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CRL.A.(MD).No.239 of



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.11.2025

PRONOUNCED ON :09.01.2026

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.A(MD).No.239 of 2024

Murugan

.. Appellant/Sole Accused

Vs.

The State represented by
The Inspector of Police,
Usilampatti All Woman Police Station,
Madurai District.
(Crime No.37 of 2017)

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) Cr.P.C, to call for the records relating to the judgment dated 02.12.2023 made in S.C.No.466 of 2018, on the file of the Sessions Court, Mahalir Neethimandram, Madurai and set aside the conviction and sentence imposed against the appellant/accused.

For Appellant : Mr.V.S.Harihara Sudhan

For Respondent : Mr.K.Gnanasekaran
Government Advocate (Crl.Side)



JUDGMENT

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The Criminal Appeal is directed against the judgment of conviction made in Sessions Case No.466 of 2018, dated 02.12.2023, on the file of the Mahalir Neethimandram, Madurai.

2. The appellant is the sole accused in S.C.No.466 of 2018, on the file of the Mahalir Neethimandram, Madurai.

3. The Inspector of Police, All Woman Police Station, Usilampatti laid a charge sheet against the appellant/accused alleging that the victim, Otchammal was residing in Mekkilarpatti along with her niece Meena and Eswaran, that on 07.06.2017 the victim has slept at front yard of their house and at about 11.00p.m., the accused pounced upon the victim and raped her and that the accused committed the offence punishable under Section 376 I.P.C.

4. The learned District Munsif cum Judicial Magistrate, Usilampatti took the charge sheet on file in P.R.C.No.5 of 2018 and furnished the copies of records under Section 207 Cr.P.c., on free of costs. The learned Judicial Magistrate finding that the offences under Section 376 I.P.C., is exclusively triable by the Sessions Court, after the compliance under Sections 208 and 209 Cr.P.C., committed the case to the Principal Sessions Court, Madurai and the



case was taken on file in S.C.No.466 of 2018 and subsequently, the case was made over to Mahalir Neethimandram, Madurai.

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5. After the appearance of the accused, the learned Sessions Judge, on hearing both sides and on perusal of the records, being satisfied that there existed a prima facie case against the accused, framed a charge under Section 376 I.P.C., and the same was read over and explained to him and on being questioned, the accused denied the charge and pleaded not guilty.

6. The prosecution, to prove its case, examined 13 witnesses as P.W.1 to P.W.13 and exhibited 12 documents as Exs.P.1 to P.12.

7. The case of the prosecution emerging from the evidence adduced by their side in brief, is as follows:

(a) P.W.1 – Meena, P.W.2-Prabhakaran, P.W.3-Chinnathai, P.W.4-Petchi are all the residents of Mekkilarpatti and are related to each other. The victim Otchammal is the paternal aunt of P.W.1. The accused also belongs to Mekkilarpatti. On 07.06.2017, P.W.1's aunt Otchammal slept at the front yard of their house and at about 11.00p.m., P.W.1 hearing the screams of her aunt, came out of her house and found the accused squatting upon the victim. On seeing



P.W.1, the accused fled away from the occurrence place. The neighbours came to that place and enquired the victim. The victim along with P.W.1 went to the police station on the next day and the victim gave a written complaint under Ex.P.8 stating that she was raped by the accused.

(b) P.W.11 – Tmt.Geetha Devi – the then Inspector of Police, All Woman Police Station, Usilampatti received Ex.P.8 complaint from the victim Otchammal at about 07.00a.m, on 08.06.2017 and registered a case in Cr.No.37 of 2017, under Section 376 I.P.C., and prepared the F.I.R., under Ex.P.9. P.W.11 went to the occurrence place and inspected the spot at about 07.45a.m., and prepared the observation mahazar under Ex.P.10 in the presence of P.W.3 – Chinnathayee and Sundararajan and also drew a rough sketch under Ex.P.2. She examined the victim, P.W.1 to P.4 and recorded their statements. She sent the victim for medical examination at about 10.15a.m., on the same day through P.W.7 – Woman Head Constable. P.W.7, as per directions of P.W.11 took the victim to Government Headquarters Hospital, Usilampatti and produced before P.W.5 – Medical Officer. P.W.5 – Dr.Revathi, who was working as a Gynaecologist examined the victim Otchammal at about 01.00p.m., on 08.06.2017 and found no injuries on her private parts and collected the smear and sent the same to the Forensic Laboratory. P.W.5 issued a certificate under Ex.P.4.



(c) P.W.11 arrested the accused at about 11.00a.m., on the same day near Mekkilarpatti bus stand and on enquiry, the accused gave a voluntary confession statement and the same was recorded in the presence of P.W.2 – Prabhakaran and P.W.4 – Petchi. P.W.11 sent a requisition to the Chief Judicial Magistrate, Madurai for recording the statement of the victim under Section 164 Cr.P.C., under Ex.P.11 and in pursuance of the directions of the Chief Judicial Magistrate, the Judicial Magistrate, Thirumangalam recorded the statement of the victim under Section 164 Cr.P.C., under Ex.P.12. P.W.11 then sent the requisition through Court for subjecting the accused to medical examination. P.W.8 – Head Constable had taken the accused and produced him before the headquarter hospital at Usilampatti. P.W.10, Dr.Ravivarman who was the duty Medical Officer on 17.08.2017, examined the accused and after getting opinion from their General Surgeon, issued a certificate under Ex.P.7 stating that there is nothing to suggest that the accused is impotent.

(d) Since P.W.11 was transferred, she handed over the case file to her successor. P.W.12 who succeeded P.W.11 took over the investigation and deputed P.W.8 Head Constable Selvaraj to forward the semen and smear samples to the Forensic Laboratory. P.W.6 – the then Scientific Officer attached to the Forensic Laboratory, Madurai received two slides and upon examination issued



a biological report under Ex.P.5, stating that the slides did not contain sperms. She also issued a serological report under Ex.P.6 stating that the result of grouping test was inconclusive.

(e) P.W.13 successor to P.W.12 took up the case for further investigation, obtained biological and serological report and examined P.W.6 and recorded his statement. After completing the investigation, P.W.13 filed a final report against the accused on 10.01.2018 under Section 376 I.P.C. With the examination of P.W.13, the prosecution closed their side evidence.

(f) When the accused was examined under Section 313(1) (b) Cr.P.C with regard to the incriminating aspects as against him in the evidence adduced by the prosecution, he denied the same as false and stated that a false case has been foisted against him. Though the accused stated that he is having defence evidence, he has not let in any evidence subsequently.

(g) The learned Sessions Judge, considering the evidence both oral and documentary and on hearing the arguments of both sides, passed the impugned judgment dated 02.12.2023, holding that the prosecution failed to prove the charge under Section 376 I.P.C., but the charge under Section 354 I.P.C., was proved, convicted the accused for the offence under Section 354 I.P.C. and



sentenced him to undergo five years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months Simple Imprisonment. Aggrieved by the impugned judgment of conviction and sentence, the accused has preferred the present Criminal Appeal.

8. Heard the learned Counsel appearing for the appellant and the learned Government Advocate (Crl.Side) appearing for the respondent and perused the materials placed on record.

9. Whether the impugned judgment of conviction and sentence imposed on the accused in S.C.No.466 of 2018, dated 02.12.2023 on the file of the Mahalir Neethimandram, Madurai is liable to be set aside? is the point for consideration.

10. The case of the prosecution is that on 07.06.2017 at about 11.00p.m., when the victim was sleeping at the front yard of her house, the accused pounced on her and raped her. As already pointed out, the learned Sessions Judge, after going through the evidence, has come to a decision that the prosecution failed to prove the charge under Section 376 I.P.C., but by holding that there is evidence to show that the accused had outraged the modesty of the victim, convicted him for the offence under Section 354 I.P.C.



11. It is pertinent to note that before commencement of trial, the victim had died. It is not in dispute that the victim was aged 90 years at the time of alleged occurrence. It is also not in dispute that the victim was residing with P.W.1 and P.W.1's brother Eswaran.

12. It is pertinent to note that the conviction is based solely on the evidence of P.W.1, who stated that, upon hearing the screams of the victim, she came out of the house and found the accused squatting over the victim and that, on noticing her, the accused fled from the scene of occurrence. On this basis, the learned Sessions Judge concluded that such conduct amounted to outraging the modesty of the victim and accordingly convicted the accused. No doubt, the victim gave a statement under Section 164 Cr.P.C. before the learned Judicial Magistrate, marked as Ex.P.12. However, it is well settled that a statement recorded under Section 164 Cr.P.C. is not substantive evidence and can be used only to corroborate or contradict the substantive evidence, if any available, before the Court.

13. As rightly pointed out by the learned counsel for the accused, the learned Sessions Judge has mainly relied upon the evidence of P.W.1 and also the suggestion put to P.W.1 by the defence. As already noted, P.W.1, in her



evidence, stated that at about 11.00 p.m. on 07.06.2017, upon hearing the screams of her aunt, she came out of her house and found the accused squatting over the victim, and that, on seeing her, the accused ran away from the place of occurrence. P.W.1 further stated that after the accused fled from the scene, the neighbours arrived at the spot. However, as rightly pointed out by the learned counsel for the accused, during cross-examination, a suggestion was put to P.W. 1 that she came to the place of occurrence only after the neighbours had already assembled, which she denied, reiterating that the accused fled only after seeing her. Nevertheless, P.W.1 admitted in her cross-examination that when she came out of her house, P.Ws.2 to 4 and her brother Selvam were already present at that time. She would admit,

“நான் வெளிய வந்து பார்த்து பாதா யார் நேந்தார்கள் என்றால் என்
பெரியம்மா சின்னதாய்இ என் அண்ணன் செல்வம்இ அண்ணி பச்சிஇ
தம்பி பிரபாகரன் ஆகியார் நேந்தார்கள். ஊர்க்காரர்கள் வந்துவிட்டார்களா
என்றால் வந்துவிட்டார்கள்.”

14. In view of the above, the admission of P.W.1 would also lead to the inference that she did not witness the occurrence and that she came to the occurrence place only after P.W.2 to P.W.4 and Selvam had already arrived there. No doubt, as rightly pointed out by the learned Government Advocate (Crl.Side), it was suggested to P.W.1,



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“எதிரி குழுவாழையில் விழுந்து கிடந்தான் என்றும் என் அத்தை
ஊர்க்காரர்கள் தவறுதலாக நினைத்துக்கொள்வார்கள் என்று எதிரி மீது
புகார் கொடுத்துள்ளார் என்றால் சரியல்ல.”

15. However, P.W.3 Chinnathai and P.W.4 Petchi, in their respective evidence, have not stated that they witnessed the occurrence. P.W.3 deposed that she was only a witness to the preparation of the observation mahazar and the rough sketch, whereas P.W.4 stated that her signatures were obtained on blank papers. According to the prosecution, P.W.4 was a witness to the confession statement of the accused; however, as she did not support the prosecution case, she was treated as hostile. P.W.2 stated that he was a witness to the medical examination of the accused and did not depose that he had witnessed the occurrence. No doubt, the suggestions put by the defence to the prosecution witnesses can be taken as the stand of the accused and may be used to corroborate the evidence available on record. However, in the absence of any direct evidence, such suggestions by themselves are not sufficient to prove the alleged offence.

16. As rightly contended by the learned counsel for the accused, P.W.5, the Medical Officer who examined the victim, deposed that there was no evidence of any external injuries on the victim. Further, Ex.P.5, the biological report, reveals



that no spermatozoa were detected on Item No.1, namely, two glass slides containing whitish smear. Though the prosecution alleged that the victim was assaulted, there is absolutely no medical evidence to substantiate the same. As further rightly contended by the learned counsel for the accused, except the evidence of P.W.1, who claimed to have witnessed the alleged occurrence—which evidence appears to be doubtful—there is no other material on record to connect the accused with the crime. However, the learned Sessions Judge, placing undue reliance on the evidence of P.W.1 and the suggestions put to her by the defence, without properly appreciating the absence of any acceptable substantive evidence, proceeded to hold that the prosecution had proved the offence of outraging the modesty of the victim woman. In the absence of any legally acceptable evidence, the impugned conviction for the offence under Section 354 IPC cannot be sustained. Accordingly, the judgment of conviction is liable to be set aside.

17. In the result, the Criminal Appeal is allowed and the impugned judgment of conviction and sentence imposed by the learned Sessions Judge, Mahalir Neethimandram, Madurai in S.C.No.466 of 2018, dated 02.12.2023 is set aside and the appellant/accused is acquitted from the charges levelled against him. Fine amount if any paid, shall be refunded to him. Bail bond, if any, shall stand cancelled.



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NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To

1.The Sessions Court, Mahalir Neethimandram, Madurai.

2.The Inspector of Police,
Usilampatti All Woman Police Station,
Madurai District.

3.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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PRE-DELIVERY JUDGMENT MADE IN

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