

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.08.2025

CORAM :

THE HONOURABLE **Dr. JUSTICE R.N.MANJULA**

Crl.A.(MD)No.216 of 2017

Kottaisamy

... Appellant/A1

versus

The State of Tamil Nadu
rep., by the Deputy Superintendent of Police,
Thiruvadanai Division,
Ramanathapuram District.

... Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the judgment made in Spl.S.C.No.108 of 2011 by the Principal Sessions Judge, Ramnad, dated 17.02.2017.

For Appellant : Mr.D.Venkatesh

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

JUDGMENT

This criminal appeal has been preferred challenging the judgment of the learned Principal Sessions Judge, Ramanathapuram, dated 17.02.2017, made in Spl.S.C.No.108 of 2011.

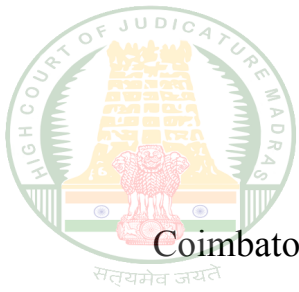


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2. There are totally three accused. The appellant is the first accused, who has been found guilty for the offences under Sections 417, 376, 506(ii) IPC and Section 3(2)(v) of SC/ST(POA) Act and convicted and sentenced to undergo the following punishment:

Offence u/s	Punishment
417 IPC	To undergo 1 year (S.I) and to pay a fine of Rs.1,000/-, i/d to undergo one month (S.I)
376 IPC	To undergo 10 years (R.I) and to pay a fine of Rs.25,000/-, i/e to undergo 1 year (R.I)
506(ii) IPC	To undergo 1 year (R.I) and to pay a fine of Rs.2,000/-, i/d to undergo 6 months (S.I)
3(2)(V) of SC/ST(POA) Act	To undergo 10 years (R.I) and to pay a fine of Rs.15,000/-, i/d to undergo 1 year (R.I)

3. The case of the prosecution is that the defacto complainant belonged to Scheduled Caste Community and had been in Tirupur working in a Banian company, before 1 ½ years. Herself and the sister of the appellant, Gomathi/A2, were staying in a same house as both were working in a same company. During Jan-2009, the accused came from Chennai to join job at



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Coimbatore. From Jan-2009, the accused used to visit his sister at Tirupur, on every Sunday. As the victim and the sister of the accused were working in different shifts, there were occasions that the victim and the accused were alone. By taking advantage of that time, the accused seduced the victim by saying that he was in love with her and he would marry her soon.

4. By giving such assurance, on 15.03.2009, when the victim was alone at home, the accused convinced her that he would marry her and compell her to have sexual intercourse. Subsequently, the victim got conceived and she revealed the relationship between her and the accused to the second accused /sister of the first accused. The sister of the first accused, Gomathi, also assured that her brother would marry her, but they evaded by leaving the victim at lurch. When the matter came to be known to the family members of the victim, panchayat was held during the month of June-2009. However, the accused and his family refused to marry the first accused citing the caste differences.

5. On the complaint given by the defacto complainant, a case has been registered. After the completion of investigation, charge sheet has been filed for the offences under Sections 417, 376 and 506(ii) IPC and Sections 3(1)(x)



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and 3(2)(v) of SC/ST(POA) Act, against the appellant/first accused. Since the offence is triable by the Sessions Court, the case was committed to the Sessions Court. The learned trial Judge had taken cognizance in Spl.S.C.No. 108 of 2011 and after completing the legal mandate of furnishing copies and all other legal formalities, the learned trial Judge framed charges against the appellant/first accused for the offence under Section 417, 376 and 506(ii) IPC and Sections 3(1)(x) and 3(2)(v) of SC/ST(POA) Act. When the appellant was questioned, he denied the same and claimed to be tried.

6. During trial, on the side of the prosecution, P.W.1 to P.W.17 were examined and Exs.P1 to ExP19 were marked. On the side of the defence, no oral and documentary evidence was let in.

7. After the conclusion of trial, based on the oral and documentary evidence, the learned trial Judge has convicted and sentenced the appellant as stated *supra*. Aggrieved over the same, this appeal has been preferred.

8. It appears from the evidence of P.W.1 that all the three accused have participated in the panchayat and panchayatdars insisted the first accused that to marry the defacto complainant. But the accused persons did not agree the



same, and they threatened the defacto complainant with dire consequences.

WEB P.W.2, who is the mother of the defacto complainant, stated in her evidence that on the same day when the panchayat was held, the first and second accused threatened the defacto complainant with knife. P.W.3 and P.W.4, who are independent witnesses and also panchayatdars, have stated in their evidence that they had convened a panchayat and the accused were called but they did not appear.

9. The learned counsel appearing for the appellant submitted that there is no evidence to show that the appellant was present in the panchayat; even assuming that he was present, the alleged threat was not serious in nature and mere utterance of words cannot be construed as criminal intimidation. In this regard, he relied upon the judgment of the Madras High Court in the case of ***V.Ponnusamy Vs., State rep., by the Deputy Superintendent of Police*** reported in ***(2016) 1 MLJ (Crl) 668***, wherein it has been held as follows:

“32..Chapter XXII of [Indian Penal Code](#), 1860 deals with certain kinds of criminal intimidation. [Section 506](#) IPC is a punishing Section. In this case, admittedly, at the time of the alleged occurrence, the accused was not in possession of any lethal weapon much less any weapon nor he possessed any corrosive substance nor he carry any Kerosene Tin or Petrol Tin or a country made bomb nor a match box. There are lethal words. Mouth is a dangerous weapon. But they cannot be equated to lethal weapons so as to attract [Section 506\(ii\)](#) IPC.



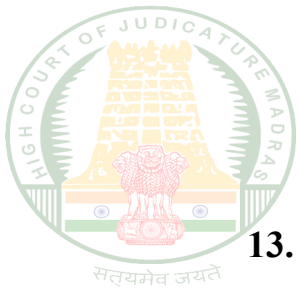
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33. *The intention of the accused should be such that he wanted to instill fear in the mind of the victim. But, the evidence of PW-1 did not satisfy such a requirement. That apart, in this respect, PWs-1, 3 and 5 were not consistent in their evidence. Thus, the charge under [Section 506\(ii\)](#) IPC has also fallen to the ground.”*

10. The learned Government Advocate (Crl.side) submitted that the trial Court has rightly considered the evidence placed and arrived at a conclusion by convicting the accused.

11. Heard both sides and perused the materials available on record.

12. On perusal of the evidence available on record, it is seen that P.W.1 has merely alleged that she was intimidated by the appellants, however the specific words constituting such intimidation have not been stated in her evidence. The panchyatdars, who have been examined as P.W.3 and P.W.4 also have not spoken about the participation of the appellant/first accused. As rightly pointed out by the learned counsel for the appellant, even if it is presumed that the appellant took part in the panchayat, the alleged intimidation as deposed by P.W.1 does not appear to be sufficiently serious to cause a real apprehension in her mind that she would be killed, if she continued to compel the first accused to marry her.



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13. So far as the offence under Section 506(ii) is concerned, the learned counsel for the appellant submitted that such offence has been made against the appellant, merely on a simple allegation that he has intimidated the victim without having any details of intimidation. Even in the evidence of P.W.1 she has stated only a generalised statement that the accused had threatened her with dire consequences and thereafter, left the place. Hence, the act of the accused with regard to causing intimidation does not attract the ingredients to make out the offence punishable under Section 506(ii) IPC. In respect of the guilt for the offence under Section 506(ii) IPC as against the appellant/ first accused also, the judgment of the Hon'ble Supreme Court in the case of ***Sharif Ahmed vs. State of U.P (2024 SCC OnLine SC 726)***, is applicable. Accordingly, the conviction of the appellant for the offence under Section 506(ii) IPC is liable to be set aside.

14. In the further evidence of P.W.1, she has stated that the physical relationship between the accused and herself had taken place repeatedly and not just once. The victim was a major during the relevant point of time. Though she initially gave her consent believing that the accused would marry her, she could have been conscious when the accused was repeating the same act. Therefore, the conduct of the victim in allowing the accused to repeatedly



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engage in sexual intercourse, would only show that though she might have been initially reluctant, subsequently she had participated by accepting the same. There was no misconception in the mind of the victim that the accused was her husband. She was conscious of the fact that she was yet to be married to him, still, she had given her consent. Consent given under influence, or half-hearted consent with reluctance, is different from consent given under fear or misconception as contemplated under Section 90 of the IPC. For a better understanding the provision under Section 90 IPC is extracted hereunder:

*“90. Consent known to be given under fear or misconception.—
A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or*

Consent of insane person.—if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

Consent of child.—unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age “

15. When the Hon'ble Supreme Court in *Pramod Suryabhan Pawar v. State of Maharashtra*, (2019) 9 SCC 608, held that, where the promise to marry is false and the intention of the maker at the time of making the promise



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itself was not to abide by it, but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The "consent" of a woman under Section 375 is vitiated on the ground of a "misconception of fact" where such misconception was the basis for her to engage in the said act.

16. In the instant case, had it been a single occurrence of physical relationship and thereafter, the accused got absconded or avoided the victim, then it can be safely presumed that the consent obtained by the victim was under a misconception of fact. Having known well that the accused did not marry her after the first occurrence, the victim consented again and again. Only after she got conceived, she started pressurizing the accused to marry her. Such repeated involvement cannot be considered as a consent given out of misconception.

17. It is essential to refer the judgment of the Hon'ble Supreme Court in the case of *Uday vs. State of Karnataka (19.02.2003 - SC)* : *MANU/SC/0162/2003*, wherein it has been held as follows:



“....22. In therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no strait jacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the Courts provide at best guidance to the judicial mind while considering a question of consent, but the Court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them.

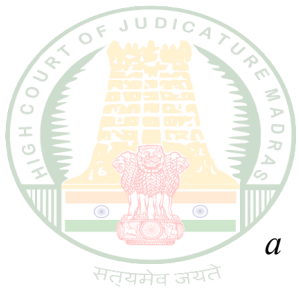
24. Keeping in view the approach that the Court must adopt in such cases, we shall now proceed to consider the evidence on record. In the instant case, the prosecutrix was a grown up girl studying in a college. She was deeply in love with the appellant. She was however aware of the fact that since they belonged to different castes, marriage was not possible. In any event the proposal for their marriage was bound to be seriously opposed by their family members. She admits having told so to the appellant when he proposed to her the first time. She had sufficient intelligence to understand the significance and moral quality of the act she was consenting to. That is why she kept it a secret as long as she could. Despite this, she did not resist the overtures of the appellant, and



in fact succumbed to it. She thus freely exercised a choice between resistance and assent. She must have known the consequences of the act, particularly when she was conscious of the fact that their marriage may not take place at all on account of caste considerations. All these circumstances lead us to the conclusion that she freely, voluntarily, and consciously consented to having sexual intercourse with the appellant, and her consent was not in consequence of any misconception of fact.

25. There is another difficulty in the way of the prosecution. There is no evidence to prove conclusively that the appellant never intended to marry her. Perhaps he wanted to, but was not able to gather enough courage to disclose his intention to his family members for fear of strong opposition from them. Even the prosecutrix stated that she had full faith in him. It appears that the matter got complicated on account of the prosecutrix becoming pregnant. Therefore, on account of the resultant pressure of the prosecutrix and her brother the appellant distanced himself from her.

26. There is yet another difficulty which faces the prosecution in this case. In a case of this nature two conditions must be fulfilled for the application of Section 90 IPC. Firstly, it must be shown that the consent was given under a misconception of fact. Secondly, it must be proved that the person who obtained the consent knew, or had reason to believe that the consent was given in consequence of such misconception. We have serious doubts that the promise to marry induced the prosecutrix to consent to having sexual intercourse with the appellant. She knew, as we have observed earlier, that her marriage with the appellant was difficult on account of caste considerations. The proposal was bound to meet with stiff opposition from members of both families. There was therefore



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a distinct possibility, of which she was clearly conscious, that the marriage may not take place at all despite the promise of the appellant. The question still remains whether even if it were so, the appellant knew, or had reason to believe, that the prosecutrix had consented to having sexual intercourse with him only as a consequence of her belief, based on his promise, that they will get married in due course. There is hardly any evidence to prove this fact. On the contrary the circumstances of the case tend to support the conclusion that the appellant had reason to believe that the consent given by the prosecutrix was the result of their deep love for each other. It is not disputed that they were deeply in love. They met often, and it does appear that the prosecutrix permitted him liberties which, if at all, is permitted only to a person with whom one is in deep love. It is also not without significance that the prosecutrix stealthily went out with the appellant to a lonely place at 12 O'clock in the night. It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married. As stated by the prosecutrix the appellant also made such a promise on more than one occasion. In such circumstances the promise loses all significance, particularly when they are over come with emotions and passion and find themselves in situations and circumstances where they, in a weak moment, succumb to the temptation of having sexual relationship. This is what appears to have happened in this case as well, and the prosecutrix willingly consented to having sexual intercourse with the appellant with whom she was deeply in love, not because he promised to marry her, but because she also desired in. In these circumstances it would be very difficult to impute to the appellant knowledge that the prosecutrix had consented in consequence of a misconception of fact arising from his promise. In any event, it was not possible for the appellant to know what was in the mind



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of the prosecutrix when she consented, because there were more reasons than one for her to consent.

27. In view of our findings aforesaid, we do not consider it necessary to consider the question as to whether in a case of rape the misconception of fact must be confined to the circumstances falling under Section 375 Fourthly and Fifthly, or whether consent given under misconception of fact contemplated by Section 90 has a wider application so as to include circumstances not enumerated in Section 375 IPC.....”

18. In the cross-examination of P.W.1, she has stated that by taking into account of the repeated physical intimacy, she had informed her parents to arrange a marriage with the accused. The victim had urged the accused to marry her, after she got conceived. Hence, the physical relationship between the accused and the victim can only be considered as a consensual relationship and not rape. However, the act of the accused in not taking any steps to marry the victim and rejecting the panchayat for the reason of 'caste' would show his intention to cheat her. Being in a close relationship for a few years, the accused could have been aware of the caste of P.W.1. In fact, P.W.1 expressed her doubt to the accused about the possibility of marrying her in view of her caste and for which the accused gave re-assurance.

19. From the very inception, the accused had no intention of marrying

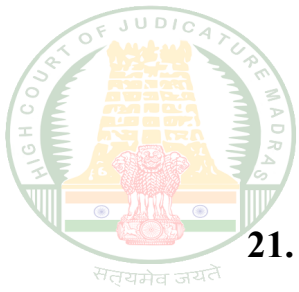


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PW1, instead he used the victim as an 'object' for his desire. Though the accused cannot be convicted under Section 376 IPC, his actions attract the ingredients of cheating as defined under Section 415 IPC and hence, he ought to be punished under Section 417 IPC. Section 415 IPC would define cheating as under:

“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”. “

20. The accused deceived the victim by inducing her with dishonest intention to have sexual intercourse. As a result, she submitted herself to him, subsequently conceived and gave birth to a girl child, thereby become an unwed mother. Her life itself was spoilt due to the harmful actions of the accused. The victim is now burdened with a child without the benefit of marriage. DNA test, Ex.P8, conducted by P.W.10 would reveal that the appellant is the father of the child Karthigairani. The act of the accused can only be considered as cheating.



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21. The offence for cheating is punishable under Section 417 IPC, the maximum punishment for the said offence is one year.

22. In order to punish a person for an offence under Section 3(2)(v) of the SC/ST (POA) Act, it should be proved that the offence for which the accused found guilty should be punishable with imprisonment for a term of 10 years or more and that the victim must belong to a Scheduled Caste or Scheduled Tribe community. In the present case, although the victim belongs to the SC/ST community, the offence for which the accused has been charged is not punishable with imprisonment for a term of 10 years or more. Hence, the accused cannot be held guilty of the offence under Section 3(2)(v) of the SC/ST Act."

23. In view of the above decision, I feel that the judgment of the trial Court is liable to be modified.

24. In result,

i) This Criminal Appeal is partly allowed.

ii) The impugned judgment passed by the learned Principal Sessions



Judge, Ramanathapuram, in Spl.S.C.No.108 of 2011 dated 17.02.2017 is

WEB COPY hereby modified as under:

Findings and Punishment imposed by the Trial Court	Modified by this Court
<u>Section 417 IPC</u> Found guilty, convicted and sentenced to undergo 1 year (S.I) and to pay a fine of Rs. 1,000/-, i/d to undergo 1 month (S.I)	Reduced to undergo six months (R.I)
<u>Section 376 IPC</u> Found guilty, convicted and sentenced to undergo 10 years (R.I) and to pay a fine of Rs.25,000/-, i/d to undergo one year (R.I)	Acquitted
<u>Section 506(ii) IPC</u> Found guilty, convicted and sentenced to undergo 1 year (R.I) and to pay a fine of Rs. 2,000/-, i/d to undergo six months (S.I)	Acquitted
<u>Section 3(2)(v) SC/ST(POA) Act</u> Found guilty, convicted and sentenced to undergo 10 years (R.I) and to pay a fine of Rs.15,000/-, i/d to undergo one year (R.I)	Acquitted

iii) It is further directed that the period of detention already undergone by the accused, if any, shall be given set off under Section 428 Cr.P.C and the sentences shall run concurrently.

(iv) The appellant/A1 shall pay the fine amount of Rs.1,00,000/- (Rupees One Lakh only), in default, he shall undergo further six months of Simple Imprisonment.

v) The trial court shall take steps to secure the accused to commit him to



prison to serve out the period of sentence.

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11.08.2025
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Index : Yes/No
NCC : Yes/No

Rmk

To

- 1.The Principal Sessions Court, Ramanathapuram.
- 2.The Inspector of Police,
All Women Police Station,
Thiruvadanai, Ramanathapuram District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 4.VR Section.
Madurai Bench of Madras High Court,
Madurai.



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R.N.MANJULA, J.,

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