



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.02.2020

CORAM

THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

CRL.A(MD).No.228 of 2014

C.Pappathi

... Appellant / Complainant

Vs.

1.State Rep.by the
Inspector of Police,
All Women Police Station,
Tenkasi, Tirunelveli District.
(Crime No.10 of 2006)

2.K.Murugan

...2nd Respondent / Accused

PRAYER: Criminal Appeal filed under Section 401 of Cr.P.C, to call for the records relating to the judgment dated 08.01.2008 in S.C.No.175 of 2007 passed by the learned Sessions Court (Mahalir Neethimandram), Tirunelveli, set aside the same.

For Appellant : Mr.L.Shaji Chellan

For R1 : Mr.K.Suyambulinga Bharathi,
Government Advocate (Criminal Side)

For R2 : Mr.J.Sulthan Basha,
for M/s.Ajmal Associates.

JUDGMENT

The Criminal Appeal has been filed as against the order dated 08.01.2008 passed by the learned Sessions Judge, (Mahalir Neethimandram), Tirunelveli in S.C.No.175 of 2007.

2. The Sessions Case in S.C.No.175 of 2007 pertains to the case in Crime No.10 of 2006 for the offence under Sections 417, 376 and 506(ii) IPC on the file of the All Women Police Station, Tenkasi. After full fledged trial, the Trial Court, by order dated 08.01.2008, acquitted the accused from all the charges framed against him. As against the order of acquittal, the appellant/defacto complainant preferred the present appeal.



3. The facts of the case are briefly stated hereunder:-

(i) The appellant/victim and the Second Respondent/accused were residing in the same village. On 20.11.2003, the appellant/victim was alone in her house, at that time, the Second Respondent/accused entered the house and gave false promise to marry her and had sexual forced intercourse with her.

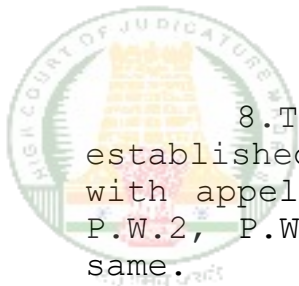
(ii) Thereafter, the second respondent refused to marry the appellant. When the appellant/victim approached the second respondent, the second respondent refused to meet her. Therefore, the appellant lodged a complaint against the second respondent. The second respondent agreed to marry her within two months in the presence of elders of village. Thereafter, he demanded 100 grams of jewels and a sum of Rs.25,000/-. On one such occasion, when the victim was returning from the shop, the accused threatened her that if she insisted for marriage with him, he will kill her and her family members. Therefore, the victim lodged a complaint as against the accused, the same was registered in Crime No.10 of 2010, for the offence punishable under Sections 417, 376 and 506(ii) of IPC. After completion of investigation, the respondent police filed a charge sheet before the learned Sessions Judge, (Mahalir Neethimandram), Tirunelveli and the case was taken on file in S.C.No.175 of 2007.

4. In order to prove the case of the prosecution, on the side of the prosecution 16 witnesses were examined as P.Ws.1 to P.W.16 and 18 documents were marked as Ex.P.1 to Ex.P.18. On the side of the accused, no document was marked and no witness was examined.

5. The learned trial Judge, after considering the oral and documentary evidence and upon hearing both sides, acquitted the accused. Aggrieved over the Judgment and conviction, the appellant / defacto complainant preferred the present Criminal Appeal.

6. The contention of the learned counsel for the appellant is that the lower Court on wrong presumption acquitted the accused and has not consider the case in his proper perspective. The trial Court came to the conclusion that there was a lover affair between the second respondent and the appellant, but strangely the trial Court held that Section 417 of Cr.P.C is not applicable in the case of women surrendering her chastity to a man on a false promise to marry her.

7. The learned counsel for the appellant further contended that P.W.1, P.W.2, P.W.7 and P.W.13 had clearly stated about that the appellant and the second respondent loved each other and they were seen in various places. Further, the love letters written by the second respondent were marked as Ex.P.5 to Ex.P.7, which corroborates the evidence of the prosecution. Despite the same, the lower Court failed to consider these facts. He further submitted that the second respondent gave undertaking before the superior officers admitting the love affair and to marry the appellant.



8.The evidence of P.W.1, P.W.8 and P.W.10 and Ex.P.11 clearly established that the second respondent had physical relationship with appellant. The demand of dowry has been proved by the P.W.1, P.W.2, P.W.12 and P.W.13. The lower Court failed to consider the same.

9.The learned counsel for the appellant further submitted that the evidence of P.W.1 with regard to criminal intimidation by the accused is corroborated by the evidence of P.W.6. The second respondent had promised and gave an undertaking to marry the appellant, thereafter, demanded dowry for avoiding marriage and also threatening her. The appellant produced cogent oral and documentary evidences, clearly proved that the second respondent committed the offence under Sections 417, 376 and 506(ii) IPC, despite the same, the trial Court on a wrong conclusion, acquitted the appellant.

10.The learned Government Advocate (Criminal Side) submitted that on receipt of the complaint, the first respondent police registered a case. On the complaint, it is seen that on 20.11.2003 at about 12 noon when P.W.1 was alone in her house, the second respondent entered the house made false promise that he will marry her and had physical relationship without her wish. Thereafter, he postponed the marriage for two years. Later, he had also demanded dowry. On 05.09.2006 at about 07.00.am., P.W.1 was returning after purchase of grocery from the shop, the second respondent came in the opposite direction threatening her. During the enquiry, the second respondent gave an undertaking that he would marry the appellant. But, failed to marry her, hence a case was registered on 28.09.2006.

11.The contention of the learned counsel for the second respondent is that it is admitted fact that the second respondent and P.W.1 were relatives and they were friendly terms. The alleged occurrence is case said to have been taken on 20.11.2003 and the complaint came to be registered on 28.09.2006, nearly after lapse of three years. There is no reason for the detailed complaint. Ex.P.11 is the petition given to the respondent police on 24.06.2006. In the said petition, nowhere it is stated about the alleged physical relationship, which is said to have taken place on 20.11.2003. The friendly relationship was mistook to as a love affair. Further, the second respondent, got employment in police force, it was one of the reason for compelling the second respondent to marry the appellant. The learned counsel for the second respondent further submitted that the second respondent is residing in the same village and they were on the similar social and economical status knowing each other from the younger days. The other witnesses, neighbours stated about the second respondent was friendly with the appellant. Ex.P.5 to Ex.P.7 /letters clearly establish the fact that the second respondent and the appellant loved each other. The letters are disputed and it is not proved in the manner known to law.



P.W.8/Doctor examined the victim and the Accident Register copy is marked as Ex.P.9.

12.The learned counsel for the Second respondent further submitted that the trial Court after considering the oral and documentary evidences, rightly acquitted the second respondent. The judgment of the trial Court is well reasoned one and prayed for dismissal of the appeal.

13.Heard the learned counsel for the appellant and the learned Government Advocate (Criminal Side) for the first respondent and also learned counsel for the second respondent.

14.It is seen that P.W.1 is the victim and P.W.2 and P.W.3 are the parents of P.W.1. The alleged occurrence is said to have taken on 20.11.2003 and the complaint came to be registered on 28.09.2006, nearly after a lapse of three years. It is further seen that the Petition/Ex.P.11 given by the appellant to the respondent police on 24.06.2006. The appellant had narrated the entire facts, but, in the said petition, nowhere it is stated about any physical relationship on her by the second respondent. It is admitted that the appellant and the second respondent were residing in the same village and no reason given for inordinate delay for lodging the complaint. Further, the evidence of PW1 does not inspire confidence. Further, after a lapse of three years, the complaint was lodged by the appellant.

15.As stated above, the second respondent and the appellant were residing in the same village, hailing from the similar social and economical background. There is no evidence to show that the second respondent made demand of dowry and that is the reason the marriage could not be held between the petitioner and the second respondent. It is seen the appellant and second respondent are now having their own way of life.

16.In view of the above, there is no reason to interfere with the well reasoned judgement of the trial Court acquitting the second respondent. Hence, this Court is not inclined to interfere with the judgment of the trial Court.

17.Accordingly, the Criminal Appeal is dismissed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

1.The Sessions Court (Mahalir Neethimandram),
Tirunelveli.

WEB COPY

2. Do- Through The Principal District Judge,
Tirunelveli.

3.The Judicial Magistrate, Tenkasi.

4.The Chief Judicial Magistrate, Tirunelveli.

5.The Inspector of Police,
All Women Police Station,
Tenkasi, Tirunelveli District.

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

7.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-8674[F] dated
27/02/2020)

CRL.A (MD) .No.228 of 2014
26.02.2020

das

SDS (02.06.2020) 5P-9C