



CrI.A.No.1039 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.03.2024
PRONOUNCED ON : 04.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.1039 of 2023

Arockiyasamy @ Suresh

... Appellant

Vs.

1.State rep. by
The Inspector of Police,
All Women Police Station,
Thirukoilur,
Villupuram District.

2.Kalaivani

... Respondents

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C. to set aside the conviction of sentence imposed on the appellant/accused in S.C.No.57 of 2018 on the file of the learned Principal Sessions Judge, Mahila Court [FTMC], Villupuram dated 23.08.2023.



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For Appellant : Mr.V.Krishnamoorthy
For R1 : Mr.S.Raja Kumar
Additional Public Prosecutor
For R2 : Mr.S.Ayyathurai

JUDGMENT

This Criminal Appeal has been filed to set aside the impugned order in S.C.No.57 of 2018 dated 23.08.2023 on the file of the learned Principal Sessions Judge, Mahila Court [FTMC], Villupuram.

2.The appellant/accused was convicted by the Trial Court and sentenced to undergo one year rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment for the offence under Section 417 IPC and to undergo ten years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo three months simple imprisonment for the offence under Section 376 IPC. Against which, the present appeal is filed.

3.The defacto complainant/victim filed impleading petition in



Crl.M.P.No.4530 of 2024, the same was allowed by this Court on 14.03.2024 and the defacto complainant was impleaded as second respondent in this appeal.

4.The case of the prosecution is that the defacto complainant is the victim, who lodged a complaint against the appellant on 18.03.2016. The complaint is that the victim after completion of her 10th Standard in the year 2009 was employed in the mobile shop of the appellant. The appellant informed the victim/defacto complainant that his mother was ill with health ailments and there was no one to take care of her. The appellant further informed the defacto complainant that he is interested to marry her and she can also take care of his mother. Later, the appellant's mother passed away. Thereafter, the appellant insisted the victim to love him and they had love relationship between them. The appellant had physical relationship with the defacto complainant on several occasions under the guise of false promise that he would marry her. The appellant's marriage proposal was not initially accepted by the victim's parents since the appellant belong to different religion and caste. The appellant promised that there would be no opposition in his family for their marriage and they continued their love



affair and physical relationship. During December 2015, the victim came to know that marriage arrangement for the appellant was being proposed with another girl and hence, she questioned the same. The appellant's friends informed the victim that the appellant was not interested to marry the victim girl and they asked her to forget the relationship. On 10.01.2016, the appellant closed the mobile shop and thereafter, he was unable to be found. On 01.03.2016, the defacto complainant/victim went to the appellant's house and demanded for marriage, at that time, she was abused and chased away by force. The appellant also informed her that he will not marry her and thereafter, she informed her parents/PW2 and PW3 and lodged a complaint to the respondent police. PW8 received the complaint, registered FIR, visited the scene of occurrence, prepared observation mahazar and rough sketch in the presence of witnesses, examined the witnesses, recorded their statements and the appellant/accused was arrested. Thereafter, the accused and the victim girl produced for medical examination. PW5/Doctor examined the appellant and issued Potency Certificate/Ex.P2. PW7/Doctor examined the victim girl and confirmed that the victim was raped and issued Ex.P3. PW9 took up further investigation, collected the documents and on completion of investigation, charge sheet filed.



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5. During the trial, PW1 to PW9 examined and Ex.P1 to Ex.P8 marked on the side of the prosecution. On the side of the defence, no witnesses examined and no document marked. On conclusion of trial, the Trial Court convicted the appellant as stated above.

6. The contention of the learned counsel for the appellant is that the appellant was charged for the offence under Sections 294(b), 506(i), 417 and 376 IPC, but the Trial Court on the evidence had acquitted the appellant for the offence under Sections 294(b) and 506(i) IPC. Thus, it was proved that there was no threat, abuse or criminal intimidation by the appellant. From the own admission of PW1/victim, it is seen that they were in love with each other for the past six years before the complaint. PW2 and PW3, parents of PW1 admit that love relationship between the victim and the appellant was informed by their daughter and they confirmed that they were not in approval of this relationship since the appellant belong to different religion and caste. PW1 admits that despite the opposition from her parents, she continued her love relationship with the appellant. He would submit that PW1 completed 10th Standard and in her evidence she admits that she was in



conscious relationship with the appellant voluntarily knowing its consequences. Since the appellant failed to marry the victim/PW1, complaint was lodged and it was projected as though on a false promise the appellant had physical relationship and raped the victim girl. He would further submit that the medical evidence confirms that there is no bruises or external injuries to show that force was used and the physical relationship was involuntary. Further, from the evidence it is seen that the offence under Section 376 IPC is not made out. In this case, PW4 is the witness for observation mahazar, admits he signed the mahazar on the request of Police without knowing its contents. PW6, cousin of the victim, is the witness for the arrest of the appellant and he admits that he had signed on the request of the Police without knowing its contents.

7.The learned counsel further submitted that PW5 and PW7 are the Doctors, PW8 and PW9 are the Investigating Officers and no private witnesses/neighbours were examined in this case. The observation mahazar and the rough sketch marked through the Investigating Officer. It is admitted by the Investigating Officer that statements and documents reached the Court with a delay of nearly two years, no reason given. He would



further submit that marriage between the appellant and the victim girl could not be conducted then since PW2 and PW3, parents of the victim girl opposed the marriage, thereafter, the appellant married another girl, the defacto complainant/PW1 getting offended of the same lodged the complaint and projected a false case as though the appellant on the guise of marriage had physical relationship with her terming it as rape. He further submitted that after the conviction, at the intervention of elders and family members, the issue got resolved. The victim girl admitted that her relationship with the appellant was voluntary and now both the appellant and the victim girl got married separately and settled with their respective family and leading a peaceful matrimonial life. Hence, he prayed for setting aside the order of conviction and sentence.

8.The learned Additional Public Prosecutor submitted that in this case, the victim girl aged about 25 years when she lodged a complaint stating six years she was employed in the mobile shop of the appellant. During that time, the appellant proposed a love affair and made false promise to marry her despite their difference in religion and caste. The victim girl was deceived by the appellant's promise gave herself to the appellant. The



appellant time and again re-assured the victim that he would marry her and on that promise, he continued physical relationship with the victim girl on several occasions. Initially, parents of the victim girl were not willing to give their daughter in marriage to the appellant due to difference in religion and caste, later they agreed for the marriage. The appellant used to visit the victim girl at her parents house and they had no objection. During December 2015, the victim came to know about arrangements made for the appellant's marriage with another girl and she questioned the same. The appellant closed the shop and thereafter, he was not available. During the first week of March 2016, the victim girl went to the house of the appellant questioning him for delaying the marriage, at that time, the appellant and his family members abused the victim girl and chased her away. The appellant through his friends informed the victim girl that the appellant is no more interested to continue the relationship with the victim and forced her to move away from the relationship. The victim realized that she was deceived on the pretext of marriage and the appellant committed rape on her, hence lodged a complaint/Ex.P1. PW8 received the complaint, registered FIR, visited the scene of occurrence, examined the victim, her parents and other witnesses, prepared observation mahazar and rough sketch and arrested the



appellant. Thereafter, both the victim girl and the appellant were sent for medical examination, from which it is proved that the victim girl was raped.

Thereafter, PW9 took up further investigation, collected the documents, recorded the statements of Doctors and others and filed a charge sheet in this case. The Trial Court on the evidence and materials produced, convicted the appellant. He would submit that now the appellant as well as the victim girl got married separately and they are living with their respective family. The victim girl presently is not interested to further pursue the case and she is willing to condone the act of the appellant which fact was verified and found to be voluntary and true.

9.The victim girl/second respondent appeared before this Court and informed that she got married and she is living with her family, likewise the appellant is also married and living with his family. She further submitted that she is not inclined to disturb the marriage life of herself and the appellant and she is inclined to condone the act of the appellant as past.

10.Considering the submissions made and on perusal of the materials, it is seen that the victim after completing her 10th Standard, was employed in



the mobile shop of the appellant in the year 2009 and when she lodged the complaint in the year 2016, she was aged about 25 years. The victim girl is a major and an educated person. From the complaint, it is seen that her main grievance against the appellant is that he had failed to marry her as promised. The victim girl in her evidence in certain terms admit that they had love affair for six years which got manifested and they had physical relationship on several occasions inside the shop as well in their house. She admits that after five years of relationship, she informed her parents about the relationship with the appellant, which initially opposed by her parents since the appellant and the victim belong to different religion and caste, confirmed by PW2 and PW3, parents of the victim, later it appears they agreed for the marriage but the appellant decided otherwise and arrangements made for the appellant's marriage with another girl. On coming to know about the same, the victim girl questioned the appellant, thereafter, complaint lodged. PW2 and PW3, parents of the victim girl admit they were not aware about the relationship including the physical relationship of the victim girl, till informed by their daughter, thus the only evidence is that of the victim girl/PW1. As stated above, the victim girl educated and a major knowing the consequences had consented and had



physical relationship with the appellant and there is no misconception. It is also to be noted that the appellant was acquitted for the offence under Sections 294(b) and 506(i) IPC. Thus, there is no threat, force or abuse in physical relationship between the appellant and the victim girl/PW1. Hence, the conviction of the appellant under Section 376 IPC is not sustainable and thereby, the conviction and sentence imposed on the appellant by the Trial Court for the offence under Section 376 IPC is hereby set aside. Further, PW1 and her parents, PW2 and PW3, in their evidence clearly stated that the appellant had promised to marry the victim girl but later failed to do so. Hence, the conviction of the Trial Court for the offence under Section 417 IPC is hereby confirmed. The victim/second respondent appeared and willing to condone the act of the appellant, now both the victim and the appellant got married separately, living with their respective family and children. In view of the same, this Court is inclined to modify the sentence of the appellant. The appellant as under trial prisoner was in prison for 28 days and after conviction, he was in prison for 114 days, in total, the appellant was in prison for 142 days. Hence, the sentence of one year imposed by the Trial Court for the offence under Section 417 IPC is modified as period already undergone by the appellant.



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WEB COPY 11. With the above modification, the criminal appeal stands partly allowed.

04.06.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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To

- 1.The Principal Sessions Court,
Mahila Court [FTMC],
Villupuram
- 2.The Inspector of Police,
All Women Police Station,
Thirukoilur,
Villupuram District.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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Pre-delivery judgment in

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