

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2017

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.R.C.No.27 of 2014

Umayal

... Petitioner

Vs.

1. Madhiazhagan

2. Station House Officer,
Marakkanam Police Station,
Marakanam.

... Respondents

Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure Code to set aside the order of acquittal passed by the Additional District and Sessions Judge, Fast Track Court No.-I, Tindivanam in S.C.No.240 of 2008, dated 25.03.2009.

For Petitioner : Mr. P.R.Thiruneelakandan

For respondents : M/s. N.Sudharsanan,
for R1

: Mr.V.Arul,

Additional Public Prosecutor, for R2

ORDER

Challenging the order of acquittal passed by the Additional District & Sessions Judge, Fast Track Court No.I, Tindivanam, in S.C.No.240/2008 dated 25.03.2009, the present revision has been filed by the defacto-complainant/P.W.1 . The accused herein stood charged for the offences under Sections 417, 376, and 313 IPC. The trial Court, after elaborate trial, by a judgment dated 25.03.2009, acquitted the accused from all the charges. Challenging the above said order of acquittal, P.W.1 has filed the present revision before this Court.

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

P.W.1, is the victim girl in this case and the accused is closely related to her, and both of them were studying at Chennai. From the year 2000, they loved each other and on deception to marry her, the accused had sexual intercourse with the petitioner. Thereafter, she has conceived, and at the request of the accused, she had undergone abortion. Thereafter, the accused family making arrangements for his marriage. While the petitioner asked him to marry her, he refused to marry her and thereby cheated her.

3. In the above circumstances, she has lodged a complaint before the respondent police on 25.03.2005. Thereafter, a mediation was conducted in their village, in which, the accused promised to marry the petitioner as his second wife and he has also given a written undertaking for the same. But once again he violated the undertaking and refused to marry the petitioner. Hence, she has given another complaint before the respondent police on 04.07.2005. Based on the above complaint, P.W.10, Inspector of Police, attached to the respondent police, registered a case in Crime No.308/05 under Sections 417,376 IPC and prepared an First Information Report Ex.P.6, and sent the petitioner for medical examination. P.W.6, Doctor, examined the victim girl and given a report Ex.P.2, that hymen was not intact and there is no symptom of any abortion. Thereafter, PW10, Inspector of Police, also sent the accused for medical examination and obtained a report that he is not impotent. P.W.10 examined the witnesses, recorded the statement of the witnesses and after completing the investigation, he laid charge sheet against the accused.

4. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 10

witnesses were examined and 8 documents were exhibited.

5. Out of the witnesses examined, PW1 is the victim in this case. According to her, the accused is closely related to her and both of them were staying at Chennai, and they loved each other. The accused promised to marry her, with the above deception, the accused had sexual intercourse with the petitioner. Thereafter, she got conceived and at request of the accused, she undergone abortion. Thereafter, the accused married another girl and he refused to marry her, and Panchayat was conducted in the village, in which, the accused promised to marry her as his second wife. But he failed to do so. Hence, she has lodged a complaint.

6. PW.2 is one of the mediators and he is known to the accused. According to him, there was a mediation and in the mediation, the accused promised to marry P.W.1 as his second wife, but he did not do so. P.Ws.3 and 4 are also panchayathars and they have also spoken about the mediation held between the parties. P.W.5 is the sister of P.W.1. She has also spoken about the love affair between the petitioner and the accused and also spoken about the mediation conducted in the village and the written agreement entered into between the parties. P.W.6 is the Doctor, who examined P.W.1 and had given a report and she has categorically stated in her cross examination that there is no symptom of abortion. P.W.7 Head

constable, working in the respondent police, took P.W.1 for medical examination. P.W.8 is the Head Constable, working in the respondent police, took the accused for medical examination. P.W.9, Doctor, examined the accused and had given a report that he is not impotent. P.W.10 is the Inspector of Police, who registered the complaint, conducted investigation and after completion of investigation, he laid charge sheet.

7. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any of the witnesses or mark any documents on his side.

8. Considering all the above materials and evidences, the trial Court acquitted the accused. Challenging the order of acquittal, the present revision has been filed.

9. I have heard the learned counsel appearing for the petitioner and the first respondent and the learned Additional Public Prosecutor appearing for the second respondent/State.

10. P.W.1 is the victim in this case. According to her, both P.W.1 and the accused loved each other and on the deception of

marrying her, the accused had sexual intercourse with her and P.W.1 also got conceived. Thereafter, the accused took her to a private Doctor and forced her to go for abortion and believing his words, she also undergone abortion. Thereafter, without marrying P.W.1, the accused had married another girl. Hence, she has lodged a complaint before the respondent police and thereafter, there was a mediation, in which, the accused had promised to marry her as second wife. Even that promise was not fulfilled and he failed to marry her. Hence, she has lodged a second complaint before the respondent police. From the evidence of P.W.1, it is seen that P.W.1 is a consenting party for sexual intercourse. But the only contention of P.W.1 is that the accused promised to marry her and only on believing his words, she has given a consent for sexual intercourse. Actually, the consent was obtained by deception. Her further evidence is that subsequently, she got conceived and she has also undergone abortion. But, her evidence was not corroborated by the medical evidence. P.W.6 has clearly stated that there is no symptom for abortion.

11. Apart from that, the occurrence had taken place in the year 2000. Thereafter, only in the year 2005, after 5 years, P.W.1 came out with a case that the petitioner refused to marry her. Even though, she has stated that earlier she had given a complaint before

the respondent police on 25.03.2005 and thereafter, panchayath has been conducted, but the copy of the said complaint was not marked. P.W.10, Investigating officer also denied that he has not issued any CSR. Even in the evidence of P.Ws.3,4, and 5, the mediators have consistently stated that there was a written agreement entered into between the parties, but, a copy of the written agreement was also not marked before the Court.

12. Considering all those materials, the trial Court doubted the version of P.W.1 and acquitted the accused. Even though, in the nature of this case, the uncorroborated evidence of the victim can be made basis for conviction provided her evidence is reliable and trustworthy. But in this case, the evidence of P.W.1 is totally unreliable and the medical evidence is also not corroborating the evidence of P.W.1 and hence, it is highly unsafe to convict the accused based on the testimony of P.W.1. The trial Court also considering all those materials, has acquitted the accused.

13. It is settled principal of law that in an order of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him and the fundamental principle of criminal justice delivery system is that every person, accused of committing an offence shall be presumed to be

innocent, unless his guilt is proved by a competent Court of law. Secondly if the accused has secured an order of acquittal, the presumption of his innocence is reaffirmed and strengthened by the trial Court. Even if two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of the acquittal recorded by the trial Court.

14. In the above circumstances, I find no illegality or irregularity in the order passed by the court below and there is no merit in the revision and the same is deserves to be dismissed.

15. Accordingly, the criminal revision case is dismissed and the judgment of the Court below is confirmed.

सत्यमेव जयते

24.10.2017

Index:Yes/No

Internet:Yes/No

mrp

To

1. The Additional District and Sessions Court,
Fast Track Court No.-I, Tindivanam

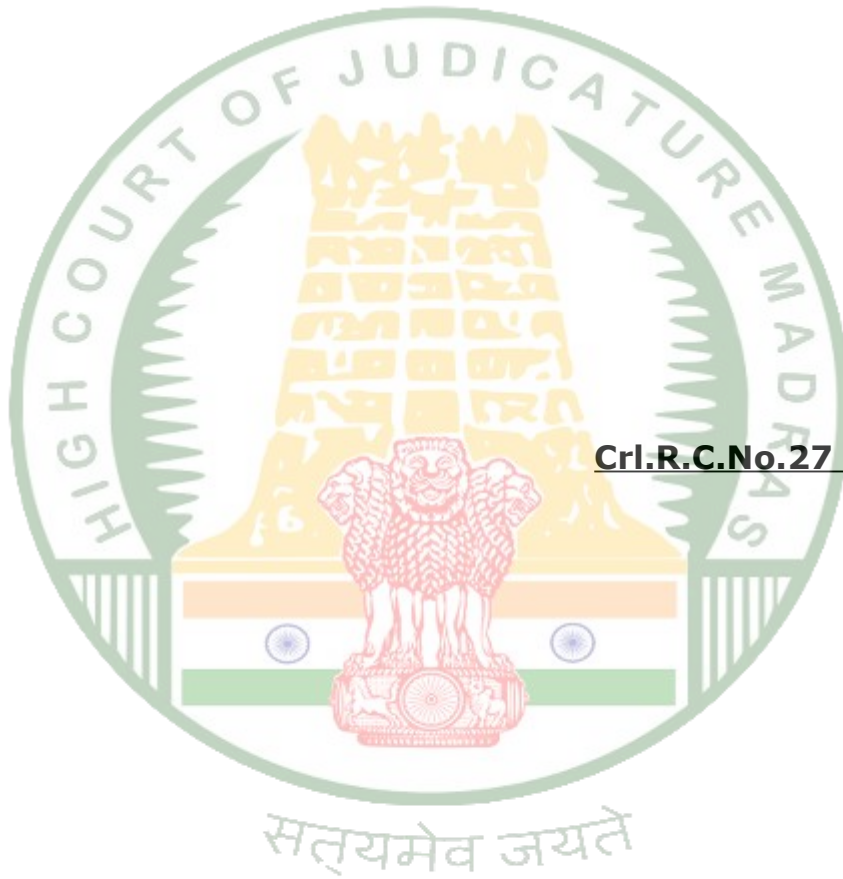
2. The Public Prosecutor,

<http://www.judis.nic.in> High Court, Madras.

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V.BHARATHIDASAN, J.

mrp



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