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Crl.A.No.335 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2023

CORAM :
THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.A.No.335 of 2017

Muthiulla

.. Appellant / Accused

v.

State of Tamil Nadu represented by
The Inspector of Police,
A.W.P.S. Gingee,
Villupuram District.
(Crl.No.17/2015)

.. Respondent/complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, to call for the records in connection with S.C.No.334 of 2016 on the file of the learned Sessions Judge, Fast Track Mahila Court, Villupuram and set aside the conviction and sentence imposed in judgment dated 15.06.2017.

For Appellant : No Appearance

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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JUDGMENT

This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him vide judgment dated 15.06.2017 in S.C.No.334 of 2016, on the file of the learned Sessions Judge, Magalir Neethi Mandram, Fast Track Mahila Court, Villupuram.

2 (i) It is the case of the prosecution that the victim and the appellant were in love with each other; that the appellant promised to marry the victim and that he had sexual intercourse twice near a lake and once in his house, two months prior to 23.08.2015. PW1 victim lodged a complaint on 23.08.2015 to the Sub Inspector of Police, All Women Police station, Villupuram and a case in Cr.No.17 of 2015 dated 23.08.2015 was registered for the offences under Sections 376, 417, and 506(i) IPC.

(ii) PW10-Investigation officer, after registration of the FIR conducted investigation, went to the terrace of the house and prepared observation mahazar [Ex.P2] and rough sketch [Ex.P8] and thereafter, he went to erikarai (lake) and prepared observation mahazar [Ex.P9] and rough sketch [Ex.P10] and examined the witnesses.



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(iii) On 23.08.2015, PW10 arrested the accused and sent him for medical examination. He sent the victim for medical examination. Ex.P6 and Ex.P11, are the certificates of examination for sexual offences for the victim and accused, respectively. On 25.08.2015, the PW1 obtained the swab and smear report [Ex.P13]. On 12.12.2015, he examined the Doctor, who did medical examination on the victim and after examination of witnesses, filed a final report on 04.02.2016, before the learned Judicial Magistrate, Gingee, for the offences under Sections 417, 376 and 506(i) of IPC against the appellant/accused.

(vii) On appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.334 of 2016 and was made over to the Sessions Court, Magalir Neethi Mandram [Fast Track Mahila Court], Villupuram, for trial. The trial Court framed charges u/s.376, 417 and 506(ii) of IPC as against the appellant and when questioned, the appellant pleaded 'not guilty'.

(viii) To prove the case, the prosecution examined 10 witnesses and



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marked 13 exhibits. When the appellant was questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same.

No witness was examined on the side of the appellant nor any document marked.

(ix) On appreciation of oral and documentary evidence, the trial Court acquitted the appellant/accused for the offences under Sections 376 and 506(ii) of IPC and convicted him for the offence under Section 417 IPC and sentenced him to undergo rigorous imprisonment for one year and pay fine of Rs.5,000/- in default to undergo Simple Imprisonment for three months. Hence, the accused has preferred the appeal challenging the said conviction and sentence.

3. There is no representation for the appellant/accused.

4. On perusal of the records and on hearing the submission of the learned Additional Public Prosecutor, this Court finds that in order to substantiate the charge for the offence under Section 417 of IPC, the



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prosecution has only relied upon the evidence of PW1. The evidence of other witnesses viz., the parents and relatives of the victim are in the nature of hearsay. The other witnesses are either witnesses to the mahazars or official witnesses.

5. PW9 is the Doctor who had examined the victim. She had issued Ex.P6-Certificate of examination for sexual offences of the victim, in which she had observed as follows:

“known person 6 months. Promised to marry her and had sexual contact on and off past 4½ months. Now refuses to marry her because of his parents.”

6. PW1 had stated in her evidence that the accused threatened her and forcibly had sexual intercourse with her. However, the trial Court had disbelieved the said version of PW1. PW1 had further stated in her evidence as follows:

“நாங்கள் இருவரும் பேசிக்கொண்டிருப்போம். அவர் என்னை திருமணம் செய்துகொள்வதாக கூறினார். எதிரி என்னை 22.08.2015ம் தேதி தன் வீட்டு மொட்டைமாடிக்கு வரும்படி கூப்பிட்டார். என்னை திருமணம் செய்துகொள்கிறேன் என்று சொன்னார். என்னுடன் உடலுறவு கொண்டார்.”



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It is her version that after having sexual intercourse twice the appellant/accused switched off the mobile phone and did not speak to her.

7. It is trite law that in order to attract the offence of cheating simpliciter, the appellant/accused must have deceived the victim and induced him/her to consent to do any act, which he/she would not have otherwise done. Deception according to the prosecution is that the accused made a false promise to marry the victim.

8. The evidence of PW1 does not suggest that the accused had made a false promise with the intention to deceive the victim. Ex.P6, wherein the Doctor had recorded the earliest version of the victim, which is extracted earlier, shows that the appellant did not agree for marriage because of his parents. The prosecution also had not established the fact that the appellant had switched off the mobile phone. The mobile phone was also not seized, as rightly and fairly pointed out by the learned Additional Public Prosecutor.

9. Breach of promise is different from making a false promise. The



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offence of cheating would not be made out if there is only breach of promise.

The prosecution at best have established that there was a breach of promise and not a false promise. The victim was aware of the consequences of having physical relationship with the appellant and in such circumstances, this Court is of the view that the evidence does not suggest that there is deception in order to attract the offence of cheating under Section 417 of IPC. In this regard, it is useful to refer to the observation made by the Hon'ble Supreme Court in ***Deepak Gulati v. State of Haryana*** reported in [(2013) 7 SCC 675], which is extracted hereunder.

“21. ... There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently.”

10. In the instant case even assuming that the appellant has made a



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false promise to marry and induced the victim to have sexual intercourse, this

Court finds that the consent to have a physical relationship was not on account of the false promise, but due to the acquaintance and mutual love for each other. Therefore, for the aforesaid reasons, the finding of the trial Court holding the appellant guilty for the offence under Section 417 of IPC, is liable to be set aside.

11. In the result, this Criminal Appeal is allowed and the appellant/accused is acquitted of the charge u/s.417 of IPC and he is directed to be set at liberty forthwith unless his custody is required in connection with any other case. The conviction and sentence passed in S.C.No.334 of 2016 on the file of the learned Sessions Judge, Magalir Neethi Mandram, Fast Track Mahila Court, Villupuram, *vide* judgment dated 15.06.2017, are set aside. Fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

06.12.2023

Index : yes/no

Neutral citation : yes/no



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To

1. The Sessions Judge,
Magalir Neethi Mandram,
Fast Track Mahila Court,
Villupuram.

2. The Inspector of Police,
A.W.P.S. Gingee,
Villupuram District.

3. The Public Prosecutor,
High Court, Madras



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SUNDER MOHAN,J.

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