



Bail Slip

The Petitioner/Accused Seelan @ Jeyaseelan, S/o.Palayyan, was released on bail as per the Order of this Court dated 25.02.2016 made in MP(MD)No.1 of 2015 in Crl.RC(MD)520 of 2015.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	24.04.2019
Date of Judgment	22.07.2019

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.RC.(MD)No.520 of 2015

Seelan @ Jeyaseelan

: Revision Petitioner/
Appellant/Accused

Vs.

The Inspector of Police,
Colachel Police Station,
Kanyakumari District.
(Crime No.194 of 2000)

: Respondent/Complainant

Prayer: Criminal Revision filed under Section 397 r/w 401 of the Code of Criminal Procedure against the judgment passed by the Assistant Sessions Judge, Padmanabhapuram, dated 13.09.2004 in SC No.3 of 2001, confirmed by the Principal Sessions Judge, Kanyakumari Division at Nagercoil, dated 21.07.2015 in C.A.No.199 of 2004.

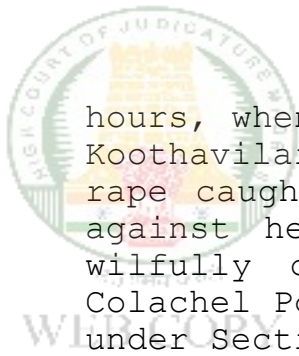
For Revision Petitioner : Mr.K.P.S.Palanivel Rajan

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

J U D G M E N T

This Criminal Appeal is directed against the judgment passed by the Assistant Sessions Judge, Padmanabhapuram, dated 13.09.2004 in SC No.3 of 2001, which was confirmed by the Principal Sessions Judge, Kanyakumari Division at Nagercoil, dated 21.07.2015 in C.A.No.199 of 2004.

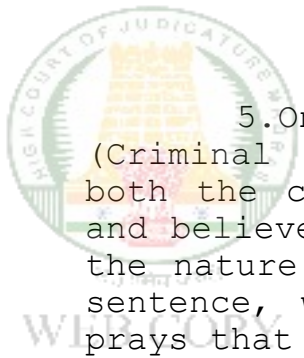
2.The case of the prosecution is that the victim girl is a minor named Anusha, who is aged about 6 years and she was studying 1st Standard at Government Middle School, Colachel and the Accused is the resident of the same village and on 10.04.2000 at about 10.00



hours, when the victim girl went to well pump set of one Ponniyan at Koothavilai to take bath, the Accused with an intention to commit rape caught hold of her and had sexual intercourse with the child against her Will inside of the water tank of the pump set and wilfully committed rape. The Inspector of Police attached to Colachel Police Station has filed a final report against the Accused under Section 376 IPC.

3. In the trial court, 16 witnesses were examined and 20 Exhibits and 4 material objects were marked. When the Accused was questioned about the incriminating circumstances, he denied the same. On the side of the Accused, no witness was examined and no document was produced. The trial court found the Accused guilty under Section 376 IPC and sentenced him to undergo Rigorous Imprisonment for 7 years and to pay a fine of Rs.1,00,000/- towards compensation to the victim. Aggrieved by the judgment of the trial court, the petitioner/Accused preferred appeal before the Sessions Judge, Kanyakumari Division at Nagercoil, which was also confirmed the findings of the trial court. Against which, the petitioner/Accused is before this court.

4. The learned counsel appearing for the petitioner/Accused submitted that the conduct of eye witness (PW1) is absolutely unnatural, with self-contradiction and contradicting other evidence of PW2 to PW8 and PW14 and PW15 and the courts below failed to see that during trial, PW1 mother of the victim stated before Court that she used to put Left Thumb Impression only and she did not know to sign her name, whereas as per FIR, it is alleged that PW1 has signed the complaint and thus falsified the very basis of FIR and there are contradictions in the evidence of material witnesses (PW1 and PW2) with regard to the date and time of the occurrence, the place of occurrence and the manner of occurrence and as per the Certificate given by the Doctor that the Accused is not a potent person and in fact, the accused had lost one hand and hence, it is highly impossible for him to commit rape on the victim girl and in this case, the water tank, in which the rape was said to have been committed is measuring only about 5 feet in length and the Accused is a well developed person having a height of 5.10 cm and therefore, it is highly impossible for the accused to commit rape inside the water tank and in this case, the owner of the water tank was not examined and the Chemical Analysis Report would not prove the charge against the Accused and there are contradictions in the evidence with regard to the recovery of the Lungi worn by the Accused and no semen was detected in the vagina or on the dress worn by the victim. The courts below without analysing all these aspects have erroneously given a concurrent findings and prays for allowing the criminal revision, by setting aside the concurrent findings of the courts below.



5. On the other hand, the learned Government Advocate (Criminal side) appearing for the respondent/State submitted that both the courts below appreciated the evidence in a proper manner and believed the evidence of the eye witnesses and having regard to the nature of the offence, convicted the Accused and passed proper sentence, which do not require any interference by this court and prays that the criminal revision has to be dismissed.

6. Heard both sides and perused the materials available on record.

7. It is mainly argued on the side of the petitioner/Accused that there must be strong medical evidence that except the petitioner, no other person has committed the offence as alleged by the prosecution and the medical evidence only discloses that there is no injury caused to the victim girl in the process of intercourse and attempt was made to commit the offence without any further evidence to link the petitioner/Accused to have involved or connected with the alleged offence and hence, the medical evidence and Doctor's opinion is general in nature and link in the chain against the petitioner is missing and the conduct of eye witness/PW1 is absolutely unnatural with self-contradiction and contradicting other evidence of PW2 to PW8, PW14 and PW15 and that adverse inference to the conduct of PW1 that after she saw the commission of offence alleged to have committed by the petitioner/Accused, PW1 is said to have brought her victim daughter to the house and then, took her to the school, dropped her informing the fact to the Headmistress and then to her mother and only in the evening after taking the victim daughter, she went to the police station along with PW3 Sivadhas and it is highly strange and not acceptable as to the conduct of PW1, whether any mother of a victim daughter, who was subjected to rape would bring her daughter home and send her to the school and thereafter, made a police complaint, after the victim daughter returned from the school and the courts below failed to draw any adverse inference to the conduct and unusual behaviour of PW1 about the alleged occurrence and there are contradictions in the evidence of the prosecution and prays for acquittal.

8. PW1 is the mother of the victim/PW2. PW1 gave Ex.P1 complaint. PW1 in her complaint and evidence stated that on 10.04.2000 at 9.00 am, her daughter had gone to pump set of one Ponniyan for taking bath and she has not returned even after 9.30 am and she had gone in search of her daughter, meanwhile her daughter was taking bath, the accused had come there and started raping her and due to which, blood started oozing from her private part and while the accused was raping her daughter, she saw the occurrence and on seeing her, the accused escaped from the place and thereafter, she and the victim daughter gone to the school and she informed about the occurrence to the Headmistress and the Headmistress advised her to take her daughter to home and then she



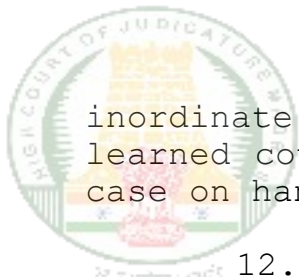
informed her mother and her mother advised her to give police complaint and while going to the police station along with PW2, they met PW3 and informed him about the occurrence and requested him to accompany with her to the police station and PW14 the Head Constable recorded the statement from her.

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9.PW2 is the victim. PW2 deposed that on 10.04.2000 at 9.00 am, she had gone to the pump set of Ponniyan for taking bath and when she was taking bath, the accused had come there and started raping her and as a result, blood started oozing from her private part and her mother came there, the accused run away.

10.The learned counsel appearing for the petitioner/accused argued that after the occurrence, PW1 has not immediately went to the police station, but as per the prosecution case, after the occurrence PW1 took her daughter to the school, informed the occurrence to the Headmistress and the Headmistress advised her to take the victim to home and then she informed the occurrence to her mother and her mother advised her to give the complaint and then, she met PW3/Sivadhas on the way and informed him about the occurrence and then, PW1 went to the police station and gave the complaint and therefore, there are contradictions in the evidence of PW1 and PW2 in respect of time of the occurrence and when PW2 had gone to the school and at what time, they proceeded to the police station and once the FIR is held to to be fabricated one or brought into existence long after the occurrence, the entire prosecution case would collapse and prays that the accused is entitled to acquittal. For that, the learned counsel for the petitioner/accused submitted the decision reported in **(1980)4 SCC 425 (Marudanal Augusti Vs. State of Kerala)**.

11.It is admitted that PW1 is an illiterate lady. To save the future of PW2, PW1 has informed the occurrence to the Headmistress, who is her well wisher for taking steps as against the culprit and afterwards, she went to the police station and gave the complaint. A rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault. It is often destructive of the whole personality of the victim. A murderer destroys the physical body of the victim. A rapist degrades the very soul of the helpless female. The courts should not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution and if the evidence of the prosecutrix inspires confidence, it must be reliable upon without seeking corroboration of her statement in material particulars and there was no apparent reason for PW1 and PW2 to falsely implicate the accused. Hence, the minor contradictions in the evidence of PW1 and PW2 will not affect the case of the prosecution. Hence, it was held that FIR was not a



inordinate delay. Therefore, the above ruling submitted by the learned counsel for the petitioner/accused is not applicable to the case on hand.

12.Further, in this case, it is necessary to decide whether the accused committed rape as against the victim. Hence, it is necessary to analysis the evidence of PW12, who gave treatment to the victim. PW12 deposed that on 10.04.00 at 7.30 pm, when she was on duty, a victim was brought for examination. The victim told her that she was raped by one known person on the same day at 9.30 am and PW12 found the following injuries:-

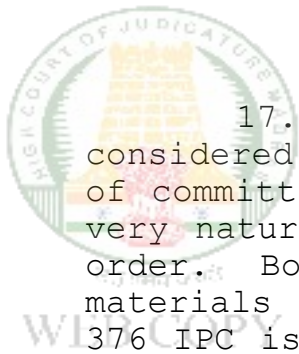
"Hymen torn with oozing of blood. Vagina admits one finger freely. Blood clot seen in fourchette. Hymen tear within 12 hours prior to examination. No public hair. No other external injury seen in the inner aspect of thigh. Vaginal smears 3 (three) preserved. Breast and Public hair not developed."

13.It is to be noted here that PW2 categorically deposed that she was rapped by the accused. PW1 also deposed that she saw that in the pump set, the accused committed sexual assault on PW2.

14.In this case, the learned counsel appearing for the petitioner/accused, while cross examining PW12 put a question that the Hymen will be not in-tact due to the assault with edged weapon as against the victim and for that, PW12 replied that it may or may not be caused and it was not caused to the other material. But PW12 also deposed that there is evidence of rape as against PW2. Hence, the argument put forth on the side of the accused stating that there was no evidence for rape as against the victim is not at all acceptable.

15.The learned counsel appearing for the petitioner/Accused further argued that the accused had only one hand and therefore, it is not possible for him to commit rape inside the tank and prays for acquittal.

16.In this case, the Doctor, who examined the accused was examined PW11. PW11 deposed that the accused is potent at the time of occurrence. Hence, the argument put forth on the side of the petitioner/accused stating that the accused had only one hand and hence, it is not possible for him to rape, is not at all acceptable. Further, the Lungi of the accused was not immediately recovered. If the Lungi of the accused was immediately recovered, there is a chance for the presence of semen on his Lungi. Hence, the recovery of Lungi without semen does not mean that there was no evidence of rape.



17.For all the reasons stated above, this court is of the considered view that the accused had committed the heinous offence of committing rape of PW2, a minor girl aged about 6 years. By the very nature of the offence, it is an obnoxious act of the highest order. Both the courts below on proper appreciation of the entire materials available on records held that the charge under Section 376 IPC is proved as against the accused and hence, the conviction and sentence of rigorous imprisonment for seven years and the compensation of Rs.1,00,000/- ordered under Section 376 IPC can be sustained.

18.In the result, this criminal revision is **dismissed**.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

- 1.The Principal Sessions Judge, Kanniyakumari Division @ Nagercoil.
- 2.The Assistant Sessions Judge, Padmanabhapuram.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 4.The Superintendent, Central Prison, Palayamkottai.
- 5.The Inspector of Police, Colachel Police Station,
Kanniyakumari District.

Copy to: The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai.(2)

+1 CC to M/s.K.P.S.PALANIVELRAJAN, Advocate SR-76977.

Crl.RC (MD) No.520 of 2015
22.07.2019

CS(11.11.2019) 6P 9C