



Crl.A.(MD).No.236 of 2018

IN THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :25.09.2023	PRONOUNCED ON : 23.11.2023
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CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

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1. Mohamed Riswi S/o. Abdul Hakkim
2. Baritha W/o. Abdul Hakkim ... Appellants /accused

Vs.

The State represented by:
The Inspector of Police,
All Women Police Station,
Keelakkarai,
Ramanathapuram District.
[Cr. No.10 of 2011].

... Respondent / Complainant

PRAYER: Criminal Appeal has been filed under Section 372 of Criminal Procedure Code, praying to call for records and set aside the Judgment and conviction passed in S.C. No.54 of 2014 on the file of the learned Sessions Judge, Fast Track Mahila Court, Ramanathapuram dated 25.04.2018.

For Appellants : Mr. V. Kathirvelu, Senior Counsel
for Mr. S.M.A. Jinnah

For Respondent : Mr. R. M. Anbunithi,
Additional Public Prosecutor.



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ORDER

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This Criminal appeal in Crl. A. (MD) No.236 of 2018 has been preferred by the appellants as against the Judgment and conviction passed in S.C. No.54 of 2014 by the learned Sessions Judge, Fast Track Mahila Court, Ramanathapuram dated 25.04.2018, wherein the Trial Court has convicted the 1st accused for the offences under Sections 417 and 376 and convicted the 2nd accused under Section 506(2) of IPC.

2. The case of the prosecution in brief is as under:

2.1. For the sake of convenience, the parties are mentioned as per the rank in Trial Court.

2.2. The 1st accused is the son of the 2nd accused. The 1st accused, while he was studying engineering, fell in love with the victim/PW1. In the meantime, the family of the victim was taking steps to the marriage of the victim. While so, on 28.11.2011, the 1st accused induced the victim by saying that he would marry her. Believing the words of the 1st accused, on 28.11.2011, at night time, the accused, without the consent of the victim girl, had intercourse with her. After some time, the said occurrence was informed to the mother of victim. While so, on 09.12.2011, when the



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parents along with victim, asked the 1st accused to marry the victim girl, 1st accused refused to marry the victim girl and the 2nd accused caused criminal intimidation with iron rod. Thereafter, the victim/PW1 had given complaint / Ex.P.1 to the concerned police station. PW9, who was the Head Constable of the said police station, had registered the FIR (Ex.P.6) in Keelakkarai All Women P.S. Cr. No.10 of 2011. Thereafter, the case was investigated by PW11 and she examined the witnesses and collected the documents and thereafter filed final report as against the accused under Sections 417, 376 and 506(2) of IPC.

2.3. Thereafter, the documents relied on by the prosecution were furnished to the accused U/s.207 of Cr.P.C. and then the learned Judicial Magistrate No.I, Ramanathapuram had committed the case to the Principal District and Sessions Judge, Ramanathapuram and in turn, the learned Principal District and Sessions Judge, Ramanathapuram made over the case to the Sessions Judge, Fast Track Mahila Court, Ramanathapuram in Sessions Case No.54 of 2014. Thereafter, the trial Court, after hearing both sides, has framed charges u/Ss.417 and 376 of IPC as against the 1st accused and under Section 506(2) of IPC as against the 2nd accused. The charges



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framed against the accused / appellant, were read over and explained to them and they denied the charges. Thereby, the prosecution examined the witnesses PW1 to PW11 and marked Ex.P.1 to Ex.P.7. No material objects were adduced on the side of prosecution. No oral or documentary evidence were submitted on the side of defence. After completion of prosecution side evidences, the accused were examined U/s.313(1)(b) of Cr.P.C. with regard to the incriminating evidence adduced against them and the same was also denied by the accused as false.

2.4. After hearing both sides and considering oral and documentary evidence adduced on either side, the Trial Court found the 1st accused guilty of offences punishable under Sections 417 and 376 of IPC and found the 2nd accused guilty of offence under Section 506(2) of IPC and convicted the accused 1 & 2 and

2.4.(i). Sentenced the 1st accused

(a) to undergo one (1) year simple imprisonment and fine amount of Rs.1000/-. In default, 1 month of simple imprisonment for the offence under Section 417 of IPC;

(b) to undergo ten (10) years Rigorous imprisonment and fine amount



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of Rs.45,000/-. In default, 1 year of Rigorous imprisonment for the offence

under Section 376 of IPC and

2.4 (ii). and sentenced the 2nd accused

to undergo simple imprisonment for 6 months and fine amount of Rs. 1,000/-. In default, 1 week of simple imprisonment for the offence under Section 506(2) of IPC. It was also directed by the Trial Court that the sentences imposed on the accused shall run concurrently and the imprisonment period already underwent by the accused shall be set off under Section 428 of Cr.P.C.

2.4.(iii) It was also directed that, out of total fine amount of Rs. 47,000/-, a sum of Rs.46,000/- was directed to be paid to the victim girl as compensation and the balance amount of Rs.1,000/- was ordered to be confiscated to the Government.

3. Aggrieved upon the above said Judgment and conviction, the present appeal has been filed by the accused / appellants on the following grounds:-

3(i) The Judgment of the Trial Court is contrary to law, weight of evidence and therefore vitiated.



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3(ii) The sentence of 6 months of simple imprisonment imposed on the 2nd accused by the Trial Court is unwarranted and injustice. The Trial Court failed to consider the contradictions in the evidences of PW1 and PW2 with regard to the criminal intimidation.

3(iii) The Trial Court failed to consider that in the Ex.P.1 complaint, it has been stated by showing the iron rod, the PW1 and PW2 were threatened by the appellant, but the said witnesses never stated anything in their evidences, with regard to the weapon for committing criminal intimidation.

3(iv) The Trial Court failed to consider that as per Ex.P.1 complaint, the date of occurrence was 19.11.2011 but the complaint was given only on 22.11.2011 and the delay was not explained. Hence, with pre-plan and pre-motive, false complaint has been given.

3(v) The 1st accused was found guilty of offence under Section 417 of IPC. At the time of occurrence, PW1 only called the 1st



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accused who was studying in Chennai and he did not come to Narippaiyur with his own willing and the same was also admitted by PW1. If any promise was given by the 1st accused, there would be any evidence produced before the Trial Court. But none of material evidence or oral evidence is produced by the prosecution. The Trial Court failed to consider the above said aspects and erroneously convicted the appellant and the same is unwarranted and unaccepted.

3(vi) At the time of occurrence, the victim PW1 was not a minor and she never stated that the 1st accused cheated her giving false promise to marry her and hence Section 417 of IPC would not attract as against the 1st accused.

3(vii) The time of occurrence on 28.11.2011 was not mentioned in Ex.P.1 complaint, Ex.P.6 FIR and Ex.P.2 final report. PW1 has stated that the occurrence was happened at day time at 1 o' clock. This evidence is only for the purpose to falsely implicate the accused and she might to have stated that



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the occurrence had happened at night time, but definitely PW2 would be present in her house. In the cross examination of PW1, she has stated that sometimes, when the 1st appellant came to her house, PW2 was present but then she has stated that at the time of occurrence, when the 1st appellant came to her house, PW2 was not present and therefore there are so much contradictions in the evidence of PW1 and hence the version of PW1 is not believable. The Trial Court ought to have considered the above aspects.

3(viii) The Trial Court failed to consider that PW1 informed PW2 about the occurrence after two days, whereas, in contra, in the evidence of PW2, she has stated that PW1 informed about the occurrence only after ten days. Hence the evidence of PW1 and PW2 are unbelievable and unacceptable.

3(ix) The 1st accused was convicted for the offence under Section 376 of IPC and sentenced to undergo 10 years of rigorous imprisonment. The evidence of PW1 never stated anywhere that the 1st accused had intercourse with PW1



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without her consent. She has stated that she had love affair with the 1st accused. Hence the Trial Court failed to appreciated the intention of PW1 that she has given false complaint only to threaten the 1st accused to marry her.

3(x) The Trial Court failed to consider that PW1 was sent for medical examination only after 6 days of registration of the case.

3(xi) The Trial Court ought to have considered that the evidence of PW5/Doctor who never stated that there is no symptom of intercourse in the body of PW1.

3(xii) The Trial Court ought to have considered that the evidence of PW6, there is no symptom found in Serology Report, there would intercourse between PW1 and the 1st accused and it was clearly disclosed in Ex.P.3 and Ex.P.4.

3(xiii) The Trial Court ought to have considered that PW1 and



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PW2 have stated in their cross examination that earlier they had given a complaint and orally requested the Police for the unit of PW1 with the 1st appellant, but the earlier complaint was suppressed by the prosecution. Hence Ex.P.1 is highly doubtful.

4. Heard Mr. V. Kathirvelu, learned Senior Counsel for Mr. S.M.A. Jinnah, appearing for the appellants and Mr. R. M. Anbunithi, the learned Additional Public Prosecutor, appearing for the respondent.

5. The learned counsel appearing for the appellants would contend that the 1st accused has been charged for the offences under Sections 417 and 376 of IPC and the 2nd accused has been charged for the offence under Section 506(2) of IPC. In order to prove the charges levelled against the accused, the prosecution has examined PW1 to PW11, marked Ex.P.1 to Ex.P.7. On the side of defence, no oral evidence adduced and no documents were marked.

5.1. PW1 is the defacto complainant and her evidence is not cogent. She herself called the accused, who was studying Engineering in Chennai



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and the defacto complainant wanted to marry the 1st accused and the same was refused by him and thereby, this false complaint has been lodged by the defacto complainant. There is no specific place and time mentioned in the charge and there is no evidence that where and at what time the occurrence took place and even according to Ex.P.1 that the name of the village is only mentioned and no specific place and time is mentioned. Further as per the prosecution case, the accused had intercourse with the victim so many times but the medical evidence is silent in this aspect.

5.2. Even according to the complaint, the prayer is to solemnize marriage between the victim and the 1st accused. Further, PW1 in her evidence stated that on 28.11.2011 at about 12.00 p.m., the accused came to the village, but the same has not been mentioned in the complaint. Further the victim has not stated about the occurrence immediately after the occurrence and after two days, she told about the same to her mother. There is no any evidence to attract the ingredients of the offence under Section 417 of IPC and the complaint has not been marked through PW1. As per Ex.P.2., no evidence for recent sexual assault and the Doctor PW5 also stated that there is no evidence for the recent sexual assault. Further PW2



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admitted that the complaint was given before the Jamad. PW3 has not stated anything about the rape by the accused. Further the investigation officer, during his investigation, failed to prepare Mahazar and Rough Sketch. These are all the major discrepancies and thereby, the prosecution case is highly doubtful and the prosecution failed to prove the charges levelled against the accused. There is no ingredient to constitute the offence under Section 506(2) of IPC and there is no evidence that the 2nd accused caused criminal intimidation and the same had created fear over the minds of the witnesses. The Trial Court has failed to consider the above said aspects and erroneously convicted the accused and thereby, the judgment and conviction passed by the Trial Court are liable to be set aside by allowing this appeal.

6. On the other hand, the learned Additional Public Prosecutor would contend that the accused and the victim, both had fell in love with each other and due to the love affairs, they had intercourse and thereafter the 1st accused refused to marry the victim girl and thereby she gave a complaint and based on the complaint, the respondent had registered the FIR against



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the accused. Further, when the victim along with her mother, went to the house of the accused to request them to marry the victim, the 2nd accused caused criminal intimidation. Thereby, the 1st accused has been charged for the offences under Sections 417 and 376 of IPC and the 2nd accused has been charged for the offence under Section 506(2) of IPC.

6.1 Before the Trial Court, the prosecution has examined PW1 to PW11 and marked Ex.P.1 to Ex.P.7. PW1 is the victim. PW2 is the mother of the victim. The prosecution witnesses have categorically deposed about the commission of offences by the accused. The Doctor was examined as PW5 and she has also supported the prosecution case and thereby, the prosecution has proved the case against the accused. The Trial Court, after taking into consideration all the aspects, correctly convicted the accused. Therefore, the present appeal is liable to be dismissed.

7. Heard both sides and perused the entire materials available on record, the Judgment passed by the Trial Court and the grounds of appeal.

8. Upon hearing both sides and perusing the entire available records, now the point for determination in this appeal is:



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8(i) whether the prosecution has proved the charges levelled against the 1st accused for the offences punishable u/S.417 and 376 of IPC and charge against the 2nd accused for the offence punishable u/S.506(2) of IPC beyond all reasonable doubts.

8(ii) whether the judgment and conviction passed by the Trial Court by convicting the 1st accused for the offences under Sections 417 and 376 of IPC and the 2nd accused for the offence under Section 506(2) of IPC, is sustainable in law and on facts.

9. **Points:-** The case of the prosecution is that the victim and the 1st accused fell in love with each other. In the meantime, the parents of the victim arranged for marriage to the victim and the same was informed to the 1st accused by the victim girl. Thereby, the 1st accused, on 28.11.2011 came to the village of the victim and induced the victim and promised to marry her and then had intercourse with her and thereafter refused to marry her. Hence the victim along with her mother went to the house of the accused and asked the 1st accused to marry her. At that time, the 1st accused refused to marry her and the 2nd accused caused criminal intimidation by showing an



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iron rod and saying that “இருவரும் திருமணப் பேச்சைப் பேசிக்ிட்டு இனி இந்த வீட்டுப் பக்கம்

வந்தால் கொன்று புதைத்துவிடுவோம்”. Hence the 1st accused was charged for the offences under Sections 417 and 376 of IPC and the 2nd accused was charged for the offence under Section 506(2) of IPC.

10. In order to prove the prosecution case, they have examined PW1 to PW11 and Ex.P.1-Ex.P.7 were marked. On the side of accused, there is no oral or documentary evidence.

11. In this case, PW1 is the victim and she has deposed before the Trial Court that “*she knew the accused. About 5 years ago, she fell in love with the 1st accused, who was her neighbour and the same was known to her parents. Immediately, her family members had taken steps for her marriage with some other person. Immediately she informed the same to the 1st accused and at that time, the 1st accused was not in the village and he was outside. Thereafter, the 1st accused came to the village and she told about the marriage arrangements. At that time, the 1st accused induced her by saying that if they were together, then their parents could not do marriage for her with some other person and for that, she refused. But thereafter, on*



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28.11.2011 at about 12.00 to 1.00 p.m., the accused came to her house and raped her by compulsion. After two days, she told her mother and then they went to the house of the accused and requested to marry her. The accused refused to marry her and the 2nd accused caused criminal intimidation by showing an iron rod. The next day, they went to Keelakkarai All Women Police Station to give complaint against the accused. The police had also brought the accused to the police station and there also, they abused the PW1 with obscene words. Then the Police had registered the FIR and then PW1 was subjected to medical examination". Therefore from the evidence of PW1, it is revealed that she fell in love with the 1st accused and after knowing the same, her parents arranged for her marriage with some other person and the same was informed to the 1st accused and at that time, the 1st accused was not in the village. After some time, the accused came to the village, at that time, PW1 narrated about the steps taken by her parents for her marriage and thereafter the 1st accused insisted her to have intercourse by promising that he would marry her and then on 28.11.2011 at about 12 to 1.00 p.m., the accused had raped PW1 with compulsion. Then after 2 days, she disclosed the same to her mother and then they went to the house of the accused and requested him to marry her but they refused. At that time, the



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2nd accused caused criminal intimidation and thereafter, PW1 gave a complaint and the same is marked as Ex.P.1.

12. On perusal of Ex.P.1., it reveals that there is no mention about the place where the occurrence took place. Further it is stated that the accused had sexual intercourse with PW1 so many times, but the same has not been disclosed by PW1 in her evidence and the complaint also does not disclose the place of occurrence. The charges also have not disclosed anything about the place and time of occurrence. There is no mention about the alleged cheating by the accused to marry her.

13. The date of occurrence is 28.11.2011. Complaint was lodged on 02.12.2011. There is a delay for lodging complaint and the same has not been properly explained. The victim was aged about 19 years at the time of giving complaint. Even according to the evidence of PW1, she only called the 1st accused over phone and stated about the arrangements made by her parents for her marriage. Therefore the evidence of PW1 shows that she also consented for the alleged occurrence.



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14. Further the prosecution also examined the Doctor who treated the victim and she was examined as PW5 and she also deposed that on 28.12.2011, the victim was subjected for medical examination and as per her evidence, there is no any symptom for recent sexual intercourse. To that effect, she has also given a certificate Ex.P.2., On perusal of Ex.P.2, it reveals that there is no evidence for recent sexual assault. Therefore the medical evidence also does not reveal anything incriminating against the accused.

15. After chief, PW1 in her cross examination stated that “வழக்கு சம்பவத்திற்கு முன்பு முகம்மது ரிஸ்வி எனது வீட்டிற்கு வந்தது கிடையாது என்றால் சரி தான். சம்பவம் நடந்த காலத்தில் முகம்மது ரிஸ்வி சென்னையில் படித்துக் கொண்டிருந்தார் என்றால் சரி தான். நான் ரிஸ்விக்கு போன் செய்தது சம்பவத்திற்கு ஒரு நாள் முன்பு. எனக்கு முகம்மது ரிஸ்வி ஏற்கெனவே ஒரு போன் வாங்கிக் கொடுத்துள்ளார். அந்த போன் மூலம் தான் போன் செய்தேன். அந்த போன் நம்பர் 8122180587 ஆகும். அந்த போனில் ஒரு சிம் கார்டு தான் உள்ளது. அந்த சிம் டொக்கோமோ கம்பெனியைச் சேர்ந்தது. சம்பவத்திற்கு பின்பு போனை முகம்மது ரிஸ்வி வற்புறுத்தி என்னிடம் வாங்கிக் கொண்டார். சம்பவத்திற்கு நான்கு நாட்கள் கழித்து யாரிடமோ செல்லி அனுப்பினார். அவர் மூலம் போனைக் கொடுத்துவிட்டேன்”. Hence the evidence of PW1 reveals that already the 1st accused had given a phone to PW1 and through that phone only, they had conversations and the same was also informed to



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the Police, but in spite of that, the Police has not obtained any call details and the investigation was not done to that regard. Further, PW1 stated that

“சம்பவத்தன்று முகம்மது ரிஸ்வி 12 மணியிலிருந்து 1 மணிக்குள் வந்தார். நான் வீட்டிற்குள் இருந்தேன். முகம்மது ரிஸ்வி வீட்டிற்கு வந்து சுமார் அரை மணி நேரம் பேசிக் கொண்டிருந்தார். முகம்மது ரிஸ்வியின் விருப்பத்திற்கு நான் சம்மதம் தெரிவிக்கவில்லை. முகம்மது ரிஸ்வி எனது வாயைப் பொத்திவிட்டதால் என்னால் கத்த முடியவில்லை. நான் எதிர்த்துப் போராடினேன். ரொம்ப நேர போராட்டத்திற்குப் பிறகு முகம்மது ரிஸ்வி என்னைக் கெடுத்துவிட்டார். என் கழுத்தில் சிறிய காயம் இருந்தது. நான் போட்டிருந்த சால்வையை எடுத்து முகம்மது ரிஸ்வி எனது கையின் பின்பக்கம் கட்டிவிட்டார். முகம்மது ரிஸ்வியின் கையால் தான் கட்டினார். கையைக் கட்டும் போது நான் கத்தினேன்”. Therefore, the evidence of PW1 reveals that at the

time of occurrence, the accused by his hands, through the shaal of PW1, tied the hands of PW1 on her backside and also she shouted. In spite of that, the accused had committed rape on her. But the above said version, has not been stated either in the complaint or while examination by the investigation officer. Therefore, the evidence of PW1 is highly doubtful as to whether the occurrence had happened as alleged by PW1. Further PW1 has not raised any alarm during the course of alleged occurrence and it is admitted fact that, in and around, there are houses situated. If so, the victim's noise or if any alarm raised by the victim, would be heard by the neighbours. In this case, there is no such evidence that the victim raised any alarm and the



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occurrence was also occurred at midnight and thereby, it shows her consent.

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16. Further, the medical records do not reveal anything about the alleged occurrence ie., the sexual intercourse committed by the accused with PW1. Therefore the prosecution has failed to prove that the accused by making false promise, had sexual intercourse with PW1/victim and thereby, he committed offence.

17. Further PW2, who is the mother of the victim has also deposed that her daughter told her that the 1st accused had raped her and thereafter she along with her daughter went to the house of the accused and asked to marry her daughter, but they refused. At that time, the 2nd accused attempted to assault them with iron rod and bill hook. Thereafter, she decided to arrange marriage for her daughter with another person. Thereafter, they gave complaint. According to the prosecution case, when the victim along with her mother went to the house of the accused and requested the 1st accused to marry her daughter, the 2nd accused caused criminal intimidation by showing an iron rod, but PW2 stated in her evidence that the accused attempted to assault with iron rod and bill hook.



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Further PW1 also stated in her evidence that the 2nd accused told that she would kill them if they come to her house for marriage talks by showing the iron rod. But the evidence of PW2 is contrary to the evidence of PW1 with regard to the manner of occurrence, weapon and words uttered by the 2nd accused. Therefore a serious doubt would arise about the the case of the prosecution.

18. PW4 is the brother of PW1. He is not an eye witness of the occurrence. He has only stated about the complaint given by them and other happenings after the occurrence. PW5 is also a hear-say witness. PW6 has deposed about the chemical analysis report and he stated that he examined as per the request sent to him and as per his report, the filter papers 1, 2, 3 and 4 do not contain sperms and for the items 5 to 9, could not identify the group of blood. Therefore, the evidence of PW6 also does not reveal anything incriminating as against the accused.

19. PW7 has deposed about the potency of the accused and as per his report, the accused is capable to have sexual intercourse. PW10 has deposed about the receipt of complaint, registration of FIR. PW11 has deposed about the investigation. PW11, in her cross examination evidence,



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has stated that “இந்த வழக்கு சம்பந்தமாக அ.சா.1ன் பக்கத்து வீட்டுக்காரரை விசாரித்தேனா என்றால் விசாரித்தேன். ஆனால் அவர்கள் சாட்சி சொல்ல முன் வரவில்லை”. Therefore, from

the evidence of PW11, it reveals that there is no any witnesses examined in and around the place of occurrence. The occurrence took place in the midnight. While so, it is the duty of the prosecution to examine the witnesses, who are residing in the nearby place of the occurrence, but the investigation officer has failed to examine the witness near to the place of occurrence. This also creates a serious doubt over the prosecution case.

20. Further PW11 admitted that she has not prepared any Observation Mahazar and Rough Sketch in this case. In this context, at the time of cross examination, she admitted that “சம்பவம் நடந்ததாகச் சொல்லப்படும் வீட்டை நான் பார்வையிட்டேனா என்றால் பார்வையிட்டேன். அந்த இடத்தைப் பற்றிய பார்வை மகஜரோ, கூரைபடமோ நான் தயார் செய்யவில்லை என்றால் சரி தான்”. Therefore the prosecution has failed to investigate the matter in a proper manner. Further PW11 in her evidence admitted that “அ.சா.1 என்னுடைய விசாரணையில் “இனி மேல் கல்யாண பேச்சு கேட்டு வீட்டிற்கு வந்தால் உங்களை சாகடித்துவிடுவேன்” என்று இரண்டாவது எதிரி சொல்லவில்லை என்றால் சரியல்ல, கொண்டு புதைத்துவிடுவோம் என்று இரும்பு கம்பியைக் காட்டி குத்த வந்ததாகக் கூறியுள்ளார்”. Therefore even according to the prosecution case, the words uttered by the accused are totally contradict to each other. In the complaint,



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it is stated that “இனி இந்த வீட்டுப் பக்கம் வந்தால் கொன்று புதைத்துவிடுவோம் என்று இரும்புக் கம்பியைக் காட்டி குத்த வந்தார்கள்”. In the evidence, PW1 stated that “இனி மேல் கல்யாண பேச்சு கேட்டு வீட்டிற்கு வந்தால் உங்களை சாகடித்துவிடுவேன் என்று 2வது எதிரி பரிதாபகம் சொன்னார். கம்பியைக் காட்டி எங்களை மிரட்டினார்”. PW2 stated that “கம்பி மற்றும் அருவாளை எடுத்து எங்களை அடிக்க வந்தார்கள்”. Therefore there are major contradictions between the evidence of PW1, PW2 and the complaint with regard to the alleged criminal intimidation caused by the 2nd accused. Therefore, the prosecution has failed to prove the case beyond all reasonable doubts.

21. As far as the offence under Section 417 of IPC is concerned, PW1 in her evidence stated that the accused made promise to marry her and then had sexual intercourse and thereafter he refused to marry her. But the evidence of PW1 is highly doubtful and to attract Section 417 of IPC, there is no sufficient evidence adduced by the prosecution and the evidence of PW1 is not sufficient and the same is highly doubtful. In order to attract Section 417 of IPC, the prosecution has to prove the offence of cheating. The term “cheating” is defined in Section 415 of IPC, which reads as follows:-



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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".

In order to attract the above said provision, there is no evidence that the accused by deceiving any person fraudulently or dishonestly induced the victim. Therefore, there is no evidence to attract the provisions of Section 417 of IPC as against the 1st accused.

22. As far as Section 376 of IPC is concerned, the evidence of PW1 is highly doubtful and the medical evidence also does not reveal anything in favour of the prosecution and merely PW1 alone has stated about the occurrence. But her evidence is not cogent and it is highly doubtful. Thereby, the prosecution has failed to prove the charge under Section 376 of IPC. Even assuming the statement of victim as true, with regard to the alleged intercourse, her evidence shows that the victim has also consented for the sexual intercourse. The victim is aged about 19 years and thereby, she consented for the same. Therefore, the offence under Section 376 of



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IPC would not attract and no evidence to prove the ingredients of Section 375 of IPC.

23. As far the offence under Section 506(2) of IPC is concerned, there is no evidence that the words uttered by the accused caused fear over the minds of the victim and the words uttered by the accused also differ between the prosecution side witnesses. Moreover the prosecution failed to recover the weapon and no evidence to constitute the offence punishable under Section 506(ii) of IPC.

24. The Trial Court failed to consider that in this case, there is no place and time of occurrence mentioned in the charge and there is no reference in the complaint about the place and time of occurrence. But the victim at the time of giving her evidence before the Court only stated about the place of occurrence that in her house the occurrence took place. The 'place of occurrence' plays a vital role these types of serious offences but the complainant neither in her complaint nor in the statement recorded before the investigation officer, stated about the place of occurrence. The charge also does not contain the place and time of occurrence. Therefore the



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prosecution case is highly doubtful. The Trial Court has not considered the above said aspects and erroneously came to the conclusion that based on the complaint given by the victim, FIR has been registered and thereafter PW1 has deposed about the contents contained in the complaint and about the occurrence and the averments contained in the complaint also corroborated the evidence of PW1. *Also as per Section 90 of IPC, if the consent was obtained under fear or misconception, the offences under Sections 376 and 417 of IPC would attract.* Further the Trial Court failed to consider that there is no evidence to attract the provisions under Section 506(2) of IPC.

25. The learned counsel for the appellants relied upon the judgment of this Court in *Ramesh vs. State represented by its Inspector of Police, All Women Police Station, Panruti, Cuddalore District reported in Crl. A. No. 272 of 2014*, wherein this Court held in Para 31 as follows:-

31. Admittedly, it can be referred that only after PW4, the cousin of the PW1 / Prosecutrix came to know about the physical relationship, she had given a complaint that too after a delay of nine months. Further, in this case, the prosecutrix is also not clear as to the date on which the first



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incident had happened and how the relationship originated and developed over a period of time accompanied by continued physical relationship. As stated above, there is nothing on evidence to show that at the initial stage itself the accused had no intention whatsoever of keeping his promise to marry the victim. This could be brought within 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 the misconception created by the accused. If the appellant had any malafide intention and if he had clandestine motives, it could be brought into the ingredient of rape. The acknowledged consensual physical relationship between the parties would not constitute the offence u/s.376 IPC. Further as stated above no evidence has been made out for the offence u/s.417 I.P.C.”

In this case on hand also, the victim has not stated about the place of occurrence and time and there is no clear cut evidence to prove the alleged occurrence and thereby the above said case law is squarely applicable to the present facts of the case.

26. In view of the above said discussions, this Court is of the opinion that the prosecution has failed to prove the charges levelled against the accused and therefore, the judgment and conviction passed by the Trial Court are unsustainable and the same are liable to be set aside.



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27. IN THE RESULT, this Criminal Appeal is allowed and the judgement and conviction passed in S.C. No.54 of 2014 by the learned Sessions Judge, Fast Track Mahila Court, Ramanathapuram dated 25.04.2018, are hereby set aside and the 1st accused is acquitted from the charges under Sections 417 and 376 of IPC and the 2nd accused is acquitted from the charge under Section 506(2) of IPC. The appellants/accused be set at liberty subject to other cases, if any. The bail bonds executed by the accused shall stand cancelled. The fine amount, if any paid by the accused, shall be refunded. Connected miscellaneous petition, if any, is closed.

23.11.2023

Index : Yes / No

Internet : Yes / No

Neutral Citation Case :Yes/No

mjs

To

1. The Sessions Judge,
Fast Track Mahila Court,
Ramanathapuram.

2. The Inspector of Police,
All Women Police Station,
Keelakkarai,
Ramanathapuram District.

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