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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Reserved on : 28.06.2021)

(Pronounced on : 22.09.2021)

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.996 of 2015

Muniyappan

....Petitioner/Accused

.. Vs ..

State represented by
Sub Inspector of Police,
All Women Police Station,
Chengam
Thiruvannamalai District
Crime No.11/2007

... Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C., against the judgment passed in C.A.No.16/2011 dated 10.07.2015 by the Sessions Judge, Thiruvannamalai, convicting the petitioner under Section 417 of I.P.C and sentenced to undergo, R.I for 10 months confirming the trial Court order dated 14.09.2011 passed in C.C.No.98/2008 on the file of Judicial Magistrate, Chengam convicting him under Section 417 of I.P.C and sentenced to undergo R.I for 10 months.

For petitioner : Mr.R.Balakrishnan

For Respondent : Mr.R.Vinoth Raja,
Government Advocate (Crl.Side)

O R D E R

The convicted sole accused is the revision petitioner herein.

2. The respondent-police filed a final report in Crime No.11 of 2007 alleging that, on promise to marry P.W.1 victim girl, the accused had sexual intercourse and subsequently left to Bangalore and off and on, when he visits the native place, she had sexual intercourse with P.W.1 and P.W.1 become pregnant and when P.W.1 asked the accused to marry her, he criminally intimidated and hence charge under Section 417 and 506 (i) of I.P.C.



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3. After observing formalities, the case was taken on file as C.C.No.98/2008 before the learned Judicial Magistrate, Chengam.

4. During the trial, P.Ws.1 to 11 and Exs.P1 to P6 were marked. No oral evidence was adduced on behalf of the accused. The learned Judicial Magistrate, Chengam, by order dated 14.09.2011, had passed the impugned judgment against the appellant.

5. The trial Court has convicted the accused and the appellate Court dismissed and hence the revision.

6. The learned counsel for the revision petitioner submitted that the revision petitioner was convicted for the offence under Section 417 I.P.C and acquitted under Section 506 (i) I.P.C.

7. The case of the prosecution is that on promise to marry, the revision petitioner had sexual intercourse with P.W.1 and made her pregnant and she threatened her not to disclose the sexual intercourse. After birth of the child, inspite of the repeated demands, the revision petitioner/accused refused to marry P.W.1 and hence the complaint.

8. Both the trial Court and Lower Appellate Court has convicted the accused and the learned counsel also relied upon the grounds raised in the revision that there is a delay in filing the complaint before the Magistrate Court and the evidence of P.W.1 is not disclosing the fact of the earliest possible time and the appellant is working in Bangalore and hence he is no way responsible for the pregnancy and with regard to the place of occurrence, whether it is the house of P.W.4 or in the open space, in the land, there is a contradiction.

9. Heard the learned Government Advocate (Crl.side) who contended that there is a delay in filing the complaint and at the first instance, P.W.1 has not disclosed as who is responsible for the pregnancy.

10. The victim girl was examined as P.W.1. P.W.2 is the mother of the victim. P.W.3 is the father, while P.W.4 is the elder sister of P.W.2 and P.W.5 is the sister of P.W.1. Attestor of the observation mahazar was examined as P.W.6 and P.W.7 Doctor, had given Medical Certificate under Ex.P3. P.W.8 is the Doctor. P.W.10 is the Assistant Professor at Government Medical College who have issued D.N.A report stating that for the baby, P.W.1 is the biological mother and the accused is the biological father.



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11. The trial Court has believed the evidence of P.W.1 and laid the conviction. The lower Appellate Court has taken into consideration the evidence of P.W.1 and the medical officer P.W.8 and has confirmed the conviction.

12. On a perusal of the evidence of P.W.1, she had categorically deposed about the relationship between the accused and P.W.1 and as and when he visits the native place, he assured that he would marry her and the accused had sexual intercourse and thereafter, the accused has left for Bangalore, however on regular visits, he used to have for sexual intercourse and she became pregnant. Her parents P.W.2 and P.W.3 and P.W.5 have enquired about the pregnancy and so she had disclosed the relationship she had with the accused. P.W.8 is the Medical Officer who examined P.W.1 issued medical certificate Ex.P3 that P.W.1 victim girl is pregnant and during the course of the investigation, she has begotten a boy, and the D.N.A report is marked as Ex.D7 through P.W.10.

13. The version of the prosecutrix P.W.1 as to the false promise to marry her made by the accused. On such a promise, she consented to have sexual intercourse and subsequently when she became pregnant despite repeated demands, the accused refused to marry her after Panchayat since no fruitful steps has been taken by the accused she gave Ex.P1 complaint and hence, both the Courts below have rightly come to the conclusion that in view of the Panchayat at village the delay is excusable. Furthermore, the presence of P.W.1 along with the accused in the said place has also seen by P.W.5 assumes significance.

14. P.W.8 Doctor Malathi who on an examination on 15.08.2007 has found that P.W.1 was pregnant and the fetus is 34 weeks and marked Ex.P3 Medical Certificate. She has stated to P.W.8 Doctor that she was made pregnant by a person known to her and said to have sexual intercourse on several times. P.W.10 Doctor Mr.Ashok Thiyagarajan through whom Ex.P7 D.N.A report was marked goes to show that on a scientific test of D.N.A mapping for a baby boy. P.W.1 is the biological mother of the boy and while the accused is the biological father also lends support to the prosecution theory.

15. There is nothing in the cross-examination to discredit the evidence of P.W.2, P.W.3, P.W.4 and P.W.5 which duly corroborates the evidence of P.W.1 regarding the existed between P.W.1 and the accused. The medical evidence of P.W.8 and P.W.10 coupled with Ex.P3 medical report and Ex.P7 D.N.A report duly corroborates the oral version of P.W.1 and hence, this Court finds that the prosecution has proved the charge under Section 417 of I.P.C beyond reasonable doubt.



16. The appellate Court relied upon the decision reported in 1994 Cr.L.J.2238 (Madras) [Mailsamy Vs.State] wherein it is held as follows:-

"The accused on false promise to marry had intercourse with the prosecutrix but subsequently when she became pregnant he refused to marry. It was held that cheating offence was made out on the day of refusal to marry and not on the date of intercourse".

17. The Courts below have concurrently laid the conviction. Though the sentence granted by the Trial Court is low and meagre, as confirmed about the offence committed, in the absence in the preferring any appeal by the State, this Court finds that the sentence passed by the Courts below is reasonable.

18. In view of the specific evidence of P.W.1 that she was made pregnant by the accused and also P.W.1 has given birth to the child aged about 2 years and as the accused refused to marry P.W.1, both the Courts below have laid the conviction under Section 417 of I.P.C and the same is sustainable. As stated supra, the sentence is also reasonable.

19. Hence, this Criminal Revision Petition is dismissed and conviction and sentence passed by the trial Court are hereby confirmed. The accused shall undergo the remaining period of sentence, if any. the period of imprisonment already undergone by the petitioner/accused shall be set off under Section 428 Cr.P.C.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Chengam.

2.-Do-Thro the Chief Judicial Magistrate,
Thiruvannamalai.

3. The Sessions Judge,
Thiruvannamalai.



Copy to

The Section Officer,
Criminal Section,
High Court, Madras.

Cr1.R.C.No.996 of 2015

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srg 28/10/2021