

Bail Slip

The Appellant/Accused namely Deva @ Devaraj S/O Patrick was directed to be released on bail as per order of this Court Sessions Case No.217/2007 dated 07/02/2012 the file of the Sessions Judge Mahila Court, Chennai dated 04/04/2012 in Crl.M.P.No.1/2012 in Crl.A No.239/2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.03.2019

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.239 of 2012

Deva @ Devaraj,
S/o.Patrick,
No.136, R.K.Puram Housing Board,
Brickline Road,
Purasaivakkam,
Chennai-600 007. ... Appellant/Accused

/versus/

State of Inspector of Police,
W-5, All Women Police Station,
Veppery,
Chennai-600 007.
(Crime No.6 of 2007) ... Respondent/Complainant

Prayer:- Criminal Appeal is filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence imposed in the judgment dated 07.02.2012 against the appellant in S.C.No.217 of 2009 on the file of the Sessions Judge, Mahila Court, Chennai and acquit the appellant.

For Appellant : Mr.I.C.Vasudevan
for M/s.T.Arun Kumar

For Respondent : Mrs.P.Kritika Kamal
Government Adovcate (Crl.Side)

J U D G M E N T

The appeal is directed against the judgment of the conviction passed by the Sessions Judge Mahila Court, Chennai in S.C.No.217 of 2009. The appellant Deva @ Devaraj was convicted

by the Court below for offence under Section 417 of I.P.C. He was sentenced to undergo 1 year R.I and to pay a fine of Rs.25,000/- in default, he was ordered to undergo 3 months S.I., from the fine amount, a sum of Rs.20,000/- was ordered to be given to the PW.1 victim as compensation.

2. The facts of the case is that Vijaya Kumari (PW.1) is a distant relative of the appellant. At the age of 1½ years, she was admitted in the Bala Mandhir Trust hostel, till she attained the age of 18 age, she was in the hostel. She studied upto 10th standard. Two sisters of her father namely Sathyavani and Megala took care of her after she left the hostel. Due to some misunderstanding with her aunties, she left their house and stayed with one Indira, who is her distant relative. For nearly two years, she was staying with Indira. The accused is the son of said Indira. According to Vijaya Kumari, the accused promised her to marry and had sexual intercourse with her frequently. When she insisted him to marry her, he refused to marry her and also threatened her dire consequence. She reported the matter to her aunties. Panchayat with the accused family through the village head people Velankani and Venugopal went futile. Since, the accused refused to marry her, she gave the complaint to the G-1 All Women Police Station on 24.10.2007. Based on the complaint given by Vijayakumari, the respondent police investigated the case and after obtaining the medical certificate of the accused as well as the defacto complainant, recorded the statement of witnesses and filed final report. The Mahila Court, Chennai, framed charges under Sections 376, 417 and 506 (ii) of I.P.C against the accused.

3. To prove the charges, the prosecution as examined 11 witnesses. 10 Exhibits were marked.

4. The trial Court held that the victim Vijayakumari (PW.1) was living in the house of the accused. They loved each other believing the promise given by the accused, the victim consented to have sex with him. Later, the accused refused to marry her. The victim had informed about that to PW.2 to PW.4 thereafter, the complaint has been lodged. The evidence indicates that the accused had intention of deceiving the victim from the beginning. Believing his false promise the victim has given consent to have sexual intercourse. After having intercourse with her on several occasions, he has refused to marry her. Therefore, holding that the accused and victim had sex but by consent, the consent of the victim was obtained by fraud hence accused has committed the offence of cheating the victim by refusing to marry her and convicted him for offence under Section 417 of I.P.C. Sentenced him to undergo 1 year R.I and to pay a fine of Rs.25,000/-, in default to undergo further period of 3 months simple imprisonment.

5. In the appeal, the learned counsel appearing for the appellant would submit that the complaint is false and fabricated. It was initiated on the instigation of PW.2 and PW.3 who had animosity with the mother of the accused. PW.1 who had no mother to take care, was initially living with PW.2 and PW.3. Due to their ill-treatment, PW.1 left their house and took refuge in the house of Indira, who is the mother of the accused. The accused neither promised PW.1 to marry her nor had any physical relationship with her. The complaint with bereft of facts and detail has been rightly disbelieved by the Court below. So far as, the charge under Section 376 of I.P.C. and 506 (ii) of I.P.C., whereas, the trial Court has erred in convicting the appellant for offence under Section 417 of I.P.C. There is no material to prove that there was any deception at the inception to cheat PW.1. Except the interested witness of PW.1 and the motivated evidence of PW.2 and PW.3, there is no material evidence available on record to indicate, there was any promise given by the accused to Vijayakumari (PW.1). Pointing out that the complaint is signed in Tamil by the de facto complainant and Vijayakumari (PW.1). Megala (PW.2) had deposed in the chief examination that Ex.P.1 complaint was given by PW.1 in writing to the police. She along with Sathyavani (PW.3) and one Parimala (PW.4) went to the police station to give the complaint. Whereas, Vijayakumari (PW.1) has said that he is not conversant to write and read Tamil. The complaint was not written by her. This proves that the complaint is not a genuine one but a fabricated and false complaint. The learned counsel would submit that even according to Vijayakumari (PW.1), she and the accused had intercourse on 14.09.2007, however, the complaint was given only on 24.10.2007, there is no explanation for the delay in lodging the complaint.

6. Per contra, the learned Government Advocate (Crl.Side) would submit that the evidence of the victim is very cogent and reliable. Regarding the crime committed by the accused. Taking advantage of the helplessness of the victim girl, the appellant had sexually exploited her and promising her that he will marry her. Later, he has refused to marry her. After this incident, the victim girl was sent out of the accused house. Since, they are all relatives, she attempted to sought out the issue amicable. The village leader Velankani and Venugopal were asked to negotiate on their behalf. Since, the negotiation failed, she gave the complaint. The reason for belated complaint is justifiable. The deceptive intention of the accused proved through the victim and their relatives PW.2 to PW.4. Therefore, the conviction of the Court below has to be confirmed.

7. The victim who was growing up the hostel, till at the age of 18 had brought back by her relatives PW.2 and PW.3, to live with them. The evidence of PW.1 goes to show that she studied upon 10th standard, staying in the hostel. She failed in her 10th standard. Along with the family of PW.2 and PW.3, the father of the victim was also living at No.65, R.K.Puram, Housing Board, Purasivakkam. She left the house of PW.2 and PW.3 and started staying with Indira (the mother of the accused). When she was staying in their house, she has developed intimacy with the accused.

8. In the complaint Vijaya Kumari (PW.1) has said that they were in love for nearly one year and were having sexual intercourse. When Indira came to know about this during the month of June, PW.1 was sent out from the house. Despite that she was secretly meeting the accused. On 14.09.2007, they had intercourse secretly, thereafter, when she asked the accused to marry her, he refused, which has prompted her to give complaint.

9. The reading of this complaint which is marked as Ex.P.1 and from the deposition of Vijaya Kumari (PW.1), this Court is unable to find out any incriminating material which would indicate that Vijaya Kumari (PW.1) gave consent to have sex with the accused, on the belief that the accused will marry her or before having sexual intercourse, the accused promised her that he will marry her. Neither PW.1 nor the other prosecution witnesses have placed any material to prove that at some point of time the accused promised Vijaya Kumari (PW.1) to marry.

10. Section 417 of I.P.C reads as under:-

417. Punishment for cheating:-

Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

11. The reading of the Vijaya Kumari (PW.1) deposition on the whole, it is clear that PW.1 had voluntarily moved with accused and consented for sexual relationship. She admits that, even after she was sent out by Indira, she continued her relationship with the accused. Therefore, the Court below has rightly acquitted the accused for offence under Section 376 of I.P.C.

12. As far as the offence under Section 417 of I.P.C is concerned, though the trial Court has said that the accused had intention of deception even at the inception. Even, if the evidence of PW.1 is taken as truth and proved, there is no material to show that the accused had a deceptive intention at the inception. It does not appear that the accused/appellant exploited the gullible position of the victim. Contrarily, it appears that Vijaya kumari (PW.1) being disgruntled by the act of Indira, sending he out from her house, has given the complaint making serious allegations against the son of Indira. Vijaya kumari (PW.1) has not even specified the place where they had sexual intercourse. She is not said how in which manner the accused expressed his promise to marry her. A bald allegation with serious accusation without an iota of evidence entails the appellant an honourable acquittal. The trial Court has miserably been carried away by the embellished evidence of PW.1. Since, the prosecution has failed to prove the guilt of the appellant beyond reasonable doubt, the trial Court judgment of conviction and sentence is liable to be set aside.

13. Accordingly, the Criminal Appeal is Allowed. The conviction and sentence passed by the Learned Sessions Judge, Mahila Court, Chennai is set aside. The fine amount paid if any, shall be refunded to the appellant. Bail bond executed shall stand discharged.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To,

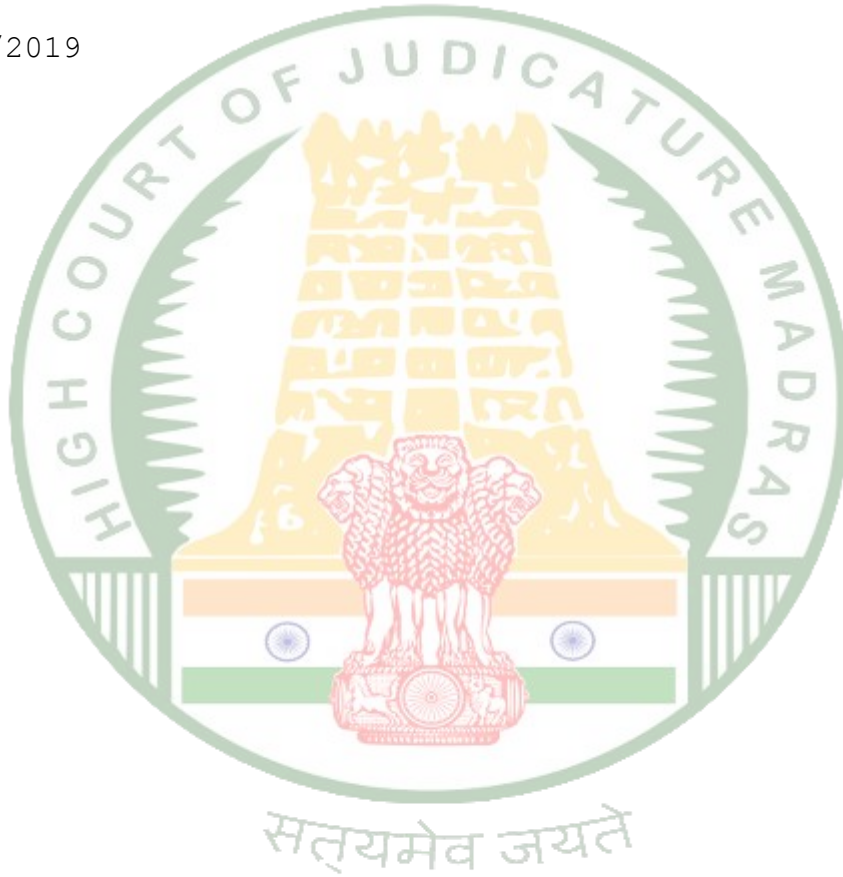
1. The learned Sessions Judge, Mahila Court, Chennai
2. The Government Advocate (Crl.Side), High Court, Madras.
3. The Inspector of Police, W-5, All Women Police Station, Veppery,
Chennai-600 007.
4. The Section Officer, Criminal Section, High Court, Madras.
- 5.The Metropolitan Magistrate,
No.II, Egmore, Chennai.
- 6.The Chief Metropolitan Magistrate,
Egmore, Chennai.

7.The Public Prosecutor,
High Court, Chennai-104.

+1cc to M/S.T.Arunkumar, Advocate Sr.24424

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vsn-II[co]
srg 08/04/2019



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