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CRL.A.No.410 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.08.2023

DELIVERED ON : 17.04.2024

CORAM

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

CRL.A.No.410 of 2017

Manikandan

: Petitioner

Vs.

The State Rep. By
The Inspector of Police,
Thandampattu Police Station,
Thandampattu,
Tiruvannamalai District.

: Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the Judgment of conviction and sentence passed by the learned Sessions & Mahila Judge, (Fast Track Court), Tiruvannamalai made in S.C.No.171/2013 dated 30.05.2017.

For Appellant : Mr.K.Ethirajulu
Legal Aid Counsel

For Respondent : Mrs.G.V.Kasthuri
Additional Public Prosecutor

ORDER

This Criminal Appeal has been filed to set aside the Judgment of conviction and sentence passed by the learned Sessions Judge, (Fast Track



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Mahila Court), Tiruvannamalai made in S.C.No.171/2013 dated

30.05.2017.

2.The brief facts which are necessary for the disposal of this Criminal Appeal are as follows:-

2.1.The Complainant in this case P.W-1 was unmarried. She dropped out of school. When she was studying 10th Standard. The Appellant in this case was her classmate throughout her school days. P.W-1 was admitted in Tiruvannamalai Medical College Hospital as she suffered miscarriage on 10.10.2012. On intimation from the Doctors at the Government Hospital, the woman Constable Gr-I - Kuppulakshmi was sent by the Sub Inspector of Police to record the oral statement from the patient admitted in the Government Hospital (P.W-1). As per the oral complaint of P.W-1 from the hospital bed, one year prior to the date of admission i.e., on 10.10.2012 when she was proceeding to the agricultural field to provide lunch to her father, her schoolmate and classmate, who is the first Accused/Appellant, waylaid her and pulled her towards Kannimar Chunai. She cried aloud but no one came to her rescue and no one was available in the nearby vicinity. She was unable to wriggle out from his hands. She was taken to the bushes and he had forcible sexual intercourse with her. Subsequently, her father



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was injured in an accident some nine months prior to the date of occurrence

he was hospitalized. Since her father suffered fracture in his leg, he was

taken for treatment at Chennai. Her mother accompanied her father. Her

sister was married and living separately. Her elder brother is also married

and living with his wife as daily wage earner in Bangalore. Therefore, she

was alone at home. She was looking after the children of her sister and

brother who were attending school at Rayandapuram Village. Since her

parents were away and the children were in the Village, she has to take care

of the children. When she was alone at home, the Appellant herein/first

Accused came to her residence and invited her for sex. He also threatened

her that if she is not cooperating, he will spread false message in the village

that she is immoral. The Appellant/first Accused was married and living

with his wife and two children. The Complainant had protested stating that,

“you are already married and living with two children. Why are you

disturbing me?” For which, he replied that he will marry her. Misusing the

relationship and after the children had gone to school, he had been

continuously indulging in sexual intercourse with her. She became

pregnant. By the time she came to know her pregnancy, it was four months.

When she informed the first Accused on 06.10.2012, he had taken her to a

private hospital where the Doctor had administered injection. She became



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regarding her medical treatment and arrested Appellant/first Accused, subjected him to medical examination and obtained his medical Certificate also. He visited the scene of crime and the place of residence of the victim P.W-1 and prepared rough sketch and observation mahazar in the presence of witnesses. After completion of the investigation, laid the final report before the learned Judicial Magistrate, Tiruvannamalai. The learned Judicial Magistrate, Tiruvannamalai had taken the final report on the file as PRC No.3 of 2013. As the offence was exclusively triable by Court of Sessions, he had issued summons to the Appellant herein as Accused No.1 and his sisters and brother who were arrayed as A-2 to A-5. As the investigation by the Inspector of Police, Thandarampattu Police Station disclosed that the victim P.W-1 was taken to private hospital by the Appellant/first Accused and his sisters and his brother, who were arrayed as A-2 to A-5, thereby endangering the life of the victim P.W-1 by making her to undergo abortion without any proper medical skill/care which endangered her life. Therefore, the offence under Sections 312 and 313 of IPC was invoked against A-1 to A-5. Since the case was exclusively triable by the Court of Sessions, it was taken by the learned Judicial Magistrate as PRC No.3 of 2013 and he had issued summons to Accused 1 to 5. On appearance of the Accused, copies were furnished to them under Section 207 of Cr.P.C. and the case was



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committed to the learned Principal Sessions Judge, Tiruvannamalai. The learned Principal District and Sessions Judge, Tiruvannamalai had taken the case on file as S.C.No.171 of 2013 and since the offence involved woman as victim the case was made over to the file of the learned Sessions Judge, Fast Track Mahila Court and the Accused was bound over to the Court of the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai. On appearance of the Accused before the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai, the Prosecution and the defence were heard. Based on the arguments of the Prosecution and the defence, the charges were framed under Section 341, 366, 376 and 312 and 313 of I.P.C. and Section 4 of the Medical Termination of Pregnancy Act, 1971. Since the Accused-1 to Accused-5 denied the charges, the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai ordered trial. In the trial, the Prosecution had examined witnesses P.W-1 to P.W-10 and marked documents Ex.P-1 to P-6. After closing of the Prosecution evidence, the Accused-1 to Accused-5 were examined under Section 313 of Cr.P.C. regarding the incriminating evidence available against them. They denied the incriminating evidence. They did not produce any evidence. After hearing the arguments of the learned Public Prosecutor and the learned Counsel for the defence, the learned Sessions Judge, Fast Tract Mahila



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Court, Tiruvannamalai by judgment dated 30.05.2017 acquitted A-2 to A-5 from the charges and convicted the A-1 alone for the offence under Section 312 r/w. Section 313 of IPC and sentenced him to undergo three years Rigorous Imprisonment.

2.2. Aggrieved by the same, the first Accused alone as Appellant filed this Appeal seeking to set aside the judgment of conviction passed by the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai, dated 30.05.2017 in S.C.No.171 of 2013 and acquit the first Accused/Appellant.

3. The learned Counsel for the Appellant submits that the Appellant is first Accused along with four other Accused persons A-2 to A-5 and they were charged for the offences as follows:

Number of Charges	Charges framed
Charge 1	341 IPC against A-1
Charge 2	366 IPC against A-1
Charge 3	376 IPC against A-1
Charge 4	312 r/w. 313 IPC against A-1 to A-5
Charge 5	5 (2)(3) r/w. 3 and 4 Medical Termination of Pregnancy Act, 1971 against A-2

4. The Accused 1 to 5 denied charges. The learned Principal Sessions

Judge, Fast Track Mahila Court, Tiruvannamalai ordered trial. During the



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trial, the Prosecution had examined witnesses viz., P.W-1 to P.W-10 and marked documents viz., Ex.P-1 to Ex.P-6. P.W-1 -victim, P.W-2-mother of the victim, P.W-3 and P.W-4 are sisters of the victim. P.W-5-Mahazar witness, P.W-6-Woman Constable, P.W-7-K.Natarajan, Special Sub Inspector of Police registered the FIR based on the Complaint given by P.W-1. P.W-8 and P.W-9 are Doctors and P.W-10-R.Chinnaraj, the Investigating Officer. After closing the Prosecution Witnesses, A-1 to A-5 were examined under Section 313 of Cr.P.C., The Accused-1 to Accused-5 denied the incriminating evidence against them. After examined under Section 313 of Cr.P.C., the arguments of the learned Additional Public Prosecutor and the learned Counsel for the Accused 1 to 5 were heard. After hearing the arguments and on perusal of the materials available before the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai had acquitted A-1 to A-5 from the charges framed against A-2 to A-5. But the first Accused/Appellant herein alone had convicted under Section 312 r/w. 313 of IPC.

5. The learned Counsel for the Appellant invited the attention of this Court to the contents of the Complaint under Ex.P-1. He further submitted that from the evidence of P.W-1, it can be presumed that P.W-1/victim aged



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about 24 years on the date of alleged occurrence. Therefore, it was consensual relationship between her and the first Accused. Both are living in the same neighbourhood and the first Accused was her Schoolmate during the School days and he was aware of that she was already married. Therefore, the said relationship was consensual relationship through which, she had developed pregnancy and she does not disclose it with anyone including her sisters. She alleged to have accompanied A-1 to the Hospital of A-2/Dr.Malarvizhi where she was subjected to medical termination of pregnancy and she came back to her house on the same day. Subsequently, she fainted in the Village and the neighbours taken her to the Hospital. Only after that, she had given the Complaint. From the evidence of P.W-7, it is found that he had already received wireless message from Tiruvannamalai Government Hospital. But the Complaint was suppressed. This is the second Complaint. There are materials available before the trial Court that this is the second Complaint. In the evidence of P.W-4, the elder sister of P.W-1, stated that they had drafted the Complaint from the person at Rayandapuram. Based on which, the Complaint under Ex.P-1 was given by her and FIR was registered under Ex.P-3. When she was in Hospital, it had not been stated or explained by the Prosecution regarding what happened to the earlier Complaint given by P.W-1. Therefore, there are two



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Complaints. The second Complaint given by the elder sister of P.W-1 was taken and based on which, FIR was registered under Ex.P-3.

6. Further, the learned Counsel for the Appellant submitted that after conclusion of the trial and after hearing the arguments and on appreciation of evidence, the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai acquitted A-2 to A-5 from all the charges. Whereas the first Accused alone was convicted for the offence under Section 312 r/w. 313 of IPC and sentenced him to undergo Rigorous Imprisonment for three years.

7. Further the learned Counsel for the Appellant invited the attention of this Court to the evidence of P.W-1 to P.W-4 and the evidence of P.W-6-Woman Constable and P.W-7-Special Sub Inspector of Police, P.W-8 & P.W-9/Doctors and the cross-examination of P.W-10. He further submitted that there are contradictions between the evidence of P.W-1, P.W-2-mother of the victim, P.W-3 and P.W-4-the elder sisters of the victim. There are contradictions among P.W-6 and P.W-7, the Police Officials and P.W-10-Investigation Officer. In spite of the same, the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai, in his Judgment in Paragraph Nos.14 & 15 had observed as follows:



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14. இவ்வழக்கின் அனைத்து சாட்சியங்களையும் சான்றாவணங்களையும் நன்கு பரிசீலிக்கையில் மலர்விழி என்ற மருத்துவரது மருத்துவமனையில் கருக்கலைப்பு செய்யப்பட்டபோது அ.சா.1 கண்விழித்து பார்த்தபோது அங்கு 3 முதல் 5 எதிரிகள் இருந்ததாக கூறியுள்ளதற்கு அ.சா.1ன் சாட்சியத்தை தவிர்த்து மற்ற சாட்சிகள் ஆதாரம் இல்லை. எனவே 3 முதல் 5 எதிரிகள் மீதான குற்றச்சாட்டுக்கள் அரசுத் தரப்பில் சந்தேகத்திற்கிடமின்றி நீரூபிக்கப்படவில்லை என்றே இந்நீதிமன்றம் தீர்மானிக்கிறது. 2ம் எதிரியைப் பொறுத்தும் அ.சா.ன் சாட்சியத்தை தவிர்த்து, அந்த மருத்துவர்தான் முதலில் ஏற்பட்ட முழுமையடையாத கருக்கலைப்பை மேற்கொண்டவர் என்பதற்கு சாட்சியமோ, சான்றாவணங்களோ ஆதாரம் இல்லை. எனவே 2ம் எதிரியின் மீதான குற்றச்சாட்டுகள் அரசுத் தரப்பில் சந்தேகத்திற்கிடமின்றி நீரூபிக்கப்படவில்லை என்றே இந்நீதிமன்றம் தீர்மானிக்கிறது.

15. மேலும் அ.சா.9 மருத்துவர் நடேசன் சாட்சியத்தில் உரைத்துள்ளபடி கிராமத்து நாட்டு வைத்தியர் பயிற்சி பெறாதவர் மூலம் இத்தகைய நிலை ஏற்படலாம் என்பதையும் இந்நீதிமன்றம் கருத்திற்கொள்கிறது. முதல் எதிரியைப் பொறுத்து இருவருக்கும் இடையிலான பழக்கத்தின் காரணமாக அ.சா.1 உடன் அவர் நெருங்கி பழகியுள்ளார். இருவரும் உறவு கொண்டுள்ளார். ஒரு முறைக்கு 5 முறை அந்த உறவுகள் நிகழ்ந்துள்ளன. அதன்மூலம் அ.சா.1 கர்ப்பமுற்றுள்ளார் என்ற நிலையில், அ.சா.1ன் முழு சம்மதம் இருந்ததாகவே கருதி, இதனை கற்பழிப்பாக கருதுவதற்கில்லை. எனவே 1ம் எதிரியின் மீதான பிரிவு 376ன் படியான குற்றமானது நீரூபிக்கப்படவில்லை என்றே இந்நீதிமன்றம் தீர்மானிக்கிறது. மாறாக தான் திருமணமானவர் எனத் தெரிந்திருந்தும், திருமணமாகாத ஒரு பெண்ணுடன் பழகி பலமுறை உறவு கொண்டு, அந்தப் பெண்ணை கர்ப்பமாக்கியதுடன் அதனை கலைப்பதற்கான கவனக்குறைவான கருக்கலைப்பில் ஈடுபட்டு அந்த பெண்ணின் உடலுக்கும், மனதிற்கும் பெரும் கேடு விளைவிக்கும் வகையில் செயல்பட்டவர் இந்த முதல் எதிரியே என்பதில் எந்த ஐயமுமில்லை. அதன் விளைவாகத்தான் திருவண்ணாமலை அரசு மருத்துவமனையில் 08.10.2012ல் முபமையான கருக்கலைப்பு அந்தப் பெண்ணுக்கு செய்யப்பட வேண்டிய அவசிய, அவசர தேவை ஏற்பட்டுள்ளது.....

8. The learned Sessions Judge had found that there are no material available against the second Accused as per the evidence of P.W-1 who had performed abortion and had acquitted her from the charges under Section



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312 r/w. 313 of IPC. The first Accused cannot be held guilty for the same charges. He was reportedly connected to the offence under Section 376 of IPC is concerned. The learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai, acquitted the Accused 2 to 5 from the charges. Therefore, the Judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai as against A-1 in S.C.No.171 of 2013 dated 30.05.2017 is perverse. Therefore, he seeks to set aside the Judgment of conviction recorded against A-1.

9. In support of his contention, the learned Counsel appearing for the Appellant relied on the decision of the Hon'ble Supreme Court in **Ram Laxman -vs- State of Rajasthan** reported in **(2016) 12 SCC 389** wherein it is held as under:

“C. Criminal Trial – Acquittal – Acquittal of co-accused/some accused/Benefit of their acquittal – Acquittal of co-accused – Parity – Entitlement to – Testimony of eyewitness found unreliable – His evidence cannot be split to grant benefit to some co-accused while maintaining conviction of another, who stands on same footing and deserves parity – Conviction of remaining accused also reversed.”

10. The learned Additional Public Prosecutor vehemently objected to the submissions of the learned Counsel for the Appellant stating that there are evidence from the deposition of P.W-1 that the first Accused had forced



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her and committed rape on her by force when she was taking food to her father. Subsequently, he blackmailed her, invited her, forcibly taken her and committed the offence. Therefore, the first Accused himself taken the victim to A-2/Dr. Malarvizhi and forced her to undergo medical termination of pregnancy against her consent. Therefore, the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai, on appreciation of evidence had acquitted the other Accused from the Charges. Based on the same evidence, the learned trial Judge convicted the first Accused/Appellant herein alone for the offence. She further submitted that the first Accused/Appellant herein was instrumental for her suffering abortion. Therefore, the Judgment of the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai in S.C.No.171 of 2013 dated 30.05.2017 is a well reasoned Judgment that does not warrant any interference by this Court. Therefore, this Court has to confirm the Judgment and findings of guilt recorded by the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai.

Point for Consideration:

Whether the Judgment passed by the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai in S.C.No.171/2013 dated 30.05.2017 is to be set aside as perverse?



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11. On consideration of the rival submissions and on perusal of the evidence of the Prosecutrix/victim/P.W-1, it is found that she was a consensual partner in the act. In her cross-examination, she had clearly stated that she had accompanied the first Accused five times, when he invited her for sexual pleasure. She had denied the suggestion of the defence that she was already married to one Poppy and it was a Christian marriage and the said Poppy died within one year of the marriage, subsequently, she was not married. She denied the suggestion. To the pointed question that why she was not married off by her parents. She would submit that due to poverty, they were unable to get her married. The cross-examination of the Prosecutrix/P.W-1 reveals that she has knowledge of her conduct and its repercussions, she had clearly admitted that the first Accused is residing in the same Village with his wife and children. The claim of the Prosecutrix that she was pulled and dragged by A-1 to Anjaneyar Kovil Chunai and committed sexual intercourse on her, reveals that it was during day time, it is unbelievable. Subsequently, for five occasions, A-1 called her and she accompanied him. Therefore, the claim that she became pregnant due to the sexual intercourse under the pretext of promise to marry cannot at all be accepted. Also, the Charge under Sections 312 and 313 of IPC will not hold good. She herself is a party to the said



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conduct. Section 312 of IPC relates to causing miscarriage which is extracted hereunder:

“312.Causing miscarriage – Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

12. The submission of the learned Counsel for the Appellant that when the co-accused/Sisters of first Accused and Doctor who alleged to have performed the procedure for abortion had been acquitted by the Court and the same reasoning has to be extended to A-1 also, is found acceptable in the facts and circumstances of the case as gathered from the records.

13. The submission of the learned Additional Public Prosecutor that the conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai, against A-1 alone for the offence under Sections 312 & 313 of IPC and acquitting A-2 to A-5 is a well-reasoned Judgment which does not warrant any interference by this Court, cannot at all be accepted. Considering the facts that for the offences under Sections 312 & 313 of IPC, A-2 to A-5 had been acquitted, the same reason had to be extended to A-1

<https://www.mhc.tn.gov.in/judis> also. As per the evidence of Prosectrix/P.W-1, she had stated that A-1 to A-5



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took her to Hospital for performing abortion on her. In the light of such specific evidence, A-2 to A-5 were acquitted by the learned Sessions Judge from the Charges under Sections 312 and 313 of IPC. When that be so, the same yardstick is to be applied to A-1 also. For the same Charges, based on the same evidence, A-2 to A-5 had been acquitted from the Charges whereas A-1 alone had been convicted cannot be accepted as reasonable in the light of the reported ruling cited by the learned Counsel for the Appellant in ***Ram Laxman -vs- State of Rajasthan*** reported in ***(2016) 12 SCC 389***. Therefore, the Judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai in S.C.No.171/2013 dated 30.05.2017 against the Appellant/first Accused is to be set aside.

14. In the light of the above discussions, the point for Consideration is answered in favour of the Appellant/first Accused and against the Prosecution. The Judgment of Conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai in S.C.No.171/2013 dated 30.05.2017 is set aside as perverse.

In the result, **this Criminal Appeal is allowed.** The Judgment of conviction and sentence of Rigorous Imprisonment of three years imposed



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on the Appellant/first Accused by the learned Sessions Judge, Fast Track

Mahila Court, Tiruvannamalai in S.C.No.171/2013 dated 30.05.2017 is set

aside. The Appellant/first Accused is acquitted from the charges. The bail

Bond executed by Appellant/first Accused is ordered to be cancelled. The

fine amount paid, if any, by the Appellant/Accused is to be refunded.

17.04.2024

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

dh/srm

To

1. The Inspector of Police,
Thandarampattu Police Station,
Thandarampattu,
Tiruvannamalai District.

2. The Sessions Judge,
Fast Track Mahila Court,
Tiruvannamalai.

3. The Public Prosecutor,
High Court, Madras.



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