



Crl.A.No.588 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2024

CORAM

THE HONOURABLE **MRS.JUSTICE R.KALAIMATHI**

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Panneer Selvam

.. Appellant

VS

State by the Inspector of Poilce,
All Women Police Station, Ambur,
Vellore District.
(Crime NO.10 of 2013)

.. Respondent

Prayer: Criminal Appeal is filed under Section 374 (2) of Cr.P.C., to call for the entire records in connection with the S.C.No.118/2014 on the file of the Learned Sessions Judge, (Magalir Nethi Mandram) Fast Track Mahila Court, Vellore, Vellore District and to set aside the Judgment dated 27.03.2018.

For Appellant : Mr.E.Kannadasan

For Respondents : Mr.S.Udaya Kumar
Government Advocate
(Crl. side)



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JUDGMENT

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This criminal appeal is filed against the judgment dated 27.03.2018 passed in S.C.No.118 of 2014 by the learned Sessions Judge, (Magalir Nethi Mandram) Fast Track Mahila Court, Vellore, convicting the 2nd accused under Section 354(B) of IPC to undergo 4 years rigorous imprisonment and to pay fine of Rs.2,000/- in default to undergo one month simple imprisonment and under Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, he has to undergo rigorous imprisonment of one year and to pay a fine of Rs.10,000/- in default to undergo two months simple imprisonment. Challenging the said conviction, the 2nd accused has preferred this appeal.

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

2.1.The Defacto complainant/witness Rakel and the first accused Siva got married in the year 2007 without the consent of both side families, as the first accused belongs to Hindu Adidravidar and the defacto complainant is a Christian Adidravidar.

2.2.The Accused No.1 is the husband of defacto complainant Rakel, and the accused Nos.2 and 3 are the parents of the accused No.1. She



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was living along with accused Nos.1 to 3 at Melpallipattu, Guruvarajapalayam, Ambur Taluk at the matrimonial home.

2.3.The Accused Nos.1 and 3 committed acts of cruelty on the said Rakel at the matrimonial home, demanded dowry of Rs.50,000/- and a vehicle for which she was often ill-treated and harrassed and thereby caused mental and physical agony.

2.4.On 20.05.2013 at 10.30 pm, while the defacto complainant/witness Rakel was sleeping alone at the matrimonial home, the Accused No.2, taking advantage that nobody was in the house, with an intention to satisfy his lust, laid down with defacto complainant on her bed, lifted her saree and inskirt and removed the buttons of blouse and squeezed her right side breast by his left hand forcibly.

2.5.Thus, according to the defacto complainant, in the course of the said commissions, and on the above said day, time, place, the accused committed offences on the defacto complainant and made criminal intimidation by staing that “இதை யாரிடமாவது சொன்னால் உன் குடும்பத்தையே தீ வைத்து கொளுத்திவிடுவேன்;”. Thereby, accused No.1 and



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No.3 committed offences punishable under Section 498(A) IPC and 4 of Dowry Prohibition Act (hereinafter referred as D.P. Act) and the accused No.2 has committed offences under Section 498(A) IPC, 4 of D.P Act, 4 of Tamil Nadu Prohibition of Harassment of Women Act(hereinafter referred as TNPHW Act).

Case No.	Court	Details of Judgment
Sessions Case No.118 of 2014	Magalir Needhi mandram (Fast Track Mahila Court), Vellore.	Accused No.1 and No.3 are found not guilty for the offence u/s 498(A) of IPC and 4 of D.P Act. Accused No.2 is not found guilty for the offence u/s 498(A) of IPC, 4 of D.P Act . Hence, they are acquitted u/s 235 (1) of Cr.P.C. In respet of the above said offences. But, Accused No.2 is found guilty for the offence u/s 354(B) of I.P.C. Being a minor offence of 376 r/w 511 of I.P.C & Accused No.2 is found guilty for the offence u/s 4 of Tamil Nadu Prohibition of Harassment of Women Act.

3. After trial, the Mahila Court, Vellore, found Accused No.1 and No.3 not guilty of the offence under Section 498(A) of IPC and 4 of Dowry Prohibition Act [hereinafter referred as D.P.Act.] The Accused No.2 was not found guilty for the offences under Section 498(A) of IPC, Section 4 of



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D.P.Act and 506(i) of IPC and acquitted under Section 235 (1) of Code of Criminal Procedure(Cr.P.C). But, Accused No.2 was found guilty for the offence under Section 354(B) of I.P.C and convicted and sentenced to undergo 4 years rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo one month simple imprisonment and under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, he was convicted and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.10,000/- in default to undergo two months simple imprisonment.

4. Mr.E.Kannadasan, the learned counsel appearing for the appellant vehemently contented that the date of occurrence was on 20.05.2013 and the complaint was given belatedly on 31.05.2013. There is enormous delay in lodging the complaint which was not sufficiently explained by the prosecution. It was his further argument that evidence of P.W1 is not believable and hence, he pleaded that the conviction and sentence passed against Accused No.2 may be set aside by allowing the appeal.



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5. Mr.Udayakumar, the learned Government Advocate (Crl. Side)

strenuously argued that the evidence of the victim/P.W1, stands corroborated by the evidence of her father P.W2 and Dr.Sharmila Devi P.W4, who conducted medical examination on her. On relying upon the above evidence of said witnesses, the trial Court, though Accused No.2/Appellant was charged under Section 376 read with 511 of IPC, convicted and sentenced him for the lesser offence viz., under Section 354(B) of IPC and under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act.

6. To substantiate the charges, prosecution examined 9 witnesses and marked 11 documents.

7. P.W1 is the defacto complainant Smt.Rakel. P.W2, Balakrishnan is the father of P.W1. P.W3, Parimala is the neighbour of P.W1. P.W4 Dr.Sharmila Devi, medically examined P.W1 and issued the accident Register / Ex.P3. P.W5 to P.W7 are the Constables who have assisted the Investigation Officer during investigation. P.W8, Veniyammal, Inspector of Police, All Women Police Station, Ambur, is the Investigating



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Officer who conducted the investigation and P.W9, S.Govindasamy conducted further investigation and filed the final report before the Judicial Magistrate Court No.3, Vellore. Ex.P.3 is the accident Register copy of P.W1.

8. The final report was taken cognizance by the Judicial Magistrate Court No.3, Vellore and on summons, accused appeared before the said Court. A copy of final report and the documents proposed to be relied upon by the prosecution were furnished to all the accused under Section 207 of Cr.P.C. and the case was made over to the Mahila Court, Vellore.

9. The Mahila Court, Vellore, took cognizance of the case as S.C.No.118 of 2014 and the accused were questioned. They pleaded not guilty. Charges were framed by the trial Court under Section 498(A) and 4 of D.P.Act, 1961 against accused No.1 and No.3 and against Accused No.2 under Section 376 read with 511 of IPC, Section 4 of TNPHW Act and Section 506 (part I) of Indian Penal Code.



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10. As per the case of prosecution, date of occurrence is 20.05.2013. But the complaint was presented on 31.05.2013 at 11.45 hrs (Ex.P7). On perusal of the entries in Ex.P1 complaint, it appears that on the receipt of the complaint, C.S.R.No.217 of 2013 was assigned and the case was registered on 01.06.2013 in Crime No.10 of 2013 under Section 498(A), 506(ii) IPC, Section 4 of D.P.Act, 1961. In column 8 of the FIR (Ex.P8) it has been mentioned that the delay is caused by the complainant. With regard to delay in filing the complaint, nothing was elicited during the cross examination of P.W1.

11. On careful perusal of the evidence of P.W1, it appears that soon after the occurrence, P.W1/Rakel came out from her matrimonial home along with her child. When she told about the occurrence to her husband and mother-in-law, they did not accept the same and after that she went to her parents home and lodged the complaint.

12. It is the duty of the prosecution to explain the delay satisfactorily. However, considering the nature of the case and the explanation offered by the victim P.W1, this Court is of the considered view that it does not



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affect the merits of the case.

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13. Mr.E.Kannadasan, the learned counsel stoutly contended that evidence of the victim is not natural. It is the evidence of P.W2 that Rakel/Victim had love affair with the first accused. She got married and gave birth to a child. She has stated that her father-in-law told her to behave like wife to him. When she told about this to her mother-in-law and her husband, they did not care for the same. Meanwhile, her husband left Jamunamarthur Hills for doing mason work and her mother-in-law went to her mother's place.

14. It has come on record through the evidence of P.W1 that on 20.05.2013 at 10.30 pm when she was sleeping alone with her son, her father-in-law under the influence of alcohol came to their house in nude and laid along with her, put off her blouse button, lifted her saree and inskirt and kept his left leg upon her legs and squeezed her right side breast. It is her further evidence that after the said incident, she pushed him down and immediately came out from the house along with her son.



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15. It is her further evidence that when she told her husband and mother-in-law about the occurrence, they did not accept the same and also all three accused caused criminal intimidation by stating that “இதை வெளியில் சொன்னால் உன்னை கொன்று விடுவேன்;”. Thereafter, she went to her parents house and lodged the complaint, Ex.P1.

16. It has come on record through the evidence of her father P.W2, Balakrishnan that already her daughter P.W1 complained about the behaviour of her father-in-law. Thereafter, her daughter also told him that her father-in-law under intoxication, when she was alone misbehaved with her. She told him that when she came out from the house, her father-in-law criminally threatened to kill her. P.W3 Parimala though did not support the prosecution case, she has identified her signature found in the observation mahazer Ex.P2 and she was treated as hostile witness.

17. It is the evidence of P.W4 Dr.Sharmila Devi, the medical officer of Government Hospital, Ambur, that on 17.08.2013, at 12.30 noon as per the police memo of All Women Police Station, Ambur, Rakel wife of Siva was brought to her for medical examination by the Head Constable



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No.1367, Ramabai P.W5. Upon enquiry, the victim told P.W4 that on 20.05.2013, at 10.30 pm her father-in-law made sexual assault on her. She did not find any external injury on her body and issued accident Register Ex.P3. The medical certificate of Accused No.2 [Ex.P4] was issued by Dr.Selvaraj.

18. Further, it is the evidence of P.W8, Veniyammal, Inspector of Police that on 31.05.2013, when she was on duty as Sub Inspector of Police in All Women Police Station, Ambur, at about 11.45 am, Rakel wife of Siva presented a complaint. On receipt of the same C.S.R.No.217 of 2013 was assigned by her and on 01.06.2013, at about 20.30 hours, case was registered in Crime No.10/13 under Section 498(A) IPC, 506(i) of IPC, Section 4 of D.P Act and Section 4 of TNPHW Act. She took up the case for investigation and on 02.06.2013, at 05.30 hours, visited the scene of occurrence, in the presence of Parimala P.W3 and Kannan(died) prepared the observation mahazer Ex.P10 and rough sketch Ex.P9. At about 06.00 am, she effected arrest of Accused Nos.1 to 3 at Guruvarajapalayam bus stop and thereafter they were sent to judicial custody. She examined the witnesses Tmt.Rakel [P.W1], Tr.Balakrishnan [P.W.2], Tmt.Parimala [P.W3], Dr.Sharmila Devi [P.W.4], Tmt.M.Ramabai, (Head Constable)



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[P.W5] , Tr.Kumar (Grade I PC) [P.W6], Tmt.Devapricilla (Woman PC) [P.W7], Tmt.Veniyammal (Inspector of Police) [P.W.8], Tr.Govindasamy (Inspector of Police) [P.W9] and recorded their statements. Victim was examined on 18.08.2013. The 2nd accused and victim were sent for medical examination to the Ambur Government Hospital on 17.08.2013.

19. Tr.Govindasamy, Inspector of Police/P.W9 who was in-charge of All Women Police Station took up the case for investigation and examined all the witnesses. After completion of investigation, final report was laid under Section 498(A), 506(i) of IPC, Section 4 of D.P Act and Section 4 of TNPHW Act read with 34 IPC.

20. Law is well settled that it, in the sexual offences, if the evidence of prosecutrix inspires the confidence of the Court and believable then based on the sole evidence of prosecutrix, prosecution case can be decided.

21. In this case, prosecution has examined father of victim, to



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support the case of P.W1. No enmity is suggested against her father-in-law except the fact that he has already misbehaved with her.

22. On careful perusal of the evidence of P.W1 and P.W2, it appears that evidence of prosecutrix is cogent, trust worthy and believable. P.W1 states that the neighbour is in enemical terms. It is a common understanding that in these type of cases, a married women if subjected to sexual offence, perpetrated by the inmate of the house, it cannot be expected that she would share the same with her neighbours. It depends upon many factors like the degree of friendship with the neighbours, etc. Though P.W2 was subjected to medical examination only in the month of August 2013, I am of the firm opinion that it has not caused any dent on the prosecution case. More so, for that she cannot be blamed. Admittedly, it is not the case of P.W1 that she has sustained any injury on account of the occurrence.

23. According to the prosecution, while the Prosecutrix was



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sleeping alone at their residence, at about 10.30 pm, on 20.05.2013, Accused No.2 came under intoxication and sexually assaulted her as narrated by her.

24. Regarding the sentence, the learned counsel Mr.E.Kannadasan appearing for the appellant pleaded that if this Court comes to the conclusion that the accused has committed the offence under Section 354(B) of IPC and under Section 4 of TNPHW Act, considering his age as he has crossed 60 years, the punishment granted to him may be modified.

25. It appears that, the 2nd accused/appellant is now 65 years old. It appears that he has undergone the sentence from 27.03.2018 (date of judgment) and was only released on 02.08.2019, after the order was passed in the Crl.M.P.No.10603 of 2019 by this Court.

26. Considering the age of the accused and rigorous imprisonment of 4 years granted under Section 354(B) of IPC is reduced to 3 years



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rigorous imprisonment and the fine amount already paid is ordered to be adjusted.

27. With the above said modifications, this Criminal Appeal is ordered.

22.02.2024

Index : Yes/No
Internet : Yes/No
dpa

To

- 1.The Sessions Judge, (Magalir Nethi Mandram)
Fast Track Mahila Court, Vellore,
Vellore District
- 2.The Inspector of Poilce,
All Women Police Station, Ambur,
Vellore District.
- 3.The Public Prosecutor,
Madras High Court, Chennai.



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R.KALAIMATHI,J.,
dpa

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