



Criminal Appeal No.612 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.12.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Appeal No.612 of 2017

Prakash

...Appellant/Accused

Vs.

The Inspector of Police,
All Women Police Station,
Vikkiravandi,
Villupuram District.
Crime No.153 of 2014.

...Respondent/Respondent

Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure against the conviction and sentence passed by the Sessions Judge, Magalir Neethi Mandram, (Fast Track Court), Villupuram in S.C.No.325 of 2014 dated 07.09.2017.

For Appellant : Mr.R.Rajarajan
For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



JUDGMENT

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The appellant has challenged the Judgement of conviction and sentence imposed on him dated 07.09.2017 passed by the learned Sessions Judge, Magalir Neethimandram, (Fast Track Court), Villapuram in S.C.No.325 of 2014. The appellant was convicted and sentenced by the Trial Court as follows:-

<i>Conviction</i>	<i>Sentence</i>
Section 376 of IPC	Accused not found guilty
Section 417 of IPC	To undergo one year Rigorous Imprisonment and to pay a fine of Rs.50,000/-, in default, to undergo Rigorous Imprisonment for Three months.

2(i). The case of the prosecution is that the victim and her family were doing business of Duck farming; that the victim had studied till 5th standard; that sometime before the lodging of the complaint, the appellant became acquainted with her; that the appellant asked the victim as to whether she was married; that when she said she was unmarried, the appellant had expressed his wish to marry her; that thereafter, she became friendly with the appellant; that the victim used to go to the motor shed of the appellant to take water during night hours; that on one occassion, when the victim went to the motor shed, the appellant forcibly took her near a tree and had sexual



intercourse and when the victim cried, the appellant promised to marry her; that thereafter, the appellant had sexual intercourse on several occasions with the victim; that the victim got pregnant, and that when she asked the appellant to marry her, he refused to do so.

(ii). It is the further case of the prosecution that on 12.03.2014, the victim gave a complaint (Ex.P.1) for the alleged offences under sections 417 and 376 of IPC. On the said complaint an FIR has been registered in Crime No.153 of 2014 (Ex.P.14). The P.W.16 took up the investigation and prepared observation Mahazar (Ex.P.4) and rough sketch (Ex.P.15) and arrested the accused/appellant. The P.W.16 gave requisition letter to conduct medical examination for the Appellant and the Victim. The P.W.14- Dr.Gitanjali examined the victim and gave a certificate (Ex.P.12).

(iii) Thereafter, P.W.16 handed over the investigation to P.W.17- Inspector of Police, All Women Police Station, Vikkiravandi, Villupuram District. After examination of other witnesses, P.W.17 filed a final report on 12.05.2014 in PRC.No.21 of 2014 before the Judicial Magistrate No.II,



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Villupuram for the offences punishable under sections 376 and 417 of IPC

against the appellant/accused.

(iv) On appearance of the appellant, the provisions of Section 207 of Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.325 of 2014 and was made over to the Sessions Court, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram, for trial. The trial Court framed charges u/s.376 and 417 of IPC as against the appellant and when questioned, the appellant pleaded 'not guilty'.

(v) To prove the case, the prosecution examined 17 witnesses and marked 17 exhibits. When the appellant was questioned u/s.313 of Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witnesses was examined on the side of the appellant nor any document marked.



(vi) The trial court after considering the oral and documentary evidence found that the prosecution has not established the offence under section 376 of IPC and established only the offence under section 417 of IPC. The trial court sentenced the appellant to undergo one year Rigorous Imprisonment and to pay a fine of Rs.50,000/-, in default, to undergo Rigorous Imprisonment for Three months for the offences under section 417 of IPC. Hence, the accused has preferred the appeal challenging the said conviction and sentence.

3. The learned counsel for the appellant submitted that the evidence does not suggest that the appellant made any false representation to the victim; that the victim was very aware of the consequences of the relationship and in any case the allegations and the evidence of the victim only suggests breach of promise and prayed for setting aside the judgement of the Trial Court.



4. The learned Additional Public Prosecutor per contra submitted that the trial Court after holding that appellant is not guilty of offence under section 376 of IPC rightly convicted the appellant for the offence under section 417 of IPC. The prosecution had established the case beyond reasonable doubt and there is no reason to interfere with the Judgement of conviction.

5. Heard the learned counsel for the appellant as well as the learned Additional Public Prosecutor for the respondent/state and perused the materials available on record.

6. This Court perused the materials on record. It is seen that the evidence of victim (P.W.1) has been corroborated by P.W.3 and P.W.4. Their evidence is that the victim and the appellant got acquainted with each other. P.Ws.5 and 6 are brothers of victim and P.W.7 is the sister-in-law of the victim. They have all stated that, they were aware of the relationship and when they all requested the appellant to marry the victim, the appellant gave evasive reply. P.W.9 and 10, the neighbours of P.W.1, have spoken about



the visits of the appellant to the house of the victim and also about the fact that the villagers questioned the appellant and asked him to marry the victim. The other witnesses are official witnesses. P.W.2 is the Doctor who had examined the Appellant and issued potency certificate (Ex.P.3). P.W.14 is the Doctor who had examined the victim and observed that the victim had consumed rat killer poison and was under treatment.

7. The only question in the instant case is that whether the appellant gave false promise to the victim and induced the victim to have sexual relationship. The evidence of P.W.1 would show that when they had sexual relationship for the first time, there was no promise made by the Appellant. Thereafter, it is P.W.1's version that the appellant promised to marry her. The consent to have sexual relationship with the appellant in the instant case is not on account of the alleged false promise to marry. The consent as seen from the evidence is only because of the victim's acquaintance with the appellant. This Court is reminded of the observations of the Hon'ble Supreme Court in this regard in ***Deepak Gulati vs State of Haryana*** reported in (2013) 7 SCC Page.682 Para.21 wherein, the Hon'ble Supreme



Court had observed as follows:

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“21...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 of 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.”



8. The evidence of other witnesses only suggest that after the villagers came to know about the relationship of the victim and the appellant, the appellant refused to marry her. This does not help the prosecution case to prove the case of deception. Further, this Court finds that in the complaint given by P.W.1, she had stated that she was pregnant. However, the certificate of medical examination (Ex.P.12) issued by the doctor (P.W.14) shows that the victim was not pregnant.

9. Considering the fact that the relationship was consensual and the consent given by the victim for the sexual relationship is not solely on account of the alleged false promise, this court is of the view that the offence under section 417 of IPC is not made out against the appellant. Therefore, the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt. Hence, the judgement of conviction and sentence is liable to be set aside.

10. In the result, this Criminal Appeal is allowed. The Judgement of



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conviction and sentence passed in S.C.No.325 of 2014, dated 07.09.2017 on the file of Sessions Judge, Magalir Neethimandram, (Fast Track Court), Villupuram is set aside. The appellant is acquitted of the charge framed against him and he is directed to be set at liberty forthwith unless his custody is required in connection with any other case. Fine amount, if any, paid by the appellant shall be refunded. Bail bond executed shall stand discharged.

11. This court also records the appreciation to Mr.Gowtham, learned counsel who gave valuable assistance in the matter at the request of this Court.

06.12.2023

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
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To

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1. The Sessions Judge,
Magalir Neethimandram, (Fast Track Court),
Villupuram
2. The Inspector of Police,
All Women Police Station,
Vikkiravandi,
Villupuram District.
3. The Public Prosecutor,
High Court, Madras.

SUNDER MOHAN, J.



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