

BAIL SLIP

The Petitioner/Accused viz., Pradeep Raj, S/o.Thanikachalam was released on bail as per the Order of this Court, dated 02.11.2012 in Crl.Mp.No.1 of 2012 in Crl.A.No.771 of 2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2019

CORAM :

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.A.NO.771 OF 2012

Pradeep Raj

... Appellant

Vs.

State represented by
The Inspector of Police,
All Women Police Station,
Panruti, Cuddalore District.

... Respondent

Prayer :

Criminal Appeal filed under Section 374(2) Cr.P.C., praying to set aside the judgment dated 22.10.2012 in S.C.No.109 of 2012 on the file of the Mahila Court, Cuddalore.

For Appellant : Mr.A.M.Rahamath Ali
For Respondent : Mrs.Kritika Kamal.P.
Government Advocate (Crl. Side)

JUDGMENT

This Criminal Appeal has been filed to set aside the judgment dated 22.10.2012 in S.C.No.109 of 2012 on the file of the Mahila Court, Cuddalore.

2.The prosecution story is as under :

2.1.The victim girl "X" is the daughter of Kantha (P.W.2). They are dalits and were hailing from Melarungunam Village, Panruti Taluk. "X" had studied only up to IX Standard and thereafter, had discontinued her studies and was going for work with her friend Manju (P.W.5).

2.2.The appellant, who is also a dalit, lived in the same village and his sister was a friend of "X".

2.3.When "X" was between 16 and 18 years of age, in 2010, the appellant, who was around 18 years, proposed to her and they fell in love. It is alleged that the appellant forcibly deflowered her on 19.01.2010 around 02.00 p.m. under cover of sugarcane crops in the fields, on the promise of marrying her. Thereafter, the appellant continued to have sex with her promising that he would marry her.

2.4.However, when "X" came to know that the appellant was getting engaged with another girl, she consumed Oleander seeds on 12.12.2011, when her mother and uncle were not at home. She was found in a semiconscious state by Manju (P.W.5), who informed the elders, and "X" was taken to Government Hospital, Cuddalore, and from there, she was taken to Jipmer Hospital, Puducherry, where, her life was saved.

2.5.When her mother questioned her, she spilled the beans. Her mother and other villagers went to the house of the appellant for discussing the issue and for settling the marriage. However, the parents of the appellant refused the proposal outrightly.

2.6.Therefore, "X" gave a written complaint (Ex.P1) on 31.01.2012, based on which, Nirmala (P.W.8), Police Constable Grade-I, registered a case in Crime No.6 of 2012, for the offences under Sections 376 and 417 IPC against the accused and prepared the printed F.I.R. (Ex.P4).

3.Investigation of the case was taken over by Chidambara Murugesan (P.W.9), Inspector of Police, who went to the place of occurrence and prepared Observation Mahazar (Ex.P3) and Rough Sketch (Ex.P5). Dr.Vidhya (P.W.6) examined "X" on 01.02.2012 and the examination report was marked as Ex.P2, which states as follows :

"she is fit for sexual intercourse; she is not pregnant now; she might have had sexual intercourse"
The Radiology Report of "X" (Ex.P6) for determining the age of "X" shows that she would be between 18 and 20 years as on 01.02.2012. The appellant was subjected to medical examination and the Potency Certificate was marked as Ex.P8.

4.After examining witnesses and collecting various reports, Revathi (P.W.10), Inspector of Police, completed the investigation and filed a final report in P.R.C.No.19 of 2012, before the Judicial Magistrate No.II, Panruti, for the offences under Sections 376 and 417 IPC against Pradeep Raj

(A1/appellant), for the offence under Section 417 r/w. 109 IPC against Thanigachalam (A2) and Ramayi (A3). Thanigachalam (A2) and Ramayi (A3) are the parents of A1/appellant.

5.On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.109 of 2012 and was made over to the Mahila Court, Cuddalore, for trial.

6.The trial Court framed charges for the offences under Sections 376 and 417 IPC against the appellant (A1) and charges for the offence under Section 417 r/w. 109 IPC against Thanigachalam (A2) and Ramayi (A3). When questioned, the accused pleaded 'not guilty'.

7.To prove the case, the prosecution examined 10 witnesses and marked Exs.P1 to P8. When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. No witness was examined nor any document marked on the side of the accused.

8.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 22.10.2012, acquitted Thanigachalam (A2) and Ramayi (A3) of all the charges, but convicted and sentenced the appellant (A1) as follows :

Provision under which convicted	Sentence
Section 376 IPC	Seven years rigorous imprisonment and also a fine of Rs.5000/- in default to undergo rigorous imprisonment for six months
Section 417 IPC	One year rigorous imprisonment
	Pay a compensation of Rs.50,000/- to the victim girl "X"

9.Challenging the conviction and sentence, the appellant (A1) has filed the present appeal.

10.Heard Mr.A.M.Rahamath Ali, learned counsel for the appellant and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent.

11.Mr.Rahamath Ali contended that, evidence of "X" (P.W.1) clearly shows that, she had consensual sex with the appellant and her complaint (Ex.P1) that the appellant had forced himself on her is false.

12.Per contra, learned Government Advocate (Crl. Side) refuted the contentions and submitted that the appellant had promised "X" that he would marry her and that she had given herself to him believing the representation. Hence, there was misconception of fact under Section 90 IPC, thereby, vitiating the consent.

13.This Court gave its anxious consideration to the rival submissions.

14."X", in her evidence, has stated that she had studied upto IX Standard; the appellant was living seven houses away from her house; the appellant and she were in love for three years; while so, one day, the appellant telephoned her and called her to the sugarcane farm of one Muthumalla Reddiyar; she went around 2 'o clock in the afternoon and together, they were talking for sometime; at that time, the appellant pulled her hand and forcibly had intercourse with her; when she asked him about this, he told that after all, he is going to marry her; therefore, on the promise of marriage, he used to call her very frequently to the sugarcane fields and had sex with her; for about four months, the appellant was in Chennai and his whereabouts were not known; however, when he came to the village, she told him that she has conceived and the pregnancy was two months; he gave a tablet which she consumed and the foetus got aborted; the appellant went back to Chennai; she learnt that the appellant is getting engaged to another girl and so, she consumed Oleander seeds and her condition became serious; she was taken to Government Hospital, Cuddalore, and from there, to Pondicherry hospital, where she was saved; when her mother questioned her, she told her mother what all had happened; her mother and other elders went to the house of the appellant for marriage talks, but the parents of the appellant refused to budge; therefore, she had no other alternative except to give complaint to the police. The complaint given by "X" was marked as Ex.P1.

15.In the complaint (Ex.P1), "X" has not stated that she missed her periods and that when she told that to the appellant, he gave her a medicine. She has not stated in the complaint (Ex.P1) that she consumed the medicine and the foetus got aborted. In her statement to the police, she has stated that she had not conceived, but represented to the appellant that she had conceived, so that, he would marry her. She was confronted with this averment in the police statement, by the defence, in the cross-examination, as required under Section 145 of the Evidence Act and when she denied the statement, it was proved

through the evidence of the Investigating Officer. She has further stated in the cross-examination that, she fell in love with the appellant at first sight and wanted to marry him desperately. Ultimately, it was suggested to her that she was unilaterally loving the appellant and was wanting to marry him, but, since the appellant did not reciprocate her love, she has engineered the present prosecution, which suggestion she denied.

16.Kantha (P.W.2), Dhandapani (P.W.4) and Manju (P.W.5) have corroborated the evidence of "X" with regard to the attempt of "X" to commit suicide by consuming Oleander seeds. In fact, Manju (P.W.5) has stated that, on 11.12.2011, "X" was alone at home as her mother and uncle had gone to Chennai, and on the next day, when she visited "X", she found "X" in a semiconscious state and therefore, she informed the elders, who rushed "X" to the Government Hospital, Cuddalore, and from there, to Puducherry hospital. Thus, there are sufficient materials to show that "X" attempted to commit suicide due to frustration.

17.As rightly contended by Mr.Rahamath Ali, "X" was not forcibly ravished. However, this Court is unable to countenance the submission of Mr.Rahamath Ali that "X" has foisted a case on the appellant, just because the appellant did not reciprocate her love. The evidence of "X" with regard to the physical relationship she has had with the appellant cannot be brushed aside lightly. Though this Court is not able to persuade itself to believe that the appellant had forcibly ravished her, yet, the facts and circumstances of the case do show that "X" was coerced into submitting herself to the wishes of the appellant on the promise of marriage.

18."X" was subjected to Radiological examination on 01.02.2012 and the Radiology report (Ex.P6) has determined her age as falling between 18 and 20 years. Therefore, in 2010, "X" must have been between 16 and 18 years. Section 376 IPC was made rigorous only in the year 2013 vide Central Act 13 of 2013. Under the law as it stood then, consensual sex between a male and a girl of 16 to 18 years was not rape. It is quite understandable that the urges of adolescence would have had a dominant effect in the young mind of "X", who succumbed to the wishes of the appellant, when he promised her that he would marry her. Admittedly, both of them were from the same village and "X" would not have anticipated that there would be hurdles for their marriage. In such view of the matter, the conviction of the appellant of the offence under Section 376 IPC cannot be sustained. However, there are sufficient materials to sustain the conviction of the appellant of the offence under Section 417

IPC for having deflowered "X" on the promise of marrying her and thereafter, reneging.

19.Coming to the question of sentence, Mr.Rahamath Ali submitted that the appellant was hardly between 18 and 20 years of age, when the incident had taken place, and the benefit of adolescence sickness should be extended to him also. He further submitted that the appellant is now married and the victim girl "X" has also got married and both of them have children of their own and hence, some leniency may be shown in the sentence.

20.In fine, the conviction and sentence of the appellant (A1) for the offence under Section 376 IPC are set aside and the conviction for the offence under Section 417 IPC is sustained, but the sentence is reduced from one year rigorous imprisonment to six months rigorous imprisonment.

In the result, this Criminal Appeal is partly allowed. The trial Court is directed to secure the appellant (A1) and commit him to prison for undergoing the sentence imposed on him.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Mahila Court, Cuddalore.
 2. The Inspector of Police,
All Women Police Station,
Panruti, Cuddalore District.
 3. The Public Prosecutor, High Court, Madras.
 4. The Deputy Registrar |
(Criminal Section), | with a direction to send back the
High Court, Madras. | original records to the trial Court
- +1cc to Mr.A.M.Rahamath Ali , Advocate, S.R.No.104129

Cr1.A.No.771 of 2012

RSK(CO)
CS/30/01/2020