



Crl.A.No.458 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2025

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.458 of 2017

Selvakumar ... Appellant/Sole Accused

v.

State rep. by Inspector of Police,
All Women Police Station,
Thirukoilur.

(Crime No.1 of 2014) ... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, against the conviction of the appellant/sole accused and sentence imposed on him in S.C.No.388 of 2014 dated 18.07.2017 on the file of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram, and set aside the conviction and sentence and allow this appeal.

For Appellant : Mr.R.Vivekananthan
Legal Aid Counsel

For Respondent : Mr.L.Baskaran
Government Advocate (Crl.Side)



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JUDGMENT

This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him for the offence under Section 417 of the IPC, vide judgment dated 18.07.2017 in S.C.No.388 of 2014, on the file of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram.

2(i) It is the case of the prosecution that the appellant and the victim had a love affair for a period of one year prior to the occurrence; that on the promise of marriage, the appellant had sexual intercourse with the victim, as a result of which, she became pregnant; that thereafter, the victim delivered a child; and thus, the appellant committed the offence under Sections 417, 376, 294(b) and 506(i) of the IPC.

(ii) On the complaint given by the victim, who was examined as PW1 before the trial Court, an FIR was registered in Cr.No.1 of 2014 by the Sub Inspector of Police [PW10]. PW11 commenced the investigation and



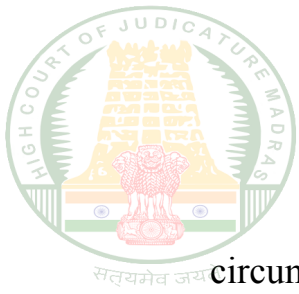
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handed over the investigation to PW12, who after partial investigation, handed over the case to PW13 for further investigation. On completion of the investigation, PW13 filed the final report against the accused for the offence under Sections 417, 376, 294 (b) and 506(i) of the IPC, before the learned Judicial Magistrate, Thirukoilur.

(iii) On the appearance of the appellant, the provisions of Section 207 Cr.P.C., were complied with, and was committed to the Court of Sessions i.e., Principal Sessions Judge, Villupuram. The case was taken on file as S.C.No.388 of 2014 and was made over to the learned Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Villupuram, for trial. The trial Court framed charges against the appellant/accused for the offences under Sections 376, 417, 294(b) and 506 (i) of the IPC, and when questioned, the accused pleaded 'not guilty'.

(iv) To prove its case, the prosecution examined 14 witnesses as P.W.1 to P.W.14 and marked 11 exhibits as Exs.P1 to Ex.P11. When the accused was questioned, u/s.313 Cr.P.C., on the incriminating



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circumstances appearing against him, he denied the same. The accused neither examined any witness nor marked any document on his side.

(v) On appreciation of oral and documentary evidence, the trial Court found the offence under Sections 376, 294 (b) and 506(i) of the IPC was not made out and held the accused guilty of the offence under Section 417 of the IPC and accordingly, convicted and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,00,000/- in default to undergo further period of rigorous imprisonment for six months. The fine amount was directed to be paid as a compensation to the minor child, who was born out of the relationship. Hence, the accused has preferred the appeal challenging the said conviction and sentence.

3. This Court had earlier appointed Mr.Muthukannu on 16.02.2024 as legal-aid counsel pursuant to the nomination made by High Court Legal Services Committee, Chennai. Since there was no representation on his behalf, on 20.06.2025, this Court appointed Mr.R.Vivekananthan, as legal-aid counsel to represent the appellant.

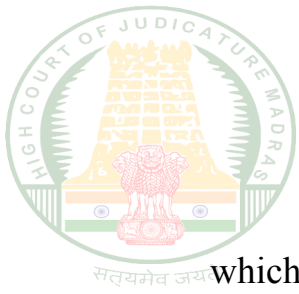


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4. (i) Mr.R.Vivekananthan, learned counsel for the appellant submitted that the appellant and the victim were known to each other and were in a love affair for a long period of time and since the relationship was consensual, the finding that the appellant had committed cheating on the victim by inducing her to have sexual intercourse on the false promise of marriage cannot be sustained, especially when the trial Court had acquitted the appellant of all the other charges.

(ii) The learned counsel pointed out to the evidence of PW1 and the other witnesses to substantiate his submissions. He also relied upon the judgment of this Court in Crl.A.No.73 of 2023 dated 20.01.2025 [***Ameen Batcha v. State rep. By the Inspector of Police***], wherein this Court in similar circumstances held that where there is a consensual relationship, the offence of cheating by deceiving the victim of a false promise of marriage, would not be made out.

(iii) The learned counsel further submitted that Ex.P11-DNA Report



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which was relied upon by the trial Court to hold that the appellant is the biological father of the child of the victim, cannot be accepted since the test was not conducted in the manner in which it should have been done and relied upon the decision of this Court in Crl.A.No.312 of 2023 dated 09.02.2024 [*M.Sathick @ Saghul Ameen v. State rep. By the Inspector of Police*].

5. Mr.L.Baskaran, learned Government Advocate (Crl. Side), *per contra* submitted that the trial Court was right in holding that the appellant had committed cheating. He relied upon Ex.P5, the medical report of the victim and Ex.P11, the DNA report, which confirms that the victim became pregnant, delivered a child and the appellant is the biological father. He would also submit that the trial Court has correctly appreciated the evidence of PW1 and other evidence on record to hold the appellant guilty of the offence under Section 417 of the IPC.

6. As stated earlier, the prosecution had examined 14 witnesses. PW1 is the victim; PW2 is the father of the victim, who corroborates the version



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of PW1; PW3 is the brother of the victim; PW4 is the neighbour who had participated in the conciliation meeting held between the appellant and the victim and the other family members; PW5 is the witness to the Observation Mahazar and Rough Sketch; PW6 is another brother of the victim; PW7 is another neighbour who corroborates the evidence of other witnesses; PW8 is the Sub-Inspector of Police, who had initially registered a CSR on the complaint of the victim; PW9, is the doctor, who examined the victim and had issued Ex.P5 medical report of the victim; PW10 is the Sub-Inspector of Police, who registered the FIR; PW11 to PW13 are the investigation officers; and PW14 is the Scientific Officer, who had conducted the DNA Test and marked Ex.P11, the DNA report.

7. The trial Court in its judgment found that the offence under Section 376 of the IPC was not made out since the victim consented to have sexual intercourse voluntarily. It is also seen that the victim had not complained about the alleged act for nearly six months. PW6 the brother of the victim/PW1 had deposed that he did not know about the alleged act until PW1 was six months pregnant.

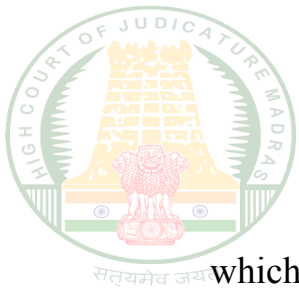


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8. It is also not in dispute that PW1 and the appellant were in a consensual relationship for more than a year prior to the occurrences that took place on 01.07.2013 and 05.07.2013. In her cross-examination, PW1 had stated that she had consented to sexual intercourse because the appellant had promised to marry her and also since she had a liking for him. The nature of evidence let in by the prosecution suggests that the victim had consented to sexual intercourse not only because he promised to marry her but also because they had a love affair for nearly one year prior to the occurrences. The Hon'ble Supreme Court in ***Mahesh Damu Khare vs. State of Maharashtra*** (Neutral Citation: 2024 INSC 897) held that where there is a consensual relationship for a prolonged period of time that turned sour, it does not attract the offences under Sections 376 and 417 of the IPC.

9. In this case, the complaint was lodged on 08.01.2014 belatedly. The alleged occurrences are said to have taken place on 01.07.2013 and 05.07.2013. PW6 the brother of the victim had stated that he came to know of the alleged occurrences only when her sister was six months pregnant,



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which suggests that the victim had not disclosed about the alleged occurrences to anyone and also that the relationship was consensual.

10. The evidence reveals that this is a case of a consensual relationship that turned sour and not a case of indulging in sexual intercourse only on the promise of marriage. The trial Court while had rightly acquitted the appellant of the offences under Sections 376, 294(b) and 506(1) of the IPC, ought not to have convicted him for the offence under Section 417 of the IPC. Therefore, the judgment of conviction and sentence for the offence under Section 417 of the IPC, is set aside.

11. The learned counsel for the appellant had disputed the DNA Report since the test was conducted improperly. This Court is of the view that even assuming that the report is erroneous (this Court had not expressed any opinion on the correctness or otherwise of the report), the victim's deposition that she and appellant had consensual relationship and a child was born due to the said relationship, cannot be disbelieved.



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12. It is seen that out of the fine amount, the victim had already received compensation of Rs.1,00,000/-. Hence, in the peculiar facts of the case, this Court holds that the appellant would not be entitled to refund of the compensation amount received by the victim.

13. With the above observations, the criminal appeal stands disposed of.

14. The High Court Legal Services Committee, Chennai, is directed to pay the scheduled fee to Mr.R.Vivekananthan, the learned legal aid counsel, who appeared for the appellant.

04.07.2025

Index : yes/no

Speaking /Non-speaking order

Neutral citation : yes/no

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To

1. The Sessions Judge, Magalir Neethi Mandram
(Fast Track Mahila Court), Villupuram.
2. The Inspector of Police,
All Women Police Station,
Thirukoilur.
3. The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN, J.

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