

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.210 of 2015

and

M.P.No.1 of 2015

G.Anandan

... Appellant/Accused

vs.

The State, rep.by
The Inspector of Police,
K-2, Ayanavaram Police Station,
Ayanavaram,
Chennai

... Respondent/Complainant

Criminal Appeal filed under Section 374 of Cr.P.C., against the conviction and sentence passed by the Mahila Court, Chennai, in S.C.No.216 of 2012, dated 16.3.2015.

For appellant : Mr.S.Gopinath, Sr.counsel
for M/s.K.Selvarangan

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

JUDGMENT

The conviction and sentence dated 16.03.2015 passed in Sessions Case No.216 of 2012, by the Mahalir Needhi Mandram, Chennai, are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that both the accused and prosecutrix are lovers. On 27.4.2009, at about 7.30 p.m., the accused has called the prosecutrix to come to his newly constructed house and accordingly, the prosecutrix has gone to the house of the accused and in front of pooja room, the accused has tied thali around her neck and also declared that from that day onwards, both he and the prosecutrix are husband and wife and thereafter, without her consent, he deflowered her and subsequently, refused to register their marriage. After occurrence, the prosecutrix has given a complaint and the same has been registered in Crime No.725 of 2010. The complaint given by her has been marked as Ex.P4.

3. On receipt of Ex.P4, the investigating officer, P.W.7, has conducted investigation, examined connected witnesses. After his transfer, P.W.8 has conducted further investigation and after his transfer, P.W.9 continued investigation and after completing the same, has laid a final report on the file of the V Metropolitan Magistrate, Egmore, Chennai and the same has been taken on file in P.R.C.No.5 of 2012.

4. The V Metropolitan Magistrate, Egmore, Chennai, after considering the fact that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the trial Court and the same has been taken on file in Sessions Case No.216 of 2012.

5. The trial Court, after hearing both sides and upon perusing the relevant records, has framed first charge against the accused under Section 376 of the Indian Penal Code; second charge against him under Section 420 of the Indian Penal Code and the same have been read over and explained to him. The accused has denied the charges framed against him and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 9 have been examined and Exs.P1 to P12 and M.O.1 have been marked.

7. When the accused has been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. On the side of the accused M.Os.1 to 5 have been marked.

8. The trial Court, after hearing arguments of both sides and upon appraising the available evidence on record, has found the accused guilty under Section 376 of the Indian Penal Code and sentenced him to undergo seven year rigorous imprisonment and also imposed a fine of Rs.10,000/- with usual default clause. The accused has also been found guilty under Section 420 of the Indian Penal Code and sentenced to undergo two years rigorous imprisonment and also imposed a fine of Rs.5,000/- with usual default clause. Against the convictions and sentences passed by the trial Court, the present criminal appeal has been filed, at the instance of the accused, as appellant.

9. The learned counsel appearing for the appellant/accused has sparingly contended that even as per Ex.P4, the Court cannot come to a conclusion that without having the consent, the accused has had deflowered the prosecutrix and

further the prosecutrix has been examined as P.W.5 and the trial Court, without assessing her entire evidence, has erroneously found the accused guilty under Sections 376 and 420 of the Indian Penal Code and therefore, the convictions and sentences passed by the trial Court are liable to be interfered with.

10. Per contra, the learned Additional Public Prosecutor has contended that on the date of occurrence, under the guise of marrying the prosecutrix, the accused has had coition with the prosecutrix and subsequently refused to marry her. Under the said circumstances, the trial Court has rightly found the accused guilty under Sections 376 and 420 of the Indian Penal Code and therefore, the convictions and sentences passed by the trial Court do not warrant interference.

11. On the basis of the divergent submissions made on either side, the Court has to look into as to whether the evidence given by the prosecutrix would be sufficient to come to a conclusion to the effect that the accused has committed offences punishable under Sections 376 and 420 of the Indian Penal Code.

12. The prosecution has set the law in motion only on the basis of Ex.P4, complaint alleged to have been given by the prosecutrix, wherein, it has been clearly stated that before committing offence, the accused has tied thali around her neck and subsequently, declared that he and the prosecutrix are husband and wife.

13. The prosecutrix has been examined as P.W.5 and her specific evidence is that even prior to occurrence, the mother of the accused has told her that since there is a defect in horoscope of the accused, marriage between him and prosecutrix would not happen and even if marriage is performed, the accused would die. Further, she has deposed in her evidence that immediately after occurrence, the accused has gone to a Foreign country in connection with his profession. Therefore, it is quite clear that in spite of the warning given by the mother of the accused, the prosecutrix has gone to the place of occurrence on the basis of mere request made by the accused and further the accused has married the prosecutrix in front of a pooja room and subsequently, he has had carnal copulation with her. Further it is seen from the evidence that after occurrence, the accused has gone to a Foreign country in connection with his profession. Under the said circumstances, the question of cheating does not arise.

14. The specific case put forth on the side of the prosecution is that after tying thali to the prosecutrix, the accused has had given a false promise of legally marrying the prosecutrix and since, subsequently he refused to perform legal

marriage, he committed offences punishable under Sections 376 and 420 of the Indian Penal Code.

15. The evidence given by the prosecutrix are the complete answers to the allegations made in the charges. Even in the first charge it is clearly mentioned that only after tying thali, the accused has had coition with the prosecutrix and further, the prosecutrix has stated in her evidence that immediately after occurrence, the accused has gone to a Foreign country and under the said circumstances, as stated earlier, the question of cheating does not arise. Therefore, the evidence adduced by the prosecutrix are not at all sufficient for coming to a conclusion that the accused has committed offences punishable under Sections 376 and 420 of the Indian Penal Code.

16. The trial Court, without assessing the evidence of the prosecutrix properly, has simply invited convictions and sentences against the accused under Sections 376 and 420 of the Indian Penal Code in casual manner. The approach made by the trial Court is erroneous. Further, on the side of the prosecution, trustworthy evidence is not available so as to attract the penal provisions of Sections 376 and 420 of the Indian Penal Code and altogether, the present criminal appeal is liable to be allowed.

In fine, this criminal appeal is allowed. The convictions and sentences passed by the trial Court in Sessions Case No.216 of 2012 are set aside. The appellant/accused is acquitted. Bail bond, if any, executed by him shall stand cancelled. Fine amounts, if any, paid by him are ordered to be refunded forthwith. Connected miscellaneous petition is closed.

msk

s/d-

Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

To

1.The Judge, Mahila Court, Chennai

2.The Inspector of Police,
K-2, Ayanavaram Police Station,
Ayanavaram, Chennai

3.The Public Prosecutor,
High Court, Madras

4.The V Metropolitan Magistrate,
Egmore, Chennai.

5.The District Collector,
Chennai.

6.The Director General of Police,
Mylapore, Chennai.

7.The Superintendent of Police,
Central Prison, Puzhal, Chennai.

8.The Assistant Commissioner of Police,
Aynavaram Range/Chennai.

+ 1 cc to M/s.K.Selvarangan, Advocate SR 56492

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Crl.A.No.210 of 2015



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