

**Bail Slip**

The Appellant/Accused namely Thekkamalai S/o.Arumugam was released on bail by this Hon'ble Court made in MP(MD).No.1/2012 in Cr1.A(MD).No.18/2011 dated 25.04.2012.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED: 24.07.2019****CORAM****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****Cr1.A. (MD) No.18 of 2011**

Thekkamalai

... Appellant/Accused

Vs.

State rep. by
The Inspector of Police,
Thogamalai Police Station,
Karur District.
(Crime No.473 of 2009)

... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374 of Cr.P.C, to set aside the order of conviction dated 23.11.2010 passed in S.C.No.32 of 2010, on the file of the learned Assistant Sessions Judge, Kulithalai and acquit the appellant.

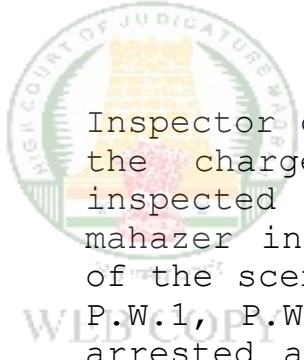
For Appellant : Mr.K.Saravanan
Legal Aid Counsel

For Respondent : Mr.A.Robinson
Government Advocate (Cr1. Side)

J U D G M E N T

The appellant was convicted for the offence under Section 376(2)(f) of I.P.C. and sentenced to undergo 10 years rigorous imprisonment and levied with fine of Rs.2,00,000/- vide judgment dated 23.11.2010 in S.C.No.32 of 2010, on the file of the learned Assistant Sessions Judge, Kulithalai.

2.The prosecution case is that on 12.09.2009 at about 2.30 p.m., when the minor victim girl was sleeping outside the house of P.W.3, the accused carried her and had forcible intercourse with her. Grandmother of the victim lodged Ex.P.1/complaint before Thogamalai Police Station on 12.09.2009 at about 11.00 p.m. Based on the same, Ex.P.6/FIR in Crime No.473 of 2009 was registered for the offence under Section 376 r/w. 511 of I.P.C. P.W.10 was the



Inspector of Police, Balaviduthi Police Station and he was holding the charge of Thogamalai Police station. On 13.09.2009, he inspected the scene of occurrence and prepared Ex.P.2/observation mahazer in the presence of witnesses. He prepared rough sketch of the scene of occurrence (Ex.P.8). He recorded the statement of P.W.1, P.W.3, P.W.4 and P.W.5. On 13.09.2009, the appellant was arrested at Archampatti intersection at about 08.00 a.m. Victim was sent for medical examination. P.W.7 is the Doctor who examined P.W.2. The accused was also medically examined by P.W.8 and it was opined that he was capable of having sexual intercourse. P.W.12 took up further investigation and after recording the statements of the witnesses again, final report was laid before the learned Judicial Magistrate No.I, Kulithalai. Since the case was exclusively triable by the Sessions Court, it was committed to Sessions Court in P.R.C.No.4 of 2010. The case was taken up for trial in S.C.No.32 of 2010 on the file of the learned Assistant Sessions Judge, Kulithalai. Charges were framed against the appellant for the offence under Section 376(2)(f) of I.P.C., since the victim was a girl aged below 12 of age. Accused pleaded not guilty and claimed to be tried.

3.The prosecution examined as many as 12 witnesses and marked Exs.1 to 12. M.O.1/Gown was also marked. On the side of the accused, one Masi @ Selvam was examined as defence witness.

4.The learned Trial Judge after a detailed consideration of the evidence on record, convicted the appellant of the offence with which he was charged and sentenced him as mentioned above. Questioning the same, this criminal appeal has been filed.

5.When the matter was taken up for hearing, there was no representation for the appellant. Therefore, this Court directed the Registry to appoint a Legal Aid Counsel to represent the appellant.

6.The leaned Legal Aid Counsel apart from reiterating all the contentions set out in the appeal memorandum pointed out that there was no evidence of rape as such. He submitted that the medical evidence did not support the prosecution case. He also submitted that the accused had attributed a motive for false implication and that therefore, he wanted this Court to set aside the impugned judgment of the Court below and acquit the appellant.

7.Per contra, the learned Government Advocate (Crl. Side) submitted that the impugned judgment does not warrant any interference.

8.I carefully considered the rival contentions and perused the evidence on record.

9.The prosecution had examined the minor victim as well as

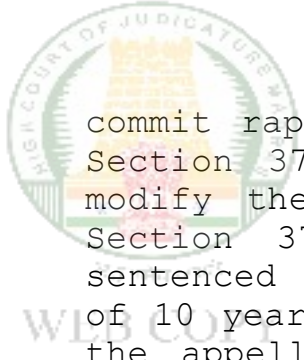


her grandmother. This Court went through the testimony of the minor victim. She had clearly deposed that she was sleeping in the house of her uncle, when the accused carried her to the toilet and pressed his private part on her genitalia. Out of pain, the victim cried. Hearing her noise, P.W.1/grandmother of the victim rushed to the spot. The accused ran away. The victim would state that he was beaten by the villagers. From the testimony of the victim one cannot come to the conclusion that there was any penetration. The occurrence had taken place on 12.09.2009 at about 02.30 p.m. Information was lodged on the same day at about 11.00 p.m. It is unfortunate that the victim was sent for medical examination only on 15.09.2009. P.W.7 the Doctor examined the victim on 15.09.2009 at about 04.00 p.m. This Court expresses its displeasure over the conduct of the investigating officer, who had initially conducted the investigation. The moment the sexual intercourse is reported to the police, the victim ought to be referred to medical examination forthwith. In this case, there was a needless delay of almost three days. No proper explanation is forthcoming for this delay.

10.P.W.7 in her testimony had stated that when she examined the victim there were no injury on her body. Hymen was found to be intact. Ex.P.4 is the certificate issued by her. P.W.7 further testified that there was nothing to indicate that the victim was subjected to rape.

11.Even though the case of rape might not have been established, I am of the the view that the prosecution had established its case beyond reasonable doubt that the accused attempted to rape the victim. P.W.1 is the grandmother of the victim. She had stated that on the occurrence date, she was washing vessels in the backyard. When she heard the cries of the victim, she rushed to see what was happening. She saw that the victim was in the toilet and that the accused was running away. On hearing the cries of the victim, the villagers assembled. The victim narrated what actually happened. P.W.1 lodged a complaint with the local police on the same day.

12.A careful reading of testimony of P.W.1/grandmother of the victim inspires the confidence of this Court. The accused had suggested that the entire complaint has been engineered at the instance of another person, who owed him money. Even according to the accused, there is no motive between the victim's family and the accused. The occurrence had taken place way back in the year 2009. Therefore, I have to necessarily go only by the definition that then obtained. According to the statutory explanation obtaining then, penetration is necessary to constitute the offence of rape. In other words, if there was no penetration, there is no <https://hosevices.com> rape as such. In this case, it has not been established that there was penetration. Hence, I hold that the accused can only be held to be guilty of the offence of attempt to



commit rape. Since in this case, the victim was only 14 years, Section 376(2)(f) of I.P.C. would be attracted. I therefore modify the conviction imposed by the Court below to one under Section 376(2)(f) r/w. 511 of I.P.C. The Court below has sentenced the appellant to under rigorous imprisonment for a term of 10 years. The Court below had no option because it had found the appellant guilty of the offence under Section 376(2)(f) of I.P.C. Ten years is the minimum term of imprisonment prescribed for the said offence. I have held that there was only an attempt to commit rape in this case. The sentence of rigorous imprisonment is therefore reduced from ten years to five years rigorous imprisonment. The fine of Rs.2,00,000/- is also reduced to Rs.50,000/-. The entire fine amount shall be paid to P.W.2 as compensation. If the accused fails to pay the said amount of Rs.50,000/- he shall undergo default sentence of one year simple imprisonment. With this modification in the matter of sentence as well as conviction, this criminal appeal is partly allowed.

Sd/-

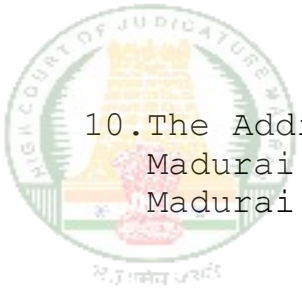
Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)

To:

1. The Assistant Sessions Judge,
Kulithalai.
2. The Inspector of Police,
Thogamalai Police Station,
Karur District.
- 3.The Judicial Magistrate No.I, Kulithalai.
- 4.The Chief Judicial Magistrate, Karur.
- 5.The Superintendent, Central Prison, Trichy.
- 6.The Superintendent of Police, Karur District, Karur.
- 7.The District Collector, Karur District, Karur.
- 8.The Director General of Police, chennai-4.
9. The Principal Sessions Judge, Karur.



10. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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