



Crl.A.No.740 of 2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2022

CORAM

THE HON'BLE Dr.JUSTICE G.JAYACHANDRAN

Crl.A.No.740 of 2015

Tamil Elakia.

... Appellant

-Vs.-

1.B.Prasath

2.The State rep by
The Inspector of Police,
All Women Police Station,
Villupuram.
Crime No.28 of 2012

.. Respondents

Criminal Appeal filed under Section 378 of Code of Criminal Procedure to set aside the judgment dated 17.08.2015 made in S.C.No.382 of 2012 on the file of the learned Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court) Villupuram and convict the respondent/accused for the offences under Section 376, 417 of IPC.

For Appellant : Mr.K.Sasindran

For Respondent : Mr.C.Munusamy, for R1
Mr.R.Kishore Kumar,
Government Advocate (Criminal side)
for R2



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J U D G M E N T

This Criminal Appeal against the acquittal preferred by the *de facto* complainant.

2. The case of the prosecution is that the *de facto* complainant and the respondent/accused are known to each other and they both fell in love. On 02.10.2011, the accused had sexual intercourse with the *de facto* complainant at her house and promised her that he will marry her. Thus, their relationship continued. When the *de facto* complainant got conceived, she informed it to the accused and asked him to marry her. However, the accused advised her to abort, which was refused by the *de facto* complainant. The accused attempted to forcibly abort the child under the protest that only if the *de facto* complainant consent for abortion, the parents of the accused will consent for marriage. However, the family members of the *de facto* complainant came to know about that and advised her to give complaint in FIR.No.28 of 2012 under Sections 417 and 317 IPC came to be registered on 20.06.2012.



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3. On completion of investigation, the final report was filed by the Investigating Officer. The case was made over to the Principal Assistant Sessions Court, Villupuram. The charge under Sections 417 and 376 IPC was framed and the accused was tried. The prosecution examined 17 witnesses and marked 14 exhibits to substantiate the charges.

4. The admitted facts of the case are:

The prosecutrix and the accused were in love and she consented to have premarital sex with the accused believing his promise that he will marry her. When she got conceived, she insisted for the marriage. However, the accused refused to marry her immediately for two reasons, first he has informed the prosecutrix that if she is carrying the child, his parents will not give consent for the marriage and another reason is that his elder brother was yet to get married and hence requested the prosecutrix to wait till the marriage of his elder brother and also to abort the fetus. When the prosecutrix refused to abort the fetus, misunderstanding has surfaced leading to the complaint dated



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20.06.2012. As per the complaint, the alleged incident occurred on 02.10.2011. Admittedly, the *de facto* complainant was major and she was aware of the consequences of her act.

5. The trial Court, after considering the admitted facts, has concluded that promising to marry a girl and later withdrawing the promise will not amounts to offences of cheating, unless the promise was made with intention to deceive and in this case, there is no evidence that the accused had a deceptive intention, when he had intercourse with the prosecutrix.

6. The learned counsel appearing for the appellant/*de facto* complainant would submit that Ex.P10/DNA Report indicates that the accused is the biological father of the child born to the *de facto* complainant and having proved that the accused has made the *de facto* complainant to believe that he will marry her and later the refusal to marry her after impregnating her clearly attracts ingredients of Section 415 IPC, which reads as follows:



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“415. Cheating —

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation—*A dishonest concealment of facts is a deception within the meaning of this section.*

7. The Indian Penal Code prescribes punishment for cheating in Section 417, which reads as follows:

“417. Punishment for cheating —

Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

8. A reading of Section 415 IPC indicates that for cheating, there must be an inducement to deliver any property or obtain the consent by



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deceptive inducement. The evidence of prosecutrix as well as her own complaint indicates that the accused has refused to marry her immediately but had stated the reasons for not able to marry her immediately. This reason forms part of the complaint and the final report. Therefore, the trial Court had rightly acquitted the accused, since the prosecution was unable to prove the intention to deceive on inception.

9. In the course of the arguments, the learned counsel appearing for the accused submitted that his client never had intention to deceive the *de facto* complainant. During the young age, he fell in love with the *de facto* complainant and impregnated her without knowing the consequences. It was consensual sex. But, subsequently, he understood that his parents will not consent for marriage, if their daughter-in-law was pregnant before marriage. That is the reason why he requested the *de facto* complainant to abort the fetus. So that, after marriage of his brother, they can get married. But due to some ill-advice, the *de facto* complainant lodged the complaint hurriedly.



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10. The learned counsel for the accused/first respondent present with the respondent in the Court further submitted that having sired the child, for her future security, he is ready to voluntarily deposit a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) in the name of the minor child, which can be utilised by the minor child in future. This offer will not be prejudice to any right of the said child as the the legal heir of the first respondent.

11. This Court on considering the evidence placed before this Court, finds that the view taken by the trial Court is a plausible view and having gained acquittal, there is no necessity to interfere the order of acquittal.

12. At the same time, taking note of the offer made by the respondent, this Court direct the first respondent to deposit a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) in the District Legal Services Authority, Villupuram. On such deposit, the Secretary, District Legal



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Services Authority, Villupuram, is directed to ensure that the said money is invested in any of the nationalised bank till the girl attains the age of 21 years. The half yearly interest shall be withdrawn and give to the *de facto* complainant/mother of the minor girl, for the expenses of the minor child, till the minor child attains majority. After the minor child attains majority, the said fixed deposit amount with accrued interest shall be handed over to Priyanka, on her attaining 21 years.

13. In view of the above, the order of acquittal is confirmed.

Accordingly, this Criminal Appeal is dismissed.

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Speaking/Non-speaking order

Index: Yes/No

Internet : Yes/No

nsa



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To

- 1.The Sessions Judge,
Magalir Neethi Mandram (Fast Track Mahila Court),
Villupuram.
- 2.The Inspector of Police,
All Women Police Station,
Villupuram.
Crime No.28 of 2012
- 3.The Secretary,
District Legal Services Authority,
Villupuram.
- 4.The Public Prosecutor,
High Court, Madras.



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Dr.G.JAYACHANDRAN.J.,

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