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Crl.A.No.73 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2025

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.73 of 2023

Ameen Batcha

... Appellant/Sole Accused

v.

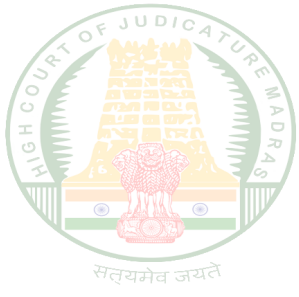
The State Rep. by its,
Inspector of Police,
Vikkravandi Police Station,
Villupuram District.
(Crime No.1623/2020)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, against the conviction of the appellant/sole accused and sentence in S.C.No.23 of 2021 dated 09.12.2022 on the file of the learned Sessions Judge, Magalir Neethimandram (FT Mahila Court), Villupuram District, and set aside the conviction and sentence and allow this appeal.

For Appellant : Mr.R.John Sathyan, Sr. Counsel
for Mr.Swamisubramanian

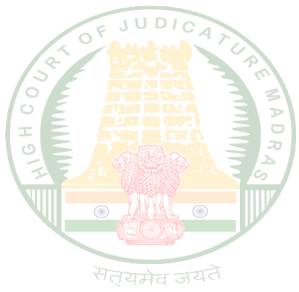
For Respondent : Mr.C.E.Pratap
Government Advocate (Crl.Side)



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JUDGMENT

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This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him, vide judgment dated 09.12.2022 in S.C.No.23 of 2021, on the file of the learned Sessions Judge, Magalir Neethimandram, Fast Track Mahila Court, Villupuram.

2. (i) It is the case of the prosecution that the victim aged about 24 years at the time of the occurrence had a love affair with the appellant who was aged 26 years, for a period of six years before the occurrence; that the victim told the appellant that since they belonged to different religions, it is not possible to get married; that appellant threatened the victim stating that if she did not marry him, he would commit suicide; and that on the promise of marriage, had sexual intercourse with the victim in her house on 17.06.2018 at about 1.30 p.m., and again on 21.06.2018 at about 12.15 p.m.

(ii) On the complaint [Ex.P1] given by the victim on 18.07.2020, a case was registered against the appellant for the offences under Sections 417, 376, 294(b) and 352 of the IPC by the Sub Inspector of Police [PW14]. The FIR was marked



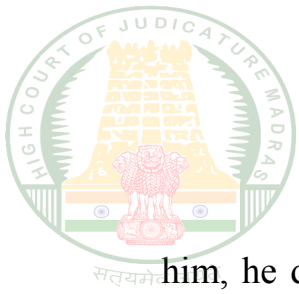
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as Ex.P10.
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(iii) PW15, the Inspector of Police, took up the investigation and after examination of witnesses, filed the final report against the appellant for the offences under Sections 417, 376, 294(b) and 352 of the IPC, before the learned Judicial Magistrate, Vikkravaandi.

(iv) 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.23 of 2021 and was made over to the learned Sessions Judge, Magalir Neethimandram, Fast Track Mahila Court, Villupuram, for trial. The trial Court framed charges against the appellant/accused for the offences under Sections 417, 376, 294(b) and 352 of the IPC and when questioned, the accused pleaded 'not guilty'.

(v) To prove the case, the prosecution examined 15 witnesses as P.W.1 to P.W.15 and marked 12 exhibits as Exs.P1 to Ex.P12. When the accused was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against



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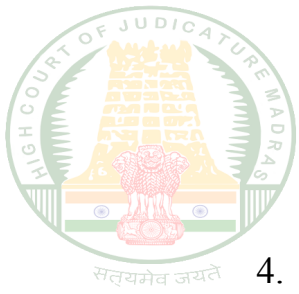
him, he denied the same. The accused neither examined any witness nor marked any document on his side.

(vi) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established its case beyond reasonable doubt and held the appellant/accused guilty of the offences under Sections 417, 376 r/w 90 of the IPC and sentenced him as follows:

| Offence under Section | Sentence imposed |
|-----------------------|---|
| 376 r/w 90 IPC | To undergo RI for seven years and to pay a fine of Rs.25,000/- in default to undergo SI for three months. |
| 417 IPC | No separate sentence was imposed for this offence |

The trial Court found the accused not guilty of the offence under Sections 294(b) and 352 of the IPC and acquitted him of the said offence. Hence, the accused has preferred the appeal challenging the said conviction and sentence.

3. Heard, Mr.R.John Sathyan, learned senior counsel appearing for the appellant, and Mr.C.E.Pratap, learned Government Advocate (Crl.Side), appearing for the respondent/State.



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4. Mr.R.John Sathyan, learned senior counsel for the appellant would submit that the complaint was lodged nearly 25 months after the alleged occurrence; that admittedly, there was a love affair and the allegation of cheating and rape, is an afterthought; that the evidence of the victim would only suggest that the relationship was consensual; and that the trial Court had disbelieved the evidence of the victim as regards the offence under Sections 294(b) and 352 of the IPC and prayed for acquittal of the appellant.

5. The learned Government Advocate (Crl. Side) appearing for the respondent *per contra* submitted that though there is a delay in filing of the complaint, the evidence of the victim is cogent and convincing and therefore, the judgment of the trial Court based on the evidence of the victim and the other relatives of the victim, cannot be faulted and prayed for dismissal of the appeal.

6. Considered the rival submissions and perused all the relevant records.

7. As stated earlier, the prosecution had examined 15 witnesses. PW1 is the victim; PW2 is the mother of the victim; PW3 is the sister of PW2; PW4 is the

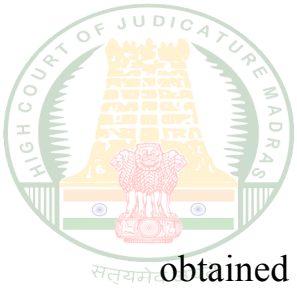


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younger brother of PW1; PW5 and PW7 are the neighbours, who corroborate the evidence of PW1; PW6 and PW8 are the observation mahazar witnesses; PW9 is the Constable, who took PW1 to the Doctor for medical examination; PW10, is the Constable, who accompanied the victim to record her statement under Section 164 of the Cr.P.C; PW11, is the Constable, who escorted the accused to the Doctor for medical examination; PW12 is the Doctor, who examined the accused; PW13 is the Doctor, who examined the victim, made entries in the Accident Register[Ex.P6] and also issued Medical Report [Ex.P9]; PW14 is the Sub Inspector of Police, who registered the FIR [Ex.P10] and PW15 is the Inspector of Police, who conducted the investigation.

8. The evidence of PW2, the mother of the victim and PW3, her sister would show that on coming to know of the affair between the appellant and the victim, they went to the house of the appellant and requested his parents and other relatives to get him married to the victim and that they refused and also insulted them.

9. The question is whether the accused on the false promise of marriage had



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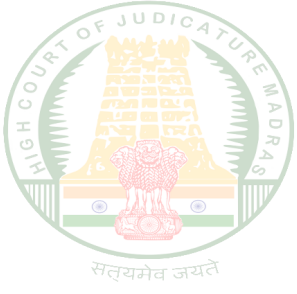
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obtained consent from the victim for sexual intercourse and thus committed the offence of rape. Admittedly, the appellant and the victim had a love affair for more than six years. The allegation is that the appellant had sexual intercourse twice viz., for the first time on 17.06.2018 and for the second time on 21.06.2018. The complaint was not lodged immediately thereafter.

10. It is no doubt true that merely because there is a delay in lodging the complaint, the victim cannot be disbelieved. However, in this case, it is the prosecution case that the appellant and the victim had a love affair for more than six years. It is also seen from the cross-examination of the victim [PW1] that the appellant and the victim had several financial transactions between them and shared a good relationship. The relevant portion reads as follows:

“நான் எதிரியுடன் நட்புறவாக பழகும்போது ஒருவருக்கொருவர் பணபறிமாற்றம் செய்துகொண்டோம் என்றால் சரிதான். அப்போது எதிரியின் ஏ.டி.எம் கார்டு என் கையில் இருந்தது என்றால் சரிதான்.”

11. It is also seen that when the victim had handed over her gold chain for raising money by pledging/mortgaging to one Sasikumar and that when the said Sasikumar refused to redeem the chain, the appellant had helped her to redeem the chain. The relevant portion reads as follows:



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“எதிரியும் நானும் நட்புறவாக இருந்த காலத்தில் கெடிலம் கிராமத்தை சேர்ந்த சசிகுமார் என்பவரிடம் என்னுடைய செயினை அடமானம் வைப்பதற்காக கொடுத்தேன் என்றால் சரிதான். அந்த செயினை சசிகுமார் மீட்டுகொடுக்கவில்லை. எதிரி தான் சசிகுமாரிடம் பேசி என் செயினை மீட்டு கொடுத்தார் என்றால் சரிதான்.”

The above admissions in the cross examination would suggest that the appellant and the victim were close to each other.

12. The evidence of PW1 therefore would make it clear that the physical relationship was not only due to the alleged promise made by the appellant to marry the victim. The victim was aged 24 years at the time of occurrence and she was aware of the consequences of her act and it cannot be said that her consent to have sexual intercourse is only on the false promise of marriage. The victim is not naive or gullible and she was capable of understanding the consequences of her acts. Further, the complaint that the appellant committed sexual intercourse on false promise of marriage was made for the first time 25 months after the alleged occurrence. In this case, delay would certainly assume significance. The evidence of the other witnesses at best reveals that the appellant and the victim had a close relationship and therefore, those witnesses would be of no avail to the prosecution to establish the alleged false promise or that the consent was on the alleged false



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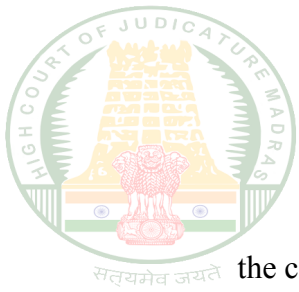
promise. The evidence of PW2 and PW3 at best would reveal a breach of promise and would not establish the alleged deception said to have been made.

13. In a recent decision, the Hon'ble Supreme Court in ***Mahesh Damu Khare v. The State of Maharashtra & Another [Crl.A. No..... of 2025 (SLP (Crl.) No.4326 of 2018) decided on 26.11.2024]***, has held as follows:

“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



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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.

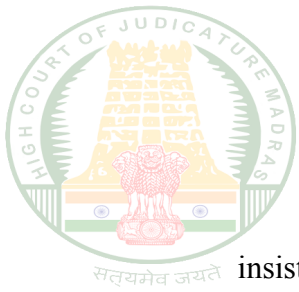
(ii) The physical relationship was going on routinely. But the complainant in her complaint states that after she got a rented room in Shirvane, Nerul Sector 1, Navi Mumbai, in December, 2010, the appellant used to come every day and had sexual intercourse everyday, though without her consent and by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



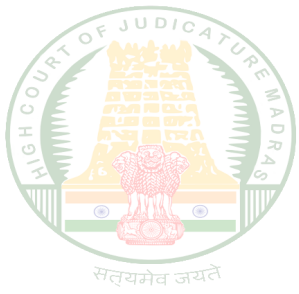
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insistence by the female partner for marriage would be indicative of a consensual relationship rather than a relationship based on false promise of marriage by the male partner and thus, based on misconception of fact.

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 demurrer 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.



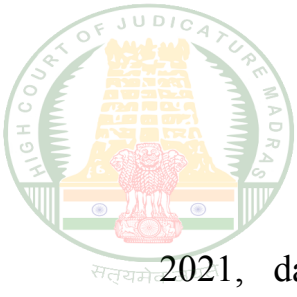
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31. In our view if criminality is to be attached to such prolonged physical relationship at a very belated stage, it can lead to serious consequences. It will open the scope for imputing criminality to such long term relationships after turning sour, 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.”

14. The above observations would be applicable to the facts of this case. The evidence only reveals a consensual relationship for a prolonged period of time that turned sour and hence, the offence under Sections 376 and 417 of the IPC, are not made out on the facts of the case. It is also to be noted that the trial Court has disbelieved the prosecution version with regard to the offence under Sections 294(b) and 352 of the IPC. Therefore, this Court is of the view that the appellant cannot be convicted on the basis of such evidence.

15. As a result, this Criminal Appeal is allowed, and the appellant is acquitted of all the charges. The conviction and sentence passed in S.C.No.23 of



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2021, dated 09.12.2022 on the file of learned Sessions Judge, Magalir
Neethimandram, (Fast Track Mahila Court), Villupuram, are set aside. The fine
amount, if any, paid by the appellant shall be refunded. Bail bond, if any,
executed shall stand discharged.

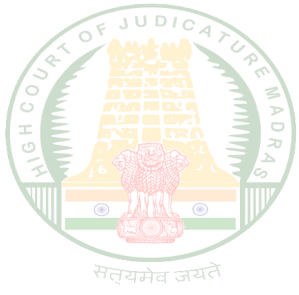
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Index : yes/no

Speaking /Non-speaking order

Neutral citation : yes/no

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SUNDER MOHAN,J.

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To

1. The Sessions Judge,
Magalir Neethimandram,
Fast Track Mahila Court, Villupuram.

2. The Inspector of Police,
Vikkavandi Police Station,
Villupuram District.

3. The Superintendent,
Central Prison, Cuddalore.

4. The Public Prosecutor,
High Court, Madras.

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