

BAIL SLIP

The petitioner/Accused viz Partiban S/O.Poongavanam was released on bail as per order of this court dated 11/06/2012 in CrI.M.P.No.1 of 2012 in CrI.Rc.No.537/2012 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.04.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.R.C.No.537 of 2012

Partiba

... Petitioner

Vs.

State represented by
The Inspector of Police,
Vikravandi Police Station,
Villupuram District.
Crime No.488 of 2010

... Respondent

Prayer: Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. praying to set aside the order passed by the learned Principal Sessions Judge, Villupuram in C.S.No.42 of 2011 dated 19.03.2012 confirming the conviction imposed by the learned Judicial Magistrate cum Assistant Sessions Judge, Villupuram in S.C.No.45 of 2011 by the judgment dated 02.08.2011.

For Petitioner : M.Velmurugan

For Mr.K.Venkatesan

For Respondent : Mr.T.Shanmuga Rajeswaran,
Government Advocate(crl.side)

O R D E R

Heard the learned counsel for the revision petitioner and the learned Government Advocate(crl.side).

2. It is a case where the revision petitioner has been convicted and held guilty for offence under Sections 417 and 376 IPC. The specific case of the prosecution is that PW.1 gave consent to have sexual intercourse with the accused under fear and misconception. As per the prosecution, the fear exerted on PW.1 is

that the accused threatened her if she don't consent to have sex he will commit suicide. Before committing suicide he will leave a note that PW.1 is cause for his death. So, fearing ignominy, she consented. The further case of the prosecution is that the accused promised to PW.1 that he will marry her, even if the mother oppose. Now he refuse to marry saying he is in love with another girl so, PW.1 lodged a complaint on 16.11.2010 alleging that she and the accused known to each other for the past 6 months and they were moving closely and had sexual intercourse first her house and later in a vacant room in the village temple. However, on 16.11.2010 when she insisted the accused to marry her, he threatened her that he will murder her. Hence, given a complaint to the police to take action against the accused. The respondent police after registering the complaint had investigated and filed final report against the petitioner for cheating and rape.

3. To substantiate the charges of offence under Sections 417 and 376 IPC, the prosecution has examined 9 witnesses and 9 Exhibits were marked on behalf of the prosecution. In defence one Saravanan was examined as DW.1. The letter executed by the prosecutrix PW.1 in the Panchayat was marked as Ex.D1.

4. The Trial Court on appreciating the evidence of the victim girl and the evidence of PW.2-the maternal aunty of the victim and PW.3-the brother of the victim coupled with the evidence held that the accused has obtained consent by making false promise and under threat. Therefore, the consent obtained is hit by Section 90 IPC. Hence, the accused is guilty of offence under Sections 417 and 376 IPC. Referring the judgment of the Hon'ble Supreme Court rendered in Uday Vs. State of Karnataka reported in (2003) 4 Supreme Court Cases 46 the trial Court held that the twin conditions for applying Section 90 IPC is satisfied in this case and therefore, the accused is guilty.

5. On appeal, the Lower Appellate Court after reappraisal of evidence has confirmed the finding of the Trial Court.

6. The learned counsel appearing for the revision petitioner would submit that the complaint itself is borne out of malafide, which has been proved by the defence through cross-examination of PW.1, PW.2 and PW.3 as well as defence witness DW.1 and Exhibits. Despite that the Courts below have erroneously held the revision petitioner guilty for offence under Section 417 and 376 IPC. The complaint Ex.P1 dated 16.11.2010 is the vague complaint without any details. However, in the course of investigation and during the deposition, PW.1 has tried to improvise her case with all new facts, which is not supported by any corroborative evidence. The defacto complainant being an adult and enough educated had contended that she was put under threat by the accused that he will commit suicide and therefore, she consented for intercourse. She continued to have physical relationship with him thereafter, since the accused promised her that he will marry her. PW.2-the aunty of the victim

has deposed that two months before giving evidence, the victim was missing from the house and they were searching for her, at that time the victim came out from sugar cane field. When they enquired her where she went, the victim told her that the accused took her to sugar cane field and gave false promise and had intercourse. Pointing out the contradiction between the evidence of PW.1 and PW.2 regarding the incident and place of occurrence, the learned counsel would submit that a false complaint of grave offence lodged due to family dispute, which has been spoken by DW.1 and established by the defence through Ex.D1. A letter voluntarily written by the defacto complainant. The learned counsel submitted that the parents of PW.1 have not been examined by the prosecution, whereas PW.2 and PW.3 who are only hearsay witnesses were examined.

7. Per contra, the learned Government Advocate (crl.side) would submit that the victim girl had come out with the facts about the incident cogently, she was made to believe by the accused that he will die if she refuse to give consent for sex and he marry her, since the consent was obtained under threat and misrepresentation, Section 90 IPC will squarely apply. The evidence of DW.1 and Panchayat which has obtained subsequently will not rendered the prosecution case unbelievable. The deposition of the victim girl and the witnesses of PW.2 and PW.3 coupled with the complaint Ex.P1 the complaint of PW.1 that she developed acquaintance with the accused 6 months prior to the complaint and she was raped by the accused giving false promise is proved.

8. Heard the submissions of the counsel. Records perused.

9. The evidence of PW.1 about the rape incident is not corroborated by PW.2. Even according to PW.1 and PW.2, the mother of PW.1 was first to know about the affair and she questioned the accused why he spoiled her daughter. Surprisingly, the Investigating Officer has not examined the mother of PW.1. Further PW.2 the maternal aunty of PW.1 has deposed contrary to the evidence of PW.1 regarding the place and time of the incident.

10. PW.1 had deposed that the accused had sexual intercourse with her on two occasions. The twin reasons relied by the defacto complainant for giving consent does not appear to be genuine. In her deposition, she says that for the first time the accused had intercourse at her house when she was staying alone. He promised her that he will marry her. Believing the said promise she consented. In the cross-examination she admits that the accused is financially better than her family and she was aware that the accused family will not give agree for the marriage. Despite that she gave consent because the accused threatened her that he will commit suicide if she does not give consent for intercourse. This fear of death which is stated as a reason to give consent is unbelievable. Particularly it is hard to believe that the accused entered her house and promised her that he will marry. Had sexual intercourse by putting her under threat that he will commit suicide if she does not consent

to have sex. Under the said threat, she consented to have sex and continued to have the illicit relationship for nearly 6 months. It is a case of the prosecution that the parents of PW.1 came to know about their affair, questioned the accused. He refused to marry, then the complaint. But the parents were not examined to substantiate and corroborate these basic facts. The Courts below has failed to take note of this vital omission. It is unsafe to convict a person based on the self serving evidence of PW.1 and the contradictory evidence of PW.2 which is purely based on hearsay evidence.

11. The over all appreciation of evidence, the trial Court as well as the Lower Appellate Court ought to have considered whether the twin test laid under Section 90 IPC satisfied through the prosecution witnesses and evidence. The defacto complainant has come out with 3 different versions. First she says that she was forced to give consent under threat, next she says that, she consented on the misconception that the accused will marry her and third she says the accused refused to marry her, since he was in love with some other girl.

12. The prosecution has failed to come out with adequate evidence to prove the case. Merely PW.1 has deposed against the accused is not sufficient to convict the accused for offence under Sections 417 and 376 IPC. PW.2 in her deposition has said that one day PW.1 was found missing, they all went in search of her. She came from sugarcane field. She threatened PW.1 and asked where she went, then PW.1 disclosed that the accused took her to sugarcane field and raped her. PW.2 evidence does not carry any merit worth considering because PW.1 herself has not stated about this incident. As per PW.1 deposition and complaint, the place of intercourse was entirely different. When there is no cogent evidence let in by the prosecution, though there may not be direct evidence in the case of this nature, the circumstantial evidence must be cogent and reliable.

13. A person who has given consent had deposed that her consent was obtained by threat and misconception. In such case there must be a strong and reliable corroborative evidence. In this case, this Court finds that such corroborative evidence is missing. In such circumstances, the conviction based on the self serving statement of PW.1, which has been later retracted by her own letter creates doubt. The Courts below has miserably failed to balance the evidence and appreciating them in a proper perspective. Hence, the findings of the Courts below is liable to be interfered. The prosecution case lacks cogent and reliable evidence. Even the testimony of PW.1 stand alone does not corroborate her previous statement or later retraction. Therefore, it is unsafe to hold the petitioner guilty.

14. In the result, the Criminal Revision Case is allowed. Accordingly, the judgment of the Courts below is set aside. Fine amount, if any, paid by the accused shall be refunded to him. Bail bond, if any, executed by the accused shall stand cancelled.

-sd/-

Assistant Registrar

/ TRUE COPY /

Sub-Assistant Registrar

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To

1.The Chief Judicial Magistrate cum Assistant Sessions Judge,
Villupuram.

2.The Principal Sessions Judge,
Villupuram.

3.The Inspector of Police,
Vikravandi Police Station,
Villupuram District.

CRIME NO.488/2010

4.The Public Prosecutor,
High Court, Madras.

5 The section officer,
criminal Section,
High court, Madras

+1 cc to Mr.MR.K.Venkatesan Advocate SR.NO. 36793

spp(co)
RD 08/06/2019

Cr1.R.C.No.537 of 2012

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