



Bail Slip

Sathiyaraj, S/o.Chinnathambi, M/21/2010, was released on bail by the order of this Court dated 26.10.2010 made in MP(MD)1/2010 in Crl.A.(MD)No.389 of 2010.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.07.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)No.389 of 2010

Sathiyaraj

... Appellant /Sole Accused

Vs.

State rep. by
The Inspector of Police,
All Women Police Station,
Udaiyalipatti Police Station,
Pudukkottai District.
(Crime No.88 of 2008)

... Respondent /Complainant

Prayer: Criminal Appeal is filed under Section 374 of Cr.P.C, to call for the records from the Lower Court and set aside the judgment of the Lower Court passed by the learned Sessions Judge, Mahila Court, Pudukkottai in S.C.No.31 of 2010, dated 08.09.2010 by allowing this appeal.

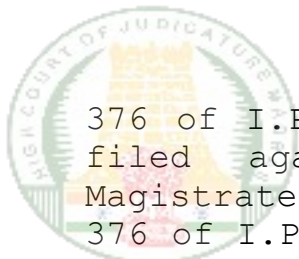
For Appellant : Mr.G.Mathavan

For Respondent : Mr.A.Robinson
Government Advocate (Crl. Side)

J U D G M E N T

The appellant was convicted for the offence under Section 417 of I.P.C. and sentenced to undergo one year rigorous imprisonment vide judgment dated 08.09.2010 in S.C.No.31 of 2010, on the file of the learned Mahila Court, Pudukkottai.

2.The case of the prosecution is that the appellant had sexual intercourse with the victim by promising her to marry her on 10.01.2008. As a result, the victim conceived. On 10.07.2008, when the victim reminded the appellant to marry her, the appellant refused. Hence, panchayat was held on 22.07.2008. Since the appellant refused to marry the victim, the victim lodged Ex.P.1/complaint dated 23.07.2008 before the Inspector of Police, All Women Police Station, Keeranur. Crime No.88 of 2008 was registered vide Ex.P.7 for the offence under Sections 417, 420 and



376 of I.P.C. Investigation was undertaken and final report was filed against the appellant before the learned Judicial Magistrate, Keeranur for the offence under Section 417, 420 and 376 of I.P.C. It was committed to Sessions Court vide P.R.C.No.13 of 2009. The case was made over to the learned Mahila Court, Pudukkottai. Charges were framed against the appellant. He denied the charges and claimed to be tried.

3.The prosecution examined as many as 14 witnesses and marked Exs.1 to 8. On the side of the accused no evidence was adduced. The indiscriminating circumstances were put to the accused under Section 313 of Cr.P.C.

4.The learned Trial Judge by judgment dated 08.09.2010 acquitted the appellant for the offence under Sections 420 and 376 of I.P.C. but convicted him for the offence under Section 417 of I.P.C. and sentenced to undergo one year rigorous imprisonment. He was also directed to pay a fine of Rs.1,000/-. Challenging the same, this criminal appeal has been filed.

5.The appellant's counsel reiterated all the contentions set out in the appeal memorandum and the learned Government Advocate (Crl. Side) wanted this Court to sustain the judgment of the Court below.

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

7.The prosecution case is that the appellant had sexual relationship with the victim/P.W.1 by promising to marry her. The victim is the defacto complainant in this case. She lodged Ex.P.1/complaint on 23.07.2008 before the respondent police. A mere look at Ex.P.1/complaint would indicate that even while she lodged a complaint, she was seven months pregnant. The defacto complainant would claim that on account of the sexual relationship which the appellant had with her, she conceived. The victim was examined as P.W.1. A specific question was put to the victim as to whether she was ready to undergo DNA test to determine the paternity of the child. Even though the victim asserted that it was the appellant, who was responsible for the child, she did not give her consent to undergo DNA test. The Court had recorded that the victim was silent. Another question was put to the accused that before the birth of the child, the victim had conceived twice and that they were aborted and that a person belonging to another community was responsible for the conception of child. The victim again remained silent.



8.I carefully went through the testimony of the victim. Except putting the blame on the appellant, her testimony is rather vague. The victim waited for a full seven months to lodge a complaint. This itself throws serious doubt on the genuineness of the victim's complaint. Even today the appellant's counsel informed the Court that the appellant is ready to undergo DNA test to disprove the case of the victim.

9.In this case, a child has been born. Therefore, it is very easy to prove or disprove the prosecution case by making the parties concerned to undergo DNA test. The appellant has expressed his readiness to undergo DNA test. But then, the victim was not ready to undergo DNA test before the Court below. In fact such a step could have very easily been taken. The case of the appellant is probabalized by the fact that the victim was not cooperating. Therefore, this Court has to necessarily draw adverse interference against the victim. It is quite possible that the victim conceived through some other person and wants to put the blame on the appellant. The appellant's counsel would state that the victim and the appellant are relatives in the prohibited degree. The Court below has failed to take note of the fact that the victim was not ready to undergo DNA test. In this view of the matter, the conviction and sentence imposed on the appellant is set aside. This criminal appeal is allowed.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

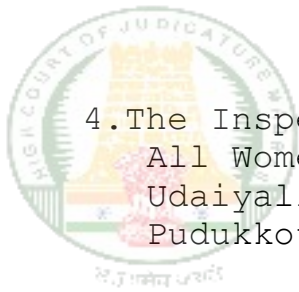
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To:

1.The Sessions Judge,
Mahila Court, Pudukkottai.

2.The District Munsif cum Judicial Magistrate
Keeranur

3.Do Through:
The Chief Judicial Magistrate, Pudukkottai District



4.The Inspector of Police,
All Women Police Station,
Udaiyalipatti Police Station,
Pudukkottai District.

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

+1 CC to M/s.G.MATHAVAN, Advocate (SR-77089[F] dated 24/07/2019)

Crl.A.(MD)No.389 of 2010

23.07.2019

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