

BAIL SLIP

The Appellant/ Accused namely Senthil Kumar, S/o.Jeyapal, was directed to be released on bail as per order of this court dated 29.01.2016 made in CrI.Mp.No.1021 of 2016 in CrI.Rc.No.161 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.10.2019

PRONOUNCED ON : 20.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.RC.No.161 of 2016

Senthil Kumar .. Petitioner/A1/Accused

Vs

State by Inspector of Police,
All Women Police Station
Tindivanam

.. Respondent/Complainant

Prayer:-

This Criminal Revision Petition is filed, against the judgement of conviction and sentence, dated 22.1.2016, made in CA.No.52 of 2014, by the I Additional District Sessions Judge, Tindivanam, confirming the judgement of conviction and sentence, dated 28.11.2014, made in CC.No.30 of 2012, by the Additional Additional Sessions Judge, Tindivanam.

For Petitioner : Mr.R.Vivekanandan

For Respondent : Mr.M.Mohamed Riyaz-APP

ORDER

1.This Criminal Revision Petition is filed, against the judgement of conviction and sentence, dated 22.1.2016, made in CA.No.52 of 2014, by the I Additional District Sessions Judge, Tindivanam, confirming the judgement of conviction and sentence of the Petitioner/A1, dated 8.11.2014, made in CC.No.30 of 2012, by the Additional Additional Sessions Judge, Tindivanam, thereby convicting and sentencing the Petitioner/A1 for the offence under Section 417 of IPC to undergo Simple Imprisonment

for one year and to pay a fine of Rs.3000/-, in default to undergo Simple Imprisonment for one year.

2.The facts leading to filing of this Criminal Revision Petition and necessary for the disposal, are as follows:-

a) According to the Prosecution, there are four accused persons, namely, A1 to A4. The Revision Petitioner herein is A1. A2 and A3 are the father and mother of A1 and A4 is his brother. The defacto complainant, Prabhavathi, PW.1, victim was a III Year College Student at the time of the alleged incident. The victim was in a love affair for about three years with the Petitioner/Accused. Seven months prior to the date of the complaint, Ex.P1 i.e. 5.2.2011, the Petitioner/Accused asked her to come to the Ayyannar Temple in the Village and he adorned her with a ring in her finger and a tilak on her forehead and promised to marry her and at that time, the Petitioner/Accused had attempted to have sexual intercourse with the victim, by saying sweet words. Despite her objections, the Petitioner/Accused had sexual intercourse with the victim under false promise to marry her and the victim became pregnant and she compelled him to marry her. The Petitioner/Accused had promised to marry her after the performance of his brother's marriage. Even after four or five months, the Petitioner/ Accused did not keep up his promise and gave evasive answers and later threatened the victim not to disclose the relationship between them to others. The parents and relatives of the victim having come to know about the pregnancy of the victim on 4.2.2011 went to the house of the Petitioner/Accused to seek justice for the victim. Whereas A2 to A4 had demanded dowry of Rs.1 lakhs and 25 sovereigns of gold along with a big vehicle to perform their marriage. When the parents of the victim expressed their inability to meet such a demand, the parents of the Petitioner/Accused refused to perform their marriage. Hence, on the complaint, Ex.P1, given by the victim, PW.1, A1 was charge sheeted for the offences under Sections 417 and 376 of IPC and A2 to A4 were charge sheeted for the offence under Sections 4 of the Dowry Prohibition Act.

b) The case was taken on file in CC.No.30 of 2012, by the Additional Additional Sessions Judge, Tindivanam 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.12 and also marked Exs.P1 to P8.

c) On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313

Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused have come with the version of total denial and stated that they have been falsely implicated in this case.

d) The Trial Court, after hearing the arguments advanced on either side and also looking into the materials available on record, (a) acquitted A4 from the charges levelled against him, (b) found A2 and A3 guilty for the offence under Section 4 of the Dowry Prohibition Act and convicted and sentenced each of them to undergo one year Rigorous Imprisonment and to pay a fine of Rs.5000/- each, in default to undergo five months Simple Imprisonment and (c) acquitted the Petitioner/A1 for the offence under Section 376 of IPC, however, found the Petitioner/A1 guilty for the offence under Section 417 of IPC and convicted and sentenced him to undergo one year Simple Imprisonment and to pay a sum of Rs.3000/-, in default to undergo three months Simple Imprisonment. In the appeal, in and by the impugned judgement of the lower appellate court, the judgement of conviction and sentence of the Trial Court was confirmed. As against the same, this Criminal Revision Petition has been filed by the Petitioner/A1 alone.

3.This court heard the learned counsel on either side.

4.The learned counsel for the Petitioner would submit that the Trial Court, finding that the victim PW.1 is a consenting party, had acquitted the Petitioner/Accused for the offence under Section 376 of IPC and that in so far as the conviction under Section 417 of IPC is concerned, except the evidence of PW.1, there is no other evidence to prove that the Petitioner/Accused had promised to marry her prior to having physical relationship and there is no material to show that the Petitioner/Accused had an intention to cheat the victim to commit the offence under Section 417 of IPC. Further, the Trial Court failed to consider the evidence of PW.1 in proper perspective and thereby the evidence of PW.1 to PW.3 are contradictory to the evidence of PW.5 and thereby the impugned judgement of conviction and sentence was not based on sound legal principles, but on presumptions and assumptions. In view of such grounds, the learned counsel for would contend that the impugned judgements of conviction and sentence are illegal, improper and incorrect and liable to be set aside.

5.The learned counsel for the Appellant, in the alternative, in respect of the sentence, would submit that the Petitioner/Accused had suffered incarceration for about a month and that in the event of this Court confirming the conviction, leniency may be shown to the Appellant/Accused to the extent of

modifying the sentence of imprisonment to the period already undergone and imposing a suitable fine amount to be paid to the victim, PW.1, as compensation, towards the welfare of the child, within a time frame, which is to be fixed by this Court.

6. The learned Additional Public Prosecutor would submit that PW.1 had deposed that she was raped by one known person before seven months and that PW.9 Doctor had issued Ex.P5 certificate that there was no reason to say that the Petitioner/Accused is impotent and that the victim was carrying seven months embryo. He would further submit that Ex.P7 DNA Report has clearly proved that the Petitioner/Accused is the biological father of the child born to PW.1 and that by deceptive words and by false promises, the Petitioner/Accused had induced PW.1 and had sexual intercourse with her due to which, she gave birth to a male child and the Petitioner/Accused cheated her by not marrying her, which would attract the offence under Section 417 of IPC and thereby, the ingredients of Section 417 of IPC have been clearly met out by the Prosecution by cogent evidence and considering the materials available on record, the Petitioner/Accused was rightly convicted by both the courts below, which warrants no interference.
7. I have given my careful and anxious consideration to the submissions of the learned counsel on either side and also perused the materials placed on record.
8. In so far as the charge of rape is concerned, the Petitioner/A1 was acquitted by both the Trial Court and the lower appellate court, finding that the charge of rape was not proved beyond all reasonable doubts by the prosecution, particularly on the ground that the victim, PW.1 was a consenting party to the sexual intercourse. As against the said acquittal, no appeal or revision has been preferred and hence, the same has become final. However, the Petitioner/A1 was convicted for the offence under Section 417 of IPC to undergo Simple Imprisonment for one year and to pay a fine of Rs.3000/-, in default to undergo Simple Imprisonment for one year.
9. Now, the questions to be considered are as to (a) whether the Prosecution has proved the charge under Section 417 of IPC beyond all reasonable doubts and (b) whether the court below is justified and right in convicting and sentencing the Petitioner/Accused as stated above, based on cogent evidence.
10. According to the Petitioner/A1, for the offence under Section 417 of IPC, except the evidence of PW.1, there is no other evidence to prove that the act of deception played by the Petitioner/Accused to get consent was for sexual intercourse.

It is the contention of the Prosecution that there is ample and reliable evidence to show that by deceptive words and false promises, the Petitioner/A1 had sexual intercourse with PW.1 and gave birth to a male child and thereby, proving the ingredients of Section 417 of IPC. In order to answer the rival contentions of both the parties, in favour of one or the other, both the oral and documentary evidence, has to be looked into in a perspective and proper manner.

11.While analysing the evidence, the victim, defacto complainant, PW.1 had deposed that she had love affair with the Petitioner/A1 for about three years and that he adorned her with a ring in her finger and put tilak on her forehead in front of the deity and promised to marry her. She had further deposed that the Petitioner/A1 had asked her to come over to the Ayyanar Temple to discuss about the marriage and under the promise of marriage, despite her objections, had sexual intercourse with her and she became pregnant and that when she disclosed her pregnancy to the Petitioner/A1, he had promised to marry her after performance of his elder brother's marriage, however, thereafter, he avoided talking with her. She had further deposed that when the parents of PW.1 came to know about the pregnancy of PW.1 through the Petitioner/A1, they approached the Petitioner/A1 and his parents to get justice and that since huge dowry was demanded by them to perform their marriage, the parents of PW.1 expressed their inability to give such a huge dowry and hence, the accused refused for the marriage and that thereafter, PW.1 had made the complaint against the accused persons to the Respondent Police.

12.It is the evidence of PW.2, who is the father of PW.1 that the Petitioner/A1 had raped PW.1 by giving false promise to marry her. PW.3, who is the mother of the victim had deposed that PW.1 had taken frequent leave to the college by stating that she was ill and that on enquiry, she came to know that PW.1 was pregnant. The evidence of PW.5 and PW.6 is that they along with the parents of PW.1 went to the house of the Petitioner/A1, seeking justice to PW.1.

13.The evidence of PW.1 to PW.6 was further corroborated by the evidence of PW.7, Sarasu, who is an independent witness and she had deposed that she had complained about the affairs of the Petitioner/A1 and PW.1 to the father of the Petitioner/A1 and that she had seen the Petitioner/A1 and PW.1 together many times near the lake and temple when she was grazing cattle in the field.

14.PW.8 Doctor, who examined the victim on 18.2.2011, had deposed that PW.1 was pregnant and was carrying 7 months old embryo and Ex.P3 is the medical certificate given by her to

that effect. PW.9 Doctor had deposed that he examined the victim on 18.2.2011 and issued accident register under Ex.P4 and issued Ex.P5 in respect of the Petitioner/A1 regarding her potency.

15.It was stated that after lodging of the complaint, Ex.P1, a male child was born on 30.4.2011 to PW.1 and the child was named as Sasidharan. The blood samples of the Petitioner/A1 and PW.1 and the child Sasidharan were sent for DNA Analysis. PW.11, Junior Scientific Assistant had deposed that by using PCR amplified STR technique, they did the comprehensive analysis and reached the conclusion that from the DNA typing results of the above samples, it was found that in the absence of identical twins, Mr.Senthikumar, the Petitioner/A1 is the biological father of the male child Sasidharan and had issued Ex.P7 forensic report to that effect. Though PW.11 had deposed in the cross examination that blood samples were not taken as per the procedure and that the PCR amplified STR technique will not yield the correct result, no evidence was let in by the defence to rebut the evidence of PW.11, on this aspect.

16.Though the Petitioner/A1 herein was acquitted for the offence under Section 376 of IPC, the same yardstick cannot be extended to an offence under Section 417 IPC. Presence of consent will not take away an act, which otherwise falls under Section 417. The definition of cheating under Section 415 of IPC is that a person allegedly cheated acts voluntarily, believing the promise made by the other person. For an offence under Section 417 of IPC, it is sufficient to induce the other person by deceit to do or omit to do anything which he/she would not do or omit to do if he/she is not deceived. If one makes a promise without the idea of fulfilling such a promise and thereby induces other person to do or omit to do which he/she would not do or omit to do if not so deceived, then the offence of cheating becomes complete.

17.When an accused person denies having made such a promise and thereby induced the Prosecutrix to have sexual intercourse with him, on facts, there is possibility of holding that she would have had sexual intercourse with the accused out of promiscuity. However, if it is proved or admitted that the accused gave such a promise before such an intercourse, the concept of promiscuity has got to be ruled out. In such cases, the accused can be convicted based on the uncorroborated testimony of the Prosecutrix.

18.In this case on hand, it is clear from the evidence, both oral and documentary evidence that it is not in dispute that the Petitioner/A1 and the Prosecutrix, PW.1 were in love with each other and the said love affair went on for a period of 3

years. As seen from evidence, as held by the Trial Court, the Prosecutrix was a consenting party to sexual intercourse with the Petitioner/A1, only on the inducement and promise. Further, the evidence of PW.1 is corroborated by the other witnesses and the medical evidence has also proved that the child born to the Prosecutrix, PW.1 was through the Petitioner/A1 and the Petitioner/A1 is the biological father of the child.

19. Thus, it is clear from the evidence, both oral and documentary that the act of deception played by the accused to get consent was for sexual intercourse and it has been proved by the Prosecution beyond all reasonable doubts, not only in respect of the Petitioner/A1 having had intercourse with PW.1, giving promise to marry, but also, giving birth to a male child, through such relationship, which is borne out by medical evidence.

20. Taking into account all the above said facts and circumstances of the case, this Court comes to the conclusion that all the ingredients necessary to make out the offence under Section 417 are made out and that the Trial Court as well as the Lower Appellate Court, on proper appreciation of evidence and principles of law came to the correct conclusion that the Petitioner/A1 was guilty of an offence punishable under Section 417 of IPC. This Court finds no infirmity or perversity in the conviction recorded by the Trial court and confirmed by the lower appellate court, regarding the charge for the offence under Section 417 of IPC.

21. Now coming to the question of quantum of sentence, the learned counsel for the Petitioner/A1 would pray for leniency regarding the sentence, by modifying the sentence of imprisonment to the period already undergone and in lieu thereof, imposing a suitable enhanced fine amount to be paid to the victim, PW.1, as compensation towards the welfare of the child, within a time frame to be fixed by this Court. It is stated the Petitioner/Accused had suffered incarceration for about a month and that the child is in the custody of PW.1. The Petitioner/A1 has also filed an affidavit, stating that he is prepared to pay any fine amount as compensation to be imposed by this Court and the same shall be appropriated towards the welfare of the child.

22. In the result, this Criminal Revision Petition is partly allowed. The impugned judgements are confirmed, in respect of conviction for the offence under Section 417 of IPC alone and is modified in respect of sentence to the effect that one year period of Simple Imprisonment is modified to the period already undergone and the fine amount is enhanced to Rs.2,00,000/- (Rupees two lakhs only), which shall be paid to the

Prosecutrix, as compensation, within a period of one month from the date of receipt of a copy of this order, failing which, the Trial Court shall take necessary steps to secure the Petitioner/A1 and commit him to prison to undergo the period of sentence, as originally imposed by the Trial Court and confirmed by the lower appellate court.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Srcm

To:

1. The I Additional District Sessions Judge, Tindivanam.
2. The Additional Sessions Judge, Tindivanam.
3. The Judicial Magistrate No.II, Tindivanam.
4. The Chief Judicial Magistrate Villupuram (For Information)
5. The Inspector of Police, All Women Police Station, Tindivanam
6. The Superintendent, Central Prison, Cuddalore.
7. The Public Prosecutor, High Court, Madras.
8. The Section Officer, Criminal Section, High Court, Madras-104.

Cr1.RC.No.161 of 2016

EV(CO)
CS/30/12/2019