



Crl.A.No.653 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2023

CORAM :
THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.A.No.653 of 2017

Thennarasu

.. Appellant / A1

v.

State rep. by
The Inspector of Police,
All Women Police Station,
Villupuram.
(Crl.No.10/2015)

.. Respondent/complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, to call for the records in connection with S.C.No.163 of 2016 on the file of the learned Sessions Judge, Mahalir Neethi Mandram [Fast Track Mahila Court], Villupuram and set aside the conviction and sentence imposed in judgment dated 26.09.2017.

For Appellant : Mr.S.Saravana Kumar

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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JUDGMENT

This Criminal Appeal has been filed by Accused No.1, challenging the conviction and sentence imposed upon him vide judgment dated 26.09.2017 in S.C.No.163 of 2016, on the file of the learned Sessions Judge, Mahalir Neethi Mandram (Fast Track Mahila Court), Villupuram.

2 (i) It is the case of the prosecution that the brother of the victim and the appellant/A1 were friends and that the appellant used to come to the house of the victim to meet her brother; that because of the frequent visits to the house, the victim and the appellant became close to each other; that the appellant promised the victim that he would marry her and had sexual intercourse; that when the victim asked the appellant and his parents to make arrangements for the marriage, they refused stating that the victim was not educated; and that further, threatened her of dire consequences, if she insisted on getting married with the appellant.

(ii) It is the further case of the prosecution that on 28.04.2015, the victim gave complaint [Ex.P1] to the Inspector of Police, All Women Police Station, [PW11] and a case was registered in Cr.No.10 of 2015 for the offence



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punishable under Sections 417, 376 and 506(i) IPC, against the appellant and his parents. FIR was marked as Ex.P9.

(iii) After registration of the FIR, PW11 commenced the investigation and examined the witnesses. She arrested the accused on 28.04.2015 at about 9pm. On 29.04.2015, PW11 gave the requisition letter for sending the accused and the victim for medical examination. The said requisition letter was marked as Ex.P10. On 29.04.2015, PW11 proceeded to the place of occurrence and prepared the Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P11) in the presence of the witnesses. Thereafter, she went to the house of the appellant and prepared the observation mahazar (Ex.P12) and Rough Sketch (Ex.P13). She thereafter examined the other witnesses on 10.05.2015. She examined the doctors who had examined the victim and the appellant.

(iv) Thereafter, PW11 handed over the investigation to PW12 who laid the final report after the completion of the investigation in PRC No.25 of 2015 before the learned Judicial Magistrate No.I, Villupuram, as against all the accused under Sections 376 and 417 of IPC.



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WEB COPY (v) On appearance of the appellant/A1 and other accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Principal Sessions Judge, Villupuram and thereafter, transferred to the Sessions Court, Mahalir Neethi Mandram [Fast Track Mahila Court], Villupuram, in S.C.No.163 of 2016, for trial. The trial Court framed charges u/s.376 and 417 of IPC as against appellant/A1 and u/s.506(i) of IPC as against accused 2 and 3, the parents of the appellant and when questioned, the accused pleaded 'not guilty'.

(vi) To prove the case, the prosecution examined 12 witnesses and marked 15 exhibits. When the appellant and other accused were questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. No witness was examined on the side of the appellant or other accused, nor any document marked.

(vii) On appreciation of oral and documentary evidence, though the trial Court acquitted the appellant/A1 for the offence under Sections 376 and A2



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and A3 for the offence under Section 506(i) of IPC, convicted the appellant/A1 for the offence under Section 417 IPC and sentenced him to undergo rigorous imprisonment for one year and pay fine of Rs.50,000/- in default to undergo Simple Imprisonment for three months. Hence, the A1 has preferred the appeal challenging the said conviction and sentence.

3. The learned counsel for the appellant/A1 submitted that the allegation with regard to false promise of marriage cannot be believed; that the victim and the appellant were in love with each other and they became acquainted because the victim's brother was the appellant's close friend; that the victim had admitted in her deposition before the Court that she was in love with the appellant; that therefore, her consent for sexual intercourse with the appellant was not due to any misrepresentation made by the appellant, but due to her acquaintance with him; and hence, prayed for setting aside the finding of the trial Court holding that the appellant is guilty of the offence under Section 417 of IPC.

4. The learned Additional Public Prosecutor, per contra submitted that



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the trial Court after considering the oral and documentary evidence found the appellant not guilty of the offence under Section 376 of IPC and had rightly held that the appellant had deceived the victim, thereby induced her to have sexual intercourse with him and accordingly, convicted him for the offence under Section 417 of IPC. Therefore, the learned Additional Public Prosecutor submitted that no interference is called for with the finding of the trial Court.

5. This Court on perusal of the records finds that the prosecution had examined PW2 to PW4, the relatives of the victim to prove the friendship between the victim and the appellant/A1. PW2, PW3 and PW4 are the sister, brother and mother of the victim, respectively. PW5 and PW8, belong to the same village and they turned hostile. PW6 and PW7 are Mahazar witnesses. PW9 is the Doctor who had examined the victim. PW10 is the Doctor, who had examined the appellant.

6. From the above, it will be clear that the prosecution relies upon the evidence of PW1 to prove the offence of cheating said to have been committed



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by the appellant. The other witnesses viz., PW2, PW3 and PW4 are hearsay witnesses. PW1, had admitted in her deposition that she was closely acquainted with the appellant. Though, she has stated that appellant had compelled her, she admits that she was in love with the appellant. The relevant portion are extracted hereunder for better understanding.

“அடிக்கடி 1ம் எதிரி என்னை வற்புறுத்தி வந்ததால் நானும் அவரை
காதலித்து வந்தேன்.”

Thereafter, PW1 would state that the appellant forced her to have sexual intercourse and that she had sexual intercourse with the appellant on more than four or five occasions; that the said relationship was known to the neighbours and thereafter, when she asked the appellant to marry her, he refused stating that she was not educated.

7. The evidence of the victim suggests that the consent given by her for the sexual intercourse is not due to any misrepresentation or alleged false promise made by the appellant. Her further evidence that the appellant forcibly had sexual intercourse with her, has been disbelieved by the trial Court.



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WEB COPY 8. As stated earlier, admittedly, the victim had physical relationship with the appellant on more than five occasions and there is nothing in the evidence to suggest that she gave consent only due to the promise of marriage. She was in love relationship with the appellant and therefore, this Court is of the view that the offence of cheating is not made out in the facts and circumstances of the case. In this regard, it is useful to refer to the observation made by the Hon'ble Supreme Court in ***Deepak Gulati v. State of Haryana*** reported in [(2013) 7 SCC 675], which is extracted hereunder.

“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 for 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.”

9. In the instant case, even assuming that the appellant had promised



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that he would marry the victim, the consent cannot be said to be only due to the alleged false promise. The consent was due to her close acquaintance with the appellant and therefore, for the aforesaid reasons, the finding of the trial Court holding the appellant guilty for the offence under Section 417 of IPC, is liable to be set aside.

10. In the result, this Criminal Appeal is allowed and the appellant/A1 is acquitted of the charge u/s.417 of IPC and he is directed to be set at liberty forthwith, unless his conviction is required in connection with any other case. The conviction and sentence passed in S.C.No.163 of 2016 on the file of the learned Sessions Judge, Mahalir Neethi Mandram [Fast Track Mahila Court], Villupuram, *vide* judgment dated 26.09.2017, are set aside. Fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

07.12.2023

Index : yes/no
Neutral citation : yes/no
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To

1. The Sessions Judge,
Mahalir Neethi Mandram,
Fast Track Mahila Court, Villupuram.

2. The Inspector of Police,
All Women Police Station,
Villupuram.

3. The Public Prosecutor,
High Court, Madras

SUNDER MOHAN,J.

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