

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.08.2018

Pronounced on : 12.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.159 of 2008

Prabhakaran,
S/o.Sri Rangan. ... Appellant/Accused No.1

Vs.

State Represented by
The Inspector of Police
All Women Police Station,
Namakkal,
Namakkal District,
Crime No.15 of 2005. ... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 (2) of the Code of Criminal Procedure, against the Judgment passed by the learned Additional District Judge cum Fast Track Court, Namakkal in S.C.No.73 of 2006 convicting the appellant herein for the offences under Sections 366, 376 and 417 of the Indian Penal Code and sentenced the appellant to undergo imprisonment for the offences under Section 366 of the Indian Penal Code 7 years R.I. And to pay a fine of Rs.2,000/- I/d to undergo 1 year R.I., under Section 376 of the Indian Penal Code sentenced him to undergo 7 years R.I. And to pay a fine of Rs.3,000/- I/d to undergo 1 year R.I. And under Section 417 of the Indian Penal Code sentenced him to undergo 1 year R.I. and directing the sentence to run concurrently by its Judgment dated 14.02.2008.

For Petitioner : Mr.C.D.Johnson
For Respondent : Ms.V.Saratha Devi,
Government Advocate [Crl.Side]

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J U D G M E N T

The appellant is the first accused in S.C.No.73 of 2006 was convicted by the Additional Sessions Judge, Namakkal District by Judgment dated 14.02.2008.

2.Originally in S.C.No.73 of 2006 there were three accused. The appellant, his father and mother, who were arrayed as A1 to A3 and they were facing trial for the offences under Section 366, 376,

414, 506 (ii) of the Indian Penal Code and under Section 3 r/w 4 of the Tamil Nadu Women Harassment Act. During trial PW1 to 9 have been examined and Ex.P1 to P11 had been marked. On the side of the accused one defence exhibit had been marked.

3. On conclusion of the trial, the Trial Court had acquitted the accused Nos. 2 and 3 and rendered a Judgment of conviction as against this appellant/first accused and convicted the appellant/first accused as under:

(1) under Section 366 of the Indian Penal Code sentenced him to undergo Seven years of Rigorous Imprisonment and to pay a fine of Rs.2,000/- (Rupees Two thousand only) in default to undergo one year Rigorous Imprisonment;

(2) under Section 376 of the Indian Penal Code sentenced him to undergo Seven years of Rigorous Imprisonment and to pay a fine of Rs.3,000/- (Rupees Three thousand only) in default to undergo one year Rigorous Imprisonment;

(3) under Section 417 of the Indian Penal Code sentenced him to undergo one year of Rigorous Imprisonment and all the sentences are to be run concurrently.

Against which the above appeal has been filed.

4. The defacto-complainant Padmapriya had completed her 12th Standard in the year 2003 was employed in a STD Booth at Mulluvadi Gate, Salem Town. The appellant was working in a nearby transport office. The appellant developed liking over the defacto-complainant. On 24.02.2004 at about 04.00 p.m. the appellant had gone to the STD Booth and proposed her to marry him. On 25.02.2004 by giving a false promise to marry the defacto complainant had taken the defacto complainant to Nalliyampalayam on 25.02.2004 and thereafter, stayed in Aniyapuram at the house of one Maarayee. On the pretext of the marriage, he had physical relationship with the defacto complainant. Thereafter, from 02.03.2004 to 01.07.2004 the appellant and the defacto complainant stayed at the residence of the appellant. During the stay, the parents of the appellant namely A2 and A3 had insulted and ill-treated the defacto complainant. One month prior to 01.07.2005 the father of the appellant attempted to misbehave with the defacto complainant and he had threatened her twice before, when she refused for the advancement made. Further, the father and mother of the appellant had threatened the defacto complainant. She had given a complaint on 02.07.2005 to the All Women Police Station, Namakkal District, who had registered a case and had filed the above case.

5. PW1 is the victim and the defacto complainant, PW2 is the mother of PW1, PW3 is the neighbour of PW1, who had secured the job for PW1 at the STD Booth, PW4, PW5 and PW8 are the neighbours of the appellant, PW6 and PW7 are the Doctors, who had examined the appellant and PW1, PW9 is the Investigating Officer.

6. The appellant submits that the defacto complainant had given a false and exaggerated version implicating the appellant and his parents. Further submitted that as per the admission of PW1 herself she had been staying with the appellant and with the appellant's parents voluntarily over a period of time. Further, she admits that she and the appellant used to travel in the public transport bus over the night on several occasions. The parents of PW1 had not raised any objection. It is the evidence of PW2, the mother of PW1 had not questioned the happenings between PW1 and the appellant. The father of PW1 had not been examined. The father of PW1 is working in the Government Forest Department.

7. On going by the events deposed by PW1, it is clear that PW1 had voluntarily been going around with the appellant and her stay with PW1 is also voluntarily, which has been over a period of time. PW1 is an educated person of 20 years of age, who is a major and with sufficient intelligence to know about the happenings. The act of PW1 is a consensual act.

8. Other than PW1, all the other witnesses do not know anything about the relationship between PW1

and the appellant. PW2, mother of PW1 admits that she is aware of PW1 had been living with the appellant and seeking some job. PW3 states about PW1 was working in a poultry farm while staying in the house of the appellant.

9.PW4, PW5 and PW8 are the neighbours of the appellant PW4 and PW5 states about PW1 coming to their home on 15.05.2005 seeking shelter from the advancement of A2/father of appellant. These two witnesses filed contradictory version with regard to the happenings on 15.05.2005.

10.PW6 is the Doctor attached to the Government Hospital, Namakkal, who had examined PW1 on 20.08.2015 and she issued Ex.P5, Medical Certificate [Hymen absent] [Vaginal Introitus admits one finger].

11.PW7 had examined appellant on 23.08.2005 and issued Potency certificate Ex.P7.

12.PW9 is the Investigating Officer states about receiving complaint from PW1 on 02.07.2005, registration of Ex.P8 FIR, examination of witnesses, Arrest of accused, thereafter, on completion of investigation filed the charge sheet.

13.Since the appellant refused to marry defacto complainant, she had lodged the complaint. PW1, who is of 20 years age, who had completed 12th Standard have been constantly moving around with the appellant. Staying with him for more than one year, during this period PW1 and appellant have been having physical relationship. In such circumstances, after the appellant refused to marry PW1 had made the PW1 to lodge the above complaint. Admittedly, the relationship between PW1 and appellant is a consensual act of sex, which cannot be latter termed as forced sex or rape.

14.The Lower Court had rightly rejected the evidence of PW1 and others with regard to the parents of appellant i.e. A1 and A2 and had acquitted them. Once the evidence of witnesses are doubtful, untrustworthy, does not inspire confidence with regard to other accused namely father and mother of the appellant. The evidence has to be looked into analysed cautiously with care. On careful consideration, this Court finds the same analogy could be drawn with regard to this appellant.

15.Thus, on perusal of the materials on record, and from the evidence of PW1, it appears that she is a consenting partner for the act committed by the appellant, when such materials are available no offence punishable under Sections 366, 376 and 417 of the Indian Penal Code is made out.

16.In the result, the Criminal Appeal is allowed and the Judgment of conviction dated 14.02.2008 made in S.C.No.73 of 2006 passed by the Additional District Judge cum Fast Track Court, Namakkal Sessions Judge (Mahila Court) Cuddalore is set aside. Consequently, the appellant is acquitted. The Bail Bond if any executed stands cancelled. No costs.

12.10.2018

Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

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To

1.The Additional District Judge
cum Fast Track Court,
Namakkal.

2.The Inspector of Police,
All Women Police Station,
Namakkal,
Namakkal District,

3.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

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PRE-DELIVERY JUDGMENT IN

Crl.A.No.159 of 2008

12.10.2018