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CrI.A.No.315 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.08.2023

DELIVERED ON : 08.09.2023

CORAM :

**THE HONOURABLE MRS. JUSTICE R.HEMALATHA**

CrI.A.No.315 of 2022

Prabhu @ Selvaprabhu

... Appellant

Vs.

State Rep. by  
The Inspector of Police,  
Villupuram West Police Station  
Crime No.267 of 2017

... Respondent

**PRAYER:** Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973 against the judgment dated 03.03.2022, passed by the learned Sessions Judge, Fast Track Mahila Court, Villupuram. in S.C.No.68 of 2018.

For Appellant : Mr.K.V. Shanmuganathan  
Assisted by Mr.R.D.Ashok Kumar  
For Respondent : Mr.R.Vinothraja  
Government Advocate (CrI.Side)



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## **JUDGMENT**

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This criminal appeal is filed against the Judgment and order of the Sessions Judge, Fast Track Mahila Court, Villupuram. in S.C.No.68 of 2018, dated 03.03.2022.

2. The appellant is the accused in S.C.No.68/2018 and he is convicted and sentenced as detailed hereunder:

| <b><i>Conviction</i></b>      | <b><i>Sentence</i></b>                                                                                                                          |
|-------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|
| Section 376(2)(I) r/w 511 IPC | Rigorous Imprisonment for 5 years and a fine of Rs.1,00,000/-, which shall be paid to the victim girl as compensation under Section 357 Cr.P.C. |

3. Thiru.Annamalai (P.W.11), the Inspector of Villupuram West Police Station laid a charge sheet against the accused Prabhu under Sections 376(2)(k), 511 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 (herein after referred to as "TNPHW Act").



WEB COPY 4. The case of the prosecution in a nutshell is as follows:

4.1. The accused Prabhu who was a water can delivery boy had under the pretext of taking out empty water can and supplying new can, entered the house of the victim lady, Devi, aged 43, on K.K. Road, Parthasarathy layout in Villupuram, molested and attempted to rape her at about 10.30 a.m on 18.04.2017 when no one else was there. The victim lady was not only physically disabled but also mentally challenged. She was alone since her younger brother Raja had gone out for a short while to buy a soap from a nearby shop after handing over the house keys to her sister.

4.2. The water can delivery boy, accused, who had come after her brother had left the house, asked for the keys from the victim woman, opened the door and stripped himself and indulged in molesting her and also oral sex. The brother Raja (P.W.1) also had returned from the nearby shop found the door open and saw the accused lying on the victim lady on the sofa where she was left earlier.



4.3. On seeing Raja (P.W.1), the accused Prabhu made good his escape but however tripped and fell down and was taken to the nearby hospital by Bharanidharan (P.W.3) and Raghothaman (P.W.4) who were present with Raja (P.W.1) at the time of the incident. The victim woman was residing with her mother and her younger brother (P.W.1). She was single.

4.4. Raja (P.W.1) gave a written complaint (Ex.P1) in the Villupuram West Police Station the same evening at 4.30 p.m to Tmt.Elavazhagi, Sub Inspector of Police (P.W.10), who registered an FIR (Ex.P5) in Crime No.267/2017 against the accused Prabhu under Sections 376(2)(k), 511 IPC and Section 4 of TNPHW Act.

4.5. Annadurai (P.W.11), the Inspector of Police, Villupuram West Police Station, took up investigation, visited the place of occurrence on K.K. Road, Villupuram on 18.04.2017, prepared an observation mahazar (Ex.P2) in the presence of witnesses Divyakumaran (P.W5) and Karthikeyan (P.W.7). Two rough sketches Ex.P6 and Ex.P7 were also prepared by him.



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Later, Raja (P.W.1), the victim woman Devi, Bharanidharan (P.W.3) and Raghothaman (P.W.4) were all enquired and their statements were recorded.

He arrested the accused Prabhu at about 11.30 a.m. near Villupuram old bus stand and remanded him to judicial custody the same day. He also recorded the statement of Dr. Shanmugam (P.W.6), who medically examined the accused Prabhu and certified regarding his potency (Ex.P3) on 12.05.2017. The statements of Thiru.Prabhakaran, Sub Inspector of Police (P.W.8) who took the accused for medical examination and Tmt.Elavazhagi (P.W.10), Sub Inspector of Police, who received the complaint from P.W.1 and registered FIR (Ex.P5) were also recorded by P.W.11. After concluding investigation, he filed a final report on 12.05.2017 against the accused under Sections 376(2)(k), 511 IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002, before the Judicial Magistrate No.I, Villupuram, in PRC No.2/2018 ,who in turn committed the case to the Court of Principal Sessions Judge, Villupuram, under Section 209 Cr.P.C. after furnishing copies of records to the accused under Section 207 Cr.P.C.

4.6. The learned Principal Sessions Judge, Villupuram, took the case



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on file in S.C. No.68/2018 and made over the same to the Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram. The learned Sessions Judge framed charges under Section 376(2)(I) r/w 511 IPC against the accused.

4.7. The prosecution examined P.W.1 to P.W.11 on their side and marked Ex.P1 to Ex.P7. P.W.1 is Raja, the younger brother of the victim woman. He is the defacto complainant. He has deposed that he had gone to a nearby shop leaving his sister alone giving her the keys and when he returned along with his nephew Bharanidaran (P.W.3) and his friend Raghothaman (P.W.4) he found the door of the house open, and the accused Prabhu was lying without dress on his sister, the victim, and on seeing them the accused rushed out of the home, chased by them. The accused fell down and became unconscious. He was taken to the hospital for first aid and in the meanwhile P.W.1 had gone to the Villupuram West Police Station for giving a complaint on the same day.

4.8. The victim woman, Devi was examined as PW2. However her



evidence was eschewed subsequently by the trial court judge based on the evidence of Dr.Vidyalakshmi (P.W.9), Psychiatrist, attached to Villupuram Government Hospital, who had examined the victim woman Devi (P.W.2) on 19.07.2019. Dr.Vidyalakshmi (P.W.9) deposed that the victim woman was treated as an outpatient (since she refused to be inpatient) from 19.07.2019 to 27.07.2019 and found that she was found to have an IQ of 20-31 and that she is not fit to be a court witness. She gave a certificate Ex.P.4 to that effect. A cursory look at the evidence of PW2 shows that the water can delivery boy Prabhu had asked for the keys to open the house stating that he had to take back the empty cans, entered the house, went to the bathroom, brought a towel asking her to wipe her mouth and then touched her private part. He then stripped himself, performed oral sex on her, touched her breast, kissed her and threatened her of dire consequences. She also answered the questions posed by the learned trial court judge.

4.9. The explanation to Section 118 of the Indian Evidence Act states that a lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational



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answers to them. The Hon'ble Supreme Court time and again declared credibility and competency of a mentally challenged person for giving evidence in a court of law and the same cannot be disregarded. The competency and credibility of mentally deficient rape victims as witnesses have been upheld by the Supreme Court where it is shown that they can communicate their ordeal capably and consistently.

4.10. In the instant case Dr.Vijayalakshmi (PW9) Psychiatrist, had assessed the mental retardation of the prosecutrix as 5 years and her IQ is 20-31. As already observed, P.W.2 had clearly understood the questions posed by the court. However, her evidence was eschewed by the trial court. Unfortunately, the prosecution did not file any appeal or revision against the order passed by the trial court judge and consequently P.W.2 was not cross examined by the accused.

4.11. P.W.3, Bharanidaran, nephew of the victim woman and P.W.1, deposed that he alongwith Raghothaman (P.W.4), his friend, went to the home of his uncle P.W.1, and the door of the house was open ajar and



P.W.1 rushed inside followed by them only to find the accused lying on the victim woman (P.W.2) in a semi nude manner and on hearing them the accused fled the scene and while rushing down taking the steps, he tripped and fell down and swooned. The accused was taken to nearby hospital for treatment of the injuries sustained by him. Raghothaman (P.W.4) also corroborated P.W.3's statement. Divyakumaran (P.W.5) and Karthikeyan (P.W.7) were the two witnesses who signed the observation mahazar and two rough sketches.

4.12. Dr. Shanmugam (P.W.6) working in Villupuram Government Hospital was the one who examined the accused on 12.05.2017 and issued a medical certificate (Ex.P3) regarding his potency. Thiru.Prabhakaran (P.W.8), Head constable, Villupuram West Police Station deposed that he was the one who was assigned the task of taking the accused Prabhu from Cuddalore Central prison to Mundiyaambakkam Government Hospital for medical examination on 12.05.2017.

4.13. Tmt.Elavazhagi (P.W.10), Sub Inspector of Police, Villupuram



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West Police Station, deposed that she received the complaint from P.W.1, and registered the FIR in Crime No.267/2017 against the accused under Section 372(2)(k), 511 IPC and also Section 4 of TNPWH Act 2002. She also deposed that it was placed before the Inspector of Police for further investigation.

4.14. Annadurai (P.W.11), Inspector of Police is the Investigation Officer. He deposed that he visited the scene of crime, prepared observation mahazar, rough sketches, recorded statements of all the prosecution witnesses, arrested the accused and later filed the final report on 12.05.2017.

4.15. When the accused was questioned under Section 313 Cr.P.C. about the incriminating evidence against him, he denied of having committed any offence. The accused on his side marked Ex.D1, which is a statement made by P.W.1 under Section 161(3) Cr.P.C. The defence took the plea that there were conspicuous contradictions in the depositions of P.W.1 to P.W.4 and that P.W.11 the Investigation Officer also did not bring in any independent witness to substantiate the charges. However, the trial court



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concluded that the guilt of the accused was proved beyond reasonable doubt and that the accused is guilty of the offences under Sections 376(2)(I) r/w 511 IPC and sentenced him as stated in paragraph No.2. The present appeal is against the conviction and sentence.

5. The learned counsel for the appellant/accused pointed out the various serious contradictions in the depositions of P.W.1 to P.W.4. (P.W.2's deposition was eschewed in the light of the medical certificate issued by Dr. Vidyalakshmi (P.W.9) certifying that she is 'not fit for trial' as her mental disability is 90%). His contention was that neither P.W.1 , nor P.W.3 and P.W.4 saw the alleged 'rape attempt' of the victim by the accused. P.W.3 in his deposition had deposed that "மாடியில், எதிரியும், என் சித்தியும் எந்த நிலையில் இருந்தார்கள் என்று நான் நேரில் பார்க்கவில்லை". According to the learned counsel, P.W.1 has deposed that all the three went inside the house and saw the incident while P.W.4 has deposed that P.W.3 was outside on the veranda. He also highlighted the aspect that the entrance to the house, the veranda and the staircase being so narrow with three of them (P.W.1, P.W.3 and P.W.4) occupying the space, the accused could not



have escaped. While P.W.1 deposed that the accused tripped and fell down, P.W.3 said that P.W.1 had `pushed the accused down the stairs. Similarly it was also pointed out that P.W.1 had deposed that he had taken the accused to the hospital while P.W.3 and P.W.4 deposed that they were the ones who took the accused to the hospital. He also argued that the injuries sustained by the accused was not investigated upon due to which the actual cause for the injuries never got exposed. According to him, the accused was beaten up in a quarrel by the three witnesses, namely, P.W.1, P.W.3 and P.W.4 and rape attempt charge was a trumped up one to put the accused into trouble and cover up the reason for beating him up. It was pointed out that there was a quarrel about the arrears of water can bill. The learned counsel also vehemently argued that the Investigation Officer has made incomplete investigation without going into the details and based his findings on conjectures and surmises.

6. Per contra, Mr.R.Vinothraja, learned Additional Public Prosecutor contended that though the victim as P.W.2 was not mentally fit to depose, the narration of the sequence of events by P.W.1, P.W.3 and P.W.4 were all



in corroboration. P.W.4, Raghothaman also was very much in consonance with the deposition of P.W.1. Therefore, he contended that the trial court was right in concluding that the accused was guilty of the offences.

7. Let us quickly recollect the sequence of events as narrated by the prosecution.

7.1. A 43 year old, physically disabled and mentally incapacitated woman is sexually abused. There has been an attempt to rape her. The accused is not a casual acquaintance. He has been frequenting the house often to deliver the water can. He is not a stranger. The victim woman is left alone in the house. The mother of the woman went out to her son's house in the neighbourhood. The younger brother (P.W.1) also left the house to go to a nearby shop to buy soap. According to P.W.1's deposition, he was away from home for about 15 minutes. He returned home along with his nephew P.W.3 and his friend P.W.4. According to P.W.3, they went inside the house only when they heard the voice of a female from inside the house. P.W.4 and P.W.1 have not mentioned that. P.W.1 has deposed that he went inside his house only because he found the door open.



It is also pertinent to mention that P.W.1 had deposed that the neighbours had gathered thereafter knowing about the incident but none of the neighbours have been examined by the Investigation Officer. The victim girl also was not medically examined as to whether she was subjected to sexual assault.

7.2. The presence of the accused there in the house was not without reason. He was a delivery boy. He had come to deliver the water can. Similarly the injuries on the accused. How did he get injured and whether he was pushed on the staircase or he tripped and fell down are all not clearly answered. The Investigation Officer has preferred to keep silent on it. That the accused was shifted to a hospital is true but whether P.W.1 did it or it was by P.W.3 and P.W.4, again is not known. What was the mode of transport used to reach the nearby hospital is also not clear. P.W.3 says it is his uncle's motorcycle while P.W.1 has deposed that an auto was hired. P.W.3 in his deposition during the course of cross examination has not only confessed that he did not see the victim woman and the accused together in the hall but further goes to depose that he knew the contents of the



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complaint only after his uncle (P.W.1) lodged the police complaint and that his deposition was only based on what his uncle had narrated to him. His deposition is extracted below:

"என் மாமா புகார் கொடுத்தபிறகு தான் என்ன நடந்தது என்று எனக்கு தெரியவந்தது என்றால் சரிதான்.

.....

சம்பவத்தை சொல்லி தான் தெரிந்துகொண்டேன். நேரில் பார்க்கவில்லை. முதல்விசாரணையில் கூறிய விவரங்கள், சொல்லி கேட்டதை தான் சொல்லியுள்ளேன். நான் நேரில் பார்த்தது இல்லை. என் மாமா சொல்லிக்கொடுத்ததன் அடிப்படையில், முதல்விசாரணையில் சாட்சியம் அளித்துள்ளேன் என்றால் என்மாமா சொன்னார், அந்த தகவல் அடிப்படையில் சாட்சியம் அளித்துள்ளேன்."

Another important revelation by him is that the accused was dressed in his shirt and pant with a few buttons on his shirt open. This has been confirmed by P.W.4 during his cross examination. But P.W.1 had deposed that the accused was fully nude when he found him lying on his sister. The room is 10' x 10' dimensions and with a narrow door and veranda and staircase, how was it possible to flee the scene of occurrence fully dressed, is another puzzling aspect. P.W.4 in his deposition has stated that the accused



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was found half nude on the sofa when he went inside the house. It is intriguing that the friend of P.W.3 enters the house while P.W.3 himself claims that he did not see the accused with the victim. In this context, P.W.3 has deposed as follows:

"நான் படி வழியாக மேலே போகவில்லை. என் மாமா ராஜா மட்டும் தான் மாடிவழியாக மேலே போனார். "

This clearly shows that P.W.3 and P.W.4's deposition are not reliable. P.W.1 has also not withstood the testimony of cross examination. P.W.3 during his cross examination has claimed that there were three to four women neighbours who were standing outside and witnessing the accused lying unconscious outside the house. The Investigation Officer (P.W.11) did not question any one of them, it is deposed. The delay in registering FIR and the inordinate delay in sending it to the Judicial Magistrate Court are all not explained.

7.3 The natural question which would arise in anyone's mind is then what actually happened. The presence of the accused and his injuries are all not explained. The reason for taking him to the hospital and what happened



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in the hospital are all shrouded in mystery. The Investigating Officer ought to have explained that clearly by investigating with it. It is true that the victim woman was a mentally incapacitated woman. There is no doubt about that. But whether she was really sexually abused by the accused is again not clear. The plea of the defence that there was a money dispute between P.W.1 and the accused is not convincing. No evidence has been adduced. The fact that the accused suffered injuries and was lying unconscious for about 15 minutes on the road is also disputable. The prosecution has just inquired unimportant aspects and instead showed interest only in fixing up the accused and built a narrative with a weak foundation and many loopholes. In my opinion, the prosecution has failed to prove the case beyond reasonable doubt. In a case filed with unanswered why and what, the trial court has erred in holding the accused guilty of the offences. I find every reason to interfere and reverse the verdict of the trial court.



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8. In the result,

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i. the Criminal Appeal is allowed.

ii. The judgment dated 03.03.2022, passed by the learned Sessions Judge, Fast Track Mahila Court, Villupuram. in S.C.No.68 of 2018. is set aside.

iii. Prabhu @ Selvaprabhu, the appellant (Accused in S.C.No.68 of 2018) is acquitted from all the offences, of which he is charged. Bail bonds, if any, shall stand cancelled.

**08.09.2023**

bga

Index : yes/no

Speaking /Non speaking Order

To

18/20



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

2. State Rep. by  
The Inspector of Police,  
Villupuram West Police Station  
Crime No.267 of 2017

3. The Additional Public Prosecutor  
High Court, Madras.

4. The Section Officer,  
Criminal Section, High Court, Madras.



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**R.HEMALATHA, J.**

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Pre-Delivery Judgment in  
Crl.A.No.315 of 2022

08.09.2023