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Crl.A.No.1240 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.06.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.A.No.1240 of 2022

Vignesh

...

Appellant

Vs.

The State rep. By,
The Inspector of Police,
All Women Police Station,
Ulundurpet,
Villupuram District
Crime No.17 of 2019

...

Respondent

PRAYER: This Criminal Appeal has been filed under Section 374(2) of the Code of Criminal Procedure to set aside the conviction and sentence passed against this appellant in SC No.17 of 2021 dated 23.09.2022 passed by the learned Sessions Judge (Mahila Court), Fast Track Court, Villupuram and acquit the appellant from all the charges in the interest of Justice.



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For Appellant : Mr. R. Vijayakumar
For Respondent : Mr. R. Vinothraja
Government Advocate (crl.side)

JUDGMENT

This criminal appeal has been filed against the judgment of conviction passed by the learned Sessions Judge, Mahila Court (Fast Track), Villupuram dated 23.09.2022 in S.C.No.17 of 2021.

2. The appellant is the sole accused in S.C.No.17 of 2021 on the file of the Mahila (Fast Track) Court, Villupuram District. The prosecution case is that the appellant and the victim girl had love affairs with each others for two years and on the promise of getting marriage, on 01.05.2019 at about 12.30 p.m, appellant/accused had sexual intercourse with the victim girl. Subsequently, he refused to marry her.

3. Based on the above materials, the Trial Court framed charges as against the appellant/accused under Section 376, 417 of IPC and he denied



the same as false. In order to prove the case of prosecution, as many as 13 witnesses were examined, 9 documents were marked.

4. When the incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. Neither any witness nor any documents have been marked on the side of the accused.

5. Having considered all the materials, the Trial Court found the appellant/accused guilty for the following offences and convicted and sentenced him as follows;

<i>Section</i>	<i>Conviction and sentence</i>
<i>376 IPC</i>	<i>to undergo ten years Rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for three months.</i>
<i>417 IPC</i>	<i>to undergo one year Rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for one month.</i>

Aggrieved by this conviction and sentence, the appellant/accused is before this Court with this present criminal appeal.



6. The learned counsel for the appellant submitted that the respondent police prosecuted the appellant/accused for having committed the offence under Sections 417 and 376 of IPC. Before the Trial Court, 13 witnesses were examined and 9 documents have been marked on the side of the prosecution. On considering the prosecution evidence, the Trial Court found the accused guilty and convicted him as stated above. The learned counsel further contended that in this case, the victim was examined as P.W.1 and she has not supported the prosecution case. Further, before the Trial Court, she deposed that she had love affairs with the accused. Since the accused refused to marry her, she gave the complaint and the complaint was written by an advocate, in which she signed, which was marked as Ex.P.1. She has also deposed that she did not know what the advocate had written in the complaint. Thus, the victim has not supported the prosecution case and there is no evidence to prove the charge as against the accused. He further submitted that P.W.8 Doctor in her evidence stated that she did not find any injuries upon the victim girl and also there is no evidence of pregnancy. The medical report of the victim girl, Ex.P.4 also not supported the prosecution case. He further reiterated the facts raised in



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the grounds of appeal. The Trial Court, without any evidence found the accused guilty and convicted him, which is unsustainable and liable to be set-aside. Thus, pleaded to allow the criminal appeal.

7. The learned Government Advocate(crl.side) appearing for the respondent fairly conceded that the victim girl, P.W.1 in her evidence deposed that the accused had love affairs with the victim. Subsequently, he refused to marry her. Hence, she gave a complaint through the Advocate and she did not know the content of the complaint and she had only signed in the complaint.

8. I have considered the matter in the light of the submissions made by the learned counsel for the parties and perused the materials available on records carefully.

9. The appellant is the sole accused in S.C.No.17 of 2021 on the file



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of Mahila (Fast Track) Court, Villupuram. He was prosecuted by the respondent police for for the offence punishable under Sections 376 & 417 of IPC for having committed sexual assault on the promise of getting marriage with the victim girl and thereafter, refused to marry her.

10. Before the Trial Court, to prove the charge, the prosecution examined 13 witnesses and also marked 9 documents. No material objects had been filed. The accused had not examined any witnesses. P.W.1 is the victim. P.W.2 Sellan is the relative of the victim. Since he has not supported the prosecution case, he was treated as hostile. P.W.3 Kaveri is the mother of the victim girl. She also deposed that the accused has promised to marry the victim, but he has not married her and she has not deposed anything about the allegation attributed towards the accused. P.W.4 Thangapandian, who is the relative of the victim, deposed about the love affairs of the victim and the accused and he has also not deposed anything with regard to the allegation attributed as against the accused. P.W.5 Chandran is the witness to the Observation Mahazar. Since he has not supported the prosecution case, he was treated as hostile witness. P.W.6



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Vallarasu, is also witness to the Observation Mahazar, Ex.P.3 and he also turned hostile. P.W.7 Anjamani is Grade I Police at Ulundurpet. On 04.07.2019, by medical memo No.13/2019 pursuant to the case registered in Crime No.17/2019, he produced the victim girl before P.W.8, Dr.Deepadharshini at Government Hospital Ulundurpet for medical examination. P.W.8 Dr.Deepadharshini, examined the victim girl and gave medical Report Ex.P.4, in which, she stated that there is no injury on the body of the victim and she got no pregnancy. P.W.9 Ilaiyaraja, Grade I-Police, Ulundurpettai, produced the accused before the Government Hospital, Ulundurpet for medical examination. P.W.10 Dr Arun, examined the accused and gave medical report Ex.P.5 and opined that the accused is having potentiality. P.W.11 Manjula, Head Constable, Ulundurpet police station, received the complaint from the victim and registered the case in Crime No.17/2019 for the offences under Sections 417, 376 IPC and the First Information Report is Ex.P.6. P.W.12 J.Viji, Inspector of Police, Ulundurpet, has took up the case for investigation, investigated the case, visited the place of occurrence, prepared Observation Mahazar and Rough Sketch(Ex.P.8 & Ex.P.9) and recorded the statement of the witnesses. He



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has also sent the victim and the accused for medical examination. P.W.13

Padma, Inspector of Police, conducted further investigation and recorded further statement of the witnesses and filed a final report against the accused for the offences under Section 417, 376 of IPC.

11. Among 13 witnesses, P.W.1, victim in her evidence before the Trial Court, deposed that the she and the accused loved each other and though the accused promised her to marry, he failed. Hence, she draft the complaint with the help of one advocate. She specifically deposed that she did not know the contents of the complaint. Her evidence runs as follows:

“ ஆஜர் எதிரியை எனக்கு தெரியும். நானும், ஆஜர் எதிரியும் காதலித்து வந்தோம். எதிரி என்னை திருமணம் செய்துகொள்கிறேன் என்று சொன்னார். அதன்பிறகு திருமணம் செய்து கொள்ள முடியாது என்று சொல்லிவிட்டு வேறு பெண்ணை திருமணம் செய்து கொண்டார். அதனால் நான் புகார் கொடுத்துவிட்டேன். புகாரை வழக்கறிஞர் எழுதினார். அதில் நான் கையெழுத்து போட்டேன். புகாரிலுள்ள என்னுடைய கையெழுத்து மட்டும் அ.த.சா.ஆ.1 ஆகு குறியீடு செய்யப்படுகிறது. புகாரை நான் சொல்லி வழக்கறிஞர் எழுதினார். எதிரி என்னை காதலித்ததாகவும், பின்னிட்டு என்னை திருமணம் செய்து கொள்ள மறுத்துவிட்டதாகவும் கூறினேன். வேறு என்ன விவரங்களை எனது வழக்கறிஞர் எழுதினார் என்று எனக்கு தெரியவில்லை. புகார்



கொடுத்தபிறகு வேறு ஒரு நீதிபதியிடம் வாக்குமூலம் கொடுத்தேன்.
அதில் கையெழுத்து போட்டேன். அதன்பிறகு போலிஸ் என்னை
மருத்துவமனைக்கு அழைத்து சென்றார்கள். “

12. P.W.8 Dr. Deepadharshini deposed before the Trial Court that
she did not find no pregnancy and any injury upon the body of the victim.
Her evidence runs as follows :

“ நான் அவரை பரிசோதித்தபோது சுயநினைவுடனும், சுற்று சூழல்
அறிந்தும் இருந்தார். மேலும் பரிசோதனையில் சுயநினைவுடனும், சுற்றுசூழல்
அறிந்தும் இருந்தார். மேலும் பரிசோதனையில் அவரது கன்னித்திரை
கிழிந்திருந்தது. மேலும் அவரது உடம்பில், மார்பில் எந்தவித காயங்களும்
இல்லை. சிறுநீர் பரிசோதனையில் அவர் கர்ப்பமாக இல்லை என்பது
தெரியவந்தது. அவரை பரிசோதித்து, ஆய்வாளரால் கேட்கப்பட்ட
கேள்விகளுக்கு என்னால் அளிக்கப்பட்ட பதில் 1. பாதிக்கப்பட்ட பெண்
உடலுறவு கொண்டுள்ளதுபோல் தெரிகிறது என்றும், 2. பாதிக்கப்பட்ட பெண்
உடம்பில் காயங்கள் இல்லை என்றும், 3. பாதிக்கப்பட்ட பெண் தற்போது
கர்ப்பமாக இல்லை என்றும் அறிக்கை அளித்தேன். என்னால்
அளிக்கப்பட்ட மருத்துவ அறிக்கை அ.சா.ஆ.4 ஆக குறியீடு செய்யப்படுகிறது.
அதன்பிறகு ஆய்வாளர் என்னை விசாரணை செய்தார்.”

13. On perusing the prosecution evidence, it reveals that there is no
evidence to prove the charge against the accused. Based upon the 164



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Cr.P.C statement of the victim girl, the Trial Court found the accused guilty.

The statement under Section 164 Cr.P.C is not a substantial evidence for proving the charges and it can only be used to corroborate any substantial evidence.

14. The Trial Court overlooked this aspect and without properly appreciating the evidence found the accused guilty and hence, the judgment has to be set aside and the accused is entitled for benefit of doubt. In this case, the prosecution failed to prove the charges against the appellant/accused beyond all reasonable doubts and hence, the accused is entitled for acquittal by giving benefit of doubt and the finding of the Trial Court is liable to be set aside.

15. In the result, the Criminal Appeal is allowed and the conviction and sentence for the offence under Sections 375 r/w.90/376, 417 IPC imposed on the appellant by the Sessions Judge, Mahila Court (Fast Track Court), Villupuram in S.C.No.17 of 2021 by the judgment dated 23.09.2022 are hereby set aside. The appellant is acquitted of the charges



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levelled against him and he is directed to be set at liberty forthwith unless his presence is required in connection with any other case. Fine amount, if any, paid by the appellant, shall be refunded to him. Bail bond, if any, shall stand discharged.

Index: Yes/No
Internet: Yes/No
mrp

14.06.2023

To

1. The Session Judge,
Mahila Court (Fast Track Court),
Villupuram
2. The Inspector of Police,
All Women Police Station,
Ulundurpet,
Villupuram District.
3. The Public Prosecutor,
High Court, Madras.



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V.SIVAGNANAM, J.

mrp

Judgement in
Crl.A.No.1240 of 2022

14.06.2023