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Crl.A.No.58 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.09.2023

DELIVERED ON : 21.09.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.58 of 2022

Rajesh

... Appellant

Vs.

The Inspector of Police,
All Women Police Station,
Ulundurpet
Villupuram District.
(Crime No.6/2017)

... Respondent

PRAYER: Criminal Appeal filed under Section 372(2) of Criminal Procedure Code, 1973 against the judgment dated 15.12.2021, passed by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Villupuram. in S.C.No.24 of 2018.

For Appellant : Mr.S.Sathia Chandran

For Respondent : Mr.S. Sugendran
Additional Public Prosecutor.



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JUDGMENT

This criminal appeal is filed against the judgment dated 15.12.2021, passed by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Villupuram. in S.C.No.24 of 2018.

2. The appellant is the accused in S.C.No.24/2018 and he is convicted and sentenced as detailed hereunder:

<i>Conviction</i>	<i>Sentence</i>
Section 376 r/w 90 IPC	Rigorous Imprisonment for 7 years and a fine of Rs.25,000/-, in default, to undergo Simple Imprisonment for three months.

3. In order to bring home the guilt of the accused, the prosecution examined 9 witnesses and marked 8 documents.

4. The case of the prosecution as could be discerned from the prosecution witnesses is as follows:



4.1. Divya (P.W.1) is the daughter of Lalitha (P.W.2) and Balan (P.W.3). P.W.1 to P.W.3 are residing in Olliampalayam Village, Ulundurpet Taluk and they are daily wagers doing the work of cutting brick stones. P.W.2 and P.W.3 have another son by name Ravidoss (P.W.4) who is working in Chennai for Bisleri Water Company.

4.2. The evidence of P.W.1 is that the accused used to visit her house when she was alone and also told her that he was in love with her. The accused further promised that he would marry her. On 10.02.2017, the accused came over to her house and had sex with her. When she informed her parents on the same day about this, they chided her by stating that the accused would never marry her. However, on the same night, P.W.1 left for Tiruppur with the accused Rajesh and his friend Sathish (not examined). Subsequently, one Priya, sister of the accused called his brother (accused) over phone and informed him about the police complaint given by the parents of P.W.1 and also requested him to drop back P.W.1 in her house. Accordingly the accused left P.W.1 at Arasur and she went to her sister's house at Manmedu, which is nearer to Arasur. PW-1 informed her sister



about the rape committed by the accused, who in turn confronted the accused over phone for which the accused sought 10 days time to give a favourable reply. However, when PW-1 came to know that the parents of the accused are searching a suitable bride for the accused elsewhere she immediately lodged a complaint (Ex.P1) with the All Women Police Station, Ulundurpet on 21.02.2017.

4.3. Tmt.Thavamani (not examined), constable 2233, attached to All Women Police Station, Ulundurpet, received the complaint (Ex.P1) from P.W.1 and registered the same under C.S.R No.38/17. She then placed the records before Tmt. Mangayarkarasi (P.W.9), Inspector of Police, All Women Police Station, Ulundurpet, for investigation. P.W.9 took up investigation in C.S.R. No.38/2017 on 08.03.2017 and registered FIR (Ex.P6) in Crime No.6/2017 for the offences punishable under Sections 417 and 376 IPC and sent the FIR to the Judicial Magistrate II, Ulundurpet. Learned Judicial Magistrate II, Ulundurpet, received the complaint at 9.p.m. on 08.03.2017 in his residence.



4.4. P.W.9, the Investigation Officer went to the scene of offence on 08.03.2017, prepared an Observation Mahazar (Ex.P7) and a rough sketch (Ex.P8) in the presence of Gunasekaran (P.W.5) and Elumalai (P.W.6). Thereafter, she arrested the accused in front of his house and produced him before the Judicial Magistrate II, Ulundurpet for judicial custody. She then sent the victim to the Government Hospital, Villupuram, where Dr.Geethanjali (P.W.8) examined the victim on 23.03.2017. P.W.1 had informed the doctor that the accused, under the promise of marrying her, used to have sex with her and that on 10.02.2017, she left for Tiruppur with the accused. P.W.8, after physical examination of the victim had opined that there were no external injuries on the private parts of the victim and that the hymen was not in tact. The certificate issued by Dr.Geethanjali (P.W.8) was marked as Ex.P5.

4.5. Similarly the accused was sent for medical examination by P.W.9 to the same hospital on 17.03.2017. Dr. K. Shanmugam (P.W.7) examined the accused and issued a certificate of Examination for Sexual Offences (Ex.P4) stating that there is nothing to suggest that the accused is incapable



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of performing sexual intercourse.

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4.6. The evidence of P.W.2 and P.W.3 is that they are residing in Olliampalayam Village, Ulundurpet Taluk, with the victim girl (P.W.1), who was studying in X standard in a school and that on 10.02.2017, they were informed by P.W.1 that the accused had raped her. On the same day, i.e. 10.02.2017, their daughter (victim) eloped with Rajesh (accused) which they came to know later. The evidence of Ravidoss (P.W.4) is that he was informed by his parents about the missing sister (P.W.1) and the offence committed by the accused. P.W.5 and P.W.6 corroborated the versions of P.W.9 with regard to the preparation of observation mahazar and rough sketch.

4.7. P.W.9 after concluding the investigation, laid a final report before the Judicial Magistrate II, Ulundurpet, against the accused for the offences punishable under Sections 376, 366 and 417 IPC.



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4.8. The learned Judicial Magistrate, after furnishing copies of records under Section 207 Cr.P.C. committed the case to the Principal District Court, Villupuram, since the offence under Section 376 IPC is triable by Court of Sessions.

4.9. The learned Principal District Judge, Villupuram, took the case on file in S.C. No.24/2018 and made over the same to the Fast Track Mahila Court, Villupuram.

4.10. When the accused was questioned with regard to the incriminating circumstances appearing in evidence against him under Section 313 Cr.P.C., he denied of having committed any offence. However, he did not examine any witness on his side. Learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram, after analysing the evidence on record found the accused guilty of the offences punishable under Sections 376 r/w 90 IPC and 417 IPC and sentenced him to undergo Rigorous Imprisonment for 7 years and a fine of Rs.25,000/-, in default, to undergo Simple Imprisonment for three months. Since the



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accused was convicted and sentenced for the offence under Section 376

IPC, no sentence was passed with regard to the offence under Section 417

IPC. The learned Trial Court Judge further observed that the offence under Section 366 IPC has not been made out by the prosecution and therefore acquitted the accused for the offence under Section 366 IPC.

5. Aggrieved over the judgment and order passed by the Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram, the present Criminal Appeal is filed.

6. Mr.S.Sathia Chandran, learned counsel for the appellant would contend that none of the ingredients for an offence under Section 376 IPC has been made out in the instant case. According to him the victim girl P.W.1 was 19 years old and even as per her statement she was in relationship with the accused for about 2½ years. He also pointed out that she herself had admitted that it was consensual sex and that it was not just one occasion but on many previous occasions (as per her statement to the doctor). In fact, according to the learned counsel she had deposed that the



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place of alleged sexual assault was her residence while in her statement to the Dr.Geethanjali (P.W.8) it was her sister's residence thus confirming that it was not just once as claimed by the prosecution. It is his further contention that when the prosecution's claim is that on 10.02.2017, the alleged incident of rape took place at 12 noon, the same night at 9.30 p.m. she left her home with the accused to Tiruppur. This sequence of events clearly shows there was no compulsion or coercion or misconception of fact from the side of the accused and the girl had left her home on her own which again goes to prove that Section 417 IPC also does not hold good. It is also argued that if it was the promise for marriage which had made her decide to go with the accused to Tiruppur, then she would have married him as she was already a major and there was no reason to back out or allowed to be brought back by the accused. According to him, the trial court did not analyse the facts of the case properly and went ahead with finding the accused guilty of the serious offence of rape under the guise of false promise to marry. The learned counsel therefore pleaded for acquittal of the accused.



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7. Per contra, Mr.S.Sugendran, learned Additional Public Prosecutor contended that the accused had deceived the girl by making a false promise of marrying her and forcibly having sex with her on 10.02.2017 in her residence, when her parents were not in the house. He also contended that after the sexual assault she was so upset that he asked her to accompany him to Tiruppur under the guise of marriage. According to him the trial court had analysed the prosecution case with precision and concluded that the accused was guilty of the offence under Sections 376 and 417 IPC.

8. Before going into the merits of the case, it is essential to study the relevant provisions of IPC, namely, Section 375 and Section 90 which read as follows:

Section 375 in The Indian Penal Code

1[375. Rape.—A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—

(First)— Against her will.

(Secondly)—Without her consent.



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(Thirdly) — *With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.*

(Fourthly) — *With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.*

(Fifthly) — *With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.*

(Sixthly) — *With or without her consent, when she is under sixteen years of age.*

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

(Exception) — *Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.]*

Section 90 IPC

"90. Consent known to be given under fear or misconception.—A consent is not such a consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or Consent of insane person.—if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he



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gives his consent; or Consent of child.—unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age".

In the instant case, P.W.1 and the accused were known to each other. They were in relationship for 2½ years as admitted by P.W.1. In fact during the course of cross examination P.W.1 has deposed that though the people in the village came to know of their relationship, her parents came to know about it only after the rape on 10.02.2017. It is her contention that the place of occurrence of rape was in her house itself on 10.02.2017. She has also deposed that after the incident P.W.1 herself had called her parents stating that she was raped by the accused. If this version is to be believed, it is weird to believe that she left her house the same night that too with the accused. It is a known fact that she along with the accused went to Tiruppur and once the sister of the accused informed the accused about the contemplated police action by P.W.1's parents, he ensured that she was dropped back in Arasur where her sister is residing. P.W.1 herself had stated that she along with the accused accompanied by one Satish, friend of the accused, went to Tiruppur while the said Sathish has not been examined by the police as a witness. However, one more version of P.W.2, mother of



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the victim was that Sathish had only seen off P.W.1 and the accused proceeding to Tiruppur and he did not accompany them. Despite these two versions, the fact remains that P.W.1 had eloped with the accused on 10.02.2017, the very same day when she was allegedly raped by the accused. This being so the statement of P.W.1 before the doctor when she was taken to medical examination is that the incident of rape which took place on 10.02.2017 was in her sister's house. It therefore raises a doubt as to whether such an incident happened on 10.02.2017. It is also clear that she had consented for intimacy of sex and it was not without her approval.

9. Dr. Geethanjali (P.W.8) did not find any injury or other evidence to suggest that the accused forced himself upon her. It is also pertinent to mention that the couple had sex on many occasions and it was not a solitary instance on 10.02.2017 as claimed in the complaint by P.W.1.

10. Now coming to the consent part of it and the alleged deception by the accused under the pretext of marrying her it is to be noted that though the parents of the victim P.W.2 and P.W.3 have pleaded ignorance



regarding the relationship of their daughter with the accused, as per the P.W.1's statement itself it is clear that the other people in the village knew about it. In a small village such matters spread like wild fire and it is intriguing as to how the parents were not aware of the happenings. It is also evident that on the date i.e. 10.02.2017 when the parents came to know of their daughter's relationship with the accused they chided her and warned her that the accused will not keep up to his promise of marrying her. Despite this warning she had left with him to Tiruppur which shows that she was fully aware of the consequences of the unkept promise, if any. It is also not clear as to how she gathered the courage to go to a distant place like Tiruppur that too with the accused and a third person Sathish. This again raises suspicion as to why and what made her go to a far off place along with the accused and Sathish instead of insisting the accused to marry her immediately.

11. Ravidoss (P.W.4), the brother of the victim has deposed that there was a panchayat in the village in the presence of elders but no evidence is adduced about the same. P.W.4 during the course of cross examination had



deposed that they had believed that the accused would marry his sister within 10 days which means there was no explicit promise in the presence of elders of the village. Thus the following aspects do not come in support of the theory of the prosecution.

- a) the place of occurrence of the alleged rape is stated differently at different times.
- b) The incident of the alleged rape on 10.02.2017 was not a solitary instance of sexual intimacy between P.W.1 and the accused.
- c) It is not clear whether Sathish, a friend of the accused accompanied P.W.1 and the accused on their trip to Tiruppur. Though P.W.1 has acknowledged that one Sathish was there with them he was not examined or brought in as an evidence.
- d) There is no clarity as to when the victim girl returned to her sister's house in Manmedu near Arasur and whether she was dropped in Arasur or just put in a bus in Ulundurpet as mentioned by P.W.1 in the complaint.

Thus the entire sequence of events is murky with no clarity as to whether the girl was in a casual relationship or in a serious relationship. Had she



been in serious relationship and had believed his promise to marry her, she could have insisted on the marriage at any point of time atleast when she was with him in Tiruppur. The date on which she was dropped back in Arasur/Ulundurpet is not specifically stated by P.W.1. The inordinate delay in lodging the complaint and registration of FIR are all serious lacunae fatal to the case of the prosecution. The entire deposition of P.W.1 smacks of a playful attitude which is probably the result of hormonal changes in a teenager. It is also to be noted that the victim girl is married and settled now.

12. Therefore, it can be inferred from the foregoing discussions that there was no misconception of facts to construe that there was no consent within the meaning of Section 375 IPC. Since P.W.1, a major, herself admitted that she went along with the accused on her own, consented for sex and did not insist him to marry her even in Tiruppur, the offences are not made out under Sections 366, 376 and 417 IPC.



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13. In the result,

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i. the Criminal Appeal is allowed.

ii. the judgment dated 15.12.2021, passed by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Villupuram. in S.C.No.24 of 2018. is set aside.

iii. Rajesh, the appellant (Accused in S.C.No.24 of 2018) is acquitted from all the offences, of which he is charged. Bail bonds, if any, shall stand cancelled.

21.09.2023

Index : yes/no
Speaking /Non speaking Order
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1. The Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court),
Villupuram
2. The Inspector of Police,
All Women Police Station,
Ulundurpet
Villupuram District
(Crime No.6/2017)
3. The Additional Public Prosecutor
High Court, Madras.
4. The Section Officer,
Criminal Section, High Court, Madras.



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R.HEMALATHA, J.

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Pre-Delivery Judgment in
Crl.A.No.58 of 2022

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