



Criminal Appeal No.208 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Criminal Appeal No.208 of 2016

Maheswaran

S/o.Kandasamy Reddiyar

... Appellant/Accused

Vs.

State represented by

Deputy Superintendent of Police,

Perambalur,

Perambalur District.

Crime No.1 of 2009

... Respondent/Complainant

Prayer : Criminal Appeal filed u/s.374 of the Code of Criminal Procedure against the judgment passed by Principal District and Sessions Judge, Perambalur, in Spl.S.C.No.36 of 2010 dated 17.02.2016.

For Appellant : Mr.M.Karthik
Legal Aid Counsel

For Respondent : Mr.L.Baskaran
Government Advocate [Crl.side]



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JUDGMENT

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Offence u/s.	Sentence
376(1) IPC	10 years rigorous imprisonment and to pay fine of Rs.1,00,000/-. The fine amount was directed to be paid as compensation to the victim girl u/s.357(3) Cr.P.C., in default, to undergo one year simple imprisonment
506(i) IPC	6 months simple imprisonment

Both the sentences were directed to run concurrently. The period already undergone was ordered to be set off u/s.428 Cr.P.C.

2. The case of the prosecution is that

2.1. the appellant developed a relationship with the victim girl [PW-1] and one year prior to lodging of the complaint, was having sexual intercourse with PW-1 by giving a false promise to marry her. Eventually, PW-1 became pregnant and the appellant refused to marry her and was forcing PW-1 to abort the child. That apart, the appellant was also



threatening the victim girl [PW-1] and criminally intimidating her. PW-1 gave a complaint on 09.01.2009 at about 11.30 a.m. before the Sub-Inspector of Police, Perambalur [PW-13] in this regard. PW-13 registered a First Information Report [Ex.P6] in Crime No.1 of 2009 for offences u/s.417, 376, 506(i) IPC and 3(1)(x) and 3(1)(xii) of the SC/ST (POA) Act, 1986.

2.2. The investigation was taken up by PW-14 and he went to the house of the appellant where the incident had taken place and prepared the observation mahazar marked as Ex.P2 and rough sketch marked as Ex.P8. PW-14 recorded the statements of witnesses u/s.161(3) Cr.P.C.

2.3. The appellant was arrested on 10.01.2009 at about 11.30 a.m. and on requisition made to the Court, he was sent for medical examination through PW-11 and the medical examination was conducted by PW-9, doctor. The appellant was thereafter remanded to judicial custody.



2.4. PW-14 also took steps to send the victim girl PW-1 for medical examination through PW-12 and the medical examination was conducted by PW-8, doctor. PW-8, doctor, on examining the victim girl, prepared the report marked as Ex.P3 and the following opinion was given after the medical examination:

"பரிசோதனைக்கு உட்படுத்தப்பட்ட வாதியின் வயது என்ன?

According to doctor's opinion : Her approximate age is 18 yrs. and above.

2) வாதி கன்னித்தன்மை இழந்துள்ளாரா? ஆம் கன்னித்தன்மை இழந்துள்ளார்.

3) வாதி கர்ப்பம் தரித்துள்ளாரா? ஆம் கர்ப்பம் தரித்துள்ளார்.

4) ஆம் எனில் கருவுற்று எத்தனை மாதம் ஆகிறது?

P/A: Ut 28-30 weeks FP Felt FH

USG : Single Live Intra Ut Preg.

Cephalic preservation

BPA - 79.0mm 31 weeks 5 days FL - 59.1mm 30 weeks 5 days CA FMGWD AP-I - 17.2 cm Placenta - Ant. GA 30-31 weeks"

2.5. The doctor, PW-9, who examined the appellant also found that he was capable of having sexual intercourse. The report was marked as Ex.P4 through PW-9.



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2.6. PW-14 completed the investigation and filed the final report before the learned Judicial Magistrate, Perambalur, which was taken on file in PRC No.17/2009. Learned Judicial Magistrate issued copies u/s.207 Cr.P.C. and committed the case u/s.209 Cr.P.C. to the file of Principal District and Sessions Judge, Perambalur. The trial Court framed charges against the appellant for offences u/s.376, 417, 506(i) IPC and Section 3(1)(x) of SC/ST (POA) Act, 1989, 3(1)(xii) of SC/ST (POA) Act, 1989 and Section 3(2)(v) of SC/ST (POA) Act, 1989. When these charges were put to the appellant, he denied the same.

2.7. The prosecution examined PWs.1 to 14 and marked Exs.P1 to P10. The appellant examined one defence witness as DW-1. The incriminating evidence that was gathered during the course of trial was put to the appellant when he was questioned u/s.313(1)(b) Cr.P.C. and he denied the same as false.



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2.8. The trial Court, considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the prosecution has made out a case beyond reasonable doubt for offences u/s.376 and 506(i) IPC and accordingly, convicted and sentenced the appellant in the manner stated supra. Aggrieved by the same, the present appeal has been filed.

3. Heard Mr.M.Karthik, Legal Aid Counsel appointed by this Court to assist the appellant and Mr.L.Baskaran, learned Government Advocate [Crl.side], appearing for the respondent State.

4. This Court has carefully considered the submissions made on either side and also perused the materials available on record.

5. In a case of this nature, the evidence of the victim girl assumes lot of significance. Hence, this Court carefully considered the evidence of PW-1. PW-1 has categorically stated in her evidence that she used to go for



coolie work in a load auto belonging to the appellant. At that point of time, she had developed a relationship with the appellant. She has further deposed that the appellant called her to his house and forced to have sexual intercourse by giving a false promise that he will marry her. On many occasions, the appellant had sexual intercourse with the victim girl on the false promise of marrying her. The victim girl became pregnant and at that point of time, the appellant is said to have forced the victim girl to terminate the pregnancy by giving her country medicines and papaya. That apart, PW-1 had also deposed that the appellant intimidated her since she refused to terminate the pregnancy. PW-1 had deposed that she informed her mother about her pregnancy and her relationship with the appellant, when she was eight months pregnant. Thereafter, the complaint came to be lodged before the police and the law was set in motion.

6. On carefully going through the evidence of PW-1, this Court finds that it is clear, cogent and consistent and even in the cross-examination, the evidence of PW-1 was not able to be discredited. The evidence of PW-1 is



further corroborated by the evidence of PW-8, doctor, who has clearly stated in the report that the victim girl has been subjected to sexual intercourse and that she was pregnant and subsequently, she also gave birth to a male child.

7. Ex.P10 which was marked through PW-14 clearly reveals that the appellant is the biological father of the child that was born to PW-1. Ex.P10 is the DNA report that was submitted by the Forensic Sciences Department on collecting the blood samples of the appellant and PW-1.

8. In view of the clear evidence of PW-1, it is not necessary for this Court to go in search of any further corroboration. The evidence of PW-2/mother of PW-1 and the evidence of PW-6/father of PW-1 only strengthens the case of the prosecution.

9. The Court below has also carefully dealt with the evidence of PW-1 and the evidence of doctors and has come to a categorical conclusion that the victim girl was subjected to physical intercourse by the appellant. This



incriminating evidence was put to the appellant when he was questioned u/s.313 Cr.P.C. Even at that point of time, the appellant has not come up with any explanation and merely denied the same as false.

10. The next question to be gone into is as to whether PW-1 was subjected to physical intercourse by the appellant against her consent. The evidence of PW-1 clearly shows that for the first time, when the appellant had physical intercourse with PW-1, it had happened in the house of the appellant and there was an element of compulsion and the appellant had also stated that he will marry PW-1. Even subsequently, physical intercourse had taken place on the false promise to marry PW-1. It is therefore clear that there was no forcible intercourse as against PW-1 and the appellant had intercourse with PW-1 only on a false promise to marry her.

11. The next question to be gone into is as to whether the consent of PW-1 can be considered to be a consent in the eye of law. Section 90 of IPC makes it abundantly clear that a consent is not such a consent as is intended by any section in the Code if such consent is given under the misconception



of fact. The misconception of fact that has been alleged by PW-1 is the false promise given by the appellant to marry her. In a series of decisions, the Apex Court has considered the distinction between a false promise to marry and a breach of promise to marry. Insofar as the first category is concerned, the intention of the accused to cheat the victim girl starts from the inception when he makes a false promise to marry and has physical intercourse with the victim girl. In the latter category, there is an element of good faith at the time when the promise is made but at a subsequent point the same is not fulfilled.

12. In the facts of the present case, it has been clearly established by the prosecution that the appellant right from the inception was giving a false promise to PW-1 that he will marry her and thereby was repeatedly having physical intercourse with PW-1. Therefore, the consent that was given by PW-1 is a consent obtained on misconception of fact as per Section 90 of IPC. Under such circumstances, the consent would not be an exclusion for the offender and such an offender is said to have committed rape as defined u/s.375 IPC and accordingly, he can be convicted for the said offence



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u/s.376 IPC. The law on this issue is too well settled and this Court does not want to burden its judgment by citing and extracting all the judgments on the point.

13. The Court below had rightly come to the conclusion that the appellant gave a false promise right from the inception and thereby, had sexual intercourse with PW-1. Even the evidence of PW-1 shows that she was having physical intercourse with the appellant on the misconception of fact that he will marry her at a later point of time. However, the appellant refused to marry the victim girl and unfortunately, the victim girl also got pregnant and she delivered a child. The DNA report, which was marked as Ex.P10 reveals that it is the appellant, who is the father of the baby.

14. The so-called consent that was given by PW-1 cannot be taken to be a consent in the eye of law and it must be construed that the appellant had physical intercourse with PW-1 without her consent. Under such circumstances, the legal presumption u/s.114-A of the Evidence Act will



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come into play. By virtue of this provision, the Court shall presume that PW-1 did not consent for the sexual intercourse with the appellant. This is yet another ground on which the conviction against the appellant has to be sustained.

15. The Court below had rightly convicted the appellant for offences u/s.375 and 506(i) IPC. Since there were no materials to sustain the conviction for the offence under the SC/ST Act, the appellant was rightly acquitted from those charges.

16. This Court directed learned Government Advocate [Crl.side] to take instructions as to the present status of the victim girl PW-1. Mrs.A.Kala, Inspector of Police, All Women Police Station, Perambalur [Mobile No.94981 65579], who was present before this Court, instructed the learned Government Advocate [Crl.side] and based on the same, it was submitted that the victim girl did not marry anyone else and that she is taking care of the child that was born to her through the appellant.



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17. The Court below had imposed sentence of 10 years rigorous imprisonment and to pay fine of Rs.1,00,000/-, in default, to undergo one year simple imprisonment for offence u/s.375 IPC. During the relevant point of time, the punishment that was provided u/s.376(1) IPC was not less than 7 years but it may extend to imprisonment for life. This was amended with effect from 21.04.2018 and thereafter, the minimum punishment that has been prescribed is 10 years rigorous imprisonment and which may extend to imprisonment for life. Considering the facts and circumstances of the case, this Court is inclined to reduce the period of imprisonment to 7 years rigorous imprisonment and to that extent, the sentence of imprisonment is modified u/s.376(1) IPC. The imposition of fine and the default sentence is sustained. Likewise, the conviction and sentence for offence u/s.506(i) IPC is also sustained.

18. The appellant was enlarged on bail during the pendency of this criminal appeal by an order dated 01.08.2016 made in CrI.M.P.No.3045 of



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2016. In view of sustaining the conviction imposed by the trial Court and modifying the sentence to the extent indicated above, the appellant shall immediately surrender before the trial Court and the trial Court shall take steps to confine the appellant in prison in order to undergo the remaining sentence. The sentence imposed shall run concurrently and the period already undergone shall be set off u/s.428 Cr.P.C.

19. In the result, this criminal appeal is partly allowed to the extent indicated herein above.

Before drawing the curtains, this Court wants to place on record its appreciation for the assistance rendered by Mr.M.Karthik, Legal Aid Counsel appointed by this Court to assist the appellant. The Tamil Nadu State Legal Services Authority is directed to pay a sum of Rs.10,000/- [Rupees Ten Thousand only] to Mr.M.Karthik, Legal Aid Counsel, who assisted this Court by appearing for the appellant.



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Index : Yes/No
Speaking Order / Non Speaking Order
Neutral Citation: Yes/No
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To

1.The Principal District and Sessions Judge,
Perambalur.

2.The Deputy Superintendent of Police,
Perambalur,
Perambalur District.
Crime No.1 of 2009

3.The Public Prosecutor,
High Court, Madras.

N. ANAND VENKATESH, J

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