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Crl.A.No.65 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2026

CORAM:

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.65 of 2024

Velmurugan

... Appellant

Vs.

The State, represented by,
The Inspector of Police,
All Women Police Station,
Thirukovilur,
Villupuram District.

(Crime No.50 of 2019)

... Respondent

PRAYER: Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, to set aside the conviction under Sections 417 and 376 of IPC and the sentences of rigorous imprisonment for a period of one year and 10 years to be run concurrently and fine of Rs.1,000/- (Rupees One Thousand Only) and Rs.10,000/- (Rupees Ten Thousand Only), in default of payment of which, to undergo simple imprisonment for a period of 1 month and 3 months respectively, rendered vide judgment dated 6th December, 2023, in S.C.No.223 of 2020, on the file of the Sessions Court, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram.

For Appellant : Ms.Shabana

For R1 : Ms.J.R.Archana
Government Advocate (Criminal Side)



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JUDGMENT

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Challenging the judgment of conviction and sentence dated 06.12.2023, passed by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram, in S.C.No.223 of 2020, the present Criminal Appeal has been filed.

2. The case of the prosecution as per the *de facto* complainant/PW1 is as follows:-

2.1. On 16.09.2019, the victim/second daughter of the *de facto* complainant (PW2), who got separated from her husband before the village panchayat, was found lying unconscious after having consumed pesticide. Subsequently, she was taken to the Government General Hospital, Thirukovilur.

2.2 Upon enquiry, after regaining senses, she stated that she became acquainted with the appellant/A1, who, on the promise of marrying her, had sexual intercourse with her on several occasions, took her earnings and thereafter, reneged.

2.3. On account of the same, on 16.09.2019, the victim/PW2 herself went to the house of the appellant/A1 and informed his family members, who are ranked as A2 to A5, about their relationship. Upon



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hearing the same, the family members of the appellant/A1 abused the victim/PW2 in filthy language, assaulted her and threatened her with dire consequences. Therefore, unable to bear the humiliation caused by the accused, the victim attempted to commit suicide by consuming pesticide. Hence, the accused have been charged as under:-

Rank	Charges
A1	Sections 376 & 417 of IPC
A2 to A5	Sections 294(b), 506(I) and 309 of IPC r/w 109 of IPC and Section 4 of the TN Prohibition of Harassment of Women Act, 2002.

3. However, only the appellant/A1 was convicted and sentenced by the trial Court and the other accused were acquitted. The appellant/A1 was convicted and sentenced as under:-

<i>Under Section</i>	<i>Sentence</i>
417 of IPC	One year rigorous imprisonment and fine of Rs.1,000/-, in default, to undergo one month simple imprisonment.
376 of IPC	Ten years rigorous imprisonment and fine of Rs.10,000/-, in default, to undergo three months simple imprisonment.
The sentences were ordered to run concurrently.	

4. Brief facts of the case, as evinced from the prosecution witnesses and other materials available on record, are as under:-



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4.1. PW1, the *de facto* complainant, is the father of the victim/PW2. The victim/PW2 was working in Tiruppur. PW2 and the appellant/A1 were in love. However, she was married to one Balamurugan in the year 2015 by her parents against her wishes and later, they got separated due to matrimonial discord.

4.2. Thereafter, the appellant/A1 contacted the victim/PW2 and on the promise of marrying her, had sexual intercourse with her. Subsequently, the victim/PW2 became pregnant and on coming to know about the same, the accused bought her pills and caused termination of the pregnancy. Further, they lived together in Tiruppur, where the victim/PW2 was employed. Even during such time, the appellant/A1 had forcible sexual intercourse with the victim/PW2.

4.3. However, later, the appellant/A1 ignored her and refused to marry her. Further, the parents and siblings of the appellant/A1 also refused to consent to their marriage, abused her and threatened her with dire consequences. Due to the humiliation caused by the accused, she consumed pesticide and was later taken to hospital by the *de facto* complainant/PW1.

4.4. Thereupon, the *de facto* complainant/PW1 lodged a complaint (Ex.P1) on 17.09.2019. Based on the said complaint, PW12,



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Grade-I Police Constable registered a case in C.S.R.No.476 of 2019 and submitted the same before PW13, the Sub-Inspector of Police, who, after enquiry, registered the First Information Report (Ex.P12), in Crime No.50 of 2019 against the accused for the offences punishable under Sections 417, 376, 294(b), 323, 355 and 506(I) of IPC and Section 4 of the TN Prohibition of Harassment of Women Act, 2002 on 19.09.2019 and forwarded the FIR to the Investigation Officer, PW14, for investigation.

4.5. PW14 took up the investigation, visited the scene of occurrence and prepared observation mahazars I and II (Ex.P13 & Ex.P15) and rough sketches I and II (Ex.P14 & Ex.P16) in the presence of the witnesses PW6 and PW7. The witnesses were enquired and their statements were recorded from them.

4.6. At about 17.30 hours on the same day, PW14 arrested accused 1 to 3, took them to the police station and remanded them to judicial custody. Subsequently, PW14 sent a requisition to the Judicial Magistrate, Thirukovilur, for recording the statement of PW2 under Section 164 Cr.P.C. The said statement of the victim/PW2 recorded under Section 164 Cr.P.C. was marked as Ex.P2.

4.7. Thereafter, both the victim/PW2 and the appellant/A1 were sent for medical examination to the Government Medical College



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Hospital, Villupuram, after obtaining permission from the Judicial Magistrate, Thirukovilur.

4.8. PW9, the Doctor, who conducted medical examination on the appellant/A1, was enquired and a statement was recorded from him. The Medical Report given by PW9 was marked as Ex.P9.

4.9. PW10, the Doctor, who conducted medical examination on PW2 was enquired and a statement was recorded from her. The Accident Register recorded by PW10 was marked as Ex.P10.

4.10. PW11 and PW12, who had taken the victim/PW2 and the appellant/A1 respectively for medical examination, were enquired and their statements were recorded.

4.11. After completion of the investigation, the respondent police filed a final report before the Judicial Magistrate Court, Thirukovilur and the same was taken on file as P.R.C.No.38 of 2019.

4.12. On issuance of summons, the accused appeared before the Court and in compliance of Section 207 of Cr.P.C., copies were furnished to them. Thereafter, the case was committed to the Court of Session and made over to the Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram, in S.C.No. 223 of 2020.



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4.13. After hearing the counsel on both sides, charges were framed against the accused. During initial questioning in respect of the incriminating materials, the accused denied the charges and sought trial.

4.14. On the side of the prosecution, PW1 to PW14 were examined and Ex.P1 to Ex.P17 were marked. On the side of the defence, neither any witness was examined nor any document marked.

4.15. The trial Court, after hearing the arguments on both sides and upon consideration of the entire materials on record, found accused 2 to 5 not guilty and acquitted them of all charges and found the appellant/A1 guilty of the offences charged and convicted and sentenced him as set out at paragraph 3, *supra*. Aggrieved by the conviction and sentence, the present Criminal Appeal has been filed.

5. Learned counsel appearing for the appellant/A1 assailed the judgment of conviction and sentence passed by the trial court on the basis of the following submissions:-

5.1. The trial Court failed to take into consideration the material contradictions in the prosecution witnesses as well as the embellishments made in the prosecution case.



5.2. It is an admitted fact that the victim/PW2 was married to one Balamurugan and had got separated due to matrimonial discord and was living alone. Thereafter, the victim/PW2 and the appellant/A1 were in a consensual relationship for a considerable period, which subsequently turned sour.

5.3. It is not the case where the appellant had cheated her to get his lust satiated and therefore, the offences under Sections 376 & 417 of IPC cannot be made out on the facts of the present case. Hence, a case of consensual relationship between the parties, which has later turned sour, has been falsely projected as a case of rape and cheating.

5.4. The medical evidence also does not support the prosecution case, as PW10, in her report (Ex.P10), has opined that no external injuries were found on the victim. Therefore, at any stretch of imagination, the offences under Sections 376 & 417 of IPC cannot be made out against the appellant.

5.5. Though the parents and siblings of the appellant were also tried along with him for other offences, the trial Court had disbelieved the evidence of the prosecution witnesses as against them and acquitted them.



6. In support of her contention, the learned counsel appearing for the appellant relied on the judgment of the Hon'ble Apex Court in ***Mahes Damu Khare vs. The State of Maharashtra & Another*** reported in ***(2024) 11 SCC 398*** for the proposition that the offences under Section 376 & 417 of IPC cannot be made out in a case of prolonged consensual relationship subsequently turning sour. The relevant paragraphs from the said judgment read thus:-

“24. It may be also noted that there may be occasions where a promise to marry was made initially but for various reasons, a person may not be able to keep the promise to marry. If such promise is not made from the very beginning with the ulterior motive to deceive her, it cannot be said to be a false promise to attract the penal provisions of Section 375 IPC, punishable under Section 376 IPC.

25. In the present case, even assuming that the appellant had made the promise since 2008 when they met for the first time, the fact that they remained unmarried for a long period till 2017 without there being any protest or objection by the complainant, does not indicate the intention at the initial stage itself to make the promise falsely to marry the complainant. Making an allegation of non-fulfilment of promise to marry without undue delay by the promisee would, on the other hand, be an indicator of a false promise being made from the initial stage. In the present case, what is not in dispute is that the physical relationship between the appellant and the complainant continued for a long period of about a decade and as such it is difficult to infer that the appellant had made a false promise since the initial stage and continued to make false promises to marry her on the basis of which she also continued to have physical relationship with him.



26. In the present case, the nature of relationship between the appellant and the complainant can be characterised by the following attributes:

(i) The appellant and the complainant were acquainted with each other since 2008. The complainant herself admits that the appellant has been in physical relationship since then till 2017 without protest in spite of alleging that the appellant had done so without her consent.

(ii) The physical relationship was going on routinely. But the complainant in her complaint states that after she got a rented room in Shirvane, Nerul Sector 1, Navi Mumbai, in December, 2010, the appellant used to come every day and had sexual intercourse everyday, though without her consent and by giving false promise of marriage.

(iii) The complainant does not appear to be a naive and gullible woman who was susceptible to deceit while maintaining physical relationship with the appellant and the allegation of false promise surfaced only when the appellant refused to provide further financial and other assistance.

(iv) The conduct of the complainant clearly shows that she is a mature person clearly capable of understanding the consequences of her acts and she was fully aware of the kind of illicit relationship she was maintaining with a married person.

(v) The complainant was fully aware that the appellant was already married and had two wives, though one of them was not keeping well.

27. Thus, from the above it appears that it is more of an extra-marital affair during the aforesaid period without any insistence by the complainant for getting married to the appellant. The fact that the complainant continued to have a physical relationship for a long time without any insistence on marriage would indicate the unlikelihood of any such promise made by the appellant for marrying her and it rather indicates that the relationship was a consensual one. In our opinion, the longer the



duration of the physical relationship between the partners without protest and insistence by the female partner for marriage would be indicative of a consensual relationship rather than a relationship based on false promise of marriage by the male partner and thus, based on misconception of fact.

28. Moreover, even if it is assumed that a false promise of marriage was made to the complainant initially by the appellant, even though no such cogent evidence has been brought on record before us to that effect, the fact that the relationship continued for nine long years, would render the plea of the complainant that her consent for all these years was under misconception of fact that the Appellant would marry her implausible. Consequently, the criminal liability attached to such false promise would be diluted after such a long passage of time and in light of the fact that no protest was registered by the complainant during all those years. Such a prolonged continuation of physical relationship without demurral or remonstrance by the female partner, in effect takes out the sting of criminal culpability and neutralises it.

29. It will be very difficult to assume that the complainant who is otherwise a mature person with two grown up children, was unable to discover the deceitful behaviour of the appellant who continued to have sexual relationship with her for such a long period on the promise of marriage. Any such mendacious act of the appellant would have been exposed sooner without having to wait for nine years. The inference one can draw under the circumstances is that there was no such false promise made to the complainant by the appellant of marriage by continuing to have physical relationship so as to bring this act within the province of Section 376 IPC and therefore, there was no vitiation of consent under misconception of fact.

30. Further, it appears that discontinuance of financial support to the complainant, rather than the alleged resiling from the promise to marry by the appellant appears to be the triggering point for making the allegation by the complainant after a long consensual relationship for about nine years.



31. In our view if criminality is to be attached to such prolonged physical relationship at a very belated stage, it can lead to serious consequences. It will open the scope for imputing criminality to such long term relationships after turning sour, as such an allegation can be made even at a belated stage to drag a person in the juggernaut of stringent criminal process. There is always a danger of attributing criminal intent to an otherwise disturbed civil relationship of which the Court must also be mindful.

32. It is evident from the large number of cases decided by this Court dealing with similar matters as discussed above that there is a worrying trend that consensual relationships going on for prolonged period, upon turning sour, have been sought to be criminalised by invoking criminal jurisprudence.”

(emphasis supplied)

7. It is also apposite to point out that the Hon’ble Supreme Court echoed the same view in *Prashant vs. State of NCT of Delhi* reported in (2025) 5 SCC 764. The relevant paragraphs from *Prashant, supra*, are as under:-

“17. In the present case, the issue that had to be addressed by the High Court was whether, assuming all the allegations in the FIR are correct as they stand, an offence punishable under Sections 376 and 506 IPC were made out. A bare perusal of the FIR reveals that the appellant and the complainant first came in contact in the year 2017 and established a relationship thereafter. The parties met multiple times at various places during the years 2017 and 2019, including at parks and their respective houses. Although the complainant stated that the appellant had a forceful sexual relationship with her, neither did she stop meeting the appellant thereafter, nor did she file a criminal complaint during the said period.



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18. It is inconceivable that the complainant would continue to meet the appellant or maintain a prolonged association or physical relationship with him in the absence of voluntary consent on her part. Moreover, it would have been improbable for the appellant to ascertain the complainant's residential address, as mentioned in the FIR unless such information had been voluntarily provided by the complainant herself.

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20. In our view, taking the allegations in the FIR and the charge-sheet as they stand, the crucial ingredients of the offence under Section 376(2)(n) IPC are absent. A review of the FIR and the complainant's statement under Section 164 CrPC discloses no indication that any promise of marriage was extended at the outset of their relationship in 2017. Therefore, even if the prosecution's case is accepted at its face value, it cannot be concluded that the complainant engaged in a sexual relationship with the appellant solely on account of any assurance of marriage from the appellant. The relationship between the parties was cordial and also consensual in nature. A mere break up of a relationship. Between a consenting couple cannot result in initiation of criminal proceedings. What was a consensual relationship between the parties at the initial stages cannot be given a colour of criminality when the said relationship does not fructify into a marital relationship. Further, both parties are now married to someone else and have moved on in their respective lives. Thus, in our view, the continuation of the prosecution in the present case would amount to a gross abuse of the process of law. Therefore, no purpose would be served by continuing the prosecution.”
(emphasis supplied)



8. Further, in *Prashant, supra*, the Hon'ble Supreme Court has considered the view in *X1 v. State of M.P.* reported in (2024) 3 SCC 496 and in *Pramod Suryabhan Pawar v. State of Maharashtra* reported in (2019) 9 SCC 608. The relevant paragraph from *Prashant, supra*, reads as under:-

“23. Recently this Court in *X1 v. State of M.P.* held that when the relationship between the parties was purely consensual and when the complainant was aware of the consequences of her actions, the ingredients of the offence of rape were not made out. Similarly, in *Pramod Suryabhan Pawar v. State of Maharashtra* arising out of identical facts, this Court has enumerated the following (SCC p. 620, para 18)

“18. To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman’s decision to engage in the sexual act.””

(emphasis supplied)

9. Learned Government Advocate (Criminal Side) appearing for the respondent submitted that though the victim/PW2 is a married woman, she had got separated from her husband and thus, taking advantage of the 14/18



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fact that the victim/PW2 is single, the appellant/A1 induced her on a false promise of marriage and had sexual intercourse with her. She further submitted that when the victim/PW2 became pregnant, the appellant/A1 caused termination of pregnancy by administering pills. However, she fairly conceded that the appellant was not charged for the offence under Section 312 of IPC.

10. In reply, the learned counsel appearing for the appellant/A1 invited the attention of this Court to the cross-examination of the victim/PW2 in which she had admitted categorically that she herself purchased pills from a medical shop for aborting the foetus.

11. Having heard the learned counsel appearing on either side and perused the materials available on record, this Court finds that the victim/PW2, had deposed that she and the appellant/A1 were in a love affair even prior to her marriage and such a relationship continued even after she got separated from her husband. Though the appellant/A1 had insisted on termination of the victim/PW2's pregnancy, it was the victim/PW2 herself, who had purchased pills from a medical store, which has also been candidly admitted by her in her statement recorded under Section 164 Cr.P.C., Ex.P2



and it is not the appellant/A1 had brought pills for her and administered the same to her, as projected by the prosecution. It is also noteworthy that even after the termination of pregnancy, the victim/PW2 continued her relationship with the appellant/A1 and they were living together in Tiruppur. Further, PW10, Doctor who examined the victim/PW2 has stated that there were no external injuries indicative of sexual assault.

12. Superadded, from the materials available on record, it is beyond cavil that the relationship between the parties was consensual in nature and continued over a considerable period and in fact, even after termination of pregnancy, their consensual relationship did not cease and only subsequently, it turned sour. Therefore, the ingredients of the offences under Sections 417 & 376 of IPC cannot be held to be attracted. This observation of this Court is fortified by the judgment in ***Mahes Damu Khare, supra***, relied on by the learned counsel for the appellant/A1, where, interestingly, the accused had had consensual relationship with the complainant for a considerable period of time and subsequently, their relationship had turned sour. Thus, the judgments in ***Mahes Damu Khare, supra***, and ***Prashant, supra***, are applicable on all fours to the facts of this case. Therefore, the judgment of the trial Court finding the appellant/A1



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guilty for the offences and convicting and sentencing him is liable to be set

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aside.

13. In the result, this Criminal Appeal stands allowed and the judgment of conviction and sentence dated 06.12.2023, made in S.C.No.223 of 2020 by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram, is hereby set aside. Bail bond, if any, executed by the appellant/A1, shall stand cancelled and fine amount paid, if any, shall be refunded to him.

09.03.2026

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Neutral Citation: Yes/No

To

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



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A.D.JAGADISH CHANDIRA, J.

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