



Bail Slip

Krishnamoorthy, aged 36 years, S/o Karmegam, Revision
Petitioner/Accused No.1 was released on bail of this Court order
dated 26.04.2016 made in Crl MP(MD)No.3585 of 2016 in Crl RC (MD)
No.270 of 2016 on the file of this Court.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.R.C(MD)No.270 of 2016

Krishnamoorthy ... Petitioner/Appellant/Accused No.1

Vs

State through:-

The Inspector of Police,
All Woman Police Station,
Manamadurai,
Sivagangai District.
(Crime No.9/2008)

... Respondent/Respondent/Complainant

PRAYER: Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records relating to the Judgment in Crl.A.No.1 of 2013, dated 06.04.2016 on the file of the Fast Track Mahila Court, Sivagangai and confirming the Judgment in S.C.No.107 of 2008 on the file of the learned Chief Judicial Magistrate cum Assistant Session Judge, Sivagangai and set aside the same and allow this criminal revision petition.

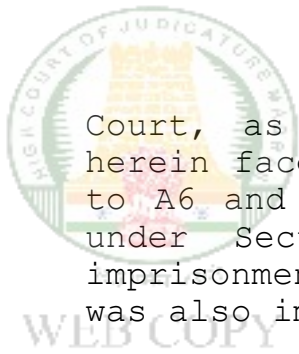
For Petitioner : Mr.M.Subash Babu

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

ORDER

Heard the learned counsel appearing for the appellant and the learned Government Advocate (Crl.side) appearing for the respondent.

2.This revision case is directed against the Judgment dated 06.04.2016 made in Crl.A.No.1 of 2013 on the file of the Fast Track Mahila Court, Sivagangai, whereby, the Judgment dated 03.01.2013 made in S.C.No.107 of 2008 on the file of the Chief Judicial Magistrate, Sivagangai was confirmed. Before the learned trial



Court, as many as six persons including the revision petitioner herein faced the trial. The learned trial Magistrate, acquitted A2 to A6 and convicted the revision petitioner alone for the offence under Section 376 of IPC and sentenced him to seven years imprisonment. Fine of Rs.3,000/- was also levied. Default sentence was also imposed.

3.The case of the prosecution reads as under:-

P.W.1- XXX and the revision petitioner belong to the same village. In the month of karthikai in the year 2007, during one night, the revision petitioner is said to have trespassed into the house of P.W.1 and committed rape on her. A2 and A3 are the parents of A1. A1 to A3 had assured P.W.1 that P.W.1 should not reveal the occurrence to others and if she would keep her words, A1 would marry her. P.W.1 believed the same. Taking advantage of the naivete of P.W.1, A1 had sexual relationship with P.W.1 several times. As a result, P.W.1 became pregnant. On 20.04.2008, when P.W.1 and her parents went to the house of A1 and demanded marriage, the accused are said to have abused her in filthy language. They had also stated that only if certain exorbitant dowry demand are complied with, A1 would marry the victim. There upon, P.W.1 lodged a complaint before the All Women Police Station, Manamadurai and the same was registered as Crime No.57 of 2008. Investigation was undertaken and final report was filed before the Judicial Magistrate, Manamadurai. The case was committed to the Sessions Court in P.R.C.No.57 of 2008 and it was made over to the Chief Judicial Magistrate/Assistant Sessions Judge, Sivagangai. Summons were issued to the accused. Charges were framed under Sections 376 and 417 of IPC against A1. Against A2 and A3, charges were framed under Section 506(1) of IPC r/w Section 109 and Section 4 of Tamil Nadu Prohibition of Women Harassment Act and Section 4 of Dowry Prohibition Act r/w Section 34 of IPC. Against A4, Charges were framed under Section 4 of Dowry Prohibition Act and Section 4 of Tamil Nadu Prohibition of Women Harassment Act r/w Section 34 of IPC. Against A5 and A6, charges were framed under Section 506(i) of IPC, Section 4 of Dowry Prohibition Act and Section 4 of Tamil Nadu Prohibition of Women Harassment Act r/w Section 34 of IPC. The accused denied the charges framed against them and claimed to be tried. In order to establish its case, the prosecution examined as many as 13 witnesses and marked Ex.P1 to Ex.P12. On the side of the accused, no evidence was adduced. The trial Judge, as already stated, acquitted A2 to A6 and convicted A1 for the offence under Section 376 of IPC. Since the substantive sentence was imposed for the offence under Section 376 of IPC, no separate sentence was imposed in respect of the charge under Section 417 of IPC. The Judgment of the trial Judge was confirmed in appeal also. Questioning the same, this revision case came to be filed.

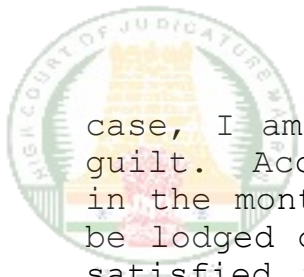


4. Before, I go into the facts of the case, I must note that P.W.1 gave birth to a boy child. When the trial Court ordered DNA test, the revision petitioner herein challenged the same and it was set aside. The learned counsel appearing for the revision petitioner highlighted that the order passed by the Sessions Judge was not put to further challenge. I do not find any merit in the submission. If the revision petitioner was sure that he was not responsible for the pregnancy of P.W.1, then, he ought to have subjected himself to paternity test. The fact that the revision petitioner shied away from the paternity test itself shows that the revision petitioner was responsible for the pregnancy of P.W.1. In fact, to be fair to the learned counsel appearing for the revision petitioner, he did not even want to seriously question the finding of guilt, but wanted to close the issue by offering to pay some maintenance amount.

5. The revision petitioner through his counsel gives an undertaking that a sum of Rs.3,00,000/- will be deposited to the credit of S.C.No.107 of 2008 on the file of the Chief Judicial Magistrate, Sivagangai, within a period of eight weeks from the date of receipt of a copy of this order. The learned counsel for the petitioner makes it clear that he does not want to challenge the finding of guilt as regards the offence under Section 417 of IPC. He confined his challenge only to the finding of guilt under Section 376 of IPC. He also gives a further undertaking that he would pay a sum of Rs.2,000/- as monthly maintenance. The revision petitioner would collect the bank account details through the good offices of the respondent and remit a sum of Rs.2,000/- every month in the said bank account. The child is now said to be aged around 12 years. After the child attains majority, the amount of Rs.2,00,000/- can be withdrawn and handed over to the boy. However, the monthly maintenance amount can be withdrawn by P.W.1. This undertaking given by the revision petitioner through his counsel is placed on record.

6. The learned Government Advocate (Crl.side) submitted that there is abundant evidence on record to confirm the finding of guilt not only under Section 417 of IPC but also under Section 376 of IPC. The learned Government Advocate (crl.side) carefully took me through the entire evidence on record. He wanted this Court to take note of the reality prevailing in the villages. He would point out that if a village girl is subjected to a crime of this nature, this Court ought not to expect that the complaint would be lodged immediately. In fact, an attempt would be made even to marry the victim to the offender and in this case, such an attempt was made and since the same did not fructify, the complaint came to be lodged. He, therefore, wanted this Court not to reject the version of the victim merely on the ground of delay.

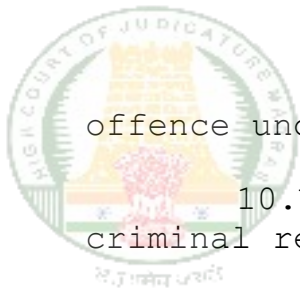
7. The submissions of the learned Government Advocate (Crl.side) are *prima facie* strong. But in the unique facts of the



case, I am afraid that I am not be able to sustain the finding of guilt. According to P.W.1, the occurrence had taken place some time in the month of Karthikai in the year 2007, but a complaint came to be lodged only on 20.04.2008. The delay is so inordinate. I am not satisfied with the explanation offered by the prosecution. That apart, a reading of the cross examination of P.W.1 also indicates that the physical relationship between the two was rather consensual. P.W.1 was aged around 20 years at the time of occurrence. I find it difficult to believe that both of her parents had left for Chennai leaving P.W.1 alone. I find it even more difficult to believe that the occurrence, as projected by the prosecution, could have happened without attracting the attention and notice of the neighbours.

8.The specific suggestion of the defence is that P.W.1 and the accused A1 were in love with each other and that the same blossomed into physical relationship. Though P.W.1 had denied the said suggestion, I find it to be highly probable. This is because of the subsequent conduct of P.W.1. P.W.1 admits that subsequently she had consensual relationship with A1 on several occasions and that is how, she became pregnant. If as claimed by the prosecution, P.W.1 had been a victim of rape, she would definitely not have had consensual relationship with A1 later at any point of time. It is also admitted by the prosecution that efforts were taken to perform marriage between the two. The prosecution alleges that A2 to A6 demanded dowry for contracting the marriage and that is how, A2 to A6 got implicated. These twin circumstances probabilise the defence projected by the accused. There are also a number of discrepancies between the testimony of P.W.1 on the one hand and the other prosecution witnesses on the other. The occurrence is said to have taken place at around 11 p.m., P.W.1 claims that she was sleeping alone on the first occasion. P.W.1 was admittedly residing in a house. P.W.5 as well as the Investigation Officer admit that the house had a door with lock. A 20 years old woman who claims that she was alone, would have definitely locked the door before going to bed. She has deposed that A1 had somehow entered the house. She woke up, when he touched her. It is not the case of the prosecution that A1 broke open and entered the house. This is yet another circumstances to show that the entire occurrence must have taken place with the consent of P.W.1.

9.The Courts below have not taken note of the defence projected. They had accepted the version of the victim at its face value. Therefore, the Judgments of the Courts below are set aside to the extent that they have found the revision petitioner guilty of the offence under Section 376 of IPC. However, the conviction for the offence under Section 417 of IPC will hold and remain. In fact, the learned counsel for the revision petitioner does not challenge the finding of guilt, as far as the offence under Section 417 of IPC is concerned. The petitioner is acquitted of the



offence under Section 376 of IPC.

10. With this modification in the matter of sentence, this criminal revision case is partly allowed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

rmi

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 Presiding Judge, Fast Track Mahila Court, Sivagangai.
2. The Chief Judicial Magistrate cum Assistant Session Judge, Sivagangai.
3. The Inspector of Police,
All Woman Police Station,
Manamadurai, Sivagangai District.
4. The Superintendent Central Prison, Madurai.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
6. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai. (2C)

Cr1.R.C (MD) No.270 of 2016

(SRK) CO
AP (04/02/2021) 5P 8C