



BAIL SLIP

The Appellant/Accused namely Mr.Senthil @ Radhakrishnan, S/o.Rajavelu was directed to be released on bail as per order of this Court dated 30.04.2014 in M.P.No.1 of 2014 in CrI.R.C.No.469 of 2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2021

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CrI.R.C.No.469 of 2014

Senthil @ Radhakrishnan

.. Petitioner/Appellant/Accused

Versus

State by Inspector of Police,
All Women Police Station,
Vridhachalam,
Cuddalore District.
(Crime No.6 of 2002)

.. Respondent/Respondent/Complainant

Prayer : Criminal Revision Case is filed under Section 397 and 401 of Cr.P.C., to call for the records of the learned III Additional District and Sessions Judge, Cuddalore at Vridhachalam made in C.A.No.17 of 2013 and set aside the judgment passed by him dated 28.03.2014 by confirming the conviction and sentence passed by the learned Judicial Magistrate No.II, Vridhachalam, Cuddalore District made in C.C.No.113 of 2004 by judgment dated 12.06.2013 convicting the appellant/petitioner herein under Section 417 of I.P.C and sentencing him to undergo one year Rigorous Imprisonment.

For Petitioner : Mr.L.Mahendran

For Respondent : Mr.L.Baskaran
Government Advocate
(Criminal Side)



ORDER

This Revision Case is filed by the petitioner/accused, aggrieved by the judgment of the learned Judicial Magistrate No.II, Vridhachalam in C.C.No.113 of 2004, dated 12.06.2013, whereby the petitioner was convicted for an offence under Section 417 of Indian Penal Code and sentence to undergo Rigorous Imprisonment for a period of one year and the judgment of the learned III Additional District and Sessions Judge, Vridhachalam in CrI.A.No.17 of 2013, dated 28.03.2014, thereby, confirming the conviction and sentence imposed by the Trial Court.

2. On 23.11.2002, P.W.1, Jeyanthi went to the All Women Police Station, Vridhachalam and lodged a complaint stating that the first accused namely Senthil @ Radhakrishnan at about a week before the lodging of the complaint, took her to the rear side of his house and by promising that he will marry, had physical intercourse and thereafter, refused to marry. In the village panchayat conducted, he agreed to marry. But, however, the accused Nos.2 and 3, the parents of the first accused and the accused No.4, the brother of the first accused, by demanding dowry, refused to perform the marriage and stopped the marriage and hence, she gave the complaint.

3. Upon complaint of P.W.1, a case in Crime No.6 of 2002 was registered and P.W.1 namely, the Inspector of Police, All Women Police Station took the case for investigation and filed a final report on 26.01.2003, proposing all the four accused guilty for the offence under Section 417 of Indian Penal Code and Section 4 of Dowry Prohibition Act. The case was taken on file as C.C.No.113 of 2004 and upon issuance of summons, all the accused appeared before the learned Magistrate and denied the charges and stood trial. Pending the trial, A2, Rajavelu, the father of the first accused, had died.

4. The prosecution examined P.Ws.1 to 11, including the the defacto complainant as P.W.1 and marked Exs.P1 to P5. Upon being questioned about the material evidence on record and incriminating circumstances under Section 313 of the Code of Criminal Procedure, the accused denied the charges. No evidence was let in on behalf of the defence. The Trial Court, therefore, heard the learned Assistant Public Prosecutor, on behalf of the prosecution and the learned Counsel for the accused and by a judgment, dated 12.06.2013 found that the evidence of P.W.1 trustworthy and from her evidence, it was clear that the first accused had represented to the victim that he will marry her and on the strength of the same, he had intercourse with the victim and after five days, he refused by stating that he will only marry the girl whom his parents would ask him to marry. Therefore, the Trial Court found that the



first accused had committed an offence under Section 417 of Indian Penal Code. However, the Trial Court found that the prosecution did not establish the other charge under Section 4 of the Dowry Prohibition Act and acquitted all the four accused of the said charge under Section 4 of the Dowry Prohibition Act and sentenced the first accused alone for the offence under Section 417 of I.P.C as indicated above.

5. Aggrieved by the same, the accused preferred Crl.A.No.17 of 2013 on the file of the learned III Additional District and Sessions Judge, Vridhachalam. The first Appellate Court, after independently appraising the evidence on record, found that the written agreement in the panchayat, marked as Ex.P1, would conclusively prove the evidence of P.W.1 that there was intercourse with the promise of marriage. The Appellate Court also took into consideration the corroboratory evidence of P.Ws.3, 4, 5 and 6 to depose about the panchayat held in connection with the issue and therefore, would conclude that the said act would constitute the offence punishable under Section 417 of Indian Penal Code and confirmed the conviction and sentence imposed by the Trial Court, aggrieved by which, the present Revision is laid before this Court.

6. Mr.L.Mahendran, learned Counsel appearing on behalf of the petitioner, drawing the attention of this Court to the evidence of P.W.1, whereby, she stated that the first accused herein had come to her house and in the guise of talking to her, took her to the rear side of his house. While, as per the investigating officer i.e., P.W.11, she did not say so, during the enquiry. Similarly, she had deposed that she resisted the intercourse and raised alarm. P.W.11, investigating officer had admitted that such a statement was not made during the course of investigation. Again, P.W.1, in her evidence, stated that, immediately after hearing her alarm, her uncle came to the spot and warned both of them and took them to the panchayat. The investigating officer had made clear that such a statement was not made during the course of investigation, while recording her statement under Section 161 Cr.P.C. This apart, the learned Counsel also brought to the notice of this Court about Crime No.105 of 2008, whereby, he has alleged that he has forcibly taken away by the members of P.W.1's family and therefore, Ex.P1 was forcibly extracted from him. By looking into all these contradictions, the learned Counsel would urge this Court to come to the conclusion that the evidence of P.W.1 is totally unbelievable as there was no promise to marry and the entire issue itself is doubtful and therefore, urged this Court to upturn the conclusions of the Trial Court and lower Appellate Court.

7. Mr.L.Baskaran, learned Government Advocate (Criminal Side) appearing on behalf of the prosecution would submit that P.W.1, in her evidence, had clearly deposed about the promise



being made and thereafter, the refusal of the first accused to marry her. There is no ground to suspect the veracity or genuineness of evidence of P.W.1. Moreover, the evidence of P.W.1 is corroborating with Ex.P1, a panchayat agreement, written in the local village panchayat and also the evidence of P.Ws.3 to 6, who conducted the panchayat. Therefore, the evidence of P.W.1 is enough to convict the accused. In this case overwhelming evidence is available and corroboratory materials would prove the offence punishable under Section 417 of I.P.C beyond any doubt whatsoever and therefore, he would submit that no ground is made out merely basing on the contradictions which are not fatal to the case of prosecution.

8. I have considered the rival submissions made on either side. I have gone through the material evidence on record. The primary contention of the learned Counsel appearing for the petitioner are that the victim i.e., P.W.1 had made embellishment in her evidence as if she resisted the intercourse and raised the alarm which was not even her case during the investigation. Even agreeing with the submissions made by the learned Counsel for the petitioner that P.W.1 had made improvements in her original version and that there is contradiction, the same will not in any manner be a material contradiction because the issue in this case is not as to whether there was resistance or not. This is not a case under Section 376 of Indian Penal Code, but the accused is convicted for the offence under Section 417 of Indian Penal Code. On the other hand, these allegations and the other allegations that the parents and family members of P.W.1, the victim had, in fact, forcibly taken the first accused and the first accused gave the complaint to the Police Station would only fortify the act that the accused had intercourse with P.W.1 with the promise to marriage. Therefore, even though I am able to see the contradictions in the evidence of P.W.1, in my considered view, these contradictions are not material to the offences under Section 417 of Indian Penal Code, for which, the accused is convicted. Therefore, I am not in a position to accept the submissions made on behalf of the petitioner/accused that this Court should interfere in the exercise of its revisional jurisdiction and accordingly, I confirm the conviction imposed by the Trial Court, which is confirmed by the lower Appellate Court.

9. Alternatively, the learned Counsel would submit that the occurrence took place in the year 2002. At that relevant point of time, the accused was 23 years of age. Now, almost 20 years have gone by the accused and the accused had since moved in life and is married and is living law abiding life. It is also represented by the learned Counsel for the petitioner that P.W.1 has also thereafter got married to a third person and is leading happy married family life. Under these circumstances, he would



submit that in view of the efflux of time to make the accused to undergo the sentence for a period of one year would be excessive and not fitting for the circumstances of the case.

10. The victim was impleaded as second respondent in this case. She had given a statement addressed to the Inspector of Police, All Women Police Station, Vridhachalam that she is living a happy married life subsequently and that she does not want any compensation or relief whatsoever from the accused and that she does not want to participate in the proceedings in any manner whatsoever further before this Court.

11. The learned Government Advocate (Criminal Side) would confirm the facts that both of them are since married and are living with their families in the same locality. There is no other antecedent as against the petitioner/accused. Considering all the above observations and considering the certificate issued by the Superintendent, Sub-Jail, Vridhachalam, dated 26.11.2021 that the petitioner/accused was in jail from 23.11.2002 till 04.12.2002 i.e., for a period of 12 days; Considering the fact that both the persons are living in the same locality, continuing the sentence of the accused would also have an impact/embarrassment to the victim I am inclined to interfere with the sentence by reducing the imprisonment imposed by the Trial Court and the lower Appellate Court from a period of one year to that of the period already undergone by the petitioner.

12. The Criminal Revision Case is partly allowed, as indicated above.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

grs

To

1. The III Additional District and Sessions Judge,
Cuddalore at Vridhachalam.
2. Do-Through,
The Principal Sessions Judge,
Cuddalore.
3. The Judicial Magistrate No.II,
Vridhachalam.



4. Do - Through,
The Chief Judicial Magistrate,
Cuddalore.

5. The Inspector of Police,
All Women Police Station,
Vridhachalam,
Cuddalore District.

6. The Public Prosecutor,
High Court of Madras.

Copy to:

1. The Superintendent,
Sub Jail,
Vridhachalam.

2. The Section Officer,
Criminal Section,
High Court, Madras.

Cr1.R.C.No.469 of 2014

SRA(CO)
SU(19/01/2022)