



Crl. Appeal No. 43 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :18.07.2023

Coram:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal. Appeal No. 43 of 2017

Mathiyazhagan

.. Appellant

Vs

State rep. By

The Inspector of Police,
All Women Police Station,
Ulundurpet.
Crime No.2 of 2012.

.. Respondent

Criminal Appeal filed under Section 374 of Cr.P.C 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 SC.No.538 of 2013 dated 03.01.2017 by allowing this appeal.

For Appellant .. Mr.C.Munusamy

For Respondent .. Mrs.G.V.Kashthuri
Addl. Public Prosecutor



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JUDGMENT

The Appellant had preferred the Criminal Appeal as against the judgment dated 03.01.2017 in SC.No.538 of 2013 passed by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram.

2. The learned Counsel for the Appellant submitted that the Accused is convicted only for the offence under Section 417 of IPC, even though the Trial Court, framed the charges under Sections 376 and 417 of IPC.

3. It is the contention of the learned Counsel for the Appellant that the learned Sessions Judge herself had acquitted the Appellant only for the offence under Section 376 of IPC. In the chief-examination of P.W-1 it is stated that the Appellant is a neighbour and he was a married man and living with his family. There is evidence in the cross examination of P.W-1 that she used to work in the field belonging to Accused as a farmhand, also help in the construction work undertaken by the Accused. In the cross



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examination, she admits that the Accused was already married. The learned Sessions Judge had discussed the evidence of Prosecutrix elaborately and arrived at a conclusion that she had consensual sex with the Accused. The DNA test proved that the daughter was born to the Prosecutrix and the Accused. Therefore, the learned Sessions Judge had convicted the Accused for the offence under Section 417 of IPC and imposed a fine of Rs.1 lakh as compensation. The learned Counsel for the Appellant submits that nowhere in the complaint stated that there was an allegation of false promise. The learned Judge had accepted the defence of the Accused and conceded with the consensus that the child was born to the Accused and the Prosecutrix and convicted him only for the offence under Section 417 of IPC.

4. The learned Additional Public Prosecutor concedes that there is evidence of knowledge of the fact that the Accused was already a married man and Prosecutrix was aged beyond 16 years on the alleged date of occurrence.



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5. Since the Prosecutrix had supported the case to up-hold the conviction and considering the peculiar circumstances of the case, the sentence imposed on the Accused is modified into one of compensation alone and that apart, the judgment alone is confirmed. The period of imprisonment already undergone is set off and sentence of imprisonment is to be set aside. If the submissions of the learned Counsel for the Appellant is to be accepted, the conviction is to be set aside.

Point for consideration:

Whether the Judgment of Conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Villupuram in S.C.No.538/2013 is to be set aside as perverse?

6. Heard the learned Counsel for the Appellant and the learned Additional Public Prosecutor for the Respondent. Perused the Judgment of the learned Sessions Judge, Fast Track Mahila Court, Villupuram.



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7. On perusal of the Judgment, the arguments of the learned Counsel for the Appellant cannot at all be accepted in the facts and circumstances of this case. The learned Sessions Judge, Fast Track Mahila Court, Villupuram had, on proper appreciation of evidence, only acquitted the Accused from the Charge under Section 376 of IPC and on appreciation of evidence, the learned Sessions Judge, Fast Track Mahila Court had arrived at a conclusion that the Appellant herein is guilty of offence under Section 417 of IPC. If the learned trial Judge had, on proper appreciation of evidence, arrived at a conclusion, the learned Appellate Judge shall not disturb the finding recorded by the learned trial Judge. In this case, the trial Court had on proper appreciation of evidence, convicted the Appellant only for the offence under Section 417 of IPC. Therefore, the arguments put forth by the learned Counsel for the Appellant will not hold good. There is evidence that the Prosecutrix herein was aged less than 18 on the date of the alleged occurrence. To prove the allegation against the Appellant, child born to the victim and the Appellant herein was subjected to DNA test which had proved that the Accused/Appellant alone is the father of the child. Under



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those circumstances, grounds of Appeal preferred by the learned Counsel for the Appellant cannot at all be accepted even though the arguments of the learned Counsel for the Appellant that there is no reference in the Complaint that the Accused gave a promise to marry the victim. Therefore, it is a consensual sex for which the Appellant cannot be convicted is rejected. The Prosecutrix had objected to the line of the argument of the Appellant and sought to reject this Appeal as not maintainable.

8. On appreciation of evidence, it is found that in the cross-examination, the suggestion of the learned Counsel for the Defence had been accepted by the Prosecutrix as P.W-1. Under those circumstances, the learned Sessions Judge, Fast Track Mahila Court, Villupuram had arrived at a conclusion that the offence under Section 417 of IPC alone is modified. The submission of the learned Counsel for the Appellant for the offence under Section 417 of IPC, the ingredients of Section 415 of IPC had to be attracted, the Appellant/Accused has not suffered any loss by parting with the material consideration cannot at all be accepted. Through the



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relationship, the victim had given birth to a child who was aged 2 years on the date of adducing evidence of the Prosecutrix/P.W-1. She had lost her reputation and the conduct of the Accused had given rise to a stigma against the child born to the victim. Under those circumstances, the submission of the learned Counsel for the Appellant that the victim has not suffered or the ingredient of Section 415 of IPC are not attracted cannot at all be accepted and hence rejected.

9. In the light of the above, the point for consideration is answered in favour of the Prosecution and against the Appellant. The appeal lacks merits and is to be dismissed.

10. Considering the future of the child, if the conviction is set aside, there is likelihood of stigma on the child, who was aged 2 years on the date of the evidence of the Prosecutrix/PW-1. The child will be branded with unnecessary words by the society which may suffer social stigma. Therefore, in the light of the DNA test which is relied on by the learned



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Sessions Judge, the sentence of imprisonment alone is modified. The rest of the conviction is upheld considering the social stigma that may be caused to the child, for no fault of the child.

In the result, **this Criminal Appeal is partly allowed.**

The sentence of imprisonment of one year Rigorous Imprisonment alone is modified as the period of imprisonment already undergone by the Appellant/Accused is treated as period of imprisonment.

18 .07.2023

drl/dh

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-speaking Order



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TO

- 1.The Sessions Judge,
Fast Track Mahila Court,
Villupuram.
- 2.The Additional Public Prosecutor,
Madras High Court,
Chennai – 600 104.

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