

Bail Slip

The Appellant/Accused namely Balamurugan S/o. Mani was directed to be released on bail as per order of this Court dated 21.11.2019 and made in CrI.M.P. No. 17126/2019 in CrI.A.No.801/2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 03.03.2021
Delivered on: 26.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.A.No.801 of 2019

Balamurugan
S/o.Mani

...Appellant/Accused No.1

Vs

The Inspector of Police,
All Women Police Station,
Salem Town,
Salem District.

...Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, 1973, to set aside the order of conviction passed by the Sessions Judge, Mahila Court at Salem in S.C.No.82 of 2016 and dated 21.10.2019, under Section 417 of the Indian Penal Code, for rigorous imprisonment for a period of one year and to pay a fine amount of Rs.20,000/- in default of which sentence to undergo simple imprisonment for a period 3 months and under Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998 for rigorous imprisonment for a period of 3 years and to pay a fine amount of Rs.10,000/- (totally Rs.30,000/-) in default of which sentence to undergo simple imprisonment for a period of 6 months by allowing the present Criminal Appeal.

For Appellant : M/s.C.Samivel
legal Aid Counsel and
Mr.Singaravelan
Senior counsel

For Respondent: Mr.R.Suryaprakash
Government Advocate

JUDGMENT

The Criminal Appeal is filed against the judgment passed by the Sessions Judge, Mahila Court at Salem in S.C.No.82 of 2016 dated 21.10.2019.

2.The respondent police registered the case against the appellant and two others for the offences punishable under Sections 376, 417 and 506(ii) of IPC in Crime No.15 of 2015 and investigated the matter and laid the charge sheet before the learned Judicial Magistrate No.4 (Mahila Court Salem), the learned Mahila Judge has taken the charge sheet on file in PRC.No.1 of 2016. Since, the offences are triable by Sessions Court the case was committed to learned Session Judge Salem and the same was taken on file in S.C.No.82 of 2016. Since the offences are against the women, the learned Principal Session Court made over the case to the Mahila Court Salem. The learned Special Judge after completing the formalities, framed the charges against the accused 1 to 3 for the offences under Sections 376(1), 417, 506 (2) of IPC and 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998 against the appellant/A1 and the offences under Sections 417, r/w 34, 506(2) and 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998.

3.After framing the charges in order to prove the case of the prosecution, during the trial on the side of prosecution 14 witnessess were examined as P.W. 1 to P.W.14 and 11 documents were marked as Ex.P1 to P11 and no material object was exhibited. On the side of the defence no one was examined as witness and no documents was marked.

4.After completing the trial and hearing the arguments advanced on either side, the trial Court found the accused 2 and 3 not guilty and acquitted them from the charges and found the first accused/appellant guilty for the offences under Sections 417 and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998 and convicted and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.20,000/-, in default, to undergo three months simple imprisonment for the offence under Section 417 of IPC and further he was convicted and sentenced to undergo 3 years of rigorous imprisonment and to pay a sum of Rs.10,000/- towards fine, in-dafult to undergo six months simple imprisonment. Challenging, the said judgement of conviction and sentence, the appellant/first accused had preferred the present appeal before this Court.

5.It is the case of the prosecution that the appellant had fall in love with the defacto complainant and he made a false promise that he would marry her and he also had intimacy with

her and she became pregnant and also she gave birth to a male baby. After 2 months of her delivery, the baby died due to some health issue. The further case of the prosecution is that the defacto complainant asked the appellant to marry her, but, the appellant refused to marry her and also tried to marry another girl. Therefore, the defacto complainant made a complaint.

6.The learned Senior Counsel appearing for the appellant would submitted that the appellant has not committed any offence as alleged by the prosecution. On the date of occurrence, the age of the defacto complainant is 36 and the appellant age is 26 years. The defacto complainant already got married and she has got 10 year old son. That the defacto complainant and the appellant were working in the stage drama group and they developed friendship, due to which, the appellant dropped the defacto complainant to her house after completing the drama programme and in that way, he developed intimacy. He further submitted that the defacto complainant is married person and she got a son and no divorce was obtained from her husband, even no matrimonial case for divorce was pending before any competent Court. It is not believable that the appellant made a false promise to marry her and she allowed him for such an intimacy and there is no independent evidence to show that the appellant made a false promise to the defacto complainant and due to which, the appellant allowed to have such intimacy. He further submitted that the DNA test was also conducted and it does not give any positive result and also submitted that the defacto complainant is 12 years elder than the appellant. The conviction of the appellant is against well settled principle of law as the appellant has not committed any offence as alleged by the prosecution.

7.The learned counsel for the appellant further argued that though the trial Court rightly appreciated the evidence and found that offences under Sections 376 and 506(ii) of IPC are not made out and acquitted the appellant, found guilty of other charges under Section 417 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998 which is not correct. In this connection, he also relied upon the judgement of the Hon'ble Supreme Court reported in (2019) 9 SCC in the case of Pramod Suryabhan Pawar Vs.State of Maharashtra and another. Therefore, the judgement of the trial Court is liable to be set aside and the appeal is to be allowed.

8.The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the defacto complainant is a married woman and got a 10 years old son and she was not living with her husband and she was living in her mother's house. The defacto complainant was acting in drama and the appellant was also one of the actor, due to which, the appellant dropped the defacto complainant in her house. During the course of time, the appellant fell in love with her and also proposed

to marry her, the defacto complainant refused his love. The appellant repeatedly proposed his love and also promise to marry her, thereafter, the defacto complainant accepted his love and they were living together as husband and wife and believing his words, she became pregnant. In the mean while, the appellant refused to marry the defacto complainant and also took steps to marry another girl the daughter of P.W.5 and also threatened the defacto complainant. Thereafter, the defacto complainant gave birth to a male child, but, due to some illness, the baby died. He further submitted that believing the words of the appellant, the defacto complainant divorced her husband and thereafter the defacto complainant repeatedly insisted the appellant to marry her but, the appellant refused to marry her and also he along with other accused persons threatened the defacto complainant. Therefore, the defacto complainant had no other option except, to file a complaint. In order to prove the charges, 14 witnesses were examined and 11 documents were marked.

9. After completing the examination of the prosecution witnesses, all the incriminating circumstances culled out from the evidence of the prosecution witnesses, were put before the appellant, but he denied the same as false. On the side of the appellant, no oral or documentary evidence was produced.

10. The Doctor, who was examined as P.W.2, had spoken about the pregnancy of the defacto complainant and gave a child. P.W.3, who is the brother of the defacto complainant has spoken about the burial of the defacto complainant's child and also their intimacy. P.W.4 is the one of the relative of the defacto complainant and he has also spoken about the intimacy between the appellant and the defacto complainant. P.W.5 is the father of the girl who was fixed for the appellant and he has spoken about the accused persons came to his house to propose to marry her daughter Vijayalakshmi to the appellant herein. At that time defacto complainant came to the house and informed that the appellant has intimacy with her therefore he dropped the marriage. The RDO enquiry report and the medical evidence clearly show that the appellant had intimacy with the defacto complainant. According to the defacto complainant, the appellant made a false promise and he had intimacy with her and subsequently he refused to marry her and also harassed her. The learned trial Judge rightly appreciated the evidence and convicted the appellant, therefore there is no merits in this case and the appeal is liable to be dismissed.

11. Heard both sides and perused the material available on record.

12. On a perusal of the records, it is seen that initially the case was registered against the appellant and two other accused, one is the father of the appellant and another one is paternal uncle of the appellant. None of the witness except

P.W.1 spoken about the promise made by the appellant and based on the promise, the defacto complainant had the intimacy and applied for divorce from her husband and also got it. There is no evidence to show that false promise was made by the appellant.

13.A combined reading of the entire materials from the prosecution witnesses and documents produced herein would go to show that at the time of starting period of intimacy, the defacto complainant had not divorced her husband and she had 10 year old son, therefore, it is not believable that the appellant made a false promise to marry her believing his word she allowed him to have such an intimacy. The appellant fully knowing well that the victim was already married and that she has got a 10 year old son. Therefore, this Court finds that the offence under Section 417 of IPC is not proved. Therefore, it is held that the appellant has not committed an offence under Section 417 of IPC.

14. As per the evidence of the defacto complainant/victim, the appellant refused to keep up his promise to marry her. The appellant made a false promise based on which he had an intimacy with her, therefore he committed an offence under section 417 of IPC. At the time of pregnancy, the defacto complainant was admitted in the hospital and the appellant's name was mentioned as father. Ex.P5 is the birth certificate of the baby, which also clearly shows that he is the father of the child. Ex.P2 is the invitation for the marriage between the appellant and one Vijayalakshmi who is daughter of P.W.5. Further from the oral and documentary evidence it is proved that there was an intimacy between the appellant and the defacto complainant and also she gave birth to a male child and that the defacto complainant asked for divorce from her husband. After knowing the fact that the appellant arranged his marriage with one Vijayalakshmi, the defacto complainant went to the house of P.W.5 and showed all the photos and she stopped the marriage. A reading of the evidence of the P.W.1 and Ex.P.5 shows that the appellant has committed an offence under section 4 of the Tamilnadu Prohibition of Harassment of Woman Act 1998.

15.Considering the facts and circumstances of this case, the conviction and sentence passed under Section 317 of IPC is set aside and the fine amount paid to the same is ordered to be refunded, conviction and sentence passed by the trial Court for the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998 is confirmed. However the sentence is modified from three years to one year and the period of detention already undergone by the appellant shall be set off against the sentence of imprisonment. The appellant is liable to pay a sum of Rs.1,00,000/- as compensation to the victim.

16. With the above modification, the Criminal appeal is partly allowed. The legal Aid counsel appointed by this Court is entitled to legal fees, as per rules.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

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To

1. The Sessions Judge, Mahila Court,
Salem.

2. Do Thro The Principal Sessions Judge, Salem

3. The Judicial Magistrate
Additional Mahila Court, Salem

4. Do Thro The Chief Judicial Magistrate
Salem

5. The Inspector of Police
All Women Police Station
Salem Town, Salem District

6. The District Collector, Salem

7. The Director General of Police
Mylapore, Chennai 4.

8. The Secretary
Tamil Nadu Legal Aid Services Authority
High Court, Chennai 104

9. The Public Prosecutor
High Court, Madras 104.

Copy to
The Section Officer
Criminal Section
High Court, Madras 104.

+1 CC to Mr.C. Samivel, Advocate sr 19614.
+1 CC to Mr.R.Suryaprakash, Advocate sr 19615
+1 CC to Mr.C. Samivel, Advocate sr 19649.

Cr1.A.No.801 of 2019

RGN (CO)
SP (26/03/2021)



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