



Bail Slip

Madan @Madankumar, aged 27 years, S/o.Bose was granted Bail in Crl.MP(MD)5277 of 2016 in Crl A(MD) No.235 of 2016 order by this Honourable Court on 12.07.2021.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
03/08/21	09/08/21

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

Crl.A. (MD)No.235 of 2016

Madan @ Madankumar

: Appellant/Sole Accused

Vs.

State rep by
The Inspector of Police,
All Women Police Station,
Manamadurai,
Sivagangai District.
(In Crime No.1/2008)

: Respondent/Complainant

PRAYER: This Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, to call for the records relating to the impugned judgment and sentence passed by Hon'ble Court of Fast Track Mahila Judge, Sivagangai in S.C.No.81 of 2008 dated 07.06.2016.

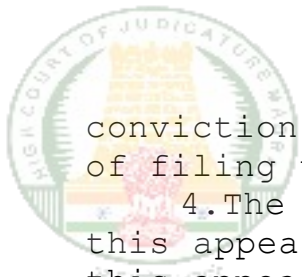
For Appellant	: Mr.M.A.Palanisamy
For Respondent	: Mr.M.Muthumanikkam Government Advocate

JUDGMENT

This present criminal appeal has been filed to set aside the conviction and sentence dated 07.06.2016 made in S.C.No.81 of 2008, on the file of the learned Fast Track Mahila Judge, Sivagangai.

2.The appellant is the sole accused. He stood charged for the offence under Sections 417, 376 and 506(i) of I.P.C. The accused denied all the charges and opted for trial. Therefore, he was put on trial on the charges.

3.After full-fledged trial, the learned Fast Track Mahila Judge, Sivagangai, found the appellant/accused guilty for the offence under Sections 417 of I.P.C., and accordingly, the appellant was convicted and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo three months simple imprisonment. The learned Fast Track Mahila Judge, Sivagangai, had acquitted the accused for the offence under Sections 376 and 506(i) of I.P.C. Challenging the



conviction and sentence, the accused is before this Court, by way of filing the present Criminal Appeal.

4.The relevant facts of the case, which gave rise to filing of this appeal, are necessary to be recapitulated for the disposal of this appeal:-

4.1. PW1-Kamachi is the victim girl in the alleged occurrence. Previous to the occurrence, the accused regularly called the victim girl for attending the field work. At that time, the accused compelled PW1 for marrying him. During the relevant point of time, in a motor room situated at Kannakankudi, the accused requested PW1 for physical conduct. Since PW1 has refused, the accused herein forcibly committed sexual assault and thereafter, he threatened PW1 as if the same was disclosed to others, he will kill her. Consequentially, PW1 became pregnant and after knowing the same, the accused requested PW1 to take medicine for aborting the foetus. Even after taking the medicine, the foetus has not been aborted and therefore, the same was intimated to PW2, who is the mother of PW1. PW2 approached the accused for marrying her daughter and the accused refused to marry PW1. Hence, PW1 lodged a complaint under Ex.P1 in All Women Police Station, Manamadurai.

4.2.On receipt of the complaint given by PW.1, one G.Amirtham, the then Inspector of Police, All Women Police Station, Manamadurai (now deceased) on 10.01.2008 at around 10.00 am., registered a case against the accused in Crime No.01 of 2008 for the offence under Sections 417, 376, 506(i) of I.P.C. The printed copy of the FIR has been marked as Ex.P.10. Thereafter, she visited the scene of occurrence and in the presence of PW12-Muniyandi and one Samayan, she prepared the Observation Mahazar under Ex.P2 and drew the Rough Sketch and the same has been marked as Ex.P11. She examined the witnesses and recorded their statements.

4.3.On 10.01.2008 at around 14 hours near to Thirumansolai Bus Stand, she arrested the accused and sent him to the judicial custody. She submitted an application before the learned Judge for referring the victim girl for medical examination under Ex.P12 and afterwards upon the reference issued by the Court. PW.7-Dr.Jeevarethinam attached with Government Hospital, Manamadurai, on 11.01.2008 examined the victim girl and issued the certificate, under Ex.P3, stating that the foetus found in the victim girl is 24 weeks.

4.4.In continuation of investigation, PW17, the then Inspector of Police submitted an application under Ex.P14 before the Court for medical examination of the accused. In view of the same, PW9-Dr.Mahewaran examined the accused and issued the certificate, under Ex.P4, as the accused is the capable person for doing sexual services.

<https://hosevices.com/online/hosevices/>

After receipt of the proceeding issued by the



learned Judge, he examined PW1 and issued the certificate under Ex.P7 as the age of the foetus is between 20 to 21 weeks. Further, he examined the accused radiologically and issued a certificate under Ex.P6 stating that the age of the accused is 21 years. During the time of investigation, upon the request made by the Investigation Officer, the learned Chief Judicial Magistrate, Sivagangai, sent a letter in D.No.57/2011 dated 07.01.2011, wherein he requested to conduct DNA test to the accused, victim girl and Child Priya born to the victim girl. In view of the said reference, PW16-Tmt.Sujatha, Scientific Assistant, Forensic Department, Chennai, conducted DNA test and issued the report under Ex.P9 stating that the accused herein is the biological father of the child, who is the daughter of victim girl. Ultimately, after recording the statement from the Doctors, who examined the victim girl and accused, the Investigation Officer in this case, namely Kumari, came to the positive conclusion that the accused herein committed an offence under Sections 417, 376 and 506(i) of I.P.C and filed a final report accordingly.

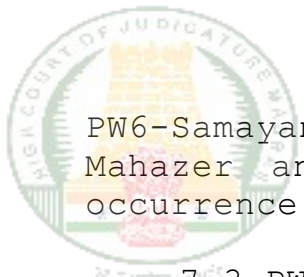
5. Based on the material available on record, the trial Court framed the charges for the offences under Sections 417, 376 and 506(i) of I.P.C. The accused denied the charges and opted for trial. Therefore, the accused was put on trial.

6. During the course of trial proceedings, in order to prove their case, on the side of the prosecution as many as 17 witnesses were examined as PW1 to PW17 and 15 documents were exhibited as Ex.P1 to Ex.P.15.

7. Out of the above said witnesses, PW1- Kamachi is the victim girl in this case. She speaks about the occurrence as during the relevant point of time, the accused forcibly committed sexual assault on her. PW2-Pancchavarnam, who is the mother of the victim girl, has stated about the occurrence as after came into the knowledge, she requested the accused to marry PW1. In spite of the said request, the family members of the accused refused and they did not accept the proposal made by her.

7.1. PW3-Mahalakshmi is the relative of PW1. She deposed before the trial Court as before the occurrence the accused herein regularly came to the house of PW1, for which, she requested the accused not come to PW1's house. PW4-Puvaneshwari is the resident of Kannakankudi. She knows about the accused and PW1. According to her, after occurrence, she attempted to paralyze the dispute having by the victim by way of performing the marriage with the accused. Since the accused refused to marry PW1, she brought PW1 to Police Station and lodged a complaint.

<https://hcservices.ecourts.gov.in/PW5-Vidyalaiyar>, alleged to be the occurrence witness and



PW6-Samayan, who is the witness to the preparation of Observation Mahazer and Recovery Mahazar, did not say anything about the occurrence. Hence, they have been treated as hostile witness.

7.3.PW7-Dr.Jeevarathinam attached with Government Hospital, Manamadurai, speaks about the medical examination of the victim girl and also the issuance of certificate in respect to the foetus found in the body of PW1. PW8-Vellaian alleged to be the occurrence witness has also not supported the case of the prosecution.

7.4.PW9-Dr.Maheshwaran, attached with the Government Hospital, Manamadurai, gave evidence in respect of the examination of the accused and issuance of potency certificate. PW-10 and PW-11, who are also alleged to be occurrence witnesses, did not support the case of the prosecution. Similarly, PW12-Muniyandi, who is the witness to the preparation of the Observation Mahazer, also did not speak in favour of the prosecution.

7.5.PW13-Dr.Jeyaraman speaks about the examination of accused and also about the examination of the foetus. According to him, at the time of occurrence, the accused is aged about 21 years and the foetus found in PW1 is between 20 to 21 weeks. PW14 and PW15, who are Head Constables, speak about the production of the accused and the victim girl for medical examination. PW16- Sujatha, working in Forensic Department, Chennai, deposed about the DNA test conducted to the accused, victim girl and the child born to PW1.

7.6.PW17, the then Inspector of Police, All Women Police Station, Manamadurai, speaks about the investigation conducted by Kumari, who is the then Inspector of Police of the same station.

8.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 or mark any document on his side.

9.Having considered all the above, the learned Fast Track Mahila Judge, Sivagangai, found that the accused cheated PW1. Accordingly, the appellant/accused was convicted and sentenced as stated supra. Aggrieved by the said conviction and sentence, the appellant is before this Court with this appeal.

10. I have heard Mr.M.A.Palaisamy, learned counsel appearing for the appellant/accused and Mr.M.Muthumanikkam, learned Government Advocate appearing for the State and also perused the records carefully.

<https://hcservices.courts.gov.in/hcservices> learned counsel appearing for the appellant would



contend that while at the time of occurrence, the appellant/accused herein did not have any dishonest intention. In the absence of dishonest concealment of fact, convicting the person under Section 417 of I.P.C is erroneous in law. According to him, the entire occurrence narrated by PW1 was happened with the concurrence of PW1 and therefore, the question of cheating does not arise and the trial Court without considering the same, convicted the accused, which is liable to be set aside.

12.Per contra, the learned Government Advocate (Crl.side) appearing for the State would contend that the result of DNA test proved the fact that the accused herein is the biological father of the child born to PW1. He would further contend that the result of DNA test is the conclusive proof and therefore, setting aside the order passed by the trial Court, does not require in this case.

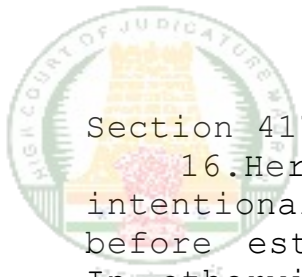
13.I have considered the rival submissions made by the learned counsel appearing on either side.

14.It is an admitted fact that the victim girl while working in the accused farm had friendship with the accused and in the short span, they engaged in sexual relationship more than one time. She submitted her for sexual relationship on more than one occasion voluntarily. In 2008, PW1 lodged the complaint about the offence punishable under Sections 417, 376 and 506(i) IPC. Pending investigation, PW1 delivered the baby. The trial Court upon appreciating the evidence of the prosecutrix, recorded the finding that it was consensual act and thus acquitted the accused for the offence punishable under Sections 376 and 506(i) of I.P.C. However, the trial Court found that the accused guilty for the offence under Section 417 of I.P.C and sentenced as above.

15. Here it is the case, the testimony of PW.1 is very clear that while at the time she was working in the accused form house, she fell in love with the accused and consequentially, she engaged the sexual relationship with the accused. In order to know the consent and other things, the evidence given by PW1 is very clear and for easy understanding, it is necessary to extract the said portion, which reads as follows:-

நான் எதிரியிடம் முதலில் உடலுறவு கொண்டது என் விரும்பத்தின் அடிப்படையில் தான் (நான் இஸ்ட்டப்பட்டு தான் அவரிடம் முதலில் உடலுறவு ,கொண்டதாக சாட்சி கூறுகிறார்) அதன் பிறகும் 2, 3 முறை எதிரியுடன் நான் சம்மதப்பட்டு தான் உடலுறவு கொண்டேன் .

Therefore, the said evidence given by PW1 in her cross-examination is made clear that only after getting her consent, the accused committed the sexual assault. In the said situation, whether it is necessary to see that the conviction of the accused under



Section 417 of I.P.C is sustainable.

16. Here it is the case, there was no promise to marry nor intentional deception by misrepresentation or deceptive practice before establishing physical relationship with the prosecutrix. In otherwise, in respect to the dishonest concealment of fact, there is no evidence available from PW1. In fact, in her evidence, for a suggestion, the prosecutrix presumed that the appellant would marry her in near future. Therefore, in the absence of dishonest concealment of fact, which is the essential ingredient of offence within the meaning of explanation appended to Section 415 I.P.C., a conviction under Section 417 of I.P.C., is not sustainable.

17. In the light of the above discussion, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused, by the learned Fast Track Mahila Judge, Sivagangai, in S.C.No.81 of 2008, dated 07.06.2016, is set aside and the appellant/accused is acquitted of all the charges. The fine amount, if any, paid by him, shall be refunded to him. The appellant/accused is directed to be released forthwith, unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

To:-

1. The Fast Track Mahila Judge,
Sivagangai.
2. The Inspector of Police,
All Women Police Station,
Manamadurai,
Sivagangai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court, Madurai. (2 Copies)

JUDGMENT MADE IN
Cr1.A. (MD) No.235 of 2016
09.08.2021