



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on	14.07.2023
Judgment Pronounced on	29.05.2024

Coram:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl. Appeal No. 88 of 2017

Shainshah .. Appellant

-Vs-

State rep. by
Inspector of Police,
W5.All Women Police Station,
Vepery, Chennai – 600 007.
(W5 P.S. Crime No.1 of 2013) .. Respondent

Criminal Appeal filed under Section 374 Cr.P.C to set aside the conviction and sentences of imprisonment and fine imposed on the Appellant/Accused by the learned Sessions Judge, Fast Track Mahila Court, Chennai in S.C.No.5 of 2014 dated 23.12.2016 and acquit the Appellant herein from the said charges.

For Appellant .. Mr.C.Prabakaran
For Respondent .. Mrs.G.V.Kasthuri
Addl. Public Prosecutor

JUDGMENT

This Criminal Appeal has been filed to set aside the Judgment of the learned Sessions Judge, Fast Track Mahila Court, Chennai in S.C.No.5 of 2014, dated 23.12.2016.

2.The brief facts, which are necessary for proper appreciation of the



case, are as follows:-

2.1.The Complainant/Victim/Prosecutrix is residing at No.18, Sathasivam Street, Purasaiwalkam, along with her parents and elder brother. There was love affair between the Victim/Prosecutrix and Accused who is residing nearer to her residence. The victim/Prosecutrix used to call the Accused often to phone No.9789950797 from Phone Nos.99401046620 and 9003278867 kept in a Petty Shop. At that time, the Accused told her to come to “Muttukadai Lane” at about 7.00 p.m. daily where they used to meet in a vacant house. Thereafter, the Accused promised her to marry. The Accused also enticed her by stating that he would marry her only if she commits mistakes along with him and had coitus with her several times and because of this, she became pregnant. When the victim/Prosecutrix told the Accused to marry her, he refused to marry her and threatened to kill her and thus cheated her. Thereby, the Inspector of Police, W5 All Women Police Station, Vepery, Chennai has filed charge sheet against the Accused for the offences under Sections 376, 417 and 506 (ii) of IPC.

2.2.The learned II Metropolitan Magistrate, Saidapet, Chennai, was pleased to take up the final report filed by the Inspector of Police as P.R.C.No.138 of 2013. The case was opened. On serving copies of the



records under Section 207 of Cr.P.C. to the Accused on his appearance, and on perusal of the records, the learned II Metropolitan Magistrate committed the above said case to the learned Principal Judge, Chennai, for disposal according to law.

2.3.The learned Principal Judge, Chennai, on receipt of the records, was pleased to take up the case on his file on 07.01.2014. and assigned it as S.C.No.5 of 2014 and made over to the Fast Track Mahila Court for disposal in accordance with law.

2.4.The learned Session Judge, Fast Track Mahila Court on receipt of records on 29.01.2014 and on appearance of the Accused and his Advocate, framed the charges on 17.02.2014 for the offences under Sections 376, 417 and 506(ii) of IPC on the basis of the available materials and when the Accused was questioned, the denied as false and claimed to be tried. In order to bring home the guilt of the Accused, the Prosecution had examined 15 witnesses out of 24 witnesses cited in the list of witnesses. To substantiate the Prosecution case, P.W-1 to P.W-15 were examined and Ex.P-1 to P-13 documents were marked.



2.5. On appreciation of evidence, the learned Session Judge, Fast Track Mahila Court, Chennai, by judgment dated 23.12.2016 in S.C.No.5 of 2014 convicted the Accused for offences under Sections 376 and 417 of IPC and acquitted the Accused for offences under Sections 506(ii) of IPC. The Accused was sentenced to undergo Rigorous Imprisonment of 7 years under Section 376 and to pay a fine of Rs.25,000/-, in default, to undergo 6 months Simple Imprisonment. For the offences under Section 417 of IPC the Accused was sentenced to undergo one year Rigorous Imprisonment. The period already undergone in detention was set off under Section 428 of Cr.P.C.

3. Aggrieved by the same, the Accused had preferred this Criminal Appeal.

4. The learned Counsel for the Appellant submitted his arguments. The learned Counsel for the Appellant invited the attention of this Court to the charges framed by the learned Sessions Judge, Fast Track Mahila Court, Chennai, under Section 376, 417 and 506 (ii) of IPC. The learned Counsel for the Appellant submitted that this is not a case of rape as projected by the Prosecution. The Accused was aged 22 years and the victim was aged 20



years. Therefore, she was competent to give consent. They were in love. In the course of love, they indulged in sexual intercourse and the victim/Prosecutrix became pregnant. It is the case of the Prosecutrix that the Accused represented that he will marry her only after involving sexual intercourse and she becomes pregnant, both families will accept their proposal for marriage since the Accused is a Muslim and the victim/Prosecutrix is a Christian. Both families may agree only after she becomes pregnant. This is the version of the Prosecutrix. This cannot be believed. She was in relationship with the Accused and in the course of relationship, she became pregnant. She was aware of the consequences of indulging in sexual intercourse before marriage.

5. The learned Counsel for the Appellant invited the attention of this Court to the evidence of the Prosecutrix as P.W-1 that the evidence of the mother of the Prosecutrix as P.W-2, the elder maternal aunt of the Prosecutrix as P.W-3, the elder maternal uncle of the Prosecutrix as P.W-4. P.W-5 is the Panchayathar, local person who is alleged to have mediated. P.W-6 is the mahazar witness. P.W-7 is also the witness regarding the claim of the Prosecution that the Prosecutrix used to contact the Accused from the Public Call Office on the mobile phone of the Accused from the shop of



P.W-7. P.W-8 is also a neighbour Velankanni. P.W-9 is the mother of the Accused who was treated as hostile. P.W-10 Edwin is a mahazar witness.

P.W-11 Kumari who turned hostile. P.W-12 Dr.Thiruselvi who had examined the Prosecutrix/P.W-1 and issued certificate under Ex.P-6. P.W-13 is Dr.Saravanan who had examined the Accused and issued Ex.P-7 potency certificate. P.W-14 is Dr.Balamurugan who had examined the Accused and issued Ex.P-9 fitness certificate regarding fit for remand. P.W-15 is the Investigation officer. The learned Counsel for the Appellant invited the attention of this Court to the evidence of the Accused as D.W-1. He had clearly stated that the Accused and the Prosecutrix were in love relationship. When the relatives of the Prosecutrix insisted to marry her, the Accused sought time to marry. Since the time sought by him was refused by the relatives of the Prosecutrix, the complaint under Ex.P-1 was lodged as though the Accused refused to marry her claiming that they both belong to different religion. The medical examination of the victim/Prosecutrix states that the foetus was five months. The evidence of the Prosecutrix is contradictory to the medical evidence. The Accused had no intention to marry. He had not given false promise to attract Section 375 punishable under Section 376 of IPC is not warranted. The learned Counsel for the Appellant also invited the attention of this Court to the ingredients of Section



417 of IPC – dishonest intention. Here there was no dishonest intention to cheat the Prosecutrix. Therefore, the offence under Section 417 of IPC is not attracted. The learned Sessions Judge, Fast Track Mahila Court failed to appreciate the facts and circumstances of the case and had recorded the conviction against the materials available in favour of the Accused.

6.The learned Counsel for the Appellant also submitted that the witnesses are all related to P.W-1. They had all supported P.W-1 as though the Accused committed offence. The complaint was written in Police Station after failure of the Panchayat. The complaint was given as improved complaint only after failure of the Panchayat as the the Accused made false promise (It is an improved version for the purpose of attracting Section 375 of IPC). On overall appreciation of facts, the offence under Section 376 of IPC is not made out. No DNA test was conducted by the Prosecution to fix the responsibility on the Appellant. The Appellant did not have dishonest intention. He was in prison for two years and forty five days. The learned Counsel for the Appellant invited the attention of this Court to the reported decisions of the Hon'ble Supreme Court in **(2016) 4 SCC 140 [Tilak Raj -vs- State of Himachal Pradesh]** and the decision of the Bombay High Court reported in **2014 SCC OnLine Bom 348 [Mahesh Balkrishna Dandane -vs-**



State of Maharashtra] and in the light of the reported decisions, the learned Counsel for the Appellant seeks to set aside the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, awarding sentence of imprisonment under Section 376 and 417 of IPC as perverse.

7. The learned Additional Public Prosecutor appearing for the State by way reply submits that the evidence of P.W-1 to P.W-3 alone will be sufficient to convict the Accused as on the date of deposition the Prosecutrix was aged 18 years. The complaint given by the Prosecutrix was not as Ex.P-1. Ex.P-3 is the birth certificate of the child. There are sufficient materials available before the Court to draw adverse inference against the Accused. The learned Additional Public Prosecutor invited the attention of this Court to page 62 of the typed set of papers regarding the birth certificate of the child, page 52 is the relevant portion, also to the the cross-examination of the Prosecutrix page 9 line 2. The learned Additional Public Prosecutor also invited the attention of this Court to the evidence of Accused himself as D.W-1. He had clearly conceded the relationship between him and the Prosecutrix. In the cross-examination, he admitted that the nature of the Prosecutrix was innocent (வெகுளி). Therefore, he had exploited the innocence of the Prosecutrix by giving a false promise and getting consent for sexual



intercourse. Therefore, the ingredients of offence under Section 375 of IPC is made out against the Accused.

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8.The learned Sessions Judge, Fast Track Mahila Court, Chennai, on proper appreciation of evidence had rightly convicted the Accused for the offence under Section 376 and 417 of IPC. There is nothing to consider the judgment as perverse. This Criminal Appeal lacks merit and the same is to be dismissed.

Point for consideration:

Whether the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Chennai in S.C.No.5 of 2014 dated 23.12.2016 is perverse warranting interference of this Court?

9.Heard the learned Counsel for the Appellant and the learned Additional Public Prosecutor. Perused the evidence of the Prosecutrix as P.W-1 and other witnesses – P.W-2 to P.W-15 and the evidence of the Accused as D.W-1. Perused the documents marked during trial as Ex.P-1 to P-13 and the judgment of the learned Sessions Judge, Fast Track Mahila Court, Chennai, in S.C.No.5 of 2014 dated 23.12.2016. The Prosecutrix had clearly mentioned regarding the representation of the Accused that he will marry her. Since both of them belong to different religion only after



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indulging in pre-marital sex and if she becomes pregnant both families will accept their marriage. The Prosecutrix had also stated that the Accused promised her that even if the elders in the family object to their marriage, he will marry her. Therefore, believing the representation of the Accused, the Prosecutrix consented to have intercourse with him. When she became pregnant, she informed him, then he refused. Therefore, she felt disappointed. Therefore, she informed it to her mother and elder maternal aunt and maternal uncle and also to the Panchayat President in the street, mediator and elderly persons in the street who mediated between the two families. Since the Accused refused to marry her, she lodged the complaint under Ex.P-1. After taking the complaint, the All Women Police, Vepery sent for the Accused. The Accused/Appellant herein appeared along with his mother and lawyer on the first day and admitted that he needs time to consider to marry her. On the second date of enquiry, he appeared along with an Advocate and refused to marry her claiming that he is ready to undergo imprisonment but he will not marry her. The intention of the Accused was proved by the Prosecutrix.

10. In cases of this nature, there will not be a direct evidence available, particularly, involving sexual offence the evidence of the Prosecutrix had to be believed. The mother and maternal aunt are witnesses 2 and 3. The



learned Sessions Judge, Fast Track Mahila Court, Chennai, on appreciation of evidence discussed the evidence in paragraphs 24 to 34 and arrived at a conclusion that there is nothing to dispute the veracity of the evidence of the Prosecutrix. The learned Session Judge, Fast Track Mahila Court, Chennai, had found her evidence cogent, natural, trustworthy and inspires confidence of the Court. The sorry state of affairs is that the Prosecutrix had given birth to a female baby on 09.05.2013 and the paternity of the child is also not disputed by the Accused. False promise made by the Accused has spoiled the life of a girl along with a female child. The learned Session Judge, Fast Track Mahila Court, had relied on the ruling of the Hon'ble Supreme Court in ***Deelip Singh -vs- State of Bihar [2005 SCC Cri. 253]*** wherein it is stated as follows:-

“ ... a misrepresentation as regards the intention of the person seeking consent, i.e., the Accused, could give rise to the misconception of fact. While applying this principle to a case arising under Section 375 IPC, this Court held that the consent given pursuant to a false representation that the Accused intends to marry, could be regarded as consent given under misconception of fact. ... ”

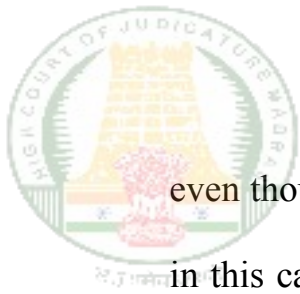
11. On perusal of the reported decision of the Hon'ble Supreme Court in ***(2016) 4 SCC 140 [Tilak Raj -vs- State of Himachal Pradesh]*** the facts even though similar, will not help the case of the Appellant herein. In the reported decision, the Prosecutrix was aged 40 years. The alleged occurrence took place in her residence. Prior to the alleged date of occurrence, as per the evidence of the Prosecutrix in the reported decision, 40



years old woman was in relationship for two years with the Accused.

Therefore, she was aware of the consequences. Here, the Prosecutrix is aged 18 on the date of alleged occurrence and 20 years on the date of giving deposition. Here, the Accused had made representation that the Accused belong to a different religion and the Prosecutrix belong to different religion so only after they indulge in sexual intercourse and she become pregnant, both families will be forced to accept their marriage. In such circumstances, even if the elders in the family of the Accused object, he will marry her. That was the evidence let in by the Prosecutrix.

12. The Accused himself has let in evidence as D.W-1. In the cross-examination by the learned Public Prosecutor, he had admitted that the Prosecutrix was not worldly-wise – not matured as worldly-wise. She believed the representation of the Accused (வெகுளி) indicating her innocence. Therefore, the innocence of a young woman, who is aged between 18 and 20 years, was exploited by the Accused with clear intention. He had made her believe that only after she become pregnant both families will accept their marriage. After becoming pregnant, when she informed him he ditched her. Therefore, the reported decision of the Hon'ble Supreme Court in **(2016) 4 SCC 140 [Tilak Raj -vs- State of Himachal Pradesh]**,



even though similar, will not help the case of the Accused in this case. Here, in this case, the alleged occurrence took place in a secluded place and away from the residence of the Prosecutrix. The Prosecutrix was directed to come there regularly by 7.00 p.m. with an intention to have intercourse. He had used his mobile phone to contact her and directed her to contact him from Public Call Office which is available through P.W-7 from whose shop the Prosecutrix was contacting him. Also, the facts in the another decision of the High Court of Bombay relied on by the learned Counsel for the Appellant in **2014 SCC OnLine Bom 348** are found similar, is not applicable to this case. In the reported decision, the Accused is alleged to have made advances to the Prosecutrix and on promise to marry her, had sexual intercourse in different premises over a period of time. In the year 2008-2009 the Applicant in the reported decision (the man who sought anticipatory bail) avoided to talk about their marriage and therefore, the Prosecutrix consumed tranquilizer and was admitted in hospital. Thereafter they continued to meet and maintained their physical relationship. On 6th December, 2013 the Prosecutrix/Complainant/Intervenor came across the photograph of the applicant/Accused performing pre-wedding rituals. Therefore, she arrived at Nashik in the evening on the same day and found that the Applicant/Accused has performed marriage with some other girl. Therefore, she lodged a



complaint. Here, it is not the case. There is clear evidence that the Accused had represented that as the Accused belong to a different religion and the Prosecutrix belong to different religion so only after they indulge in sexual intercourse and she become pregnant, both families will be forced to accept their marriage. Therefore, the ingredients under Section 376 of IPC is attracted for false promise. That is the difference in both the cases. Therefore, those facts will not help the case of the Accused/Appellant in this case. Hence the same is rejected.

13.In the light of the above discussion, the submission of the learned Counsel for the Appellant is rejected. The submission of the learned Additional Public Prosecutor that the reasoning given by the learned Sessions Judge, Fast Track Mahila Court, Chennai convicting the Accused is found well reasoned judgment which does not warrant any interference, is accepted. The grounds of appeal preferred by the Appellant in this case is rejected. The judgment of the learned Sessions Judge, Fast Track Mahila Court, Chennai in S.C.No.5 of 2014 dated 23.12.2016 is found well reasoned judgment which does not warrant interference.

14.Above all, as per the guidelines issued by the Hon'ble Supreme



Court while appreciating evidence, the finding given by the learned trial judge is to be given due weightage since the trial Judge had the advantage of observing the demeanour of the witnesses. Even though there is likelihood of a different opinion, different finding, the finding given by the trial Judge is to be given weightage. Under those circumstances, the finding given by the trial Judge is found reasonable and acceptable regarding the promise to marry and after having sexual intercourse when the victim became pregnant ditching her.

15.The point for consideration is answered in favour of the Prosecution and as against the Appellant/Accused. The judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Chennai in S.C.No.5 of 2014 dated 23.12.2016 is a well reasoned judgment which does not warrant any interference.

In the result, **this Criminal Appeal is dismissed.** The judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Chennai in S.C.No.5 of 2014, dated 23.12.2016 is confirmed. The learned Sessions Judge, Fast Track Mahila Court, Chennai is directed to issue



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warrant to the Inspector of Police, W-5, All Women Police Station, Vepery, Chennai to secure the Accused and sent him to Prison so as to undergo the remaining period of sentence of imprisonment as per the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Chennai in S.C.No.5 of 2014, dated 23.12.2016. The period already undergone in detention is set off under Section 428 of Cr.P.C. In case, the Accused is absconding, the learned Sessions Judge, Fast Track Mahila Court, Chennai, shall pass appropriate orders to declare the Accused as Proclaimed Offender.

The learned Sessions Judge, Fast Track Mahila Court, Chennai, shall send compliance report to the Registry of this Court within a month.

29.05.2024

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Index : Yes/No

Internet : Yes/No

Note: Issue order copy on 29.05.2024

Copy to:

1.The Sessions Judge, (For follow up action)
Fast Track Mahila Court,



Chennai.

CrL.A.No.88 of 201



- 2.The District Collector,
Chennai District,
Chennai.
- 3.The Commissioner of Police, (For follow up action)
Chennai City Police, Egmore,
Chennai -600 008.
- 4.The Inspector of Police, (For follow up action)
W-5, All Women Police Station,
Vepery, Chennai – 600 007.
- 5.The Public Prosecutor, (For follow up action)
Fast Track Mahila Court, Chennai.
- 6.The Public Prosecutor, (For follow up action)
Madras High Court,
Chennai – 600 104.

SATHIKUMAR SUKUMARA KURUP. J.

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