



Criminal Appeal No.687 of 2017

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Dated : 06.12.2023

**CORAM**

**THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

Criminal Appeal No.687 of 2017

Rajesh

...Appellant/Accused No.1

Vs.

The State Represented by  
Inspector of Police,  
All Women Police Station,  
Gingee, Villupuram District.  
Crime No.04 of 2015.

...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.238 of 2016 dated 06.10.2017.

|                |   |                                                     |
|----------------|---|-----------------------------------------------------|
| For Appellant  | : | Mr.C.Prabakaran                                     |
| For Respondent | : | Mr.A.Gokulakrishnan<br>Additional Public Prosecutor |



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### **JUDGMENT**

The appellant has challenged the Judgment of conviction and sentence imposed on him dated 06.10.2017 passed by the learned Sessions Judge, Magalir Neethimandram, (Fast Track Court), Villpuram in S.C.No.238 of 2016. The appellant was convicted and sentenced by the Trial Court as follows:-

| <i><b>Conviction</b></i>               | <i><b>Sentence</b></i>                                                                                                                     |
|----------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| Sections 376, 294(b) and 506(i) of IPC | Accused No.1 is 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 the appellant were classmates in 12th Standard in Alampondi Government High Secondary School in the year 2010; that thereafter, the victim discontinued her studies; that the appellant promised the victim that he would marry her and allow her to pursue higher studies; that the victim was working in a textile shop in Chennai; that whenever she went to her village the 1st accused/Appellant had sexual intercourse with her on several occasions; that when the victim came to know that the 1st accused/Appellant decided to



marry another girl, she confronted the appellant; that the parents of victim convened Panchayat and in the Panchayat it was decided that both of them should get married; and that thereafter the parents of the victim went to the house of the appellant and asked him to marry her but the 1st accused/Appellant refused.

(ii). It is the further case of the prosecution that on 26.03.2015 the victim gave a complaint and the respondent police registered the same in CSR.61 of 2015 and that on 30.03.2015 an FIR (Ex.P.7) was registered in Crime No.04 of 2015 for the offences punishable under sections.417,376,294(b),506(i) of IPC. P.W.10 the Inspector of Police took up the case for investigation and proceeded to the place of occurrence and prepared Observation Mahazar and Rough sketch (Ex.P.2 and Ex.P.8). He examined other witnesses and sent the victim and the appellant for medical examination. After medical examination, the Inspector of Police (P.W.10) filed a final report before the Judicial Magistrate, Gingee for the offences under sections.417,376,294(b),506(i) of IPC, against the appellant and Accused No.2/father of the appellant.



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(iii) On appearance of the accused, 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.238 of 2016 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, 417, 294(b) and 506(i) of IPC as against this appellant and when questioned, the appellant pleaded 'not guilty'.

(iv) To prove the case, the prosecution examined 10 witnesses and marked 14 exhibits. When the appellant was questioned u/s.313 of Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. The appellant had examined himself as D.W.1.

(v) The trial court after considering the oral and documentary evidence found that the appellant's father i.e., Accused No.2 was not guilty of the offences under sections 506(i) & 417 of IPC and the appellant was not found guilty of the offences under section 376, 294(b) and 506(i) of IPC. The trial Court however found the appellant guilty of the offence under



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section 417 of IPC and sentenced him to undergo one year Rigorous Imprisonment and to pay a fine of Rs.50,000/-, in default, to undergo Rigorous Imprisonment for Three months.

3. The learned counsel for the appellant submitted that the evidence of P.W.1 would show that the consent for sexual intercourse given by the victim to the appellant is not due to the alleged false promise and the victim herself had stated that the appellant would not agree for marriage and therefore refused for sexual relationship, initially. The learned counsel further pointed out the evidence of the victim that the appellant forcibly had sexual intercourse with her. This is contrary to the prosecution case that the victim was deceived by the appellant by way of false promise. The learned counsel for the appellant further submitted that the evidence of Appellant (D.W.1) would show that there was no panchayat held as stated by the prosecution.



4. The learned Additional Public Prosecutor submitted per contra submitted that the trial Court had rightly convicted the appellant for the offence under section 417 of IPC and there is no interference called for with the said judgement of the trial Court.

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. On perusal of the records, this court finds that the victim examined as P.W.1 has spoken about the relationship between her and the appellant. She had also stated about the holding of panchayat when the appellant refused to marry her. P.W.2 and P.W.3 have also spoken about the Panchayat.

7. The evidence of P.W.2 and P.W.3 about the relationship of the



victim and the appellant, is hearsay. P.W.6,7 and 8 speak about the Panchayat, said to have been held when the appellant refused to marry the victim. The other witnesses are official witnesses and the doctors who had examined the victim and the appellant.

8. From the above narration of facts it could be seen that the prosecution sought to prove the offence under section 417 of IPC through the evidence of victim P.W.1. The evidence of victim (P.W.1) would show that the victim and the appellant were classmates in school from 1<sup>st</sup> standard to 12<sup>th</sup> standard. They were close to each other. The evidence also suggest that the appellant was in regular touch with the victim, even after she went to Chennai for job. P.W.1 would further state that when the appellant insisted on getting married to the victim she refused stating that the appellant's parents would not agree for the same; and that thereafter, the appellant forcibly had sexual intercourse with the victim. However, the version of P.W.1 with regard to forcible sexual intercourse has been disbelieved by the trial Court.



9. From the overall reading of the evidence of P.W.1, it is clear that the sexual relationship between the victim and the appellant was not due to the alleged false promise made by the appellant with regard to marriage. The victim was aware of the consequences of the relationship that she had with the appellant. It is trite law unless the victim had given consent for sexual intercourse due to false promise, the offence of deception/cheating would not be made out. 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:

*“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*



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*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."*

10. This is the case where the agreement to have physical relationship was due to the acquaintance of the victim with the appellant and not solely on account of any alleged misrepresentation by the appellant. Considering the fact that the relationship was consensual and the consent given by the victim for the sexual relationship is not 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/1<sup>st</sup> accused. Further, the prosecution has failed to establish the guilt of the appellant/1<sup>st</sup> accused beyond reasonable doubt. Hence, the judgement of conviction and sentence is liable to be set aside.



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11. In the result, this Criminal Appeal is allowed. The Judgement of conviction passed in S.C.No.238 of 2016, dated 06.10.2017 on the file of Sessions Judge, Magalir Neethimandram, (Fast Track Court), Villupuram is set aside. The appellant/1<sup>st</sup> accused 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.

**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,  
Gingee, Villupuram District.
3. The Public Prosecutor,  
High Court, Madras.



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**SUNDER MOHAN, J.**

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