file in S.C.No.48 of

2010 and made over to the learned Sessions Judge, Mahalir Neethimandram Chennai. The learned Sessions Judge, after completing the formalities, found the accused not guilty for the offence under Section 506(ii) IPC and acquitted him for the said offence, and found guilty and convicted and sentenced him as follows:

Sl.No	Sections	Sentence
1	417 IPC	Sentenced to undergo two years Rigorous Imprisonment with a fine of Rs.5,000/- in default to undergo further three months Simple Imprisonment
2	Under Section 4 of Tamilnadu Prohibition of Harassment of Women Act 1998	Sentenced to undergo two years Rigorous Imprisonment with a fine of Rs.50,000/- in default to undergo further three months Simple Imprisonment.
A sum of Rs.50,000/- out of the fine is ordered to be given as compensation under Section 357 Cr.P.C., to the complainant P.W.1 after appeal time is over.		

2 During the trial in order to prove the case of the prosecution, on the side of the prosecution as many as 13 witnesses were examined and 14 documents were marked and one material object was produced. After completing the prosecution evidences, when the incriminating circumstances culled out from the prosecution witnesses were put before the appellant, the appellant denied as false. On the side of the defence, no one was examined and Exhibit D1 was marked

3 After completing the trial and after hearing the arguments on either side, considering the materials placed before the learned Sessions Judge, Mahalir Neethimandram, Chennai, the learned Sessions Judge, found the accused guilty for the offences as stated above and convicted the appellant.

4 Challenging the said judgment of the learned Sessions Judge, Mahalir Neethimandram, Chennai, in S.C.No.48 of 2010 dated 31.10.2011, the appellant has filed the present Criminal Appeal before this Court.

5 The learned counsel for the appellant would submit that there is no evidence to show that he made a promise and had physical contact with her and no witnesses have spoken about it. Though, the complaint was given only after one year from the date of the occurrence, the complaint given by the complainant and

registration of First Information Report was not tallied with the statement of the victim/P.W.1. Further, there is no evidence to show that the appellant had a physical contact with the victim. The learned Sessions Judge, Chennai found not guilty for the offence under Sections 376, 294(b) and 506(ii) IPC and the same benefit should have been extended to the other offence under Section 417 IPC also, which warrants interference of this Court.

6 The learned Government Advocate (Criminal Side) would submit that P.W.1 is the victim girl, P.W.5 is the friend of the victim girl. She has spoken about that she had seen the appellant and the victim in the beach. P.W.5 stated that P.W.1 used to share all the personal things with her and she also told that the appellant took P.W.1 to Kalakasthi and had physical contact and he promised to marry her. After, that the accused refused to marry her, she went to the house of the appellant. The appellant went to Kashmir for his job and he avoided the victim and therefore she preferred the complaint before the police and also recorded the statement under Section 164 of Cr.P.C., from P.W.1 and P.W.5. The Ex.P2 is the statement under Section 164 Cr.P.C., recorded by the learned Judicial Magistrate from the victim. Ex.P3 is the statement under Section 164 Cr.P.C., from the witness P.W.5 in front of the victim. Therefore, from the evidence of P.W.1 and P.W.5 and the Ex.P2 and Ex.P3 the prosecution has proved its case beyond reasonable doubt. The accused promised to marry her and had a physical relationship with her, later he refused to marry her therefore, the victim filed a complaint. The learned Sessions Judge, Mahalir Neethimandram, Chennai, has rightly convicted the accused, which does not warrant any interference by this Court.

The brief facts of the case

7 The defacto complainant had studied ITI and diploma in Tailoring and has been working in a private concern. During February 2008, the defacto complainant had received a missed call in her cell phone. So she sent a message who was that. On the next day also the same person had made a call to the defacto complainant and when the defacto complainant was attending the call, the caller had informed that he knew her and he was liking her and he wanted to marry her and so he wanted to see her. Since the defacto complainant did not know the person, she had disconnected the phone. In spite of this fact, several calls were made by the same person from his cell phone as well as from the public call office and from the cell phone of his friends. When she attended again, he is said to have informed that he wanted to see her and he invited her to come out of the house and further said to have informed that if she did not come out of the house, he would come to her house to see her and pressurized and tortured her. Because of the pressurize and torture, the defacto complainant agreed to come to the beach and had asked her to wait

nearer to labourer statue situated at Marina Beach. There the 1st accused along with Sathish and Ashok, A4 and A5, came to the place and met her and informed her that if she did not love him he would not live and commit suicide. The victim was not responded to that, and returned to her house. When there was frequent calls from the 1st accused again and again, the defacto complainant had consulted her friend Malathi P.W.5 and thereafter she along with Malathi had met the 1st accused. At that time, the 1st accused had told her that he was working in Army and he promised to marry her. But without responding to that invitation also the defacto complainant returned to her house. Because of the further frequent calls, the defacto complainant had started talking with the 1st accused and started to go out with him. In that circumstances, they had gone to Guindy Children Park during March 2008, the 1st accused had told her that he was having Naga Dosham and in order to do parihram, he wanted to go to Kalahasti along with her, but even though the defacto complainant was reluctant initially, later agreed for the same. The defacto complainant by informed her mother that she was going to Tiruttani along with her friend, and decided to go with the 1st accused to Kalahasti. When P.W.5 advised the defacto complainant not to go with 1st accused alone, the 1st accused had promised to P.W.5 that he would bring back her friend safely. On 23.02.2008, the defacto complainant was taken by the 1st accused to Kalahasthi. While they got into bus from Koyambedu Bus Stand, the accused Basker, Sathish, Ashok Saravanan also got into bus, and when it was questioned by the defacto complainant the 1st accused had informed that they were his friends and they also wanted to do some pooja at Kalahasti. Subsequently, they had arrived Kalahasti in the midnight around 02.30 a.m, and as it happened to be mid night, the 1st accused told her that they could go to the temple after taking bath and they booked a room at Brinda Lodge situated near Venkateswara Hotel and stayed at room No. 101, informing to the hotel people that she was his wife. After visiting the temple the 1st accused and defacto complainant alone had returned to the room, and as they had not taken food during earlier night, the 1st accused went away to bring some food. The 1st accused came back with two cool drink bottles and after having that cool drink the defacto complainant lost her conscious and at that time taking advantage of the situation the 1st accused forcibly had sexual intercourse with the defacto complainant. When the defacto complainant started crying, the 1st accused had promised to marry and consoled her and thereafter they returned to Chennai. While his friends returned in another bus. The 1st accused said to have informed after some time, that he was leaving to Kashmir he could marry her only after three months. On 1st April 2008, the 1st accused had left for Delhi and he was seen off by the defacto complainant. The 1st accused is said to have given two phone numbers to the defacto complainant to contact him if necessary. The 1st accused got the number of P.W.5 also.

Thereafter, when the defacto complainant contacted the 1st accused, he avoided the phone and evaded the calls. When the defacto complainant contacted the friends of the appellant, they informed that arrangement were made for him to marry another girl. The 1st accused had not given his real address. But had given his voters I.D., card while he was in Kalahasti. So, when the defacto complainant along with her friend had gone to 1st accused house and informed to his mother, but on knowing the fact she started abusing the defacto complainant and stated that as they belongs to two different communities she could not agree to marry his son. The 1st accused brother also absued the defacto complainant and threatened to drop all further contacts with the appellant. In such circumstances, the defacto complainant had given a complaint to the Assistant Commissioner of Police, Flower Bazzar Range.

8 In order to prove the case of the prosecution the victim was examined as P.W.1. P.W.1 has clearly narrated the incident. Though the appellant is not known to her, she received missed call from the appellant and he wanted to meet her. After meeting the victim he expressed his love and he wanted to marry her and brought her to beach and took her to kalakasthi and stayed at lodge, while they were in the hotel the appellant mixed a tablet with the cool drinks and gave it to the victim. Then the appellant had physical relationship with the victim. Subsequently, he avoided to meet her, therefore, she went to the house of the A6 and A7. Since they also refused to meet her, thereafter she filed a complaint. P.W.5 is the friend of P.W.1 she has corroborated the evidence of P.W.1 she also seen the appellant and the victim in the beach, at that time, the appellant told P.W.5 he likes the victim and also he want to marry her and after the incident in Kalakasthi, he tried to avoid her and went to Kashmir.

9 The evidence of P.W.1, P.W.5, Ex.P2 and Ex.P3 themselves prove that the appellant had made false promise with the victim and had a sexual intercourse. Subsequently, the appellant refused to marry the victim, the cases likes this one cannot expect clear eye witness. The victims will not reveal the facts to their parents also, generally, they used to share with any one of the close friend like that P.W.1 shared her personal things to P.W.5 therefore, from the evidence of P.W.1, P.W.5, Ex.P2 and Ex.P3, this Court find that the appellant had made false promise to the victim and had a physical relationship. Thereafter, he avoided her and refused to marry her.

10 Though, there is no materials to prove that the appellant had committed the offence under Section 506(ii) IPC. Whereas, it is found that the appellant has committed the offence under Sections 417 IPC and Section 4 of Tamilnadu

Prohibition of Harassment of Woman Act, 1998. There is no merit in the appeal, this Court does not find any valid reason to interfere with the judgment of the learned Sessions Judge, Mahalir Neethimandram, Chennai, the learned Sessions Judge, has given a valid reason for convicting the appellant for the offence under Section 417 IPC and Section 4 of Tamilnadu Prohibition of Harassment of Women Act, 1998. This Court does not find any merit and sound reason or ground to interfere with the judgment of the learned Sessions Judge. Hence this appeal is liable to be dismissed.

11 In the result, this Criminal Appeal is dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Sessions Judge,
Mahalir Neethimanram,
Chennai
2. The Inspector of Police,
W.10, All Women Police Station,
Flower Bazaar,
Chennai.
3. The Public Prosecutor,
High Court,
Chennai.
4. The III Metropolitan Magistrate,
George Town, Chennai.

+1cc to Mr.T.S.Srinivasan, Advocate Sr.54711

Crl.A.No.718 of 2011

mp[co]
srg 03/03/2020