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Crl.A.(MD).No.562 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.10.2024

DELIVERED ON : 26.11.2024

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.A.(MD).No.562 of 2024

Selvam @ Selvakumar

... Appellant/Accused No.1

Vs.

State rep. by the Inspector of Police,
All Women Police Station,
Sivagangai, Sivagangai District,
Crime No.18 of 2015.

... Respondent/Complainant

Prayer: Criminal Appeal has been preferred under Section 374(2) Cr.P.C.,
to call for the records and set aside the Judgment passed by the learned Fast
Track Mahila Court, Sivagangai, in S.C.No.209 of 2016, dated 13.05.2024,
and allow this appeal and acquits the appellant/accused No.1

For Appellant : Mr.S.Prabhu Rajadurai

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

J U D G M E N T

This Criminal Appeal has been filed by the appellant to set aside
the Judgment passed by the learned Fast Track Mahila Court, Sivagangai, in
S.C.No.209 of 2016, dated 13.05.2024.



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2.The case in brief:

The defacto complainant lodged a complaint before the respondent police stating that she has completed nursing course. She helped the first accused's mother to contact his son, who was working in abroad, over phone. In this way, she developed love affair with him. In this circumstances, some two months prior to the date of complaint, when the first accused came to India, on false promise of marriage, had physical contact with the defacto complainant for many times. Thereafter, by knowing that the family members of the first accused searching alliance to him, she informed the family members of both family about their love affair. But, they refused. The first accused and his family members abused the defacto complainant and her family members in filthy language. Therefore, she gave a complaint against the accused persons before the respondent police. Based upon which, a case in Crime No.18 of 2015 was registered. After completing the investigation, final report was filed before the Committal Court for the offences punishable under Sections 417, 376 IPC against 1st accused, 417, 379 r/w 109 IPC against accused Nos.2 and 3 and 294(b), 506(i) r/w 109 IPC against the 4th accused . Then it was committed to the trial Court and the same was taken cognizance in S.C.No.209 of 2016, on the file of the District and Sessions Judge, Fast Track Mahila Court, Sivagangai and the following charges were framed against the accused.



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3.Charge against the accused person:-

On false promise of marriage, the first accused developed love affair with the defacto complainant and had physical contact with her for several times and thereafter, cheated her, refusing to perform marriage, thereby, he committed offence punishable under Section 417, 376 IPC. The charges were read over and explained to all the accused and questioned for which they pleaded not guilty, hence trial was ordered and conducted.

4.In pursuance of the above said plea, the trial before the trial Court commenced and to prove the prosecution case, 13 witnesses have been examined on the side of the prosecution and 11 documents marked. Material objects were marked as M.O.No.1 & M.O.No.2. On the side of the accused persons two witness were examined, but no documents were marked.

5.The case of the prosecution as narrated through the evidence in:

5.1.PW1 is the victim. She was studying Diploma in Nursing at Paramakudi in 2015. The accused is neighbour. He was in abroad at that time. Through the mother of the accused the victim was talking with him.



After some time, he came down to India, stayed in the village for about 3 months. At that time, the accused promised her to marry and under false promise of marriage, she was subjected to repeated sexual intercourse. In the course of time, the affair was known to the neighbours. On 28.08.2015, the victim along with the mother went to the accused's house and informed his parents about the affair and requests them to arrange marriage. But the parents of the first accused scolded her, abused and refused to arrange the marriage. So she lodged a complaint under Ex.P1. Later, she was informed that marriage proposal was made for the first accused with some other girl. Panchayat was arranged in the Village. But, accused refused. Dejected over the conduct of the accused, she attempted to commit suicide.

5.2.The complaint in Ex.P1 was received by PW12, who was working as Inspector attached to Madurai Meenakshi Amman Temple Crime Station and registered a case on 04.09.2015 in Crime No.18 of 2015 under Section 417 and 376 of IPC. At about 1.15 p.m., he went to the place of occurrence, in the presence of witness, he prepared observation Mahazar, sketch and recorded the Statement of witnesses. On the same day, he arrested the first accused, made arrangement to remand. On 05.09.2015, recorded the statement of the victim girl and made arrangements to send the victim girl for medical examination and requested the Jurisdictional Magistrate to record the Statement of the victim under Section 164 of



Cr.P.C. After that the accused was subjected to medical examination at his request. Recorded the statement of officials and after that further investigation was undertaken by PW13. She perused the records and verified statements recorded by her predecessor. After receiving the report from Regional Forensic Laboratory, submitted alteration report altering the offence to 417, 376, 294(B), 506(ii) r/w 109 IPC. At the time of filing of the final report, he included the accused Nos.2 to 4 as additional accused and filed additional charge sheet.

5.3.PW2 is the mother of the victim girl, she corroborated PW1 with regard to the material particulars spoken by the victim.

5.4.PW3 the relative of PW1 has spoken about the affair between the first accused and the victim. PW4 is also another neighbour and also supported the prosecution. PW5 is also a neighbour.

5.5.PW6, PW7 & PW8 are the police officials attached to the respondent police. They are not materials witnesses.

5.6.PW9 was the Medical Officer, who examined the victim girl. On his assessment he found that she was aged about more than 21 years and submitted his report.

5.7.PW11 is the Medical Officer, whose opinion was sought by the Investigating Officer with reference to the Medical Examination of the victim.



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6.After examination of all the witnesses are over, the accused were subjected to Section 313 Cr.P.C proceedings. They denied the facts narrated by the prosecution witnesses. On the side of defence two witnesses were examined, but, no document was marked.

7.At the conclusion of the trial process, the trial Court recorded finding of guilt against the first accused person and passed judgment of conviction on 13.05.2024 and sentenced to undergo 10 years rigorous imprisonment and imposed fine of Rs.10,000/-, in default to undergo further three months imprisonment and also sentenced to undergo one year rigorous imprisonment and imposed fine of Rs.2,000/-, in default to undergo further one month imprisonment. Against the above said judgment of conviction and sentence, the first accused preferred this appeal.

8.Pending the appeal process, the accused/appellant filed Crl.M.P. (MD).No.6669 of 2024, seeking suspension of sentence. At that time, the following observation was made by this Court.

“8.The learned counsel appearing for the petitioner would submit that the case of prosecution on its face will not lie since the victim



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girl/de-facto complainant was major, they were loving each other and with her consent, sexual intercourse occurred. He is referring to the judgments of the Hon'ble Supreme Court in (I) Dr.Dhruvaram Murlidhar Soar Vs. State of Maharashtra and others [(2019)18 SCC 191]; (ii)Maheshwar Tigga Vs. State of Jharkhand [(2020)10 SCC 108] and (ii)an unreported judgment of this court made in Crl.A No.548 of 2021, dated 21/06/2014 (Rahul Gandhi Vs. The State rep. by its Inspector of Police, All Women Police Station, Kallakuruchi District). He would submit that section 376 r/w 417 IPC will not attract to the present facts and circumstances of the case.

9.But reading of the judgment of the trial court shows that it does not satisfy the requirement of principles of law with regard to the discussion and conclusion. Upto para 26 to 29, the arguments of both sides were extracted. In para 7 conclusion is reached. In para No.8 reason for the conclusion was made in a cryptic manner. So, it is seen that proper appreciation of evidence by the trial court is not made in a proper manner.

10.On the sole ground, I am of the considered view that it is a fit case for remand. The parties are at liberty to argue the matter in the main appeal



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itself, after the type set of papers is made ready by the Registry.”

9. So this was pointed out by the counsel for the appellant at the time of argument and submitted that since already finding was recorded by this Court, it is the fit case for remand and requests that the matter may be remitted back to the trial court for fresh consideration, of course, by granting liberty to him to recall for cross examination of victim and other material witnesses at his choice.

10. Reading of the above said observation does indicate that this Court has already made an opinion on that the case must be remitted back. So I find absolutely, no reason to differ from the above said view. Now the learned Additional Public Prosecutor has also not made any strong objection for remanding the matter back. On that ground the judgment and sentence passed by the trial Court are hereby set aside. The matter is remanded back to the trial court. The trial court shall restore the sessions case to the file and proceed in accordance with law, by permitting the appellant herein to recall and cross examine the witnesses and permitting him to examine witness if any on his side, by imposing cost at its discretion.



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11. Accordingly, this appeal stands allowed.

26.11.2024

NCC: Yes/No
Index: Yes/No
Internet: Yes/No
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To

1. The Judge, Fast Track Mahila Court, Sivagangai.
2. The Inspector of Police,
All Women Police Station,
Sivagangai, Sivagangai District,
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN, J

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