



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)No.143 of 2011

Melkiss

... Appellant/Accused No.1

Vs

State represented by,
The Inspector of Police,
Manapparai,
Trichy District.
(Crime No.502 of 2005)

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to set aside the Judgment dated 30.03.2011 in S.C.No.168 of 2008 of the learned Sessions Judge, Mahila Court, Tiruchirapalli and acquit the appellant/Accused No.1.

For Appellant : Mr.G.Thiruvarutselvan

For Respondent : Mr.A.Robinson
Government Advocate (Crl.side)

JUDGMENT

The appellant was convicted for the offence under Section 376 of IPC and sentenced to rigorous imprisonment for seven years and levied with fine of Rs.2,000/-, vide Judgment dated 30.03.2011 in S.C.No.168 of 2008 on the file of the Sessions Judge, Mahila Court, Tiruchirapalli.

2.The prosecution case is that the appellant gave a false promise to the victim that he will marry her and had sexual relationship with her in January 2005. As a result of the said physical intimacy, the victim became pregnant and delivered a child on 06.12.2005. Since the efforts to abort the child were not fruitful, the victim and her family demanded that the appellant should marry her. Since the victim became pregnant, she wanted the appellant to marry her. Since the appellant refused on 13.08.2005, the victim lodged a complaint before the Manapparai Police Station. On coming to know the same, the appellant and his parents abused the victim on 15.08.2005. Therefore, the victim's mother lodged one



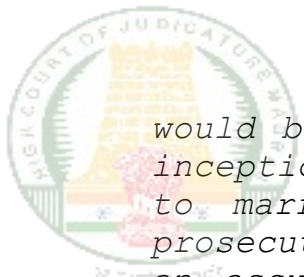
more complaint-Ex.P1 before the Manapparai Police Station, leading to registration of FIR-Ex.P12 in Crime No.502 of 2005 for the offences under Sections 417, 420, 376, 294b and 506(ii) of IPC. Investigation was taken up and final report came to be laid against the appellant and his parents before the Judicial Magistrate, Manapparai. Since the offence of rape was also involved, the case was committed to the Sessions Court in P.R.C.No.13 of 2008. The case was made over to the Mahila Court, Thiruchirappalli for trial in S.C.No.168 of 2008. Charges were framed all the three accused. They pleaded not guilty and claimed to be tried. The prosecution examined as many as 17 witnesses and marked Ex.P1 to Ex.P14. On the side of the defence, two witnesses were examined. Ex.D1 to Ex.D6 were marked. The prosecution also marked M.O.1-X rays. The learned trial Judge, after a detailed consideration of the evidence on record, by the impugned Judgment dated 30.03.2011, acquitted the appellant's parents in *toto*. The appellant was convicted only for the offence under Section 376 of IPC and sentenced as mentioned above. Challenging the same, this appeal came to be filed.

3.The victim was examined as P.W.2. She had clearly stated that she agreed to have sexual relationship with the appellant, only because, he promised to marry her. That there was physical relationship between the appellant and P.W.2 is borne out by the fact that the child was born. The paternity of the child has been established by Ex.P11-DNA Test. P.W.12-the author of Ex.P11, had clearly deposed before the Court that the appellant is the biological father of the child born to the victim/P.W.2. It is further submitted by the appellant's counsel that the victim filed M.C.No.41 of 2012 before the learned Judicial Magistrate, Manapparai and the appellant has been directed to pay a sum of Rs.2,000/- as maintenance to the child. The appellant has been honouring the said maintenance order till date.

4.It is unfortunate that the accused, while cross examining P.W.2, chose to not only deny his relationship with the victim, but also assassinate her character. In fact, he examined defence witness to impress upon the Court that P.W.2 is a woman of poor character. That the accused is indulging in falsehood is evident from the DNA report. Thus the appellant's defence that he had no relationship with P.W.2 has been totally falsified. Therefore, it would not be open to the appellant to fall back on the theory of consent. The victim had categorically deposed that she submitted to the appellant, only because, she believed that he would marry her. Thus, her consent cannot be said to be a free consent.

5.The learned Government Advocate (Crl.side) drew my attention to the decision of the Hon'ble Supreme Court in **Anurag Soni Vs. State of Chhattisgarh (2019 O AIR(SC) 1857)**. Paragraph 12 of the said decision reads as under:-

"12.The sum and substance of the aforesaid decisions



would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, on a misconception of fact as per Section 90 of the IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Section 375 of the IPC and can be convicted for the offence under Section 376 of the IPC."

6.Faced with this legal position and also the evidence on record, the learned counsel appearing for the appellant submitted that he would not challenge the finding of guilt in respect of the offence under Section 376 of IPC and that he only pleaded for modification in the matter of sentence.

7. It is true that during the relevant time also, the statute prescribed a minimum sentence, but for special and adequate reasons, the same can be reduced. In this case, the occurrence is of the year 2005. The victim had got married in the year 2006 itself. She appears to have begotten two children through her legal marriage. The appellant got married in the year 2007. He is having two female children. The impugned Judgment came to be passed only in the year 2011. The appellant is honouring the maintenance order passed in favour of the female child born to him through the victim-P.W.2. The appellant through his counsel undertakes to deposit a further sum of Rs.1,00,000/- to the credit of S.C.No.168 of 2008 on the file of the Mahila Court, Tiruchirappalli in favour of Velankanni born to P.W.2 through the appellant/accused. This will be over and above Rs.25,000/- already said to have been deposited by the appellant. The appellant also agrees to continue to honour the maintenance order passed against him. The appellant states that he will be satisfied, if reduction is shown in the matter of punishment.

8.Taking note of these mitigating aspects and undertaking given by the appellant, this Court, even while sustaining the conviction imposed on the appellant, reduces the sentence of imprisonment from seven years rigorous imprisonment to nine months rigorous imprisonment. The period of incarceration already undergone by the appellant will be set off in terms of Section 428 of Cr.P.C. Therefore, the appellant will have to be in prison for about 100 days more. The appellant is directed to deposit a sum of Rs.1,00,000/- to the credit of S.C.No.168 of 2008 on the file of the Sessions Judge, Mahila Court, Tiruchirapalli. The learned trial Judge, will invest the said sum of Rs.1,00,000/- in an interest bearing account with any nationalised Bank along with a sum of Rs.25,000/- already deposited by the appellant. The said sum of Rs.1,25,000/- together with interest will be handed over to the



child born to the appellant through P.W.2/victim on the child attaining the age of 18 years. The appellant is also directed to honour the maintenance order passed against him in favour of the said child.

9. Even while sustaining the conviction, the sentence of imprisonment is reduced and modified as mentioned above. The appeal is partly allowed. The appellant shall deposit the compensation amount within a period of four weeks from the date of receipt of a copy of this order. In the event of failure on the part of the appellant to do so, he will have to undergo the default sentence of one year rigorous imprisonment.

Sd/-

Assistant Registrar ()

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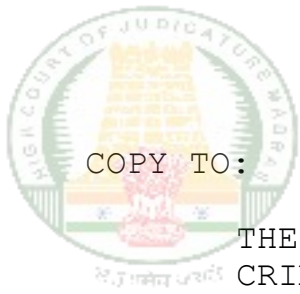
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Sub Assistant Registrar(CS)

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To

1. THE SESSIONS JUDGE,
MAHILA COURT, TIRUCHIRAPALLI.
2. THE JUDICIAL MAGISTRATE
MANAPPARAI.
3. DO THROUGH
THE CHIEF JUDICIAL MAGISTRATE,
TRICHY.
4. THE SUPERINTENDENT
CENTRAL PRISON,
TRICHY.
5. THE INSPECTOR OF POLICE
MANAPPARAI,
TRICHY DISTRICT.
6. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.



COPY TO:

THE RECORD KEEPER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

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+1 CC to M/s.G. THIRUVARUTSELVAN, Advocate (SR-82577[F] dated
20/08/2019)

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NR(27.05.2020) 5P 10C