

Bail Slip

The Petitioner/Accused viz., Bharathidasan was directed to be released on bail as per the order of this Court dated 22/03/2013 in CMP No.1 of 2013 in Crl.A.No.231 of 2013 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.A.No.231 of 2013

Bharathidasan ... Appellant/1st Accused

Vs.

State represented by
The Inspector of Police,
All Women Police Station,
Chengalpattu. ... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) Cr.P.C. against the judgment and order dated 02.03.2013 passed in S.C.No.216 of 2009 on the file of the Mahila Court, Chengalpattu and acquit him from the offence.

For Appellant : Mr.P.M.Duraiswamy

For Respondent : Mr.R.Suriya Prakash
Government Advocate
(Crl.Side)

JUDGMENT

Challenge in this criminal appeal is to the judgment and order dated 02.03.2013 passed in S.C.No.216 of 2009 on the file of the Mahila Court, Chengalpattu.

2. On 17.02.2020, this Court passed the following order:

"Parvathy (PW1) of Aathur village in Chengalpattu District is an unlettered shepherd. The appellant fell in love with Parvathy (PW1). For about two years, Parvathy (PW1) and the appellant were in love with each other.

2. It is the case of Parvathy (PW1) that the appellant seduced and impregnated her on the promise of marrying her. When the appellant came to know of her pregnancy, he started avoiding her. Therefore, Parvathy (PW1) gave a complaint on 10.03.2008 in All

Women Police Station, based on which, an enquiry was conducted, in which, the appellant gave an undertaking that he will marry her. After giving such an undertaking, the appellant became scarce and his whereabouts were not known to Parvathy (PW1). One fine day, she learnt that the appellant had come to see his parents and therefore, she, along with her family members, went to the house of the appellant, where, they were abused and threatened by the parents and relatives of the appellant, and so, Parvathy (PW1) gave a written complaint (Ex-P1) to the police, based on which, Anbu (PW9), Sub-Inspector of Police, registered a case in Crime No.7 of 2008 on 06.08.2008 at 17.30 hours for the offences under Sections 376, 417 and 506 (I) IPC against Bharathidasan (A1)/appellant, Manimaran (A2) Ellammal (A3) and Subramani (A4).

3. Parvathy (PW1) delivered a female child on 11.08.2008. Parvathy (PW1) was medically examined by Dr.Parashakthi (PW7) on 27.01.2009 and after radiological examination, her age was determined between twenty one and twenty two years vide age certificate (Ex-P3).

4. The appellant was medically examined by Dr.Parashakthi (PW7) on 27.01.2009 and after radiological examination, his age was determined between twenty four and twenty five years vide age certificate (Ex-P4). Dr.Saravanan (PW5), medically examined the appellant and issued medical certificate (Ex-P2), opining that he was not impotent.

5. The child of Parvathy (PW1) was also radiologically examined and its age was determined between six months and seven months vide age certificate (Ex-P5).

6. The appellant, Parvathy (PW1) and her new born were produced before the experts in the Tamil Nadu Forensic Sciences Laboratory and their blood samples were taken for DNA profiling. Lakshmi Balasubramanian (PW12), Forensic Science Expert in DNA profiling, in her evidence as well in the DNA report (Ex-P10), has stated that the child was born to the appellant and Parvathy (PW1).

7. After recording the statements of witnesses and collecting various reports, the police completed the investigation and filed a final report in P.R.C.No.23 of 2009 before the Judicial Magistrate Court No.II, Chengalpattu, for the offences under Sections 376, 417 and 506 (II) and 323 IPC, against Bharathidasan (A1)/appellant,

Manimaran (A2) and Ellammal (A3).

8. 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.216 of 2009 and was made over to the Sessions Court (Mahalir Neethimandram), Chengalpattu, for trial.

9. The trial Court framed charges for the offences under Sections 376, 417, 506 (II) and 323 IPC against Bharathidasan (A1)/appellant, and Sections 506 (II) and 323 IPC against Manimaran (A2) and Ellammal (A3). When questioned, the accused pleaded "not guilty".

10. To prove the case, the prosecution examined thirteen witnesses and marked ten exhibits.

11. When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. From the side of the accused, no witness was examined nor any document marked.

12. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 02.03.2013 in S.C.No.216 of 2009, acquitted Manimaran (A2) and Ellammal (A3) of all charges and acquitted Bharathidasan (A1)/appellant of the offences under Sections 323, 376 and 506 (II) IPC, but, convicted and sentenced him as under:

Provision under which convicted	Sentence
Section 417 IPC	Six months rigorous imprisonment and to pay a fine of Rs.3,000/-, in default to undergo two months rigorous imprisonment.

13. Challenging the above conviction and sentence, the Bharathidasan (A1) is before this Court.

14. Heard P.M.Duraiswamy, learned counsel for the appellant and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) for the respondent/State.

15. Parvathy (PW1), in her evidence, has stated that the appellant proposed to her by saying

that he was in love with her; after great reluctance, she accepted his proposal; on one day, while she was in the fields, the appellant hugged her, kissed her and made her lie on the floor and seduced her by saying that he will marry her; she became pregnant; when she asked the appellant to marry her, he refused; so, she lodged a complaint in All Women Police Station; during enquiry by the police, the appellant gave an undertaking in writing that he will marry her, and so, her complaint was closed; after that, the appellant became scarce and absconded; one fine day, when she learnt that the appellant had come to his house, she went along with her family members to the house of the appellant, where, they were abused and threatened; hence she gave the complaint (Ex-P1).

16. In the cross-examination of Parvathy (PW1), the defence was not able to make any serious dent in her testimony. Her evidence has been substantially corroborated by Krishnammal (PW2), Dhatchayani (PW3), Dhanasekaran (PW4) and Bhagyavathy (PW6). Of course, these witnesses had not witnessed the seduction as they came into the picture only after Parvathy (PW1) conceived, but, these witnesses have stated that when they approached the appellant and his family members, they refused to take Parvathy (PW1).

17. The prosecution also examined Dr.Parasakthi (PW7), who medically examined the appellant, Parvathy (PW1) and her child for age determination.

18. Lakshmi Balasubramanian (PW12), in her evidence, has stated that on the order dated 10.07.2009 passed by the Judicial Magistrate Court No.II, Chengalpattu, she took blood samples of the appellant, Parvathy (PW1) and her child, conducted DNA profiling and determined that the appellant had fathered the child. The DNA report was marked as Ex-P10.

19. The learned counsel for the appellant submitted that the police has suppressed the earlier complaint that was given to the All Women Police Station by Parvathy (PW1) and therefore, the prosecution case deserves to be rejected.

20. The fact remains that DNA profiling has concluded that the child that was born to Parvathy (PW1) has been fathered by the appellant. Parvathy (PW1) was around nineteen years when she was seduced

and she is an unlettered peasant and a shepherd by profession. In her evidence, Parvathy (PW1) has stated that the appellant, who was stalking her, on the promise of marrying her, deflowered her. Under such circumstances, the failure of the police to produce the earlier complaint that was given by Parvathy (PW1) does not affect the prosecution case.

21. When this Court was about to confirm the conviction and sentence slapped on the appellant by the trial Court, the learned counsel for the appellant submitted that the appellant is ready and willing to sufficiently compensate Parvathy (PW1). He also submitted that the appellant continues to remain as a bachelor and he is doing odd jobs in the village like cooking, etc. Admittedly, Parvathy (PW1) filed M.C.No.29 of 2015 before the Family Court, Chengalpattu, under Section 125 Cr.P.C., against the appellant, claiming maintenance for her child from the appellant, in which, by order dated 19.5.2015, the trial Court has directed the appellant to pay a sum of Rs.2,500/- as maintenance to her child Anandhi.

22. This Court called for a report from the Family Court, Chengalpattu and found that there were arrears to be paid by the appellant. The report dated 03.02.2020 submitted by the Family Judge, Chengalpattu, shows that the appellant had paid only a sum of Rs.28,000/- towards maintenance.

23. The petition for maintenance was initially filed on 18.03.2014 before the Chief Judicial Magistrate Court, Chengalpattu, and was numbered as M.C.No.2 of 2014. Thereafter, it was transferred to the file of the Family Court, Chengalpattu and was re-numbered as M.C.No.29 of 2015. The Family Court, by order dated 19.05.2015, directed the appellant to pay a sum of Rs.2,500/- per month, as maintenance, to his daughter Anandhi, from the date of the petition.

24. The total amount of maintenance payable by the appellant from the date of the petition in M.C.No.29 of 2015 to February 2020 comes to Rs.1,80,000/- (72 months x Rs.2,500/-). From the report dated 03.02.2020 submitted by the Family Judge, Chengalpattu, it is seen that the appellant has already paid a sum of Rs.28,000/- towards maintenance. The appellant has paid further amount of Rs.1,49,500/- by cash to Parvathy (PW1) before this Court. The balance amount to be paid by the appellant is Rs.2,500/-.

25. The appellant has undertaken to pay the monthly maintenance of Rs.2,500/- from March 2020 awarded by the Family Court in M.C.No.29 of 2015 to the child, regularly. The appellant has also undertaken to pay a sum of Rs.2,50,000/- as compensation to Parvathy (PW1).

For further payment, post the matter on 28.02.2020, under the caption "for further orders".

3. Today, Bharathidasan, the appellant herein, handed over the arrears of maintenance of Rs.2,500/- and also a sum of Rs.2,50,000/- by cash to Parvathy (PW1).

4. In such perspective of the matter, the conviction of the appellant of the offence under Section 417 IPC stands confirmed, but, the substantive sentence of six months rigorous is set aside. However, the sentence of fine and the default sentence shall remain the same. If the fine amount has already been deposited before the trial Court, the bail bond executed by the appellant shall stand cancelled.

Resultantly, this criminal appeal is partly allowed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

nsd

To

1. The Inspector of Police,
All Women Police Station,
Chengalpattu.
2. The Sessions Judge,
Mahila Court,
Chengalpattu.
3. The Family Judge,
Chengalpattu.
4. The Chief Judicial Magistrate,
Chengalpattu.

5. The Assistant Registrar,
(Crl.Side)
Madras High Court,
Chennai - 104.

with a direction to return
the original records to the
Court below concerned

+1cc to Mr.P.M.Duraiswamy, Advocate SR.No.17719

Crl.A.No.231 of 2013

RR (CO)
GMY (21/05/2020)



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