

Bail Slip

The Petitioner/Accused Viz., Manimaran S/o Kuttiyappan was released on bail as per order of this Court dated 06/02/2013 in Crl M.P.No.1 of 2013 in Crl. A. 96/2013 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl.A.No.96 of 2013

Manimaran

.... Appellant

Vs.

State represented by
Inspector of Police,
All Women Police Station,
Chengalpattu,
Kancheepuram District.
(Crl.No.2 of 2008)

.... Respondent

Criminal Appeal filed under Section 374 Cr.P.C., praying to set aside the judgment of conviction and sentence, dated 10.01.2013, passed by the Sessions Judge, Mahila Court, Chengalpattu, in S.C.No.23 of 2009.

For Appellant :Mr.T.R.Ravi

For Respondent:Mrs. Kritika Kamal. P.
Government Advocate (Crl. Side)

J U D G M E N T

This Criminal Appeal has been filed to set aside the judgment of conviction and sentence, dated 10.01.2013, passed by the Sessions Judge, Mahila Court, Chengalpattu, in S.C.No.23 of 2009.

2.The prosecution case lies on a very narrow compass. "X" (for the sake of anonymity)/P.W.1 and the appellant (A1) were in love with each other for over two years. They appear to have had sex, due to which, "X" (P.W.1) conceived. When she was nine months pregnant, her mother Kuppammal (P.W.3) came to know of it

and when she questioned "X" (P.W.1), the latter disclosed the truth. The family members of "X" (P.W.1) approached the family of the appellant (A1) for marriage, but the parents and relatives of the appellant (A1) disputed the relationship and did not agree for the marriage. Therefore, "X" (P.W.1) lodged a written complaint (Ex.P1), based on which, Mehrunbee, (P.W.10), Inspector of Police, registered a case in Crime No.2 of 2008 on 11.04.2008 at 10.00 hours, for the offences under Sections 417, 376, 294(b) and 506(ii) IPC against Manimaran (A1/appellant), Kuttiyappan (A2), Rani (A3) and Selvi (A4) and prepared the printed F.I.R. (Ex.P7) and continued the investigation.

3."X" (P.W.1) delivered a female child Benita. Since the appellant (A1) and his family members disputed the paternity, the police filed an application before the Judicial Magistrate No.II, Chengalpattu, for DNA profiling of the appellant (A1), "X" (P.W.1) and the child. The DNA report (Ex.P11) states as under :

"Conclusion :

From the DNA typing results of the above individuals, it is found that

- (i) in the absence of identical twins, Mr.K.Manimaran is the biological father of the female child Benita.
- (ii) The female child Benita is born to Mr.K.Manimaran and "X".

4.The appellant (A1) was examined by Dr.Hemantha Kumar (P.W.5), who, in his evidence as well in the medical report (Ex.P4), had opined that the appellant (A1) was not impotent. Radiological examination was conducted on the appellant (A1) and his age was determined to be between 23 and 25 years vide Ex.P5.

5.After completing the investigation, the police filed a final report in P.R.C.No.70 of 2008 before the Court of Judicial Magistrate No.II, Chengalpattu, for the offences under Sections 366, 376, 417 and 506(ii) IPC against Manimaran (A1/appellant), Kuttiyappan (A2), Rani (A3) and Selvi (A4).

6.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.23 of 2009 and was made over to the Mahila Court, Chengalpattu, for trial.

7.The trial Court framed charges for the offences under Sections 366, 376, 417 and 506(ii) IPC against the appellant (A1) and the other accused (A2 to A4) were charged of the offence under Section 506(ii) IPC. When questioned, the accused pleaded 'not guilty'.

8.To prove the case, the prosecution examined 10 witnesses and marked 12 Exhibits and 1 Material Object.

9.When the accused were questioned under Section 313 Cr.P.C., they denied the allegations. No witness was examined nor any document marked from the side of the accused.

10.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 10.01.2013, held "X" as major and that "X" has had consensual sex with the appellant (A1) and therefore, acquitted the appellant (A1) of the offences under Sections 366, 376 and 506 (ii) IPC. However, the appellant (A1) was convicted of the offence under Section 417 IPC and was sentenced to rigorous imprisonment for six months. The other accused (A2 to A4) were acquitted of all the charges.

11.Challenging the conviction and sentence, this Criminal Appeal has been preferred.

12.Heard Mr.T.R.Ravi, learned counsel for the appellant (A1) and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side), appearing for the State.

13.Mr.T.R.Ravi contended that, even during trial, "X" (P.W.1) had got married and the appellant (A1) had also got married. He further contended that the appellant (A1) had not given any promise to "X" (P.W.1) that he would marry her and therefore, the conviction of the appellant (A1) of the offence under Section 417 IPC cannot be sustained.

14.Per contra, learned Government Advocate (Crl. Side) refuted the contentions.

15.The case of the prosecution hinges on the evidence of "X" (P.W.1) and the DNA Report (Ex.P11). "X" was examined-in-chief on 23.09.2010 and at that time, the defence sought adjournment for cross-examination. She was recalled only on 09.07.2012 and was cross-examined. In the cross-examination, "X" (P.W.1) admitted that, a year back, that is somewhere around 2011, she got married and was living with her husband in Tiruppur. She further stated that she gave herself up to the appellant, since the appellant had promised that he would marry her, but later reneged. In the cross-examination of "X" (P.W.1), the appellant (A1) had taken a stand that he had not had sex with her at all and that he had not fathered the baby. However, the DNA Report (Ex.P11) clearly shows that the appellant (A1) had fathered the child Benita. In such view of the matter, this Court does not find any infirmity in the conviction of the appellant (A1), warranting interference.

16.Mr.T.R.Ravi pleaded for leniency in the sentence. Accepting his submission, the substantive sentence of imprisonment is reduced from six months rigorous imprisonment to four months rigorous imprisonment.

17.In fine, this Criminal Appeal is partly allowed.

The trial Court is directed to secure the appellant (A1) and commit him to prison to undergo the remaining sentence, if any. The appellant (A1) will be entitled to set off under Section 428 Cr.P.C.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Sessions Judge,
Mahila Court,
Chengalpattu.

2.The Inspector of Police,
All Women Police Station,
Chengalpattu,
Kancheepuram District.

3.The Public Prosecutor,
High Court, Madras.

4.The Deputy Registrar/
Section Officer
(Criminal Section),
High Court, Madras.

with a direction to send back the
original records, immediately, to
the trial Court

5.The Judicial Magistrate No.II,
Chengalpattu.

6.The Chief Judicial Magistrate,
Chengalpattu.

+1cc to Mr.T.R.Ravi, Advocate Sr.16686

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