



BAIL SLIP

The Appellant/Accused Mani @ Manikandan was released on bail (Accused not in Jail) granted as per Order of this Court dated 29.10.2015 made in MP(MD) 1 of 2015 in Crl.A(MD).319 of 2015.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE **B. PUGALENDHI**

Crl.A. (MD)No.319 of 2015

Mani @ Manikandan : Appellant/Sole Accused

v.

State rep. by
The Inspector of Police,
All Women Police Station,
Kumbakonam,
Thanjavur District.

: Respondent/Complainant

PRAYER: Appeal filed under Section 374(2) of the Criminal Procedure Code to call for the records in connection with the judgment passed by the learned Sessions Judge, Mahlia Court, Thanjavur, in S.C.No.64 of 2012, dated 27.05.2015 and quash the same.

For Appellant : Mr.D.Venkatesh
for Mr.M.P.Senthil

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

JUDGMENT

The appellant is the sole accused in S.C.No.64 of 2012, on the file of the Sessions Court, Mahalir Neethimandram, Fast Track Mahila Court, Thanjavur. He was charged for the offence under Sections 376, 417, 294(b) and 506(i) IPC and the trial Court, by it's judgment dated 27.05.2015, though found him not guilty for the offence under Sections 376, 294(b) & 506(i) IPC, found him guilty for the offence under Section 417 IPC, convicted and sentenced him to undergo rigorous imprisonment for one year, with a fine of RS.500/-, 1/4 to undergo rigorous imprisonment for three months. As



against the conviction and sentence imposed by the trial Court, the appellant has preferred this appeal.

2. The brief facts of the case, in a nutshell, are as follows:

2.1. The appellant / accused, Manikandan and the defacto complainant, Kavitha [PW1] were residing at Kumbakonam in the same street. The defacto complainant [PW1] studied upto eighth standard and was working in a private Chips Company. The appellant / accused used to take her in his bicycle, to her workplace and they have also moved closely and loved each other. During the Masimagam festival, in the year 2008, when the mother of PW1 gone to the festival, the appellant / accused compelled PW1, promised her that he would marry her, had sexual relationship with her. Thereafter, he made such physical contact five or six times, in several situations. Pursuant to their physical relationship, PW1 became pregnant and when she insisted for marriage, the appellant / accused refused to marry her and absconded. Therefore, she lodged a complaint before the Kumbakonam District Police Station on 05.06.2008 and the police have also enquired her and the appellant. The appellant refused to marry her and PW1 was under the impression that if she insist upon the complaint, the appellant would not marry her and therefore, withdrew the complaint.

2.2. Thereafter, on 01.10.2008, PW1 met the appellant and requested him to marry her, for which, the appellant abused her that she is carrying the child of some other person and that he is not responsible for the same, refused to marry and criminally intimidated her. Therefore, PW1 lodged the present complaint on 01.10.2008, before Tmt. Andral [PW14], then Sub-Inspector of Police, All Women Police Station, Kumbakonam. PW14, on receipt of the complaint, registered a case in Crime No.3 of 2008, for the offence under Sections 417, 294(b) & 506(i) IPC, proceeded to the place of occurrence, prepared the observation mahazar [Ex.P2] and a rough sketch [Ex.P10] and examined the witnesses, who were present in the place of occurrence. She arrested the accused from his house on the same day, around 12.00 noon and remanded him to judicial custody. She also made a request for chemical examination of the defacto complainant [PW1] and the appellant / accused.

2.3. Dr. Suganthi [PW9] of Government District Headquarters Hospital, Kumbakonam, examined PW1 on 14.10.2008 and found that she was seven months pregnant and issued a certificate in Ex.P3. Dr. Anbu [PW10] of Government District Headquarters Hospital, Kumbakonam, examined the appellant on the same day and issued the certificate [Ex.P3] that there is no reason to certify that he is impotent.

2.4. The investigation officer has also collected the blood samples from PW1 and the appellant as well as from the child of PW1, namely, Raji, through Tmt. Punithavalli [PW13], then Head Constable. PW13 collected the FTA Cards from the Forensic Laboratory, Chennai



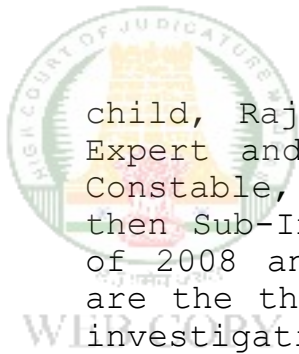
and the blood samples were collected by Dr. Shek Abdullah, Government District Headquarters Hospital, Kumbakonam, in the FTA Cards, on 22.10.2010 and were sent for analysis to the Forensic Science Laboratory, Chennai, on 25.10.2010.

2.5. Ms. Yuvarani [PW11], Junior Scientific Officer, Forensic Science Laboratory, Chennai, examined the blood samples collected in Crime No. 3 of 2008 and issued the report in Ex.P5. According to the report, the DNA typing results of the samples received are found that, in the absence of identical twins, the appellant / accused, namely, Mani @ Manikandan, is the biological father of the female child, Raji.

2.6. During the course of investigation, the investigation officer has also collected the love letters written by the appellant to PW1, from PW1 and has also taken steps to collect his sample signatures and sent for handwriting analysis. The letters of the appellant / accused in Ex.P6 along with the sample handwriting of the appellant were sent for examination to the Document Expert in the Forensic Science Laboratory, Madurai. Tmt. Gomathy [PW12], Assistant Director & Document Expert, Forensic Science Laboratory, Madurai, examined these letters with the accepted handwriting of the appellant and issued the report in Ex.P7 that the enclosed writings, stamped and marked as S1 to S24, Q1 to Q30 & Q32 to A40, have all been written by one and the same person. She further stated that the specimen and the questioned writings have been freely written showing natural variation and they agree cumulatively in the handwriting characteristics.

2.7. The subsequent investigation in this case was conducted by Tmt. Vijayalakshmi [PW15], then Sub-Inspector of Police; Tmt. Banumathi [PW16] then Sub-Inspector of Police and Tmt. Vasanth [PW17], Inspector of Police. PW17 filed the final report on 02.09.2011, as against the appellant / accused, for the offence under Sections 376, 417, 294(b) & 506(i) IPC.

2.8. During the trial, on the side of the prosecution, as many as seventeen witnesses were examined and eleven documents were marked. PW1 is the victim girl and she narrates the incident and the lodging of the complaint. PW2 is the mother of the victim girl and PW3 is another relative. They speak about the accused taking PW1 to her workplace in his bicycle and that they were moving closely. PW4 is a neighbor and she witnessed the accused and PW1 moving closely. PWs. 5 & 8 were examined for the purpose of observation mahazar. PW6 is another neighbor and also witnessed the accused and PW1 moving closely and has also informed the parents of the victim about the same. PW7 is another neighbor and he turned hostile. PW9 is the Doctor, who examined the victim girl [PW1] and issued the certificate [Ex.P3]. PW10 is the Doctor, who examined the appellant and issued the certificate [Ex.P4]. PW11 is the Scientific Officer, who conducted the DNA test for the appellant, victim [PW1] and the



child, Raji. Her report is marked as Ex.P5. PW12 is the Document Expert and her report is marked as Ex.P7. PW13 is the then Head Constable, who collected the blood samples for DNA test. PW14 is the then Sub-Inspector of Police, who registered the case in Crime No.3 of 2008 and conducted the preliminary investigation. PWs.15 & 16, are the then Sub-Inspectors of Police, who conducted the subsequent investigation in this case and PW17 is the then Inspector of Police, who conducted the final investigation and filed the final report.

3. After the prosecution evidence was closed, the incriminating materials were put to the accused under Section 313 Cr.P.C., and the accused denied the same. Though he has stated that there are witness in support of his case, he neither examined any witness nor produced any documents. The trial Court, in conclusion of the trial, found the appellant / accused guilty, convicted and sentenced him, as stated supra. As against the same, he has preferred the instant criminal appeal.

4. Heard Mr.D.Venkatesh, learned Counsel for Mr.M.P.Senthil, learned Counsel for the appellant and Mr.A.Robinson, learned Government Advocate (CrI. Side) for the respondent / State.

5. The learned Counsel for the appellant submits that the victim girl [PW1] is aged about 23 years and even according to her, she had a consensual sex and therefore, no offence is made out. That apart, the complaint has been lodged belatedly and the earlier complaint, dated 05.06.2008, according to the victim, was withdrew by her and only to coerce the appellant, the subsequent complaint was lodged. In fact, the earlier complaint dated 05.06.2008 has been suppressed by the prosecution and therefore, the benefit of doubt ought to have been extended to the appellant / accused. The trial Court, while acquitting the appellant for the offence under Sections 376, 294(b) & 506(i) IPC, has convicted him for the offence under Section 417 IPC. To attract the offence under Section 417 IPC, the ingredients under Section 415 IPC, that the inducement has to be intentional, has to be fulfilled, which is lacking in this case. Therefore, he prays for interference.

6. Per contra, the learned Government Advocate (CrI. Side) for the respondent / State submits that the prosecution has established the case, through the evidence of PWs.1 to 4 and also through the evidence of the Doctor [PW9]. Due to the illicit relationship with the accused, PW1 got pregnant and also delivered a girl child, Raji. The blood samples recovered from the child, PW1 and the accused were sent for analysis and the Scientific Officer has given her report that the biological father of the child is none other than the appellant / accused. That apart, the love letters written by the accused to the victim [PW1] were also recovered by the investigation agency and marked as Ex.P6. The signatures found in these letters were also noted, compared by the Document Expert [PW12] and she also gave her report that the sample handwriting of the appellant /



accused tally with that of the handwriting in Ex.P6. The prosecution has proved the case, through both oral and scientific evidence and therefore, there is no need to interfere with the impugned judgment passed by the trial Court and prays for dismissal.

7. This Court has paid it's anxious consideration to the rival submissions and also to the available materials.

8. The victim girl [PW1] has studied upto eighth standard and was working in a Chips Company. The appellant / accused is also residing in the same street as that of the victim [PW1], moved closely with the victim girl and also used to have her in his bicycle to her workplace, which fact has been witnessed by PWs.2 to 4 & 6. According to PW1, on a festival day, when her mother [PW2] was attending the festival, the appellant / accused by promising her to marry, had sexual relationship and the physical relationship continued for five or six times. Consequent to that, she got conceived and delivered a girl child, Raji.

9. The investigation officer, during the course of investigation, has collected the blood samples of the appellant / accused, the victim girl [PW1] and the child, Raji, through Dr. Shek Abdullah, in the FTA Cards. The FTA Cards were then sent for analysis to the Forensic Science Laboratory, Chennai for examination. The Scientific Officer [PW11], on analysis of the said samples, has submitted a report in Ex.P5 as follows:

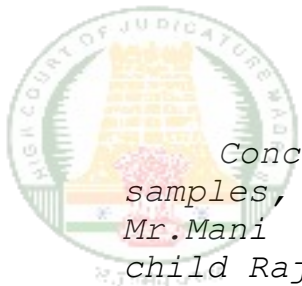
"The DNA extracted from each of the above blood samples was typed using PCR amplified STR technique for 15 STR loci after taking due care for the integrity of each sample.

The results of the DNA typing for each of the above samples are shown in the enclosed annexures I to III. A comprehensive analysis of the test results and the interpretations thereof are given in annexure IV.

From the comprehensive analysis of the test results as shown in annexure IV, the alleged father Mr. Mani @ Manikandan is not found excluded from the paternity of the child Raji under any of the 15 STR loci tested. Hence, the cumulative probability of paternity of Mr. Mani @ Manikandan for being the father of the child Raji and the cumulative chance of exclusion of any random man from the paternity of the child Raji were computed.

(i) the cumulative probability of paternity of Mr. Mani @ Manikandan for being the father of the child Raji is found to be 99.999999998%.

(ii) the cumulative chance of exclusion of any random man from the paternity of the child Raji is 99.99999999999999%.



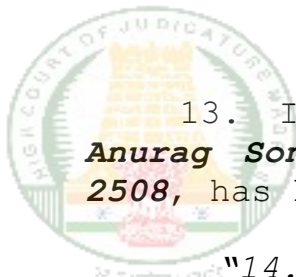
Conclusion: From the DNA typing results of the above samples, it is found that in the absence of identical twins, Mr.Mani @ Manikandan is the biological father of the female child Raji."

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10. The letters written by the appellant / accused to PW1 were also recovered during the course of investigation and were subjected for analysis. The Document Expert [PW12], after analysis, has submitted a report [Ex.P7] in affirmative that the samples enclosed and marked as S1 to S24, Q1 to Q30 & Q32 to Q40 have all been written by one and the same person. Therefore, this Court is of the view that the prosecution has established it's case through oral and scientific evidence.

11. The learned Counsel for the appellant / accused has raised a ground that for the incident alleged to be taken place in the months of February - March, 2008, the complaint was lodged belatedly on 01.10.2008 and that apart, the earlier complaint dated 05.06.2008 has been suppressed by the prosecution. The appellant / accused has cheated the victim in this case that he would marry her, had physical relationship with her and the poor girl, expecting that he would marry her, waited till she got pregnant. Even after the pregnancy, the accused absconded and thereafter, a complaint was lodged on 05.06.2008. This complaint dated 05.06.2008 has been specifically mentioned by PW1 in her chief examination itself. Though it is not mentioned in the complaint [Ex.P1] or in the First Information Report [Ex.P9], the earlier complaint lodged by her on 05.06.2008 has been admitted by PW1 in her chief examination. This complaint was also withdrawn by her, under the impression that the appellant would marry her if she did not insist upon the complaint. On 01.10.2008, when PW1 requested the appellant / accused to marry her, he has abused her and also criminally intimidated her and therefore, a new cause of action arose for the complaint lodged on 01.10.2008.

12. During the course of investigation, the investigation agency has successfully proved the paternity of the appellant / accused for the child, Raji. Apart from that, the letters written by the appellant / accused were also collected and the series of letters were marked as Ex.P6. The handwriting of the appellant / accused found in these letters [Ex.P6 series] has also been analyzed using the specimen handwriting of the appellant and the prosecution has proved the handwriting of the appellant, through the report of the Document Expert [PW11] in Ex.P5. Therefore, this Court is of the view that the prosecution has established the case beyond any reasonable doubt and that the impugned judgment of the trial Court convicting the appellant / accused does not warrant any interference.



13. In fact, the Hon'ble Supreme Court, very recently, in **Anurag Soni v. State of Chhattisgarh**, reported in **2019 Crl.L.J. 2508**, has held as follows:

"14. Considering the aforesaid facts and circumstances of the case and the evidence on record, the prosecution has been successful in proving the case that from the very beginning the accused never intended to marry the prosecutrix; he gave false promises/promise to the prosecutrix to marry her and on such false promise he had physical relation with the prosecutrix; the prosecutrix initially resisted, however, gave the consent relying upon the false promise of the accused that he will marry her and, therefore, her consent can be said to be a consent on misconception of fact as per Section 90 IPC and such a consent shall not excuse the accused from the charge of rape and offence under Section 375 IPC. Though, in Section 313 CrPC statement, the accused came up with a case that the prosecutrix and his family members were in knowledge that his marriage was already fixed with Priyanka Soni, even then, the prosecutrix and her family members continued to pressurise the accused to marry the prosecutrix, it is required to be noted that first of all the same is not proved by the accused. Even otherwise, considering the circumstances and evidence on record, referred to hereinabove, such a story is not believable. The prosecutrix, in the present case, was an educated girl studying in B. Pharmacy. Therefore, it is not believable that despite having knowledge that the appellant's marriage is fixed with another lady Priyanka Soni, she and her family members would continue to pressurise the accused to marry and the prosecutrix will give the consent for physical relation. In the deposition, the prosecutrix specifically stated that initially she did not give her consent for physical relationship, however, on the appellant's promise that he would marry her and relying upon such promise, she consented for physical relationship with the appellant-accused. Even considering Section 114-A of the Evidence Act, which has been inserted subsequently, there is a presumption and the court shall presume that she gave the consent for the physical relationship with the accused relying upon the promise by the accused that he will marry her. As observed hereinabove, from the very inception, the promise given by the accused to marry the prosecutrix was a false promise and from the very beginning there was no intention of the accused to marry the prosecutrix as his marriage with Priyanka Soni was already fixed long back and, despite the same, he continued to give promise/false promise and alluded the prosecutrix to give her consent for the physical relationship. Therefore, considering the aforesaid facts and circumstances of the case and considering the law laid down by this Court in the aforesaid decisions, we are of the opinion that both the courts below have rightly held that the consent given by the prosecutrix was on



misconception of fact and, therefore, the same cannot be said to be a consent so as to excuse the accused for the charge of rape as defined under Section 375 IPC. Both the courts below have rightly convicted the accused for the offence under Section 376 IPC."

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14. In view of the aforesaid pronouncement of the Hon'ble Supreme Court, this Court is of the opinion that the appellant / accused can even be punished for the offence under Section 376 IPC. However, the trial Court has acquitted the appellant / accused for the said offence and since no appeal has been preferred against the acquittal, this Court, while confirming the judgment of conviction, refrains from proceeding any further.

15. Accordingly, the judgment of conviction and sentence passed by the learned Sessions Judge, Mahalir Neethimandram, Fast Track Mahila Court, Thanjavur, in S.C.No.64 of 2012, dated 27.05.2015, is confirmed. The trial Court is directed to secure the appellant / accused and commit him to prison, so as to undergo the remaining period of sentence. Bail bonds, if any executed, shall stand terminated.

In fine, this Criminal Appeal stands dismissed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gk

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Sessions Judge,
Mahalir Neethimandram,
Fast Track Mahila Court,
Thanjavur.

2.The Judicial Magistrate,
Kumbakonam.



3. The Chief Judicial Magistrate,
Thanjavur District.

4. The Inspector of Police,
All Women Police Station,
Kumbakonam, Thanjavur District.

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

Copy to: The Record Keeper / Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2)

Crl.A. (MD) No. 319 of 2015
11.09.2020

CS(22.09.2020) 9P 8C