

Tandale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 192 OF 2010

Sanjay Dhondu Manchekar,
Aged 42 years, Occ. : Services,
Residing at Opp. Bholenath Mandir,
Salt Pay Road, Wadala (E),
Mumbai – 400 037

... Appellant

Vs.

The State of Maharashtra
(At the instance of Wadala Police Station)

... Respondent.

Mr. M. H. Jahagirdar for Appellant
Mr. Amit Palkar, A.P.P. for Respondent-State.

CORAM : A.S. GADKARI, J.
RESERVED ON : 27th NOVEMBER 2020.
PRONOUNCED ON : 4th DECEMBER 2020.

JUDGMENT :-

Being dissatisfied with the Judgment and Order dated 18th March 2010, passed by the learned Additional Sessions Judge, Mumbai in Sessions Case No. 190 of 2009, convicting the appellant under Section 420 of the Indian Penal Code (for short, "I.P.C.") and sentenced to suffer rigorous imprisonment for five years and to pay a total fine of Rs.10,000/-, in default of payment of fine to further suffer simple imprisonment for six months, the appellant has preferred the present Appeal.

By the same Judgment and Order dated 18th March 2010, the Trial Court has been pleased to acquit appellant for the offence punishable under Sections 376 and 506 of the I.P.C.

2. Heard Mr. Jahagirdar, learned counsel for the appellant and Mr.Palkar, learned A.P.P for the respondent-State. Perused entire record.

3. The prosecution case in nutshell is that, the marriage of complainant (PW-1) was scheduled in December 1998. In the marriage ceremony itself, her husband expired due to heart attack and the prosecutrix was not willing to marry for second time. The complainant was visiting house of her sister namely, Suchita Dhurat (PW-2) who was residing at Wadala. The brother of her brother-in-law introduced complainant with the appellant. The appellant told complainant that, he would make efforts to get a good job to the complainant. The complainant thus got acquainted with the appellant. Their acquaintance blossomed in an affair. The appellant promised to marry with the complainant and established physical relations with her. It is the further prosecution case that, the appellant during the period of their affair i.e. from the year 2004 to 2008, under various pretext induced complainant to part with cash amount and/or valuable property to the tune of approximately Rs.4,61,650/-.

Subsequently, the appellant resiled from his promise to marry with the complainant and therefore, their relations got strained. The complainant therefore approached Mr. Mohan M. Sonawane (PW-3) from Mankhurd, a social worker for help to resolve the said issue and for amicable settlement. Mr. Sonawane interalia contacted his counter part from Wadala namely Mr. Anand Jadhav (PW-5) who was also a social worker and Shakhapramukh of a political outfit namely 'Shivsena'. A meeting was accordingly arranged on 14th February 2008 between the complainant, her family members, appellant, his family members, Mr. Mohan Sonawane (PW-3), Mr. Anand Jadhav (PW-5), Mr. Ganpat @ Balu Manchekar (DW-1) and other persons from the society. In the said meeting, the appellant executed a Deed of Guarantee (Exh.17) coupled with a Memo of Acceptance of Liability (Exh.18). Apart from the aforestated three witnesses, the Deed of Guarantee was also signed by six other witnesses. The Memo of Acceptance of Liability (Exh.18) has been duly signed by the appellant. As the appellant did not honour his Deed of Guarantee (Exh.17) and Memo of Acceptance of Liability (Exh.18), and the complainant also came to know that the appellant has married with other woman, she lodged a complaint (Exh.14) with Wadala Police Station on 23rd June 2008. The police, after conducting preliminary enquiry, recorded First Information Report (Exh.15) on 5th August 2008.

During the course of investigation, the appellant came to be arrested on 6th August 2008.

4. After completion of investigation, police submitted charge-sheet under Sections 376, 420 and 506 of the I.P.C. against the appellant in the Court of Metropolitan Magistrate, 29th Court, Dadar, Mumbai. As the offence punishable under Section 376 of the I.P.C. is exclusively triable by the Court of Sessions, the said case was committed to the Court of Sessions at Mumbai for trial.

5. The Trial Court framed charge against the appellant below Exhibit-4. The contents of the charge were read over and explained to the appellant, to which he pleaded not guilty and claimed to be tried. The defence of the appellant was of total denial.

The Trial Court, after recording evidence and hearing learned counsel for the respective parties, was pleased to convict the appellant under Section 420 and acquitted him from the offence punishable under Sections 376 and 506 of the I.P.C., by its impugned Judgment and Order dated 18th March 2010.

6. Mr. Jahagirdar, learned counsel for the appellant submitted that, though the prosecutrix in her evidence stated that, she was earning salary of approximately Rs.10,300/- per month, she claims that she paid a total amount

of Rs.4,61,650/- and gave a gold chain to the appellant, which can not be accepted. That, the prosecutrix has failed to produce on record source of the said income for paying that amount to the appellant. That, the said payment of income has not been substantiated either by reliable documents or any other evidence on record. He submitted that, list of documents including the documents at Exhs. 17 and 18, produced on record by the prosecution under Section 294 of the Code of Criminal Procedure, have not been admitted by the appellant. He further submitted that, the documents indicating loan obtained by the complainant from Vishal Sahyadri Co-operative Credit Society has also not been admitted by the appellant. He submitted that, appellant never demanded any amount from the complainant and the prosecution has failed to prove the fact that, the complainant had in fact paid the said amount approximately of Rs.4,61,650/- and a gold chain to the appellant and therefore, offence under Section 420 of the I.P.C. has not been proved against the appellant. He further submitted that, due to the complaint lodged by the complainant, the appellant has to suffer irreparable loss in his life and due to the conviction awarded by the Trial Court, the appellant has to lose his job from Bharat Petroleum Company, Mumbai. That, as of today, the appellant is leading a miserable life, being a jobless person. He therefore prayed that, the conviction under Section 420 of I.P.C. against the appellant may be set aside by allowing the present Appeal.

7. Per contra, Mr. Palkar, learned A.P.P. submitted that, the prosecution has proved beyond reasonable doubt, the offence committed by the appellant under Section 420 of the I.P.C. That, Exhibit Nos. 17 and 18 have been duly proved by the prosecution and the said documents have also been identified by PW-3, PW-5 and DW-1. He submitted that, the appellant by extending promise to marry with the complainant, has ruined her life. The appellant has also induced her to part with huge amount of approximately Rs.4,61,650/- and has defalcated it. He submitted that, the appellant does not deserve any leniency from this Court and therefore, the present appeal preferred by the appellant may be dismissed.

8. As noted earlier, the appellant has been acquitted by the Trial Court from the charges framed under Sections 376 and 506 of the I.P.C. and therefore, this Court has to only consider, whether an offence under Section 420 of the I.P.C. has been made out against the appellant or not and if it is made out, then what should be quantum of punishment in that behalf.

Perusal of testimony of Complainant (PW-1) clearly reveals that, the appellant got acquainted with her through the brother of her brother-in-law. The appellant used to visit the house of complainant's brother-in-law at Wadala. The appellant by giving promise to marry with the complainant, established physical relations with her at various places. That, the appellant also introduced complainant with his friend by saying that, he was intending

to marry with her. The prosecutrix has deposed various instances of appellant inducing her to part with amounts on various occasions. That, on one occasion, the appellant induced her to part with her gold chain for raising some amount. She has further deposed that, after the appellant refused to marry and repay the said amount, a meeting was called on 14th February 2008 at Wadala and in that meeting, the appellant expressed his willingness to repay an approximate amount of Rs.4,61,650/- and gold chain within stipulated period. That, the appellant executed a Deed of Guarantee (Exh.17) along with Memo of Acceptance of Liability (Exh.18) dated 14th February 2008. Complainant (PW-1) has duly proved the contents of the said two documents and also Exhs. 17 and 18.

In her cross-examination, except an omission that the appellant demanded Rs.6000/-from her and she had paid it, nothing beneficial to the appellant has been elicited. The solemn statements of the prosecutrix, coupled with fact of proving of Exhs. 17 and 18 have gone unchallenged.

9. Mr. Mohan M. Sonawane (PW-3), Mr. Anand A. Jadhav (PW-5) and Ganpat @ Balu Manchekar (DW-1) are the signatories to Exhibit-17. PW-3 has deposed that, he is a social worker. That, on 14th February 2008, another social worker namely, Smt. Snehlata Koyande requested him to resolve a dispute which had arisen between the complainant and appellant. That persons from both the sides had gathered at Shivsena Branch at Wadala.

That, Mr. Anand Jadhav (PW-5), Shakhapramukh of Shivsena Branch, Wadala was also present there. A discussion took place in the meeting and thereafter the appellant admitted to repay the said amount of Rs.4,61,650/- to the complainant. This witness has identified Exh. 17 and has stated that, the contents thereof are true and correct. He has also identified his signature and signatures of the other witnesses on the said document.

Mr. Anand Jadhav (PW-5) has also deposed in similar manner as that of PW-3. Both these witnesses have denied the suggestions that, they pressurized and forced appellant and got executed Exh-17.

10. It is important to note here that, the appellant in support of his case has examined Ganpat @ Balu Manchekar as a defence witness. The said Mr. Manchekar (DW-1) was also a signatory to the Deed of Guarantee dated 14th February 2008 executed by the appellant. In his cross-examination, he has admitted that, Mr. Mohan Sonawane (PW-3) and others did not pressurize appellant in the said meeting to execute the said document. This admission given by the DW-1 totally demolishes case of the appellant that, PW-3 and PW-5 pressurized him to execute the said two documents i.e. Exhs. 17 and 18.

Prosecution through the complainant has produced on record extract of Register of Vishal Sahyadri Co-operative Credit Society and also pre-litigation notices dated 17th September 2008 and 29th January 2008 issued by

the said credit society to the complainant, calling upon her to repay the loan amount clearly indicates that, the complainant had availed loan facility from it. The statement of complainant that, she took loan from the said credit society for making payment to the appellant is duly corroborated.

It is thus clear from the testimonies of the above-stated witnesses that, the prosecution has proved beyond reasonable doubt that, the appellant by taking undue advantage of the situation, from time to time, induced complainant to part with the said amount and a gold chain for his personal benefit and did not return the same and deceived the complainant. The inducement by appellant to the complainant to part with the said amount and its utilisation for his personal benefit clearly establishes commission of an offence under Section 420 of the I.P.C. The Trial Court has therefore rightly convicted appellant under Section 420 of the I.P.C.

11. This leads me to deal with the quantum of punishment imposed upon the appellant by the Trial Court. It is the settled position of law that, the sentence awarded to the accused should be commensurate to the nature of offence and the manner in which it was committed. The sentencing courts are necessarily to consider all relevant facts and circumstances bearing on the question of sentence, while imposing a sentence commensurate with the gravity of the offence. The sentence is necessarily to be adequate, just and proportionate with the gravity and nature of crime. The mitigating and

aggravating circumstances are required to be taken into consideration while awarding sentence.

In the present case, as per the submissions made by the learned counsel for the appellant, after conviction of the appellant, he has lost his job from Bharat Petroleum Company, Mumbai. The appellant is having children and is leading a miserable life for want of job. The Trial Court has imposed sentence of five years of rigorous imprisonment with fine of Rs.10,000/- on the appellant. Taking into consideration the overall view of the matter, this Court is of the opinion that, the sentence of five years of rigorous imprisonment can be reduced to three years of rigorous imprisonment by maintaining the fine amount and in default sentence thereof, imposed by the Trial Court.

12. Hence, the following Order :

- a) The conviction of the appellant under Section 420 of the Indian Penal Code is upheld and the appellant is sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.10,000/-, in default of payment of fine to further suffer simple imprisonment for six months.
- b) The appellant will get benefit of the period of imprisonment already undergone, while computing the sentence as

contemplated under Section 428 of the Code of Criminal Procedure.

- c) The appellant is directed to surrender before the Trial Court for undergoing balance sentence within a period of four weeks from today.
- d) Appeal is partly allowed in the aforesaid terms.

(A.S. GADKARI, J.)