

Bail Slip in Crl.A.No.576 of 2014

Appellant/Accused namely Sankar S/o. Neelakandan was directed to released on bail as per the order of this Court dated 12.11.2014 made in M.P. No.1/2014 in Crl.A.No.576 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2020

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.A.No.576 of 2014

Sankar ... Appellant/Accused

Vs

State rep. by,
Inspector of Police,
All Women Police Station,
Villupuram,
Villupuram District.
Crime No.35/2012

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code praying to set aside the Judgment dated 09.10.2014 made in S.C.No.220 of 2013 on the file of the I Additional District Court, Tindivanam.

For Appellant :Mr.C.S.S.Pillai,
Legal Aid Counsel.

For Respondent:Mr.S.Karthikeyan,
Additional Public Prosecutor.

J U D G M E N T
(through Video Conference)

The present Criminal Appeal has been filed to set aside the Judgment of conviction and sentence passed by the learned I Additional District and Sessions Judge, I Additional District Court, Tindivanam dated 09.10.2014 in S.C.No.220 of 2013.

2.The appellant is the sole accused. He stood charged for the offence under Sections 376 and 417 of Indian Penal Code. By Judgment dated 09.10.2014, the learned I Additional District and Sessions Judge, I Additional District Court, Tindivanam

convicted the appellant under Section 417 of Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for a period of three months and further directed to give the fine amount to the victim girl as compensation. In respect of the offence under Section 376 of Indian Penal Code, the trial Court acquitted the accused.

3.Challenging the said conviction and sentence, the appellant / accused is before this Court by filing the present Criminal Appeal.

4.The case of the prosecution in brief is as follows:

(i) PW2, Deepa, the victim girl and the accused Sankar are the residents of Venkanthur Village, Tindivanam Taluk. The accused moved with her as a close friend. Two years prior to giving of evidence, the accused called the victim girl to his house in order to chat with her. There was no inmates in the house at that time. As soon as the victim girl entered, he closed the door and when the victim girl asked as to why he is closing the door, the accused replied by stating that you are a blind and who is going to marry you. However, he promised to marry her. Believing the said promise, she gave consent for sexual intercourse with him and accordingly, he had sexual intercourse with the victim girl for number of times. In turn, she became pregnant and her parents and relatives came to know about this fact. Her mother viz., PW1, Dhanalakshmi, PW3, father Mani, PW4, Rajendiran and PW5, Sathiya asked as to who is the reason for pregnancy and the victim girl informed that the accused is the person who had sexual intercourse with her for number of times. Immediately, all of them went to the house of the accused and asked his parents to arrange marriage between the accused and the victim girl. But the accused as well as his parents refused to arrange the marriage. Hence, PW1 lodged complaint against accused under Ex.P.1.

(ii)PW14, the then Inspector of Police, All Women Police Station received the complaint from PW1 and registered the First Information Report in Crime No.35 of 2012 under Sections 417 and 376 of Indian Penal Code. The printed First Information Report has been marked as Ex.P.7. She visited the scene of occurrence and prepared observation mahazar and rough sketch in the presence of PW6 Basker and one Elumalai which have been marked as Ex.P.2 and Ex.P.8 respectively. She examined the witnesses viz., Dhanalakshmi, Deepa, Mani, Rajendiran, Sathiya, Basker, Elumalai, Murugan and Sheela and recorded their statements.

(iii)In continuance of investigation, On 21.08.2012, she gave requisition to the concerned Court to send the victim girl for medical examination. In turn, PW10, Jothi, P.C.508 took the

victim girl for medical examination. PW8, Dr.Sudha, examined the victim girl and issued a medical report under Ex.P.4. Similarly, on 22.08.2012, PW13, Dr.Gitanjali examined the victim girl and issued medical report under Ex.P.6. In the meantime, on 03.10.2012, at about 10.00 A.M., PW14 arrested the accused and made arrangements for sending him to judicial custody.

(iv) On 04.10.2012, PW14 gave requisition to the Court to send the accused for medical examination. In turn, PW9, P.C.Anbhazhagan took the accused for medical examination. PW11, Dr.Rajasekar examined the accused and gave medical report under Ex.P.5. Similarly, the accused was examined by PW7, Dr.Premanath and gave medical report under Ex.P.3. Conclusively, PW14 examined the doctors and recorded their statements. After completing the investigation, she came to the positive conclusion that the accused herein committed offence under Sections 417 and 376 of Indian Penal Code and filed final report.

5. Based on the above materials, the learned I Additional District and Sessions Judge, I Additional District Court, Tindivanam framed charges for the offence under Sections 417 and 376 of Indian Penal Code. The accused denied the same and opted for trial. In order to prove the case of prosecution, as many as fourteen witnesses have been examined as PW1 to PW14 and eight documents were marked as Ex.P.1 to Ex.P.8.

6. Out of the said witnesses, PW1 viz., Dhanalakshmi is the mother of the victim girl. She had deposed that her daughter who is the victim girl, is blind from her date of birth itself. The accused is the neighbour and due to the same, both the victim girl and the accused jointly went outside for various places. After the occurrence, she came to know that her daughter became pregnant and on enquiry, it was told by her daughter that the appellant herein is the reason for pregnancy. Further, she stated that when the said act was informed to the father of the accused, he refused to perform the marriage between the accused and the victim girl and therefore, she lodged complaint before the police.

7. PW2, Deepa is the victim girl. She deposed that during the relevant point of time, the accused regularly came to her house and they both will chat with each other. During the time of occurrence, the accused invited her to his house for chatting, by obeying the same, the victim went to the house of accused. At that time, immediately, after entering into the house, the accused closed the door. When she heard the noise in respect of closing the door, asked the accused as to why he is closing the door, the accused replied that she is blind and due to the same, anybody will not be interested to marry her. He

also made promise that he will marry her and thereby, after getting consent from the victim girl, the accused made sexual intercourse with her and similarly for number of times. After six months from the date of the said incident, All are knows that she became pregnant and when the same was questioned by the father of the victim girl to the accused, the accused and his parents refused to arrange marriage between the accused and the victim girl.

8.PW3, Mani is the father of the victim girl. He deposed in the evidence similar to the evidence given by PW1. PW4, Rajendiran is the brother of PW3. He speaks about the friendship having by the victim girl with the accused. Further, he stated that he knows the pregnancy of the victim girl through PW1. PW5, Sathiya who is residing in the same village deposed that she has also developed friendship with the victim girl and the accused. After hearing the pregnancy of the victim girl, she asked the same to the accused. But the accused denied the same and made reply to the PW5 that he is not responsible for the pregnancy of PW2.

9.PW6, Basker is also the resident of the same village. According to him, he attested in the observation mahazar prepared by PW14. PW7, Dr.Premnath attached with Government Hospital, Villupuram deposed that on 08.11.2012, he medically examined the accused for the purpose of ascertaining his age. According to him, the accused completed the age of twenty years and in this regard, he issued age certificate under Ex.P.3.

10.PW8, Dr.Sudha who is also attached with Government Hospital, Villupuram speaks about the examination of the victim girl. According to her, on 08.03.2012, she examined the victim girl and found that the fetus found in the PW2 is aged about 22 to 24 weeks. In this regard, she issued medical certificate under Ex.P.4. PW9, Anb hazhagan attached with All Women Police Station, Villupuram speaks about the production of accused for medical examination. Similarly, PW10, Jothi attached with the same Police Station speaks about the production of the victim girl for medical examination.

11.PW11, Dr.Rajasekar working as Assistant Surgeon in Government Hospital, Tindivanam speaks about the medical examination of the accused. According to him, nothing appears for stating that the accused is impotent. PW12, Akila, working as constable in the said Police Station speaks about the production of the victim girl for taking X-ray. PW13, Dr.Gitanjali speaks about the examination of the victim girl and issued report under Ex.P.6 stating that her vagina admits two fingers and hymen is not intact.

12.PW14, Revathi, the then Inspector of Police, All Women Police Station, Villupuram speaks about the receipt of complaint from PW1, registration of First Information Report, examination of witnesses, arrest of the accused and about the filing of final report.

13.When the above incriminating materials were put to the accused under Section 313 of Criminal Procedure Code, the accused denied the same as false. However, he neither chose to examine any witnesses nor mark any documents on his side. The learned I Additional District and Sessions Judge, after perusing all the above materials and on considering the arguments advanced by either side, came to the conclusion that the appellant / accused is found guilty for the offence under Section 417 of Indian Penal Code and rendered the conviction and sentence as stated supra. Aggrieved over the said conviction and sentence, the appellant is before this Court.

14.I have heard Mr.C.S.S.Pillai, learned Legal Aid Counsel for the appellant and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the respondent.

15.The learned Counsel for the appellant would contend that the evidence given by prosecution witnesses are having lot of contradictions and the evidence put forth by PW2 creates doubt as to whether the alleged occurrence had happened as stated by the prosecution. According to him, the quantum of conviction awarded by the accused is excessive and he prayed for allowing the appeal.

16.Per contra, the learned Additional Public Prosecutor appearing on behalf of the respondent would contend that evidence given by the victim girl is more than sufficient to hold that at the time of occurrence, the accused with dishonest intention to deceive the victim girl made sexual intercourse and caused injury to the body of the victim girl. He prayed to dismiss the appeal.

17.I have considered the rival submissions made on either sides and I have also carefully perused the records.

18.Initially, to bring home an offence under Section 417 of Indian Penal Code, the prosecution is to prove,

'(1)Deception of any person;

(2) (a)Fraudulently or dishonestly inducing that person -

(i)to deliver any property to any person, or

(ii)to consent with any person relating to any property; or

(b)Intentionally inducing that person to do which he would not do or omit to do, and that act or omission causes

or is likely to cause damage or harm, to that person in body, mind, reputation or property. A dishonest concealment is a deception within the meaning of this Section.'

19. Here, it is the case that the evidence given by doctors is very clear that during the time of medical examination, the victim girl was pregnant and the fetus is aged about 22 to 24 weeks. In respect of the same, there was no denial on the side of the accused. In the said circumstances, the evidence given by PW2 who is the competent person who speaks occurrence in narrow manner that during the time of occurrence, the accused after making promise to marry him and by utilizing her loneliness consoled and committed the offence. It is a pitiable case that the victim girl is blind who lost her vicinity from the date of birth itself. Only due to the same, she was always in her house and taking advantage of the same, the accused started to chat with her and further, both of them went to various places.

20. Yet another thing which is necessary to decide this case is that when at the time of giving evidence, PW1, mother of the victim girl has stated that the victim girl and the accused are having relationship of brother and sister. The said circumstances show that only due to the same, PW1 and PW3 allowed the victim girl to chat with the accused. The accused being the 23 years old person, after knowing the relationship with the victim girl, committed the said offence which is intolerable. As already stated before the occurrence, the accused has made a false promise that he would marry the victim girl. Now, since the accused refused to marry the victim girl, it is clear that the promise made by the accused during the time of occurrence is with dishonest intention.

21. Since the evidence given by the victim girl is corroborated through the evidence given by the doctors who conducted the medical examination to the victim girl, no doubt, due to the act committed by the accused, PW2 becomes pregnant and gave birth to the child and also the said child is also in the custody of PW2. Accordingly, the accused caused damage to the body of the victim girl and he has also spoiled the reputation of the victim girl and her family. The entire evidence given by PW2 reveals the fact that the accused made representation deliberately with a view to cheat the victim girl without having any intention or inclination to marry her which is completely under the purview of cheating. Hence, the lower Court has come to the correct conclusion and convicted the accused as stated above. Further, the learned Counsel for the appellant did not state any special circumstances which warrants the interference of this Court with the findings arrived by the trial Court.

22. Accordingly, the evidence given by PW2 inspires the confidence of this Court and her evidence is wholly reliable. In the light of the above discussions, I am of the opinion that the appeal filed by the appellant is liable to be dismissed.

23. In the result, this Criminal Appeal is dismissed confirming the judgment of conviction and sentence dated 09.10.2014 made in S.C.No.220 of 2013 on the file of the I Additional District Court, Tindivanam.

(i) Bail bond, if any executed by the appellant/accused, shall stand cancelled.

(ii) The trial Court is directed to take effective steps to secure the custody of the appellant/accused to undergo the remaining period of sentence.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The I Additional District and Sessions Judge,
I Additional District Court,
Tindivanam.
2. The Judicial Magistrate No.II
Tindivanam
3. The Chief Judicial Magistrate
Villupuram
4. The Inspector of Police,
All Women Police Station,
Villupuram,
Villupuram District.
5. The Public Prosecutor,
High Court of Madras,
Chennai.

Crl.A.No.576 of 2014

KJ(CO)
SP(18/01/2021)