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Crl.R.C.No.1033 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2024

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.R.C.No.1033 of 2020

Arun

... Petitioner

Versus

State rep by the
Inspector of Police,
All women Police Station,
Pollachi.
(Crime No.31 of 2010)

... Respondent

Criminal Revision Case is filed under Section 397 r/w.401 of Cr.P.C. to call for the records and set aside the judgment in Criminal Appeal No.338 of 2017 dated 04.09.2020 on the file of the learned V Additional District and Sessions Judge, Coimbatore in confirming the judgment made in C.C.No.176 of 2011, dated 05.10.2017 on the file of the learned Judicial Magistrate No.I, Pollachi.

For Petitioner
For Respondent

: Mr. I. Abrar Mohamed Abdullah
: Mr. S. Vinoth Kumar
Government Advocate (Crl.side)

ORDER

The Criminal Revision Case has been filed to set aside the judgment of the learned V Additional District and Sessions Judge, Coimbatore in C.A.No.338 of 2017, dated 04.09.2020 and confirming the judgment of the



learned Judicial Magistrate No.I, Pollachi in C.C.No.176 of 2011, dated 05.10.2017.

2. The brief facts, which are necessary for appreciation and consideration in this Revision, are as follows:

2.1. P.W-1 father of the victim was employed as Security Guard in the plantation of P.W-7 and residing with his family in the same plantation. The daughter of P.W-1 is the victim in this case. She was in love with the Accused. The Accused is the Revision Petitioner before this Court. In the Course of love, the Accused is alleged to have picked up the daughter of P.W-1 from her place of employment and dropped her near her house. In the course of such love affair, he is alleged to have taken her to many places. On promising to marry her, he demanded sex from the daughter of P.W-1. She resisted on the ground that till marriage she will not consent for sex. On 18.03.2010, he had dropped her on a two wheeler bearing Registration No. TN-41-Q-1924 (Hero Honda Splendor) belonging to his friend by name Bill Moorthy and he had informed her that he will visit the plantation in the intervening night of 18.03.2010 and 19.03.2010 i.e., early morning on 19.03.2010 and they will spend time together in the plantation. Early in the morning on 19.03.2010 when P.W-1 woke up for answering nature's call, he found his daughter missing from home. Therefore, P.W-1 along with his wife went in search of



their daughter out of the house and inside the plantation. To their shock, they found their daughter in a compromising position with the Accused. The Accused was employed as Driver in the same plantation under P.W-7 the owner of the Plantation. On seeing P.W-1, the Accused attempted to run away P.W-1 raised alarm to catch hold of him. The staff of the Plantation hearing the commotion caught hold of the Accused. Immediately, the message was sent by P.W-1 to P.W-8 auditor of P.W-7. They detained the Accused in the plantation. The father of the Accused was ill at that time. Therefore, the mother, elder sister, paternal uncle of the Accused came to the plantation and given an undertaking that they will marry the daughter of P.W-1 to the Accused and they took time on the pretext that the marriage of the elder sister of the Accused was fixed and after her marriage within three months they will perform the marriage of the Accused with the daughter of P.W-1. They had given a written undertaking on the insistence of the daughter of P.W-1 to register a marriage and subsequently can perform the marriage after the marriage of the sister of the Accused, the Accused and his family members evaded stating that if it is registered it will be published for obtaining objections from the members of the public. Therefore, it cannot be registered. As an alternative, in the meeting held in the plantation by P.W-7 owner of the plantation, P.W-8 auditor of P.W-7, P.W-1 father of victim and the elders in the family of the Accused, they had conceded to register it with the Notary



Public. Accordingly, they had given an undertaking before the Notary Public that they will perform the marriage of the daughter of P.W-1 with the Accused after the marriage of the sister of the Accused.

2.2. In the meanwhile, the daughter of P.W-1 had given a complaint with All Women Police Station, Pollachi regarding the attempt of the Accused to wriggle out of the situation. The Inspector of Police, All Women Police Station, Pollachi, conducted an enquiry, summoned the Accused and his elders in the family. They conceded that they will conduct the marriage of the Accused with the daughter of P.W-1 and took time. Also they pleaded that the case need not be registered that they will perform the marriage of the Accused with the daughter of P.W-1. After the marriage of the sister of the Accused, the mother, elder sister of Accused, the uncle of the Accused who had given undertaking to P.W-7, P.W-1 and P.W-8 had withdrawn from the undertaking given. The mother of the Accused also stated that they had given the elder sister with 50 sovereigns of gold and married her to a person employed in the United Kingdom. Therefore, they cannot permit the Accused to marry the daughter of P.W-1 and family P.W-1 cannot afford dowry to the status of the Accused. Therefore, the daughter of P.W-1 given a complaint to the Inspector of Police, All Women Police Station, Pollachi which was registered as CSR and conducted enquiry. This time, the elders of the family of the Accused



stoutly objected to marry the Accused to the daughter of P.W-1. Therefore, the case was registered for the offence under Section 417 of IPC against the Accused. The daughter of P.W-1 felt ashamed to face the society as she had developed pregnant due to the conduct of the Accused and therefore, she committed suicide pending trial. After the investigation, the Inspector of Police, All Women Police Station had laid final report before the learned Judicial Magistrate No.1, Pollachi under Section 417 of IPC. The Accused was arrested and remanded. Subsequently, granted bail. On summons, the Accused appeared before the learned trial Court/Court of the learned Judicial Magistrate No.I, Pollachi. The Accused was furnished with copies under Section 207 of Cr.P.C. When the Accused was questioned, he denied the charges. Therefore, trial was ordered. During trial, the Prosecution examined witnesses as P.W-1 to P.W-10 and marked documents as Ex.P-1 to Ex.P-6. After completion of the Prosecution evidence, the Accused was examined under Section 313 of Cr.P.C. regarding the incriminating materials available against him through the witnesses P.W-1 to P.W-10 and documents under Ex.P-1 to Ex.P-6. The Accused denied the incriminating evidence against him.

2.3. After hearing the Prosecution and the learned Counsel for the Accused, the learned Judicial Magistrate No.I, Pollachi, had by judgment dated 05.10.2017 in C.C.No.176 of 2011 convicted the Accused for offence under



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Section 417 of IPC. The Accused was sentenced to undergo rigorous imprisonment of one year and to pay fine of Rs.10,000/-, in default, to undergo simple imprisonment for three months. The period already undergone in detention was set off under Section 428 of Cr.P.C.

2.4. Aggrieved by the judgment of conviction recorded by the learned Judicial Magistrate No.I, Pollachi against the Accused, the Accused had preferred Appeal in Crl.A.No.338 of 2017. After hearing the arguments of the Appellant and the learned Public Prosecutor for the State, the learned V Additional District and Sessions Judge, Coimbatore by judgment dated 04.09.2020 dismissed the Criminal Appeal.

3. Aggrieved by the judgment of the learned V Additional District and Sessions Judge, Coimbatore in dismissing the Appeal, the Accused before the learned Judicial Magistrate No.I, Pollachi and the Appellant in Crl.A.No.338 of 2017 before the learned V Additional District and Sessions Judge, Coimbatore, had preferred this Criminal Appeal seeking to set aside the judgment of conviction recorded by the learned Judicial Magistrate No.I, Pollachi and confirmed by the learned V Additional District and Sessions Judge, Coimbatore.



4. The learned Counsel for the Revision Petitioner submitted that the Accused before the trial Court, the learned Judicial Magistrate No.I, Pollachi and the Appellant before the Appellate Court, the learned V Additional District and Sessions Judge, Coimbatore, is the Revision Petitioner herein. He further submitted that the trial Court had erred in relying on the written undertaking given by the Accused which was not marked in the trial. The learned Counsel for the Revision Petitioner invited the attention of this Court to the depositions of the materials witnesses. P.W-1/Father of the victim, P.W-6/Sister of the victim. P.W-7/Sambathkumar, P.W-8/the Accountant of P.W-7 and the Plantation, where the alleged occurrence between the Accused and the victim took place as per the evidence of P.W-1.

5. It was the submission of the learned Counsel for the Revision Petitioner that there were contradictions in the evidence between the depositions of P.W-7 and P.W-8. P.W-7/Sampath kumar in his evidence stated that he was informed immediately after the occurrence, but he came to the Plantation only on the next day morning by 8 a.m. P.W-8 stated that as he came to the Plantation early hours, he only gave message to P.W-7. Further he stated that in the evidence of P.W-7, an undertaking was recorded from the relatives of the Accused, whereas the Investigation officer/P.W-10 had stated that she had not obtained any undertaking or seized any undertaking from P.W-



1. P.W-8/Accountant of P.W-7 in his evidence had stated that after three days after the alleged occurrence, a written undertaking was obtained from the Accused in the office of the Notary Public which was not been marked as material document in the trial. Whereas the learned trial Judge had discussed the said undertaking given by the Accused and arrived at a conclusion that the Accused had committed the offence under Section 417 of I.P.C and accordingly convicted for one year rigorous imprisonment and to pay a fine of Rs.5000/-.

6. Aggrieved by the same, the Accused preferred Criminal Appeal before the learned V Additional District and Sessions Judge, Coimbatore. The learned V Additional District and Sessions Judge, Coimbatore, after hearing the arguments on both sides had by judgment dated 04.09.2020 in C.A.No.338 of 2017 dismissed the Appeal. He had also relied on the very same document stating that there had been lapses by the trial Court in marking the document. It was the submission of the learned Counsel for the Revision Petitioner that the said undertaking was alleged to have been given by the Accused. Therefore not marked during trial which had been distinguished by the learned Appellate Judge as marked through P.W-1 and P.W-3 and the learned V Additional District and Sessions Judge, Coimbatore had dismissed the Appeal.



7. It was the contention of the learned Counsel for the Revision Petitioner that the conviction recorded by the trial Judge and the Appeal dismissed by the learned V Additional District and Sessions Judge, Coimbatore are erroneous and is to be set aside and this revision has to be allowed.

8. In support of his contention, the learned Counsel for the Revision Petitioner relied on the reported ruling in the case of ***Thilak Raj -vs- State of H.P reported in 2016 (4 SCC) Page 140*** in Page 17 to 20 and seeks to set aside the judgment of conviction recorded by the learned Judicial Magistrate No.I, Pollachi and the learned V Additional District and Sessions Judge, Coimbatore in dismissing the Appeal as perverse.

9. The learned Government Advocate (Crl. Side) vehemently objected to the submissions of the learned Counsel for the Revision Petitioner stating that the trial Court on the basis of appreciation of evidence of P.W-1 to P.W-10 and Ex.P-1 to Ex.P-8 had recorded the finding which was confirmed in Appeal. This Court as Revision Court cannot re-assess the evidence and there is no merit in this Revision.

10. The learned Government Advocate (Crl.side) also invited the attention of this Court to Section 90 of I.P.C which deals with consent in this



case. There is evidence that the Accused had obtained consent of the victim under the pretext of promising to marry her. The discussion of the evidence relates to the consent given by the victim to the Accused and the promise given to P.W-1, P.W-7 and P.W-8 by the Accused in the presence of his relatives to marry the daughter of P.W-1 after this incident after the marriage of his sister.

11. It is the further submission of the learned Government Advocate (Crl.side) that the Victim felt that she was exploited by the Accused and not kept his promise. Therefore, she committed suicide. Therefore, the victim was not examined before the trial Court and the contents of the same was deposed by P.W-1. The evidence of P.W-1 corroborated by P.W-7 and P.W-8. The owner of the Plantation, where P.W-1 was residing along with his family in the Plantation, where the alleged occurrence took place between Victim and the Accused and it was corroborated by P.W-8.

12. The learned Government Advocate (Crl.side) further submitted that the learned V Additional District and Sessions Judge, Coimbatore had on consideration of the submission of the learned Counsel for the Revision Petitioner distinguished the fact that the undertaking given by the Accused and complaint given by the Victim. There were two Ex.P-1 which had been distinguished by the learned V Additional District and Sessions Judge,



Coimbatore in his judgment and had set right and had been attracted the question of the charge against the Accused was proved. Thereby the appeal was dismissed. This Revision lacks merit and is to be dismissed.

Point for Consideration

Whether the judgment of conviction recorded by the learned Judicial Magistrate No.I, Pollachi in C.C.No.176 of 2011 dated 05.10.2017 and confirmed by the learned V Additional District and Sessions Judge, Coimbatore in C.A.No.338 of 2017 dated 04.09.2020 are to be set aside as perverse?

13. Heard the learned Counsel for the Revision Petitioner, Mr.I.Abrar Mohamed Abdullah and the learned Government Advocate (Crl.side) Mr.S.Vinodh Kumar. Perused the judgment of learned Judicial Magistrate No.I, Pollachi in C.C.No.176 of 2011 and the judgment of the learned V Additional District and Sessions Judge, Coimbatore in C.A.No.338 of 2017.

14. The submission of the learned Counsel for the Revision Petitioner cannot be considered by this Court. On Perusal of the judgment of the learned Judicial Magistrate No.I, Pollachi in C.C.No.176 of 2011, it was found that the document, the undertaking given by the Accused was not marked as per the index of the documents in the end portion of the judgment. It was missing. the learned Judge had discussed the entire materials in the undertaking letter. Also



the learned Judicial Magistrate No.I, Pollachi, had stated that at the time of marking the document the defence had not objected to the same or sought expert opinion regarding signature on the letter of undertaking. There is discussion in the letter of the undertaking. There was confusion in the judgment regarding two letters regarding Ex.P-1. Two Ex.P-1 had been marked. This was found out by the learned Appellate Judge. Ex.P-1 was the Potency certificate issued by P.W-2/Doctor Meena, Assistant Professor General Surgery who had obtained opinion from the Psychiatrist as well as the Urologist regarding the potency of the Accused.

15. The learned Judicial Magistrate No.I, Pollachi in his judgment in C.C.No.176 of 2021 dated 05.10.2017 had discussed about the undertaking given by the Accused and his relatives. The complaint given by the victim was marked as Ex.P-4 through P.W-1/the father of the victim. The learned Judicial Magistrate No.I, Pollachi had in the course of the discussion in Page 12 of the judgment had discussed about the Ex.P-1 as the letter of undertaking given by the Accused in the presence of the P.W-7/Sampath and P.W-8/Sethupathi. Further the learned Judicial Magistrate No.I, Pollachi had observed that the Accused had not disputed the signature in Ex.P-1. Whereas by inadvertently in the list of documents, this letter of undertaking/Ex.P-1 was left out.



16. The learned Appellate Judge has all the powers of the trial Judge.

On perusal of the entire materials and the original records, the learned Appellate Judge had found out that original Ex.P-1 was marked twice. One was the letter of undertaking given by the Accused to P.W-7 and P.W-8 in the presence of the P.W-1/the father of the victim and the victim. Therefore the learned V Additional District and Sessions Judge, Coimbatore had set right the defect by observing in his judgment in C.A.No.338 of 2017 in Paragraph 13 as Ex.P-2A. Further the learned Judge had observed that Authorised Affidavit alleged to have been given by the Accused was not produced by the Prosecution.

17. The submission of the learned Counsel for the Revision Petitioner that the said document was not marked. Even if accepted, there was evidence before the Court that the Accused was caught red handed in compromising position in the Plantation belonging to P.W-7/Sampath and he was informed of the same by P.W-7/Sampath in his evidence had deposed that P.W-8 his Accountant informed him and went to the Plantation the next day morning. As rightly pointed out by the learned Counsel for the Revision Petitioner that there were minor contradictions. P.W-1/father of the victim, claimed that P.W-7/the owner of the Plantation Sampath and P.W-8/Sethupathi/the Accountant of the Plantation came to the Plantation in the intervening early morning hours, after



the Accused was detained by the staff of the Poultry Farm which was situated inside the same plantation, the Accused slipped and fell down thereby suffered injuries. As per the evidence of P.W-1, P.W-7 and P.W-8 came to the Plantation immediately. But as per the evidence of P.W-7, though he had received intimation immediately, he came to the Plantation, the next day morning only. That was the contradiction.

18. The fact that there was a panchayat convened before the elders of the family of the Accused and the Accused and the elders gave an undertaking and given a promise to marry the victim after the marriage of the sister of the Accused. And subsequently he did not keep up his promise were all corroborated by P.W-7 and P.W-8. There was contradiction only with regard to the fact that the visit of P.W-7 in the intervening night. Rest of the fact had been cogently corroborated by P.W-7 and P.W-8 which was upheld. The conviction recorded by the learned Judicial Magistrate No.I, Pollachi was upheld by the learned V Additional District and Sessions Judge, Coimbatore. Only in the Appeal, the said document had been marked as Ex.P-2A. As the learned V Additional District and Sessions Judge found out that the contents of the agreement had been deposed by the P.W-1, P.W-7 and P.W-8. Therefore, he had marked it. That cannot be denied or rejected. As the learned Judicial Magistrate No.I, Pollachi in the discussion of evidence by the learned Judicial



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Magistrate No.I, Pollachi is without any basis. Usually in criminal cases, the oral evidence alone is considered. Rarely documentary evidence is considered.

Here the question is the letter of undertaking given by the Accused. The learned Judicial Magistrate No.I, Pollachi claims that the Accused did not object the marking of the same and discussed about the letter of undertaking given by the Accused and attested by his acquaintance and friends and the copy of which was enclosed in the typed set. When the same was raised in the Appeal, the learned V Additional District and Sessions Judge, Coimbatore had on perusal of the entire original records, found out that the document had been already marked as Ex.P-1. Therefore, he had distinguished it as Ex.P-2A. Even if the same is ignored, the contents of the letter was discussed by P.W-7 and P.W-8 will be sufficient to corroborate the evidence of P.W-1. Even otherwise there was evidence through P.W-6/Sister of the victim that the victim died due to the feeling of rejection by the Accused after exploiting her sexually under the promise of marriage and subsequently ditching her. Therefore, the contention of the Revision Petitioner that the victim was not examined as witness. The Court can draw adverse inference from the absence of the victim before the Court and from the evidence of P.W-1, P.W-6 to P.W-8 that the victim was not alive on the date of the trial. The Accused did not keep up the promise. The Accused indulged in sexual intercourse under the promise of marriage and later did not keep up his promise which naturally attracts Section



417 of I.P.C. There was no perversity in the reasoning of the learned Judicial

Magistrate No.I, Pollachi in recording the conviction against the Accused.

Similarly, the non marking of the letter of undertaking was raised in the Appeal, the learned V Additional District and Sessions Judge, Coimbatore on appreciation of evidence on perusal of the original records traced out the undertaking which was already marked as Ex.P-1 which was later marked as Ex.P-2A. Also he had discussed the contents of the same which was already discussed by the learned Judicial Magistrate No.I, Pollachi in recording the conviction.

19. The evidence of P.W-1 proved through P.W-6/sister of the victim who was not direct witness but was a hearsay witness from the parents of the victim. P.W-7 and P.W-8/owner of the Plantation corroborated in detail about the development till the death of the victim. Therefore, the finding of the fact on appreciation of evidence by the both Courts concurrently holding the Accused guilty for the offences cannot be re-assessed by the Revision Court as pointed by the learned Government Advocate (Crl.side), Mr.Vinoth Kumar. Therefore the submission of the learned Counsel for the Revision Petitioner is rejected. The facts of the reported ruling relied by the learned Counsel for the Revision Petitioner was also not helpful to the case of the Revision Petitioner.



20. As rightly pointed out by the learned Government Advocate (CrI.side), Section 90 of I.P.C., clearly explains regarding the consent. The submission of the learned Counsel for the Revision Petitioner in the reported ruling in the case of *Thilak Raj -vs- State of H.P* reported in **2016 4 (SCC 140)**, the facts were different. There, the victim was examined as a Prosecutrix. Here the Prosecutrix ended her life due to rejection by the Accused which prompted the case. The evidence of the P.W-1, P.W-7 and P.W-8 who were direct witnesses to the immediate conduct of the Accused after getting caught red handed immediately after the sexual intercourse, proves the charge against the Accused beyond reasonable doubt. Even if the argument of the learned Counsel for the Revision Petitioner was accepted, the letter of undertaking given by him need not be considered. The conduct of the Accused when caught, giving a promise to the P.W-1 ,the Victim as well as the P.W-7 and P.W-8, that he will marry her subsequent to the marriage of his sister. Not keeping up his promise itself will be sufficient to hold that he had indulged in sexual intercourse, even though consensual sex, the Victim was alleged to have ended her life after the incident when the Accused is alleged to have ditched her as per evidence before the trial Court. Therefore, the expression 'Cheating' is attracted.

21. In the light of the above discussion, the point for consideration is



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answered against the Revision Petitioner and in favour of the Prosecution. The judgment of conviction recorded by the learned Judicial Magistrate No.I, Pollachi in C.C.No.176 of 2011, dated 05.10.2017 and confirmed in Appeal by the learned V Additional District and Sessions Judge, Coimbatore were found proper.

In the result, **the Criminal Revision is dismissed.** The Revision Petitioner is directed to surrender before the learned Judicial Magistrate No.I, Pollachi within 15 days from the date of uploading of this order in the website of this Court.

The learned Judicial Magistrate-I, Pollachi is directed to issue warrant to secure the Accused in C.C.No.176 of 2011.

The Respondent Police/All Women Police Station, Pollachi is directed to secure the Accused and produce him before the Court to undergo the period of sentence imposed by the trial Court and confirmed in Appeal and in Revision.

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Index : Yes/No

Speaking/Non-speaking order



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SATHI KUMAR SUKUMARA KURUP, J.,

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To

1. The Judicial Magistrate No.I,
Pollachi.
2. The Public Prosecutor
Madras High Court
3. The Section Officer, VR Records,
High Court, Chennai.

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