

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No(s). 1178 OF 2011  
(Arising out of SLP(CrI.)No.9416 of 2015)

PRABHU @ KULANDAIVELU

Appellant(s)

VERSUS

THE STATE OF TAMIL NADU

Respondent(s)

J U D G M E N T

BANUMATHI, J.:

(1) Leave granted.

(2) Being aggrieved with the conviction and also sentence of imprisonment imposed upon him under Sections 313 and 417 I.P.C., the appellant has filed this appeal.

(3) Case of the prosecution is that the appellant-accused, Prabhu @ Kulandaivelu, was related to Tamilselvi (PW-1) and acquainted with her under the false promise of marriage and had sexual intercourse number of times with PW-1 in 2003, resultantly PW-1 became pregnant. It is alleged that against

the wishes of PW-1, the appellant took PW-1 to Rudhramoorthy Hospital and compulsorily aborted her fetus. The appellant and his father (since acquitted) were charged for the offences punishable under Sections 376, 417, 313 and 506(ii) I.P.C. The Trial Court convicted the appellant for all the offences and sentenced him to undergo rigorous imprisonment for ten years for the offence under Section 376 I.P.C.; one year rigorous imprisonment for the offence under Section 417 I.P.C.; for ten years for the offence under Section 313 I.P.C. and fine of Rs.500/- for the offence under Section 506 (ii) I.P.C.

(4) On appeal, the High Court acquitted the father of the appellant from all the charges. The High Court acquitted the appellant-accused under Section 376 I.P.C. but affirmed the conviction and sentence of imprisonment of the appellant under Sections 417 and 313 I.P.C.

(5) We have heard Ms. Thilakavathi G., learned senior counsel appearing for the appellant-accused and Mr. M. Yogesh Kanna, learned counsel appearing for the respondent-State. We have also perused the impugned judgment and the evidence/materials on record.

(6) In her evidence PW-1 has categorically asserted that the appellant gave her false promise that he would marry her and had sexual intercourse with her number of times. The expression "Cheating" is defined in Section 415 I.P.C. and it

reads as under :

*"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 a deception within the meaning of section.*

*(emphasis added)*

(7) By the evidence of PW-1, the prosecution has established that the appellant herein had induced PW-1 to have sexual intercourse with him by falsely promising her that he will marry her. The conviction of the appellant-accused under Section 417 I.P.C. is based upon proper appreciation of the evidence of PW-1 and we do not find any reason to interfere with the same.

(8) Insofar as the conviction of the appellant under Section 313 I.P.C. is concerned, the evidence of Dr. Valli (PW-8) assumes importance. In her evidence Dr. Valli (PW-8) has stated that on 21<sup>st</sup> October, 2004 at 12.00 noon PW-1 came to the hospital with bleeding and lower abdominal pain along with one whose name is stated to be registered as "Prabhu", as her husband. Dr. Valli (PW-8) further stated that in order to save

the life of PW-1 after obtaining her consent Dr. Valli (PW-8) has medically terminated the pregnancy of PW-1. Though PW-1 has stated that the abortion was done compulsorily at the instance of the appellant, the evidence of Dr. Valli (PW-8) does not support the version of PW-1.

(9) The essential ingredient of Section 313 I.P.C. is that "*Causing miscarriage without woman's consent*". But as per the evidence of Dr. Valli (PW-8) consent of PW-1 was taken and, therefore, it cannot be said that the ingredients of Section 313 I.P.C. has been established by the prosecution.

(10) That apart, as seen from the evidence of PW-8, even when PW-1 was brought to the hospital, she was already bleeding and had lower abdominal pain and there was nothing in evidence to connect that act with the appellant-accused. In the light of evidence of Dr. Valli (PW-8) and other evidence, the conviction of the appellant under Section 313 I.P.C. cannot be sustained and is liable to be set aside.

(11) In the result, the conviction of the appellant under Section 417 IPC and the sentence of imprisonment for the same is confirmed. However, the conviction of the appellant-accused under Section 313 IPC is set aside and this appeal is allowed in part.

(12) The appellant is undergoing sentence of imprisonment from 8<sup>th</sup> October, 2015 and has already undergone imprisonment of about three years. The appellant is ordered to be set at liberty forthwith unless his presence is required in connection with any other case.

.....J.  
(R. BANUMATHI)

.....J.  
(INDIRA BANERJEE)

NEW DELHI,  
SEPTEMBER 18, 2018.