



CrI.A.No.684 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.11.2025  
PRONOUNCED ON : 04 .02.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.684 of 2017

Sathish @ Sathith Kumar

... Appellant

Vs.

The State rep. by  
The Inspector of Police,  
All Women Police Station,  
Tirukoilur.  
Crime No.09 of 2014.

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the judgment passed against the appellant on 23.10.2017 in S.C.No.135 of 2015 on the file of the Court of learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Villupuram and acquit him from all charges.



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Crl.A.No.684 of 2017

For Appellant : Mr.E.C.Ramesh  
For Respondent : Mr.Leonard Arul Joseph Selvam  
Additional Public Prosecutor  
Assisted by Ms.Harshana.T

### JUDGMENT

This Criminal Appeal is filed to set aside the impugned judgment in S.C.No.135 of 2015 dated 23.10.2017 on the file of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Villupuram.

2.The appellant/accused in S.C.No.135 of 2015 convicted by the Trial Court by judgment dated 23.10.2017 and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.1,00,000/-, in default, to undergo six months rigorous imprisonment of the offence under Section 417 IPC. The fine amount to be paid as compensation to the child Girija aged about 4½ years for the welfare of the child and to be deposited in the name of Girija in any Nationalised Bank and further the victim, mother of the child is permitted to withdraw the periodical interest once in six months for the welfare of the child. Against which, the present appeal filed.



3.The case of the prosecution is that the defacto complainant/PW1 had a love affair with the appellant for 1½ years, four months prior to the complaint, when she was taking bath in the river near Anjaneyar temple, the appellant forcible took her to nearby bush, promised he will marry her and had sexual intercourse with the defacto complainant. When the defacto complainant requested the appellant to marry her, the appellant not only refused to marry but informed he will marry only his sister's daughter. The defacto complainant approached the appellant's sister/A2 and requested for the marriage, but appellant's sister abused, threatened and chased her away. Hence, the defacto complainant with the help of an Advocate lodged a complaint on 29.01.2014 which was received and CSR.No.8 of 2014 assigned on 01.02.2014. Both parties called for enquiry, the appellant refused to marry her and thereafter, a case in Crime No.9 of 2014 for the offence under Sections 417, 376 and 506(i) IPC registered on 12.02.2014 against the appellant and his sister. Thereafter, PW5 took up investigation, visited the scene of occurrence, prepared observation mahazar/Ex.P2 and rough sketch/Ex.P5 in presence of witnesses, recorded the statement of victim and others, produced the victim for medical examination. In the meanwhile, the appellant obtained anticipatory bail and reported for



investigation. The appellant was sent for medical examination, DNA test conducted, the victim delivered the baby, DNA report confirmed appellant as father of the baby. PW6 took up investigation, collected further documents and filed charge sheet. PW7/Forensic Expert confirmed the DNA test and submitted a report. During trial PW1 to PW7 examined and Ex.P1 to Ex.P8 marked on the side of the prosecution. On the side of the defence, no witness examined and no documents marked. On conclusion of trial, the Trial Court acquitted A2/appellant's sister and convicted A1/appellant as stated above.

4.The contention of the learned counsel for the appellant is that both victim and the appellant are major, they were in love relationship for more than 1½ years. The appellant was doing flower decoration work in Bangalore and he used to come for temple festival to his Village as well as to the village of the defacto complainant. Their love relationship got strengthened and both of them had physical relationship. The victim showed no resistance and it was a consensual relationship. The victim was aware of the consequences and continued to have relationship and she had not disclosed the love and physical relationship she had with the appellant to



anyone until she became pregnant, only after she became pregnant, she informed the same to others. PW2/brother of defacto complainant went along with her and lodged a complaint. PW1 admits that the appellant used to come and visit her uncle, residing next to her house, at that time, she was regularly speaking with him and had continued relationship. PW3/aunt of the defacto complainant confirms the appellant's visit to their house. The entire episode unraveled only after the victim became pregnant and the appellant was not ready to marry immediately since he had other commitments. PW1 confirms she is not conversant in reading and writing and she does not know what is written in the complaint/Ex.P1 and an Advocate had written the complaint and a Junior to the Advocate accompanied her to the Police Station. The Police received the complaint, initially conducted enquiry and later registered FIR. From the complaint and the evidence of PW1, it is clear victim not disclosed her relationship with the appellant, further there is nothing to show that there was any forcible physical relationship by the appellant against the victim's wish. The medical evidence confirms there is no injury, scratches or bruises. Though the appellant was charged for false promise and rape, the Trial Court acquitted the appellant from the charge of rape, finding there was no misconception



and forced physical relationship but given a finding by false promise appellant deceived the victim had physical relationship. The victim confirms physical relationship was not once, on several occasions. In such circumstances, the conviction of the appellant is not sustainable. PW2 and PW3 does not state anything about the occurrence, both deposed it was PW1 who informed about the relationship she had with the appellant. The Trial Court acquitted the appellant from major charge but without any material convicted the appellant for the offence under Section 417 IPC.

5.In support of his contention, the learned counsel for the appellant relied upon the decision of this Court in the case of ***Hamsaveni vs. The Inspector of Police, All Women Police Station, Tindivanam and others*** reported in ***2014 (1) MWN(Cr.) 146*** and in the case of ***Swami @ Ramakrishnan vs. State by Inspector of Police, G2 Puthumanthu Police Station, Nilgiris District*** reported in ***2010 (1) TNLJ 104 (Criminal)***, wherein this Court finding that the love affair admitted by the prosecutrix and the evidence indicate prosecutrix accompanied appellant showing no resistance and there is nothing to infer that the appellant had no intention to marry her and no circumstance or intention shown by the prosecution to



infer such conduct on the part of the appellant. Further in both the judgments of this Court, the judgment of the Apex Court in the case of *Uday vs. State of Karnataka* reported in *2003 (4) SCC 46* relied upon, wherein it is held that the prosecutrix freely exercised a choice between resistance and assent, she must have known the consequence of the act and consented to have sexual intercourse with the appellant and it cannot be said that the consent was in consequence of misconception of fact. The facts of the above case would clearly lead to an inference that there was no misconception or false promise. Hence, prayed for acquittal.

6.The learned Additional Public Prosecutor opposed the appellant's contention and submitted that in this case, PW1 is a rustic villager and the appellant used to visit her uncle's house regularly, both developed love relationship, they were in talking terms for more than 1½ years and developed close relationship. When the victim was taking bath in the river near Anjaneyar temple, the appellant took the victim to a thorny bush where he committed sexual assault and rape. The victim out of fear and inherent constraints, not disclosed the relationship until she became pregnant. Once she became pregnant, she requested the appellant to marry her. The appellant



informed that he would marry his sister's daughter and started avoiding the victim. Thereafter, victim went to the house of the appellant's sister and demanded for marriage where she was threatened, intimidated and chased away. Thereafter, defacto complainant lodged the complaint. PW6 registered FIR, took up investigation, conducted major portion of the investigation, examined the victim, her brother/PW2 and aunt/PW3, recorded statements, sent the victim for medical examination. PW4 examined the victim and given medical report/Ex.P3. The victim given birth to a bay, observation mahazar/Ex.P2 and rough sketch/Ex.P5 prepared in the presence of PW3. The accused obtained anticipatory bail, reported before the responded police and thereafter sent for medical examination and medical report/Ex.P7 collected. DNA report collected from PW7 confirmed accused is the biological father. In this case, after completion of investigation charge sheet filed for offence under Sections 417, 376 IPC against the appellant and under Section 506(i) IPC against the appellant's sister. During trial PW1 to PW7 examined and Ex.P1 to Ex.P8 marked on the side of the prosecution. On the side of the defence, no witness examined and no documents marked. On conclusion of trial, the Trial Court acquitted the appellant's sister for offence under Section 506(i) IPC and the appellant from offence under



Section 376 IPC but convicted the appellant under Section 417 IPC and sentenced him as stated above. He further submitted that the appellant was directed to pay compensation amount of Rs.1,00,00/- and the same deposited in the name of Minor Girija, who was aged about 4½ years in any Nationalised Bank and PW1/mother of the child was permitted to withdraw the periodical interest once in six months till the minor girl attains majority. The appellant was given only a lesser sentence and hence, prayed for dismissal of the appeal.

7.Considering the submissions made and on perusal of the materials, it is not in dispute that both victim and appellant are major having love relationship for more than 1½ years. The appellant was doing flower decoration work in Bangalore, who used to visit victim's uncle regularly, who was neighbour to the victim, both victim and appellant having physical relationship consciously without any force or resistance. The victim, a major had consensual relationship knowing about the consequences. Only after victim became pregnant she was unable to maintain secrecy of her relationship with the victim informed her brother/PW2 and aunt/PW3, that to after the appellant not agreeable for the marriage. The Doctor/PW4



examined the victim and gave medical report/Ex.P3. From the report, it is seen no injuries found on the cheeks, mammary glands or thighs confirming no forceful sexual relationship. In the above case, the prosecutrix is a grown girl aged about 23 years, from her evidence it is seen she had volunteered herself, had continuous physical relationship with the appellant, she admits the love affair between her and the appellant, from the evidence indicate she accompanied the appellant whenever he came to her Village, admittedly appellant hails from a different village, employed in Bangalore and he used to visit the prosecutrix Village and they continued their relationship. PW7 is the Assistant Director, Forensic Science Laboratory, Chennai conducted DNA test, gave DNA report/Ex.P8 confirming the appellant as father of the child. The Trial Court finding is that prosecutrix consent for physical relationship with the appellant is voluntary and will not come under the ambit of Section 90 of IPC. It is proved the appellant is the biological father of the child born to the prosecutrix, but there is no evidence to establish beyond all reasonable doubt that the appellant subjected prosecutrix to sexual act against her will and without her consent and on false promise to marry. Hence, the conviction and sentenced passed by the Trial Court cannot be sustained.



Crl.A.No.684 of 2017

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8.In the result, the Criminal Appeal is allowed. The conviction and sentence imposed by the Trial Court in S.C.No.135 of 2015 dated 23.10.2017 is set aside. But the compensation amount of Rs.1,00,000/- paid by the accused vide receipt No.0107146 dated 23.10.2017 in the name of minor Girija and other condition with regard to the compensation amount is sustained.

04.02.2026

Index : Yes/No  
Speaking Order/Non Speaking Order  
Neutral Citation: Yes/No  
*cse*

To

- 1.The Inspector of Police,  
All Women Police Station,  
Tirukoilur.
- 2.The Sessions Judge,  
Mahalir Neethimandram  
(Fast Track Mahila Court),  
Villupuram.
- 3.The Public Prosecutor,  
High Court, Madras.



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Crl.A.No.684 of 2017

M.NIRMAL KUMAR, J.

*cse*

Pre-delivery judgment made in

Crl.A.No.684 of 2017

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