



BAIL SLIP

Veeramuthu, Male, aged 25 years, S/o.Rengasamy, Sole Accused is released on bail vide Court order dated 07.03.2011, made in MP (MD)No.01/2011 in Crl A(MD)NO.63 of 2011.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.08.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)No.63 of 2011

Veeramuthu

... Appellant

Vs.

State rep by
The Inspector of Police,
Karambakudi Police Station,
Alangudi In charge
Pudukkottai District.

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C, to set aside the conviction and sentence passed in S.C.No.120 of 2010, by the learned Sessions Judge, Pudukkottai, dated 04.02.2011.

For Appellant : Mr.J.Anandkumar

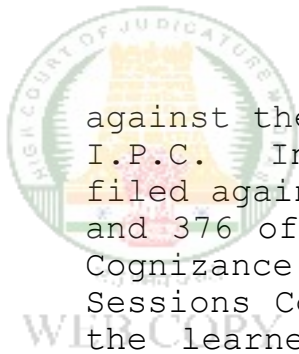
For Respondent : Mr.A.Robinson

Government Advocate (Crl. Side)

J U D G M E N T

The appellant was convicted for the offences under Sections 417 and 420 of I.P.C. and sentenced to undergo one year rigorous imprisonment and three years rigorous imprisonment respectively and levied with fine vide judgment dated 04.02.2011 in S.C.No.120 of 2010, on the file of the learned Sessions Court, Mahila Court, Pudukkottai.

2.The prosecution case is that the appellant as well as the victim were engaged road as workers during the year 2006-2007 and that the appellant gave a false promise to marry the victim and induced her to have physical relationship with him. On 07.02.2007 at about 10.00 p.m., the appellant had sexual intercourse with the victim. As a result, the victim became pregnant. The victim reminded the appellant about his promise to marry her. But then, the appellant wanted the victim to abort the conception. The appellant was not willing to marry the victim. Therefore, the victim/P.W.1 lodged Ex.P.1/complaint before Karambakudi Police Station. Ex.P.6/FIR in Crime No.179 of 2007, was registered



against the appellant for the offences under Sections 417 and 420 of I.P.C. Investigation was undertaken and final report came to be filed against the appellant for the offences under Sections 417, 420 and 376 of I.P.C. before the learned Judicial Magistrate, Alangudi. Cognizance of the offences was taken and the case was committed to Sessions Court vide P.R.C.No.12 of 2010. The case was made over to the learned Mahila Court, Pudukottai for trial in S.C.No.120 of 2010. Charges were framed against the appellant for all the three offences. The appellant pleaded not guilty to the charges and claimed to be tried.

3.The prosecution examined as many as ten witnesses and marked Exs.1 to 7.

4.The learned Trial Judge after detailed consideration of the evidence on record, by the impugned judgment acquitted the appellant of the offence under Section 376 of I.P.C. but then, found him guilty of the offences under Sections 417 and 420 of I.P.C. Questioning the same, this criminal appeal has been filed.

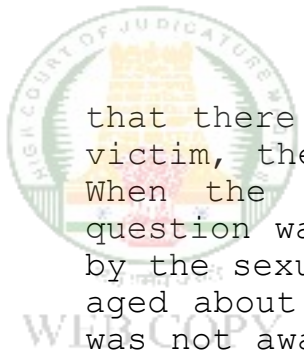
5.The learned counsel appearing for the appellant reiterated all the contentions set out in the appeal memorandum and wanted this Court reverse the impugned judgment.

6.Per contra, the learned Government Advocate (Crl. Side) submitted that the impugned judgment does not warrant any interference and wanted this Court to dismiss the appeal.

7.I carefully considered the rival contentions and perused the evidence on record.

8.P.W.1 is the victim. She had categorically stated that she was doing collie work along with the appellant in Alangudi area. The appellant had assured the victim that he would not mind caste differences and that he would certainly marry the victim and induced the victim to have sexual relationship with him. The victim stated that she believed the words of the appellant and had sexual relationship with him. The victim had sexual relationship with the appellant on several occasions. As a result, the victim conceived. When the pregnancy was about four months old, the appellant told the victim to abort the conception. He also got her some abortion pills. Even though the victim consumed some pills, the pregnancy could not be terminated. Thereupon, the victim reported the matter to her mother. The victim called upon the appellant to marry her. But then, the appellant said to have abused the victim by referring her community and refused to marry her. Left with no other option, the victim lodged Ex.P.1/complaint before Alangudi Police Station on 01.08.2007.

9.The victim was cross-examined at length. Her testimony <https://www.sevins.com/sevins.html> is not shaken. Even though, a formal suggestion has been put



that there was no sexual relationship between the appellant and the victim, the fact remains that a girl child was born through P.W.1. When the accused was examined under Section 313 of Cr.P.C., a question was put to him was that on account of the pregnancy caused by the sexual relationship, a girl child born and that the child was aged about 2 ½ years, the answer given by the appellant is that he was not aware of that. The appellant at no point of time expressed his readiness to undergo DNA test. The appellant admitted in the examination under Section 313 of Cr.P.C. that the victim was working along with him. The testimony of the victim commands the confidence of this Court. The Court below rightly came to the conclusion that the prosecution established beyond reasonable doubt the charges against the appellant in respect of offence under Section 420 of I.P.C. In fact the Honourable Supreme Court in **Anurag Soni Vs. State of Chhattisgarh (Crl.A.No.629 of 2019, dated 09.04.2019)** held as follows:-

''12.The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 of the IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Section 375 of the IPC and can be convicted for the offence under Section 376 of the IPC.''

10.If the principle of law enunciated by the Honourable Supreme Court is applied in this case, the appellant should have found guilty of the offence of rape. But then, the appellant should consider himself rather lucky. The State has not filed any appeal challenging the acquittal of the appellant for the offence under Section 376 of I.P.C. There is no merit in this appeal and the conviction and sentence imposed on the appellant is confirmed and the criminal appeal stands dismissed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)



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To:

1.The Chief Judicial Magistrate, Pudukkottai District.

2.The Judicial Magistrate, Alangudi.

3.The Sessions Court,
Pudukkottai District.

4.The Inspector of Police,
Karambakudi Police Station,
Alangudi In charge
Pudukkottai District.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.ANANDKUMAR, Advocate (SR-81091[F] dated 09/08/2019)

Crl.A. (MD)No.63 of 2011
09.08.2019

_KK/SAR/14.10.2019/4P-7C/