



Crl.A.No.462 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Judgment RESERVED ON : 07.06.2023]

[Judgment PRONOUNCED ON : 04.09.2023]

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.462 of 2017

R.Sriramajayam

.....Appellant

.. Vs ..

The State
Rep.by the Inspector of Police,
All Women Police Station,
Tirukoilur, Villupuram District.

...Respondent

PRAYER: Petition filed under Section 374 (2) of Cr.P.C, to call for the entire records in connection with the S.C.No.192 of 2013 on the file of the Sessions Judge Mahalir Neethi Mandram (Fast Track Mahalir Court) Villupuram and set aside the conviction and sentence imposed by the Sessions Judge, Mahalir Neethi Mandram (Fast Track Mahalir Court), Villupuram.

For Appellant

: Mr.V.Parthiban

For Mr.G.M.Anantha Kumar

For Respondent

: Mr.L.Baskaran

Government Advocate (Crl.Side)

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J U D G M E N T

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The convicted sole accused is the appellant herein.

2. This Criminal Appeal has been filed against the conviction and sentence imposed by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Villupuram, in S.C.No.192 of 2013 by judgment dated 12.07.2017 convicted the appellant for the offence under Section 417 of I.P.C and sentenced to undergo one year R.I and imposed a fine of Rs.2 lakhs in default to pay fine amount to undergo SI for 3 months. The trial Court acquitted the appellant for the offences under Sections 376 and 312 I.P.C.

3. The case of the prosecution is that the victim Prabhavathi, P.W.1 and the appellant are friends from the childhood and the appellant is 4 years younger to P.W.1. After completion of the school education, P.W.1 joined college and the appellant also joined in the medical college at Ram Nagar, Karnataka. Even after, they completed the schooling, the appellant expressed his love towards her and she advised the appellant not to behave like this and it is quite common in the young age. But, the appellant continuously insisted her and due to the said act of the appellant, she starts loving him. The said appellant



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has expressed his willingness to have intercourse with her and initially she refused, but later, due to the promise of marriage, she permitted the appellant to have sex with her and the said act continued for three years.

4. The further case of the prosecution was that she becomes pregnant by the said sexual intercourse and the appellant have given medicine to abort the same. Later, the appellant and her sisters came to the house of P.W.1 and expressed their willingness to marry the P.W.1 and they have taken 2 months time to do the marriage. But, later, the appellant refused to marry her and told that he will marry as per the wish of his parents. P.W.1 made a complaint against the appellant and the same was registered under Sections 376, 417 and 312 of I.P.C and the appellant's parents was also charged under Sections 417 and 109 I.P.C and the same was quashed by an order dated 28.08.2015 in Crl.O.P.No.33029 of 2013.

5. On receipt of Ex.P1, complaint on 09.07.2012, case was registered and after investigation, final report was filed before the concerned Magistrate Court for the offences under Sections 376, 417 and 312 r/w 109 of I.P.C and since the case is exclusively triable for



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the Sessions Court, the case was committed to the learned Principal District Judge and made over to Mahila Court in S.C.No.192 of 2013. Pending the trial, A2 and A3 father and mother of the first accused filed Crl.O.P.No.33029 of 2013 dated 28.08.2015 proceedings against the parents have been quashed and hence, the accused alone face the trial.

6. On consideration of both oral and documentary evidence, the learned Mahila Judge has acquitted the accused of all the charges except Section 417 of I.P.C. For the reasons stated in the impugned judgment, the learned Sessions Judge has held that it is a consensual sex and hence the offence under Section 376 of I.P.C was not made out and the alleged abortion spoken by P.W.1 is disbelieved and further held that no doubt, both the victim and the accused are aware of the consequence of having physical relationship and having taken note of the behaviour and act on the part of the accused playing deception upon the victim, the accused is guilty of the commission of the offence under Section 417 of I.P.C and consequently, liable to be convicted under Section 417 of I.P.C and hence the appeal.



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7. The learned counsel appearing for the appellant contended that P.W.2 gave answer in her examination that she did not know the relationship of her daughter with the accused for the past 6 years in spite of that she being remains along with P.W.1 her daughter.

8. The learned Government Advocate (Crl.Side) made submissions in support of the judgment of the trial Court.

9. Now, the next point to be considered is Whether the sexual intercourse with the prosecutrix by the accused person is on a false 'promise of marriage' and refusing to marry, is it cheating or not?, and punishable under Section 417 of I.P.C.

10. To constitute offence of cheating under Section 415 of I.P.C., the following ingredients are necessary:-

- (i) Deception of any person;
- (ii) fraudulently or dishonestly inducing the person deceived to deliver any property to any person or to consent for that or any person shall return any property or;
- (iii) intentionally inducing person deceived to do or omit to do anything which he would not do or omit if he was not so deceived and which act of omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.



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11. The latter part of the definition of cheating given under Section 415 of I.P.C would clearly point out that the cases in which damage or harm is caused or likely to cause to the person deceived in body, mind and reputation, on account of intentional inducement, would fall within the meaning of the offence of cheating.

12. It is settled law, as laid down by the Hon'ble Apex Court that if on false promise, assuring marriage, the victim share bed with the accused and subsequently the accused did not keep up his promise, then it would attract the offence under Section 417 I.P.C. If there are materials to show that at the time of sharing the bed, the accused did not have the intention to marry the victim and he made the false promise, then the offence under Section 417 of I.P.C is clearly made out.

13. After perusing the evidence of P.W.1, P.W.2, P.W.3 victim, mother and her paternal uncle, I find that the version of the private prosecution witnesses are nature of chaff and grain and it is a duty of the Court to collect the grain out of chaff.



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14. P.W.1 (victim girl) in a cross-examination has admitted that her age is 25 as per the complaint. She has admitted that her date of birth is 24.05.1984 and she is 28 years of age at now. However, during the further cross, she could turn around and say her date of birth is different and it is 12.09.1986.

15. Further cross examination, she had deposed as follows:-

.....எனக்கும், எதிரிக்கும் ஜாதி வித்தியாசம், வயது வித்தியாசம் இருந்தபோதிலும் எதிரி வீட்டில் திருமணத்திற்கு ஒப்புக்கொள்வார்கள் என்று நம்பினேன்.,....

.....இது வெறும் இனக்கவர்ச்சி தான் என்று அறிவுரை கூறியுள்ளேன். அதை மீறியும் எதிரி என்னை பின்தொடர்ந்து வந்து பலமுறை தன்னுடைய காதலை வெளிப்படுத்தி என்னுடன் கட்டாயப்படுத்தி உடலுறவு வைத்துக்கொண்டார்.....

.....முதல் சம்பவம் நடக்கும்போது எதிரி என்னை கட்டாயப்படுத்தி உடலுறவு வைத்துக்கொண்டார் என்பது குறித்து நான் பயத்தின் காரணமாக புகார் கொடுக்கவில்லை. முதல்முறையாக எதிரி என்னை கட்டாயப்படுத்தி உடலுறவு கொள்ளும்போது எனக்கு காயங்கள் ஏற்பட்டது. அதற்கு நான் சிகிச்சை எதுவும் எடுத்துக்கொள்ளவில்லை.....



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.....அப்போது அவருக்கு 21 வயது. அப்போது
எனக்கு வயது 23.....

.....எதிரி என் வீட்டிற்கு வந்து பெண் கேட்டபோது
தான் எங்கள் திருமணத்திற்கு எங்கள் வீட்டார் எதிர்ப்பு
தொரிவித்தார்கள். எதிரி குடும்பத்தினர் 2012ம் ஆண்டு
பெண் கேட்டு என் வீட்டிற்கு வந்தார்கள். அப்போது தான்
என் வீட்டார் எதிர்ப்பு தொரிவித்தார்கள். நான் என்
வீட்டாரிடம் சமாதானம் பேசினேன். அதன்பிறகு என் வீட்டில்
ஒத்துக்கொண்டார்கள். என் வீட்டார் இருவரும் வெவ்வேறு
ஜாதி என்பதாலும், எனக்கு எதிரியை விட அதிக வயது
என்பதாலும் என் வீட்டார் முதலில் மறுத்துவிட்டார்கள்.
தற்போது சாட்சி எதிரி வீட்டில் பெண் கேட்க வருவதற்கு
முன்பாகவே என் வீட்டார் என் திருமணம் குறித்து
ஆட்சேபனை தொரிவித்தார்கள். நான் அவர்கள் வருவதற்கு
முன்பு என் வீட்டாரை சமாதானம் படுத்திவிட்டேன்.....

.....பெண் கேட்டு எதிரி வீட்டாரே விருப்பப்பட்டு
வந்தார்கள். நானும், விருப்பப்பட்டு பெண் கேட்க வாங்கள்
என்று சொன்னேன். எதிரி என் வீட்டிற்கு பின்னால்
குடியிருந்ததால் நாங்கள் நண்பர்களாக பழகி வரும்போதே
என் வீட்டாருக்கு தெரியும்.....



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....அவருடைய அக்கா, மாமா, பெரியப்பா, மற்றும் அவருடைய நண்பர் பாலு மட்டுமே வந்தார்கள். அதனால் அன்று நாங்கள் திருமணம்குறித்து எந்த முடிவும் செய்யவில்லை.....

....எதிரி தரப்பில் தான் முதன்முதலாக என்னை பெண் கேட்டு என் வீட்டிற்கு வந்தார்கள் என்றால் சரிதான். அதற்கு முன் என் தரப்பில் எதிரி வீட்டிற்கு சென்று அவர் பெற்றோரிடம் திருமணத்தை பற்றி பேசவில்லை என்றால் சரிதான்.....

16. In this connection, the mother of the victim girl was examined as P.W.2 and in her cross-examination she has stated that:

.....நான் என் மகளுக்கு திருமண ஏற்பாடு செய்யும்போது என் மகள் தனியாக உட்கார்ந்து அழுதுகொண்டிருந்தார். நான் விசாரித்தபோது எதிரி வீட்டில் பெண் பார்க்க வருவது பற்றி கூறியது.

.....எதிரி வீட்டில் பெண் பார்க்க வந்தார்கள். ஆனால் அவர் அப்பா, அம்மா உடன் வரவில்லை. எதிரியின் அக்கா, மாமா, பெரியம்மா பையன் வந்தார்கள். அப்பா, அம்மா வந்தால் தான் திருமணத்தை பற்றி முடிவு செய்ய முடியும் என்று சொன்னோம்.



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.....என் வீட்டில் பெண் கேட்டு வரும்வரை ஆஜர்
எதிரிக்கும், என் மகளுக்கும் உடலுறவு இருந்த விவரம்
எனக்கு தெரியாது.....

.....என் மகள் எதிரியுடன் 6 வருடமாக பழகி வந்த
விவரமும், மூன்று வருடமாக உடலுறவு வைத்துக்கொண்ட
விவரமும் எனக்கு தெரியாது. நான் எந்த சம்பவத்யையும்
பார்க்கவில்லை. ...

....நான் என் மகளிடம் எதிரி வேறு ஜாதி, எதிரி
வயது குறைவானவர் என்று என் மகளுக்கு அறிவுரை
சொன்னேன். ஆனால் எதிரி என் மகளிடம் நீ இல்லை
என்றால் நான் செத்துவிடுவேன் என்று மிரட்டியுள்ளார்.....

....சென்னையில் படித்து வந்தார். எதிரி பெங்களூரில்
படித்து வந்தார் என்றால் சரி. அவர்கள் கல்லூரியில்
படிக்கும்போது செல்போன் கிடையாது என்றால் சரி.

17. The independent witness Balamurugan is examined as
P.W.7 he could state that in the chief examination, for 5 years before,
the accused along with his relative came to see the victim girl with
marriage proposal along with aunt's son, sister and sister's husband
and he also accompanied them assumes significance.



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18. The Investigation Officer G.Vijayalakshmi is examined as

P.W.9 in her cross examination has categorically admitted that:

.....புகார்தாரரை விசாரிக்கும்போது எதிரி தனக்கு வாழ்த்து அட்டை அனுப்பியதாக எதுவும் காட்டவில்லை. அவர் அப்போதே கொடுத்திருந்தால் அதை யார் அனுப்பினார்கள் என்று நிபுணருக்கு அனுப்பி அறிக்கை பெற்றிருப்பேன் என்றால் சரிதான்.....

.....அ.சா.1ஐயும், எதிரியையும் வெளியூரில் ஒன்றாக பார்த்ததாக யாரும் சொல்லவில்லை என்றால் சரிதான்....

.....எதிரியும், அ.சா.1ம் பழகியதற்கான ஆதாரம் பற்றியும் குறிப்பிடவில்லை என்றால் சரிதான்....

புகார்தாரர் தன்னை பரிசோதனை செய்த மருத்துவரிடம் எதிரி தன்னை வன்புணர்ச்சி செய்ததாக கூறவில்லை என்றால் சரிதான்.

19. On an combined reading of the admissions made by the P.W.1 (Victim) P.W.2 (her mother) and P.W.9 (Investigation Officer), I find that Ex.P4 was subsequently added by the police.

20. It is a specific case of the Investigation Officer that the greetings card which said to have been sent by the accused to show his love and his consequent romantic affair with the accused was not



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produced during the course of investigation and it was produced by her.

21. Had it been sent to the police, it could have been sent for the forensic report to ascertain the signature contained therein is that of the accused or not, could have thrown light on issue especially when the same has been disputed by the defence counsel during the cross examination assumes significance.

22. It is needless to say that both the victim girl and the accused are aware of the consequence of having physical relationship and having taken note of the behaviour and act on the part of the accused playing deception upon the victim, the accused is guilty of the commission of offence under Section 417 of I.P.C and consequently, while observing so, the learned Sessions Judge has convicted the accused for alleged offence under Section 417 of I.P.C.

23. Such a finding of the learned Special Session Judge is under challenge and the learned counsel Mr.Parthiban, for the accused has drawn my attention to the summary of the admissions made by P.W.1, P.W.2 and P.W.9 as extracted supra assumes significance and needs discussion as under:

24. As per the version of P.W.1, though they have been in



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friendship for 6 years. For first three years, it was only a friendship. Subsequently, it was turned into closer and they had sexual intercourse. As per her admission in the cross examination, at the time of 21 years only, the accused had sexual intercourse with her. She had sufficient intelligence to understand the significance and moral quality of her that she was consenting too. That may be the reason for keeping the sexual intercourse as a secret as she could do so. She didn't resist the overdo of the appellant. Therefore, I find that P.W.1 has freely exercised a choice between resistance and assent and therefore, the trial Court appears to have come to the conclusion that P.W.1 has freely, voluntarily and consciously consented for having sexual intercourse with the appellant/accused and her consent was not in consequence of misconception of fact.

25. However, it appears that the learned Sessions Judge has convicted the accused for the offence under Section 417 of I.P.C that at the time of the first occurrence, the accused has no intention to marry P.W.1 and hence, he had cheated P.W.1. In this regard, the cross examination of P.W.1 and P.W.2 as extracted supra assumes significance.

26. Even as per the evidence of P.W.1 has admitted in cross



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that initially her family members have raised objection. In the year 2012, the accused along with her family came to the house of P.W.1 with a marriage proposal. At that time, it is the parents of P.W.1 who have raised objection for marriage and P.W.1 has asked for a compromise. The objection raised by the parents of P.W.1 is that two fold namely that P.W.1 victim girl is 3 years elder than the accused and they belonged to different caste and hence the parents of the accused had refused for the marriage proposal put forward by the accused.

27. It remains to be stated that the accused came with the marriage proposal to the house of P.W.1 and he did not come alone. He came along with elders in the family namely her elder sister and uncle and aunt's son along with P.W.9. This factum has been admitted by P.W.1, P.W.2 and P.W.3 (private prosecution witnesses) and P.W.7 independent witness. She also stated that even in the chief examination that the accused also accompanied with the team of relatives for the marriage proposal. They went to the house of P.W.1 and she further admitted in her cross examination that the accused along with his family members on their own came with the marriage proposal and she also conveyed the same that the accused along with their family members are coming for marriage proposal on their own



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voluntarily accord. She could state that the parents of the accused, did not turned up. She also admitted that along with accused, his uncle and maternal uncle, two relatives and the Balu P.W.7 also came.

28. It is further admitted in the cross examination for the first time they came on their own with marriage proposal which was refused by the parents of P.W.1. The above said evidence, admission made by P.W.1 is also clearly admitted by P.W.2–mother and hence, I find that in order to label a person has committed a cheating, he should not have had intention to marry her and she tolerate him to have sexual intercourse.

29. Had the accused had no intention to marry her, he could not have went to the house of P.W.1 voluntarily along with team of his relatives and one independent witness (P.W.7–Balu) and it is because of the non co–operation of the parents of P.W.1, the marriage could not be vitalized.

30. For the reasons that P.W.1 is elder to him in a number of years of age and they belongs to different caste. When the parents of P.W.1 has refused the marriage proposal which was brought out on



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record as on admission from the P.W.1, P.W.2, P.W.3 and P.W.4. I am of the considered view that the essential ingredients of the offence under Section 415 of I.P.C which is punishable under Section, 417 of I.P.C is not made out. The accused has in his own commitment towards the P.W.1 has convinced his family members and as a 25 years old boy, who is having a medical qualification has went to the house of P.W.1 for the marriage proposal along with elders. It is the parents of the P.W.1 who had refused for the reasons stated supra and hence I have no hesitation to hold that the appellant/accused has done his best for the materialization of marriage and it is only at the instance of the parents of P.W.1 are not materialized the marriage and hence he cannot be termed as he cheated her which is punishable under Section 417 of I.P.C.

31. Yet another point is that P.W.1, P.W.2 and P.W.3 admitted the role played by P.W.7 Balu and it appears that Balu had a General Power of Attorney to sell the house of the father of the accused. Something went wrong somewhere and P.W.9 has not shown any interest selling the property after a compromise and subsequently the power has been cancelled.

32. It appears from the records that in view of the admissions



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made by the above said prosecution witnesses, I am not expressing any opinion upon the version of P.W.9 as it appears to be more fishy. Accordingly, the prosecution has not proved the charge 417 of I.P.C beyond reasonable doubt and hence, by the operation of law the benefit goes to the accused and he stands acquitted of the charge.

33. During the argument, it is submitted that the appellant has already deposited Rs.2 lakhs as ordered by the learned Sessions Judge and it has also been withdrawn and hence, there is no order for refund of the said amount.

34. With these observations, **this Criminal Appeal is allowed.** The conviction and sentence passed by the learned Sessions Judge in respect of 417 of I.P.C against the accused stands set aside and the appellant is set at liberty and bail bond if any shall stand cancelled.

04.09.2023

nvi

Internet :Yes / No
Speaking Order : Yes/No
Neutral citation : Yes/No



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To

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1. The Sessions Judge Mahalir Neethi Mandram
(Fast Track Mahalir Court) Villupuram.
2. The Inspector of Police,
All Women Police Station,
Tirukoilur, Villupuram District.
3. The Public Prosecutor,
High Court, Madras.



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RMT.TEEKAA RAMAN, J.
nvi

Judgment made in
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04.09.2023