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Crl.A.No.7 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.11.2024

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

**Crl.A.No.7 of 2023**

Salman

...Appellant/Sole Accused

Vs.

State Represented by,  
The Inspector of Police,  
All Women Police Station,  
Perambalur,  
Perambalur District.  
(Crime No.5/2014)

...Respondent/Complainant

**Prayer :** Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, against the Judgment dated 28.10.2022 in Sessions Case No.14 of 2014, on the file of the learned Sessions Judge, Mahila Court, Perambalur District.

For Appellant

: Mr.R.John Sathiyam  
Senior Counsel  
for  
Mr.Swami Subramanian



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For Respondent

: Dr.C.E.Pratap

Government Advocate (Crl.Side)

### **JUDGMENT**

This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him vide judgment dated 28.10.2022 in S.C.No.14 of 2014 on the file of the learned Sessions Judge, Mahila Court, Perambalur District.

2(a). It is the case of the prosecution that the appellant and the *de-facto* complainant had a love affair; that on the promise of marriage, the appellant had sexual intercourse with the *de-facto* complainant between 20.02.2013 and 02.02.2014 on various dates; that the appellant made the *de-facto* complainant believe that she was married to him by tying a Thali and had sexual intercourse, as a result of which the *de-facto* complainant became pregnant and thereafter, when the *de-facto* complainant requested the appellant to marry her, he refused to do so and abused her in filthy language and threatened her of dire consequences.



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(b). The *de-facto* complainant had lodged a complaint in Ex.P1 on 27.03.2014, which was registered in Crime No. 5 of 2014 dated 27.03.2014, on the file of the respondent for the offences under Sections 376, 417, 294 and 506(1) of the IPC. The FIR was marked as Ex.P7.

(c). P.W.10/the Sub Inspector of Police registered the FIR and P.W.13/the Inspector of Police conducted the investigation, and after examination of witnesses, filed the Final Report for the offences under Sections 294(b), 376, 417 and 506 (1) of the IPC before the Jurisdictional Magistrate.

(d). On the 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. 14 of 2014 and was made over to the learned Sessions Judge, Mahila Court, Perambalur District, for trial. The trial Court framed charges u/s. 376, 417, 294(b) and 506(1) of the IPC against the appellant, and when questioned, the appellant pleaded 'not guilty'.



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(e). To prove the case, the prosecution examined 13 witnesses as P.W.1 to P.W.13 and marked 12 exhibits as Exs.P1 to P12. When the appellant was questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. On the side of the defence, two witnesses were examined as D.W.1 and D.W.2 and one document was marked as Ex.D1.

(f). On appreciation of oral and documentary evidence, the Trial Court found that the appellant/accused was not guilty of the offences under Sections 417, 294(b) and 506(1) of the IPC and found guilty of the offence under Section 376(2)(n) of the IPC and sentenced him to undergo rigorous imprisonment for a period of ten years and also to pay a fine of Rs.2,00,000/- (Rupees Two Lakhs Only) in default, to undergo simple imprisonment for a further period of two years. Hence, the accused/appellant has preferred the appeal challenging the said conviction and sentence.



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3. Heard Mr. R. John Sathiyar, learned Senior Counsel, appearing for the appellant/accused, and Dr.C.E. Pratap, the learned Government Advocate (Crl.Side) appearing for the respondent/State.

4. The learned Senior Counsel for the appellant/accused would submit that the allegation as regards deception and false promise of marriage has been invented for the purpose of prosecuting the appellant; that the evidence discloses that the relationship between the appellant and the *de-facto* complainant was consensual; that there is evidence to show that the appellant had married the *de-facto* complainant and were living together as husband and wife; and that it was the *de-facto* complainant who deserted the appellant and thereafter filed this false case.

(b). The learned Senior Counsel also pointed out the evidence of the *de-facto* complainant/victim and the evidence of the Investigating Officer, to show that the deposition of the victim in Court was an afterthought and she had not stated any of those facts during the investigation and also



pointed out the evidence of D.W.1 to show that the appellant married the *de-facto* complainant and hence, neither deception nor rape has been established and therefore prayed for acquittal.

5. The learned Government Advocate (Crl. Side) for the respondent/complainant, *per contra*, would submit that pursuant to their relationship, the victim became pregnant, a child was born; that a DNA analysis was conducted to ascertain the paternity of the said child and the DNA results revealed that the appellant is the biological father of the child; and that the evidence of the victim is cogent and convincing and therefore, there is no infirmity in the Judgment of the Trial Court; hence, he prayed for dismissal of the appeal.

6. This Court has carefully considered the rival submissions and perused the materials on record.

7. As stated earlier, the prosecution had examined 13 witnesses. P.W.1 is the victim/*de-facto* complainant. P.W.2 is the elder sister of the



victim/P.W.1. P.W.3 is the Doctor, who had examined the accused and had certified that the age of the accused was around 25 years. P.W.4 is a Doctor, who had examined the accused and conducted the potency test and had certified that the accused was not impotent. P.W.5 is the Head Constable, who accompanied the accused for medical examination. P.W.6 is the Constable, who accompanied the victim girl for medical examination. P.W.7 and P.W.8 are the Observation Mahazar witnesses. P.W.9 is the Doctor, who had examined the victim and had issued Ex.P6, a certificate confirming the pregnancy of the victim. P.W.10 is the Sub Inspector of Police, who registered the FIR. P.W.11 is the Forensic Expert Expert, who had issued the DNA report [Ex.P8]. P.W.12 is the Constable, who assisted the Investigating Officer. P.W.13 is the Investigating Officer, who had filed the Final Report.

8. The fact that the appellant and the victim/P.W.1 had sexual relationship is not in dispute. The evidence of the Doctor confirms the said fact. However, the question is whether the appellant had deceived the victim and compelled her to have sexual intercourse. The above description of the witnesses would show that the prosecution relies upon the evidence of



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P.W.1 and P.W.2 for this purpose. P.W.1 is the victim and P.W.2 is the elder sister of P.W.1. The deposition of P.W.1 is that the appellant/accused had expressed his love for P.W.1; that he also expressed his desire to have sexual intercourse for which, P.W.1 refused and thereafter, the appellant took her to a godown, which is attached to a bakery run by his parents; that on 20.02.2013, had forceful sexual intercourse; that the victim could not prevent the appellant; that on 02.04.2013, the appellant assaulted P.W.1 and took her to a temple, tied Thali and thereafter, continued to have sexual intercourse; that the accused had captured the act of sexual intercourse in a camera and thereafter threatened her of dire consequences and exposing her in Youtube, if she did not agree for sexual intercourse; and that thereafter, she became pregnant and she informed her sister about the same and when she and her sister went to meet the appellant in his house, the appellant abused both of them in filthy language and thereafter, the victim/P.W.1 had lodged a complaint.

9. However, the cross-examination of the Investigating Officer reveals that none of the material facts stated by her in her deposition had been stated during the investigation. The relevant portion of the evidence of



the Investigating Officer/P.W.13 reads as follows:

....

“அ.சா.1 என்னுடைய புலன் விசாரணையின் போது நான் விடுமுறையில் பெரம்பலூர் புதிய பேருந்து நிலையம் அருகே உள்ள நூலகத்திற்கு வந்ததாகவும், எதிரியை அங்கு பார்த்ததாகவும், சொல்லவில்லை. மேலும் 2 நாட்கள் எதிரியை பார்த்ததாகவும், அவர் என்னுடன் நட்பாக இருக்கும்படி கேட்டதாகவும் அதற்கு தான் மறுத்துவிட்டதாகவும் அ.சா.1 என புலன் விசாரணையில் தெரிவிக்கவில்லை.”

....

“அதன்பின் 1 வாரம் கழித்து 20.02.2013, அன்று எதிரி என்னை எஸ்.என். பேக்கிரியில் குடோனில் உள்ள சிறிய அறைக்கு பேசுவதற்கு வா என்று அழைத்ததாக அ.சா.1 என புலன் விசாரணையில் தெரிவிக்கவில்லை. அந்த அறையில் கண்காணிப்பு கேமரா பொருத்தப்பட்டு இருந்தது என்று அ.சா.1 என புலன் விசாரணையில் தெரிவிக்கவில்லை. அதற்கு எதிரி தன்னை கேட்காமல் வலுக்கட்டாயமாக அவர் மடி மீது வைத்து கொண்டு தன் ஆடைகளை அவரே கழற்றி என்னுடன் வலுக்கட்டாயமாக உடலுறவு கொண்டார் என்று அ.சா.1 என புலன் விசாரணையில் தெரிவிக்கவில்லை. அந்த



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அறையில் தொங்கி கொண்டிருந்த ஒரு மின்சார ஓயரை வைத்து கொண்டு தன்னை உடலுறவுக்கு வற்புறுத்தியதாகவும் தன்னால் திமிர்வே முடியவில்லை என்று அ.சா.1 என புலன் விசாரணையில் தெரிவிக்கவில்லை. மறுபடியும் 02.04.2013 எதிரி தன்னை அடித்து விடுதியில் இருந்து அழைத்து வந்து மலைக்கோட்டையில் உள்ள கோவிலில் வைத்து தன்னை அடித்து தன் கழுத்தில் ஒரு மஞ்சள் கயிற்றை கட்டினார் என்று அ.சா.1 என புலன் விசாரணையில் தெரிவிக்கவில்லை. 20.02.2013 எதிரி தன்னிடம் வலுகட்டாயமாக உடலுறவு வைத்து கொண்ட பதிவுகள் அங்கு உள்ள கேமராவில் பதிவாகி உள்ளது மேலும் எதிரி அவருடைய செல்போனில் அந்த உடலுறவு காட்சி உள்ளது என்று சொல்லி அந்த காட்சிகளை செல்போனில் தன்னிடம் காட்டியதாகவும், அதை தான் பார்த்ததாகவும் அ.சா.1 என புலன் விசாரணையில் தெரிவிக்கவில்லை. எதிரி வலுகட்டாயமாக கருகலைப்பு மாத்திரை வாங்கி தன்னுடைய வாயில் போட்டுவிட்டதாகவும் அதனால் தனக்கு நரம்பு தளர்ச்சி ஏற்பட்டதாகவும் அ.சா.1 என புலன் விசாரணையில் தெரிவிக்கவில்லை. தன் வீட்டிலும், விடுதியிலும் தன்னுடைய உடம்பு வெள்ளையாகிவிட்டது என்று கேட்டதாவும் அ.சா.1 என புலன் விசாரணையில்



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தெரிவிக்கவில்லை. அதன்பின் 4 வது முறையாக தான் கார்ப்பமடைந்ததாகவும், அதனால் தன் உடம்பில் மாற்றங்கள் தெரிவதாகவும் அதற்கு என்ன காரணம் என்றும், என் அக்கா, என் அம்மா ஊரில் உள்ளவர்கள் மற்றும் தன் வகுப்பு தோழிகள் கேட்டதாவும் அ.சா.1 என் புலன் விசாரணையில் தெரிவிக்கவில்லை.”

....

“நீ இதற்கு சம்மதிக்காவிட்டால் நான் தற்கொலை செய்து கொள்வேன் என்று மிரட்டி வலுக்கட்டாயமாக உடலுறவு வைத்து கொண்டதாக கூறினார். நான் சத்தம் போட்டு கதவின் தாழ்ப்பாணை திறக்க ஓடினேன். அப்போது எதிரி என் வாயை என் சால் துப்பட்டவால் கட்டி விட்டு வெறித்தனமாக என்னுடன் உடலுறவு கொண்டார் என்று என் விசாரணையில் அ.சா.1 சொல்லவில்லை.”

....

“என் வலது முன்கையில் சூடு வைத்தார். அதனால் என் கையில் கருப்பாக சூடு காயம் ஏற்பட்டது என்று அ.சா.1 என் புலன் விசாரணையில் சொல்லவில்லை. அதன்பின் 4 வது முறையாக நான் கார்ப்பம் அடைந்துவிட்டேன் என் உடம்பில் மாற்றங்கள் தெரிவதாக என் அக்கா மற்றும் வகுப்பு தோழிகள்,



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அம்மா மற்றும் ஊரில் உள்ளவர்கள் கேட்டார்கள்.”

....

எந்தெந்த காலக்கட்டத்தில் அ.சா.1 காப்பம் ஆனார், அபாசன் செய்தார் என்று அ.சா.1 எனது விசாரணையில் தேதி குறிப்பிடவில்லை. 3 முறை காப்பம் ஆகி அபாசன் ஆனதாக மட்டும் சொல்லியுள்ளார். சம்பவ இடத்திலிருந்து வீடியோ, கேமரா எதிரியிடம் இருந்து செல்போன் ஆகியவற்றை நான் கைப்பற்றவில்லை. அ.சா.1 புகார் கொடுத்த காவல் நிலையம் வந்த விவரம் எனக்கு தெரியும், எத்தனை பேர் அவருடன் வந்தார்கள் என்று எனக்கு தெரியாது. என்னிடம் புகார் எதுவும் அளிக்கவில்லை.”

....

“அ.சா.2 எனது விசாரணையில் எதிரி என தங்கையுடன் உடலுறவு கொண்ட சாட்சிகளை வீடியோ கேமராவிலும், தன்னுடைய சொல்லிலும் பதிவு செய்து இருப்பதாகவும், தொடர்ந்து உடலுறவு கொள்ளவில்லை என்றால், அந்த சாட்சிகளை யூ டிபில் போட்டு விடுவதாக தன் தங்கையை மிரட்டியதாக சொல்லவில்லை.”

The above deposition of the Investigating Officer/P.W.13 would



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demonstrate that the victim had stated several facts for the first time in Court and that it is an afterthought. P.W.2 is a hearsay witness and the above-extracted portion would also reveal the improvements in her deposition in Court.

10. Be that as it may. The learned counsel for the appellant/accused, in her cross-examination of the victim/P.W.1, had asked the victim as to whether the appellant had married the victim in a Mosque; the victim would state that a marriage in fact took place, but it was under compulsion. This evidence of the victim would show that the victim's evidence is self-contradictory. If the appellant had deceived the victim and had sexual intercourse on the false promise of marriage, there was no reason for him to compel the victim to get married to him.

11. That apart, D.W.1/District Vice President of the Tamil Nadu Thowheed Jamaath at Perambalur, would state that the victim volunteered to get married with the appellant and on 22.06.2014, the marriage was solemnized in the presence of Jamathars and that the appellant had paid



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Rs.10,000/- (Rupees Ten Thousand only) as *Mahr* to the victim.

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12. D.W.2 is the person who had arranged a rental house for the appellant and the victim to stay after their marriage and he would also state that they had lived in that house for two months and thereafter, the victim/P.W.1 left the house stating that her sister called her. The prosecution has not elicited anything in the cross-examination to disbelieve the evidence of D.W.1 and D.W.2. Further, in the cross-examination, D.W.1 had confirmed the presence of the mother and sister of the victim at the time of marriage. The evidence of D.W.1 and D.W.2 and the admission made by P.W.1 in her cross-examination, therefore, confirm that the marriage in fact took place and hence, the allegation of deception cannot be accepted and the trial Court rightly acquitted the appellant for the offence of cheating. Further, P.W.9/Doctor, who had examined the victim had stated in the cross-examination that when the victim came for examination, she had not stated that she was subjected to forcible sexual intercourse; and that she had only stated that she had intercourse with the appellant.



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13. From the above discussion of the evidence, it would be clear that the offence under Section 376 of the IPC has been made out. The evidence only discloses a consensual relationship and therefore, the appellant is not guilty of the offence under 376 of the IPC. The trial Court had acquitted the appellant of all other offences by its Judgement dated 28.10.2022. In such circumstances, the appeal deserves to be allowed.

14. In the result, this Criminal Appeal is allowed, and the appellant is acquitted of the offence u/s. 376(n)(2) of the Indian Penal Code. The conviction and sentence passed in S.C.No.14/2014 on the file of the learned Session Judge, Mahila Court, Perambalur District, *vide* Judgment dated 28.10.2022, are set aside. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

19.11.2024

Index: yes/no  
Neutral citation : yes/no  
dk



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Copy to:-

- 1.The Sessions Judge  
Mahila Court,  
Perambalur District.
- 2.The Inspector of Police,  
All Women Police Station,  
Perambalur,  
Perambalur District.
- 3.The Public Prosecutor  
High Court of Madras,  
Chennai – 600 104.



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**SUNDER MOHAN,J.**

*dk*

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