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Crl.A.No.466 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.09.2022

CORAM

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

Crl.A.No.466 of 2016

Pushpa

...Appellant

Vs.

1.Manikandan

2.The Inspector of Police,
Sankarapuram Police Station.
Villupuram

... Respondents

Prayer: Criminal Appeal filed under Section 372 of Cr.P.C. praying to set aside the judgement of acquittal dated 28.08.2015 passed in S.C.No.159 of 2014 on the file of Sessions Judge Magalir Neethi Mandram/Fast Track Mahila Court, Villupuram and convict the first respondent by allowing the above appeal.

For Appellant : Ms.Veeramarthini

For Respondents : Mr.C.Munusamy, for R1

Mr.R.Kishore Kumar,
Government Advocate (Criminal side),
for R2

ORDER

This Criminal Appeal is filed by the victim being aggrieved
by the order of acquittal passed by the trial Court.



2. The case against the respondent initiated on the complaint given by the victim alleging rape and cheating by committing breach of promise to marry her, the complaint also alleges that the respondent intimidated the *de facto* complainant and abused her.

3. Based on the complaint, investigation has been completed and charges under Sections 417, 376, 294(b) and 506(i) of I.P.C were framed and the accused was tried by the learned Mahila Neethimandram (Fast Track Court), Villupuram in S.C.No.159 of 2014. 16 witnesses were examined as PW.1 to PW.16 and 12 exhibits marked as Ex.P1 to Ex.P12.

4. The crucial evidence is Ex.P.8-DNA report of the child born to the victim girl indicating that the accused is the biological father. However, the trial Court acquitted the accused on the ground that the victim had intercourse with the accused voluntarily and it was consensual sex. The breach of promise to marry her will not attract the offence under Section 417 of I.P.C. Regarding the usage of abusive language and criminal intimidation, the Court below disbelieved the case of the



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prosecution and acquitted the accused.

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5. In the appeal, the victim has contended that the trial Court erred in acquitting the accused on the ground of delay and on the ground of consent for sex, but both the reasons are untenable under law and facts. The complaint was not lodged immediately after the commission of the offence, since the offender promised to marry her and the victim believed the words of the accused. When the fact came to light that the said promise was only with an intention to deceive her, the complaint was given. By that time she was at the advance stage of pregnancy. Further, the trial Court failed to take note of the fact that at the time of occurrence, the victim was less than 18 years old and DNA report clearly establishes the fact that the respondent is the biological father of the child born to the victim subsequent to the complaint.

6. This Court, on perusing the records, the evidence and the reasons given by the Court below for acquitting the respondent, finds grave miscarriage of justice has been done to the complainant. Taking note of the admission of the victim, who was examined as PW.1 that the



accused is the neighbouring land owner and residing in the farm house enticed her, under the pretext of love and promise of marriage had intercourse with her and impregnated her as voluntary consent. This portion of the evidence being taken as valid consent by the victim girl without taking note of the fact that at the time of giving the consent, the victim was a minor girl and such consent was not a valid one. On considering the fact that, at that time of occurrence she was above 16 years old, the Court below has extended the benefit of doubt to acquit the accused. However, from the evidence let in by the prosecution, this Court nowhere finds that the exact date of birth of the victim girl. The trial Court without any evidence has concluded that the *de facto* complainant was 16 years old.

7.. In the said circumstances, this Court holds the judgment of the trial Court is perverse. Ex.P8 and the evidence of PW.1, victim of the crime, clearly indicate that the respondent herein had impregnated the victim, who was a minor at the time of occurrence and the alleged consent was obtained by fraud and deceitful manner. Hence liable to be punished for the offence under Section 417 of I.P.C., though the benefit



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of doubt may be extended for the offence under Section 376 of I.P.C.

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8. In the light of the above findings, the trial Court judgment of acquittal is partly set aside. Hence, this Criminal Appeal is partly allowed.

9. The Registry is directed to issue bailable warrant to the accused to appear before this Court on 28.09.2022 for answering the question of sentence under Section 417 of I.P.C. The respondent police is directed to execute the bailable warrant to the accused/1st respondent for his presence before this Court on 28.09.2022 at 10.30 a.m..

10. Post the matter on 28.09.2022.

21.09.2022

Speaking/Non-speaking order

Index: Yes/No

Internet : Yes/No

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To

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1.The Sessions Judge Magalir Neethi Mandram/Fast Track Mahila Court,
Villupuram

2.The Inspector of Police,
Sankarapuram Police Station,
Villupuram.

2.The Public Prosecutor,
High court of Madras,
Chennai-104.



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Dr.G.JAYACHANDRAN,J.

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