

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 21.06.2019****CORAM****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****Cr1.A.(MD)No.268 of 2019****WEB COPY**

Dhana Lekshmi

... Appellant

Vs.

1.The Inspector of Police,
Chempatti Police Station,
Dindigul District.
(Crime No.296 of 2003)

2.Sampath Kumar

... Respondents

Prayer: Criminal Appeal is filed under Section 372 of Cr.P.C, to set aside the order passed in C.A.No.11 of 2009 dated 26.02.2010 on the file of the Fast Track Court, Dindigul reversing the judgment passed in S.C.No.140 of 2005 dated 21.04.2009 on the file of Additional Assistant Sessions Judge, Dindigul.

For Appellant : Mr.S.C.Herold Singh

For Mr.T.Jeen Joseph

For Respondents : Mr.A.Robinson

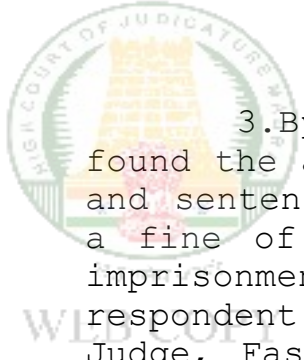
Govt. Advocate (Cr1. Side) for R1

: Mr.A.Hariharan for R2

JUDGMENT

The appellant and the second respondent herein were neighbours during the year 2002. Their family owned the adjacent lands. The appellant alleged that on 02.08.2003 at about 04.00 p.m. the second respondent carried her away when she was working in garden, took her a little distance away and committed rape on her. This became known to her sister and two others immediately thereafter. But then, the appellant informed her parents only two days later. Thereafter, Ex.P.1/complaint was lodged on 04.08.2003 before Chempatti Police Station. Crime No.296 of 2003 was registered (Ex.P.10). The investigating officer after carrying out the investigation, filed the final report. Cognizance of the offence under Section 376(1) was taken. It was committed to Sessions Court in S.C.No.140 of 2005 and made over to the learned Additional Sessions Judge, Dindigul.

2.The prosecution examined as many as 13 witnesses and marked Exs.1 to 6. M.Os.1 to 4 were also marked. The accused had earlier pleaded not guilty to the charges and claimed to be tried.



3. By judgment dated 21.04.2009, the learned Trial Judge found the accused guilty of offence under Section 376(1) of I.P.C. and sentenced him to seven years rigorous imprisonment and levied a fine of Rs.5,000/- and default sentence of one year rigorous imprisonment was also imposed. Questioning the same, the second respondent herein filed C.A.No.11 of 2009 before the Assistant Judge, Fast Track Court, Dindigul. By judgment dated 26.02.2010 the lower Appellate Court allowed the appeal and acquitted the accused. Challenging the same, the defacto complainant filed CrI.R.C.(MD)No.690 of 2010. Since the judgment of the lower Appellate Court acquitting the accused was passed on 26.02.2010 that is after the cut off date, this Court directed the Registry to convert revision case into one of appeal.

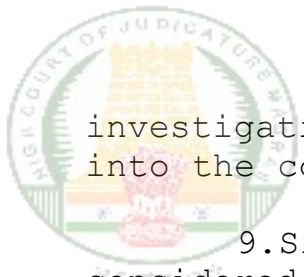
4. Heard the learned counsel on either side.

5. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds. He pointed that during the relevant point of time, she was only 17 years old and was a minor and therefore, the theory of consent cannot be accepted. He further contended that notwithstanding the civil dispute between the family of the defacto complainant and that of the accused, no person would even dream of lodging a case of rape that would involve reputation and honour of the daughter.

6. On the other hand, the learned counsel appearing for the second respondent/accused submitted that the judgment of the Lower Appellate Court reversing the conviction and sentence passed by the Trial Court is a well considered one and it does not warrant any interference at the hands of this Court.

7. I carefully considered the rival contentions and went through the evidence on record. It is true that the appellant was 17 years of age during the relevant time. But then, the occurrence had taken place in the year 2003. Section 375 of I.P.C. was amended by Act 13 of 2013 and consent became irrelevant if she is 18 years of age only thereafter. Prior to the said amendment, consent was irrelevant only when the victim was under 16 years of age. Therefore, the case on hand will have to be considered with reference to the pre-amendment statutory provisions.

8. The learned counsel appearing for the second respondent placed reliance on Ex.P.12 namely., radiological report, which indicates that the defacto complainant/appellant was above 18 years and below 21 years. But then as rightly pointed by the learned counsel appearing for the appellant, this document cannot be even looked into. It is because it was not marked through the author of the document and it came to be marked only through the



investigating officer. Therefore, this Court cannot even look into the contents of Ex.P.12.

9. Since I have held that the case on hand will have to be considered in terms of the pre-amendment provisions, eschewing Ex.P.12 will not really cause prejudice to the accused.

10. The defacto complainant was examined as P.W.1. This Court went through her deposition in toto. P.W.1 would claim that the occurrence had taken place for over an hour. The occurrence had taken place in an agricultural field. The defacto complainant would claim that she struggled with the accused. If the occurrence had taken place for one hour and that too in an open ground as claimed by the defacto complainant/appellant certainly there would be mark of struggle on the person of the defacto complainant/appellant. But then the Doctor/P.W.8, who examined the defacto complainant had deposed that there was no injury on the person of the defacto complainant. After a careful perusal of the entire evidence on record, the Lower Appellate Court came to the conclusion that the version projected by the defacto complainant would not be believable. I am in full agreement with the reasons assigned by the First Appellate Court. The defacto complainant would claim that she was working in her field when the accused came from behind and carried her away to the occurrence spot. The defacto complainant was aged about 17 years during the relevant time. It is simply impossible that the second respondent/accused would have done the act attributed to him against the will or consent of the defacto complainant. A mere look at Ex.P.15/rough sketch also indicates that if for one hour, the appellant had been abused on the bare ground certainly the impact would have been felt on her cloth as well as body. Of course some seminal discharge was detected on her cloths but then the same has not been demonstrated to match with that of the accused by carrying out the D.N.A. test. In these circumstances, I am of the view that the verdict of the Lower Appellate Court in coming to the conclusion that the offence of rape has not been established does not deserve to be interfered with. I find no merit in this appeal and the criminal appeal stands dismissed.

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

Sub Assistant Registrar (CS)



2.The Additional Assistant Sessions Court,
Dindigul.

3.The Inspector of Police,
Chempatti Police Station,
Dindigul District.

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

copy to
The Section Officer,
Criminal Section(Records)
Madurai Bench of Madras High Court,
Madurai-2 copies

+1 CC to M/s.T.JEEN JOSEPH, Advocate (SR-70476[F] dated
21/06/2019)

+1 CC to M/s.A.HARIHARAN, Advocate (SR-70560[F] dated
21/06/2019)

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