



Crl A No.352 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

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Rajasekaran

..Appellant / 1st Accused

Vs.

State by Inspector of Police
All Women Police Station,
Villupuram,
Crime No.58 of 2011

..Respondent /
Complainant

Prayer: Criminal Appeal is filed under Section 374 of Cr.PC to set aside the conviction and sentence imposed on the appellant by the learned Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Villupuram in S.C.No.60 of 2012 dated 26.04.2016.

For Petitioner : Mr.C.Munusamy

For Respondent : Mr.L.Baskaran
Government Advocate
[Criminal Side]



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ORDER

When this Criminal Appeal came up for hearing on

24.01.2023, this Court passed the following order :-

This Criminal Appeal has been preferred challenging the judgement of the learned Sessions Judge, Fast Track Mahila Court, Villupuram dated 26.04.2016 made in SC.No.60 of 2012.

2. The appellant is the first accused against whom the prosecutrix/PW1 has given a complaint on the allegation that the first accused gave a love proposal to her and that was refused by the prosecutrix/PW1; due to the continuous pressure given by the appellant, she accepted his love proposal; on 20.08.2009 when she was alone at her home, the first accused came there and had sexual intercourse with her by promising to marry her; he was in the habit of repeating the same on several occasions, due to which prosecutrix/PW1 got pregnant; thereafter, the prosecutrix/PW1 persuaded the first accused to marry her, but he refused; when the matter was revealed to her parents, they also



approached the first accused, but he refused to marry the prosecutrix/PW1; on 14.06.2011 the prosecutrix/PW1 gave birth to a male baby; on 30.06.2011 at about 3.00 p.m, when PW1 along with her parents went to the house of the first accused, the parents of the first accused abused the prosecutrix/PW1 and demanded Rs.50,000/-, 10 sovereigns gold jewels and Hero Honda Motorcycle for marrying her; hence, PW1 gave a complaint (Ex.P1) against them.

2.1. On the said complaint, a case was registered in Crime No.58 of 2011 for the offences under Sections 417, 376, 294(b) IPC read with Section 4 of DP Act by All Women Police Station, Villupuram. After completing the investigation, charge sheet has been filed against the Accused 1 to 3 for the offence under Sections 417, 376, 294(b) IPC read with Section 4 of DP Act.

2.2. After the case was taken on file, the accused were summoned and copies of the charge sheet were furnished to them. On perusal of the records and considering the same, the charges have been framed against the first accused for the offences under Sections



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417, 376 IPC and Section 4 of DP Act. As against the accused 2 & 3, charges have been framed for the offence under Sections 294(b) IPC and Section 4 of DP Act.

2.3. During the course of the trial, on the side of the prosecution, 9 witnesses have been examined as PW1 to PW9 and Exs.P1to P9 were marked. On the side of the defence, no oral or documentary evidence was let in. At the conclusion of the trial and considering the materials available on record, the learned Sessions Judge had convicted the accused and imposed the punishment as under:-

<i>Rank of the accused</i>	<i>Offence</i>	<i>Punishment imposed</i>
A1	Section 417 IPC	To undergo One year Rigorous Imprisonment and to pay a fine of Rs.50,000/- in default to undergo Six months Rigorous Imprisonment
	Section 376 IPC	Not found guilty
	Section 4 of D.P.Act	Not found guilty
A2	Section 294(b) IPC & Section 4 of D.P.Act	Not found guilty



A3	Section 294(b) IPC & Section 4 of D.P.Act	Not found guilty
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3. Heard the learned counsel for the appellant and the learned Government Advocate (Crl.Side) appearing for the respondent. Perused the entire materials available on record.

4. When the matter was taken up on 02.01.2023, this Court observed as under:

“It is submitted by the learned counsel for the appellant that the appellant and the victim had already got married and living as husband and wife. They are ready to appear before this Court to confirm the same.

2. Learned Government Advocate (Crl.Side) appearing for the State seeks small accommodation to verify the credentials of the same.

3. Post the matter on 24.01.2023.”

5. Today, when the matter was taken up, PW1 and the first accused were present before this Court.

6. It is seen that the appellant/first accused had married PW1 and they have two children. PW1 has stated that they are living as a family and the



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appellant/first accused takes care of the family.

7. The learned counsel for the appellant/first accused submitted that taking into consideration of the change of circumstances in the lives of the appellant/first accused and PW1, some lenience should be shown in the matter of punishment.

8. No doubt this Court could understand the difficulties that might be faced by PW1 and her children, if the accused is sent to prison. On enquiry, it came to be known that the marriage between the appellant and PW1 had taken place on 10.01.2019. The complaint has been given on 15.07.2011 after the first child was born on 14.06.2011. From the year 2011 to 2016, the case was pending and the appellant/first accused was convicted on 26.04.2016 after an exhaustive trial. During the course of trial, PW1 was cross examined at length and DNA analysis was also done for the first child to confirm its paternity. DNA test confirmed that the appellant/first accused is alone the father of the child born to PW1. The appellant/A1 knew that he had fathered a child for PW1. But he refused to marry PW1. It would have been an ordeal for PW1 to undergo a full-fledged trial. The



appellant/first accused did not come forward to take PW1 and the children to his family and left her at lurch with a child in her hands.

9. He had chosen to marry her only in the year 2019. After marriage, PW1 delivered a female baby also for the appellant/first accused and she is three years old. Even though PW1 and her children would be affected, if the appellant is sent to prison by confirming the sentence, the ordeal undergone by the victim/PW1 for nearly 9 years as an unwed mother in her society with a child cannot be overlooked. Around after the appeal ends in his favour, if the appellant turns around at the instigation of his family members and others and deserts his wife and children, then also the worstly affected persons would be PW1 and her children. Unless some repentance in the form of some assurance for the future of PW1 and her children is done, the matter cannot be viewed in the manner wished by the appellant. When the appellant/first accused was told about this, he agreed to settle a house property in the name of PW1 and prove his *bona fides*.

10. I feel the said proposal can be considered and the further orders can be passed after the appellant



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executes his words. Hence, list the matter on 20.02.2023.

2. The matter was once again heard on 20.02.2023

and this Court passed the following order :-

On 24.01.2023, this Court has passed a detailed order after hearing the submissions of the learned counsel for the appellant that he had married the prosecutrix in the year 2019 and thereafter they lived peacefully along with their children. The order of this Court was to the following effect:

“8. No doubt this Court could understand the difficulties that might be faced by PW1 and her children, if the accused is sent to prison. On enquiry, it came to be known that the marriage between the appellant and PW1 had taken place on 10.01.2019. The complaint has been given on 15.07.2011 after the first child was born on 14.06.2011. From the year 2011 to 2016, the case was pending and the appellant/first accused was convicted on 26.04.2016



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after an exhaustive trial. During the course of trial, PW1 was cross examined at length and DNA analysis was also done for the first child to confirm its paternity. DNA test confirmed that the appellant/first accused is alone the father of the child born to PW1. The appellant/A1 knew that he had fathered a child for PW1. But he refused to marry PW1. It would have been an ordeal for PW1 to undergo a full-fledged trial. The appellant/first accused did not come forward to take PW1 and the children to his family and left her at lurch with a child in her hands.

9. He had chosen to marry her only in the year 2019. After marriage, PW1 delivered a female baby also for the appellant/first accused and she is three years old. Even though PW1 and her children would be affected, if the appellant is sent to prison by confirming the sentence, the ordeal undergone by the victim/PW1 for nearly 9 years as an unwed mother in her society with a child cannot be overlooked. Around after the appeal ends in his favour, if the appellant turns around at the instigation of his family members and others and deserts his wife and children, then also the worstly affected persons would be PW1 and her



children. Unless some repentance in the form of some assurance for the future of PW1 and her children is done, the matter cannot be viewed in the manner wished by the appellant. When the appellant/first accused was told about this, he agreed to settle a house property in the name of PW1 and prove his bona fides.

10. I feel the said proposal can be considered and the further orders can be passed after the appellant executes his words. Hence, list the matter on 20.02.2023.”

2. When the matter was taken up today, the learned counsel for the appellant submitted that the appellant is not able to settle the house property in the name of P.W.1 because the house stands in the name of his father and his father died and his brothers have not come forward for partition.

3. The earlier order has been passed only to show the bonafideness on the part of the appellant. The appellant could have settled his undivided share that he



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would inherit from the father's house, in the name of P.W.1. But, he did not come forward to do the same and sought further time.

4. Hence, the matter is ordered to be listed on 01.03.2023.

3. The appeal thereafter came up for final hearing on 15.03.2023 and the learned Government Advocate submitted that the appellant and PW1 got married and they are living happily with two children and sought for some time to make them appear before the Court. Accordingly, the matter stood adjourned to today.

4. The appellant Rajasekaran and his wife Punitha (PW1) and their two children viz., Deva Punithan (12 years) and Yazhini (3 ½ years) were present before this Court. The appellant and PW1 informed this Court that they got married on 10.01.2018 and through the wedlock, two children were born and that they are



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living happily.
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5. The learned counsel for the appellant also brought to the notice of this Court the earlier order passed and submitted that the appellant in order to show his bonafides also purchased a property in the name of his wife Punitha. To substantiate the same, a copy of the Sale deed dated 23.02.2023 registered as document No.5564 of 2023 on the file of Sub-Registrar, Thirukkanur, was also produced before this Court.

6. Mrs.C.Chandra, Sub-Inspector of Police, All Women Police Station, Villupuram District was also present and the concerned police officer instructed the learned Government Advocate. The learned Government Advocate submitted that in view of the subsequent development, he leaves it to this Court to pass further orders in this criminal appeal.



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7. Taking into consideration the facts and circumstances of the case and the fact that the appellant and PW1 had married and they have two children through the wedlock and since the appellant was convicted and sentenced for offence under Section 417 of IPC, this Court is inclined to compound the offence under Section 320 of Cr.PC.

8. In the light of the above, the judgment and order passed by the Sessions Judge, Mahalir Neethi Mandram, Fast Track Mahila Court in Villupuram District, in SC No.60 of 2012 dated 26.04.2016 is set aside and this Criminal Appeal is disposed of accordingly. The Trial Court had imposed the sentence of fine of Rs.50,000/- against the appellant and this amount was deposited by the appellant on 26.04.2016 before the Trial Court. Only after such deposit, the appellant filed the application seeking for suspension



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of sentence in Crl MP No.5439 of 2016 and the sentence was suspended by order dated 01.07.2016. In view of the fact that the offence is compounded, the fine amount has to be refunded to the appellant. It is left open to the appellant to file a memo before the Trial Court seeking for the withdrawal of the sum of Rs.50,000/- and the memo shall be entertained and the appellant shall be permitted to withdraw the sum of Rs.50,000/-.

27.03.2023

Internet : Yes
Index : Yes
Speaking Order / Non Speaking Order

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N. ANAND VENKATESH, J.

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To
The Sessions Judge, Magalir Neethi Mandram,
(Fast Track Mahila Court), Villupuram

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