

Bail Slip

The Appellant/Accused Name P.Naveen Kumar S/o.Parthiban was directed to be realised on Bail as per order of this Court dated 01/09/2014 mae in Crl MP No.1/2014 Crl A No.91/2014.

IN THE HIGH COURT OF JUDICATURE AT MADRA

RESERVED ON : 13.03.2020

PRONOUNCED ON : 09.07.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

Crl.A.No.91 of 2014

P.Naveen Kumar ... Appellant/Accused

Vs.

State of Tamil Nadu
Represented by Inspector of Police
W27, All Women Police Station,
Vadapalani, Chennai - 600 024. ...Respondent/Complainant

Prayer:- This Criminal Appeal has been filed under Section 374 of the Code of Criminal Procedure against the judgment dated 21.02.2014 passed in S.C.No.318 of 2013 on the file of the Sessions Court, Mahalir Needhimandram, Chennai.

For Appellant : Mr.S.Thamizharasi

For Respondent : Mr.R.Ravichandran (Crl.side)
Government Advocate

JUDGMENT

The Sessions Judge, Mahila Court, Chennai, by Judgment dated 21.02.2014, passed in S.C.No.318 of 2013, has convicted the appellant/accused under Section 376 IPC and sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for a period of six months and under Section 417 IPC and sentenced him to undergo six months rigorous imprisonment and to pay a fine of Rs. 1,000/- in default to undergo simple imprisonment for one month and directed that the sentences imposed on the accused shall run concurrently. Impugning the same, the present criminal appeal has been preferred by the accused/appellant.

2. The prosecution has laid the charge sheet against the accused under Sections 376 and 417 IPC by putting forth the

case that the victim girl was working in a Food Court, Chandra Mall, Virugambakkam and the accused was also working there and accordingly, the victim girl and the accused were moving as friends and subsequently loved each other and on 10.07.2012, at about 9.45 A.M., the accused came to the residence of the victim girl when she was alone and expressed that he is in love with her and also lured and enticed her that he shall marry her and on that premise, had forcible sex with her for four times against her Will and without her consent and thus, the accused has committed the offences as aforesated.

3. To sustain the prosecution case, PWs 1 to 6 were examined, Exs.P1 to P10 were marked. No MO has been marked.

4. The criminal law in the matter has been set in motion based on the complaint lodged by the victim girl on 03.10.2012, marked as Ex.P3. On a perusal of Ex.P3, it is found that according to the victim girl, the accused was moving with her closely and used to come to her house often and expressed that he is in love with her and going to marry her and was enticing and luring her and according to the victim girl, on 10.7.2012, when she was alone in her house, the accused came there and by enticing and luring her, as above stated, left the house only on the next day early morning at 2.45 A.M. and at that time, her mother was not available and she had been to Amaintthakarai for the delivery of her sister and had sexual intercourse with her for four times and even thereafter, it is stated by the victim girl that she and the accused used to converse over phone and when subsequently the accused disowned his relationship with the victim girl and put forth that he is going to marry another girl, according to the victim girl, she had been necessitated to lodge the complaint against the accused and based on Ex.P3 complaint, it is found that the police had proceeded to register the case under sections 376 and 417 IPC.

5. Therefore, as per the complaint given by the victim girl marked as Ex.P3 and as per the charges levelled against the accused by the trial Court, as above pointed out, the accused is stated to have forcible sex with the victim girl against her Will and without her consent by enticing and luring her that he would marry her and accordingly, had sexual intercourse with her for four times on 10.07.2012. Therefore, the entire prosecution case proceeds only on the premise that the offence of rape attributed against the accused has been committed on 10.07.2012.

6. On the basis of the abovesaid complaint lodged by the victim girl dated 03.10.2012, as rightly put forth by the accused counsel, it is evident there is a delay of 83 days in lodging the complaint. As to why the victim girl had belatedly preferred the complaint, there is no proper explanation on the part of the prosecution. However, quite inconsistent to the abovesaid case put forth by the victim girl in the complaint

as well as the charge sheet formulated against the accused in the matter, the victim girl examined as Ex.PW2 would depose that she had developed love with the accused while working at Food Court and further, she would state that on 20.04.2012 when she had taken leave and was alone in her house and her mother had been to work, the accused came to her house at about 10.30 A.M. and after engaging with her in conversation for some time, asked her to have sexual intercourse with him and she refused for the same, however, according to the victim girl, she was compelled by the accused to have sexual intercourse with him and after the same, she asked the accused to talk with her mother for marriage and further, it is testified by the victim girl that the accused approached her mother in the end of April and apprised her that he would marry the victim girl and not to give the victim girl in marriage to anybody else and that her mother had told the accused that the victim girl is too young and she is planning her marriage after two years and further, according to the victim girl, even thereafter, the accused used to come to her house frequently and having sexual intercourse with her and she would only thereafter state that again on 10.07.2012, when she was alone in the house and her mother had been to Amainthakarai for her sister delivery, the accused stayed with her for whole of the day and had sexual intercourse for four times and left the place and subsequently, the accused having disowned the relationship with the victim girl, the victim girl had disclosed the incident to her mother and thereafter, complaint had come to be lodged.

7. Therefore, as rightly put forth by the accused counsel, it is evident that quite inconsistent to Ex.P3 as well as the charges leveled against the accused, the victim girl has given a new version as to the physical relationship which she had with the accused even much prior to the alleged date of the commencement of rape on her as disclosed in the complaint. When according to the victim girl, as disclosed in Ex.P3 complaint, the accused has committed rape on her only on 10.07.2012, however, when she, during the course of evidence, has proceeded to testify that even much prior to the same, from 20.04.2012 onwards she and the accused had been having sexual intercourse repeatedly and though she would claim that the abovesaid sexual intercourse which she had with the accused earlier was without her Will and consent and that too on the enticement and luring made by the accused that he would marry her, however, when with reference to the abovesaid case, as testified during the course of trial, no basis or foundation had been made by the prosecution in any manner, the evidence of the victim girl that the accused forcibly raped her even on 20.04.2012 itself and also subsequently, against her Will and without her consent, been having repeated sexual intercourse with her also by enticing and luring her on the assurance of false marriage cannot at all be believed and accepted in any manner. If the abovesaid case of the victim girl has any semblance of truth, as rightly put forth by the

accused counsel, the same would have been disclosed in the complaint. However, nothing has been whispered about the sexual relationship which the victim girl had with the accused, as testified by her prior to 10.07.2012 in the complaint Ex.P3.

8. That too, as rightly put forth by the accused counsel, even in the complaint Ex.P3, the victim girl has not stated that the accused had sexual intercourse with her for four times on that date without her Will and consent in specific. All that she would state is that the accused had promised to marry her and as they were engaged in love even prior to the same, according to the victim girl, she had allowed the accused for having sexual intercourse with her four times on 10.07.2012 and on that date, according to the victim girl, her mother had not been in the house and left to Amainthakarai for attending her sister delivery. The accused has denied that he had been engaged in love with the victim girl as projected by her. The abovesaid case of the victim girl has been denied in toto by the accused. However, the materials placed on record go to disclose that the accused and the victim girl were working in the Chandra Mall Food Court at one point of time. Accordingly, on that sole factor, it cannot be held that the accused had been engaged in love with the victim girl as sought to be projected by the victim girl in the matter.

9. In this connection, the prosecution would endeavour to examine one Binoth as PW4 who is also stated to have been working in the Chandra Mall Food Court at the relevant point of time. PW4 would claim in the chief examination that the victim girl and the accused were engaged in love while working in the Food Court and he had also directed them not to engage in love affair during work. During the course of cross examination, he has admitted that neither the victim girl nor the accused had apprised him that they were engaged in love and he had not witnessed them having any physical relationship and also admitted that he does not remember as to when from they were engaged in love and when they had expressed him that they propose to marry and further admitted that the owner of the Food Court was available and he had not complained to the owner that the accused and the victim girl were engaged in love and moving closely with each other. Furthermore, PW4 is unable to even clearly state as to where he is put up/residing, other than vaguely stating that he is residing opposite to Food Court. Therefore, when the evidence of PW4 is as above, as rightly put forth by the accused counsel, PW4 appears to be a stock witness of the prosecution and further, when neither the accused nor the victim girl has disclosed him as to having love affair with each other and therefore, merely from the victim girl and the accused being engaged in conversation at the time of working, the inference drawn by PW4 that they were engaged in love as such cannot be accepted. If that be so, PW4 would have tendered concrete and clear evidence precisely as to when from the accused and the victim girl had been engaged in love and furthermore, if the

abovesaid facts are true, as rightly put forth by the accused counsel, the same would have been disclosed to PW4 either by the victim girl or the accused and that apart, the same would have been disclosed to the owner of the Mall and if really, the victim girl and the accused had been engaged in love as sought to be projected by PW4, the same would have been known to the owner also and on the other hand, when the prosecution has not endeavoured to examine the owner of the Mall and had only chosen to examine PW4 and when PW4 is unable to detail about the love relationship said to have been in existence between the victim girl and the accused, therefore, his inference that they had been engaged in love with each other based on their mere conversation, as such, cannot be accepted in any manner. Particularly, when the accused is found to be engaged as cashier and the victim girl is engaged in the service job and the victim girl's mother was also engaged in household cleaning work at the Food Court, if really, the accused and the victim girl had been engaged in love as inferred by PW4, the same would have been noticed by the victim girl's mother and on the other hand, when according to PW2, the mother of the victim girl, she had come to know about the physical relationship of the victim girl and the accused only on being apprised by the victim girl at the time of the lodgment of the complaint and furthermore, when the suggestion has been put to PW4 that he had wrongly inferred that the accused and the victim girl were engaged in love by seeing them conversing with each other, PW4 has answered that such a possibility is also there and furthermore, when PW4 is unable to detail as to what was the conversation between the victim girl and the accused, therefore, as rightly contended by the accused counsel, no safe reliance could be attached to the evidence of PW4 to hold that the accused and the victim girl were engaged in love.

10. As above pointed out, why the prosecution has not endeavoured to examine the owner of the Food Court, there is no proper explanation. Therefore, the very case of the prosecution that the victim girl and the accused were engaged in love has not been established. As above pointed out, the complaint of the victim girl is that the accused has committed forcible sex on 10.07.2012 four times on the promise of marrying her. However, quite inconsistent to the case, she would come out with the case that they had been having sexual relationship even from 20.04.2012 and subsequent thereto on several occasions. If really, the accused had forcible sex with the victim girl from 20.04.2012 onwards repeatedly and if really, during April 2012, the accused had approached PW3, the victim girl's mother for marrying the victim girl, naturally, as contended by the accused counsel, the victim girl's mother would have shown her inclination to the marriage, particularly, the accused being a person of a good status. However, the case projected by the prosecution that PW3 was not inclined to celebrate the marriage of the victim girl as she was a girl of small age, as such cannot be believed and

accepted in any manner.

11. If the abovesaid case of the prosecution has any semblance of truth, as rightly put forth by the accused counsel, all the facts would have been disclosed in the complaint marked as Ex.P3. However, PW3, during the course of chief examination, has not disclosed anything about the physical relationship which the accused is said to have been maintaining with the victim girl forcibly and subsequent thereto on several occasions and very vaguely PW3 would state that the accused approached her during the month of April and sought for the marriage of the victim girl and that she had requested the accused to wait for two years. During the course of cross examination, PW3 has admitted that her daughter, namely, the victim girl did not disclose to her about the physical relationship which she had with the accused during the months of April, May and June and further admitted that the accused was engaged as Manager in the Food Court and according to PW3, her daughter has apprised her about the forcible sex which the accused had with her on 10.07.2012 only in the month of August. Therefore, with the abovesaid evidence of PW3, it is seen that she is totally unaware of the alleged physical relationship which the accused had with the victim girl from April 2012 onwards repeatedly as claimed by PW2 victim girl and if really, the accused had approached PW3 for marrying the victim girl during April and if really, the accused had forcible sexual relationship with the victim girl from April 2012 onwards and that too repeatedly, all the abovesaid facts would have been disclosed in the complaint and on the other hand, when the complaint recites only about the sexual relationship the accused had with the victim girl on 10.07.2012, therefore, it is highly improbable and unacceptable to believe the case of the prosecution, particularly, the case projected by the victim girl that the accused had been having forcible sexual relationship from April 2012 onwards repeatedly on the enticement of marrying her.

12. If as put forth by the victim girl, the accused had forcible relationship with the victim girl on 10.07.2012, that too for four times by staying in her house throughout night and if the victim girl has not given consent to the abovesaid acts of the accused, as rightly put forth by the accused counsel, the victim girl would have complained about the acts of the accused to the neighbours and furthermore, if really such an incident had occurred on 10.07.2012, particularly, when the victim girl is claimed to be alone in the house, her neighbours would have been put on knowledge about the same and the prosecution would have also endeavoured to examine the neighbours. On the other hand, as rightly put forth by the accused counsel, as no incident had taken place as narrated by the victim girl, it is seen that the prosecution has not endeavoured to examine any of the neighbours pointing to the same. That apart, there is no proof placed on the side of the

prosecution to hold that the mother of the victim girl was not available in the house on 10.07.2012 and that she had been to Amainthakarai for attending her elder daughter's delivery and if the abovesaid case of the prosecution has any semblance of truth, some materials would have been projected by the prosecution pointing to the same. Therefore, the case of the prosecution that the victim girl was alone in the house on 10.07.2012 and that the accused had sexual relationship with her four times by staying in her house for the whole night by luring and enticing her that he would marry her, as such, cannot be believed and accepted.

13. The complaint of the victim girl marked as Ex.P3 only goes to show that the offence of rape has been committed by the accused for the first time on 10.07.2012. The complaint does not recite the relationship which the accused had with the victim girl, particularly, from April 2012 onwards. However, according to the prosecution, the victim girl had disclosed about the incident which had occurred from April 2012 during the course of investigation in her 161 statement. According to the IO examined as PW6, the victim girl had given 161 statement within 15 minutes from the lodgment of the complaint. However would further admit that the victim girl had given statement only as put forth by her in the complaint and as projected by the prosecution. In such view of the matter, it does not stand to reason as to how come the prosecution can claim that the victim girl had given statement contrary to the complaint lodged by her, that too about the forcible sex which the accused had with her from April 2012 onwards that too repeatedly. Therefore, as rightly contended by the accused counsel, the alleged 161 statement of the victim girl is found to have been concocted to suit the prosecution case one way or the other.

14. The doctor who had examined the victim girl has been examined as PW1. PW1 Dr.Vimala has deposed that the victim girl had only confirmed that she had been having sexual relationship with a known person. Therefore, the victim girl had not disclosed to the doctor that she had been in love with the person with whom she had been having sexual relationship for a period of four months. According to PW1, no external injuries was noted on the body of the victim girl and hymen was not intact and her vagina admitted one finger easily and she was not found to be conceived and the semen collected from her body on being subjected to examination found no presence of sperm and the above being the evidence of the medical officer, as rightly contended by the accused counsel, the medical evidence projected in the matter does not lend support to the case of the victim girl as well as the prosecution case that the victim girl was subjected to forcible sex against her Will and consent. No doubt, the victim girl had been subjected to medical examination very belatedly i.e. on 09.10.2012. When the victim girl has not endeavoured to lodge the complaint immediately about the alleged illegal acts

committed by the accused and had chosen to come forward with complaint very belatedly, nearly 83 days after the occurrence and also nearly 5 months after the alleged occurrence which is said to have been committed during April 2012, in such view of the matter, the resultant position being the medical evidence having not lend any support to the prosecution case and accordingly, it is found that we have only the evidence of the victim girl to sustain the prosecution case.

15. As above pointed out, when there are various contradictions in the evidence of the victim girl and the complaint projected by her and when particularly, there is no proof to hold that the victim girl was alone in the house on 10.07.2012 or prior to the same that the accused is alleged to have sexual intercourse with her on several occasions, when there is no proof to hold that the accused at any point of time approached her mother for marrying the victim girl and when the victim girl is also found to have not disclosed the incident to anyone, even to her mother and furthermore, the victim girl having also not disclosed to her mother about the sexual relationship which the accused had with her commencing from April 2012 onwards and had chosen to disclose the incident which had occurred on 10.07.2012, that too, in the month of August 2012 and when the victim girl's testimony is not supported by the medical evidence projected in the matter and as above pointed out, PW4's evidence does not inspire confidence and the reliability and credibility of the alleged 161 statement given by the victim girl is also found to be at stake, all put together, as rightly contended by the accused counsel, when the evidence of the victim girl does not inspire confidence that the accused had committed rape on her on 10.07.2012 against her Will and without her consent and for the same, the victim girl had taken only the refuge/shelter under section 417 IPC, namely, that the accused had enticed and lured her to forcible sex on the false promise of marrying her, however, when her evidence to the abovesaid aspects does not lend or merit acceptance, particularly, when she is found to have had sexual intercourse with the accused even prior to 10.07.2012 repeatedly and therefore, the number of times which the victim girl had sex with the accused would only go to expose the weakness of her case and particularly, when the place of occurrence is stated to be the victim girl's house and alleged to have been take place during the absence of PW3, atleast the occurrence as alleged by the victim girl would have been known to the neighbours of the house, on the other hand, when none of the neighbours of the victim girl has been examined, in such view of the matter, the case of the victim girl/prosecution, as such, cannot be accepted readily for holding that the accused had committed rape on the victim girl on 10.07.2012 as projected by them.

16. The only point that is urged by the prosecution is that the victim girl had been subjected to forcible sex on the promise of false marriage. With reference to the

abovesaid factors, the Apex Court in the decision reported in CDJ 2019 SC 950 (Pramod Suryabhan Pawar Vs. The State of Maharashtra & Another) had detailed as to under circumstances and factors the question of whether the victim girl had been subjected to misconception of facts with reference to the accused promising to marry her should be considered and the abovesaid aspects enunciated by the Apex Court in the abovesaid decision are extracted below:

"14 In the present case, the "misconception of fact" alleged by the complainant is the appellant's promise to marry her. Specifically in the context of a promise to marry, this Court has observed that there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled. In Anurag Soni v State of Chhattisgarh⁹, this Court held:

"37. 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, such a consent can be said to be a consent obtained 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 Sections 375 of the IPC and can be convicted for the offence under Section 376 of the IPC."

Similar observations were made by this Court in Deepak Gulati v State of Haryana¹⁰ ("Deepak Gulati"):

"21. ... 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..."

15. In Yedla Srinivasa Rao v State of Andhra Pradesh¹¹ the accused forcibly established sexual relations with the complainant. When she asked the accused why he had spoiled her life, he promised to marry her. On this premise, the accused repeatedly had sexual intercourse

with the complainant. When the complainant became pregnant, the accused refused to marry her. When the matter was brought to the panchayat, the accused admitted to having had sexual intercourse with the complainant but subsequently absconded. Given this factual background, the court observed:

"10. It appears that the intention of the accused as per the testimony of PW 1 was, right from the beginning, not honest and he kept on promising that he will marry her, till she became pregnant. This kind of consent obtained by the accused cannot be said to be any consent because she was under a misconception of fact that the accused intends to marry her, therefore, she had submitted to sexual intercourse with him. This fact is also admitted by the accused that he had committed sexual intercourse which is apparent from the testimony of PWs 1, 2 and 3 and before the panchayat of elders of the village. It is more than clear that the accused made a false promise that he would marry her. Therefore, the intention of the accused right from the beginning was not bona fide and the poor girl submitted to the lust of the accused, completely being misled by the accused who held out the promise for marriage. This kind of consent taken by the accused with clear intention not to fulfil the promise and persuading the girl to believe that he is going to marry her and obtained her consent for the sexual intercourse under total misconception, cannot be treated to be a consent..."

16. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The "consent" of a woman under Section 375 is vitiated on the ground of a "misconception of fact" where such misconception was the basis for her choosing to engage in the said act. In *Deepak Gulati* this Court observed:

"21. ... 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.

.....

24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance". Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her."

17. In *Uday v State of Karnataka*¹² the complainant was a college going student when the accused promised to marry her. In the complainant's statement, she admitted that she was aware that there would be significant opposition from both the complainant's and accused's families to the proposed marriage. She engaged in sexual intercourse with the accused but nonetheless kept the relationship secret from her family. The court observed that in these circumstances the accused's promise to marry the complainant was not of immediate relevance to the complainant's decision to engage in sexual intercourse with the accused, which was motivated by

other factors:

25. There is yet another difficulty which faces the prosecution in this case. In a case of this nature two conditions must be fulfilled for the application of Section 90 IPC. Firstly, it must be shown that the consent was given under a misconception of fact. Secondly, it must be proved that the person who obtained the consent knew, or had reason to believe that the consent was given in consequence of such misconception. We have serious doubts that the promise to marry induced the prosecutrix to consent to having sexual intercourse with the appellant. She knew, as we have observed earlier, that her marriage with the appellant was difficult on account of caste considerations. The proposal was bound to meet with stiff opposition from members of both families. There was therefore a distinct possibility, of which she was clearly conscious, that the marriage may not take place at all despite the promise of the appellant. The question still remains whether even if it were so, the appellant knew, or had reason to believe, that the prosecutrix had consented to having sexual intercourse with him only as a consequence of her belief, based on his promise, that they will get married in due course. There is hardly any evidence to prove this fact. On the contrary, the circumstances of the case tend to support the conclusion that the appellant had reason to believe that the consent given by the prosecutrix was the result of their deep love for each other. It is not disputed that they were deeply in love. They met often, and it does appear that the prosecutrix permitted him liberties which, if at all, are permitted only to a person with whom one is in deep love. It is also not without significance that the prosecutrix stealthily went out with the appellant to a lonely place at 12 o'clock in the night. It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married.."

18. To summarise the legal position that emerges from the above cases, the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To

establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.

19. The allegations in the FIR indicate that in November 2009 the complainant initially refused to engage in sexual relations with the accused, but on the promise of marriage, he established sexual relations. However, the FIR includes a reference to several other allegations that are relevant for the present purpose. They are as follows:

(i) The complainant and the appellant knew each other since 1998 and were intimate since 2004;

(ii) The complainant and the appellant met regularly, travelled great distances to meet each other, resided in each other's houses on multiple occasions, engaged in sexual intercourse regularly over a course of five years and on multiple occasions visited the hospital jointly to check whether the complainant was pregnant; and

(iii) The appellant expressed his reservations about marrying the complainant on 31 January 2014. This led to arguments between them. Despite this, the appellant and the complainant continued to engage in sexual intercourse until March 2015.

The appellant is a Deputy Commandant in the CRPF while the complainant is an Assistant Commissioner of Sales Tax.

20. The allegations in the FIR do not on their face indicate that the promise by the appellant was false, or that the complainant engaged in sexual relations on the basis of this promise. There is no allegation in the FIR that when the appellant promised to marry the complainant, it was done in bad faith or with the intention to deceive her. The appellant's failure in 2016 to fulfil his promise made in 2008 cannot be construed to mean the promise was false. The allegations in the FIR

indicate that the complainant was aware that there existed obstacles to marrying the appellant since 2008, and that she and the appellant continued to engage in sexual relations long after their getting married had become a disputed matter. Even thereafter, the complainant travelled to visit and reside with the appellant at his postings and allowed him to spend his weekends at her residence. The allegations in the FIR belie the case that she was deceived by the appellant's promise of marriage. Therefore, even if the facts set out in the complainant's statements are accepted in totality, no offence under Section 375 of the IPC has occurred."

17. Applying the same to the case at hand, when the alleged love affair between the accused and victim girl had not been established and when the victim girl is found to have had sexual relationship even prior to 10.07.2012 and when with reference to the same, there is no material to hold that the accused had been having forcible sexual relationship with her on the promise of marrying her and when the alleged incident of 10.07.2012 has also not been established by the prosecution in any acceptable manner as above discussed, therefore, the case projected by the victim girl/prosecution that the victim girl had subjected her body to the accused on his false promise of the marrying her, as such, cannot be accepted in any manner when the victim girl and the accused are found to have been continuing the physical relationship over a period of time freely, voluntarily and without any doubt and the victim girl is also found to be a girl of better understanding and knew about the consequences of physical relationship with the accused, her conduct in not disclosing the same even to her mother at the earliest, all put together would only go to show that the case projected by the victim girl and the evidence put forth by the victim girl belie the case that she was deceived by the accused promise of marrying her and accordingly, it is also found that the offences of rape levelled against the accused has also not been established.

18. In support of his contentions, the accused counsel also placed reliance upon the decisions reported in CDJ 2018 MHC 8256 (Amali Arockia Selvi Vs. Maria Michael @ Michael & Another), CDJ 2003 SC 338 (Uday Vs. State of Karnataka) & CDJ 2014 SC 280 (Vinod Kumar Vs. State of Kerala). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

19. The accused counsel also pointed out that the time of arrest of the accused has also not been clearly established by the prosecution and according to him, even before the lodgment of the complaint, the accused is found to

have been arrested. Inasmuch as, I have held that the prosecution has not established the offences put forth against the accused, in my considered opinion, the abovesaid aspect of the matter pertaining to the arrest not to be dealt with in detail. In this case, the doctor who had examined the victim girl has also not been named in the final report.

20. In the light of the abovesaid discussions, when the prosecution is encircled with serious doubts, suspicions, loopholes, lacunae and surmises and with reference to the same, no plausible explanation is forthcoming on the part of the prosecution to clear the same, in such view of the matter, the benefit of doubt emerging from the same should be extended in favour of the accused and accordingly I hold that the prosecution has miserably failed to establish the charges levelled against the accused under sections 376 and 417 IPC and resultantly, I hold that the accused is not guilty of the offences punishable under Sections 376 and 417 IPC.

21. In conclusion, the judgment dated 21.02.2014, passed in S.C.No.318 of 2013, on the file of the Sessions Judge, Mahila Court, Chennai convicting and sentencing the appellant/accused under Sections 376 and 417 IPC are set aside and the accused is held not guilty of the offences under Sections 376 and 417 IPC and acquitted thereof. Accordingly, the criminal appeal is allowed. The bail bond executed by the appellant shall stand cancelled. The fine amount, if any, paid by the appellant shall be refunded to him.

Sd/-
Assistant Registrar(CS-I)

//True copy//

Sub Assistant Registrar

sli/sms

To

1.State of Tamil Nadu
Represented by Inspector of Police
W27, All Women Police Station,
Vadapalani, Chennai - 600 024.

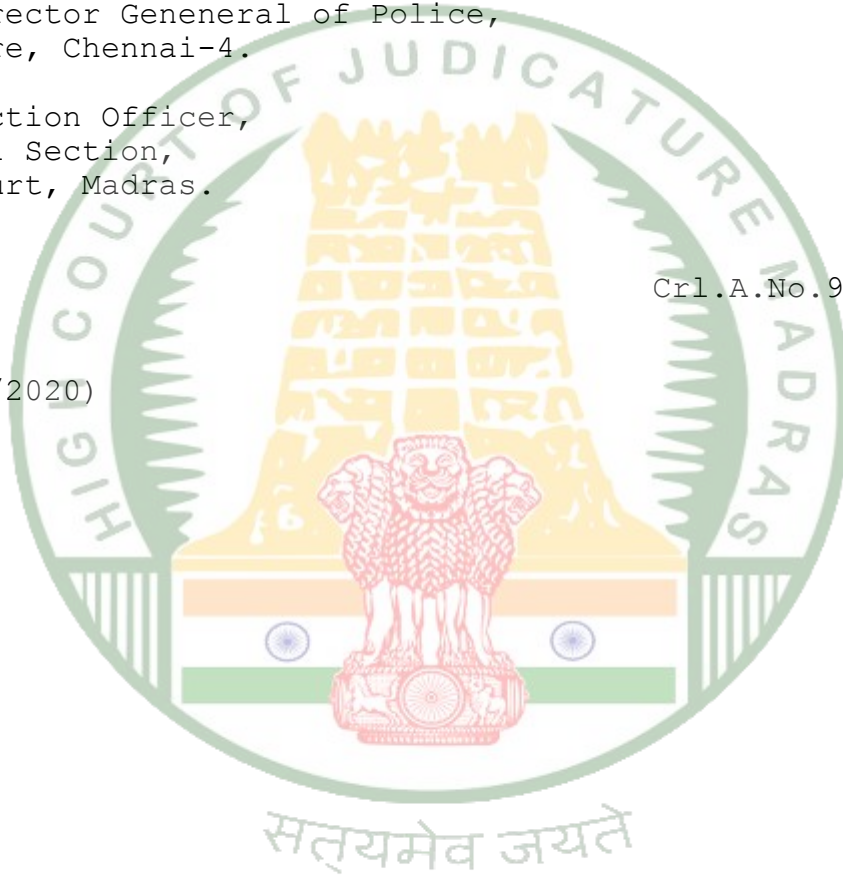
2.The Sessions Court,
Mahalir Needhimandram, Chennai.

3. The Metropolitan Magistrate,
No.XXIII, Saidapet, Chennai-15.

4. The Chief Metropolitan Magistrate,
Egmore, Chennai(for information)
5. The Superintendent,
Central Prison, Puzhal, Chennai.
6. The Judge, Mahila Court, Chennai.
7. The Public Prosecutor,
High Court, Madras.
8. The Director Geneneral of Police,
Mylapore, Chennai-4.
9. The Section Officer,
Criminal Section,
High Court, Madras.

Cr1.A.No.91 of 2014

PP(CO)
GMY(03/08/2020)



WEB COPY