

(2010) 10 MAD CK 0395

In the Madras High Court

Case No : Criminal R.C. No. 1484 of 2006

Paneer @ Paneerselvam

APPELLANT

Vs

State by Inspector of Police

RESPONDENT

Date of Decision : 06-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 415, 417, 506

Citation : (2010) 10 MAD CK 0395

Hon'ble Judges : T. Sudanthiram, J

Bench : Single Bench

Advocate : R. Vijayakumar, for the Appellant; S. Senthil Murugan, Government Advocate (Crl. Side), for the Respondent

Judgement

T. Sudanthiram, J.—The revision Petitioner herein is an accused in C.C. No. 21 of 1998 on the file of the learned Judicial Magistrate, Maduranthakam and he was convicted by the trial Court for an offence u/s 417 I.P.C. and sentenced to undergo rigorous imprisonment for a period of six months. The said conviction and sentence were also confirmed by the learned Principal Sessions Judge, Chengalpattu, in Crl.A. No. 31 of 2006. Challenging said conviction and sentence, the Petitioner has preferred this Criminal Revision Case.

2. The case of the prosecution in brief is that P.W.1, aged about 18 years, was a resident of Kavathur Colony. P.W.2 is her father and P.W.3 is her brother. P.W.1 was going for agricultural coolie work. At that time, the accused used to follow her and used to talk with her. The accused assured P.W.1 that he would marry her and also made a promise that he would not marry any other person except P.W.1. P.W.1 believed his words and moved closely. She also shared the bed with the accused. Once, P.W.3 had seen both P.W.1 and the accused in a compromised position. P.W.1 conceived and even after conception, the accused promised to marry her. P.W.2, father of P.W.1 enquired P.W.1. She revealed that the accused had intimacy with her. When P.W.2 approached the accused, he had refused to

marry P.W.1. A panchayat was convened in the presence of P.Ws.4 and 5. But the accused has not accepted to marry P.W.1. Therefore, P.W.1 gave a complaint-Ex.P.1 before the Chithamoor Police Station.

(ii) On receiving the complaint from P.W.1, the Sub-Inspector of Police, Chithamoor Police Station, registered a case in Crime No. 365 of 1995 for the offences under Sections 417 and 506(ii) I.P.C. and prepared the First Information Report-Ex.P.6. P.W.1 was sent to the Hospital. P.W.6, Dr. Chakravarthy examined P.W.1 and also found that she was pregnant and he issued Ex.P.2-Accident Register. The accused was arrested by the Investigating Officer. As the Sub-Inspector of Police who conducted the first investigation died, P.W.10, Sub-Inspector of Police took up further investigation and after completing the investigation, he laid a final report against the accused.

3. In order to establish the case, the prosecution has examined P.Ws.1 to 10 and marked Exs.P.1 to P.6. On behalf of the accused, no witness was examined and no document was marked.

4. Both the Trial Court and the Appellate Court, after analyzing the oral and documentary evidence, have found the accused guilty u/s 417 I.P.C.

5. Mr. R. Vijayakumar, learned Counsel appearing for the revision Petitioner/accused submitted that even as per the evidence of P.W.1, there was no inducement on the part of the accused and P.W.1 voluntarily had sexual intercourse with the accused and there was no intention on the part of the accused to cheat P.W.1 and as such, the ingredients of the offence u/s 417 I.P.C. are not attracted.

6. Per contra, the learned Government Advocate (Crl. Side) submitted that it is the specific evidence of P.W.1 that the accused promised to marry P.W.1 and only on such promise, P.W.1 had love with the accused and she consented for the sexual intercourse. P.W.1 was conceived and she also delivered a female child. It is further submitted that the fact that the accused refused to marry P.W.1 would lead to show that the accused had an intention to cheat P.W.1.

7. This Court has considered the submissions made by the learned Counsel on either side and perused the records.

8. It is the specific evidence of P.W.1 that it was only the accused who had come forward to speak with P.W.1 and he promised to marry her and he also promised that he would not marry any other person except P.W.1. Only on such promise, P.W.1 fell in love with him and they developed intimacy with each other.

It is the further evidence of P.W.1 that when she conceived, P.W.1 informed the accused and he told her not to reveal the matter to any one and again he promised to marry her. But subsequently, he had failed to marry P.W.1. Even though a panchayat was convened, the accused had refused to marry her. While the accused was questioned u/s 313 Code of Criminal Procedure, he had totally denied his affair with P.W.1. Even in the cross-examination it had been suggested

by the accused totally denying the affairs. Both the Courts below have accepted the evidence of P.W.1. This Court also does not find any reason to reject the evidence of P.W.1. If the evidence of P.W.1 is accepted, then the fact remains that P.W.1 consented for the sexual act with the accused only on the basis of the promise made by the accused to marry her. If the accused has not made any such promise, definitely P.W.1 would not have had any sexual intercourse with him. As the accused had now totally denied his affair, it leads to show that even at the initial stage the accused had an intention to cheat P.W.1. Even after P.W.1 having become pregnant, the refusal made by the accused to marry her establish the fact that the accused had made a false promise. As the accused made the promise to marry P.W.1, he had induced P.W.1 to give her consent, which attracts the ingredients that are required u/s 415 of I.P.C., which is as follows:

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".

Explanation. A dishonest concealment of facts is deception within the meaning of this section.

As per the above Section, on the facts available it is to be held that P.W.1 would not have done any such act if she had not been deceived by the accused.

9. In the result, the conviction imposed on the Petitioner/accused u/s 417 I.P.C. by the learned Judicial Magistrate, Maduranthakam, in C.C. No. 21 of 1998, is confirmed.

10. The learned Counsel appearing for the Petitioner/accused had prayed for leniency with regard to the sentence of imprisonment imposed on the Petitioner/accused and submitted that according to the instructions to him, P.W.1-victim had married another person and she is living peacefully and the accused had already been in jail for a period of one month.

11. Considering the facts and circumstances of the case and nearly about 15 years had elapsed, the sentence of imprisonment imposed on the Petitioner/accused is modified and reduced to the period of imprisonment already undergone by him. Instead, the Petitioner is imposed to pay a fine of Rs. 5,000/-, in default, to undergo three months rigorous imprisonment. The Petitioner is directed to pay the fine amount before the learned Judicial Magistrate, Maduranthakam, Kancheepuram District, in C.C. No. 21 of 1998, within a period of four weeks from the date of receipt of a copy of this order.

12. Except the above modification regarding the sentence of imprisonment imposed on the Petitioner/accused, this Criminal Revision Case is dismissed.