



BAIL SLIP

The Appellant/Sole Accused namely, Sundaravadivel, aged 32/16, s/o. Palanichamy, was directed to be released on bail as per the order of this Court dated 19/1/2017 in Crl MP(MD)No.12242 of 2016 in Crl A(MD)No.470/2016 on the file of this Court.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: **08.11.2019**

Pronounced on: **20.11.2019**

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Crl. A. (MD) No.470 of 2016

Sundaravadivel ... Appellant/Sole Accused

Vs.

The State represented by
The Inspector of Police,
Bodi Taluk Police Station,
Theni District
(Crime No.259 of 2013)

...Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code against the judgment dated 16.11.2016 passed by the Sessions Judge, Theni (Fast Track Mahila Court), Theni in S.C.No.41 of 2014.

For Appellant : Mr.V.Pandi

For Respondent : Mr.V.Neelakandan, APP

O R D E R

This criminal appeal is filed against the order of the learned Sessions Judge, (Fast Track Mahila Court), Theni, in S.C.42 of 2016 dated 16.11.2016 convicting and sentencing the appellant to undergo 6 years rigorous imprisonment for the offence under Section 376 IPC and also to pay a fine of Rs.50,000/- towards compensation to the victim and to undergo 1 year rigorous imprisonment for offence under Section 417 IPC.

2. The facts, which culminated in the order of conviction and sentence, are briefly stated hereunder:

2.i) The appellant/accused is known to P.W.1, who is the
<https://hcservices.ecourts.gov.in/hcservices/>



prosecutrix/victim girl, who was 21 years old at the time of occurrence. According to the case of the prosecution, the victim girl was working in Premier Spinning Mills at Pollachi, wherein the sister of the appellant was also working. It appears that the appellant visited his sister at Pollachi and at that time, he developed relationship with the prosecutrix/P.W.1. Due to the said relationship, P.W.1 had sexual intercourse during the month of September 2010 when the appellant visited her house and at that time the parents of P.W.1 were not in the house. Thereafter, it appears that the appellant continued to have sexual relationship with P.W.1 on several occasions and P.W.1 the prosecutrix had permitted the appellant to have sexual intercourse with her as the appellant had promised to marry her. According to the prosecution, the appellant is a close relative of P.W.1 and the families of both the appellant as well as the prosecutrix are known to each other and they lived in neighboring villages.

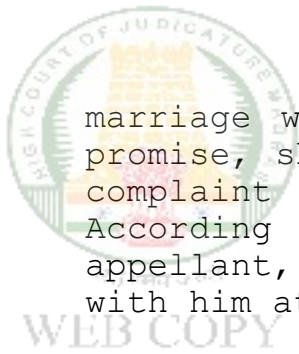
2.ii) According to the prosecution, when the parents of P.W.1 contacted the family members of the appellant in 2011 for marriage of P.W.1 with the appellant, it appears that the appellant and his family members refused to perform marriage. According to the appellant, P.W.1 was not suitable for marriage. Therefore, P.W.1 felt let down on the promise meted out by the appellant and hence the complaint was lodged with the jurisdictional police on 13.09.2014 and thereafter, investigation was conducted by the police. After completion of investigation, charge sheet was filed before the trial court.

2.iii) The trial court initially framed the charges on the basis of the report of the police and charged the appellant for offences under Sections 376 and 417 IPC. Thereafter, the case was committed to the Sessions Court for trial. The Sessions Court has taken the case on its file and questioned the accused and the charges were denied under the provision of the Code of Criminal Procedure. A full-fledged trial was set in motion.

3. On the side of the prosecution, 12 witnesses were examined as P.W.1 to P.W.12 and 6 documents were marked as Ex.P.1 to Ex.P.6. No material objects were produced. On the side of the accused, no witness was examined and one document was marked as Ex.D.1.

4. P.W.1 is prosecutrix. P.W.2 is the father of P.W.1. P.W.3 is the mother of P.W.1. P.W.4 is the brother of P.W.1. P.W.5 is the neighbor of the above witnesses. Other witnesses are official witnesses.

5. P.W.1 has narrated in her deposition that the appellant had promised to marry her and on such belief, she had consented to have sexual intercourse with him on number of occasions commencing from September 2010 and thereafter. Once she had come to know that the



marriage would not happen as the appellant was going back on his promise, she informed her parents and her brother and thereafter, a complaint was lodged, which is marked as Ex.P.1 dated 13.09.2014. According to the deposition of prosecutrix, but for promise by the appellant, she would not have consented to have sexual intercourse with him at all.

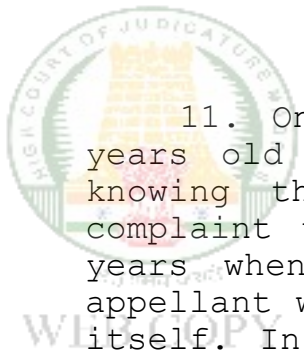
6. The deposition of P.W.1 was supported by P.Ws.2, 3 and 4. though they were not privy to the sexual conduct of the appellant. However, the case set up by the defence was that P.W.1's family namely, the father of P.W.1 (P.W.2 - Krishnamoorthy) was granted lease of 75 cents of land belonging to the appellant's family and they were involved in cultivation of the land for many years. Therefore, they wanted the property to be settled in favour of them. Since the appellant's family was not willing to settle the property which was under the lease to the P.W.1's family, in order to wreak vengeance, a false case was set up as if the appellant had promised to marry P.W.1 and induced her to have sexual relationship.

7. During the examination of P.Ws.2, 3 and 4, the fact of 75 cents of land being cultivated by P.W.1's family was brought out by the defence. All three witnesses namely the father, the mother and the brother of P.W.1 accepted that they were having lease hold rights to a portion of the property belonging to the appellant's family. However, a suggestion was put as to whether they had come up with the false case against the appellant in order to grab the property, the same was categorically denied by them. However, the case of the defence was that P.W.1 and her family members had grievance against the appellant's family and that was sought to be the motive attributed for lodging a false complaint against the appellant.

8. As far as the evidence of P.W.9-the Doctor is concerned, she had opined that P.W.1 was involved in sexual intercourse earlier as her hymen was not intact and it was ruptured.

9. Only independent witness is P.W.5. His evidence is to the effect that he is a hearsay witness and was not privy to any of the occurrence directly.

10. Before the trial court, on behalf of the defence, several contradictions were pointed out in the case of the prosecution stating that the entire complaint was motivated and no independent witnesses were examined other than P.W.5 in order to corroborate the testimony of P.W.1, who was the main witness in the prosecution case. As far as P.Ws.2, 3 and 5 are concerned, they merely repeated what P.W.1 had deposed. According to the defence, prosecution never established the case of promise meted out to P.W.1 by the appellant and the factum of P.W.1 consenting to have sexual relationship with the appellant was not established at all.



11. On the other hand, it was established that P.W.1 was 21 years old at the relevant point of time and she was capable of knowing the consequences of such relationship. More over, the complaint was given only on 13.09.2014 i.e., after more than two years when P.W.1 and her family members came to know that the appellant was not willing to marry P.W.1 as per his promise in 2011 itself. In fact, there was material contradiction like the matter was taken to the local panchayat and panchayat was conducted, but those leaders were not arrayed as prosecution witnesses in the case. No acceptable explanation was given as to why the complaint was lodged belatedly after two years only in September 2014.

12. It was also the case of the defence that on 10.09.2014, the complaint was lodged to the police by the appellant stating that P.W.1 and her family members disturbed the marriage of the appellant with one of his relatives. As a counter blast and as an afterthought, the complaint was filed by P.W.2, the father of the victim girl. In fact, the case of the defence was that when all other attempts failed in order to grab the property, P.W.1 and her family members had come up with the false case of promise by the appellant and sexual conduct of the appellant towards P.W.1.

13. In the light of the above evidence, the trial court had brushed aside all the material contradictions and overlooked the same. According to the trial court, the deposition of P.W.1 alone is sufficient enough to convict the appellant for the offences under Sections 417 and 376 IPC. According to the trial court, the testimony of P.W.1 was inspiring and trust worthy and therefore, all other contradictions in the case of the prosecution had been ignored. The trial court also discountenanced the case of the defence stating that the motive behind the complaint was unbelievable and P.W.1 and her family members cannot be said to be involved in false complaint just because they were not able to get the property which was under the lease hold rights. On the whole, the trial court has overlooked the material contradictions of the case of the prosecution and concluded against the appellant. In fact, as regards the offence under Section 417 IPC, 3 decisions were cited on behalf of the defence and the same were brushed aside by the trial court without delving into the ratio decided by the courts. It appears that the trial court was determined to hold the appellant guilty of the offences charged against him.

14. This Court while analysing the evidence and the materials which were placed on record is of the considered view that there are many material contradictions in the case of the prosecution which cannot be ignored by the trial court. More over, the most crucial factor, which ought to have weighed with the trial court, is whether P.W.1 the prosecutrix suffered from misconception of fact namely whether she was completely under the influence of promise meted out at the instance of the appellant and which resulted in consenting to the sexual relationship of P.W.1 with the appellant. Nowhere in the



prosecution case, there is an iota of evidence to show that such promise was meted out by the appellant to the prosecutrix and except her own statement there was no other independent witness to corroborate such promise by the appellant.

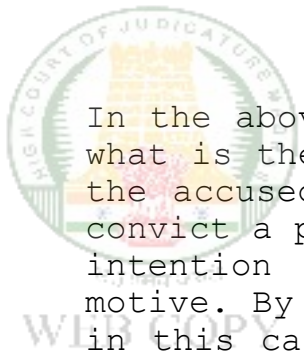
15. In order to attract Section 417 IPC and for convicting a person under the said Section, more stronger case needs to be made out. Mere statement of prosecutrix alone is not sufficient enough to convict the appellant/accused under Section 417 IPC.

16. In fact, when the matter was argued before this Court by the learned counsel by narrating the contradictions as stated above, 6 decisions were cited stating as to how Section 417 IPC is not attracted at all in the circumstances of the case.

17. The judgments, which are relied on behalf of the appellant, are quoted hereunder:

17.i) **2013(3) CTC page 567 (in Deepak Gulati Vs. State of Haryana)**. The learned counsel appearing for the appellant would draw the attention of this Court to paragraph No.18, which is extracted hereunder:

18. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly, understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.



In the above case, the Hon'ble Supreme Court of India has held that what is the consent and the consent of false promise of marriage by the accused. The Hon'ble Supreme Court has held that the court can convict a person for rape only if it reaches the conclusion that the intention of the accused was mala fide and he has clandestine motive. By referring the same, the learned counsel would submit that in this case prosecution has never established that there was *mala fide* intention on the appellant and clandestine motive on his part.

17. ii) **2013 Crl Law Journal page 3196 (Mallesh Khemanna Vs. State of Karnataka)**. The learned counsel would draw the attention of this Court to paragraph Nos. 7 and 9, which are extracted hereunder:

7. In the present case on hand, there was a distinct belief that there would be a marriage, as the complainant herself has mentioned that when the appellant first proposed to her, she had expressed that he should seek the consent of her parents and since they were already related, there was a strong possibility of such marriage and therefore, the continued relationship over a period of time would indicate that the complainant had consented to have sexual intercourse with the appellant consciously freely and voluntarily.

9. Accordingly, in the present case on hand, given the circumstances of the case and the position of law, the finding of the court below that the appellant had committed rape on the complainant in the first instance, notwithstanding that there may have been consensual sex at later points of time, is not a finding that can be sustained. The complainant did believe that a marriage with the appellant was a possibility. The further circumstance that appellant had been openly visiting the complainant as stated by PW-7 and PW-8 over several months, would also mean that though the appellant did consider marriage, he has resiled later either because he developed cold feet or for some other reason.

Therefore, given the state of the law, this court would, without any hesitation, hold that the prosecution has not made out a case beyond all reasonable doubt against the accused and consequently, the appeal is allowed. The judgment of the court below is set aside. The appellant is acquitted. The fine amount deposited by the appellant is directed to be refunded.

In the above case, the High Court of Karnataka in an identical case has held that the conviction for rape in which circumstance was not valid. In fact, the court had allowed the appeal against the order of conviction since it concluded that when on several occasions the prosecutrix allowed sexual contact of the appellant towards her, she was capable of understanding the consequences and mere promise to marry alone cannot result in conviction under Section 376 IPC.



17 iii) **2016 Crl. LJ 1136 (in Tilak Raj Vs. State of Himachal Pradesh)**. The learned counsel would draw the attention of this Court to paragraph Nos. 19,20, 23 and 24, which are extracted hereunder:

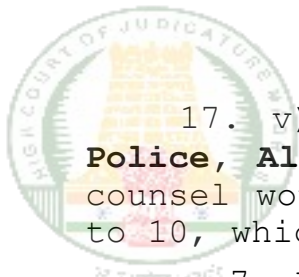
19. We have carefully heard both the parties at length and have also given our conscious thought to the material on record and relevant provisions of the Indian Penal Code (for short "the IPC). In the instant case, the prosecutrix was an adult and mature lady of around 40 years at the time of incident. It is admitted by the prosecutrix in her testimony before the trial court that she was in relationship with the appellant for the last two years prior to the incident and the appellant used to stay overnight at her residence. After a perusal of copy of FIR and evidence on record the case set up by the prosecutrix seems to be highly unrealistic and unbelievable.

20. The evidence as a whole including FIR, testimony of prosecutrix and MLC report prepared by medical practitioner clearly indicate that the story of prosecutrix regarding sexual intercourse on false pretext of marrying her is concocted and not believable. In fact, the said act of the Appellant seems to be consensual in nature. The trial court has rightly held thus:

"23. If the story set up by the prosecutrix herself in the court is to be believed, it does come to the fore that the two were in a relationship and she well knew that the accused was duping her throughout. Per the prosecutrix, she had not succumbed to the proposal of the accused. Having allowed access to the accused to her residential quarter, so much so, even having allowed him to stay overnight, she knew the likely outcome of her reaction. Seeing the age of the prosecutrix which is around 40 years, it can be easily inferred that she knew what could be the consequences of allowing a male friend into her bed room at night.

24. The entire circumstances discussed above and which have come to the fore from the testimony of none else but the prosecutrix, it cannot be said that the sexual intercourse was without her consent. The act seems to be consensual in nature.

In the above case, the Hon'ble Supreme Court of India held that where the prosecutrix is 40 years old and was capable of understanding the consequences of sexual relationship and therefore, the case of the prosecution was found to be unacceptable that it was only on the basis of earlier promise she consented to have sexual relationship.



17. v) **2014 Crl. LJ 1437 (In Hamsaveni Vs. The Inspector of Police, All Women Police Station, Tindivanam & others)**. The learned counsel would draw the attention of this Court to paragraph Nos. 7 to 10, which were extracted hereunder:

7. As far as the age factor to be found out in this case with that of P.W.1 is concerned she was aged above 20 years and the first accused was 23 years at the time of occurrence. There is no materials on the side of the prosecution to prove that P.W.1 was below the age of 16 years. Since she has aged above 16 years and the same has been admitted by her, she had sufficient intelligence to understand the significance and consequence of the act for which she was consenting to. At the time of examination of P.W.1 before the Court on 16.11.2005 she was aged 22 years. The first occurrence occurred on 10.11.2003 as per her evidence. Hence, on the date of occurrence she was 20 years. On this score, no offence is made out on the side of the accused.

8. It is the argument of the learned counsel for the petitioner that since the consent was obtained by false representations and later he refused, the 1st accused is liable to be punished under Section 417 I.P.C. The learned counsel for the respondent would rely upon the oral testimony of P.W.1. The cross examination would show that P.W.1 has got knowledge about the consequence of earlier intercourse before marriage. Her cross examination goes thus:

(Vernacular matter omitted ...Ed.)

9. The above said part of evidence would indicate that she is well aware of the consequences which would arise if sexual intercourse takes place before marriage. Learned counsel for the respondent taking advantage of this part of evidence cited a decision of Honourable Supreme Court reported in (2003) 4 SCC 46 [Uday v. State of Karnataka] wherein Their Lordships have observed as follows:

"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."

10. After going through the above judgment, it has to be necessarily observed that consent was obtained by P.W.1 and in view of the above, the finding of the trial Court Judge is sustainable in law. There is no valid ground made out to interfere with the judgment of the trial Court which deserves to be confirmed and it is accordingly confirmed. The revision is devoid of merits. This point is answered as indicated above.

In the above case, the learned Judge of this Court has clearly held that the prosecutrix therein was 20 years old at the time of occurrence and on the basis of the cumulative facts the learned Judge held that Section 417 IPC was not attracted in such circumstances and the testimony of prosecutrix established that she had knowledge and consequences of intercourse before marriage. Therefore, ultimately, the learned Judge upheld the acquittal by the trial court.

17.vi) 2016 Crl. LJ 509 (In Anup K. Paul Vs. State of Rajasthan and another) .

The learned counsel would draw the attention of this Court to paragraph No.18. The court has deliberated 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.

18. Now the question, which comes for consideration, is whether the petitioner has obtained the consent of the respondent No.2 with the sole intention to seduce her to indulge in sexual act by making false promise to marry her without intention to do so since beginning or whether he has obtained her consent fraudulently. The Hon'ble Supreme Court has considered this aspect of the matter extensively in various judgements. In Uday v. State of



Karnataka (AIR 2003 SC 1639) (supra), the Hon'ble Supreme Court while deciding a case having almost similar facts as of instant case has held as under:

It, therefore appears that 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. We are inclined to agree with this view, but we must add that there is no strait jacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the Courts provide at best guidance to the judicial mind while considering a question of consent, but the Court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them".

17.vii) **2014 Crl. LJ 3870 (In sodhir Kumar Vs. State of Uttarakhand)**. The learned counsel would draw the attention of this Court to paragraph Nos. 12 to 14, what are extracted hereunder:

12. Having gone through the entire evidence adduced by the prosecution, the arguments advanced by the counsel for the parties, it illustrates that the prosecution has utterly failed in proving the guilt of the accused for the reasons enumerating firstly, according to the evidence of the doctor, at the time of alleged incident, the prosecutrix was above than 18 years of age, thus she is treated major. Secondly, the prosecutrix kept mum for a considerable period of one and half year and when her pregnancy became public then on the behest of the villagers, her uncle lodged the F.I.R. Thirdly, which is significant and most salient that in her examination-in-chief, the prosecutrix has admitted that "incase she wuld not have been pregnant, then it would have been all well, but cause of dispute arose, when she became pregnant and on the behest of villagers, her uncle lodged the report". Suffice it to say that the prosecutrix was a consenting party, otherwise she would have protested. Considering all the facts of the case, it is found that victim was quite mature and she



cohabited with the accused on her own volition. Fourthly, the doctor did not find any sign of injury on any part of the body of the victim, which is not possible in the case of forceful commission of rape. Thus, suffice it to say that the prosecutrix was a consenting party. Therefore, this Court is of the view that the trial court has erred in law in convicting the accused/appellant under Section 376 I.P.C.

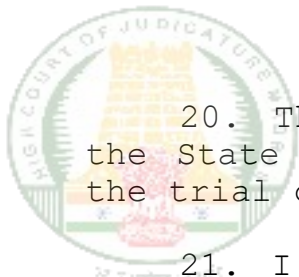
13. For the reasons as discussed above, I am of the view that it cannot be said that charge of offence punishable under Section 376 IPC against the accused/appellant Sudhir Kumar is proved beyond reasonable doubt. Therefore, this appeal deserves to be allowed.

14. Accordingly, the appeal is allowed. Impugned judgment and order dated 08.11.2011 passed by the District & Sessions Judge, Pauri Garhwal in Sessions Trial No.21 of 2003 'State v. Sudhir Kumar', so far as it relates to the conviction and sentence under Section 376 IPC awarded to the accused/appellant is concerned, is hereby set-aside. The accused is on bail. He needs not to surrender. His sureties are discharged. Let the Lower Court's Record be sent back.-----

In the above case, the High Court has held that the prosecutrix has co-habited with the accused on her own volition and the court held that the prosecutrix was a consenting party and therefore, it held that the trial court had erred in law in convicting the appellant/accused for offence under Section 376 IPC.

18. Therefore, relying on the above decision, the learned counsel would submit that the trial court has completely brushed aside the decisions, particularly the last 3 decisions which were cited before it and such action by the trial court not considering the ratio laid down by the Hon'ble Supreme Court and Madras High Court which are binding on the trial court, the judgment of the trial court is liable to be interfered with.

19. To sum up, the learned counsel would submit that there are legal infirmities as well as factual infirmities in the final conclusion reached by the trial court as there were too many material contradictions in the case of the prosecution and also the concept of false promise to marry is not considered by the trial court and the trial court has completely gone by its own presumption of such promise which alone resulted in sexual relationship by the prosecutrix with the accused. Therefore, the entire promise on which the conviction is recorded by the trial court calls for interference.



20. The learned Government Advocate (Crl.side) appearing for the State supported the reasons and ultimate findings rendered by the trial court.

21. I have given my anxious consideration to the submissions made on either side and perused the materials and pleadings placed on record.

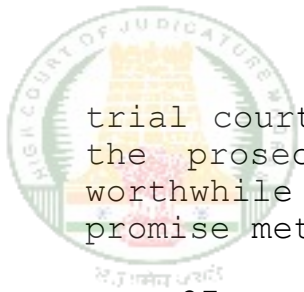
22. This Court is perfectly in agreement with the entire submissions made on behalf of the appellant/accused that the trial court has completely erred itself in overlooking all the material contradictions that have been pointed out by the defence and there appears a gapping hole in the case of the prosecution. As rightly held by the Hon'ble Supreme Court of India as well as the other High Courts, the misconception of fact must be clearly and unequivocally established in order to convict a person for offences under Sections 417 and 376 IPC.

23. In this case, the entire finding by the trial court is rather sketchy and does not go deep enough to understand rudimentary concept of misconception of fact which led to the consent given by the prosecutrix for sexual relationship.

24. The trial court has entirely relied on the statement of the prosecutrix alone and disbelieved the motive which was attributed to the prosecution by the defence. In fact, as narrated above, the evidence of P.Ws.2, 3 and 4 would show that there was civil dispute between the family of the prosecutrix and the family of the appellant and that motive, which is possible factor, ought to have been considered by the trial court.

25. The motive which was attributed by the defence was worth to be considered by the trial court. Unfortunately, the trial court has not dealt with the issue at all as contended by the learned counsel for the appellant/accused. The trial court appeared to be determined to hold the appellant/accused is guilty for the offences under Section 417 IPC and no matter whether there was clinching evidence or not. More over, the trial court woefully overlooked the fact that the complaint was given after two years when the factum of refusal of marriage of the prosecutrix with the appellant was disclosed by the appellant's family in 2011 and thereafter, the complaint was given only on 13.09.2014.

26. According to the prosecution case itself, the appellant/accused continued to have sexual relationship with the prosecutrix during the period and there was no evidence to show that either in 2011 or 2012 any complaint was made about the sexual contact of the appellant towards prosecutrix. Therefore, the trial court ought to have concluded that mere promise to marry cannot be sole factor which led to consenting sexual relationship. Therefore, there could be other reason for mutual sexual contact between the prosecutrix and the appellant/accused. Therefore, it is rather risky for the



trial court to convict the accused on the basis of the statement of the prosecutrix alone unless her statement is corroborated by worthwhile evidence by independent witness particularly the alleged promise meted out by the appellant towards the prosecutrix.

27. More over, the trial court has also not dealt with about the complaint given by the defence on 10.09.2014 and the complaint Ex.P.1 given by the prosecutrix on 13.09.2014 is only a counter blast. Even otherwise, the trial court had failed to see the other circumstances of the case for convicting the appellant/accused under Sections 417 and 376 IPC. In the circumstances of the case the factum of promise must be clearly and clinchingly established and no other factor would have led to consenting to relationship. Such efforts were not spared by the trial court and the trial court has simply recorded its conviction on the basis of the statement of the prosecutrix alone. Such an approach adopted by the trial court does not advance the case of administration of justice.

28. When too many material contradictions were pointed out in the case of the prosecution, the trial court ought to have given the benefit of doubt to the appellant/accused and ought to have acquitted the appellant from the charges. As it appeared in the finding by the trial court, the trial court has deliberately and wantonly over looked the same and recorded its conviction. It almost appeared the trial court has erred in relying only on the statement of the prosecutrix while recording the conviction. In fact, even remotely, this Court is of the considered view that there could not be conviction of the appellant for offences under Sections 376 and 417 IPC. When such is the position, it was unfortunate that the trial court has chosen to convict the appellant for the offence under Sections 376 IPC and sentenced him to undergo 10 years of rigorous imprisonment and to pay a sum of Rs.50,000/- towards compensation to the victim girl and also sentenced to undergo 1 year rigorous imprisonment for offence under Section 417 IPC.

29. For the above reasons, the judgment of conviction and sentence dated 16.11.2016 passed by the Sessions Judge, Theni (Fast Track Mahila Court), Theni in S.C.No.41 of 2014 is hereby set aside and the appellant/accused is acquitted from all charges.

30. In fine, this Criminal Appeal is allowed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)



To

- 1.The Sessions Judge, Theni (Fast Track Mahila Court), Theni
- 2.The District Munsif-cum-Judicial Magistrate, Bodinayakanoor.
- 3.The District Munsif-cum-Judicial Magistrate, Through
The Chief Judicial Magistrate, Theni District
- 4.The Inspector of Police,
Bodi Taluk Police Station, Theni District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 6.The Superintendent of Prison,
Madurai.

+1cc to Mr.N.PANDI, ADVOCATE, SR NO.100478

Crl.A.(MD) No.470 of 2016
20.11.2019

_KK/SAR/05.12.2019/14P-8C/