

BAIL SLIP

The Petitioner/Accused viz. Anandan, S/o. Duraivelu, was released on bail as per the order of this Court dated 13/10/2014 in Crl.Mp.No.1/2014 in Criminal Appeal No.18/2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.03.2020
PRONOUNCED ON : 04.06.2020

CORAM

THE HONOURABLE MR. JUSTICE T. RAVINDRAN

CRL A.No.18 of 2014

Anandan ...Appellant/Accused
Vs.

State Rep by
The Inspector of Police
W-17, Peravallur Police Station
Chennai ...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment, conviction passed against the appellant by the Hon'ble Sessions Judge, Mahalir Needhimanram (Mahila Court) at Chennai on 18.12.2013 in S.C.No.410 of 2012.

For Petitioner : Mr. M. Mohammed Rafi

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

JUDGMENT

The Sessions Judge, Mahila Court, Chennai, by judgment dated 18.12.2013, passed in SC No.410/12 has convicted the appellant / accused under Section 376 IPC and sentenced him to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.10,000/-, in default, to undergo Simple Imprisonment for 6 months, under Section 417 IPC and sentenced him to undergo Rigorous Imprisonment for one year and under Section 506(1) and sentenced him to undergo Rigorous Imprisonment for 2 years and directed the sentences of imprisonment imposed on the accused to run concurrently and challenging the same, the appeal has been

preferred by the accused.

2. Briefly stated, according to the prosecution case, the appellant/accused and the victim were living in the same area and known to each other and the appellant had suppressed his earlier marriage and the children born to him and been developing contacts with the victim and with the intention of having sexual intercourse with the victim one way or the other, during August 2011, on one day, the appellant took the victim to his house when no one was available in the house and mixed sedative in the juice and offered to her and on consuming the same, the victim got drowsed and exploiting the said situation, the appellant, against her will and consent, had forcible sexual intercourse with her and also the appellant, by falsely promising to marry the victim and so enticing her, had sexual intercourse with the victim on several occasions in his house and on account of the same, the victim becoming 5 months pregnant and on the victim's mother coming to know of the same, the victim and her mother approached the appellant and demanded justice and the appellant had refuted the relationship with the victim and further disowned by stating that he is not responsible for the pregnancy of the victim and also threatened them that he would burn them alive and thus according to the prosecution, the appellant had committed the offences punishable under Sections 376, 417 and 506(2) IPC.

3. Inasmuch as the appellant had disowned his relationship with the victim and also disputed that he is not responsible for her pregnancy and further also having threatened the victim and her mother, it is found that the complaint had been lodged by the victim to the police marked as Ex.P1 and based on the same, the case had come to be registered against the accused under Sections 376, 506(1) IPC and the printed FIR has been marked as Ex.P14 and the Investigation Officer, Tmt. Revathy who had taken up the investigation in the matter, proceeded to the scene of occurrence and prepared the observation magazar and the rough sketch in the presence of the witnesses and also recorded the statements of the victim, her mother and the other witnesses and arrested the accused on 29.04.2012 at about 9 a.m. and thereafter examined further witnesses and recorded their statements and subjected the victim and the accused to medical examination and also secured the school certificate of the victim and examined the further witnesses and recorded their statements and also took steps to record the 164 statement of the victim before the Judicial Magistrate and after collecting the medical reports and also examining the medical officials and recording their statements, finally concluded the investigation and laid the final report against the accused under Sections 376, 417 and 506(2) IPC.

4. To sustain the prosecution case, P.Ws.1 to 14 were examined and Exs.P1 to P15 were marked. No M.O., has been marked. On the conclusion of the prosecution evidence, the accused was examined with reference to the incriminating evidence tendered against him by the prosecution witnesses and the accused had denied the same. According to the accused, he has not committed the offences leveled against him and further as could be seen from the defence put forth by him during the course of trial, it is his contention that the victim was having contacts with several male persons and in the habit of consuming liquor and accordingly developed physical relationship with others and therefore, according to him, he is not responsible for the pregnancy of the victim. On the side of the accused D.Ws.1 and 2 were examined and no document has been marked and no M.O. has been marked.

5. The victim girl has been examined as P.W.1. P.W.1 during the course of her evidence has deposed about the acquaintance which she had developed with the accused. Both being in the same locality and accordingly, it is found that according to P.W.1, the accused had promised to marry her suppressing his earlier marriage and the children born to him and believing the same, it is the case of P.W.1 that she had developed her relationship with the accused and in that connection, it is her case that the accused took her to his house and at that point of time, the accused' mother was not in the house and after engaging conversation with her for some time it is stated that the accused offered her drink and on consuming the same, she became drowsed and the accused had removed her clothes and had forcible sexual intercourse with her and when she regained consciousness, questioned the accused with reference to his act, the accused had promised to marry her and also assured that he would take talk to her mother. Therefore, according to P.W.1 the victim, on account of the acts committed on her by the accused, she having lost her menstruation, thereafter she complained about the same to her mother and found that she has become pregnant and according to her when she and her mother approached the accused and informed the matter, the accused disowned his relationship with the victim and also challenged that he is not responsible for her pregnancy and also threatened them with dire consequences and therefore, according to P.W.1, left with no other alternative, she has lodged the complaint marked as Ex.P1.

6. From the evidence of P.W.1, it is found that the accused and the victim P.W.1 are residing the same locality. Therefore, it is found that they are known to each other over a period of time. It is the main contention of the accused that the victim girl was having contacts with the other male persons in the area and also used to consume liquor and accordingly developed

physical relationship with the persons with whom she had developed contacts and therefore, according to the accused, he is not responsible for the pregnancy of the deceased and not committed the offences put forth against him. In this connection, the accused had named one Mani and one Madan examined as D.W.2 and one Nagarajan examined as P.W.7 as the persons who had developed contacts with the victim and therefore, according to the accused, he is not responsible for the pregnancy of the victim. However, the same had been denied by the victim P.W.1 during the course of her evidence. According to the accused, D.W.2 Madan is known to the victim through her brother examined as P.W.3. No doubt, P.W.1 during the course of cross examination has admitted that she knew Madan as he used to come to her house with her brother. Further she has also admitted that she knew Mani as he was residing four houses away from her house and that she knew Mani for 2-3 months and denied the suggestion that she knew Mani for several years and also denied the suggestion that she developed contacts with Mani, Madan and other male persons and consumed liquor with them. Further P.W.1 also disputed that she has knowledge about the accused having already married and having children and also disputed that she has contacts with the accused' family members. Madan examined as D.W.2 has disputed having any contacts/relationship with the victim and he would state that Thanga Pushpam is his mother and that the victim's brother P.W.3 Mahesh was working under him as electrician and only after the incident he came to know about the same through his mother and he was not examined by the police and he came to know about Mani and Nagaraj after the incident and he came to know about the pregnancy of the victim through her brother. Therefore, considering the evidence of P.W.1 and D.W.2 in toto, when both P.W.1 as well as D.W.2 had denied any contacts/relationship between them and when other than putting suggestion to P.W.1 that she had contacts with D.W.2 and other male persons and used to consume liquor with them, when as above pointed out, the abovesaid suggestion having been denied by P.W.1 and further when D.W.2 has also challenged having any contacts with the victim girl, in such view of the matter, the endeavor of the accused to project the case as if the victim is a girl who had developed contacts with several male persons and consumed liquor with them as such cannot be believed and accepted. Merely because the victim has deposed about having knowledge about Madan, Mani and Nagarajan, it cannot be inferred that she had developed contacts/relationship with them and used to consume liquor with them and therefore, the abovesaid persons must be responsible for her pregnancy. No doubt, during the course of her evidence, P.W.1 has admitted that she had given statement to the police that the accused had taken her to his friend Mani's house. Merely because, the accused had taken her to Mani's house, it cannot be held that P.W.1 and Mani had been having

contacts as sought to be projected by the accused.

7. In the complaint, the victim girl has stated that the accused had mixed sedative in the liquor and offered to her and thereby committed rape on her and on that basis, it is put forth that the victim is in the habit of consuming liquor. The victim also admitted having given such a complaint, however, according to her by liquor she meant only juice. Therefore, merely from the abovesaid stray statement in the complaint, it cannot be held or inferred that the victim was in the habit of consuming liquor as sought to be put forth by the accused. P.W.2 Valli is the mother of the victim girl. She has also deposed that the accused is residing in the same area and used to converse with her daughter and came to know that the accused had committed rape on her daughter against her will and consent by taking her to his house forcibly against her will and consent by offering juice mixed with sedative and her daughter having become pregnant and thereafter when she and her daughter approached the accused and questioned the same, the accused disowned having any relationship with the victim and also disputed that he is not responsible for her pregnancy and furthermore threatened them with dire consequences and therefore, they had decided to lodge the complaint. Despite the cross examination of P.W.2, nothing has been culled out by the accused to discredit her evidence or in support of the defence version. No doubt, P.W.2 during the course of cross examination at one place would state that both the accused and Mani are responsible and that she condemned her daughter and also would state that police examined her daughter with reference to Mani. On the abovesaid stray statement, as rightly held by the Trial Court, it cannot be held that the victim was having close contacts with Mani and Mani is responsible for her pregnancy as sought to be projected by the accused. As above pointed out, P.W.1 has only stated about having knowledge about Mani that too for 2-3 months and therefore, when it is seen that at one point of time, the accused had taken the victim girl to Mani's place and accordingly, it is found that evidence of P.W.2 had been tendered on the abovesaid lines and therefore, from the abovesaid evidence of P.W.2, it cannot be held that the victim girl was having close relationship with Mani and thereby became pregnant.

8. With reference to the alleged acquaintance of P.W.7 Nagaraj with the victim girl, the victim girl P.W.1 would only state that she knew Nagarajan. Nagarajan has been examined by the prosecution as P.W.7 to show that the accused was working under him and that he came to know about the relationship between the accused and the victim girl and condemned the accused with reference to the same and disputed that he has contact with the victim girl and therefore, to say that P.W.7

Nagarajan had also been having contacts/relationship with the victim girl and they used to consume liquor together, as such, cannot be countenanced.

9. In this connection, though Mani has been named as a witness in the final report, he has not been examined. According to the prosecution, Mani was not able to be secured and therefore, he was not examined. In fact, it is found that even the accused had endeavoured to examine Mani, however, the same ended in vain. Therefore, inasmuch as Mani was not traceable and remain absconded he was not able to be examined either on the side of the prosecution or on the side of the accused. As above pointed out, merely from the stray statement of P.W2, the victim's mother, we cannot hold that Mani is responsible for the pregnancy of the victim as sought to be projected by the accused. As rightly contended by the Government Advocate, the evidence of a witness should be read in toto and not in isolation. Accordingly, considering the evidence of P.W1, P.W.2, P.W.7 and D.W.2, it is seen that even though P.W.1 knew about Mani, P.W.7. Nagaraj and D.W.2 Madan, however, considering the evidence of P.Ws.1 and 2 as well as the evidence of P.W.7, it is found that it is only the accused who had been having close relationship with the victim and accordingly he had induced and lured her by offering to marry her particularly by suppressing his earlier marriage and children and the victim having fallen prey to his overtures, accordingly exploiting the situation, it is found that the accused had committed rape on her against her will and consent and therefore, the trial court is found to be justified in holding that it is only the accused who had committed the rape on the victim against her will and consent.

10. P.W.3 Mahesh, the brother of the victim has also deposed about the relationship the victim had developed with the accused and the victim becoming pregnant and thereafter, the victim having disclosed the same to their mother and thereafter they having approached P.W.4 ThangaPushpam and the victim being taken to the hospital, when she had been found to be pregnant, accordingly the complaint had come to be lodged in the matter. Therefore, as rightly held by the trial court, P.W.3's evidence also lend support to the prosecution case and P.W.3 has denied the suggestion put forth by the accused that the victim was having contacts/relationship with various male persons, such as Mani, Madan and Nagarajan and according to P.W.3, it is only the accused who is responsible for the pregnancy of his sister.

11. P.W.4, Thanga Pushpam had also deposed about the factum of the victim and her mother approaching her complaining about the forcible sex which the accused had with the victim girl and she took her to the doctor and the doctor having confirmed that the victim girl had become pregnant, accordingly deposed about

the lodgement of the complaint. P.W.4 has disputed the suggestion put forth by the accused that her son Madan (D.W.2) is having relationship with the victim and he is also responsible for the pregnancy.

12. P.W.8 Sundari is the head mistress of the school where the victim girl had studied and she had produced the school certificate of the victim girl marked as Exs.P4 and P5. From Ex.P4, it is found that the victim girl was born on 11.05.1993.

13. P.W.10 is the medical officer , who had examined the accused and certified that he is aged about 20 years and below 25 years. P.W.11 is Dr.Vinitha who is the medical officer who had examined the victim and noted that on examination, she did not notice any external injuries. The victim girl was 5 months pregnant and the victim girl on being questioned informed her that she had been having sexual intercourse with the known person and her vagina admitted two fingers easily and hymen was not seen and opined that she had sexual intercourse several times and the certificate issued by her has been marked as Ex.P.9 and further she has also deposed that on examining the vaginal smear collected from the victim girl through lab, no sperms were deducted, the lab report has been marked as Ex.P10. At this juncture, it has to be noted that mere absence of injuries in the private parts of the victim girl, by itself, would not lead to the conclusion that she had not been subjected to forcible sexual intercourse by the accused, particularly, when the victim girl had come out with the case only after becoming 5 months pregnant, in such view of the matter, the absence of injuries on her body would not undermine her case.

14. P.W.10 Dr. Selvakumar is the Medical officer who had examined the accused and deposed about the potency of the accused. From his evidence and Ex.P11 certificate marked through him, it is found that the accused is a potent person.

15. P.W.13, Tmt. Jayanthi is the Judicial Magistrate before whom the victim girl had tendered 164 statement. She has deposed about the statement offered to her by the victim and the same had been marked as Ex.P12. Pointing Ex.P12, the counsel for the accused contended that, the victim girl is found to have admitted having sexual intercourse with the accused on several occasions and that the victim and the accused were loving each other and therefore, according to the counsel for the accused, the victim girl being a woman of inferior virtue and having contacts with several male persons and in the habit of consuming liquor, therefore, according to him, no forcible sexual intercourse had been committed by the accused on the victim girl and therefore it is his contention that the accused

had been falsely implicated in the matter by the victim girl. However, considering the statement offered by the victim girl to the Magistrate, when it is seen that the victim girl had subjected her body to the accused only on the assurance that the accused had promised to marry her and she having fallen prey to the abovesaid false promise put forth by the accused, therefore, to say that merely because she had been having sexual intercourse with the accused on several occasions, it cannot be held that the victim girl and the accused had been only having consensual sex as sought to be contended by the counsel for the accused. From the statement of the victim girl given to the Magistrate it is found that, subsequently, due to the accidental fall, she got aborted and the victim girl has clearly tendered statement to the magistrate that on becoming pregnant, when she approached the accused to marry her, inasmuch as the accused had disputed his relationship with her and also informed that he is already married and having two children, accordingly, it is found that left with no other alternative, the victim girl had chosen to prefer the complaint.

16. P.W.14 is the Investigation Officer and she had deposed about the investigation conducted by her in the matter.

17. On the side of the accused, his wife has been examined as D.W.1. D.W.1 Sundari has tendered evidence that she knew the victim girl and further stated that the victim girl also knew that she is the wife of the accused and that they are having two children. By way of the evidence of D.W.1, the accused has endeavoured to show that he had not suppressed his earlier marriage and the children born to him to the victim girl and according to him, the victim girl is aware of the same much earlier. However, as above pointed out, P.W.1 has denied the suggestion that she has knowledge about the accused having married and having two children, therefore, merely from the evidence of D.W.1 that the victim girl is aware of the accused' earlier marriage, it cannot be held that the victim girl had developed relationship with the accused despite having knowledge about his earlier marriage and when there is no material projected on the part of the accused to suggest that the victim girl is having the abovesaid knowledge about his marriage other than the interested evidence of his wife D.W.1, as rightly concluded by the trial court, merely on the basis of the evidence of D.W.1, it cannot be held that the victim girl was developing her relationship with the accused despite having knowledge of his earlier marriage.

18. The counsel for the accused in support of his contentions placed reliance upon the decisions reported in

- 1) CDJ 2003 SC 338 (Uday vs. State of Karnataka)
- 2) CDJ 2018 MHC 8156 (Amali Arockia Selvi vs. Maria

Michael @ Michael & another)

3) Decision of Delhi High Court dated 25.09.2019
rendered in Criminal L.P.532 of 2019 (State vs.
Sandeep)

for the proposition that the evidence of the victim girl is not wholly reliable and further would contend that the victim girl having consented to the acts of sexual intercourse with the accused on several occasions until she became pregnant, it could only be an act of promiscuity on her part and on that basis no criminal liability could be fastened on the accused that he is responsible for her pregnancy. However, the principles of law as above outlined in the decisions relied upon by the counsel for the accused, in my considered opinion, would not be applicable to the case at hand. The accused has failed to establish that the victim girl was having close contacts with various male persons as projected by him and thereby became pregnant, on the other hand, when there is a positive and reliable evidence of the victim girl that it is only the accused who had committed rape on her against the will and consent on the promise that he would marry her and when there is no reliable and acceptable material to hold safely that the victim girl has knowledge about the earlier marriage of the accused and when the evidence of the victim girl is found to be totally acceptable and convincing and not shown to be untrustworthy by the accused during the cross examination and the accused' endeavours to rely upon the stray statement made by the victim girl and her mother during the course of cross examination not to be countenanced particularly when the evidence of the witnesses should be read in toto and not in isolation, in such view of the matter, considering the overall materials projected by the prosecution in the matter, as rightly held by the trial court, the prosecution has established that it is only the accused who has committed rape on the victim girl against her will and consent on the false promise of marrying her and thereafter the accused having refuted his relationship with the victim girl and on the other hand threatened the victim girl and her mother with dire consequences, in all, it is seen that, as held by the trial court, the accused has committed the offences put forth against him.

19. For the reasons aforestated, the prosecution has established the charges leveled against the accused under Sections 376, 417, 506(1)IPC beyond reasonable doubt and in such view of the matter, the trial court is found to be justified in convicting and sentencing the accused for the aforestated offences.

In conclusion, the Criminal Appeal is dismissed and the conviction and sentence imposed on the accused by the trial court are confirmed. The trial court is directed to secure the

presence of the accused and commit him to prison to undergo the sentence imposed on him as per law.

Sd/-

Assistant Registrar

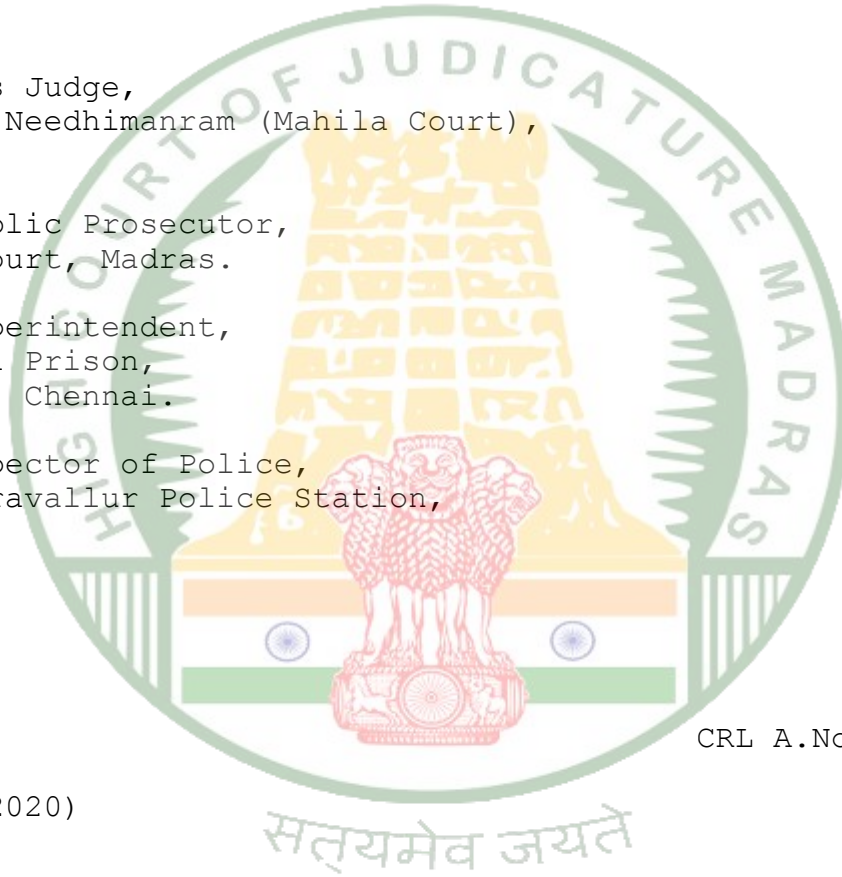
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Sub Assistant Registrar

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To

1. Sessions Judge,
Mahalir Needhimanram (Mahila Court),
Chennai.
2. The Public Prosecutor,
High Court, Madras.
3. The Superintendent,
Central Prison,
Puzhal, Chennai.
4. The Inspector of Police,
W-17 Peravallur Police Station,
Chennai.



CRL A.No.18 of 2014

AD(CO)
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