

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.03.2020

PRONOUNCED ON : 09.07.2020

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

Crl.A.No.521 of 2013

Siva @ Sivakumar

... Appellant

Vs.

State represented by
Inspector of Police,
W-21, All Women Police Station, Guindy,
Crime No.10 of 2009,
Chennai City.

... Respondent

Prayer: Criminal appeal filed under Section 374 (2) Cr.P.C. against the judgment of conviction for the offences under section 376 of the Indian Penal Code and was sentenced to undergo 10 years Rigorous imprisonment also to fine of Rs.10,000/- with a default sentence of 6 months simple imprisonment. (ii) sentenced to undergo 3 years Rigorous imprisonment for the offence under section 506(ii) of the Indian Penal Code and a fine of Rs.5,000/- with a default sentence of one month simple imprisonment by the Sessions Judge Magalir Neethi Mandram-Chennai by his judgment dated 02-07-2013 in S.C.No.398 of 2012.

For Appellant : Mr.V.Gopinath, Senior Counsel.
for M/s.R.John Sathyan.

For Respondent : Mr.R.Ravichandran,
Government Advocate (Criminal side)

JUDGMENT

The Criminal Appeal is directed against the judgment passed in S.C.No.398 of 2012, on the file of the Sessions Judge Mahalir Court, Chennai, by judgment dated 02.07.2013, convicting the appellant/accused for the offence punishable under Section 376 IPC and sentencing him to undergo rigorous imprisonment for 10 years and also to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for 6 months and under section 506(ii) IPC and sentencing him to undergo rigorous imprisonment for three years and also to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for one month.

2. The final report has been laid by the respondent police against the appellant/accused alleging that the victim and her family were residing at No.16, RajivGandhi street, 2nd Cross street, Taramani, Chennai-113. The house belongs to the appellant and the victim girl's parents are engaged in Coolie work and on 10.06.2009, when the victim girl was alone and no one

else was in her house, the accused committed rape on the victim at about 4 P.M. against her Will and consent and thereby made her pregnant and further, the accused also threatened the victim girl not to disclose the abovesaid acts to any one failing which, threatened her that he would murder her and thus, according to the respondent police, the appellant/accused has committed the offences punishable offence under Sections 376 and 506(i) IPC.

3. It is the case of the prosecution that the victim girl apprehending danger to her life did not disclose the abovesaid incident to her mother immediately and further, according to the prosecution, the victim girl missed her period of menstruation and apprising the same to her mother, her mother had informed that as the victim is a small girl, there is nothing wrong in missing the menstruation period and thereafter, according to the prosecution, the victim's pregnancy developed and on noting the enlargement of the stomach, her maternal aunt directed the victim's mother to enquire about the same and on her mother insisting the victim girl to disclose as to what had happened and accordingly, it is stated that the victim girl had disclosed to her mother that due to the acts of the accused, she had become pregnant and immediately, she was taken to the Gosha hospital and

her pregnancy was confirmed and the victim girl and others went to the accused house and informed the matter and the accused sister and father refused to hear their words and challenged them to establish that the victim girl had become pregnant only due to the acts of the accused and accordingly, it is put forth that the complaint was launched in the police station and the victim girl was taken to the Magistrate and then to the hospital and the complaint preferred by the victim's mother has been marked as Ex.P2 and further, it is put forth that the victim girl gave a statement to the Magistrate with reference to the occurrence, which has been marked as Ex.P1 and further, it is stated that the victim girl gave birth to a male baby on 09.03.2010 and accordingly, the investigation had been commenced in this matter and after recording the statement of the witnesses and subjecting the victim girl for medical examination and also arresting the accused and subjecting the accused to undergo medical examination to ascertain his potency and after the birth of the male baby to the victim girl, steps had been taken to determine the parentage of the baby and the DNA test was done with the aid of the blood gathered from the victim girl, baby and the accused and the FIR registered in this matter has been marked as Ex.P12 and after concluding investigation, as above pointed out, the final report has

been laid against the appellant/accused.

4. To sustain the prosecution case, PWs 1 to 10 were examined, Ex.P1 to P15 were marked. M.O.1 has been marked. On the conclusion of the prosecution evidence, the appellant/accused was examined under Section 313 Cr.P.C. and on being questioned with reference to the incriminating evidence tendered against him, he had denied the same. On the side of the appellant/accused, DWs 1 and 2 were examined, No documentary evidence and M.O has been marked.

5. On an appreciation of the materials placed on record, both oral and documentary, the trial Court was pleased to convict and sentence the appellant/accused as aforestated.

6. The accused is charged for committing the offences of rape on the victim girl as well as threatening her with dire consequences in the event of disclosing the same to others under Sections 376 and 506(ii) IPC. According to the victim girl examined as PW1, when she was alone in her house, the accused who is already known to her, came to her house and

committed rape on her and threatened her with dire consequences in the event of disclosing the same to others and also would depose that he also threatened that he would kill her parents and also her maternal uncle and on that apprehension, she did not disclose the same to any one, but subsequently, she lost her menstruation period and thereafter, she having got conceived and became pregnant due to the acts of the accused and due to the enlargement of her stomach, according to her, on the insistence of her mother, she had disclosed the same to her mother and immediately, thereafter, when they went and addressed the same to the accused house and as the accused family has not favourably responded to the same, according to them, they had chosen to lodge the complaint. As above pointed out, the complaint lodged by the victim girl's mother Amudha PW2 has been marked as Ex.P2. On a perusal of Ex.P2, it is found that on the date of the presentation of the complaint, the victim girl had become pregnant and further, as above pointed out, during the course of investigation, the victim girl had delivered a male baby on 09.03.2010.

7. According to the accused, he has no connection with the victim girl and the case had been falsely foisted on him and further, the victim girl and

the prosecution witnesses have been cross examined by the accused alleging that the victim girl was having illicit relationship with her neighbour Rajendran, husband of Kirubavathy, examined as DW1 and on account of the same, Kirubavathy left the place and on coming to know of the complaint lodged by the victim girl's mother, Kirubavathy had brought her husband Rajendran to the police station and though the police had examined Rajendran, however, let him off and accordingly, it is found that the defence version of the accused is that he had no physical relationship with the victim girl at any point of time and therefore, not responsible for her pregnancy. However, the victim girl would assert during the course of evidence that other than the accused, she had no sexual intercourse with any other person.

8. As above pointed out, in the light of the abovesaid position, the victim girl having delivered a male baby on 09.03.2010 and the accused having also asserted that he has not fathered the baby during the course of investigation, accordingly, the prosecution has chosen to take the DNA test for confirming the parentage of the baby born to the victim girl and in this connection, examined the official of the forensic sciences lab as PW8 and the DNA test report of the baby born to the victim girl has been marked as

Ex.P11. Considering the evidence of PW8 and the DNA report projected in the matter, it is found that the appellant/accused is excluded from being the father of the male child born to the victim girl. Therefore, when the evidence projected by the prosecution had excluded the appellant/accused from being the genetic father of the child born to the victim girl and according to the accused, he had no physical relationship with the victim girl at any point of time and on the other hand, he had put forth the defence version that the victim girl was having illicit relationship with one Rajendran, her neighbour and when the materials placed on record disclose that during the course of investigation Rajendran had been brought to police station by his wife examined as DW1, in such view of the matter, as rightly contended by the accused counsel, the investigation should have been directed to ensure the ruling out of the possibility of Rajendran from being the culprit in the matter.

9. PW5 Komathi, who is the maternal aunt of the victim girl, during the course of cross examination, had admitted that after the accused had been arrested, Kirubavathi DW1 had brought her husband Rajendran to the police station complaining that he is responsible for the pregnancy of the

victim girl. Thus, it is evident that DW1's husband Rajendran had been alleged to have been responsible for the pregnancy of the victim girl and accordingly, he had also been taken to police station by his wife DW1. In this connection, DW1 has tendered evidence that she was residing in one of the floors where the victim girl was residing and according to her, her second husband, during her absence, had developed illicit relationship with the victim girl and she had put forth the case that on returning home, during 2009, she noted the victim girl and her husband Rajendran lying in the cot and questioned the same and picked up quarrel with her husband and further, also would state that subsequently she noted them having physical relationship. Further, she would also state that the same was informed to her by her neighbour and on account of the same, she left the place with her children. The suggestion has been put to her by the prosecution that her husband Rajendran developed illicit relationship with her daughter born through her first husband. Be that as it may, considering the position that her husband is a person who is alleged to be in the incest relationship with others and accordingly, on coming to know of the present case, DW1 had voluntarily chosen to bring her husband to the police station complaining that it is he who is responsible for the pregnancy of the victim girl and the

same has also been admitted by PW5 and the IO examined as PW10 has also admitted during the course of cross examination that on 03.12.2009, Kirubavathy (DW1) had brought her husband to the police station informing that he may be responsible for the pregnancy of the victim girl and according to her, though she had examined Rajendran, not recorded any statement from him and further, according to her, even after the receipt of the DNA report, she had not further chosen to call Rajendran and examine him and according to the accused, only on account of the political influence exerted, the IO had not chosen to direct the investigation to ascertain whether Rajendran is responsible for the pregnancy of the victim girl even after the receipt of the DNA report marked as Ex.P11 and further, according to the accused counsel, when the illicit relationship of Rajendran and the victim girl had also been spoken to by another neighbour also, namely, Shalini examined as DW2, in such view of the matter, when Ex.P11, the DNA report had excluded the appellant/accused as being the father of the child of the victim girl, as rightly contended by the accused counsel, the IO should have directed the investigation against Rajendran so as to exclude his complicity in the offences and on the other hand, it is found that the IO had not endeavoured in directing the investigation so as to implicate

Rajendran in the crime and with reference to the same, no proper reason has been given by the IO. As put forth by the accused counsel, it is found that due to the pressure exerted on the IO, she had not chosen to implicate Rajendran as a culprit in the matter.

10. When according to the victim girl, she had no physical relationship with any other person other than the accused and on the other hand, when her abovesaid assertion is belied by the DNA report and the accused having been excluded as being the genetic father of her child, in such view of the matter, when a serious suspicion emanates as to who is responsible for the pregnancy of the victim girl and when other than the evidence of PW1 victim girl, there is no other material to hold that it is only the accused who had committed rape on her against her Will and without her consent and as above pointed out, when the complaint has also been lodged in the matter very belatedly and furthermore, when the medical report projected in the matter do not lend support to the case projected by the victim girl in any manner, particularly to evidence and hold that it is only the accused who had committed rape on her against her Will and without her consent, in such view of the matter, in my considered opinion,

as rightly contended by the accused counsel, when the evidence of victim girl does not inspire confidence and her evidence is also not supported by medical evidence and other surrounding factors are also found to be belying the case of the victim girl, in such circumstances, it would not be safe to rely upon the solitary evidence of the victim girl for holding the accused guilty of the charges levelled against him.

11.The principles of law with reference to the abovesaid position has been explained by the Apex Court in the decision rendered by it in Crl.A.No.1095 of 2018 dated 29.08.2018 and the same is extracted below.

“7. In Sadashiv Ramrao Hadbe v. State of Maharashtra, [(2006) 10 SCC 92], this Court reiterated that the sole testimony of the prosecutrix could be relied upon if it inspires the confidence of the Court:

“9. It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the

entire case is improbable and unlikely to happen.”

8. However, as is also evident from the observations above, such reliance may be placed only if the testimony of the prosecutrix appears to be worthy of credence. In this regard, it is also relevant to note the following observations of this Court in the case of Raju v. State of Madhya Pradesh, [(2008) 15 SCC 133], which read thus:

“10. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the court.

11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was

present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.” Having due regard in our mind to the above-mentioned settled position in law, we have assessed the entire material on record meticulously.”

12. In the light of the above position, when it is noted that a false allegation of rape can cause equal distress, humiliation and damage to the accused and the accused must also be protected against the possibility of false implication and when there is no material projected by the prosecution corroborating the evidence of the victim girl, in such view of the matter, as held by the Apex Court, no presumption could be raised for assuming that the statement of the victim girl is always correct or without any embellishment or exaggeration. The victim girl during the course of her evidence stated that she was threatened by the accused not to disclose the incident to others and the prosecution case is that the accused had threatened the victim girl not to disclose the incident to any one, or else, he would murder her and thus, committed the offence punishable under Section 506(ii) IPC. However, quite contrary to the abovesaid version, the victim

girl would depose that the accused had threatened her that he would kill her parents and maternal uncle in the event of her disclosing the incident to others and therefore, when it is found that the victim girl's testimony cannot be solely relied upon as there is a possibility of embellishment or exaggeration and her assertion that she had no sexual intercourse with anyone other than the accused is belied by the DNA report, in such view of the matter, as above pointed out, despite the abovesaid position, the investigation having not been redirected further against Rajendran by the Investigation Officer and when according to the victim girl, she and the accused had been having physical relationship on several occasions, considering the abovesaid background, as contended by the accused counsel and when her evidence that the accused had threatened to do away her mother and her maternal uncle is not fitting to the charge leveled against the accused, in my considered opinion, no safe reliance could be attached to the evidence of the victim girl for sustaining the charges put forth against the accused.

13.The trial Court without considering the abovesaid factors in the right perspective, particularly, the evidence of PW8 and the DNA report and

also the failure of the Investigation Officer in not redirecting the investigation on Rajendran to exclude his responsibility for the pregnancy of the victim girl and when there is no reason to disbelieve the evidence of DWs 1 and 2, particularly, the evidence of DW1 alleging that it is only her husband who is having illicit relationship with the victim girl, in such view of the matter, the reasonings and conclusion of the trial Court for maintaining the conviction of the accused under Sections 376 and 506(ii) IPC cannot be upheld as per law and accordingly, as rightly contended by the accused counsel, it is found that the accused had been falsely implicated in the matter without any basis and when the evidence of the victim girl is found to be not inspiring and reliable and as above pointed out, her evidence not supported by any medical evidence, on the whole, it would be unsafe to base the conviction of the accused wholly on the unreliable and unacceptable solitary testimony of the victim girl.

14. In the light of the abovesaid discussions, the conviction and sentence imposed on the accused by the trial Court by judgment dated 02-07-2013 passed in S.C.No.398 of 2012 on the file of Sessions Judge Magalir Neethi Mandram-Chennai are set aside and the appellant/accused is

acquitted of the offences under Sections 376 and 506(ii) IPC and resultantly, the criminal appeal preferred by the appellant is allowed. The bail bond executed by the appellant shall stand cancelled. The fine amount, if any, paid by the appellant shall be refunded to him.

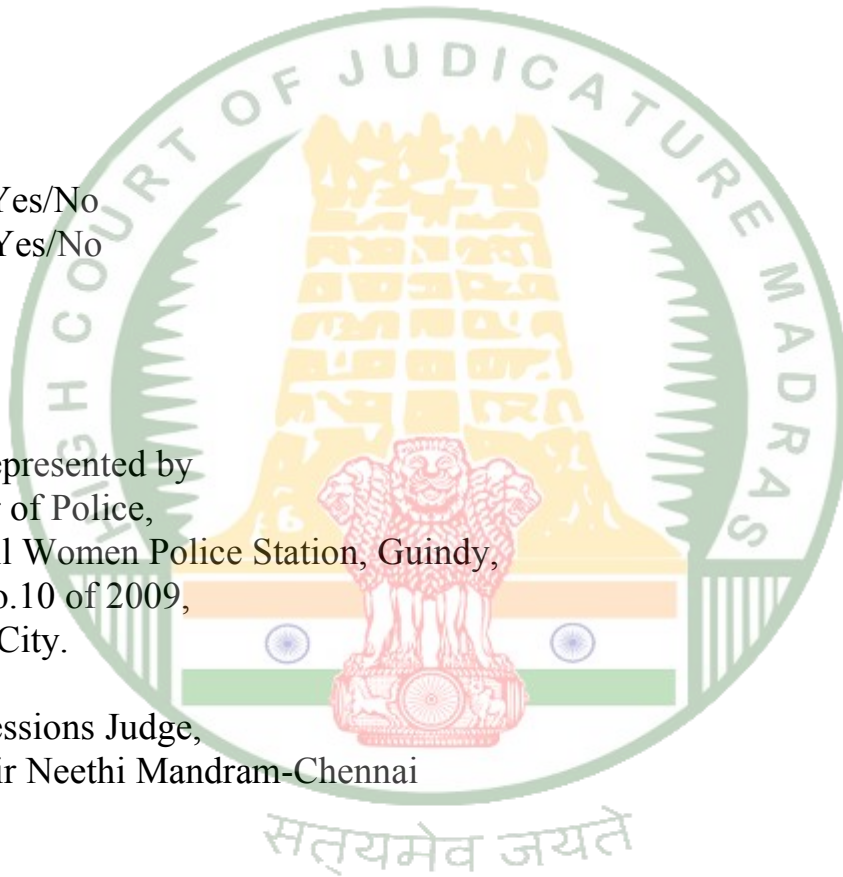
09.07.2020

Index : Yes/No
Internet: Yes/No
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To:

1.State represented by
Inspector of Police,
W-21, All Women Police Station, Guindy,
Crime No.10 of 2009,
Chennai City.

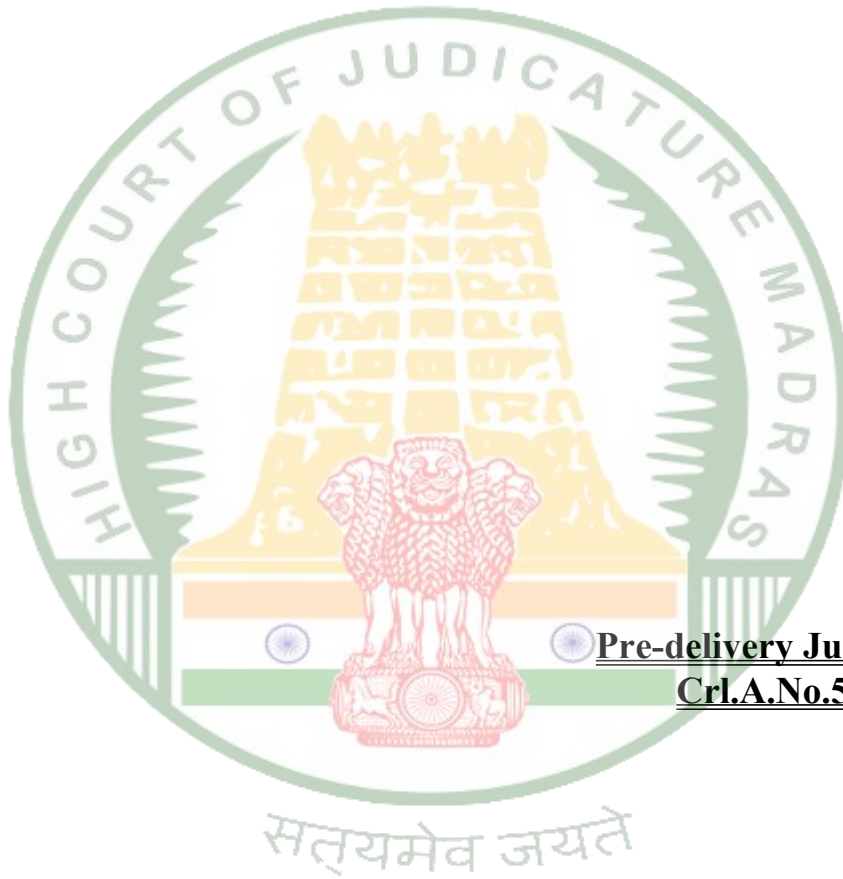
2. The Sessions Judge,
Magalir Neethi Mandram-Chennai



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T.RAVINDRAN,J.

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Pre-delivery Judgment in
Crl.A.No.521 of 2013

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