



Crl.A.No.1235 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.1235 of 2023 and
Crl.M.P.No.17399 of 2023

Dayalan

... Appellant

Vs.

State rep. by
The Inspector of Police,
All Women Police Station,
Tindivanam,
Villupuram District.
(Crime No.11/2016).

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) Cr.P.C., against the conviction and sentence imposed upon him by the learned Sessions Judge, Magalir/Neethimandram (Fast Track Mahila Court) Villupuram S.C.No.244 of 2017 dated 13.10.2023 for the offences under Section 417 of IPC and sentenced to undergo 1 years R.I and to pay a fine of Rs.1,000/- in default sentenced to undergo 1 month S.I and convicted u/s 376 of IPC and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/- in default undergo 3 months S.I the sentence shall run concurrently and the period of detention already undergone if any is ordered to be set off U/s.428 of Cr.P.C.

For Appellant : Mr.L.Mahendran

For Respondent : Mr.S.Raja Kumar,
Additional Public Prosecutor



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JUDGMENT

This Criminal Appeal has been filed to set aside the impugned judgment, dated 13.10.2023 in S.C.No.244 of 2017 passed by the learned Sessions Judge, Magalir Neethimandram, (Fast Track Mahila Court), Villupuram (trial Court).

2.The conviction and sentence imposed against the appellant are as follows:

- For offence under Section 417 IPC, the appellant was convicted and sentenced to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment for one month.
- For offence under Section 376 IPC, the appellant was convicted and sentenced to undergo Rigorous Imprisonment for ten years and to pay a fine of Rs.10,000/-, in default to undergo Simple Imprisonment for three months.

3.By consent of both the appellant and the learned Additional Public Prosecutor and in view of the defacto complainant/victim girl not inclined in



pursuing the case against the appellant, the main criminal appeal itself is taken up for final disposal.

4.Gist of the prosecution case is as follows:

(i)The defacto complainant/victim girl/PW1 hails from Murukeri village, Tindivanam. After completion of 12th std in the year 2011, the defacto complainant get employed in the centering and building material hiring shop. The appellant is a married man having three female daughters. The appellant and the defacto complainant developed close intimacy. The appellant was very much interested to have a male baby through the defacto complainant and the defacto complainant also agreed for the same. The appellant on the pretext of false promise of marrying the defacto complainant, had sexual intercourse with her. During the year 2014, the defacto complainant got pregnant and on the advice of the appellant, she took abortion pills, as a result, foetus got aborted. Again in the year 2015, the defacto complainant again conceived. This time also abortion pills was given by the appellant and foetus was aborted. In the year 2016, again the defacto complainant became pregnant. This time the defacto complainant



insisted the appellant to marry her. When the defacto complainant became sick, her brother/PW4 came to know about the pregnancy. When questioned, the defacto complainant informed that the appellant is the reason for her pregnancy and she called the appellant to home. The appellant came to the defacto complainant's house and in presence of family members and others he informed that he is the reason for pregnancy and promised to marry the defacto complainant. Later the appellant refused to marry her, hence, the defacto complainant lodged a complaint (Ex.P1) to the respondent Police. Due to the sexual relationship, a female baby named Mrithula born to the defacto complainant.

(ii)On the complaint (Ex.P1) of the defacto complainant/PW1, PW14/Inspector of Police registered FIR (Ex.P10), visited the scene of occurrence, prepared Observation Mahazar & Rough Sketch (Exs.P11 & P12) in presence of witnesses and recorded the statement of witnesses. In this case, PW2, the father of defacto complainant, a Carpenter by profession confirmed his daughter was working in the appellant's shop and the appellant by false promise had physical relationship with his daughter, due



to which, his daughter became pregnant. PW2 stated that he and his family members had gone to appellant's house and questioned him, at that time, the appellant refused to marry her daughter and panchayat was held. PW2 further stated, the appellant disowned the paternity of the defacto complainant's pregnancy and offered to give Rs.5 to 10 lakhs for aborting foetus. PW3, the brother of the defacto complainant confirmed the relationship of the defacto complainant with the appellant. PW4, a resident near PW1's house confirms the relationship between the defacto complainant/PW1 and the appellant.

(iii) During the course of investigation, the defacto complainant/PW1 referred for medical examination. PW9, the Doctor examined the defacto complainant, confirmed the defacto complainant's pregnancy and issued Accident Register (Ex.P4). PW10, the Doctor examined the appellant and issued potency certificate (Ex.P5). PW12 is the Doctor further examined the defacto complainant/PW1 and answered to the questionnaire of the Investigating Officer and gave medical certificate (Ex.P7). PW13 is the Radiologist examined the appellant and issued radiology report (Ex.P6).



Thereafter, DNA test was conducted and DNA report (Ex.P13) confirmed the appellant is the biological father of the defacto complainant's daughter Mrithula.

(iv) During the trial, on the side of the prosecution fourteen witnesses examined as PW1 to PW14 and thirteen documents marked as Exs.P1 to P13. On the side of the defence, no witness examined and no document marked. The trial Court convicted the petitioner as stated above.

5. The learned counsel for the appellant submitted that the defacto complainant/victim girl/PW1 admits that after completing 12th std, she was working in the appellant's shop for nearly five years. She admits that she was 22 years of age, aware about the appellant already married having three female children. The appellant wanted a male baby through the defacto complainant. The defacto complainant agreeing to the same had physical relationship for nearly four years. This relationship is a conscious relationship. The defacto complainant claims that in the years 2014 and 2015, she became pregnant and she took pills for abortion and got aborted



twice. But the medical evidence is otherwise. PW12, the Doctor examined the defacto complainant and replied to the questionnaire (Ex.P8) of the Investigating Officer stating there is nothing to show the defacto complainant had any abortion prior. The defacto complainant admits that the appellant is a married man having three female children. She further admits that a person already married cannot have a second marriage. In such circumstances, no misconception and question of false promise of marriage and thereby sexually exploiting the defacto complainant, and committing rape, would not arise.

6.The learned counsel further submitted that it is a voluntarily conscious relationship and there is no misconception or forcible sexual relationship by the appellant. The defacto complainant admits that on many occasions, she and appellant had physical relationship at various places. She further admits that earlier a complaint lodged to the respondent Police who enquired and found it is a consensual relationship between two majors, hence, no case of cheating or rape made out and refused to entertain the complaint. Thereafter, the complaint was presented to the Deputy



Superintendent of Police and a reporter known to the defacto complainant had pressurized the Deputy Superintendent of Police. Fearing for adverse publicity in the media, the respondent Police registered case against the appellant and petitioner was convicted by the trial Court. In this case, the evidence of PW2 and PW3, the father and brother of the defacto complainant are in the nature of hearsay. PW5 is the witness for Observation Mahazar (Ex.P11) and the other Observation Mahazar witness PW7 not supported case of the prosecution. PW8 is the Neighbour of PW1, who also not supported case of the prosecution. The other witnesses are Doctors (PW9, PW10, PW12, PW13) who examined the appellant and defacto complainant and issued Exs.P4 to P9 and the DNA report (Ex.P13).

7.In support of his submission, the learned counsel for the appellant relied on the decision of the Hon'ble Apex Court in the case of “***Pramod Suryabhan Pawar Versus The State of Maharashtra*** reported in (2019) 3 ***SCC (Cri) 903***”. He further submitted that there is distinction between mere breach of promise and not fulfilling a false promise. From the evidence and materials, it is clear that the defacto complainant agreed to have sexual



intercourse with the appellant knowing well the appellant is a married man having three female children. Thus, on the facts of the case, it cannot be said that the consent of the defacto complainant is on misconception of fact and there was no forcible physical relationship.

8.The learned counsel further submitted that the defacto complainant is not willing to further pursue the case against the appellant and she filed affidavit in this regard before this Court. Hence, he prays for setting aside the impugned judgment.

9.The learned Additional Public Prosecutor appearing for the respondent Police submitted that in this case PW1 is the victim girl/defacto complainant who lodged a complaint (Ex.P1) to PW14 against the appellant. PW14 registered FIR (Ex.P10), visited the scene of occurrence, prepared Observation Mahazar & Rough Sketch (Exs.P11 & P12) in presence of witnesses, recorded statements of PW2, PW3 & PW4 who are father, brother and neighbour of PW1/defacto complainant. PW2 to PW4 and other witnesses confirmed the relationship between the appellant and defacto



complainant/PW1. In this case, the appellant is a married man having three female children and had centering shop in Murukeri village where the defacto complainant was employed. Taking advantage of the defacto complainant's financial position and social status, the appellant promised to marry defacto complainant had physical relationship with her for many years on the pretext to have a male child through her. Earlier on two occasions in the year 2014 and 2015, the defacto complainant became pregnant and the foetus got aborted on the pills given by the appellant. On the third occasion in the year 2016 again the defacto complainant got pregnant, this time the defacto complainant insisted the appellant to marry her. Though the appellant initially agreed for the marriage, later he disowned her pregnancy. Thereafter, a panchayat held and the appellant came forward to give certain amount to the defacto complainant which was not agreeable.

10.It is further submitted that the medical evidence (PW9, PW10, PW12 and PW13) and their reports (Exs.P4 to P9 & P13) reiterates and confirms that the appellant is the reason for the pregnancy of the defacto



complainant and he is the biological father of the defacto complainant's daughter Mirudhulla. On conclusion of investigation, charge sheet filed before the trial Court citing witnesses and documents. The trial Court on the evidence and materials had rightly come to a finding that the appellant taking advantage of defacto complainant's social background and poverty, committed rape on her by giving false promise of marriage and later refused to marry her.

11.The learned Additional Public Prosecutor fairly submitted that the defacto complainant appeared before the respondent Police who is now before this Court and confirmed that she is not interested in pursuing the case considering the plight of three female children of appellant and their sufferings. The defacto complainant has reconciled to the reality and now the prime concern is to up bring her daughter Miruthulla. The appellant's family have also agreed to support and provide congenial atmosphere for the child Miruthulla.

12.This Court considered the rival submissions and perused the



materials available on record.

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13. In this case, the defacto complainant/PW1 admits that she is a educated person completed schoolings and she is a major. She was working in the appellant's shop from the year 2011 to 2016. She had physical relationship with the appellant knowing that he is a married man having three children and for the purpose of appellant's wish to have a male baby, she agreed for physical relationship, in the year 2016, the defacto complainant became pregnant and she insisted the appellant for the marriage. Though the appellant initially agreed for the marriage, later refused to marry and disowned her pregnancy. Annoyed over the same, the complaint (Ex.P1) lodged by the defacto complainant. This fact reiterated and confirmed in her evidence. But her evidence is with contradiction and improvements. Added to it, the evidence of PW2 and PW3, the father and brother of the defacto complainant are with contradictions. The prime witness PW1/defacto complainant admits her conscious relationship with the married man with three female children. In this case, the defacto complainant having physical relationship with the appellant on several occasions over a period of time is a consensual act.



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14.No doubt, in this case the Doctors evidence (PW9, PW10, PW12 and PW13) and DNA report (Ex.P13) confirmed that the appellant is the biological father of the defacto complainant's daughter Mirudhulla. When the defacto complainant confirms her conscious and consensual relationship with the appellant, it cannot be termed as rape. Thus, on the facts of the case, there is no misconception or false promise by the appellant and thereby, the defacto complainant had given herself, for the physical relationship, which can be termed as a rape. Hence, the conviction and sentence for offence under Section 376 IPC are set aside.

15.Now the only question to be looked into whether the appellant had cheated the defacto complainant. The appellant promised to marry the defacto complainant though he was a married man having three female children. The defacto complainant also agreed for such marriage. In such circumstances, the defacto complainant appeared before this Court and filed affidavit that she is no more interested to further pursue the case against the complaint considering the appellant's family circumstances and also welfare



of her minor daughter Mirudhulla. In view of the same, the conviction and sentence for offence under Section 417 IPC is set aside.

16.In the result, this Criminal Appeal stands allowed setting aside the impugned judgment, dated 13.10.2023 in S.C.No.244 of 2017 passed by the learned Sessions Judge, Magalir Neethimandram, (Fast Track Mahila Court), Villupuram. Fine amount if any paid shall be refunded. Bail bond if any executed shall stand cancelled.

17.The trial Court had recommended the District Legal Services Authority to pay compensation of Rs.5,00,000/- to the defacto complainant/PW1. It is brought to the notice of this Court by defacto complainant that no steps taken by the District Legal Services Authority so far in this regard. Finding that the defacto complainant and her daughter Mirudhulla to be appropriately compensated, this Court had verified with the Secretary, State Legal Services Authority, Chennai who informed on enquiry with the District Legal Service Authority, Villupuram now the process for payment of Rs.5,00,000/- to the defacto complainant as



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recommended by the trial Court, initiated by the District Legal Service Authority, Villupuram. In any event, the payment will be made to the defacto complainant within a period of three weeks.

18.In view of above, the District Legal Services Authority, Villupuram to make payment of Rs.5,00,000/- as compensation to the defacto complainant as expeditiously as possible. The State Legal Service Authority to ensure the payment of compensation to the defacto complainant. The connected Miscellaneous Petition is closed.

26.03.2024

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

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To

1.The Sessions Judge, Magalir Neethimandram,
(Fast Track Mahila Court),
Villupuram.

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



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Tindivanam,
Villupuram District.



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3.The Central Prison,
Cuddalore.

4.The Public Prosecutor,
High Court, Madras.

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