



Crl.A.No.751 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.06.2023

PRONOUNCED ON : 29.08.2023

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.751 of 2017 and
Crl.M.P.No.14904 of 2017

Brittokumar

... Appellant

.. Vs ..

The State rep. by
the Inspector of Police,
Manalurpet Police Station,
Villupuram District.
(Crime No.295/2011)

...Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) of Cr.P.C, to set aside the conviction and sentence passed against the Appellant/accused by the learned Sessions Judge, Mahalir Neethi Mandram (Fast track Mahila Court), Villupuram in S.C.No.86 of 2016, dated 13.11.2017.

For Appellant : Mr.S.Saravana Kumar

For Respondent : Mr.L.Baskaran
Government Advocate (Crl.Side)

J U D G M E N T

The convicted sole accused is the appellant herein.



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2. This Criminal Appeal has been filed against the conviction and sentence awarded by the learned Sessions Judge, Mahalir Neethi Mandram (Fast track Mahila Court), Villupuram, in S.C.No.86 of 2016 by judgment dated 13.11.2017 wherein the learned Sessions Judge found the appellant guilty for the offence punishable under Section 417 I.P.C., convicted and sentenced him to undergo one year Rigorous Imprisonment and to pay a fine of Rs.40,000/- in default to undergo Rigorous Imprisonment for 3 months. However, the accused was acquitted from the charges under Section 376 and 506 (i) of I.P.C.,

3. The case of the prosecution is that the prosecutrix and the accused were acquainted for six months and that the accused promised the prosecutrix that he will marry her. On 07.10.2011, when the prosecutrix was alone in her house, the accused had sexual intercourse with the prosecutrix against her will and threatened her not to disclose the same to anyone. Hence, she lodged a complaint against the accused before the Special Sub-Inspector of Police, Arakandanallur Police Station.



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4. After filing final report, the learned Judicial Magistrate, Tirukoilur taken the case on file as P.R.C.No.35/2016 for the offence punishable under Section 376, 417, 506 (i) of I.P.C., Thereafter the case was transferred to the Principal Sessions Court, Villupuram as S.C.No.86 of 2016 and subsequently made over to the Sessions Judge, Fast Track Mahila Court, Villupuram. The learned Sessions Judge framed charges under Section 376, 417 and 506 (i) of I.P.C., against the accused and the charges read over and explained to him in Tamil to which the accused denied the charges and pleaded not guilty. To prove the case of the prosecution, P.W.1 to P.W.6 were examined and Ex.P1 to Ex.P10 were marked.

5. As stated supra, the accused was acquitted from charges under Section 376 and 506 (i) I.P.C., and convicted for the offence punishable under Section 417 I.P.C., Aggrieved against the said conviction and sentence, the appellant/accused preferred the present appeal before this Court.



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6. The learned counsel for the appellant/accused contended that as per the prosecution, the date of occurrence said to have been taken place on 17.10.2011 and the complaint was lodged with the respondent Police on 19.11.2011 and that there is a delay in lodging the complaint. There is no plausible explanation made by the defacto complainant for the said delay and that the complaint is purely a afterthought and the first information is also doubtful. He further contended that the victim is a grown up lady who is aged 27 years at the time of giving complainant and she is well aware the consequence of illegal sexual relationship. Hence, the conviction and sentence passed by the trial Court is liable to be set aside.

7. Mr.L.Baskaran, learned Government Advocate (Crl.Side) made submissions in support of the judgment of the trial Court.

8. Heard both side and perused records.

9. P.W.1 is prosecutrix, P.W.2 is the mother of the prosecutrix, P.W.3 is the attestor of the Observation Mahazar, P.W.4 is the Doctor



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who examined the victim and issued Medical report (Ex.P4). P.W.5 is the retired Sub-Inspector of Police who has registered FIR (Ex.P5). P.W.6 is the Deputy Superintendent of Police, Anti Corruption wing. who filed final report.

10. After perusing the evidence of P.W.1, it is seen thus:

புகார் கொடுப்பதற்கு முன்று ஆண்டுகளுக்கு முன் ஆஜர் எதிரி என்னை திருமணம் செய்துகொள்வதாகக் கூறி என்னுடன் பழகி வந்தார். என் விருப்பமில்லாமல் என்னுடன் உடலுறவு கொண்டார். அதன்பிறகு என்னை பார்த்திருப்பதாக கூறினார். நான் இல்லாதப்பட்டவள் என்றும், அதனால் என்னை திருமணம் செய்து கொள்ளமாட்டேன் என்றும் சொல்லிவிட்டார்.

11. In the cross examination, she has stated as under:

நான் 25 வயதிருக்கும்போது எதிரிக்கும் 25 வயது தான். அப்போது தான் அவர் என்னை காதலிப்பதாக சொன்னார். நான் சொன்ன காலத்தில் ஆஜர் எதிரி சேலத்தில் ஸ்டார் ஹோட்டலில் வேலை பார்த்து வந்தார் என்றால் சரிதான்...

....நானும் எதிரியும் சுமார் 5 முறை உடலுறவு வைத்துக்கொண்டிருப்போம்.

12. Hence, this Court finds that in the cross examination, P.W.1



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has categorically stated that she had acquaintance with the accused and thereafter the accused promised the prosecutrix to marry her and on such promise she had a sexual intercourse with him. Thereafter P.W.1 has stated that the accused refused to marry her and hence the complaint. There is nothing in the cross examination to discrete her evidence. The medical examination report Ex.P4 issued by P.W.4, Dr.Padmini shows that there is no external injuries on the body. It is also seen that the doctor has found that the hymen is not intact. The doctor has not found any tenderness or congestion or oedematous in the hymenal edges of the prosecutrix.

13. In view of the above, I find that both the accused and the prosecutrix were loving each other and on the promise made by accused that he would marry the prosecutrix, she had submitted herself and had sexual intercourse with him. P.W.1 has spoken about the same which was duly corroborated by the medical evidence. Therefore, the accused has no intention to marry her. In view of the evidence of P.W.1, I find that the prosecutrix evidence is acceptable and reliable. However, P.W.1 has categorically admitted in her cross examination that at the time of



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occurrence, she was aged 25 years and she was aware of the physical intimacy and the consequences of the said physical intimacy. It is the specific evidence that she had submitted herself only in view of the repeated promise made by the accused. Hence I find that the ingredients of Section 417 of I.P.C., is made out. Thus, the trial Court had rightly convicted the accused and sentenced him to undergo one year Rigorous Imprisonment and to pay a fine of Rs.40,000/- which cannot be termed as excessive. I do not find any irregularity or illegality in the conviction passed by the trial Court which warrants interference by this Court.

14. For the reasons stated supra, the Criminal Appeal is dismissed as devoid of merits. The learned Sessions Judge, Mahalir Neethi Mandram(Fast track Mahila Court),Villupuram is directed to issue Non Bailable Warrant to secure the accused to undergo remaining period of sentence. Consequently, connected miscellaneous petition is closed.

29.08.2023

vum

Internet :Yes / No

Speaking Order : Yes/No

Neutral citation : Yes/No

RMT.TEEKAA RAMAN, J.



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To

1. The Sessions Judge,
Mahalir Neethi Mandram
(Fast track Mahila Court),
Villupuram.
2. The Inspector of Police,
Manalurpet Police Station,
Villupuram District.
3. The Public Prosecutor,
High Court, Madras.

Pre-Delivery Judgment made in

CrI.A.No.751 of 2017 and
CrI.M.P.No.14904 of 2017

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