

BAIL SLIP

The Appellant/1st Accused namely, Anandakumar, S/o. Paramasivam was directed to be released on bail made in CRL.MP(MD).No. 3311 of 2016 in 128/2016 dated 20/04/2016 on the file of the Madurai Bench of Madras High Court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED : 13.07.2021

ORDER PRONOUNCED : 03.09.2021

CORAM :

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**
Crl.A. (MD) No.128 of 2016

Anandakumar ... Appellant/Accused No.1
vs.

The State represented by
The Inspector of Police,
Kalugumalai Police Station,
Thoothukudi District.

... Respondent/Complainant

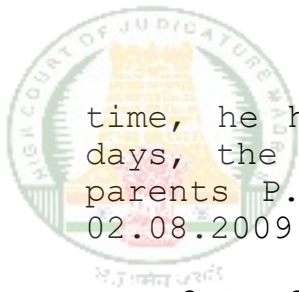
PRAYER:- This Appeal filed under Section 374 (2) of the Code of Criminal Procedure, to call for the records relating to the judgment dated 11.03.2016 made in S.C.No.210 of 2010 on the file of the learned Sessions Judge, (Fast Track Mahila Court) Thoothukudi, convicting the appellant for the offence under Section 417 of IPC and sentencing to undergo one year rigorous imprisonment and for payment of Rs.3,000/- in default, to undergo two months rigorous imprisonment and to set aside the same.

For Appellant : Mr.V.Sasikumar
For Respondent : Mr.T.Senthil Kumar
Government Advocate (Crl.Side)

JUDGMENT

This Criminal Appeal is filed against the judgment dated 11.03.2016 made in S.C.No.210 of 2010 on the file of the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi.

2.The case of the prosecution is that A1 is the son of A2 and A3. The 1st accused is the neighbour of P.W-1 to P.W-3. He had developed love affair with PW1 and thereby promised to marry her. On 24.05.2009, P.W-1 was at home alone. Her parents, P.W-2 and P.W-3 had gone for work. The 1st accused had entered the house of P.W-1 and spent time with P.W-1, who was alone at home. In due course of



time, he had sexual intercourse with her. Subsequently on several days, the 1st accused had sexual intercourse with P.W-1, when her parents P.W-2 and P.W-3 were away for their work particularly on 02.08.2009.

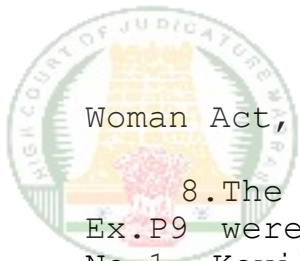
3. On 25.10.2009, similarly the 1st accused had entered into the house of P.W-1 and in the absence of P.W-2 P.W-3, he had sexual intercourse with P.W-1. At that time, unexpectedly P.W-2 & P.W-3, the parents of P.W-1, came to the house. They found the act of PW-1 and the 1st accused. The 1st accused was caught red-handed. When he was enquired by P.W-2 and P.W-3, he informed them that he will marry their daughter, P.W-1. Based on the same, on 26.10.2009, P.W-2 and P.W-3 went to the house of the 1st accused and asked the parents of the 1st accused viz., A2 and A3 to marry their daughter, P.W-1 to the 1st accused. The parents of the 1st accused are the accused 2 and 3 in this case. They informed P.W-1 and P.W-2 that they can arrange the marriage in the Tamil month of 'Thai'.

4. On 29.12.2009, by around 11.00 am., when P.W-1 to P.W-3 went to the house of the 1st accused, the parents of the 1st accused informed them that he was not at home. He had gone out of station and he will return only after two days. Similarly, on 01.01.2010, P.W-1 to P.W-3 went to the house of the 1st accused and sought the date of marriage from A2 and A3. The parents of the 1st accused, A2 and A3 informed them that they will have a marriage talk in the presence of the Panchayatdars. Accordingly, on 01.01.2010, in the presence of the Panchayatdars, a marriage agreement was prepared. In the presence of the elders in the Panchayat, the parents of the 1st accused, even though the 1st accused was out of station, entered into a marriage agreement and the same was signed by them on 01.01.2010. After that, they took P.W-1 to their house.

5. In the house of the 1st accused, A2 and A3, parents of the 1st accused, brother, nephew and other relatives, Subramanian, Oorkavalan, had shouted P.W-1 stating that whether she had relationship with A1 alone or any other people and that she cannot be a daughter-in-law of that family. The accused 2 to 6 threatened her that if she resided in the house of A1, they will murder her.

6. On 02.01.2010, the accused 1 to 6 pulled her by the hand and pushed her out from the house and also threatened her that they will murder her if she enter the house of A1. On coming to know of the same, the parents and other relatives of P.W-1 came to the house of the 1st accused and objected to their conduct. Therefore, P.W-1 accompanied P.W-2 and P.W-3 and came to Kalugumalai Police Station and lodged a complaint under Ex.P1.

7. P.W-11, Latha, Sub inspector of Police, Kalugumalai Police Station on receipt of the complaint under Ex.P1 had registered FIR under Ex.P9 against the accused under Sections 147, 417, 376 and 506



Woman Act, 1998.

8.The original complaint under Ex.P1 and the original FIR under Ex.P9 were sent to the Court of the learned Judicial Magistrate No.1, Kovilpatti and the copies of the same were placed before P.W-12, Inspector of Police, Kalugumalai Police Station for investigation.

9.P.W-12, Rajasundar, Inspector of Police, Kalugumalai Police Station, on receipt of the copy of the FIR under Ex.P9 and on receipt of the copy of the complaint under Ex.P1 had proceeded to the house of the accused 1 to 3 and to the house of P.W-1 to P.W-3. He prepared Observation Mahazar under Ex.P4 and Rough Sketch under Ex.P10 in the presence of the witnesses, P.W-8, Tamilar Siva and Selvaraj.

10.Further, P.W-12, Rajasundar had examined the witnesses, P.W-1- Mariammal, P.W-2 - Madasamy, P.W-3 - Lakshmi, P.W4 - Mariyamuthu, P.W-5 - Manikandan, P.W-7 - Sivakumar, one Gurusamy and P.W-11 - the Sub Inspector of Police and recorded their statements. He had sent P.W-1 to the Government Hospital for medical examination on the requisition obtained from the Court of the learned Judicial Magistrate No.1, Kovilpatti along with police escorts. The learned Judicial Magistrate No.1, Kovilpatti, had given requisition under Ex.P11 and P.W-12 had obtained medical examination report from the Government Hospital, Kovilpatti. Thereafter, he was transferred and on transfer, P.W-13, Sabhumukar, Inspector of Police took charge in the Kalugumalai Police Station. He had proceeded with the investigation and examined the Doctor, who had examined the 1st accused and also the Doctor, who had examined the prosecutrix, PW1. He arrested the 1st accused and his mother, A3 at Kumaresan Nagar and produced them before the learned Judicial Magistrate, Kovilpatti concerned along with remand request. He had obtained school certificate regarding the age of the prosecutrix.

11.After completion of the investigation, P.W-13, Sabhumukar had laid the final report before the Court of the learned Judicial Magistrate No.1, Kovilpatti against the 1st accused under Sections 417, 376 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998 and as against the accused 2 to 6 under Sections 417, 376 and 506(2) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998.

12.On receipt of the final report of the investigation under Section 173 of Cr.P.C by the learned Judicial Magistrate No.1, Kovilpatti, he had taken cognizance of the offences and numbered the case as P.R.C.No.14 of 2010. On receipt of summons from the learned Judicial Magistrate No.1, Kovilpatti, the accused 1 to 6 appeared before him. On appearance of A-1 to A-6 before the learned Judicial Magistrate - I, Kovilpatti, they were furnished with copies of the



alleged in the final report of the investigation were triable before the Court of the learned Sessions Judge, the learned Judicial Magistrate - 1, Kovilpatti had committed the case in P.R.C.No.14 of 2010 to the Court of the learned Sessions Judge, Thoothukudi.

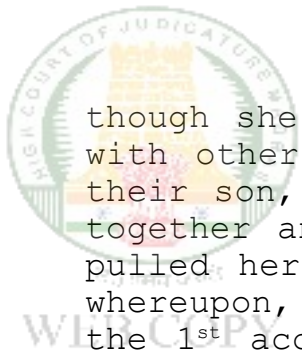
13.The learned Sessions Judge, on receipt of the copy of the final report and the records in P.R.C.No.14 of 2010 from the Court of the learned Judicial Magistrate - 1, Kovilpatti, had made over the case to the learned Principal District and Sessions Judge, Thoothukudi. On appearance of the accused before the learned Principal District and Sessions Judge, Thoothukudi, the case was numbered as S.C.No.210 of 2010 and made over to the Court of the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi. The accused were bound over to the Court of the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi.

14.On appearance of the accused, the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi had framed charges against the 1st accused under Sections 417, 376 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998 and as against the accused 2 to 6 under Section 506(2) of IPC. Charges were read over to the accused 1 to 6 and explained in Tamizh to the accused 1 to 6. When the charges were read over and explained to the accused 1 to 6 in Tamizh, the accused pleaded not guilty and claimed to be tried. Therefore, the learned Sessions Judge had ordered trial.

15.During trial, prosecution had examined 13 witnesses as P.W-1 to P.W-13 and marked 11 documents as Ex.P1 to Ex.P11 and marked one material object as M.O.1.

16.P.W-1, prosecutrix, in her deposition, had narrated the incident leading to the development of friendship into love and subsequently, when the 1st accused came to her house, when she was alone and offered her to marry her, giving promise to her. She had further in her deposition stated that the Accused had forced her to indulge in sexual intercourse on the ground that he alone will marry her. She had also deposed to the fact that on 02.08.2009 her parents came unexpectedly to the house, when they were on compromising position.

17.P.W-2, Thiru.Madasamy, is the father of prosecutrix. He had also spoken regarding the subsequent development that when he and his wife questioned the 1st accused, he agreed to marry their daughter, prosecutrix. Therefore, the parents of P.W-1 went to the house of the 1st accused, whereupon, the parents of the 1st accused viz., A2 and A3 agreed to perform the marriage of the 1st accused with the prosecutrix, P.W-1. Subsequently, the conduct of the parents of the 1st accused in entering a written agreement in the presence of the Panchayatdars was such that though they will accept the prosecutrix as their daughter-in-law and took P.W-1 to their house, subsequently they started harassing her by using the words as



though she was living a wayward life indulging in sexual pleasures with other people. They threatened her that she cannot live with their son, if she stays with their family, the accused 2 to 6 join together and will put an end to her life. Also the accused 2 to 4 pulled her by their hand and pushed her to go outside the house, whereupon, the parents of the prosecutrix went to the residence of the 1st accused and questioned A2 to A6. There was an altercation between them resulting in lodging of the complaint, under Ex.P1. The said fact was mentioned in the deposition of P.W-2 and P.W-3, who are the parents of P.W-1.

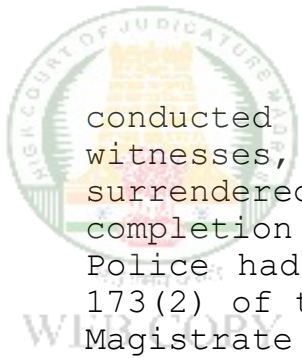
18.P.W-4, Thiru.Mariyamuthu was the witness to the Panchayath held between the parents of P.W-1 and the parents of the 1st accused, which was duly entered in writing and signed by the witnesses including him. P.W5, who is the friend of A1, has turned as hostile, but in the examination in chief, he had stated the fact that the 1st accused informed him that he is in love with the prosecutrix, P.W-1.

19.P.W-6-the Doctor, Kaleeswari had examined the prosecutrix, P.W-1 at Government Hospital, Kovilpatti on the requisition of the learned Judicial Magistrate No.1, Kovilpatti and based on the requisition of the Investigation Officer, P.W-12, who had in his deposition stated that she had conducted the clinical examination on the prosecutrix and issued the medical examination report of the prosecutrix, Ex.P2. She had found that the prosecutrix is subjected to sexual intercourse.

20.P.W-7, Sivakumar had also spoken about the fact of conducting the Panchayat between P.W-1 to P.W-3 and the accused 2 to 6. He had also spoken about the fact of writing down the marriage agreement, which was duly signed by both parties. P.W-8, Tamilar Siva stood as witness for the Observation Mahazar under Ex.P4 and the Rough Sketch under Ex.P10 prepared by the Investigation Officer, P.W-13 in the house of the accused.

21.P.W-9, Dr.Sankar had examined the 1st accused on the requisition of the learned Judicial Magistrate No.1, Kovilpatti. P.W-10 Dr.Jeyalakshmi had spoken regarding the age of the prosecutrix and on the basis of the medical examination, she had assessed the age of the prosecutrix as 18. The requisition of the learned Judicial Magistrate No.1, Kovilpatti is marked as Ex.P8. P.W-11, Latha, the Sub Inspector of Police had registered a case under Ex.P9. P.W-12, Raja Sundar is the Investigation Officer, who had conducted the investigation after visiting the scene of crime and prepared Observation Mahazar under Ex.P4 and Rough Sketch under Ex.P10.

22.P.W-13, Sabhumukar is also the Investigation Officer. After joining duty, he had proceeded with the investigation from where the earlier officer had conducted the investigation. P.W-13, Sabhumukar, Sub Inspector of Police, Kalugumalai Police Station, had



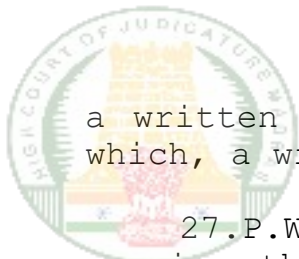
conducted the investigation and recorded the statement of the witnesses, the Doctor, Sankar, P.W9. The rest of the accused surrendered before the Court concerned and released on bail. After completion of the investigation, P.W-13, Sabhumukar, Inspector of Police had laid a final report of the investigation under Section 173(2) of the Code of Criminal Procedure before the learned Judicial Magistrate No.1, Kovilpatti.

23.After completion of the prosecution evidence, the learned trial Judge had examined the accused 1 to 6 under Section 313(1) of Cr.P.C. The accused 1 to 6 denied the incriminating evidences against them. After completing the 313(1) proceedings, the prosecution and the defence were heard. Based on the arguments of the learned counsel on either side and on analyzing the evidence of the entire witnesses through P.W-1 to P.W-13 and the documents Ex.P1 to Ex.P11 and the material object, M.01, the learned trial Judge had convicted the 1st accused and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.3,000/-, in default, to undergo rigorous imprisonment for two months for the offence under Section 417 of IPC and the 1st accused was found not guilty for the offence under Sections 376 and 4 of Tamil Nadu Prohibition of Harassment of Woman Act 1988 and the accused 2 to 4 and 6 are found not guilty for the offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act 1988 and Section 506(2) of IPC. A-5 died before the trial commenced.

24.Aggrieved by the said judgment of conviction and order of sentence, the 1st accused alone had preferred this appeal.

25.The learned counsel for the appellant/accused had submitted his written arguments. The prosecution had focused as though the 1st accused on the promise to marry P.W-1 forced her to have intercourse with him. P.W-1 had in her evidence clearly stated that she was in love with the 1st accused. When she was in compromising position with the 1st accused on 25.10.2009, her parents had entered into the house unexpectedly and seen it. The parents of the 1st accused, A2 and A3 agreed to perform the marriage within a week based on the Panchayath. After taking her to the family of the 1st accused, the accused 1 to 6 joined together and threatened her. P.W-1 to P.W-3 in their deposition stated that while the parents of P.W-1 approached the accused 2 to 6, they demanded 20 sovereigns of gold and Rs.20,000/- cash as dowry. The occurrence is said to have taken place on 25.10.2009, but the complaint was registered only on 02.01.2010. The enormous delay had not been explained by the prosecution.

26.P.W-2 had approached P.W-7, who claimed to be Panchayathdar to convene the Panchayath against the appellant. P.W-1 in her complaint dated 02.01.2010, had stated that the appellant did not appear before the Panchayat held on 01.01.2010, Therefore, P.W-1 had



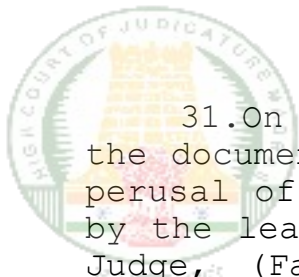
a written agreement to marry the daughter of P.W-2 and P.W-3, for which, a written memorandum was executed.

27.P.W-7 was the Panchayathdar. The prosecution had failed to examine the main witnesses, namely, Muniasamy, Sankardoss who are also the Panchayathdars. The written agreement arrived in the Panchayath has no legal sanctity. No Panchayat was held on 01.01.2010 and based on the violation of memorandum, the same cannot be entertained. P.W-1, prosecutrix is not a minor. She attained the age of majority and is aware of the consequences of indulging in sex with the person known to her. Therefore the offence under Section 417 of IPC is not attracted. There are no ingredients made out by the prosecution to attract Section 375 of IPC as defined in Section 375 of IPC. Therefore, the conviction under Section 417 of IPC is to be set aside. The entire evidences are much suspicious. The prosecution had miserably failed to prove the charges against the appellant under Section 417 of IPC. Therefore, the conviction of the accused by the learned trial Judge is to be set aside and the accused is entitled to be acquitted.

28.The learned Government Advocate (Crl.Side) by way of reply had clearly pointed out that the witnesses, P.W-1 to P.W-13 had spoken cogently. The evidence of P.W-1 was corroborated by P.W-2 and P.W-3, who are the parents of P.W-1. Since P.W-1 and A1 resided as neighbours, on seeing the act on 25.10.2009, the parents of the prosecutrix enquired the accused, whereupon, he promised to marry the prosecutrix. Subsequently, there was a Panchayat. The fact of holding Panchayat was spoken by P.W-4, P.W-5 and P.W-7. P.W-5, who was the friend of A1, was the hostile witness. He had stated that the 1st accused was in love with P.W-1. That much of his evidence is reliable.

29.The learned Government Advocate (Crl.Side) had submitted that the evidence of the prosecution was proved through P.W-1 to P.W-4 and P.W-7. The evidence of P.W-4 and P.W-7 will be sufficient to prove the factum of holding the Panchayath for marriage between P.W-1 and the 1st accused. Since the prosecution had not filed any appeal against the acquittal of A1 to A6 for the charges as discussed above, the learned Government Advocate (Crl.Side) submitted that to convict the accused under Section 417 of IPC, the evidence is very much available and there is no perverse finding. Therefore, the appeal is to be dismissed and the judgment of conviction imposed on the sole accused is to be confirmed and the appeal is to be dismissed as having no merits.

30.On perusal of the entire materials, the deposition of witnesses, P.W-1 to P.W-13, the documents, Ex.P1 to Ex.P11 and the material object, M.01, it is found in paragraph No.17 of the judgment dated 11.03.2016, the learned trial Judge had discussed elaborately and arrived at a logical deduction. Therefore, nothing



31.On perusal of the materials, the witnesses, P.W-1 to P.W-13, the documents, Ex.P1 to Ex.P11 and the material object, M.01 and on perusal of the judgment dated 11.03.2016 and as rightly pointed out by the learned Government Advocate (Crl.Side), the learned Sessions Judge, (Fast Track Mahila Court) Thoothukudi had discussed the evidence and entire materials available before her and arrived at a conclusion that the offence under Section 417 of IPC is attracted.

32.Only after analyzing the entire evidence and assessment of the entire materials, the learned trial Judge had acquitted the accused 1 to 6 from the charge under Section 506 (ii) of IPC. Therefore, the learned trial Judge had properly analyzed the entire materials, in the light of the Indian Evidence Act. Therefore, nothing is found perverse.

33.In the light of the above discussions, the judgment dated 11.03.2016 made in S.C.No.210 of 2010 on the file of the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi, convicting the sole appellant for the offence under Section 417 of IPC and sentencing him to undergo one year rigorous imprisonment and to pay a fine of Rs.3,000/-, in default, to undergo two months rigorous imprisonment is found acceptable. Therefore, the same is hereby confirmed. The contentions raised in the appeal is rejected as having no merits. The point for consideration is answered against the appellant and in favour of the respondent.

In the result, this Criminal Appeal is dismissed as having no merits. The judgment and the conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi in S.C.No.210 of 2010 is confirmed. **The learned Sessions Judge, Fast Track Mahila Court, Thoothukudi, is directed to issue warrant to secure the appellant/accused to undergo remaining period of sentence and to collect the fine from the accused.** The period of detention already undergone by the appellant/accused will be set off under Section 428 of Cr.P.C.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

mm/dh

To

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

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



2.The Inspector of Police,
Kalugumalai Police Station,
Thoothukudi ditrict.

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

Copy to

The Section Officer, V.R.Section (2C)
Madurai Bench of Madras High Court,
Madurai

CrI.A.(MD) No.128 of 2016
03.09.2021

SJ(CO)
KB(28.09.2021) 9P 6C