



BAIL SLIP

Sivasubramanian, 37/15, S/o, Thangaraj Nadar, Petitioner / Appellant/Accused, released on bail of this Court order dated 30.10.2015 made in MP(MD)No.1 of 2015 in Crl.A(MD)No.326 of 2015.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.A.(MD)No.326 of 2015

Sivasubramanian : Appellant / Accused

Vs.

State rep by,
The Inspector of Police,
Kulasekarapattinam Police Station,
Thoothukudi District.
(in Crime No.64 of 2013)

: Respondent / Complainant

PRAYER: This Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, to call for the records and set aside the conviction and sentence passed by the learned Fast Track Mahila Court, Thoothukudi in S.C.No.109 of 2014 dated 06.10.2015 and allow the appeal.

For Appellant : Mr.R.Venkateswaran
For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

JUDGMENT

The present criminal appeal is directed against the conviction and sentence, dated 06.10.2015 made in S.C.No.109 of 2014, on the file of Fast Track Mahila Court, Thoothukudi, in S.C.No.109 of 2014.

2.The appellants is the sole accused. He stood charged for the offence punishable under Sections 376 and 417 of IPC. After a full-fledged trial, the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi, came to the conclusion that the appellant was found guilty under Section 417 of IPC, convicted and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo six months rigorous imprisonment. Challenging the said conviction and sentence, the



appellant is before this Court with the present Criminal Appeal.

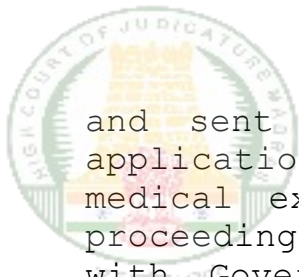
3.The case of the prosecution in brief is as follows:-

(i) P.W.1-Sureka is a resident of Venkatachalapuram in Udangudi and P.W.2-Vasandha is her mother. The accused is residing in the same street and also he is related to P.W1. He is divorced man. During the relevant point of time, he sought permission from P.W.2 for marrying P.W.1 and the same was negatived by P.W.2, however, after such occurrence, he developed the acquaintance with P.W1. One day, in the midnight around 11.00 p.m., he asked the P.W.1 to come behind her house, wherein he made false promise before P.W1 as he would marry her and afterwards, when at the time he attempted to commit sexual intercourse with P.W1, she has refused for the same. However, after made a promise as above, he has indulged in sexual intercourse with her and as a result of which, she becomes pregnant and given birth to a female child. In the mean time, when P.W2 approached the accused for marry her, initially, he has consented for the marriage, but in due course, he refused to marry P.W.1. Therefore, since the accused is refused to marry her, she attempted to commit suicide and thereby, she was admitted in the hospital, wherein, the police examined her and obtained the statement under Ex.P.1. During the time of investigation, both herself, her daughter and the appellant were put under DNA test.

(ii) On receipt of the complaint from P.W1, P.W10-Muthuraman, the then Sub Inspector of Police, Kulasekaranpattinam Police Station, registered a case as against the accused in Crime No.64 of 2013 under Sections 376 and 417 of IPC. The printed FIR was marked as Ex.P1. After registration of the case, he has forwarded the copy of the FIR to P.W12 for investigation.

(iii) P.W12- Esakki, the then Inspector of Police, Perumalpuram Police Station, on receipt of the said FIR, took up the same for investigation. He visited the scene of occurrence and prepared an observation mahazar. He drawn the rough sketch and the same was marked as Ex.P15. He examined the witnesses and recorded their statements. He submitted an application before the learned Judicial Magistrate, Thiruchenthur, to conduct medical examination to the victim girl. In turn, in view of the proceedings issued by the Magistrate, P.W9-Dr.Sridevi attached with Thoothukudi Medical College Hospital, medically examined P.W.1 and issued a certificate. In the mean time, the victim girl had given birth to one female child on 25.02.2013 around 11.00 a.m, for which, P.W.9 issued the AR copy under Ex.P10. The requisition letter given by Inspector of Police before the Magistrate was marked as Ex.P9.

(iv) On 01.07.2013, P.W12 arrested the accused in Coimbatore



and sent him to the remand. On 02.07.2013, he submitted an application before the Magistrate, wherein he prayed to conduct medical examination to the accused. In turn, in view of the proceedings issued by the Magistrate, P.W7-Dr.Manokaran attached with Government Hospital, Thoothukudi examined the accused on 03.07.2013 and issued the report under Ex.P6 stating that there is nothing to suggest that he is impotent. The requisition given by P.W12 was marked as Ex.P5.

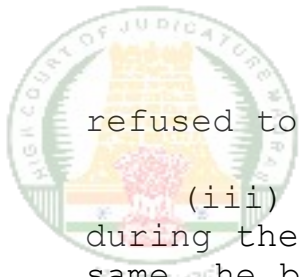
(v) In continuation of investigation, P.W12 submitted an application before the learned Judicial Magistrate, Tiruchenthur, to conduct DNA test to the accused, P.W1 and to the minor child, who born to P.W1. In turn, P.W.8-the Scientific Officer in Regional Forensic Science Laboratory, collected the blood samples from those persons and after examination, he issued report stating that the accused is the biological father of the minor child. The DNA report issued by him was marked as Ex.P8. After collecting the said report, P.W12 examined the Scientific Officer and recorded their statements. After concluding the investigation, he came to the positive conclusion that the accused is liable to be convicted under Sections 417 and 376 of IPC. He filed the final report accordingly.

4. Based on the materials available on record, the trial Court framed the charges for the offence under Sections 417 and 376 of IPC. The accused denied the charges and opted for trial. Therefore, the accused was put on trial.

5. During the course of trial proceedings, in order to prove their case, on the side of the prosecution, 12 witnesses have been examined as PW1 to PW12 and 15 documents are exhibited as Ex.P1 to Ex.P15.

6.(i) Out of the above said witnesses, PW1-Surekha is the victim girl. She spoken about the occurrence as during the relevant point of time, since her mother refused to give permission for marrying her, the accused developed the intimacy on her and during the time of occurrence, after given a false promise as he would marry her, he indulged in sexual intercourse with her and as a result of which, she had given birth to one female child.

(ii) P.W.2-Vasanth is the mother of P.W1. She spoken about the occurrence as during the time when the accused approached her for getting permission to marry P.W.1, she refused to give permission to him. Afterwords, on 25.02.2013, P.W1 gave birth to one female child and thereafter, on enquiry, P.W.1 confessed that the accused is the sole reason for her pregnancy. She has further stated before the trial Court as during the time when she along with others approached the accused for marrying P.W1, he



refused to marry her.

(iii) P.W.3-Rajesh is the brother of P.W1. He has stated as during the time of occurrence, P.W1 consumed poison and due to the same, he brought P.W1 to the hospital, wherein, the Doctor refused to give treatment. However, they had given first aid and advised to go to Government Hospital, Thoothukudi, for further treatment. According to him, P.W1 gave birth to one female child.

(iv) P.W4-Alexander, who is a resident of Venkatachalapuram in Udangudi, gave evidence as during the time of investigation P.W.12 visited the scene of occurrence and prepared an observation mahazar under Ex.P2.

(v) P.W5-Prabha Devi, the then Grade-I Head Constable, Kulasekaranpattinam Police Station deposed that she had produced the victim girl before the Doctor for medical examination.

(vi) P.W6-Muthukumar, the then Head Constable, Kulasekaranpattinam Police Station, spoken about the statement recorded from P.W1. P.W7-Dr.Manokaran attached with Government Hospital, Thoothukudi, speaks about the examination of accused.

(v) P.W.8-Rajesh is the Assistant Scientific Officer working in the Forensic Science Department, Madurai, spoken about the collection of blood samples and about the result of DNA test.

(vi) P.W9-Dr.Sridevi, attached with Government Hospital Thoothukudi, spoken about the examination made on the victim girl. P.W10-Muthuraman, the then Sub Inspector of Police, Kulasekaranpattinam Police Station, spoken about the receipt of complaint and about the registration of the case.

(vii) P.W11-Dr.Lourdes Albina spoken about the collection of blood samples from P.W1, accused and the minor child. P.W12-Esakki, the then Inspector of Police, Kulasekaranpattinam Police Station, speaks about the investigation, examination of witnesses and also about the filing of final report.

7.When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., the accused denied the same as false. However, he did not choose to examine any witness nor mark any document on his side.

8.Having considered all the above materials placed before him and on appreciating the submissions made by the learned counsel appearing on either side, the learned Sessions Judge came to the conclusion that the appellant herein was guilty under Section 417 of IPC, convicted and sentenced as stated in paragraph No.2 of



this judgment. As already stated in respect to offence under Section 376 of IPC, he was acquitted by the trial Court. Challenging the said conviction and sentence the appellant is before this Court with this criminal appeal.

9. I have heard Mr.R.Venkateswaran, learned counsel appearing for the appellant and Mr.E.Antony Sahaya Prabahar, learned Additional Public Prosecutor appearing for the State and also perused the records carefully.

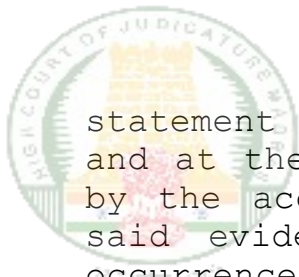
10. The learned counsel appearing for the appellant would contend that the evidence given by P.W1 in respect to the illicit intercourse committed by the accused is having lot of contradictions. Merely, because of the reason that DNA report is found against the accused, it cannot be held that he cheated P.W.1 at the relevant point. Therefore, the conviction and sentence awarded by the trial Court has to be set aside by this Court.

11. Per contra, the learned Government Advocate (crl.side) would contend that the result of DNA test would prove that the accused is the biological father of the minor child and therefore, it should be held that the accused alone cheated P.W1. According to him, the findings rendered by the Courts below should not be disturbed by this Court.

12. I have considered the rival submissions made by the learned counsel appearing on either side.

13. Now, on going through the judgment rendered by the trial Court, it was observed that only by believing the false promise made by the accused, the victim shared the bed with the accused and as a result of which, she became pregnant. In otherwise, the trial Court had not going into the fact that the accused is having fraudulent intention or otherwise, he dishonestly induced P.W1. In this regard, on going through the evidence given by P.W1, in her chief examination, she has stated as while at the time the accused attempted to indulge in a sexual activity, he made a promise for marrying her. On the other hand, in her cross-examination, she has admitted that till delivering the minor child, she has not disclosed the details of pregnancy to any body, further, she admitted in her cross-examination that while at the time the accused came for committing alleged intercourse, she had not raised objection by raising alarm. The said evidence given by P.W1 shows that she has also a consenting party for the alleged sexual activity committed by the accused. The entire cross-examination of P.W1 would disclose the fact that she continued the relationship with the accused in many times.

14. On the other hand, before the authorities, she made a



statement as only one time she indulged in the alleged occurrence and at the same time, she has not stated about the consent given by the accused to the marriage with her. Therefore, the above said evidence given by P.W1 reveals the fact that after the occurrence, the accused had approached P.W1's mother to marry the victim girl and also the relationship between the accused and the victim girl had continued till she gave birth to a female child. Therefore, the whole evidence given by P.W.1 discloses the fact that the accused is not having any intention to cheat P.W1 and thereby, in the absence of any specific evidence in respect to the false promise alleged to be given by the accused, we cannot come to a conclusion that the accused herein had fraudulently induced P.W1 to commit an act, which caused damage to her body. The trial Court, without appreciating the same, held that the accused committed an offence under Section 417 of IPC. Therefore, I am of the considered opinion that the evidence given by P.W1 in her cross examination and the evidence given by P.W2 is narrow that at the time of committing the offence, the accused herein having the intention to marry P.W1 and thereby, the same cannot constitute the offence under Section 417 of IPC.

15. However, it is the specific contention raised by the learned Additional Public Prosecutor appearing for the State that only due to the physical relationship with the accused, P.W1 begotten a female child namely Dharshini and therefore, it should be necessary to award some compensation to the female child.

16. Now, on considering the said submission with the facts and circumstances of the case, it is true the evidence given by the Doctor, who conducted DNA Test proved the fact that P.W1 is the mother of the child Dharshini and the accused herein is her biological father. The accused is also not disowning the same.

17. In the said circumstances, though P.W1 says that she is a victim, the real fact is that by the act and conduct of the accused and P.W1, the child Dharshini is born and she is the real victim. Therefore, the child has every right to proceed against the accused under civil law. For no wrong on the part of the child, she is now in the earth with a social stigma. When the child grows she would develop some sort of frustration and that she has to carry such ordeal for all her remaining life due to the unmindful conduct of P.W1 and the accused.

18. In fact, the word "Victim" defined in Sec 2(WA) of Cr.P.C is, as follows:-

"Victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "Victim" includes his or her guardian or legal heir"



Now, on go through the said definition herein also due to the act of the accused, the child suffered loss and injury as stated above. Therefore, this Court is very confident that the child Dharshini is the victim, under the definition of Section 2(WA) of Cr.P.C and therefore, in view of the above, the accused is liable to pay compensation to the victim child.

19. As far as the quantum of compensation is concerned, the learned counsel for the appellant fairly admit that the accused is running a grocery store in Coimbatore. Therefore, considering the nature of business conducted, it is easy for the accused to pay Rs.7,00,000/- as a compensation.

20. Accordingly, without prejudice to the civil right having by the minor child, to proceed against the accused, under Section 357 (A) (3) of Cr.P.C the accused is directed to deposit a sum of Rs.7,00,000/- to the credit of S.C.No.109 of 2014, dated 24.08.2015 on the file of the Fast Track Mahila Court, Thoothukudi, within a period of four months from the date of receipt of a copy of this order as a compensation to the child Dharshini. On such deposit being made, the learned trial Judge is directed to deposit the said amount in any one of the nationalized bank for the period till the minor attains majority. The defacto complainant/P.W1 is permitted to receive the interest once in three months and the same is to be utilized for the welfare and benefit of her child. After attaining the majority, the child is entitled to receive the matured amount on proper identification.

21. With the above directions, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellants/accused, by the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi, dated 06.10.2015 is set aside. The fine amount, if any, paid by the appellant, shall be refunded to him. Bail bond, if any, executed by the appellant shall stand cancelled.

Sd/-

Assistant Registrar (CS III)

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/ /2021

Sub Assistant Registrar (CS)

cp
To:-

1. The Sessions Judge,
Fast Track Mahila Court, Thoothukudi.

<https://hcservices.ecourts.gov.in/hcservices/>

