



BAIL SLIP

Arivazhagan, Male S/o.Selvam, aged about 29(2015), was released on bail vide this Court Order Dated 17.12.2015 in MP(MD) No.1/2015 in Crl.A(MD).No.335 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.A.(MD)No.335 of 2015

Arivazhagan, S/o.Selvam : Appellant/Accused No.1
Vs.

State through
The Inspector of Police,
All Women Police Station,
Alangudi in-charge Karampakudi Police Station,
Pudukottai District.
(Crime No.291 of 2010) : Respondent/Complainant

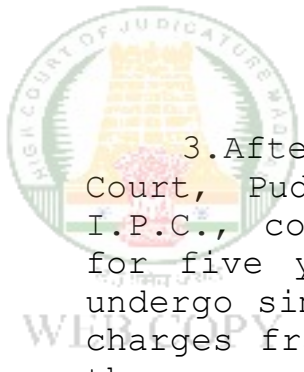
PRAYER: This Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, to call for the entire records connected with judgment dated 12.10.2015, made in S.C.No.46 of 2013 on the file of the Mahila Court, Pudukkottai, set aside the same and consequently, acquit the appellant.

For Appellant : Mr.R.Anand
for Mr.R.Pon Karthikeyan
For Respondent : Mr.M.Muthumanikkam
Government Advocate (Crl. side)

J U D G M E N T

This Criminal Appeal is directed against the conviction and sentence dated 12.10.2015, passed in S.C.No.46 of 2013 on the file of the learned Sessions Judge, Mahila Court, Pudukkottai.

2.The other accused are brother, brother's wife and father of the appellant/first accused. Before the trial Court, the appellant/first accused [hereinafter called as 'the accused'] stood charged for the offence under Sections 294(b), 506(ii), 417, 420 and 376 r/w. 90 I.P.C. The other accused (now acquitted) have been charged for the offence under Sections 294(b), 506(ii), 417 and 420 I.P.C.



3. After full-fledged trial, the learned Sessions Judge, Mahila Court, Pudukkottai, found the accused guilty under Section 420 I.P.C., convicted and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.3,000/-, in default, to undergo simple imprisonment for three months. In respect of other charges framed against the all accused, the trial Court acquitted them.

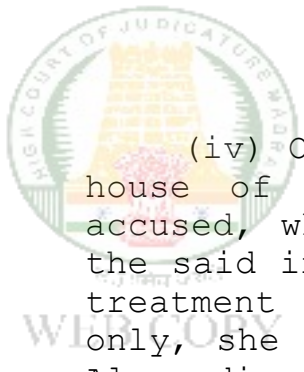
4. Challenging the said conviction and sentence dated 12.10.2015, the accused is before this Court with this Criminal Appeal.

5. The case of the prosecution is as follows:-

(i) P.W.1 is the victim girl. The accused is her uncle. While P.W.1 was studying in 12th Standard, the accused came to the house of P.W.1 and helped her for preparing the record note. One such a time, when the record note was given to the accused, after completing the work, the same has been returned by the accused with Rs.10/-. In respect of the same, P.W.1 questioned the accused as to why he kept Rs.10/- in the record note, for which, the accused would state that he fall in love with P.W.1. Further, he would submit before P.W.1 that if the said proposal is not accepted by her, he would commit suicide. Thereafter, the accused herein regularly came to the house of P.W.1 and helped her for purchasing domestic needs. In the year 2009, after ten days from the Deepavali festival, by promising to marry her, the accused invited P.W.1 for sexual intercourse. Since P.W.1 refused for the same, the accused by putting his hand on her head made a promise as he would marry her. Thereafter, he had sexual intercourse with her, hence, P.W.1 had become pregnant. When the same was informed to the accused, he threatened P.W.1 alleging that if the same has been disclosed to anybody, he would commit suicide. Further, he insisted her to abort the fetus. When the accused compelled P.W.1 to abort the fetus by saying that after return from Singapore, definitely he would marry her, the other accused had also in support of the promise made by the accused.

(ii) After the promise made by the accused, the accused, P.W.1, her grandmother P.W.8 - Uma, P.W.9 - Kalaimani and P.W.2 - Amutha all are went to the hospital situated at Pattukkottai, wherein the Doctor refused to abort the fetus, hence, all were went to Dhanalakshmi Hospital, wherein P.W.11 - Dhanalakshmi had aborted the fetus.

(iii) After abortion, P.W.11 handed over the fetus along with Red colour T-shirt and brown colour drawer and in turn, the same was buried on the backside of P.W.1's house.



(iv) On 16.07.2010, around 07.30 hours, when P.W.1 went to the house of the accused and asked him to marry her, the other accused, who present there, abused her in filthy language. After the said incident, P.W.1 consumed poison, for which, she has taken treatment in a hospital run by P.W.12-Dr.Rajendran. Thereafter only, she lodged a complaint before the All Women Police Station, Alangudi, under Ex.P.1.

(v) After receipt of the said complaint, one Tmt.Kalaiselvi, the then Head Constable assigned C.S.R. number and thereafter, she placed the said complaint before P.W.25 - Tmt.Kavitha, for enquiry.

(vi) After enquiry, on 17.08.2010, P.W.25 - Tmt.Kavitha, the then Sub-Inspector of Police, registered a case against the accused in Crime No.291 of 2010, for the offence under Sections 417 and 420 I.P.C. The printed F.I.R. is marked as Ex.P.1.

(vii) After registration of the case, P.W.26 - Balamurugan, the then Inspector of Police, All Women Police Station, took up the same for investigation. He examined the witnesses and recorded their statements. On 18.09.2010, he altered the Sections of law under Ex.P.10 as 417, 420, 294(b) and 506(i) IPC. On 28.08.2010, he sent a letter to P.W.22- Venkatasubramanian, the then Tahsildar, Karampakudi, for recovering the fetus, which was buried in the house of P.W.1.

(viii) On 03.09.2010 in the presence of P.W.22 - Venkata Subramanian, P.W.10 - Subbulakshmi, the then Village Administrative Officer, P.W.14 - Dr.Jansi Rani and P.W.15 - Chellamani, the then Police Constable, P.W.26, who is the Investigating Officer, recovered M.O.1 to M.O.3.

(ix) In continuation of investigation, on 04.09.2010 around 09.00 a.m., near Karampakudi Bus Stand, P.W.26 arrested the fourth accused. Thereafter, since he got transfer, he handed over the case records to P.W.27 - Meenakshi, for further investigation.

(x) P.W.27 - Meenakshi, the then Inspector of Police, All Women Police Station, conducted the investigation and on 16.12.2011 she submitted an application before the learned Judicial Magistrate, Alangudi, seeking permission to conduct medical examination on the victim girl as well as to the accused. In turn, in view of the proceedings issued by the learned Magistrate, P.W.19 - Dr.Malathi attached with Raniyar Hospital, Pudukkottai, on 26.06.2012 examined the victim girl and issued a certificate under Ex.P.3, as there was a symptom of abortion on P.W.1.



(xi) Similarly, P.W.23 - Dr.Ramalatha and P.W.24-Dr.Sathish examined the accused, issued age certificate to the accused as the age of the accused is around 26 years. In this regard, the certificate issued by P.W.23 was marked as Ex.P.6. Further, P.W.24 issued a certificate under Ex.P.8 stating that there was no symptom found on the body of the accused that he is incapable of performing sexual intercourse. The age certificate issued by P.W.23 in respect of the victim girl was marked as Ex.P.7. In the said certificate, it has been stated that the age of P.W.1 was around 21 years.

(xii) In continuation of investigation, through P.W.22 Tahsildar, Karampakudi, P.W.27 forwarded M.O.1 to M.O.3 for chemical examination. In turn, on receipt of the material objects, P.W.21 - Jeya, the Scientific Assistant, Forensic Science Department, Trichy, examined the same and issued a report under Ex.P.5 stating that no blood is detected in M.O.1 to M.O.3. After receipt of the said certificate, P.W.27 examined the Doctors and recorded their statements. Finally, after concluding investigation, he filed a final report that all the accused are liable to be convicted under Sections 90, 417, 420 and 376 I.P.C. r/w. Section 109 I.P.C.

6.From the above materials, the learned trial Judge framed charges against the accused under Sections 376 r/w. Section 90 I.P.C. and also framed charges against the remaining accused under Sections 294(b), 506(ii), 417 and 420 I.P.C. All the accused denied the same as false and opted for trial. Hence, they were put on trial.

7.During the course of trial proceedings, in order to prove their case, on the side of the prosecution, 27 witnesses were examined as P.W.1 to P.W.27 and 10 documents were exhibited as Ex.P.1 to Ex.P.10, besides three material objects [M.O.1 to M.O.3].

(i) Out of the said witnesses, P.W.1, who is the victim girl, narrated the occurrence as alleged by the prosecution.

(ii) P.W.2 - Amutha, who is the cousin sister of P.W.1, claims that during the relevant point of time, in Dhanalakshmi Hospital, after abortion, the fetus of P.W.1 was handed over to them.

(iii) P.W.3 - Maheswari, who is the resident of the same Village claims that due to the reason that the first accused refused to marry P.W.1, she consumed poison and took treatment.



(iv) P.W.4 - Devi gave evidence that P.W.1 told to her about the promise made by the accused and about the abuse made by the other accused.

WEB COPY (v) P.W.5 - Thenarasu, P.W.6 - Ravichandran and P.W.7 - Chandrasekaran, who are the relatives of P.W.1 speaks about the occurrence as that of the evidence given by P.W.3.

(vi) P.W.8 - Uma and P.W.9 - Kalaimani, who are the alleged witnesses, before the trial Court did not support the case of prosecution. Hence, both of them were treated as hostile witnesses.

(vii) P.W.10 - Subbulakshmi and P.W.15 - Chellamani, who are the Officers working in the Revenue Department, speaks about the requisition given by the Investigation Officer in respect of tracing out of fetus of P.W.1, which was buried in P.W.1's house and about the recovery of M.O.1 to M.O.3.

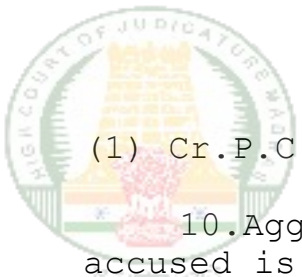
(viii) P.W.11 - Dhanalakshmi, who was working as Staff Nurse, gave evidence as during the relevant point of time, P.W.1 came to her husband's hospital with bleeding. She would further state that while at the time of giving treatment to P.W.1, she has been administered with Stembogram injection.

(ix) P.W.12 - Dr.Rajendran, P.W.14 - Dr.Jansirani, P.W.19 - Dr.Malathi, P.W.20 - Dr.Ilayaraja, P.W.23 - Dr.Ramalatha and P.W.24 - Dr.Sathish, who are the Doctors, gave evidence as during the time of investigation, they examined P.W.1 and the accused, issued age certificate to the accused and P.W.1 and about the consumption of poison by P.W.1.

(x) P.W.25 - Kavitha, P.W.26 - Balamurugan and P.W.27 - S.Meenakshi are the Police Officers and they spoke about the receipt of complaint from P.W.1, registration of the case, details of investigation and about the filing of final report.

8.When the above incriminating materials were put to the accused under Section 313 Cr.P.C., all the accused denied the same as false. However, they did not choose to examine any witness or mark any document on their side.

9.Having considered all the materials placed, the learned Sessions Judge, Mahila Court, Pudukkottai, came to the conclusion that the first accused in this case is guilty under Section 420 I.P.C. and accordingly, sentenced him as stated in Paragraph 2 of this judgment and acquitted the other accused under Section 235



(1) Cr.P.C.

10. Aggrieved over the said conviction and sentence, the accused is before this Court with this Criminal Appeal.

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11. I have heard Mr. R. Anand, learned counsel appearing for the appellant and Mr. M. Muthumanikkam, learned Government Advocate (Criminal side) appearing for the State and perused the materials available on record.

12. The learned counsel appearing for the appellant would contend that from the date on which the alleged complaint has been received by the Police Officer till the filing of final report, they have not followed the mandatory procedure, which has to be necessarily followed during the time of investigation. He would further submit that according to the case of prosecution, immediately after the occurrence, P.W.1 consumed poison, for which, she had been treated by P.W.12-Dr. Rajendran. In respect of the same, a complaint has also been lodged, but for the said complaint, no action will be initiated by the police. He would further submit that in the material objects recovered, there was no symptom that the fetus was buried as alleged by the prosecution and therefore, the prosecution has not proved its case beyond reasonable doubt.

13. Per contra, the learned Government Advocate (Criminal side) appearing for the State would contend that the evidence given by the prosecution witnesses is sufficient to hold that the accused herein had cheated the victim girl and therefore, he is liable to be convicted under Section 420 I.P.C. and prayed for dismissal of the Criminal Appeal.

14. From the materials available on record, it is apparent that the story projected by the prosecution discloses the fact that during the time of occurrence, the accused herein after making false promise, committed sexual intercourse with P.W.1 and after she became pregnant, refused to marry her. Hence, the said story attracts the cognizable offence. In general, it is the duty of the Police Officers to register a case immediately if the allegation leveled against the accused seems to be cognizable. But, P.W.27, who conducted further investigation in this case, had admitted in her cross-examination as the complaint pertains to the case has been received by the Police on 20.07.2010 and thereafter, F.I.R. has been registered on 28.07.2010. Further, the said F.I.R. reached the Court on 23.08.2010 at 01.00 p.m.

15. Now, on considering the delay in every area, particularly, in assigning with the C.S.R. number, registration of the case, the

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



Police Personnels, who investigated the case committed atrocity on the complaint given by P.W.1, who is the poor victim. Without any reasons, the complaint given by P.W.1 had not been treated as a complaint to resolve the grievance addressed by P.W.1. For the said score alone, all the Police Officers, who dealt with this case are liable for disciplinary action.

16.Secondly, it is the case of the prosecution that before lodging the complaint pertains to this case, P.W.1 while at the time of taking treatment for consumption of poison, lodged a complaint and the same was intimated to the police. In respect of the same also, the Investigation Officer gave evidence as no case has been registered for the said incident. Further, the story put forth by the prosecution discloses the fact that during the time of investigation, they recovered M.O.1 to M.O.3, which are the material objects to show that the fetus of P.W.1 was aborted in the hospital run by the husband of Dhanalakshmi. In this regard, while at the time of giving evidence as P.W.11, the said Dhanalakshmi had denied that no such abortion had happened in the Hospital. In this regard, she simply states that during the relevant point of time, P.W.1 was brought to the Hospital with bleeding. In otherwise, she did not say anything about the abortion and other things.

17.Corresponding to the said evidence, the material objects collected, which are the prima facie evidence to show that the fetus was aborted, were examined by P.W.21 and she issued a report stating that there was no blood detected in the material objects collected. In such circumstances, if the story put forth by the prosecution that the fetus was handed over to P.W.1 by P.W.11 is true one, definitely on chemical examination, there may be a possibility of detecting blood. Therefore, the said circumstance creates a doubt whether P.W.1 became pregnant during the act of the accused. Though the relatives of P.W.1 gave evidence in support of the prosecution, in order to substantiate the same, the materials collected by the prosecution and the evidence given by the Expert, who examined the material objects, show two different versions in respect of abortion of P.W.1.

18.It is a general rule that if two sets of evidence are projected on a single issue, the same will fatal to the case of prosecution. Therefore, in all totalities, the evidence given by the prosecution witnesses left a doubt whether due to the act of the accused, P.W.1 became pregnant and consumed poison. Accordingly, in the said circumstances, I am not in a position to hold that during the time of occurrence, the accused herein cheated P.W.1. Further, the necessary ingredients, which are required for proving the offence under Section 420 I.P.C., is not



shown in this case and therefore, the conviction and sentence imposed by the learned Sessions Judge, Mahila Court, Pudukkottai, is liable to be set aside.

19. In the result, this Criminal Appeal is allowed and the conviction and sentence dated 12.10.2015, imposed in S.C.No.46 of 2013, by the learned Sessions Judge, Mahila Court, Pudukkottai, is set aside and the appellant is acquitted from the charge. The fine amount, if any, paid by him shall be refunded to him. Bail bond, if any, executed by the appellant shall stand cancelled.

Sd/-

Assistant Registrar (CS II)

// True Copy //

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Sub Assistant Registrar (CS)

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To

1. The Sessions Judge,
Mahila Court,
Pudukkottai.
2. The Judicial Magistrate, Alangudi,
Pudukkottai District.
3. Do-Thro' The Chief Judicial Magistrate,
Pudukkottai District.
4. The Superintendent, Central Prison,
Tiruchirappalli.
5. The District Collector, Pudukkottai District.
6. The Superintendent of Police,
Pudukkottai District.
7. The Director General of Police, Mylopure,
Chennai.
8. The Inspector of Police,
All Women Police Station,
Alangudi in-charge Karampakudi Police Station,
Pudukkottai District.



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

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Copy to

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.PON KARTHIKEYAN, Advocate (SR-28367[F] dated
07/09/2021)

Judgment in
Criminal Appeal (MD) No.335 of 2015
06.09.2021

PK(CO)
SB(20.09.2021) 9P 13C