B A I L S L I P

The Appellant/Accused viz., Senthilkumar, age 25 years, S/o Sundaram was directed to be released on bail as per the order of the Court dated 25.4.2007 in Crl.MP.No.1 of 2007 in Crl.RC.No.1 of 2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.6.2009

CORAM:

THE HONOURABLE MR.JUSTICE G.RAJASURIA

Crl.R.C.No.1 of 2007

Senthilkumar ... Petitioner/Accused

vs.

The State by the Inspector of Police,
All Women Police Station,
Namakkal District ... Respondent/Complainant

Petition filed under Section 397 r/w 401 of Cr.P.C. against the judgement dated 27.9.2006, passed by the Additional District Sessions Court/Fast Track Court, Namakkal, in C.A.No.27 of 2006 confirming the judgement dated 4.5.2006 passed by the Chief Judicial Magistrate/Assistant Sessions Judge, Namakkal, in S.C.No.42 of 2005.

For Petitioner : Mr.N.Manokaran
For Respondent : Mr.Hasan Md.Jinnah,A.P.P.

O R D E R

Animadverting upon the judgement dated 27.9.2006, passed by the Additional District Sessions Court/Fast Track Court, Namakkal, in C.A.No.27 of 2006 confirming the judgement dated 4.5.2006 passed by the Chief Judicial Magistrate/Assistant Sessions Judge, Namakkal, in S.C.No.42 of 2005, this criminal revision case is focussed.

2. The epitome and the long and short of the germane facts, which are absolutely necessary and germane for the disposal of this criminal revision case would run thus:

(a) The police laid the police report in terms of Section 173 of Cr.P.C. as against the accused for the offence under Sections 450, 376(1), 417 and 506(2) IPC. Since the accused pleaded not guilty, the trial was conducted.

(b) During trial, on the prosecution side, the victim girl was examined as P.W.1 along with 12 others as P.Ws.2 to 13 and Exs.P1 to P9 were marked. On the accused side, R.W.1 and R.W.2 were examined and no documentary evidence was adduced.

(c) Ultimately, the trial Court recorded the conviction and imposed the following sentences.

Case No.	Offence	Punishment imposed
C.C.No.42 of 2005	450 IPC	Three years R.I.
	376(1) IPC	Seven years R.I.
	417 IPC	One year R.I.

(d) Aggrieved by and dissatisfied with the convictions recorded and sentences imposed by the trial Court, the accused preferred appeal C.A.No.27 of 2006 before the Sessions Court, which Court modified the convictions and sentences as under:-

Case No.	Offence	Punishment imposed
C.A.No.27 of 2006	376(1) IPC	Seven years R.I.
	417 IPC	One year R.I.

3. Challenging and impugning the judgements of both the Courts below, this revision is focussed on various grounds, the pith and marrow of them would run thus:-

Both the Courts below committed serious error in adjudging as though the offence of rape was made out on the ground that the consent of P.W.1 was 'no consent'. The lower Court failed to apply the law relating to burden of proof in deciding the case. In Ex.P3-the Medical Report, initially it is found written as 'Hymen intact' and subsequently, the word 'not' before the word 'intact' was inserted and that fact has not been considered by both the Courts below for giving the benefit of doubt in favour of the accused. Barely based on the evidence of P.Ws.1 and 5, both the Courts below recorded the convictions, warranting interference by this Court. The evidence of D.W.1 and 2 were not considered by both the Courts below. Accordingly, he prayed for setting aside the order of lower Courts and for acquitting the accused.

4. Heard both sides.

5. The point for consideration is as to whether both the Courts below were perverse in convicting the accused for the offences under Section 376 and 417 IPC based on non-application of mind in appreciating the evidence placed before them.

6. The learned counsel for the revision petitioner/accused, drawing the attention of this Court to various parts of the evidence, would reiterate the grounds of revision and further develop and advance his argument to the effect that without au fait with law and au courant with facts and that too, without taking into consideration the latest precedents of the Honourable Apex Court, both the Courts below held as though the consent given by P.W.1 was 'no consent'; it is the categorical case of the defence that there was no promise of marriage held out by the accused in favour of P.W.1 and he had no such illegal connection with her. In support of canvassing his case, the learned counsel for the revision petitioner would cite the following decisions of the Honourable Apex Court

(i) (2003)4 SUPREME COURT CASES 46 - UDAY VS. STATE OF KARNATAKA, certain excerpts from it would run thus:

> "21. It 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 straitjacket 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 ease, 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.
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> 24. 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.
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> 25. 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 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. . . . .. This is what appears to have happened i 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 it. 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 wash in the mind of the prosecutrix when she consented, because there were more reasons than one for her to consent."

(ii) (2005) 1 SUPREME COURT CASES 88 – DEELIP SINGH ALIAS DILIP KUMAR VS. STATE OF BIHAR, certain excerpts from it would run thus:

"19. The factors set out in the first part of Section 90 are from the point of view of the victim. The second part of Section 90 enacts the corresponding provision from the point of view of the accused. It envisages that the accused too hash knowledge or has reason to believe that the consent was given by the victim in consequence of fear of injury or misconception of fact. Thus, the second part lays emphasis on the knowledge or reasonable belief of the person who obtains the tainted consent. The requirements of both the parts should be cumulatively satisfied. In

other words, the court hash to see whether the person giving the consent had given it under fear of injury or misconception of fact and the court should also be satisfied that the person doing the act i.e. The alleged offender, is conscious of the fact or should have reason to think that but for the fear or misconception, the consent would not have been given. This is the scheme of Section 90 which is couched in negative terminology.

28. The first two sentences in the above passage need some explanation. While we reiterate that a promise to marry without anything more will not give rise to "misconception of fact" within the meaning of Section 90, it needs to be clarified that a representation deliberately made by the accused with a view to elicit the assent of the victim without having the intention or inclination to marry her, will vitiate the consent. If on the facts it is established that at the very inception of the making of promise, the accused did not really entertain the intention of marrying her and the promise to marry held out by him was a mere hoax, the consent ostensibly given by the victim will be of no avail to the accused to exculpate him from the ambit of Section 375 clause secondly. This is what in fact was stressed by the Division Bench of the Calcutta High Court in the case of Jayanti Rani Panda[12] which was approvingly referred to in Uday case[1]. The Calcutta High Court rightly qualified the proposition which it stated earlier by adding the qualification at the end (Cri LJ p. 1538, para 7) — "unless the court can be assured that from the very inception the accused never really intended to marry her". (emphasis supplied) In the next para, the High Court referred to the vintage decision of the Chancery Court which laid down that a misstatement of the intention of the defendant in doing a particular act would tantamount to a misstatement of fact and an action of deceit can be founded on it. This is also the view taken by the Division Bench of the Madras High Court in Jaladu case[9] (vide passage quoted supra). By making the solitary observation that "a false promise is not a fact within the meaning of the Code", it cannot be said that this Court has laid down the law differently. The observations following the aforesaid sentence are also equally important. The Court was cautious enough to add a qualification that no straitjacket formula could be evolved for determining whether the consent was given under a misconception of fact. Reading the judgment in Uday case[1] as a whole, we do not understand the Court laying down a broad proposition that a promise to marry could never amount to a misconception of fact. That is not, in our understanding, the ratio of the decision. In fact, there was a specific finding in that case that initially the accused's intention to marry cannot be ruled out.

30. Is it a case of passive submission in the face of psychological pressure exerted or allurements made by the accused or was it a conscious decision on the part of the prosecutrix knowing fully the nature and consequences of the act she was asked to indulge in? Whether the tacit consent given by the prosecutrix was the result of a misconception created in her mind as to the intention of the accused to marry her? These are the questions which have to be answered on an analysis of the evidence. The last question raises the allied question, whether the promise to marry, if made by the accused, was false to his knowledge and belief from the very inception and it was never intended to be acted upon by him. As pointed out by this Court in Uday case[1] the burden is on the prosecution to prove that there was absence of consent. Of course, the position is different if the case is covered by Section 114-A of the Evidence Act. Consent or absence of it could be gathered from the attendant circumstances. The previous or contemporaneous acts or the subsequent conduct can be legitimate guides.

34. According to PW 12, she did not like the accused making passionate gestures and therefore, she went to the house of the accused and made a complaint to his "bhabhi". Though she promised to restrain him, the accused continued to do so. Her further version is that she was not willing to marry the accused; even then the accused used to come to the courtyard of her house many a time and it was within the knowledge of her parents and brother that the accused used to talk to her for hours. She used to accompany him whenever he wanted. Another statement of significance is that she tried to resist the talk of marriage by telling the accused that marriage was not possible because they belonged to different castes. However, she agreed to marry him after she was raped and under the impression that he would marry, she did not complain to anybody. These statements do indicate that she was fully aware of the moral quality of the act and the inherent risk involved and that she considered the pros and cons of the act. The prospect of the marriage proposal not materialising had also entered her mind. Thus, her own evidence reveals that she took a conscious decision after active application of mind to the things that were happening. Incidentally, we may point out that the awareness of the prosecutrix that the marriage may not take place at all in view of the caste barrier was an important factor that weighed with the learned Judges in Uday case[1] in holding that her participation in the sexual act was voluntary and deliberate.

7. The learned Public Prosecutor cited the following

decisions:

(i) (2006) 11 SCC 615-EDLA SRINIVASA RAO Versus STATE OF ANDHRA PADESH, certain excerpts from it would run thus:

> 11. In this connection our attention was also invited to the decision of this Court in Uday v. State of Karnataka[4]. In this case also this Court held that for determining whether consent given by the prosecutrix was voluntary or under a misconception of fact, no straitjacket formula can be laid down but the following factors stand out: (i) where a girl was of 19 years of age and had sufficient intelligence to understand the significance and moral quality of the act she was consenting to; (ii) she was conscious of the fact that her marriage was difficult on account of caste considerations; (iii) it was difficult to impute to the appellant, knowledge that the prosecutrix had consented in consequence of a misconception of the fact arising from his promise, and (iv) there was no evidence to prove conclusively that the appellant never intended to marry the prosecutrix. On the basis of the above factors, this Court did not feel persuaded to hold that consent was obtained by misconception of facts on the part of the victim. But as already mentioned above, in the present case we are satisfied that looking to the antecedent and subsequent events that the accused never intended to fulfil the promise of marriage, this was not a case where the accused was deeply in love. In the present case in our hand the accused persuaded her for a couple of months but she resisted it throughout. But, on one day he came to the house of her sister and closed the doors and committed forcible sexual intercourse against her will and consent, holding out a promise for marriage and continued to satisfy his lust. Therefore, this case stands entirely on a different footing. We may add a word of caution that the court of fact while appreciating evidence in such cases should closely scrutinise evidence while taking into consideration the factors like the age of the girl, her education, her social status and likewise the social status of the boy.
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> 12. In R. v. Williams[5] if a girl does not resist intercourse in consequence of misapprehension, this will not amount to a consent on her part. It was held that where a medical man, to whom a girl of fourteen years of age was sent for professional advice, had criminal connection with her, she making no resistance from a bona fide belief that he was treating her medically, he could be convicted for rape.
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> 13. Similarly, in R. v. Flattery[6] where the accused professed to give medical advice for money, and a girl of nineteen consulted him with respect to illness from which she was suffering, and he advised that a surgical

operation should be performed and, under pretence of performing it, had carnal intercourse with her, it was held that he was guilty of rape.

14. Likewise, in R. v. Williams[7] the accused was engaged to give lessons in singing and voice production to the girl of sixteen years of age had sexual intercourse with her under the pretence that her breathing was not quite right and he had to perform an operation to enable her to produce her voice properly. The girl submitted to what was done under the belief, wilfully and fraudulently induced by the accused that she was being medically and surgically treated by the accused and not with any intention that he should have sexual intercourse with her. It was held that the accused was guilty of rape.

15. In this connection reference may be made to the amendment made in the Evidence Act. Section 114-A was introduced and the presumption has been raised as to the absence of consent in certain prosecutions for rape. Section 114-A reads as under:

"114-A. Presumption as to absence of consent in certain prosecutions for rape.—In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of Section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the court that she did not consent, the court shall presume that she did not consent."

16. If sexual intercourse has been committed by the accused and if it is proved that it was without the consent of the prosecutrix and she states in her evidence before the court that she did not consent, the court shall presume that she did not consent. Presumption has been introduced by the legislature in the Evidence Act looking to atrocities committed against women and in the instant case as per the statement of PW 1, she resisted and she did not give consent to the accused at the first instance and he committed the rape on her. The accused gave her assurance that he would marry her and continued to satisfy his lust till she became pregnant and it became clear that the accused did not wish to marry her.

(ii) (2007) 7 SCC 413-28 PRADEEP KUMAR ALIAS PRADEEP KUMAR VERMA Versus STATE OF BIHAR AND ANOTHER, an excerpt from it would run thus:

"28. The first two sentences in the above passage need some explanation. While we reiterate that a promise to marry without anything more will not give rise to 'misconception of fact' within the meaning of Section 90, it needs to be clarified that a representation

deliberately made by the accused with a view to elicit the assent of the victim without having the intention or inclination to marry her, will vitiate the consent. If on the facts it is established that at the very inception of the making of promise, the accused did not really entertain the intention of marrying her and the promise to marry held out by him was a mere hoax, the consent ostensibly given by the victim will be of no avail to the accused to exculpate him from the ambit of Section 375 clause Secondly. This is what in fact was stressed by the Division Bench of the Calcutta High Court in Jayanti Rani Panda case[13] which was approvingly referred to in Uday case[2]. The Calcutta High Court rightly qualified the proposition which it stated earlier by adding the qualification at the end (Cri LJ p. 1538, para 7) —'unless the court can be assured that from the very inception the accused never really intended to marry her'. (emphasis in original) In the next para, the High Court referred to the vintage decision of the Chancery Court which laid down that a misstatement of the intention of the defendant in doing a particular act would tantamount to a misstatement of fact and an action of deceit can be founded on it. This is also the view taken by the Division Bench of the Madras High Court in Jaladu case[10] (vide passage quoted supra). By making the solitary observation that 'a false promise is not a fact within the meaning of the Code', it cannot be said that this Court has laid down the law differently. The observations following the aforesaid sentence are also equally important. The Court was cautious enough to add a qualification that no straitjacket formula could be evolved for determining whether the consent was given under a misconception of fact. Reading the judgment in Uday case[2] as a whole, we do not understand the Court laying down a broad proposition that a promise to marry could never amount to a misconception of fact. That is not, in our understanding, the ratio of the decision. In fact, there was a specific finding in that case that initially the accused's intention to marry cannot be ruled out."

8. A plain reading of the above said decisions coupled with Section 375 IPC and Section 114(A) of Indian Evidence Act would unambiguously and unequivocally highlight the fact that if the victim girl, in her evidence before the Court states that she did not consent for sexual intercourse, it shall be presumed that the sexual intercourse occurred between the accused and herself, amounts to rape.

9. In this background, the evidence on record should be analysed. P.W.1-the victim girl, categorically, without mincing words, would detail and delineate, express and expatiate that the accused was known to her, as at one point of time he was her

classmate; subsequently, he was vending milk, for which purpose he occupied a place near her parents' house to have his place of business; taking undue advantage of the nearness of the place, in which the accused was vending milk, to that of P.W.1's residence he without the consent of P.W.1 had sexual intercourse with her and thereafter pacified her with the promise of marrying her and thereby committed rape on her.

10. It is also the specific case of P.W.1 that it was not at the first instance, based on promise of marriage, she consented for the accused to have sexual intercourse with her, but at the first instance itself on 20.1.2004, the accused, without her consent had sexual intercourse with her and when she cried, he pacified her by saying that he would marry her and that she should not divulge his act of sexual intercourse with her to anyone. As such, according to her, four times, the accused had sexual intercourse with her based on that promise. But, subsequently, he had a volte face and turned turtle and refused to marry her. Whereupon, she along with her parents was constrained to run from pillar to post in vain for getting him married to her.

11. P.W.2 the owner of the house, in which the accused was running his milk vending shop and P.W.3-the mother of P.W.1 and P.W.4 and P.W.5-the neighbours also clearly corroborated the evidence of P.W.1 to the effect that A1 was moving closely with the victim. P.W.7-the Doctor, who examined the victim girl opined that the 'hymen was not in tact' and that she gave the medical certificate Ex.P3.

12. The learned counsel for the petitioner would draw the attention of this Court that initially in the medical certificate-Ex.P3 it was written as 'Hyman intact', but subsequently by way of interpolation, the word 'not' is found inserted between the words 'Hymen' and 'intact', for which the Doctor unsatisfactorily gave the answer as though soon after writing as 'Hymen intact' she made such interpolation.

13. In the factual matrix I am of the opinion that it was only due to lapsus calami that initially the Doctor did not specify the word 'not' in between the words 'Hymen' and 'intact' and as such, the accused cannot try to make a mountain out of mole hill and it is no body's case that as at the time of the Doctor examining P.W.1-the victim girl, was a virgin. In Ex.P3-the certificate issued by the Doctor-P.W.10 it is found clearly specified as under:-

> "Since patient says that she is used to having intercourse with that person and as hymen is not intact, there is possibility of intercourse."

14. The learned counsel for the petitioner/accused would try to canvas the case that the victim was already a married girl and she could not have been bamboozled or beguiled, perplexed and

flummoxed by any of the alleged promise of marrying her, made by the accused, as she had the knowledge of analysing things and her utterance that she was made to be carried away by the accused's promise is nothing but a cock and bull story, purely for the purpose of putting the accused in trouble and this Court has to came to the rescue of the accused and hold that the evidence of P.W.1 is nothing but a mere falsehood.

15. I am fully aware of the fact that the accused is not bound to prove his defence plea beyond reasonable doubt and it is sufficient if preponderance of probabilities are highlighted before the Court. Even though D.W.1 and D.W.2 were examined on the defence side to show that the victim girl was already married to one Chinnathambi, yet neither Chinnathambi nor the parents of Chinnathambi were examined in this connection. As such, it has to be taken that it is nothing but a false plea dished out by the accused, so as to wriggle out of his criminal liability.

16. The learned counsel for the petitioner also would try to portray a picture that the victim girl with her mother tried to trap the accused and thereby, somehow or other compell him to marry P.W.1 and that since their attempt ended in fiasco, they did choose to foist this false case as against the accused.

17. To the risk of repetition, without being tautalogous, I would like to point out that preponderance of probabilities would govern the defence plea. Here there is nothing to indicate that the accused was having such a financial or social status, which was far above the victim girl's status and that they wanted to somehow or other trap him and compel him to marry P.W.1, wherefore, it is axiomatic that on the defence side several pleas were made but not made out and correctly both the Courts below, appreciating the evidence, rejected the defence theory and believed the prosecution version.

18. At this juncture, my mind is reminiscent and redolent of the following decisions of the Honourable Apex Court:

(i) 2002 Supreme court cases (crl) 1448 - Bindeshwari Prasad Singh alias B.P.Singh and Others vs. State of Bihar (now Jharkhand) and another, an excerpt from it would run thus:

> "13. The instant case is not one where any such illegality was committed by the trial court. In the absence of any legal infirmity either in the procedure or in the conduct of the trial, there was no justification for the High Court to interfere in exercise of its revisional jurisdiction. It has repeatedly been held that the High Court should not reappreciate the evidence to reach a finding different from the trial court. In the absence of manifest illegality resulting in grave miscarriage of justice, exercise of revisional jurisdiction in such cases is not warranted.

14. We are, therefore, satisfied that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional jurisdiction at the instance of the informant. It may be that the High Court on appreciation of the evidence on record may reach a conclusion different from that of the trial court. But that by itself is no justification for exercise of revisional jurisdiction under Section 401 of the Code of Criminal Procedure against a judgment of acquittal. We cannot say that the judgment of the trial court in the instant case was perverse. No defect of procedure has been pointed out. There was also no improper acceptance or rejection of evidence nor was there any defect of procedure or illegality in the conduct of the trial vitiating the trial itself.

(ii) 2005 Supreme Court Cases (cri) 276 - Sathyajit Banerjee and Others vs. State of W.B.and others, an excerpt from it would run thus:

"22. The cases cited by the learned counsel show the settled legal position that the revisional jurisdiction, at the instance of the complainant, has to be exercised by the High Court only in very exceptional cases where the High Court finds defect of procedure or manifest error of law resulting in flagrant miscarriage of justice."

19. The sum and substance, the gist and kernal, the pith and marrow of those decisions is to the effect that unless there is any perversity or non-application of mind on the part of the lower Court in applying the law in analysing the evidence, the question of interfering in the revision would not arise.

20. Both the Courts below, analysed the oral evidence coupled with the medical evidence and gave concurrent finding that the girl was lulled to the belief by the accused that he would marry her and consequently, he had sexual relationship with her. It is also their finding that for the first time on 20.1.2004, the accused had sexual intercourse with her without her consent. As such, I am of the considered opinion that there is no reason to interfere with the findings of both the Courts below.

21. The learned counsel for the revision petitioner also, by inviting the attention of this Court to the portion of the evidence, which would be to the effect that the accused in fact wanted to marry P.W.1, but her mother did not consent, would argue that in such a case, as per the Honourable Apex Court judgement in (2003) 4 SCC 46-UDAY Versus STATE OF KARNATAKA, the accused cannot be found fault with as though he cheated the girl or raped the girl.

22. Once again I would like to point out that simply because there were some suggestions that the accused in fact wanted to

marry the victim girl but it was his mother, who stood in his way, the Court cannot digest it and it is a big pill to swallow. The accused is an adult male, who had chosen to have extra marital sexual relationship with the victim girl and in such a case, it is nothing but a lame excuse on the part of the accused to state that his mother stood in the way of himself marrying P.W.1. It is also a plea, like other defence pleas, dished out purely for the purpose of wriggling out of his criminal liability.

23. The learned counsel for the accused, by way of probabalising the defence, would submit that as per the evidence of P.W.1 herself, earlier to the present complaint lodged by her in the form of Ex.P1, she lodged two complaints, one before the Molasi Police Station and another in the Pallipalayam Circle Office and in both the complaints, she had never whispered about the alleged sexual intercourse with her by the accused and in such a case, the Court should look askance at Ex.P1, which itself is a dubious document, as it is in a computer print form; whereas, P.W.12-the Inspector would state that P.W.1 gave only an oral complaint, which was reduced into writing; as such, these improbabilities in the prosecution case could be considered in favour of the accused and thereby benefit of doubt could be given to the accused.

24. I would like to highlight and spotlight the fact that at the time of giving complaint at Molasi Police Station as well as in Pallipalayam Circle Office, the victim's endeavour was to marry the accused, as she was already spoiled by him and at that time, her intention was not to secure a punishment for him, only after meeting with her water loo in getting consent from the accused for her marriage, she having no other go, came forward with the entire truth and lodged the compliant ultimately. No doubt, Ex.P1-the complaint is found in a computer print and from that the Court cannot develop any suspicion. The forcible rape took place as early as 20.1.2004 and thereafter also under false promise of marrying the victim girl, the accused had four times sexual intercourse with her and thereafter only the accused decamped from his place of business, so as to escape from his liability to marry the victim girl. Hence, the victim girl only thereafter was constrained to approach the law enforcing agency, seeking justice. In such a case, even if the victim had really approached some person for the purpose of getting her complaint typed in the computer format, it cannot be doubted. Accordingly, I am of the view that I could see no perversity or non-application of law on the part of both the Courts below in recording the conviction as against the accused for the offence under Sections 376 and 417 IPC.

25. The learned counsel for the petitioner, in a extemporary manner stated that in view of this Court having chosen not to interfere with the conviction recorded by both the Courts below,

the sentence may be reduced, taking into account the age of the accused, as he just crossed his adolescent stage.

26. It is quite obvious from the charge-sheet itself that he was about 23 years old. I am of the view that in this connection, the decision of the Honourable Apex Court reported in 2009(3) Supreme Court Cases 761-Zindar Ali Sheikh vs. State of West Bengal and another could be relied on fruitfully. An excerpt from it would run thus:

> "27.This takes us to the last argument about the quantum of sentence. The Courts below have awarded 10 years of imprisonment and a fine of Rs.5000. In our opinion, considering the fact that the incident took place about 6 years back and the fact that the accused is behind the bars for last about 5 years, as also poverty on the part of the accused, we feel that the sentence already suffered would be sufficient. The sentence of fine is however, confirmed. Fine, if recovered shall be paid to the prosecutrix. She shall be intimated by sending notice to her. We, accordingly, modify the sentence. The appeal is disposed of with this modification.

27. A bare perusal of the said entire judgement of the Honourable Apex Court, including the excerpt cited supra, would reveal that much of a muchness could be seen between this case and the facts involved in the cited case, on certain aspects. In the cited case five years imprisonment was considered to be sufficient and accordingly, the Honourable Apex Court awarded the same. In this case also, taking into consideration the fact that the accused, due to infatuation and young age committed the offence, I am of the opinion that the sentence of 5 years R.I. could be imposed. Accordingly, the sentence of 7 years R.I. imposed under Section 376 IPC is reduced to five years R.I. and the rest of the portion of the sentence imposed by the trial Court and as confirmed by the appellate Court is confirmed. It is quite axiomatic that the accused is entitled to set off as per Section 428 of Cr.P.C. The trial Court is directed to secure the accused to undergo the remaining period of sentence.

28. With the above modification, the criminal revision case is disposed of.

msk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Judicial Magistrate, Thiruchengode.

2. Do Thro The Chief Judicial Magistrate,
   Asst Sessions Judge, Namakkal.

3.The Additional District Sessions Judge/
   Fast Track Court, Namakkal

4.Do Through the Principal Sessions Judge,
  Namakkal.

5.The Superintendent, Central Prison, Coimbatore.

6.The Public Prosecutor, High Court, Madras.

7.The Inspector of Police, All Women Police Station,
   Namakkal District

+ 1 cc to Mr. N. Manokaran, Advocate SR No.27476

CU(CO)
SR/16.7.2009 Crl.R.C.No.1 of 2007