

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 27.07.2017****CORAM****THE HONOURABLE MR.JUSTICE C.T.SELVAM****Crl.A.No.139 of 2008**

Arumugam

S/o.Kondusami @ Kondan

Vs

Appellant/Accused

State: rep.by

The Inspector of Police,
Sendamangalam Police Station,
Namakkal.

(in Crime No.127 of 2006)

..

Respondent/Complainant

Criminal Appeal filed under section 374 (2) of Criminal Procedure Code against the judgment dated 04.02.2008 passed in S.C.No.30 of 2007 by learned Principal Sessions Judge, Namakkal.

For Appellant :: Mr.Rajeshkannan

For Respondent :: Mr.V.Arul,
Additional Public Prosecutor

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JUDGEMENT

This appeal arises against the judgment of learned Principal Sessions Judge, Namakkal, passed in S.C.No.30 of 2007 on 04.02.2008.

2. Prosecution case is that PW-1, Victim girl Palaniammal, the wife of PW-2, Seerangan and their two daughters and one son were living together in Arunthathiyar Street at Vadugapatti. The families of the accused Arumugam and victim belonged to the Arunthathiyar Community. PW-1 or PW-2 would sleep on the cot in the open cow-shed attached to the tiled house at Arunthathiyar Street. On 03.03.2006 at about 3.00 a.m., while, PW-1 Palaniammal, was sleeping at the open cow-shed, the accused gagged and carrying her, took her to the nearby field of one Mottaiyandi and raped her. When she tried to wriggle out of his catches, he closed her mouth using his hands and due thereto, she fainted. She came to and identified the accused Arumugam and shouted for help. Witnesses PWs-2 to 5 approached the place of occurrence. PW-2 Seerangan saw the accused running away from the field, leaving PW-1 Palaniammal behind. PWs-1 and 2 went to the Sendamangalam Police Station and lodged a complaint Ex.P1 on 03.03.2006 at about 11.00.a.m., against the accused.

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3. PW-10 Head Constable, Sendamangalam Police Station, registered a case in Crime No.127 of 2006 for offences under Section 363 and 376 IPC and forwarded the same to the higher officials and learned Judicial Magistrate. Upon receipt of FIR, Ex.P12, PW-11 Inspector of Police, Sendamangalam Police Station, took up investigation, visited the place of occurrence at about 11.45.a.m,

prepared Observation Mahazar Ex.P3 and Rough Sketch Ex.P13 in the presence of PW-6 and another. He examined PWs-1 to 5 and recorded their statements. On 03.03.2006 at about 15.30 hrs., he seized M.Os.1 & 2, inskirt and saree worn by PW-1, in the presence of PWs-1 to 5 under Ex.P4. He submitted Ex.P10, requisition letter to learned Judicial Magistrate for conduct of medical examination of the victim PW-1. On 03.03.2006 at about 16.30 hours, he arrested the accused at Alanganatham junction and sent him to judicial custody. Arrest memo is Ex.P14. PW-2, the husband of the victim identified the accused. PW-11 Inspector of Police submitted Ex.P11 requisition to learned Judicial Magistrate to conduct medical examination of the accused. He examined PWs-4 and 5 and recorded their statements. He forwarded the Material Objects 1 and 2 to Court under Ex.P15, Form 95. Upon transfer of PW-11, PW-12, Inspector of Police took up further investigation. He examined PW-7 Doctor, recorded her statement and obtained medical report. He examined PW-10 Head Constable, Sendamangalam Police Station and recorded his statement. He examined Chemical Analyst and recorded his statement and obtained medical report. On completion of investigation, PW-12 filed charge sheet on 18.08.2006 informing commission of offences u/s.366 and 376(i) IPC. Upon committal, the case was tried in S.C.No.30 of 2007 on the file of Principal Sessions Judge, Namakkal.

and marked 15 exhibits. Defence examined DW-1 and on the side of defence, no exhibits were marked. On questioning u/s.313 Cr.P.C., accused denied charges. On appreciation of materials before it, trial Court, under judgment dated 04.02.2008, convicted accused for offences u/s.366 and 376(1) IPC and sentenced him to undergo 1 year R.I. and fine of Rs.5,000/- i/d 6 months R.I., for offence u/s 366 IPC and 8 years R.I. and fine of Rs.5000/- i/d 1 year R.I. for the offence u/s 376(1) IPC. Trial Court directed both the sentences imposed on the accused to run concurrently. There against, the present appeal has been filed.

5. Heard learned counsel for appellant and learned Additional Public Prosecutor for respondent. Perused the records.

6. A perusal of the material on record shows that the prosecution case would fail on all counts. The offence u/s 366 IPC alleged is that the appellant carried away PW-1, to a distance of 100ft., at about 3.30.a.m. on his own, using one hand, using the other to close her mouth towards avoiding her raising cain. Such a feat would be reserved to one of extreme masculine power and we would presume that the appellant is not one so endowed. PW-1 has informed of appellant laying her ever so gently on the ground and thereafter having raped her. She has deposed that while her husband, children and also her mother-in-law and father-in-law generally would sleep

inside their neighboring houses, she was the one who chose to sleep outside. PW-2 is her husband and PW-3 is her daughter. PWs-4 and 5 have been examined to speak to their joining in chasing the accused and they have turned hostile. PW-3 has admitted to the absence of PWs-4 and 5 in the scene of occurrence. PW-7, Doctor informs that but for a ½ cm abrasion on the right cheek, PW-1 victim absolutely was in fine shape. PW-2, husband of PW-1, even in chief, has admitted to enmity with the accused.

7. Considering the totality of the circumstances, this Court has no hesitation in informing that the probability of the prosecution case being false looms large. For the said reasons, appeal shall stand allowed. The judgment of learned Principal Sessions Judge, Namakkal, passed in S.C.No.30 of 2007 on 04.02.2008, shall stand set aside. Appellant is acquitted of all charges. Fine amount, if any, paid by him shall be refunded. Bail bonds, if any, executed by him shall stand cancelled.

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Index: Yes/No

Internet: Yes/No

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C.T.SELVAM, J.

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To

- 1.The Principal Sessions Judge,
Namakkal.
- 2.The Inspector of Police,
Sendamangalam Police Station,
Namakkal.
- 3.The Public Prosecutor,
High Court, Madras.

Crl.A.No.139 of 2008



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