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Crl.A.No. 521 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2022

Coram

THE HON'BLE MR. JUSTICE P.VELMURUGAN

Crl.A.No. 521 of 2022

P.Prasanna Saravanan

..Appellant

-Vs-

State rep. By
The Inspector of Police,
All Women Police Station,
Panruti,
Cuddalore District
(Crime No. 03/ 2017)

..Respondent

PRAYER : Criminal Appeal filed under Section 374(2) Cr.P.C., praying to set aside the conviction and sentence imposed in judgment dated 30.11.2021 made in S.C.No. 300/2017 by the learned Sessions Judge, Mahila Court, Cuddalore.

For Appellant : Mr.G.Mohan
For Respondent : Mr.R.Murthi, GA (Crl.Side)

ORDER

This Criminal Appeal is filed challenging the conviction and sentence imposed in judgment dated 30.11.2021 made in S.C.No. 300/2017 by the



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learned Sessions Judge, Mahila Court, Cuddalore.

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2. The respondent police registered a case against the appellant and two others in Crime No.3/2017 for offences under Section 417, 376 and 294(b) IPC and also under Section 4 of Dowry Prohibition Act. After completing investigation, laid charge sheet before the Judicial Magistrate-I, Panruti. The learned Judicial Magistrate taken charge sheet on file in PRC. No. 15/2017 and completed final proceedings under Section 207 and committed the case to the Principal District and Sessions Court, since the some of the offences exclusively triable by Court of Session. The learned Principal District and Sessions Judge taken on file in Spl.CC.No. 300 of 2017 and made over the case to Mahila Court, since the offences charged are against women. The learned Mahila Judge, after completing the formalities, framed charges against the accused under Sections 376, 417 and 294(b) IPC and found A1 guilty of the offences under Sections 376 and 417 IPC and A2 & A3 are found guilty of the offence under Section 4 of Dowry Prohibition Act and not found guilty of the offence under Section 294(b) IPC.



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3. In order to substantiate the charges framed against the appellant and 2 others, on the side of the prosecution 10 witnesses were examined as PW1 to PW10 and 9 documents as Exhibits P1 to P9 were marked and no material objects were exhibited.

4. After examining the prosecution witnesses, the incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the accused/ appellant and questioned under Section 313 of Cr.P.C and he denied all the incriminating circumstances as false and pleaded not guilty

5. On conclusion of trial, hearing of arguments advanced by the learned counsel on either side and based on the entire materials, the trial Court found the appellant/A1 guilty for the offences under Section 376(1) IPC and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay fine of Rs.1,00,000/- and in default, to undergo simple imprisonment for a period of 2 years. The appellant was also convicted for



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the offence under Section 417 IPC and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.50,000/- and in default, he shall undergo simple imprisonment for a period of three months. However, other accused A2 & A3 were found guilty of the offence under Section 4 of the Dowry Prohibition Act and sentenced to undergo simple imprisonment for a period of one year and to pay fine of Rs.10,000/- and in default, each of them shall undergo simple imprisonment for a period of three months and acquitted from the charges framed under Section 294(b) IPC.

6. Aggrieved over the same, the A1 has filed the present appeal before this Court.

7. The learned counsel for the appellant would submit that the victim/defacto complainant is a major. The victim and the appellant have fell in love and exchanged their feelings by way of physical relationship, therefore the offence charged under Section 376 not made out and also there was no false promise by the appellant to the defacto complainant as if he



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would marry her. Even in the evidence of the victim/PW1, nothing was stated about the false promise and forceful intercourse with her. Further the learned counsel would submit that the appellant never demanded dowry and not used any filthy language against the defacto complainant. The trial Court failed to appreciate the evidence of PW1 and wrongly convicted the appellant merely on the ground of sympathy.

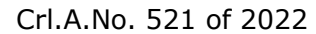
8. The learned counsel for the appellant would further submit that the date and month of the occurrence was not clearly stated by PW1 either in the complaint or before the trial Court during evidence. After pregnancy, the defacto complainant and the appellant went to the hospital to abort the foetus, since there was a delay in arrival of the doctor, they returned to their house without aborting the foetus. Thereafter, the PW1 intimated the same to her maternal aunts, they scolded the defacto complainant and lodged a complaint against the appellant and his parents. PW1 clearly stated in her evidence that they know each other and fell in love prior to filing of the case. Further the both the defacto complainant and the appellant are belongs to the same community and relatives. Knowingly they had physical



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relationship, due to the same, the defacto complainant became pregnant and gave birth to a child. Therefore, no evidence to prove the offence charged against the appellant under Section 376 and 417 IPC. Accordingly, the conviction and sentence imposed by the trial Court is liable to be set aside and the appeal to be allowed.

9. On the other hand, the learned Government Advocate (Crl.side) would submit that the defacto complainant, who is a victim in this case, while pursuing her studies, the appellant invited the defacto complainant to his house and by using sugar coated words that his family members consented for the marriage and by giving false promise, had physical relationship with the defacto complainant forcefully. After informing the pregnancy by the defacto complainant, the defacto complainant and her maternal aunts along with few others went to the appellant's house and asked the appellant to marry the defacto complainant. The appellant's parents/A2 & A3 demanded dowry of 30 sovereigns of gold and other household articles and abused them with filthy language. Further all the witnesses have clearly spoken about the said demand of dowry by the



11. It is the specific case of the prosecution that the victim was staying in her maternal grand mother's house in Melkumaramangalam, Panruti Taluk, she used to go to house of the accused which is situated just



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opposite to her house. The appellant and the victim are relatives. While the victim was studying 10th standard, the appellant's mother/A2 asked the victim to stay in her house long with her daughter. When she was staying in the house, the appellant told her that he fell in love with her, but she refused and stopped to go to the appellant's house. Subsequently, while the victim was studying teacher training course, the appellant who was studying law course in Puducherry used to take her outside, both were in love each other. When the victim was studying BSc in Cuddalore District in the year 2016, the appellant called her to his room in his house and when she went and conversed with him, at that time the appellant had sexual intercourse with her, and thereafter, the appellant used to call the victim to his room and had sexual intercourse on several times, due to this, the victim became pregnant. When the victim informed the appellant about her pregnancy, the appellant told the victim that he will marry her after the marriage of his elder brother. Thereafter, the appellant took the victim to a hospital in Panruti to terminate the pregnancy, since the staff members of the hospital informed that the doctor would come late, they returned from the hospital. Thereafter the victim informed her senior maternal aunt/PW2 about her pregnancy, the



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PW2 scolded and beat her. When they went to the appellant's house, taking advantage of the pregnancy, the appellant's parents insisted for dowry for marriage.

12. Against the appellant/A1, the trial Court framed charges under Section 376 and 417 IPC and 294(b) IPC. In order to substantiate the charges, the prosecution has examined 10 witnesses as PW1 to PW10 and marked 9 documents. Out of the said 10 witnesses, the victim was examined as PW1.

13. On careful perusal of the deposition of PW1, clearly reveals that she has not deposed that the appellant has made false promise as if he would marry her and had sexual intercourse with her. She has stated that both fell in love and had physical relationship, due to that she became pregnant. When she informed the appellant about her pregnancy, the appellant told that he would marry after the marriage of his elder brother. When the deposition of victim/PW1 clearly reveals that there was no forceful sexual intercourse or rape by the appellant on the victim/PW1, this Court finds



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that ingredients of Section 376 of IPC not made out. Further, it is also clear that both the appellants were in love with each other. At the time of occurrence, the victim had already completed the age of 18 years, she was neither a minor nor a child. There was no false promise or misrepresentation by the appellant/A1 for having sexual intercourse with the victim. It was informed by the appellant that only after the marriage of his elder brother, he would marry the victim. The DNA test also proved that the appellant/A1 is the biological father of the child born to the victim/PW1.

14. It is settled law that if on false promise, assuring marriage, the victim shared bed with an accused, as a result of which, the victim became pregnant, and subsequently, the accused did not keep up his promise, then, it would attract the offence under Section 417 of IPC. But on the case on hand, as discussed above, there is no dispute with regard to the love affairs and physical relationship between the appellant and the victim and there are no evidence or materials to show that at the time of having physical relationship, the appellant/A1 did not have the intention to marry the victim and he made false promise, therefore, Section 417 of IPC would not attract.



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15. In view of the above, this Court has come to the conclusion that none of the charges were substantiated by the prosecution and the prosecution had not proved the case beyond reasonable doubt. The trial Court failed to appreciate the evidence of PW1/Victim and wrongly convicted the appellant/A1 and the same is liable to be set aside.

16. In the result, the conviction and sentence imposed by the trial Court in S.C.No. 300/2017, dated 30.11.2021 in so far as the appellant/A1 is concerned is set aside. The Criminal Appeal is allowed. The prison authority is directed to release the appellant, if his custody is not required for any other case.

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Index:Yes/No
Speaking order/Non-speaking order
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Note : Registry is directed to issue a copy of this order on 14.12.2022

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P.VELMURUGAN, J

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To

1. The Inspector of Police,
All Women Police Station,
Panruti, Cuddalore District.

2. The Sessions Judge,
Mahila Court,
Cuddalore.

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