



BAIL SLIP

The 2nd Appellant/2nd Accused namely John Britto, S/o.Jesudoss was directed to be released on bail vide order dated 12.09.2019 made in CrI.M.P.No.12345/2019 in CrI.A.No.411/2019 on the file of this court.

The 1st Appellant/1st Accused namely Madhalaimuthu @ Raja, S/o.John Britto was directed to be released on bail as per order of this court dated 21.01.2020 made in CrI.M.P.No.317/2020 in CrI.A.No.411/2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.1.2022

DELIVERED ON : 15.2.2022.

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Criminal Appeal No.411 of 2019

1. Madhalaimuthu @ Raja
2. Jhon Britto

...Appellants/Accused

vs.

State re. by
The Inspector of Police,
Thammampatti Police Station,
Thammampatti,
Salem District.

...Respondent/Complainant

Criminal Appeal filed under Section 374 Cr.P.C. against the judgment of conviction and sentence passed in S.C.No.120 of 2016 dated 19.6.2019 by the Sessions Judge, Magalir Neethimandram, Salem.

For Appellants : Mr.T.Muruganantham

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

JUDGMENT

Challenging the judgment of conviction and sentence rendered by the Sessions Judge, Magalir Neethimandram in S.C.No.120 of 2016, the accused being son and father have filed the present Criminal Appeal.



2. Allegations levelled against the appellants are that A1, son of A2, by giving false promise to marry, had forcible sexual intercourse with PW1, the de facto complainant several times, resultantly, she had delivered a child, which died few days later and when the de facto complainant had demanded A1 to marry her, he had refused to marry her and thereupon, when she had complained the same to his father, A2, he had given false hope that after marriage of his daughter, he would conduct the marriage of PW1 with his son, A1, however, on a later date, on coming to know that a marriage proposal for A1 with another girl was going on, she alongwith her parents and sister had approached the accused demanding justice for her and by that time, they had abused her with filthy language and threatened her with dire consequences and thereby the appellants stand charged as under:-

Rank	Charges
A1	Sections 376, 417, 420 read with Section 34, Sections 294(B), 506(ii) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998
A2	Section 420 read with Section 34, Sections 294(B), 506(ii) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998

3. However, the appellants stand convicted and sentenced as under:-

Rank	Provision of conviction	Sentence
A1	417, 420 r/w 34 IPC	i) One year Rigorous Imprisonment and to pay fine of Rs.2000/- in default to undergo three months Simple Imprisonment ii) Four years Rigorous Imprisonment and to pay fine of Rs.50,000/- in default to undergo six months Simple Imprisonment
A2	420 r/w 34 IPC	Four years Rigorous Imprisonment and to pay fine of Rs.50,000/- in default to undergo six months Simple Imprisonment

4. Brief facts of the case, as evinced from the prosecution witnesses and other materials available on record, are as under:-

(i) PW1, the de facto complainant belongs to Vadakku Kaattu Kottai, Koneripatty, Gengavalli, Taluk, Salem District. PW2 and PW3 are her parents and they are doing agriculture. She has got



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four brothers and two sisters. She had studied upto Higher Secondary education in Thammampatti Girls Higher Secondary School and employed as Tailor. From the year 2008, she had been in love with A1, son of A2, who resides in a house behind her house. She had go go to her field only through the field of the accused.

(ii) While PW1 used to go to her field, A1 used to tease her and later on, he had pulled her into his house and by giving promise to marry her and to make her belief that he would marry her, had forcible sexual intercourse with her on several occasions and thereupon, in the year 2010, she had become pregnant. When she had apprised of the same to the accused, A2, father of A1 had assured her that after conducting the marriage of his daughter, he would arrange for the marriage of PW1 with the A1.

(iii) Subsequently, on development of her pregnancy to the level of seven months, she had not come out of her house and at the instance of her sister Selvarani, she had been staying in a Women's Home at Athur and she had delivered a male child. When PW1 had informed about the childbirth and requested him to marry her, he had pacified her by saying that he would marry her after the marriage of his sister. Two days later, the child born to PW1 died and it was buried at the river side of their village by her sister's husband Paulraj. Even thereafter, A1 used to have forcible sexual intercourse with PW1.

(iv) On 28.10.2015, she came to know about the marriage proposal of A1 with another girl, she, alongwith her parents and her sister, had questioned the accused as to how A1 could marry another girl after having cheated PW1 with false hope of marrying her for which, both the accused had abused her with filthy language suspecting the paternity of the child given birth by PW1 and thereupon, PW1 had lodged the complaint, Ex.P1 and subsequently, she had given her statement under Section 164 Cr.P.C. which is marked as Ex.P2.

(v) PW14, Sub Inspector of Police, Thammampatti Police Station, on receipt of the complaint Ex.P1 from PW1 on 28.10.2015 at about 12.00 noon, registered a case in Crime No.284 of 2015 against the accused for offences punishable under Sections 417, 420, 376, 294(b), 506(i) IPC and sent the F.I.R., Ex.P12 and the original complaint to Judicial Magistrate II, Athur and a copy of the same to the Inspector of Police, PW15 for investigation of the case.

(vi) On 28.10.2015, PW15, Inspector of Police, took up the investigation and had visited the house of PW1, enquired PW1, the victim girl, P.Ws.2 to 5, father, mother, sister and cousin

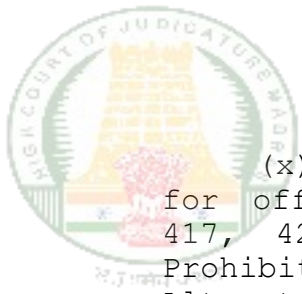


of the victim girl and recorded their statements and thereafter, he went to the house of the accused and on their acceptance of their committing the offence, arrested them and took them to the police station at about 4.30 pm and thereafter, remanded them to judicial custody. Subsequently, PW15 had given requisition Ex.P13 for recording the statement of PW1 under Section 164 Cr.P.C. On the same day, he had sent PW1 for medical examination at Government Hospital, Salem and for counselling at Children Welfare Organisation, Salem and had sent requisition, Ex.P14 to Judicial Magistrate I, Athur for sending A1 for medical examination at Government Hospital, Salem.

(vii) On 30.10.2015, PW15 had enquired PW1, who was at the Women's Home, Salem and recorded her statement once again. Thereafter, he had enquired PW6, son in law of PW2, PW7, brother of PW1 and recorded their statements. Thereafter, he had sent a requisition to the Medical Officer at Government Hospital for issuance of certificate with regard to delivery of a child by PW1.

(viii) On 31.10.2015, PW15 had enquired PW8, the Pastor and recorded his statement and obtained a copy of the proclamation of banns, Ex.P3 for the proposed marriage of A1 in his Church.

(ix) On 16.12.2015, PW15 had visited Government Hospital, Salem, enquired Dr.Arulselvam, PW10, who had conducted medical examination on A1 on the basis of proceedings issued by Judicial Magistrate in Ex.P7 and recorded his statement and obtained his Report, Ex.P8 and Age Certificate, Ex.P9. He had also enquired Dr.Priyadarshini, PW9, who had conducted medical examination on PW1 and recorded her statement and obtained her Report, Ex.P5. Copy of the accident register extract is marked as Ex.P4 and the final report of PW9 alongwith Chemical Analysis Report is Ex.P6. He had also examined Dr.Sangeetha, PW11, who had appraised the age of the victim girl, PW1 and record her statement and obtained her Report, Ex.P10 with regard to the age of the victim girl. Thereafter, he had visited the Regional Forensic Sciences Laboratory, Maravaneri, Salem and enquired Ms.Sangeetha, the Scientific Officer, Sangeetha, who had conducted test on vaginal smear of PW1 and recorded her statement and obtained the Report, Ex.P6. On the same day, PW15 had also enquired Judicial Magistrate III, Salem, who was deputed by the proceedings of the Chief Judicial Magistrate, marked as Ex.P15 for recording the statement of PW1 under Section 164 Cr.P.C and recorded his statement. The statement recorded from PW1 under Section 164 Cr.P.C. is Ex.P2. Thereafter, PW15 had visited Anugraha Hospital at Athur and enquired Dr.Vanisri, PW12, who had attended delivery of childbirth to PW1 on 21.8.2009 and recorded her statement and obtained a copy of the extract from the hospital register, Ex.P11.



(x) On completion of investigation, PW15 had altered the FIR for offences punishable under Sections 294(b), 506(ii), 376, 417, 420 read with 34 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998 and sent the Alteration Report, Ex.P16 to Judicial Magistrate II, Athur and on 21.12.2015, he had filed the final report.

(xi) On receipt of the final report, Judicial Magistrate, Athur had taken up the case in P.R.C.No.2 of 2016 and after issuance of copies of the documents to the accused, having found that the case is triable by court of Sessions, committed the case to the District and Sessions Court, Salem and in turn, it was referred to the Trial Court as S.C.No.120 of 2016.

(xii) The Trial Court framed charges against A1 under Sections 376, 417, 420 read with 34, 294(b), 506(ii) and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998 and against A2 under Sections 420 read with 34, 294(b), 506(ii) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998. When questioned, the accused denied the charges and sought to be tried.

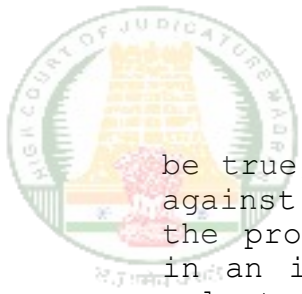
(xiii) To prove its case, the prosecution has examined P.Ws.1 to 15 and marked Exs.P1 to P16 and on the side of the accused, D.Ws.1 to 3 were examined and Exs.D1 to D7 were marked and no M.O.s were marked.

(xiv) On considering the entire oral and documentary evidence, the Trial Court found the accused guilty, and convicted and sentenced them as stated above aggrieved against which, the present Criminal Appeal has been filed.

5. Assailing the judgment of conviction and sentence, learned counsel appearing for the appellants would submit his arguments as under:-

(i) A case of consensual relationship between the parties has been falsely projected as a case of rape and cheating. Though the Trial Court had framed charges against the first appellant for offence under Section 376, 417, 420 read with 34 IPC and 294(B) and 506(ii) IPC and also under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998 and framed charges against the second appellant under Section 420 read with 34 IPC and under Section 294B and 506(ii) IPC and under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998, the court had found them not guilty for all other offences and had found the first appellant guilty for offences under Sections 417, 420 r/w 34 IPC and the second appellant guilty for offences punishable under Section 420 r/w 34 IPC alone.

(ii) Even taking into consideration the entire averments to



be true, no offence under Section 417 or 420 IPC can be made out against the appellants/accused. Admittedly, it is a case where the prosecutrix and the first appellant were said to have been in an intimate relationship for more than five years from 2010 voluntarily and freely due to which, there was physical relationship between them and that during the year 2010, the prosecutrix had become pregnant and that she is also said to have delivered a male child which is also said to have died after a few days and even thereafter, there had been physical relationship between them on several occasions and ultimately, the complaint had been given on 28.10.2015. The prosecutrix is a major and grown up lady aged about 25 years and even allegedly at the time of first physical relationship between them, she was about 19 years old and that being so, she was a woman of better understanding and was aware of the consequences of the consequences of physical relationship.

(iii) It is not a case of becoming pregnant and aborting at once. It is the case of the prosecutrix that she became pregnant during January 2008 and disclosed it to her elder sister alone and she delivered a male child on 21.8.2009 in a Home without the knowledge of her parents and it is the further case that the child died within two days and that the child was also buried without knowledge of her parents by her brother in law. It is the further case of the prosecutrix that even thereafter, she continued the physical relationship with the petitioner for almost three years and that the complaint was alleged to have been given to the respondent police only when she came to know that banns for the wedding of the first appellant was read in the Church.

(iv) Though it is stated that the prosecutrix became pregnant and delivered a child and it died within two days and it was buried, other than the oral evidence of the prosecutrix, no investigation has been done by the respondent to confirm the birth and death and also burial of the child. It is also strange that the prosecutrix had only disclosed the same to her sister and brother in law and that she had not informed to anyone else. Nobody in the Home has been examined to prove the fact that the prosecutrix stayed in the Home and delivered a child there.

(v) Admittedly, the physical relationship between the prosecutrix and the first appellant had spread over a period of five years and they had sexual intercourse on several occasions and thereby, it cannot be construed to be on account of misconception. In order to establish that the consent of the prosecutrix was obtained by "misconception of fact", the prosecution has to establish that the promise of marriage must have been a false promise given in bad faith and with no



intention of being adhered at the time it was given and the false promise itself must be an immediate relevance or bear the direct nexus to the prosecutrix's decision to engage in the sexual act. Further, the prosecution has failed to prove that the inducement and the promise was made only to satisfy the lust of the first appellant.

(vi) In order to convict the appellants, the prosecution ought to have proved by scientific evidence that a child was born and it died and that it was buried and that the first appellant is responsible for the pregnancy.

6. In support of his contention, the learned counsel for the appellants would rely on the following decisions of this court in *Ramesh vs State rep. by its All Women Police Station* ((2021) 3 MLJ (Cr1) 264.

7. Per contra, Mr. S. Sugendran, learned Government Advocate (Criminal Side) would submit that the relationship between the first appellant and the prosecutrix has been spread over for a period of five years and it is a case where a village girl had been fraudulently induced and she was made to consent for physical relationship on the promise of marriage. However, he would fairly submit that other than the oral evidence of the victim girl and her sister and other witnesses, who are her relatives, no investigation has been done by the investigating official in the Home or in the Hospital with regard to birth and death of the child as alleged by PW1. He would, however, submit that PW12, Dr. Vanisri had deposed that on 21.8.2009, PW1 was admitted with labour pain and that she delivered a male child at 9.22 hours by normal delivery and that the child was kept in incubator as the baby born with umbilical cord tied thrice around its neck and it had suffocation in breathing and that as per the records, the child died on 22.8.2009.

8. In reply, the learned counsel for the appellants would submit that though it is stated that PW1 had delivered a child, no investigation has been done that the first appellant is the biological father of the child and the Doctor, who is said to have attended the delivery, has also, in her cross examination, had categorically stated that she cannot confirm that the person viz, Priya to whom she had performed delivery is the person involved in the present case. The learned counsel for the appellants would reiterate that other than the oral evidence of PW1, no other evidence has been let in by the prosecution and it is highly unbelievable that PW1 the prosecutrix and her sister PW4 and brother-in-law PW6 have not disclosed about the pregnancy to anyone else. Further, the birth and death of the child was not informed to the Municipal authorities. He would further submit that even after the alleged death of the child,



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there was continued physical relationship between the parties and therefore, it cannot be construed that the first appellant had given false promise to marry PW1 and only on misconception she had given consent for the physical relationship to convict the appellants.

9. Before proceeding into the merits of the case, this court feels that to have a clear understanding on the subject, it is relevant to note what principle prevails now as held by the Apex Court.

10. In *Deepak Gulati vs. State of Haryana* ((2013) 7 SCC 675), the Apex Court has held as under:-

" 21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

.....

24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course,



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be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance". Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her."

11. In Promod Suryabhan Pawar vs. State of Maharashtra and another ((2019) 9 SCC 608), the Apex Court has held as under:-

"18. To summarise the legal position that emerges from the above cases, the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act."

12. Relying on the decision in Deepak Gulati vs. State of Haryana ((2013) 7 SCC 675) and some other decisions, it has been held by the Apex Court in Dr. Dhruvaram Muralidhar Sonar vs State of Maharashtra and another ((2019) 18 SCC 191) as under:-

"23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual



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intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC."

13. Relying the above three judgments, this court has held in Ramesh vs. State ((2021) SCC OnLine Mad 2156), as under:-

"Taking into consideration the over all circumstances in this case, the evidence do not indicate that the promise by the appellant was false or that the prosecutrix engaged in sexual relations with the appellant on the basis of the promise on misconception. Admittedly, there had been love affair between the prosecutrix and the appellant for eight years and there was physical relationship between them which was spread over a period of two years. In between, the prosecutrix has also become pregnant twice and she had aborted it twice and she had not disclosed it to anybody. Whereas it is the evidence of the prosecutrix that the sexual relationship between her and the appellant was known to both the families for about four years. Further the prosecution has not let in any evidence to establish that the consent of the prosecutrix was obtained by misconception of fact and the prosecution has also failed to establish that the promise of marriage was false from the beginning and it was given in bad faith and given with no intention of being adhered to at the initial stage. Further, the alleged false promise itself has no immediate relevance and also does not bear direct nexus to the decision of the prosecutrix to engage in the sexual act.

.....

If the appellant had any malafide intention and if he had clandestine motives, it could be brought into the ingredient of rape. The acknowledged consensual physical relationship between the parties would not constitute the offence u/s.376 I.P.C. Further as stated above no evidence has been made out for the offence



u/s.417 I.P.C "

14. On analysis of the factual aspects and the materials available on record in the light of the submissions made by the learned counsel appearing for the parties with the guidance of the principles laid down in the above decisions, this court finds that PW1, the victim girl herself had deposed that she and the first accused had been in love affair from the year 2008 and her evidence and the medical evidence proves that she was about 19 years old when PW1 and the first accused had the first physical relationship. From the evidence of PW1, it is further seen that subsequently, she had become pregnant and delivered a male child by staying in a Women's Home at the instance of her sister without even apprising of the issue to her parents and the child died two days after it born and it was buried by the husband of PW1's sister, who has not been examined by the prosecution.

15. The evidence of PW1, victim girl reveals that the physical relationship between herself and A1 had continued and spread over for about five years despite the delivery of a baby and its death within two days, however, it is peculiar that the prosecution has not initiated to conduct any investigation on the line of proving the responsibility of A1 for the pregnancy and his paternity. Moreover, as rightly pointed out by the learned counsel for the appellants, the birth and death of the child was also not informed to the Municipal authorities and no investigation has been done by the investigating official in the Women's Home where PW1 is said to have stayed prior to giving birth to the child. The Doctor, who is said to have attended the delivery had also admitted in her cross examination that she could not confirm as to whether the de facto complainant in this case was the person to whom she had attended delivery.

16. Considering the fact that even at the time of first physical relationship between the de facto complainant and A1, the de facto complainant was about 19 years old, she cannot plead ignorance of the consequences and she can be expected to be a person with maturity and understanding the consequences. Further, her evidence itself is that their relationship had spread over for about five years. Therefore, the prosecution cannot take a stand that by misconception to marry her, A1 had induced an innocent girl and had committed the offence rather, the evidence of PW1 and other attendant circumstances divulge that it is only a consensual affair between two matured persons.

17. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance" and therefore, it cannot be expected that the de



facto complainant was under the "continuous misconception of fact" at the instance of A1 for a period of five years despite the intermittent events like her pregnancy, refusal of paternity by the accused, childbirth, its death and burial of the baby without disclosing about the same to anybody else except the sister of the de facto complainant and her husband, who was also not chosen to be examined by the prosecution for the reasons best known to them.

18. In *Digamber Vaishnav v. State of Chattisgarh* reported in (2019) 4 SCC 522, the Hon'ble Apex Court has enlightened the principles of criminal jurisprudence as under:-

"One of the fundamental principles of criminal jurisprudence is undeniably that the burden of proof squarely rests on the prosecution and that the general burden never shifts. There can be no conviction on the basis of surmises and conjectures or suspicion howsoever grave it may be. Strong suspicion, strong coincidences and grave doubt cannot take the place of legal proof. The onus of the prosecution cannot be discharged by referring to very strong suspicion and existence of highly suspicious facts to inculcate the accused nor falsity of defence could take the place of proof which the prosecution has to establish in order to succeed, though a false plea by the defence at best, be considered as an additional circumstance, if other circumstances unflinchingly point to the guilt".

19. Following the above principles, this court, in *Hari Shankar v. State through Inspector of Police* (2021) SCC Online Mad. 1701, while dealing with an allegation of penetrative sexual assault, having found that the statement of PW1/victim was full of embellishment, self contradictions and further improvements, thereby making it suspicious and doubtful, that the evidence of P.W.1, the victim and P.W.2, mother of the victim are not only self contradictory, but, they are contrary to each other and also having found that the medical evidence does not corroborate the evidence of PW1/victim girl of having been subjected to forcible sexual assault, has held as under:-

"... for the reasons stated above, in the light of the decisions cited and the analysis of the evidence this Court is of the considered view that the doubtful and suspicious nature of the evidence sought to be relied upon to substantiate the circumstances in this case themselves suffer from serious infirmities and lack of legal credence to merit acceptance of

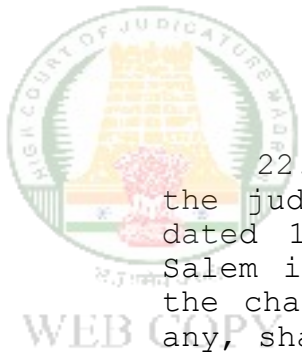


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this court. Having regard to the material on record, this court finds that there is every possibility of false implication of the accused in this matter. The evidence of the victim/prosecutrix and her mother PW 2 are unreliable, untrustworthy inasmuch as they are not credible witnesses. Their evidence bristles with contradictions and is full of improbabilities. The prosecution has tried to rope in the appellant merely on assumptions, surmises and conjectures. The story of the prosecution is built on the materials placed on record, which seems to be neither the truth, nor wholly the truth. The findings of the court below do not deserve the merit of acceptance or approval with regard to the glaring infirmities and illegalities apparent on the face of record resulting in serious and grave miscarriage of justice to the appellant. The prosecution has miserably failed to prove its case beyond reasonable doubt and the trial Court erred in convicting the appellant/ accused on wrong appreciation of facts warranting interference of this Court to set aside the impugned judgment."

20. In the case on hand, the the prosecution has miserably failed to discharge its burden to prove its case that the victim girl was given a wrong belief by the first accused to marry her only for satisfying his lust so as to convict him. The evidence of the victim girl itself goes to suggest that herself and the first accused had love affair for about five years and their physical relationship had continued even after the death of the child which she alleged to have given birth at the instance of the first accused, which was also alleged to have been buried by the husband of PW1's sister, who was also not examined by the prosecution. Such birth and death of the child were also not registered before the appropriate authority by PW1 and in fact, her evidence is that even her parents do not have knowledge about the same which is highly unbelievable. The prosecution has also not chosen to prove the paternity of the accused for the said child.

21. In view of the above, this court find that the case of the prosecution has been surrounded by cloud of suspicion and the prosecution has not taken efforts to clear the same. Therefore, without there being any solitary evidence to link the appellants with the offence, the Trial Court found the appellants guilty for the offences and convicted and sentenced them, which is liable to be set aside.



22. In the result, the Criminal Appeal stands allowed and the judgment of conviction and sentence in S.C.No.120 of 2016 dated 19.6.2019 by the Sessions Judge, Magalir Neethimandram, Salem is hereby set aside. The appellants are acquitted of all the charges and they are set at liberty. Fine amount paid, if any, shall be refunded.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

ssk

To

1. Sessions Judge,
Magalir Neethimandram, Salem.
2. Do Thro Principle Sessions Judge,
Magalir Neethimandram, Salem.
3. The Judicial Magistrate II, Attur.
4. Do Thro Chief Judicial Magistrate, Salem.
5. The Inspector of Police,
Thammampatti Police Station,
Thammampatti, Salem District.
6. The Superintendent,
Central Prison, Coimbatore.
7. The Public Prosecutor,
High Court, Madras.

Copy To

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

+1cc to M/s.T.Muruganantham, Advocate, S.R.No.9773

Criminal Appeal No.411 of 2019

RSI(CO)
RGA(23/02/2022)