



BAIL SLIP

The Petitioner/1st Accused namely M.Nagarajan, S/o.Mani, was directed to be released on bail as per the order of this Court dated 20.01.2017 in Crl.MP.No.11697 of 2016 in Crl.RC.No.1302 of 2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2022

CORAM

THE HON'BLE MS. JUSTICE R.N.MANJULA

CRL.R.C.NO.1302 OF 2016

M.Nagarajan

... Petitioner/1st Accused

Vs.

The Inspector of Police,
All Women Police Station,
Sirkali.

... Respondent/Complainant

Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C., to call for the records pertaining to the judgment passed in C.A.No.59 of 2012 on the file of the Sessions Judge, Fast Track Mahila Court, Nagapattinam, dated 21.04.2016, confirming the conviction of the Judicial Magistrate, Sirkazhi in C.C.No.389 of 2008 dated 20.09.2012.

For Petitioner : Mr.A.Mohamed Ismail

For Respondent : Mr.A.Gopinath,
Government Advocate (Crl.side)

ORDER

This Criminal Revision Case has been preferred challenging the judgment of the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam dated 21.04.2016 passed in C.A.No.59 of 2012, confirming the judgment of the learned Judicial Magistrate's Court, Sirkazhi, dated 20.09.2012 passed in



C.C.No.389 of 2008.

2. The Revision Petitioner before this Court was the first accused before the trial Court. P.W.1 - Victim is the defacto complainant.

3. According to the case of the prosecution, the family of the victim and the family of the accused are relatives and at the time of occurrence, the victim was at the house of the accused in order to do some household assistance to the mother of the first accused - second accused; the third accused is her uncle; on 10.10.2004, when she was staying at the house of the accused, the first accused seduced her by stating that he would marry her; by saying so, he had sexual intercourse with her; he repeated the same on subsequent dates also and made her pregnant; when the matter was made known to the family of the first accused, he threatened the victim and abused her in filthy language; the victim delivered a female baby subsequently. Hence, the accused have been charged for the offence under Section 417 of IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act.

4. On the complaint given by P.W.1/victim, a case was registered in Crime No.6 of 2006, All Women Police Station, Sirkazhi under Sections 417, 420, 294(b), 506(ii) of IPC. P.W.19 - DSP, took up the case for investigation, visited the place of occurrence, prepared observation Mahazar and rough sketch in the presence of witnesses; she also enquired the witnesses and recorded their statement; she sent P.W.1/victim and the first accused for medical examination and enquired the doctor who conducted the medical examination and got his report; since she went on transfer, her successor P.W.20 continued the investigation; he took P.W.1, the first accused and the child born to them for collecting their blood samples and sending it to Forensic Laboratory through proper channel. After completing his investigation, he filed the charge sheet against the accused 1 to 3 for the offence under Section 417 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act.

5. After the case was taken on file and on being satisfied with the materials available on record, the learned trial Judge framed the charges against the accused 1 to 3 under Section 417 of IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act. When the accused was questioned, they pleaded innocence and claimed to be tried. Hence, the trial was conducted.



6. During the course of the trial, on the side of the prosecution, 20 witnesses were examined as P.W.1 to P.W.20 and 7 documents were marked as Exs.P1 to P7. When the incriminating materials surfaced in the evidence of the complainant was put to the accused 1 to 3 under Section 313 Cr.P.C., they denied their involvement. On the side of the defence, no witness was examined and no document was marked.

7. After the conclusion of the trial and on considering the evidence available on record, the trial Court convicted the first accused as under :-

Rank	Provision under which convicted	Sentence
A1	417 IPC	One year Simple Imprisonment and a fine of Rs.2,000/- in default to undergo one month simple imprisonment
	4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998	Six months Simple Imprisonment and a fine of Rs.10,000/- and a sum of Rs.50,000/- as compensation to P.W.1

The sentence shall run concurrently.

The second and third accused were found not guilty and they were convicted.

8. The Criminal Appeal filed by the first accused was also dismissed on 21.04.2016. Aggrieved over that, the first accused has filed this present Criminal Revision Case.

9. Heard the learned counsel for the petitioner/first accused and the learned Government Advocate appearing for the respondent/State.

10. The learned counsel for the petitioner/first accused submitted that the victim was a major at the time of the occurrence and the occurrence had taken place with her consent; both the first accused and the victim girl got married to some other persons and settled in their life and hence, the punishment imposed against the first accused may be reduced; the Courts below have not appreciated the evidence in a proper perspective and convicted the accused.

11. The learned Government Advocate (Criminal Side) appearing for the respondent State submitted that the victim has



given a clear cut evidence about the involvement of the first accused in the occurrence and the DNA test of the child born to P.W.1 also proved that the first accused was the father of the child; the first accused had assaulted P.W.1 without any remorse for his own action; hence, this Revision Case should be dismissed.

12. Point for consideration :-

Whether the finding of the guilt of the accused for the offence under Sections 417 of IPC and 4 of the Tamil Nadu Prohibition of Harassment of Women Act by the learned Sessions Judge, based on the materials available on record is fair and proper?

13. The fact that the victim/P.W.1 and the accused are known to each other as relatives, was not denied; P.W.1 was staying at the house of the accused during the relevant time in order to render some household assistance for the second accused; during that time, the first accused seduced the victim by stating that he would marry her if she had sexual intercourse with him; believing his words, the victim allowed him to have repeated sexual intercourse with her; the medical age of the victim was shown to be 19 years at the time of occurrence; the sexual intercourse between the first accused and P.W.1 had taken place more than once; however, her consent was obtained by the first accused only on the assurance that he would marry her.

14. Since the first accused had deserted the victim after she got conceived, the family of P.W.1 went and approached the family of the first accused and requested the first accused to marry P.W.1. P.W.1 was abused by the first accused and he had even assaulted her by kicking on her stomach. The oral evidence of P.W.1 on this aspect is clear and the Courts below have found no reason to reject her evidence. The parents and brother of P.W.1, who were examined as P.W.2 to P.W.4 have also corroborated the evidence of P.W.1. Apart from the oral evidence of the witnesses, the scientific evidence given by P.W.18 - Manimaran, Scientific Expert, would also show that the first accused is the father of the child born to P.W.1. In fact, the evidence of the sexual victims does not require any corroboration for the simple reason that these kinds of occurrences cannot occur in the presence of any third party. In this case, scientific evidence is also available to prove that the first accused had repeated sexual intercourse with P.W.1.

14.1 After P.W.1 got conceived, the first accused started to behave in an indifferent manner. When P.W.1 went to his house and requested him to marry her, he ill-treated her and kicked on



her stomach. No doubt, the above act of the first accused would have caused fear and pain in the mind of P.W.1. Since the age of the victim was found to be above 18 years through medical examination, the lower Court has not convicted the first accused for the offence under Section 376 IPC. Since the accused had got her consent by giving repeated false assurance of marriage, he was convicted for the offence under Section 417 IPC.

15. As per Section 415 of IPC, if anyone dishonestly induces the person to deliver any property or any person, which would likely to cause damage or harm to that person in body, mind, reputation or property, is said to be cheating. For better appreciation, Section 415 of IPC which defines cheating, is extracted as under :-

"415. Cheating -

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

16. Only by believing the words of the first accused that he would marry the victim, the first accused delivered her 'person' to him and thereafter, she got conceived. The first accused changed his attitude and avoided her subsequently. Such conduct on the part of the accused would not only cause harm to the physical integrity of the victim but also affect her mental peace. So the act of the accused is well within the definition of 'cheating'.

17. The Courts below have rightly appreciated the evidence on record and punished the accused for the offence under Section 417 of IPC. The manner in which the first accused treated the victim when she came and requested him to marry, would have caused fear, humiliation and shame in the mind of the victim. So it is right for the Courts below to convict the accused under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act. The learned Appellate Judge has also carefully perused the evidence on record and found the appreciation of the evidence and the findings of the lower Court, is correct. In my opinion, there is no factual or legal infirmity in the judgments of the Courts below and it does not require any interference.



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18. During the course of the argument, the learned counsel for the petitioner/first accused submitted that some indulgence may be shown in the matter of punishment. It is further submitted that the first accused got married and he had two children.

19. The present status of the victim is not known. But the record would show that the first accused had not even chosen to pay the compensation of Rs.50,000/- awarded by the trial Court. The way in which the first accused treated P.W.1 when she came and told him that she got conceived would show that he was remorseless of his action. Further, the responsibility to bring up the child born through the first accused fell on the shoulder of P.W.1. Hence, I find no reason to reduce the punishment imposed against the first accused.

20. Though the first accused was not punished for the offence under Section 376 IPC, the facts of the case would show that the victim is still a victim of the sexual offence only. The compensation amount so ordered by the Courts was not paid by the first accused. The victim has delivered a female baby and it is needless to state about the social stigma and other practical difficulties that would be faced by both P.W.1 and the child. It will be challenging for P.W.1 to bring up the child delivered by her as an unwed mother. In the given social and economic condition, she would face many difficulties including the financial demand to raise the child born out of the crime. The life of the victim with her child have to be rehabilitated by awarding compensation to be payable from the Tamil Nadu Victim Compensation Fund. Hence, I feel it is appropriate to award a compensation of Rs.3,00,000/- to be payable to P.W.1 by the Government from Victim Compensation Scheme within a period of three months from the date of receipt of a copy of this order.

In the result, this Criminal Revision Case is dismissed and the Judgment of the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam, dated 21.04.2016 passed in C.A.No.59 of 2012, is confirmed.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

1. The Sessions Judge,
Fast Track Mahila Court,
Nagapattinam.
2. The Judicial Magistrate,
Sirkazhi.
3. The Chief Judicial Magistrate,
Nagapattinam.
4. The Inspector of Police,
All Women Police Station,
Sirkazhi.
5. The Secretary, Finance Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 9.
6. The Director,
Social Welfare and Women Empowerment Department,
Secretariate, Chennai- 9.
7. The Superintendent of Central Prison,
Trichy.
8. The Public Prosecutor,
High Court, Madras.
9. The Section Officer,
Criminal Section (Records), High Court,
Madras.

Crl.R.C.No.1302 of 2016

BR(CO)
PM/07/03/2022