



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.A.No.290 of 2021

J.Rajkumar

...Petitioner/Accused

Versus

The State represented by
Inspector of Police,
All Women Police Station,
Villupuram.
Crime No.3/2015

...Respondent/Complainant

PRAYER:

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the judgment passed against the appellant on 07.04.2021 in S.C.No.61 of 2016 on the file of the learned Sessions Judge, Mahila Court (Fast Track Mahila Court), Villupuram and acquit him for all the charge.

For Appellant : Mrs.Revathi G.Mohan
Legal Aid Counsel

For Respondent : Mr.S.Sugendran
Government Advocate, (Criminal Side)

JUDGMENT

This Criminal Appeal has been filed to set aside the judgment dated 07.04.2021 passed in S.C.No.61 of 2016 on the file of the learned Sessions Judge, Mahila Court (Fast Track Mahila Court), Villupuram.

2.The respondent police registered a case against the appellant and three others for the offence under Sections 417, 376, 312, 294(b) and 506(ii) I.P.C. After investigation, laid a charge sheet before the Judicial Magistrate No.II, Villupuram. The learned Magistrate taken the charge sheet on file in P.R.C.No.4 of 2016. After completing the formalities, committed the case to the Principal District and Sessions Judge, Villupuram, since the case is exclusively triable by the Court



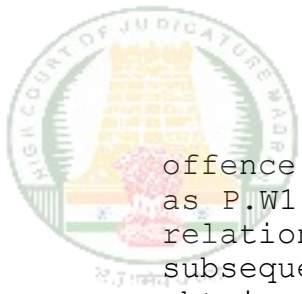
of Session. The learned Sessions Judge, taken the case on file in S.C.No.61 of 2016 and after completing the formalities, made over the same to the Special Judge, Mahila Court (Fast Track Mahila Court), Villupuram since the offence is against woman. The Special Judge, after completing the formalities, framed the charges against the appellant for the offence under Sections 376 , 312 and 417 I.P.C , against A2 for the offence under Section 294(b) I.P.C., against A3 and A4 for the offence under Section 506(ii) I.P.C.

3. After framing charges, in order to prove the case of the prosecution, during trial, on the side of the prosecution, as many as 13 witnesses were examined as P.W.1 to P.W.13 and 10 documents were marked as Ex.P1 to Ex.P10. No material object was exhibited.

4. After completing the examination of the prosecution witnesses, incriminating circumstances culled out from the prosecution witnesses were put before the accused by questioning under Section 313 Cr.P.C., They denied the same as untrue and pleaded not guilty. On the side of the defence, no oral and documentary evidence was produced.

5. On conclusion of trial and hearing the arguments advanced on either side, considered the material facts, the trial court acquitted A2 and A3 for the charged offence. Though A1 was also acquitted for the offence under Section 312 I.P.C, he was convicted for the offence under Section 376 and 417 I.P.C. and sentenced to undergo seven years rigorous imprisonment and to pay fine of Rs.25,000/-, in default to undergo three months simple imprisonment for the offence under Section 375 I.P.C which is punishable under Section 376 I.P.C. There is no separate sentence was ordered for the offence under Section 417 I.P.C. Challenging the said judgment and conviction and sentence, the first accused has filed the present appeal before this Court.

6. The learned counsel for the appellant would submit that age of the prosecutrix is 21 years and the age of the appellant is 25 years at the time of occurrence and as stated by the prosecutrix, the appellant never made a promise to marry her. With the consent of the victim only the appellant had sexual relationship with her. There is no evidence to show that the appellant is the reason for victim's pregnancy. There is no evidence to show that the appellant is the one, who caused the alleged offence and there is no evidence to show that the victim become pregnant and she aborted her pregnancy. False case has been foisted against the appellant. The prosecution failed to establish its case. The trial court rightly appreciated the evidence and acquitted the other accused for the charged offence, however, wrongly convicted the appellant for the



offence under Sections 376 and 417 I.P.C. Victim was examined as P.W.1, has clearly stated that she gave consent to have sexual relationship with her and due to that, she become pregnant, subsequently she aborted her fetus. Once again, the appellant obtained her consent, had sexual intercourse with her. Subsequently, she again become pregnant and there is no evidence to show that she got pregnant and subsequently the same was aborted. The victim/prosecutrix admitted that she gave consent for sexual intercourse. The trial court miserably failed to appreciate the evidence of prosecution and wrongly convicted the appellant, which warrants interference. When the trial court, acquitted the appellant for the offence under Section 312 I.P.C, the trial court ought to have acquitted him for the offence under Section 376 I.P.C also, the ingredients of Section 375 I.P.C are not made out in this case. Therefore, the judgment of conviction is liable to be set aside, in respect of offence under Section 375 I.P.C punishable under Section 376 I.P.C. Hence the appeal may be allowed and the judgment of conviction and sentence passed by the Mahila Court is liable to be set aside.

7.The learned Government Advocate (Criminal Side) appearing for the respondent would submit that P.W.1, victim has clearly stated that the appellant made a false promise and believing his promise, she did not resist for sexual relationship with him and due to that she become pregnant. The appellant promised that since his elder sister did not get marry at that time, therefore, after the marriage of his elder sister, he would marry the prosecutrix. Further, he requested her to abort her pregnancy and she heeded for his request. Once again, he made a false promise that he would definitely marry her, had intimacy with her several times and subsequently also she become pregnant. Even then also, the appellant refused to marry her. When the parents of the prosecutrix approached the appellant's family, he threatened and abused the prosecutrix. Therefore, no other option, she made a complaint. P.W.9, is the independent witness, has clearly stated about the relationship between the appellant and the prosecutrix. P.W.11-Doctor has clearly stated that victim's hymen was not intact and she was subjected to sexual intercourse. Therefore, the prosecution has proved its case beyond all reasonable doubt. Since the appellant obtained the consent, by made a false promise that he would marry her and he would be the husband of prosecutrix and had intimacy with her. Therefore, Section 375 I.P.C would attract. The trial judge rightly appreciated the evidence and convicted the appellant and imposed the sentence and fine under section 376 I.P.C. Therefore, there is no merit in the appeal and the same is liable to be dismissed.

8. Heard the learned counsel for the appellant and the



learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials.

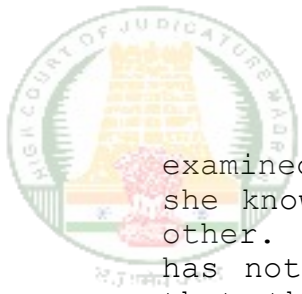
9. The case of the prosecution is that the victim and the appellant loved each other. On 22.02.2012 the appellant called the victim and made a promise to marry her, had sexual intercourse with her. Due to that, she become pregnant. Hence the appellant made an attempt to abort the fetus. Once again, he done the same act. Due to which, again, the victim got pregnant. When the parents of the victim approached the appellant's family, the appellant refused to marry the victim and scolded her with filthy language. Hence the complaint.

10. Since this Court is the Appellate Court, it is a final Court of fact finding and in order to give independent findings, it has to re-appreciate the evidence . Accordingly, this Court also re-appreciated the entire materials and give this findings.

11. The trial court framed the charges against the appellant and other accused as stated above.

12. In order to prove the charges against the appellant beyond all reasonable doubt, the prosecution examined totally 13 witnesses and marked 10 documents. Out of 13 witnesses, the prosecutrix was examined as P.W.1. In her deposition, she has clearly narrated that both the appellant and the victim are belonging to same village and same community and also both are known to each other. When she was working in the private textile company, the appellant used to contact her over cell phone and subsequently they developed their friendship and also they loved each other. Since the prosecutrix was staying in the hostel due to her job, the appellant used to call her and both wandering here and there. The appellant promised her to marry her, had a sexual relationship with her. Since the appellant is in the same village and also he belong to same caste and also the known person, in addition, the appellant made a promise to marry her, the victim initially gave a consent for the same. Therefore, she got pregnant. The appellant advised her to abort the fetus., since, his elder sister was not married at that time, and after getting marriage, he would marry the victim. Therefore, she gave a consent for abortion also. They continued their relationship and the appellant promised to marry her and subsequently also have sexual relationship with her several times. Again also, she got pregnant and subsequently she aborted. Therefore, the victim's parents approached the family of the appellant, they refused to marry the victim and also scolded them with filthy words. Therefore, the prosecutrix gave a complaint.

13. One of the witness is residing in the same street was

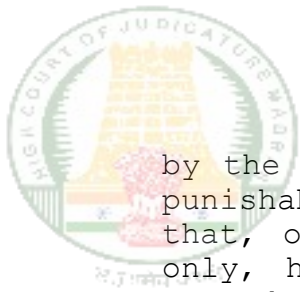


examined as P.W.9, she has stated in her chief-examination that she knows that both the appellant and the prosecutrix loved each other. In the cross examination, she denied the same that she has not seen while they are together. However, she has stated that the prosecutrix tell her about the relationship with the appellant and also her pregnancy and subsequent abortion. The doctor one who conducted medical examination of the prosecutrix was examined as P.W.11, she has stated that the victim was subjected to penetrative sexual intercourse. Therefore, from the evidence, it is proved that the victim was subjected to penetrative sexual intercourse. Now the question is whether it amounts to rape or not. According to the prosecution, he made the promise that he would marry her and obtained consent, had forcible sexual intercourse. Therefore, it is falls under Section 375 I.P.C punishable under Section 376 I.P.C.

14. According to the defence, he never forced her and he never made a promise and of course, with the consent of the prosecutrix, he had sexual relationship. Therefore, it is not falls under Section 375 I.P.C which is punishable under Section 376 I.P.C.

15. On a reading of the evidence of the prosecutrix, though there is no independent witnesses were examined to prove the relationship between the appellant and the prosecutrix, the victim has clearly stated that while working in private textile company, she had occasion to contact with him over phone and subsequently they developed their relationship and since the appellant made a promise to marry her, she gave a consent for sexual intercourse with the appellant. However, a woman about 20 years, she has stated that due to promise, she went along with him at that time, he forcibly had sexual intercourse with her, but she has not intimated the said act either to the parents or to police authorities. Due to sexual intercourse, she become pregnant and when the appellant came to know, advised her to abort the fetus, since her elder sister did not marry at that time. According to the evidence of PW.2, after miscarriage also, the prosecutrix had physical relationship with him several times. She also got pregnant subsequently. Therefore, the woman know very well that till the appellant's elder sister gets married, he won't marry her and she should have maintain some distance instead, she has a close relationship with the appellant and allowed him to have physical contact. Therefore, the act of the appellant not falls under the ingredients of under Section 375 I.P.C which is punishable under Section 376 I.P.C.

16. The Appellate court is the final Court of fact finding, it has to re-appreciate the entire evidence. This Court re-appreciated all the evidence and finds that the act committed



by the appellant does not fall under Section 375 I.P.C which is punishable under Section 376 I.P.C. Since the prosecutrix knows that, only after marriage of the elder sister of the appellant only, he would marry her. Therefore, conviction and sentence passed by the Appellate Court for the charged offence under Section 375 I.P.C punishable under Section 376 I.P.C is set aside. However, the victim has clearly stated that, the appellant made a promise to marry her and had sexual relationship with her and subsequently refused to marry her. Therefore, the trial court rightly found the appellant guilty of the offence under Section 417 I.P.C Since the trial court convicted and imposed sentence for the charged offence under Section 376 I.P.C, separate sentence was not imposed for the offence under Section 417 I.P.C.

17. Since this Court also finds that the appellant made a false promise and obtain consent from the victim and had physical relationship with her, he has committed the offence punishable under Section 417 I.P.C. Since this Court finds the appellant not guilty for the offence under Section 376 I.P.C, the conviction and sentence imposed on the appellant for the said offence is set aside and as he is found guilty for the offence under Section 417 I.P.C, he is convicted and sentenced to undergo one year rigorous imprisonment and to pay fine of Rs.25,000/- , in default to undergo three months simple imprisonment.

18. However, since the appellant was convicted for the offence under Section 417 I.P.C and the victim is only 20 years old and lost her virginity due to the promise made by the appellant, the appellant is liable to pay sum of Rs.5,00,000/- (Rupees Five Lakhs) as compensation to the victim within one month from the date of receipt of a copy of this judgment, failing which, the District Collector, Villupuram is directed to recover the money as arrears of land revenue and pay the same to the victim and file a complaint to that effect.

19. With the above modification, the Criminal Appeal is dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Mahila Court (Fast Track Mahila Judge),
Villupuram.
2. The Court for Exclusive Trial of Case under
POCSO Act Chengalpattu (FAC)
Chengalpattu District.
3. The District Collector,
Villupuram.
4. The Superintendent,
Central Prison,
Cuddalore.
5. The Inspector of Police,
All Women Police Station,
Villupuram.
6. The Public Prosecutor,
High Court,
Madras.

+1cc to M/s.Revathi G.Mohan, Advocate, S.R.No.51492

CRL.A.No.290 of 2021

MG(CO)
RGA(30/12/2021)