



Crl.A.No.631 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved on : 04..01..2023

Judgement Pronounced on : 09..01..2023

Coram

The Honourable Mr. Justice **P.N.PRAKASH**

and

The Honourable Mr. Justice **N.ANAND VENKATESH**

Criminal Appeal No.631 of 2022

and

Crl.M.P.No.8369 of 2022

Madesh

Son of Venkatraj

..... Appellant

-Versus-

State by The Inspector of Police,
All Women Police Station,
Denkanikottai, Krishnagiri District.
[Crime No.20 of 2015]

.... Respondent

Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 against the judgement and order dated 09.10.2020 passed by the learned Sessions Judge. Fast Track Mahila Court, Krishnagiri, in S.c.No.143 of 2016 convicting the appellant for offences u/s 341, 354 and 376(1) of IPC and sentencing to undergo 1 (One) month rigorous imprisonment for offence u/s 341 of IPC; to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/- for u/s 354 of IPC in default of payment of fine to suffer rigorous imprisonment for a further period of 3 (Three) months; and to undergo imprisonment for life and to pay a fine of Rs.1,000/- for offence u/s



376(1) of IPC in default of payment of fine to suffer rigorous imprisonment for a further period of 6 (Six) months.

For Petitioner : Mr.E.Kannadasan

*For Respondents : Mr.M.Babu Muthumeeran,
Additional Public Prosecutor*

JUDGEMENT

N.ANAND VENKATESH.J.,

This Criminal Appeal has been filed against the judgement and order, dated 09.10.2020, passed by the Sessions Judge (Fast Track Mahila), Namakkal in S.C.No.143 of 2016 convicting and sentencing the appellant in the following manner:-

Sl. No.	Convicted for offence under	Sentenced to undergo
1	Section 341 of IPC	Rigorous Imprisonment for 1 (One) month for offence u/s 341 of IPC;
2	Section 354 of IPC	Rigorous Imprisonment for 3 (Three) years and to pay a fine of Rs.1,000/- for u/s 354 of IPC in default of payment of fine to suffer rigorous imprisonment for a further period of 3 (Three) months
	Section 376(1) of IPC	Imprisonment for Life and to pay a fine of Rs.1,000/- for offence u/s



Sl. No.	Convicted for offence under	Sentenced to undergo
		376(1) of IPC in default of payment of fine to suffer rigorous imprisonment for a further period of 6 (Six) months
	All the above sentences were ordered to run concurrently	

2. The case of the prosecution in brief is as follows:-

(i) P.W.3, the prosecutrix, is the daughter of P.W.1 and P.W.2 and she is a differently-abled (dumb) girl. On 25.08.2015, P.W.3 was proceeding towards her house at about 04.00 p.m. but, she did not reach her house for a long time. Hence, P.W.1, who is the father of P.W.3, started searching for P.W.3 and he found the victim girl lying undressed near Kolappa's Garbage Dumping Yard. On seeing P.W.1, the appellant is said to have fled from the place of occurrence. Further case of the prosecution is that the victim girl was also threatened by the appellant with dire consequences. P.W.1 enquired the victim girl and she explained that the appellant attempted to kiss her and the appellant was pushed down; hence, the appellant slapped her and thereafter disrobed her and committed penetrative sexual assault against her.



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(ii) On 26.08.2015, at about 11.00 a.m., P.W.1 lodged a complaint (Ex.P1) before All Women Police Station, Denkanikottai. An FIR (Ex.P9) came to be registered in Crime No.20 of 2015). The investigation was taken up by P.W.17. By then, P.W.12, who was the Sub-Inspector of Police, went to the scene of crime at about 12.00 noon and prepared an observation mahazar (Ex.P4) and a rough sketch (Ex.P10). P.W.12 also sent the victim girl for medical examination to Denkanikottai Government Hospital and P.W.3 was examined by P.W.13 and through her, accident register was marked as Ex.P11. On examination of the victim girl, P.W.13 referred her to P.W.16, who examined the victim girl and gave a final opinion (Ex.P15). For Proper appreciation, the answers given to the queries and the final opinion are extracted hereunder:-

வினாக்கள் :

(1) பாதிக்கப்பட்ட பெண் கற்பழிக்கப்பட்டுள்ளரா?

The above mentioned victim has been examined . The required samplings have been taken and sent for forensic analysis at tertiary centre. Report awaited.



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(2) பாதிக்கப்பட்ட பெண்ணிற்கு கண்ணித்திரை கிழிந்துள்ளதா? இல்லையா?

The above mentioned victim has been examined, there is minimal congestion at 4 'O' – 5 'O' clock position of the hymen along with minimal tear at present.

(3) தடயங்கள் ஏதேனும் தென்படுகிறதா?

The above mentioned victim has been examined, no external injuries in relation with rape can be detected at present.

(4) பாதிக்கப்பட்ட பெண்ணிற்கு வயது அறிவியல்ரீதியாக வழங்கவும்.

(5) பாதிக்கப்பட்ட பெண்ணிடம் இருந்து Smear, Swab, Hair இவைகளை சேகரம் செய்யவும்.

The above mentioned, victim has been examined, samples taken.

2 – Vaginal swabs

2 – Vaginal swab side

2 – Container containing vaginal wash

Hair clippings (pubic hair) taken. Nail clippings taken.

Samples taken and sent for forensic analysis.

Opinion: I am of the opinion that the



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forensic report analysis is negative for spermatozoa.

(SLM/BIOL/457/2015 and
ALM/BIOL/469/18 DATE 28.11.15 the
possibility of penetrative sexual assault
cannot be ruled out.

After the examination of patient there is
minimal congestion at 4 'o' – 5 'o' clock
position of the hymen along with minimal tear
at present.”

(iii) On taking up the investigation, P.W.17 produced the victim girl before the Judicial Magistrate-I, Hosur, for getting recorded the statement of the victim girl and the Magistrate, in turn, recorded the statement of the victim girl u/s 164 of Cr.P.C. and the said statement has been marked as Ex.P2. The material objects were collected and they were sent for scientific analysis. The appellant surrendered before the Judicial Magistrate, Denkanikottai, and he was taken on police custody by P.W.17. The appellant was also sent for medical examination and he was examined by P.W.14 and the report was marked through this witness as Ex.P14. It is clear from the report that the appellant was aged about 19 years at the time of commission



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of the crime. Ex.P13 was also marked through P.W.14, wherein, it was found that there is nothing to suggest that the appellant is impotent.

(iv) P.W.17 recorded the statements of the witnesses u/s 161(3) of Cr.P.C. and also collected all the medical and scientific reports. The final report was prepared and was placed for the opinion of the Public Prosecutor. At that stage, since P.W.17 was transferred, P.W.18 followed up and filed the final report on 14.12.2015 before the Judicial Magistrate, Denkanikottai. The copies were served on the appellant u/s 207 of Cr.P.C. and the case was committed to the Court of Session and thereafter, it was made over to the court below for trial.

3. The court below framed charges for offence u/s 341, 354, 376(1) and 506 Part II IPC against the appellant. When the appellant was questioned on the charges, he denied the same as false. Thereafter, he was put on trial.

4. The prosecution examined P.W.1 to P.W.18, marked Ex.P.1 to P.22 and identified and marked M.O.1 to M.O.3. The incriminating evidence that



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was collected in the course of trial was put to the appellant when he was questioned u/s 313(1)(b) of Cr.P.C. and he denied the same as false. However, no witness was examined nor any document marked from the side of the appellant.

5. The court below on considering the facts and circumstances of the case and on appreciating the oral and documentary evidence came to a conclusion that the prosecution has proved the case against the appellant for offence u/s 341, 354 and 376(1) of IPC beyond reasonable doubts and decided to convict and sentence the appellant as stated in the first paragraph of the judgement and acquitted the appellant from the charge u/s 506 Part II IPC for want of evidence.

6. Heard Mr.E.Kannadasan, learned counsel for the appellant and Mr.M.Babu Muthumeeran, learned Additional Public Prosecutor for the respondent.

7. The main focus of the argument of the learned counsel for the appellant was that there was a material contradiction between the evidence of



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the Doctors viz., P.W.13 and P.W.16, who examined the victim girl and it is not clear from their evidence as to whether there was any penetrative sexual assault committed against the victim girl. It was also further pointed out that the evidence of the victim girl examined as P.W.3 with the assistance of a Special Educator also does not point to the fact that the appellant had committed penetrative sexual assault against the victim girl.

8. The learned counsel for the appellant concluded his argument by submitting that the appellant was aged about 19 years at the time of the incident, hence, the life sentence imposed by the court below is very harsh and he prayed for a reduction of the sentence.

9. In a case of rape the main evidence that has to be taken into consideration by a court is the evidence of the prosecutrix. It is not necessary to search for any corroboration, if the evidence of the prosecutrix does not lack any credibility. In view of the same, it is necessary for this court to first consider the evidence of the prosecutrix, who was examined as P.W.3. Since the prosecutrix was incapable of speaking (dumb), the assistance of the



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Special Educator (P.W.4) was taken and the evidence was recorded. This

court deems it fit to extract the entire evidence of P.W.3 hereunder:-

“(சாட்சிக்கு வாய் பேச முடியவில்லை. சைகைகள் மூலம் கேட்கும் கேள்விகளுக்கு புரிந்து கொண்டு பதில் சொல்ல முடிகின்றது. சாட்சியிடம் கெலமங்கலம் வட்டார வள மையத்தில் சிறப்பு பயிற்றுநராக பணிபுரியும் பயிற்றுநர் கலாதேவி அவர்கள் உதவியோடு சைகை மொழியில் கேள்வி கேட்கப்பட்டு சாட்சி சொன்ன பதில்களை பயிற்றுநர் கலாதேவி அவர்கள் விவரித்து சொன்னபடி அவர் உதவியுடன் விரிவாக்கம் செய்து கண்ணியில் சாட்சியத்தின் சாட்சியம் பதிவு செய்யப்பட்டது)

முதல் விசாரணை

இன்று நீதிமன்றத்தில் ஆஜராகியிருக்கும் அ.சா.1 இராமையா என்னுடைய அப்பா. அ.சா.2 லட்சுமம்மா என்னுடைய அம்மா. நான் என் அம்மா, அப்பாவோடு குடியிருக்கின்றேன். ஆஜர் எதிரியை எனக்கு தெரியும். எதிரி எங்கள் வீட்டிற்கு பக்கத்தில் இருக்கின்றார். எனக்கு முதலில் என்ன நடந்தது என்று சொல்ல முடியும். எதிரி குடித்துவிட்டு வந்து என்னை kiss பண்ண போனார். நான் எதிரியை பிடித்து தள்ளினேன். அப்போது எதிரி என்னுடைய கன்னத்தில் அடித்துவிட்டார். என்னுடைய துணிகளை எதிரி கழற்றினார். எதிரி என்னுடைய மார்பை பிடித்து கசக்கினார். எதிரி என்னுடைய துணி முழுவதையும் எடுத்துவிட்டார். எதிரி என்னை கீழே தள்ளிவிட்டார். பின்பு சாட்சி தனது பிறப்புறுப்பை காண்பித்து



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எதிரி அவர் மேலே படுத்து தப்பாக நடந்து கொண்டார் என்று சொன்னார், (சாட்சி பதில் சொல்லும் போது மிகவும் அழுதார்). என் அப்பா அங்கேயிருந்து வந்தார். என் அப்பா, ஏன் அம்மா என்னை போலீஸ் ஸ்டேசனுக்கு கூட்டிக்கொண்டு போனார்கள். பின்பு என்னை ஆஸ்பத்திரிக்கு கூட்டிக்கொண்டு போனார்கள். பின்பு ஓதுரில் இந்த மாதிரியுள்ள கோர்ட்டிற்கு கூட்டிக்கொண்டு போனார்கள். அங்கு உங்கள் முன்பாக (உச்சரை காண்பித்து சொன்னார்) நான் பேசி சொன்ன விவரங்களில் கைரேகை வைத்தேன். நான் கொடுத்த வாக்குமூலம் அ.சா.ஆ.2 இந்த வழக்கு சம்மந்தமாக ஆய்வாளர் என்னை விசாரித்தார்கள்.

எதிரி தரப்பு குறுக்கு விசாரணை

எதிரியை எனக்கு நான் குாந்தையாக இருந்ததிலிருந்தே தெரியும். என் அப்பா வேலை பார்த்த நிலத்திற்கும் எங்கள் வீட்டிற்கும் இடையே கொஞ்சம் அதிக தூரம் உள்ளது. சம்பவ நடந்தபோது அந்த இடத்திற்கு என் அப்பா வந்தார். சம்பவத்திற்கு பின்பு என் அம்மா தான் எனக்கு உடைகளை போட்டுவிட்டார். நான் முதல் விசாரணையில் சம்பவம் நடந்ததாக சொன்ன விவரம் வழக்கிற்காக பொய்யாக சொல்கிறேன் என்று சொன்னால் சரியல்ல.

மறுவிசாரணை : இல்லை.”

10. On a careful reading of the above evidence, we have no doubt in our mind that the victim girl has identified the appellant since he was residing near the residence of the victim girl and she has explained as to what actually



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happened on the fateful day. The evidence of P.W.3 is credible and hence, this court is inclined to act upon the evidence of P.W.3.

11. The evidence of P.W.3 is corroborated by the evidence of the Doctor, who was examined as P.W.16. The opinion of the Doctor – P.W.16, extracted supra, makes it very clear that the victim girl has been subjected to sexual assault and minimal congestion was found in the hymen along with the minimal tear. This evidence further corroborates the evidence of the victim girl.

12. The court below has properly appreciated the evidence and has come to the correct conclusion that the prosecution has proved the case beyond reasonable doubts and this court does not find any ground to interfere with such finding of the court below.

13. The next issue to be considered is regarding the plea made by the learned counsel for the appellant for reduction of the sentence imposed by the court below for offence u/s 376(1) of IPC.



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14. The appellant was aged about 19 years at the time of incident. It seems that the appellant was under the influence of alcohol and the same has been spoken to by the victim girl (P.W.3). Considering the facts and circumstances of the case and the age of the appellant at the time of the incident, we deem it just and reasonable to reduce the sentence of substantive imprisonment alone insofar the offence u/s 376(1) of IPC is concerned to rigorous imprisonment for 10 (Ten) years.

In the result, The conviction of the appellant for offence u/s 341, 354 and 376(1) of IPC are sustained; the sentence imposed for the offence u/s 341 and 354 of IPC are also sustained; insofar as the offence u/s 376(1) of IPC is concerned, the substantive sentence is modified and the appellant is directed to undergo rigorous imprisonment for 10 (Ten) years for offence u/s 376 (1) of IPC and the fine and default sentence imposed thereof are sustained. All the above sentences shall run concurrently and the period of sentence already undergone by the appellant in this case shall be set off u/s 428 of Cr.P.C.

This Criminal Appeal is partly allowed accordingly to the extent



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indicated herein above. Consequently, connected Crl.M.P. stands closed.

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(P.N.P., J.) (N.A.V.,J.)
09..01..2023

Index: Yes/No
kmk

To

- 1.The Sessions Judge, Fast Track Mahila Court,
Krishnagiri, Krishnagiri District.
- 2.The Inspector of Police, All Women Police Station,
Denkanikottai, Krishnagiri District.
- 3.The Public Prosecutor, High Court, Madras.



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P.N.PRAKASH.J.,
AND
N.ANAND VENKATESH.J.,

kmk

Pre Delivery Judgement
in
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Judgement Pronounced on
09..01..2023