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Crl.A.No.712 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2024

CORAM:
THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.A.No.712 of 2017

K.Maheswari

...Victim/Appellant

vs.

The State
Represented by Inspector of Police,
All Women Police Station,
Ulundurpet
(Crime No.8 of 2012)

...Respondent

Prayer: Criminal Appeal filed under Section 372 of Code of Criminal Procedure, 1973, to set aside the Order of acquittal in S.C.No.196 of 2013 dated 23.02.2016 on the file of the learned Sessions Judge, Mahila Court, Villupuram, and thereby allow the appeal.

For Appellant : M/s.N.Suresh

For Respondent: Mr.E.Raj Thilak
Additional Public Prosecutor

JUDGMENT

Mr.N.Suresh, the learned counsel for the appellant submitted that he has no instructions. This Court finds that the appeal has not been admitted yet. The appeal has also been filed without impleading the accused. Since the learned



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counsel for the appellant has reported no instruction, this Court examined the judgment to ascertain if the judgment of acquittal has to be reversed.

2(i). The accused was charged for the offences under Sections 376 and 417 of the Indian Penal Code. The allegation is that the accused had developed friendship with the appellant and used to take her in his bike to drop her at her house regularly; that on 01.02.2012 at about 11.00 p.m., taking advantage of the fact that the appellant was alone in her home, the accused committed the offence of rape; that he further promised the appellant that he would marry her and hence, committed the offence under Section 417 of the IPC also.

(ii). The victim/appellant gave a complaint on 03.10.2012 to P.W.9/Sub Inspector of Police, who had registered the First Information Report for the offences under Sections 417 and 376 of the IPC. The FIR was marked as Ex.P6.

(iii). P.W.10/Inspector of Police took up the investigation, and after the examination of all witnesses, he filed the final report for the offences under Sections 417 and 376 of the IPC.

(iv). It is further the case of the prosecution that the victim/appellant



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became pregnant. The accused was the biological father of the child born to the victim.

(v) P.W.1 is the victim. P.W.2 is the father of the victim. P.W.3 is the mother of the victim. P.W.4 is known to both the accused and the appellant/victim and has seen them together. P.W.4 turned hostile. P.W.5 is also known to both the appellant/victim and the accused. P.W.5 is the Mahazar Witness. P.W.6 is the Mahazar Witness. P.W.7 is the doctor who examined the victim and issued a medical report [Ex.P4]. P.W.8 is another doctor who examined the accused and issued a medical report/[Ex.P5]. As stated earlier, P.W.9 registered the FIR. P.W.10 is the investigating officer.

5. The learned trial Judge, after taking into consideration the oral and documentary evidence, found that there was consent, and hence, the offence of Section 376 of the IPC was not made out; that the consent was not obtained on a false promise of marriage; that P.W.1 had admitted that the accused did not have a forcible relationship. The learned Judge had observed that the physical relationship was admitted and that consent was not obtained by a misconception



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of fact. Though there was a DNA report suggesting that the accused was the biological father in the absence of evidence to establish the ingredients of Section 375 of the IPC, the trial Court was justified in acquitting the accused. The trial Court also found that the accused could not have made a false promise that he would marry the victim since the victim was aware of the fact that the accused was a married man as she was a neighbour.

6. The view taken by the trial Court is justified in law and on facts. We see no reason to interfere with the judgment of the acquittal. Hence, the appeal is dismissed. The Judgment of the trial Court in S.C.No.196 of 2013 passed by the learned Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court) Villupuram, dated 23.02.2016 is confirmed.

15.03.2024

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

1.The Sessions Judge, Mahila Court,



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Villupuram,

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

3.The Public Prosecutor,
High Court, Madras,
Chennai – 600 104.

SUNDER MOHAN,J.

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