



Crl.A(MD)No.213 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2025

CORAM:

THE HON'BLE DR.JUSTICE R.N.MANJULA

Crl.A(MD)No.213 of 2017

Mohanraj Kumar

.. Petitioner

Vs.

The Inspector of Police,
All Women Police Station, Sattur,
Virudhunagar District, Crime No.13/2011.

... Respondent

Prayer: This Criminal Appeal Case filed under Section 374 of Cr.P.C to call for records in SC No.181 of 2012 on the file of the learned Sessions Judge, Mahalir Neethi Mandram (Fast Track Mahila Court), Srivilliputhur, dated 20.06.2017 and set aside the order of conviction and sentence, dated 20.06.2017 awarded against the appellant above named.

For Appellant : Mr.N.Ananthapadmanabhan
Senior Counsel

For Respondent : Mr.K.Gnanasekaran
Government Advocate (Crl.Side)



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JUDGMENT

The present appeal has been filed against the Judgment of the learned Sessions Judge, Fast Track Mahila Court, Srivilliputhur, dated 20.06.2017, made in SC No.181 of 2012.

2.The appellant is the sole accused, who has been found guilty by the trial court and he has been convicted and sentenced to undergo the following punishment.

Provisions under which convicted	Sentence of imprisonment	Fine amount
417 IPC	6 months rigorous imprisonment	To pay a fine of Rs. 1,000 in default to undergo 3 weeks simple imprisonment
376 IPC	7 years rigorous imprisonment	To pay a fine of Rs. 55,000 in default to undergo 3 weeks simple imprisonment

3.The case of the prosecution as it appears from the record is that the victim woman is living in Melathayilpatti village and the accused is also living in the same village. The victim during school vacation had been to the house of the accused, who was involved in manufacturing



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crackers. During that time, the accused and the victim fell in love with each other. On 17.03.2011, at about 09.00 am., when the victim was at her home, the accused contacted her through phone and told her that he would talk to her in person. When the victim went to the house of the grand-mother of the accused and was talking with him, he suddenly pulled her hands and compelled her to have physical relationship with him. Despite her refusal, the accused compelled and raped her against her will. When the victim cried, he promised her that he would marry her. When the victim got conceived, he gave her tablets to abort the same, but it was unsuccessful and the fetus developed in the womb. When the Doctor examined, she confirmed her pregnancy. The victim's mother demanded justice before the Village Panchayat, but it was of no use.

4. Thereafter, the victim gave a complaint on 01.11.2011 before the respondent Police and it was taken up for investigation. After the completion of investigation, the charge sheet was filed against the accused under Sections 376, 417 IPC and he was found guilty and convicted and sentenced as stated *supra*.



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5.The learned Senior Counsel for the appellant submitted that a consensual relationship has been exaggerated as an offence of rape; the accused did not promise to marry the victim; the victim has given a complaint with some ulterior motive; no evidence is available to show that the accused had refused to marry her at any point of time; in fact, the victim has stated that the marriage between herself and the accused was solemnized in the presence of both the parents and other relatives; subsequently, the sacred thread was snatched from her; the accused at no point of time had refused the affair between himself and the victim.

6.The learned Government Advocate (Crl.Side) appearing for the respondent submitted that the victim's evidence is the best reliable evidence and the trial Court has relied on the evidence of the victim and the medical evidence to arrive at a conclusion that the accused had physical relationship with the victim.

7. I have given my anxious consideration to the submissions made on either side and carefully perused the records.



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8.In the complaint Ex.P1, the victim has stated that she had an affair with the accused. On the day of occurrence, the victim got a call from the accused and as per his instructions, she went to his grandmother's house. It is alleged during that time, that the accused had forcibly raped her.

9.During the cross examination of PW1, she has clearly stated that they had the sexual relationship on two prior occasions. On two such occasions, they were in a house, where there was no one. Even in the complaint, she has stated that she had tried to abort the fetus with the help of the accused by consuming the tablet, but it did not work. Therefore, she continued to carry the child. When the mother asked her about the size of her stomach, then also she did not reveal the truth. On the compulsion of her mother, a scan was done, and she was found to be 8 months pregnant. Only subsequent to that, she revealed that the accused was the reason for her pregnancy.



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11. The occurrence is said to have taken place on 17.03.2011 and the victim knew that she was pregnant, but she had chosen to give the complaint only on 01.11.2011. It was not the case of the prosecution that the victim was a minor at the time of occurrence. Even the charge sheet did not state that the victim was a minor at the time of occurrence.

12. However, the learned trial Judge has proceeded to conclude that the accused had committed the offence of rape within the meaning of **375(fourth)** IPC. It was observed that after having the sexual intercourse, the accused had promised the victim that he would marry her.

14. As per the definition of '*rape*' under Section 375(fourth) of IPC, a man is said to have committed rape with the consent of the woman, when the man knows that he is not her husband, and that her



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consent is given because she believed that the man is another person to whom she believed herself to be lawfully married.

15. In the instant case, neither the accused gave hope to the victim that he is lawfully married to her, nor the victim had ever believed that the accused had married her, at the time of having the sexual intercourse with her. The victim and the accused knew that they were not married but were only lovers.

16. It was the promise given by the accused to the victim that he would marry her and that had prompted her to carry the child. She trusted him at the risk of carrying the child in her womb without even revealing the said fact to her mother. She was at the advanced stage of pregnancy when the mother suspected her big stomach.

17. In the complaint itself, she has stated that how she managed to have her pregnancy as a secret. She was hiding it from her



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mother that her stomach is big due to obesity. The kind of pretension and management done by her would only show how deeply she posed her trust on the accused and believed that he would marry and save herself and the child she carried in her womb.

18. However, the failure on the part of the accused to keep up his promise or the alertness on the part of the victim to prevent the occurrence, will not convert the consensual sexual relationship between herself and the accused to rape, especially under the category of Section 375(fourth) of IPC.

19. In order to make out an offence of rape under Section 375(2) of IPC, the following ingredients ought to have been proved.

- 1. There should have been sexual intercourse between the victim and the man.*
- 2. The victim ought to have consented the same.*
- 3. But the consent should have been obtained*



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- *When the accused knows that he is not the husband of the victim.*
- *The consent has been given by the victim as she believed that he is the man whom she is lawfully married or believed that she has been wedded to him.*

20.As stated already, in the present case, the consent of the victim was neither obtained by making her believe that the accused was her husband, nor did the victim believe that she was married to the accused.

21. In fact, in the evidence of the victim, she has stated that subsequent to the occurrence, the marriage was convened between the accused and the victim in the presence of the relatives. But immediately the sacred thread tied on her neck was snatched.

22.Both the victim and the accused did not trust that a valid



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marriage happened between themselves. The accused has taken a defence that he did not cheat the victim and never refused to marry her or live with her. Had he really married and lived with the victim, she would have not given the complaint of this nature.

23. Only because the accused knew that there was no valid marriage between them and the marriage ceremony was only an eye wash to cheat the victim, he had chosen to marry another woman and fathered two children through her. Had he believed that the marriage had already been taken place between himself and the victim, he could not have easily married another woman without dissolving the so called marriage with the victim. The victim also did not believe that there was a valid marriage between herself and the accused. Had she believed that, she would have filed proceedings for restitution of conjugal rights, when the accused deserted her. So, it can only be understood that the accused had cheated the victim by making her to believe that he would marry her at some point of time and continued to have sexual relationship.



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24. The victim girl knowingly took the risk on the belief that the accused would not let her down. But the accused was not honest to the relationship and he did not care to honor his promise to marry the victim. Hence, the criminal liability can be fastened upon the accused only for cheating the victim and not for the offence of rape.

25. The victim was hardly 18 to 19 years old at the time of occurrence. The victim had consented to have physical relationship with the accused but not with an intention to have a child outside of marriage. The definition of cheating under sec.415 I.P.C is inducing someone to deliver any property or to do certain things, which the person would not do and thereby cause damage or harm to that person's body, mind and to her integrity. For a better clarity, the provision under Section 415 is extracted below:

“415. Cheating —

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".



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26. In this regard, the Hon'ble *Supreme Court* has elaborately dealt with the aspect of cheating in *Hira Lal Hari Lal Bhagwati Vs C.B.I., New Delhi*, reported in 2003 INSC 275. The relevant portion is extracted hereunder:

“Section 415 of the Indian Penal Code deals with cheating. To hold a person guilty of cheating as defined under Section 415 of the Indian Penal Code, it is necessary to show that he has fraudulent or dishonest intention at the time of making the promise with an intention to retain the property. In other words, Section 415 of the Indian Penal Code which defines cheating, requires deception of any person (a) inducing that person to: (i) to deliver any property to any person, or (ii) to consent that any person shall retain any property OR (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person, anybody's mind, reputation or property. In view of the aforesaid provisions, the appellants state that person may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the Section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In



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the second class of acts, the inducing must be intentional but not fraudulent or dishonest.”

27. The accused had induced the victim girl to give her consent for having sexual relationship by influencing her that he would marry her, and thereby, the accused had caused damage and harm to her body and mind. Her reputation in the society has also been damaged as she had become an unwed mother due to the pregnancy caused on her by the accused. A 19-year-old girl becoming an unwed mother and to live in this society with a child born out of such a relationship would not only cause damage to her bodily integrity, but also to her mental health. The harm done by the accused to the life of the victim is irreparable.

28. Now it is learnt that the child is 15 years old and she has the need to take care of the child as well. The accused without having any honesty and sense of dutifulness towards a child for which he had fathered, had proceeded to engage in another marriage and given birth to two more children out of that marriage. In the life that the accused



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designed for himself, he had settled well and live his normal life.

29.The damage caused by the accused to the life of the victim cannot be compensated in terms of money or otherwise. The outlook of the accused towards a woman of his love is very disheartening. He had only tried to prove to the victim by his conduct that him being a man can live without any clutches or responsibility towards her or the child she had given birth for him.

30.It is too difficult to imagine the nightmarish life the victim would have lived all these days with a huge responsibility of bringing up the child all alone by herself. She has been fighting the legal battle for so many years at the cost of losing the pleasure of life.

31.Even though the accused cannot be convicted for the offence under Section 376 IPC in view of the active consent on the part of the victim to go physical with the accused, his conduct would very



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much prove the offence of cheating as defined under Section 415 of IPC.

Hence the finding the accused guilty for the offence under Section 417

has to be upheld.

32.The trial Court has imposed a punishment of 6 months imprisonment with fine of Rs. 1,000/-, for the offence under Section 417 IPC. But the trial Court has not awarded any compensation. As the fine amount imposed by the trial Court is very nominal and out of which, no compensation can be paid to the victim, I feel the accused should be ordered to pay compensation separately.

33.Though the loss of injury suffered by the victim cannot be quantified in terms of money for the purpose of awarding compensation, I feel some consolation can be given to her by ordering the accused to pay a compensation of Rs. 15 lakhs to the victim.



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34.In the result, the **Criminal Appeal is partly allowed.**

The finding of guilt, conviction, and sentence imposed on the appellant for the offence under **Section 376** IPC by the learned Sessions Judge, Mahalir Neethimantram (Fast Track Mahila Court), Thanjavur, in S.C.No.168 of 2012, dated 27.09.2017, is hereby **set aside** and the appellant is acquitted of the said charge.

35. So far as the finding of guilt and conviction recorded against the appellant for the offence under **Section 417 IPC is concerned, the same is confirmed.** It is submitted that the appellant had already undergone 63 days of imprisonment. Considering the facts and circumstances of the case, the sentence imposed by the trial court is reduced to the period already undergone. However, the appellant is directed to pay a sum of **Rs.15,00,000/-** (Rupees Fifteen Lakhs only) as compensation to the victim under Section 357(3) Cr.P.C., within a period of **three (3) weeks** from the date of receipt of a copy of this judgment.



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The bail bond executed by the appellant shall stand terminated.

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NCC :Yes/No

Index :Yes/No

Internet:Yes/No

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To

1.The Sessions Judge,
Mahalir Neethi Mandram (Fast Track Mahila Court), Srivilliputhur.

2. The Inspector of Police,
All Women Police Station, Sattur,
Virudhunagar District, Crime No.13/2011.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

4.The Section Officer,
Criminal Record Section,
Madurai Bench of Madras High Court, Madurai.



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DR.R.N.MANJULA, J.

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