

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2017

C O R A M

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.277 of 2014

and

M.P.No.1 of 2014

S.Dinesh Kumar
S/o.Selvadurai

... Appellant/A1

-vs-

State represented by
The Inspector of Police,
W-6, All Women Police Station,
Ayanavaram, Chennai.
Crime No.3 of 2011

... Respondent/Complainant

Criminal Appeal filed under Section 374 r/w 382 of the Code of Criminal Procedure against the judgment of learned Sessions Judge, Mahila Court, Chennai, passed in S.C.No.158 of 2012 on 16.05.2014.

For Appellant	:	Mr.R.C.Paul Kanagaraj
For Respondent	:	Mr.M.Mohammed Riyaz
		Government Advocate [Crl.side]

J U D G M E N T

This appeal arises against judgment of learned Sessions Judge, Mahila Court, Chennai, passed in S.C.No.158 of 2012 on 16.05.2014, convicting the appellant/A1 for offences u/s.376 and 417 IPC and sentencing him to 7 years R.I. and fine of Rs.10,000/- i/d 6 months S.I. for offence u/s.376 IPC and 1 year R.I. and fine of Rs.1,000/- i/d 1 month S.I. for offence u/s.417 IPC.

2. The case of the prosecution is that there was a love affair between appellant/A1 and complainant. Appellant/A1, under promise of marriage indulged in sexual intercourse with her on several occasions. When the complainant insisted on marriage, appellant/A1 threatened her with dire consequences. PW-1 preferred Ex.P1, complaint, on 31.05.2011 at 19.00 hours. PW-10, Sub Inspector of Police, registered a case in Crime No.3 of 2011 on the file of respondent for offences u/s.376, 417 and 506(ii) IPC. Printed First Information Report is Ex.P11. PW-10, Sub-Inspector of Police, took up investigation on 31.05.2011, visited the place of occurrence in the presence of PW-6 and another, prepared Ex.P3 - Observation Mahazar and Ex.P12 - Rough Sketch. She examined PWs.1 to 5 and others and recorded their statements. She forwarded a requisition to the Chief Metropolitan Magistrate towards sending the victim for medical examination and for recording her Section 164 Cr.P.C. statement. Thereafter, she forwarded the entire records to PW-12, Inspector of Police, for further investigation. PW-12 examined PWs.2, 4 and 5 and recorded their statements. She examined, PW-7, Doctor, who had examined the victim and recorded her statement and obtained Ex.P6 - Accident Register and Ex.P10 - Certificate of Age. She examined the Doctor, who examined the first accused and obtained Ex.P8 - Medical Certificate and Ex.P9 - Certificate of Age. Thereafter, she examined PW-9, Scientific Officer and recorded her statement. Upon completion of investigation and filing of charge

sheet informing commission of offences u/s.376 and 417 IPC against A1 and 417 r/w 34 and 506(ii) IPC against A2 and A3. The case, upon committal, was tried in S.C.No.158 of 2012 on the file of learned Sessions Judge, Mahila Court, Chennai.

3. Prosecution examined PWs.1 to 12 and marked Exs.P1 to P13 and one material object. None were examined on behalf of the defence nor were any exhibits marked. On questioning u/s.313 Cr.P.C., the accused denied charges. Learned trial Judge, on appreciation of the evidence, under judgment dated 16.05.2014, while acquitting accused 2 and 3, convicted the appellant/A1 for offences u/s.376 and 417 IPC and sentenced him to 7 years R.I. and fine of Rs.10,000/- i/d 6 months S.I. for offence u/s.376 IPC and 1 year R.I. and fine of Rs.1,000/- i/d 1 month S.I. for offence u/s.417 IPC. There against, the present appeal.

4. Heard learned counsel for appellant and learned Government Advocate [Crl.side]. Perused the records.

5. This is an admitted case of consensual sex between appellant and complainant, PW-1 admittedly having been aged 20 at the time of occurrence. Appellant/first accused was aged 22 at such time. In cross-examination, PW-

1/victim, admitted that sexual intercourse was on her consent. Therefore, offence u/s.376 IPC would not stand attracted. Towards submitting that other offence alleged against petitioner viz., 417 IPC would not stand attracted, learned counsel for appellant relied on the judgment of this Court in ***Hamsaveni v. Inspector of Police, All Women Police Station, Tindivanam [2014 STPL 799 Madras]***, wherein the observation of the Apex Court in ***Uday v. State of Karnataka [2003 (4) SCC 46]*** has been relied upon. The same reads:

“The consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. In the instant case, the prosecutrix was a grown-up girl studying in a college. She was deeply in love with the appellant. She was, however, aware of the fact that since they belonged to different castes, marriage was not possible. In any event the proposal for their marriage was bound to be seriously opposed by their family members. She admits having told so to the appellant when he proposed to her the first time. She had sufficient intelligence to understand the significance and moral quality of the act she was consenting to. That is why she kept it a secret as long as she could. Despite this, she did not resist the overtures of the appellant, and in fact succumbed to them. She thus freely exercised a choice between

resistance and assent. She must have known the consequences of the act, particularly when she was conscious of the fact that their marriage may not take place at all on account of caste considerations. All these circumstances lead us to the conclusion that she freely, voluntarily and consciously consented to having sexual intercourse with the appellant, and her consent was not in consequence of any misconception of fact.”

The facts improbabilised the prospects of marriage in the case cited. Even in the absence of such factual circumstance, the dictate would hold good.

For the aforesaid reasons, this Criminal Appeal shall stand allowed. The conviction and sentence passed by learned Sessions Judge, Mahila Court, Chennai, passed in S.C.No.158 of 2012 on 16.05.2014, are set aside and appellant is acquitted of all charges. Fine amount, if any, paid shall be refunded to him. Bail bond(s), if any, executed by him shall stand cancelled. Connected miscellaneous petition is closed.

07.03.2017

Note to office:

Issue order copy by 10.05.2017

Index: Yes / No

Internet: Yes

gm

C.T.SELVAM, J

gm

To

- 1.The Sessions Judge,
Mahila Court,
Chennai.
- 2.The Inspector of Police,
W-6, All Women Police Station,
Ayanavaram, Chennai.
- 3.The Public Prosecutor,
High Court, Chennai.

Criminal Appeal No.277 of 2014

07.03.2017

<http://www.judis.nic.in>