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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.A.NO.876 OF 2019

AND

CRL.M.P.NO.18547 OF 2019

Mr.Nataraj

... Appellant/Accused

Versus

1. The State represented by
Deputy Superintendent of police
Ulundurpet sub division
Vilupuram District.
2. The Inspector of Police,
Thirunavalur Police Station,
Vilupuram District.
(Crime No.72 of 2009)

... Respondents/Complainants

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the Judgment dated 24.07.2019 made in Special Sessions Case No.216 of 2015 passed by the Special Sessions Court SC/ST Act Cases, Villupuram.

For Appellant : Mr.K.P.Chandrasekaran

For Respondents : S.Sugendran
Government Advocate
[Crl. Side]

JUDGMENT

The appellant is the accused. Challenging the Judgment dated 24.07.2019 made in Special Sessions Case No.216 of 2015 passed by the Special Sessions Court SC/ST Act Cases, Villupuram, he filed the present appeal before this Court.



2.The respondent/police registered a case against the appellant herein and others in Crime No.72 of 2009 for the offences under Sections 417, 376, 387 r/w 109 of IPC., and Section 3(1)(x) of the Schedule Caste/ Scheduled Tribe (Prevention of Atrocities), Act. The respondent/police, after investigation, laid a charge sheet before the learned Judicial Magistrate No.II, Ulundurpet. The learned Judicial Magistrate taken the charge sheet on file in PRC.No.1 of 2010 and committed it to the file of learned Principal District Sessions Court, Vilupuram. The learned Principal Sessions Judge, Villupuram, had taken the case on file in Spl.S.C.No.216 of 2015 and made it over to the Special Designated Court, Villupuram. The learned Sessions Judge, after completing the formalities, framed charges against the appellants for the offence under Sections 417, 376, 387 r/w 109 of IPC., and Section 3(1)(x) of SC/ST (POA), Act. After completing the formalities, during the trial, in order to prove the case of the prosecution, on the side of the prosecution, 12 witnesses were examined as PW.1 to PW.12 and 11 documents were marked as Ex.P1 to P11. There is no material object produced. On completion of examination of prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the accused, they denied the same as false and pleaded not guilty. On the side of the accused, no one was examined and no document was marked.

3.On completion of trial, hearing the arguments advanced on either side and considering the materials, the Trial Court found the appellant herein/A1, guilty for the offence under Section 417 of IPC., and not found guilty for the offence under Section 376 of IPC., Section 3(1)(x) of SC/ST Act and Section 387 r/w 109 of IPC. Except the appellant, all the other accused were acquitted for the charged offences and the appellant alone was convicted only for the offence under Section 417 of IPC, for which, he was sentenced to undergo one year simple imprisonment. He was also directed to pay a sum of Rs.50,000/- to the victim, in default, to undergo three months rigorous imprisonment and further directed to pay Rupees One Lakh to the child born to PW.1, in default to undergo three months Simple Imprisonment. The said sum of Rupees One Lakh was directed to be deposited in anyone of the Nationalised Banks and permitted the victim girl to withdraw its interest once in a six months. Challenging the said Judgment of conviction and sentence, the first accused/A1 has filed this present appeal before this Court.

4.Heard the learned counsel for the appellant/A1 and the learned Government Advocate (crl.side) for the respondents.



5.The learned counsel for the appellant would submit that only with the consent of the victim, the appellant had sexual relationship with her. Though the Trial Court did not believe the case of the prosecution for the offence under Section 376 of IPC., and also for the offence under SC/ST Act, convicted the appellant herein erroneously only for the offence under Section 417 of IPC. He would further submit that P.W.2, P.W.3, P.W.4 and P.W.5 deposed that the de-facto complainant was insulted by the accused 2 to 5 by using her caste name only when she went to their residence. All the witnesses are relative and they are interested witnesses. It is alleged that the accused scolded her by using the caste name, after she gave birth to a female child due to the relationship with the appellant. Further, P.W.7 has not stated anything about the abortion of the pregnancy on the earlier occasion. Thus, there was an illegal intimacy between the de-facto complainant and the appellant. The appellant has not cheated the de-facto complainant, since there was illegal intimacy with the victim, he intimated it to the mother of the victim/de-facto complainant and the appellant. But the appellant is already married and therefore, the question of marrying the victim will not arise. Since the relationship between the appellant and the de-facto complainant is an illicit relationship, the Trial Court rightly appreciated the evidence and found the appellant not guilty of the offence under Section 376 of IPC., however, wrongly convicted the appellant for the offence under Section 417 of IPC., and therefore, the Judgment of the Trial Court is liable to be set aside and the appeal has to be allowed.

6.The Government Advocate (crl.side) would submit that the appellant promised the victim/P.W.1 to marry her. PW.1 had physical relationship with the appellant under the belief that the appellant would marry her and due to which she become pregnant. P.W.1 also gave birth to the child on 09.09.2009. Earlier, the victim became pregnant but it was aborted at the instance of the accused 2 to 5. Thereafter, once again, the victim become pregnant but even thereafter, the appellant failed to marry, P.W.1 for the reason that the victim belongs to Scheduled Caste community. Though, the Trial Court found that the victim girl become a major and she had illegal intimacy with the appellant with consent, the appellant was not convicted for the offence under Section 376 of IPC., however, the Trial Court found that the appellant promised to marry her and had illicit intimacy with her and subsequently, refused to marry her and therefore, she filed a complaint. The Trial Court rightly appreciated all the evidence and concluded that the other accused have not committed any offence as alleged by the prosecution and the appellant alone committed the offence under Section 417 of IPC. There is no merit in the appeal and the



appeal is liable to be dismissed.

7. Heard both sides and perused the records available on record.

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8. The case of the prosecution is that the victim/P.W.1 and the appellant had illicit intimacy and with the consent of the victim girl, the appellant had sexual intercourse with her repeatedly, due to which, the victim became pregnant. However, it is alleged that at the instigation of A-1 to A-5, the pregnancy was aborted in the year 2006. However, again, in the year 2007, both of them had sexual intercourse, due to which, the victim/P.W.1 became pregnant once again, but this time, inspite of request made by the appellant and others, she refused to terminate the pregnancy. On 09.01.2009, the victim/P.W.1 gave birth to a female child and thereafter, she insisted the appellant to marry her, but it was refused by the appellant for the reasons that the victim/P.W.1 belongs to Scheduled Caste community. It is also alleged that the victim/P.W.1 was abused by the accused 1 to 5 by using her caste name, hence, the complaint.

9. This Court is the Appellate Court, as a final Court of fact finding, it has to re-appreciate the evidence and to give its findings independently.

10. Admittedly, the appellant and P.W.1 had illicit relationship with each other. According to the appellant it is not an illegal intimacy and he had sexual intercourse with the consent of the victim/P.W.1 and therefore, the question of cheating the victim/P.W.1 with promise to marry her does not arise.

11. According to the prosecution, the appellant promised to marry the victim/P.W.1 and on the basis of such promise, the victim/P.W.1 had intimacy with the appellant. However, when P.W.1 become pregnant, the appellant refused to marry her. Therefore, it is clear that the appellant had cheated the victim/P.W.1. Therefore, she made a complaint before the respondent/police. The respondent/police registered a case and filed the charge sheet. The Trial Court framed several charges against the appellant, including the charge under Section 417 of IPC., The Trial Court found the appellant not guilty for the offences, besides acquitting the other accused. The Trial Court has appreciated all the material evidence and convicted the appellant for the offence under Section 417 of IPC.

12. This Court has to now consider available materials placed to examine as to whether the charges under Section 417 of IPC.,



framed against the appellant are proved or not.

13. On reading of evidence of P.W.1, who is the victim girl, it is evident that she belongs to the Scheduled caste community. It is not established by the accused that she belongs to Udayar community and she is not a member of the Scheduled caste. The entire case of the prosecution is that the appellant promised to marry her and under the guise of such promise, he had sexual relationship with her, due to which, P.W.1 became pregnant. It is also stated that accused 2 to 5 have been instrumental in aborting the foetus of P.W.1 and they met the expenses for such abortion in the year 2006. Even after the abortion, they continued their relationship and the appellant promised to marry her. Due to which, the victim became pregnant once again and on 09.01.2009, the victim gave birth to a female child. Thereafter, she went to the house of the appellant where A-2 to A-4 abused the victim by using her caste name. They also refused permission for the marriage between the appellant and the victim girl on the ground that she belonged to a Scheduled caste. Therefore, P.W.1 gave a complaint to the respondent/police. P.W.4/Doctor, who had examined the appellant stated that he is not impotent and he is capable of having sexual intercourse with a woman. P.W.7/Doctor, who examined the victim girl has stated that she examined the victim girl on the basis of the direction issued by the learned Judicial Magistrate No.2, Ulundurpet. At the time of such examination, it was stated that P.W.1 gave birth to a female child two months ago. The Accident Register issued by P.W.7 was marked as Ex.P4. The medical evidence of the Doctor clearly indicates that victim was subjected to sexual intercourse by the appellant and she gave birth to the female baby. Thus, it is clear that the appellant promised to marry the victim and had physical relationship with her, due to which, she became pregnant. However, the accused 2 to 5, parents and relatives of appellant have raised objection for the marriage between appellant and the victim girl and did not accept their marriage, since she belongs to the Scheduled caste. Therefore, the Trial Court, did not convict the appellant for the offence under Section 376 of IPC., However, the prosecution established that the appellant promised to marry P.W.1 and had sexual intercourse with her and made her pregnant and subsequently, P.W.1 gave birth to female baby and he refused to marry. The prosecution has established the offence against the appellant under Section 417 of IPC. On perusal of the records, this Court does not find any reason to interfere with the Judgment of the Trial Court.

14. The blood samples of the appellant, victim girl and also the female baby, were taken and it was established through DNA test that the child was born to P.W.1. The test report of P.W.6



shows that the appellant is the biological father of the female baby born to P.W.1. Therefore, it shows that the appellant had sexual relationship with P.W.1. It is proved that the appellant had physical relationship with P.W.1 and she gave birth to female baby. From the evidence, the Trial Court found that P.W.1 has given a consent, therefore, no offence under Section 376 of IPC., is made out. Since the victim/P.W.1 belongs to Scheduled caste community, family members of the appellant refused to perform marriage of the victim with the appellant. The evidence of P.W.1 clearly shows that after pregnancy, P.W.1 asked the appellant to marry but he refused to marry. Therefore, the offence under Section 417 of IPC., is made out. The Trial Court rightly appreciated the evidence on records and convicted the appellant for the offence under Section 417 of IPC., and there is no prima facie ground made out for admitting this appeal and this Court does not find any perversity in the Judgment of the Trial Court and no reason to interfere with the Judgment of the Trial Court and there is no admissible grounds in the appeal. Hence, the Judgment of the Trial Court is confirmed. Therefore, this Court is not inclined to admit the appeal and the appeal is dismissed, at the admission stage itself. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IX)

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Sub Assistant Registrar

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To

1. The Special Sessions Court SC/ST Act Cases, Villupuram.
2. The Judicial Magistrate No.2, Ulundurpet, Villupuram District.
3. -do- through The Chief Judicial Magistrate, Villupuram.
4. The Deputy Superintendent of police Ulundurpet sub division, Vilupuram District.
5. The Inspector of Police, Thirunavalur Police Station, Vilupuram District.



6. The Public Prosecutor,
High Court, Madras.

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The Section Officer,
Criminal Section,
High Court, Madras - 104.

Crl.A.No.876 of 2019
and
Crl.M.P.No.18547 of 2019

PCH (CO)
RLP (08/02/2022)