

Bail Slip

The Appellant/Accused-1 namely Raja S/o.Sekar was released on bail 10.09.2014 in CrI.MP 1/2014 in CrI.A.No.472/2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.07.2020

PRONOUNCED ON : 17.07.2020

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

CRL A.No.472 of 2014

Raja S/o.Sekar
Annanagar, 2nd Street
Avalivanallur
Harithuvarmangalam
Valangaiman Taluk
Thiruvarur District.

...Appellant/Accused -1

Vs.

The State, Rep by
Inspector of Police
Pabanasam All Women Police Station
Pabanasam, Tanjavur District. ..Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment passed by the learned Sessions Judge, Mahalir Neethimandram, Thiruvarur in S.C. No.33 of 2013 dated 19.08.2014 imposing conviction and sentence under Section 312 part II of I.P.C. on the appellant and direct the fine amount of Rs.1,000/- paid by the appellant to be refunded to the appellant.

For Appellant : Mr. B. Thirumalai

For Respondent : Mr. R. Ravichandran
Government Advocate (Crl. Side)

JUDGMENT

The Sessions Judge, Mahalir Neethi Mandram, Tiruvarur, by judgment dated 19.08.2014, passed in S.C.No.33 of 2013, has convicted the appellant/A1 under section 312 Part II IPC and sentenced him to undergo Rigorous Imprisonment for 3 years and also to pay a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for 6 months and acquitted the appellant/A1 of the offences under Sections 376 and 417 IPC

and further also acquitted A2 - Sekar and A3-Seetha of the offences under Section 294(b) IPC and Section 4 of TNPWH Act 2012. Impugning the conviction and sentence imposed on him, the appellant /A1 has come forward with the present appeal.

2. Shorn of unnecessary details, according to the prosecution case, the appellant and the victim girl aged 18 years are the residents of Avalivanallur Village and both the appellant and the victim girl were engaged in the love affair and on 12.03.2012, the victim girl consumed Slice, Cool drink, which was given by the appellant through a boy and while the victim girl was sleeping, the appellant committed rape upon her and further on 15.03.2012, at about 10 pm, while the victim girl was alone in her house, the appellant came and informed her that it was he who had committed rape upon her while she was sleeping and promised to marry her and thereby again had sexual intercourse with her and on account of the abovesaid acts committed by the appellant, the victim girl got conceived and informed the same to the appellant and requested him to marry her and the appellant directed the victim girl to abort the child and for that purpose gave tablet to the victim girl and the same was taken by the victim girl and inasmuch as the victim girl suffered pain, on 03.06.2012, she was admitted in the private hospital and her cleaning was conducted by the doctor and further it is stated that on 25.06.2012, at about 9 am, the accused A2 and A3 scolded the victim girl with filthy language and caused harassment and thus it is put forth that the appellant/A1 had committed the offences punishable under Sections 376, 312 and 417 IPC and A2 and A3 had committed the offences punishable under Section 294 (b) IPC and Section 4 of TNPWH Act 2012.

3. In support of the prosecution case P.Ws. 1 to 12 were examined and Exs.P1 to P8 were marked. No MO has been marked. On the closure of the prosecution evidence, the accused were examined under Section 313 of Cr.Pc. with reference to the incriminating evidence and the accused had denied the same. According to the accused, they had not committed the offences levelled against them and the case has been falsely foisted against them and in particular A1 has disowned that he is responsible for causing the pregnancy of the victim girl and also denied that it is he who had caused the miscarriage of the child by giving tablet as alleged by the victim girl and contended that he is already married with the third accused, namely, Geetha, on 11.04.2012 itself to the knowledge of the victim girl and her relatives and therefore, according to him, the case has been falsely foisted against him by the victim girl. In support of the defence version, the appellant has examined himself as D.W.1 and marked Exs.D1 to D4. No MO has been marked.

4. The Sessions Judge,, Mahalir Neethimandram, Thiruvrur, on an appreciation of the materials placed on record, both oral and documentary, was pleased to convict the appellant

alone under Section 312 part II IPC and sentenced him as aforestated and acquitted him of the other offences levelled against him and further acquitted A2 and A3 of the offences put forth against them. Challenging the same, the present appeal has been preferred by the appellant.

5. Inasmuch as the appellant had been acquitted by the court below of the offences under sections 376 and 417 IPC and sentenced him only under Section 312 part II, it has to be mainly seen whether the appellant had voluntarily caused the mis-carriage of the victim girl without good faith as alleged by the prosecution.

6. The main case of the prosecution is that only due to the rape committed by the appellant on the victim girl on 12.03.2012 and 15.03.2012, the victim girl got conceived. This is what the victim girl has also deposed in her evidence. However, considering the materials placed on record, when it is found that the victim girl's foetus had been removed by the medical officer Dr. Rajalakshmi examined as P.W.7 and considering the evidence of P.W.7, it is noted that the victim girl came to her hospital on 03.06.2012 complaining of pain and bleeding and on examining her she found the victim girl not anemic and also noted that she had 22 weeks foetus which was quickening and active and also found that her uterus mouth was opened about 2 cms and she was bleeding excessively and therefore opined that her abortion is essential and inevitable for saving the victim girl, resultantly, removed the foetus considering the safety of the victim girl and thereafter discharged her on the next day i.e. 04.06.2012 and therefore it is found that considering the evidence of P.W.7, the medical officer, it is noted that at the time when the victim girl went to P.W.7, she was already having 22 weeks foetus and therefore, her case that she became pregnant only by the act of rape committed by the accused on 12.03.2012 and 15.03.2012 having been belied by the abovesaid medical evidence and furthermore, the prosecution also having failed to establish that the appellant had committed rape upon the victim girl on the false promise to marry her., on an appreciation of the available materials placed on record, it is found that the court below has chosen to hold that the prosecution had not established the guilt of the appellant under Section 376 and 417 IPC.

7. The court below, however, proceeded to hold that inasmuch as the appellant and the victim girl were engaged in the love affair, the appellant was responsible for causing the mis-carriage by offering tablet and admitting her in the hospital and thereby the abortion had been conducted, thus according to the court below, the appellant is liable to be punished under Section 312 part II IPC.

8. The counsel for the appellant vehemently contended that the entire case of the prosecution is a fabricated one and the genuineness of the prosecution case itself is in

serious doubt and therefore, it is put forth by him that the court below should have rejected the prosecution case in toto and acquitted the appellant even of the offence under Section 312 IPC. The offence of rape, according to the victim girl, is alleged to have been committed on her by the appellant on 12.03.2012 and 15.03.2012. As above pointed out, the abovesaid case of the victim girl has been totally belied by the medical evidence adduced in the matter through P.W.7, particularly when the victim girl was having 22 weeks foetus on 03.06.2012 at the time when she got admitted in the hospital of P.W.7 and naturally the sexual intercourse, which is alleged to have place qua the victim girl, should have occurred in the month of January 2012, therefore, the possibility of the victim girl having sexual intercourse for the first time on account of the alleged rape committed by the appellant on 12.03.2012 and 15.03.2012 cannot at all be totally believed and accepted and further inasmuch as the court below has also determined that the case of the prosecution that the appellant had committed rape upon the victim girl by promising to marry her is also not established in any manner, finally concluded that the appellant has not committed the offences punishable under Section 376 and 417 IPC.

9. In the light of the abovesaid position, when according to the victim girl the rape occurrence is stated to have taken place on 12.03.2012 and 15.03.2012 and the alleged act of uttering filthy language made against her as attributed against A2 and A3, had been spoken to on 25.06.2012, in such view of the matter, if really the appellant had committed any rape upon her, as alleged by her, on 12.03.2012 and 15.03.2012, the victim girl would have proceeded to lodge a complaint against the appellant immediately. On the other hand, according to the version of the victim girl, she lodged the complaint only on 28.06.2012. As far as the offences attributed against A2 and A3 which are said to have been committed by them on 25.06.2012, the same has been found to be a false theory by the court below and accordingly acquitted A2 and A3 of the offences levelled against them under Section 294(b) and Section 4 of TNPWH Act 2012, therefore, when the main occurrence is said to have taken place on 12.03.2012 and 15.03.2012, if the same had any element of truth, the victim girl would have informed the same to her brother and the other family members and proceeded to lodge the complaint immediately. On the other hand, it is seen that the complaint is found to have been lodged by the victim girl, according to her, only on 28.06.2012. However, it is found that the alleged complaint said to have been lodged by the victim girl on 28.06.2012 had not been registered by the respondent police. In this connection, the IO examined as P.W.12 has deposed that though the complaint was lodged on 12.06.2012, she had not proceeded to register any case based on the same and only gave CSR number. However, if really any complaint had been lodged by the victim girl on 28.06.2012 complaining of the rape against the appellant, in particular the same

having disclosed a cognizable offence, naturally the respondent police should have taken further steps in registering the same and commenced the investigation and therefore to say that the respondent police had chosen only to give CSR number without registering the FIR based on the complaint said to have been lodged by the victim girl on 28.06.2012, as such, cannot be readily countenanced. In this connection, the IO examined as P.W.12 has, during the course of cross examination, admitted that with reference to the lodgement of the complaint on 28.06.2012 and the furnishing of CSR number, she has not produced the said complaint and the receipt issued by her in connection with the same and not produced the general diary pointing to the same. As to why the IO had not endeavoured to produce the abovesaid documents with reference to the lodgement of the complaint by the victim girl on 28.06.2012 and the factum of she providing only the CSR number to the same without registering the FIR, no plausible explanation is forthcoming pointing to the same. It is thus found that the complaint said to have been lodged by the victim girl on 28.06.2012 has been totally suppressed by the prosecution for the reasons best known to them.

10. Adding further, according to P.W.2, Subash, the brother of the victim girl, it was he along, with his paternal uncle, who had preferred the complaint on 28.06.2012 for the purpose of warning the appellant and as his sister fell ill, the police did not come and inasmuch as further problems erupted, he had preferred another complaint on 05.07.2012. P.W.5 would also depose that the complaint was given only by P.W.2 and therefore as per the evidence of P.W.2, it is found that it was he along, with the paternal uncle, who had lodged the complaint of the incident on 28.06.2012 and no action was taken on the same. Therefore, according to him another complaint was lodged on 05.07.2012. Now according to the prosecution, the complaint lodged by P.W.1 was taken on file only on 05.07.2012 and based on the same, the FIR Ex.P5 has come to be registered. Therefore, as per the version of P.Ws.1 and 2, it is found that both had separately lodged the complaints on 28.06.2012 and however, the same having not seen the light of the day and suppressed by the prosecution and on the other hand, the complaint marked as Ex.P1 said to have been lodged by P.W.1 having been taken on file only on 05.07.2012, as rightly contended by the appellant's counsel, the genuineness of the origin of the prosecution case itself is in serious doubt and if really the occurrence, as alleged by the victim girl, had occurred, the complaint lodged by her on 28.06.2012 would have been taken on file and registered by the respondent police immediately and to say that the respondent police had given only CSR number without taking any further action based on the same cannot at all be believed and accepted and considering the evidence of P.Ws.1 and 2 and the IO P.W.12, it is found that more than two complaints had been lodged in connection with the alleged incident. However, the earlier complaints lodged with reference to the same had been

suppressed for one reason or the other and only the complaint Ex.P1 had been taken on record and based on the same, Ex.P5 FIR had come to be registered by the respondent police. In the light of the abovesaid factors, when the earlier complaint had been suppressed by the prosecution and though the complaint Ex.P1 is said to have been dated 28.06.2012, however, when the respondent police has failed to establish that any CSR number had been really furnished to the same on 28.06.2012 by producing the concerned receipt and the general diary and when the alleged complaint said to have been lodged by P.W.2 along with his paternal uncle on 28.06.2012 had also been suppressed and in the light of the abovesaid factors, as rightly contended by the appellant's counsel, a serious doubt arises with reference to the credibility of the case projected by the prosecution and therefore the suppression of the earlier complaint lodged in the matter, in my considered opinion, throw a serious suspicion in the credibility of the prosecution case and the abovesaid factors would seriously undermine the prosecution case.

11. Now according to the respondent police based on Ex.P1 complaint, the FIR had come to be registered on 05.07.2012 marked as Ex.P5 and it is found that the FIR had been received by the competent magistrate only on 07.07.2012. As to why there is a delay in dispatching the FIR to the competent court, particularly when as per the evidence of P.W.12, the IO, the distance between Papanasam Women Police Station and the competent magistrate court is only 25 KM and when the delay in the despatch of the FIR, as above pointed out has not been properly explained by the prosecution and as above noted when the earlier complaints lodged in the matter had also been suppressed by the prosecution, in toto, it is found that all is not well with the prosecution case, particularly, qua the registration of the complaint and despatch of the same to the competent court and therefore the above factors would also vitiate the prosecution case.

12. In addition to that, according to the IO, immediately on the registration of the FIR, she had recorded the statements of the witnesses on 05.07.2012 and 06.07.2012. However, it is found that the statements recorded by the IO had been despatched to the competent court only on 14.02.2013. As to why there is a delay in the despatch of the statement of the witnesses to the competent court, absolutely there is no explanation on the part of the IO and therefore, the argument putforth by the appellant's counsel that the statements had been belatedly forwarded to the competent court only to concoct the same to suit the prosecution case, cannot be easily brushed aside, particularly when there is no plausible and convincing explanation on the part of the respondent police qua the delay in forwarding the statements of the witnesses to the competent jurisdictional court. The abovesaid factor also would seriously dent the credibility of the statements of the witnesses alleged to have been given by

them to the investigation officer during the course of investigation.

13. Now according to the victim girl, the appellant committed the act of rape on her on 12.03.2012 when she was in an unconscious state i.e. according to the victim girl, inasmuch as she fell unconscious by consuming slice, someone pushed down her body and she was unable to open her eyes. This is what she says about the occurrence which is stated to taken place on 12.03.2012. During the course of evidence, the victim girl examined as P.W.1 would only state that a boy from her aunt's house offered her a slice bottle apprising her that the same had been directed to be given to her by her aunt and thus according to the victim girl on consuming the slice drink, she became unconscious. Therefore, the victim girl has not stated during the course of evidence that it was only the appellant who had offered the slice on 12.03.2012 and on consuming the same she fell unconscious. Further according to the victim girl on 15.03.2012 the appellant came out in open that it was he who had committed rape upon her and further it is putforth that the appellant promised to marry her and on that premise again had sexual intercourse with her. However, as above pointed out, when the abovesaid case putforth by the victim girl had been totally belied by the medical evidence adduced in the matter as above pointed out, it is seen that the abovesaid case putforth by the victim girl has to be thrown out as a false one. Accordingly it is seen that the court below had rightly acquitted the appellant of the offences under Sections 376 and 417 IPC.

14. Now according to the victim girl, she and the appellant were engaged in the love affair. The same had been totally denied by the appellant. The alleged incident is said to have taken place on 12.03.2012 and 15.03.2012. Three months thereafter, according to the victim girl, she having experienced changes in her body and on noting that she had got conceived due to vomitting, it is her case that she informed the same to the appellant and asked him to marry her and according to her, the appellant had directed her that he would marry her only if she aborts the child and further it is putforth that on 01.06.2012, the accused offered her tablet and on consuming the same, it is stated that the victim girl experienced pain and thereby got admitted in the hospital of P.W.7 at Thanjavur on 03.06.2012 and her abortion was effected by P.W.7 on 03.06.2012 and she got discharged on 04.06.2012. Nowhere in Ex.P1 complaint the victim girl had stated that it is only the appellant who had offered her tablet on 01.06.2012 to effect the abortion. Insofar as this matter is concerned, when according to the victim girl it is only the appellant who had offered the tablet for effecting abortion on 01.06.2012 and on consuming the same she had experienced pain and thereby she was taken to P.W.7's hospital with reference to the same, if the abovesaid case of the victim girl has any semblance of truth, on being examined by the medical officer P.W.7, the

victim girl would have apprised about the same to the medical officer particularly about the fact that it is only the appellant who had offered the tablet and that on consuming the same she had experienced pain and the appellant had brought her to the hospital etc. Further she would have also disclosed to P.W.7 that only due to the acts committed by the appellant she got conceived. However, considering the evidence of P.W.7, Dr. Rajalakshmi, it is found that nothing has been whispered to the medical officer by the victim girl as to how, by whom and what circumstances she got conceived and who had offered her the tablet for effecting abortion, etc., on the other hand, it is seen that nothing has been disclosed to P.W.7 with reference to the same by the victim girl and on a perusal of the 161 statement given by P.W.7, it is found that though she had persuaded the victim girl to explain as to the reason for her getting conceived and her state of affairs, it is found that the victim girl had not come out with any statement to the medical officer and therefore, to say that the victim girl had decided to effect the miscarriage/abortion on the assurance of the appellant that he would marry her only thereafter, as such, cannot be readily believed and accepted. If the same is a true version, the victim girl would have disclosed about the same to the medical officer P.W.7.

15. As above pointed out, according to the victim girl, on noting that she had got conceived three months after the alleged occurrence she had apprised the same to the appellant and requested him to marry her and according to the victim girl, the appellant had directed her to effect the abortion and only thereafter he would marry her. However, considering the evidence projected in the matter, it is found that the abovesaid case projected by the victim girl is totally false and cannot at all be relied upon in any manner. Now according to the victim girl three months after the incident, she came to know that she got conceived. Thereafter, it is seen that she would have noted about the factum of her getting conceived only during the last week of May 2012. The materials placed on record go to show that the appellant and A3 Geetha had got married in the village temple on 11.04.2012. The abovesaid factum of marriage is found to be very much known to the victim girl. In fact the victim girl, during the course of evidence, in the cross examination has clearly admitted that she knew that the appellant and A3 had got married in the village temple on 11.04.2012. Considering the evidence of P.W.2, Subash, the brother of the victim girl and the other witnesses, it is found that the marriage of the appellant and A3 had been celebrated only by the grandfather of the victim girl and P.W.2. In fact P.W.2 during the course of evidence, has clearly admitted that he heard about the parents of A3 not giving their consent to the marriage between the appellant and A3 and consequently the appellant had taken poison and got admitted in the hospital and it is further admitted that it is true to state that his grandfather Rangasamy who had celebrated the marriage of the appellant and A3 in the village

temple on 11.04.2012 along with the other elders of the village. Therefore, considering the evidence of P.Ws.1 and 2 in toto as above pointed out, when it is found that to their knowledge, the marriage of the appellant and A3 had been celebrated on 11.04.2012, that too, by their grand father, if really the appellant had committed the rape upon the victim girl on 12.03.2012 and 15.03.2012, particularly on 15.03.2012 on the false promise of marrying the victim girl, as rightly contended by the appellant's counsel, the victim girl would have taken effective steps to stop the marriage between the appellant and A3 celebrated by her grandfather on 11.04.2012. On the other hand, when it is seen that to the knowledge of the victim girl and her brother, the marriage of the appellant with A3 had been celebrated by their grand father on 11.04.2012 and when it is noted that neither P.W.1, the victim girl, nor her brother P.W.2 taken any steps to stop the said marriage, the above factors would only go to expose that inasmuch as the appellant was in no way responsible for the conception of the victim girl, resultantly they had not taken any steps to prevent the celebration of the appellant's marriage with A3 on 11.04.2012. Therefore, it is seen that to the knowledge of one and all, particularly to the knowledge of the victim girl and her brother, the marriage of the appellant and A3 had been celebrated on 11.04.2012.

16. Now according to the victim girl three months after the alleged incident she came to know that she had conceived and therefore according to her she apprised the same to the appellant and requested him to marry her and to the same, the appellant had directed her that he would marry her on her terminating the pregnancy. However, the abovesaid version of the victim girl cannot at all be believed and accepted. As above pointed out, to the knowledge of the victim girl and her brother P.W.2, the marriage of the appellant with A3 had been celebrated by their grand father on 11.04.2012 itself. To say that the appellant had promised to marry her provided she aborts the pregnancy three months after the alleged incident, as such, cannot be believed and accepted. In such view of the matter, the case of the prosecution that the victim girl had chosen to abort the child at the instance of the appellant who had promised to marry her cannot at all be believed and accepted. Accordingly, it is found that inasmuch as the appellant was in no way responsible for the pregnancy of the victim girl and inasmuch as the appellant had not taken any steps to effect the abortion of the victim girl by offering her tablet on the promise of marrying her, the victim girl had not also disclosed about the same to the medical officer as to how, by whom and under what circumstances she got conceived and whether it is only the appellant who had offered her the tablet for effecting the abortion etc. Therefore, the case projected by the victim girl that it is only the appellant who had offered her the tablet on 01.06.2012 for effecting the abortion on the promise of marrying her is found to be a false theory and if the abovesaid case has any element of truth, the

victim girl having got aborted on 03.06.2012, if the abovesaid case is true, atleast immediately thereafter, the victim girl would have taken steps to prefer a complaint against the appellant. On the other hand, as above pointed out, the complaint is alleged to have been lodged by the victim girl only on 28.06.2012 and when the said complaint has not seen the light of the day and when the complaint projected in the matter is found to have been taken on file only on 05.07.2012 and when the said complaint is also found to have been belatedly forwarded to the competent court, all put together, only lead to the conclusion that inasmuch as the abovesaid case of the prosecution is not true and the victim girl has come forward with the false case as if the appellant had promised to marry her after effecting the abortion and been responsible for effecting the abortion. Further, there is no material on the part of the prosecution as to what is the name of the tablet offered by the appellant, from where it was purchased, when it was purchased and whether it was purchased by the appellant and further more when the prosecution has miserably failed to establish that it was the appellant who had offered the tablet to the victim girl on the false promise of marrying her and the abovesaid case is also belied by the fact that to the knowledge of the victim girl and her brother, the appellant and A3' marriage has been already celebrated on 11.04.2012, all put together only expose the weakness of the prosecution case. The prosecution is thus unable to substantiate the case by acceptable and reliable materials.

17. The court below had proceeded to convict the appellant on the premise that the appellant and the victim girl were engaged in the love affair. However, considering the evidence of the victim girl and her brother P.W.2 and the other prosecution witnesses, when it is found that the appellant had completed his college education and thereafter offered campus employment and subsequent thereto got employed and working at Krishnagiri and when the factum of the appellant having obtained the employment in the campus interview during May 2010 and the factum of his employment at Krishnagiri since then, when the same had been clearly spoken to by P.W.2 and therefore P.W.2 having also admitted that there is no chance of the appellant and the victim girl meeting in the bus thereafter, therefore the evidence offered by the prosecution witnesses that they had witnessed the appellant and the victim girl engaged in conversation by traveling in the same bus and that they had condemned the same, as such, cannot be believed and accepted. In this connection, the IO P.W.12 has admitted that P.W.3 Rajan has not stated to him that he used to travel in the bus for purchasing the articles frequently and she has further admitted that P.W.5 Purushothaman has also not stated to her that the victim girl used to travel in the bus and he had condemned the victim girl and also stated that P.W.5 has not said to her that the appellant had spoiled the life of 4 girls

in toto. Therefore, when the prosecution witnesses have not stated that the appellant and the victim girl had been travelling in the same bus frequently and thereby got engaged in the love affair to the IO, their evidence during the trial that they had seen the appellant and the victim girl engaged in the conversation during the bus travel and therefore their presumption that the appellant and the victim girl were engaged in the love affair, as such, cannot at all be believed and accepted, particularly when the same had been totally controverted by the appellant and he has also tendered evidence as D.W.1 and considering the documents marked as Exs. D1 to D3, when it is seen that the appellant had obtained campus employment and working at Krishnagiri from May 2010, to say that the appellant and the victim girl had been frequently travelling in the bus, thereby were engaged in the love affair, as such, cannot be believed and accepted.

18. The abovesaid facts had not been properly appreciated by the court below and the court below, without any basis or materials, had proceeded to hold that the appellant and the victim girl were engaged in the love affair and therefore, it was only the appellant who had effected the miscarriage of the victim girl. When the appellant is no way responsible for the pregnancy of the victim girl and when the appellant has also not promised to marry the victim girl and when the court below had proceeded to acquit the appellant of the offences under sections 376 and 417 IPC, the facts being above, when the appellant had admittedly got married with A3 on 11.04.2012 to the knowledge of the victim girl and her brother P.W.2, to say that the appellant had directed the abortion of the victim girl on the promise of marrying her subsequent thereto cannot be believed and accepted. Furthermore, when there is no acceptable and reliable material that it was only the appellant, who had voluntarily caused the miscarriage of the victim girl on the false promise of marrying her and when the abovesaid facts have not been disclosed by the victim girl to the medical officer P.W.7 who had effected the abortion on 03.06.2012 and as abovenoted when there is a huge delay in the lodgement of the complaint and when there are several complaints said to have been lodged in the matter, the earlier complaints had also been suppressed and the complaint projected in the matter had also been belatedly forwarded to the competent court and the statements of the witnesses alleged to have been recorded by the IO had also been forwarded belatedly to the competent court and when there is no explanation pointing to the same in any manner on the part of the prosecution, all put together, would only lead to the conclusion that the entire prosecution case is a false one and accordingly the prosecution is unable to establish that the miscarriage of the victim girl had been effected by the appellant by offering her the tablet and that it was the appellant who had got her admitted in P.W.7's hospital and effected the abortion. As rightly contended by the appellant's counsel, when there is no material to hold that

who had bought the tablet, what is the name of the tablet, when the tablet was bought and when the victim girl had not disclosed that it was the appellant who had offered her the tablet for effecting the abortion in the complaint, when the appellant had also not disclosed anything about the same to the medical officer P.W.7 and when there is no evidence to show that it was the appellant who had got her admitted in P.W.7's hospital on 03.06.2012, as above pointed out, when nothing has been disclosed by the victim girl to P.W.7, when the theory of the victim girl that the appellant had directed her to effect the abortion on the promise of marrying her is belied by the fact that to her knowledge the appellant and A3 had already got married on 11.04.2012 in toto, the prosecution case is not entitled for acceptance in any manner and therefore considering the abovesaid factors, the court below had failed to appreciate the materials placed on record in the proper perspective and on the other hand based on surmises and conjectures and without any foundation proceeded to convict and sentence the appellant under Section 312 part II IPC.

19. In the light of the abovesaid factors when the prosecution case is beset with serious doubts, suspicions, defects, surmises, lacunae, loopholes and when with reference to the same no plausible explanation is putforth on the part of the prosecution to dispel the same, as rightly contended, the benefit of doubt emanating out of the same, should be extended in favour of the appellant and accordingly I hold that the prosecution has failed to establish the charge levelled against the appellant under Section 312 Part II IPC in any manner and resultantly acquit him thereof.

For the reasons aforestated, the judgment dated 19.08.2014, passed in S.C.No.33 of 2013, on the file of the Sessions Judge, Mahalir Neethi Mandram, Tiruvarur, convicting and sentencing the appellant/A1 under Section 312 part II of I.P.C are set aside and resultantly, the appellant/A1 is acquitted of the offence under Section 312 Part II IPC and accordingly, the Criminal Appeal is allowed. The bail bond executed by the accused shall stand discharged. The fine amount, if any, paid by the accused shall be refunded to him.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

bga

To

1.The Sessions Judge,
Mahalir Neethi Mandram,
Tiruvavarur

2.The Inspector of Police
Pabanasam All Women Police Station
Pabanasam, Tanjavur District.

3. The Joint Secretary to Government,
Public Law and order,
Fort ST George, Chennai-9

4. The Director General of Police,
Mylapore, Chennai.

5. The District Collector, Thanjavur

6. The Public Prosecutor, High Court, Madras-104.

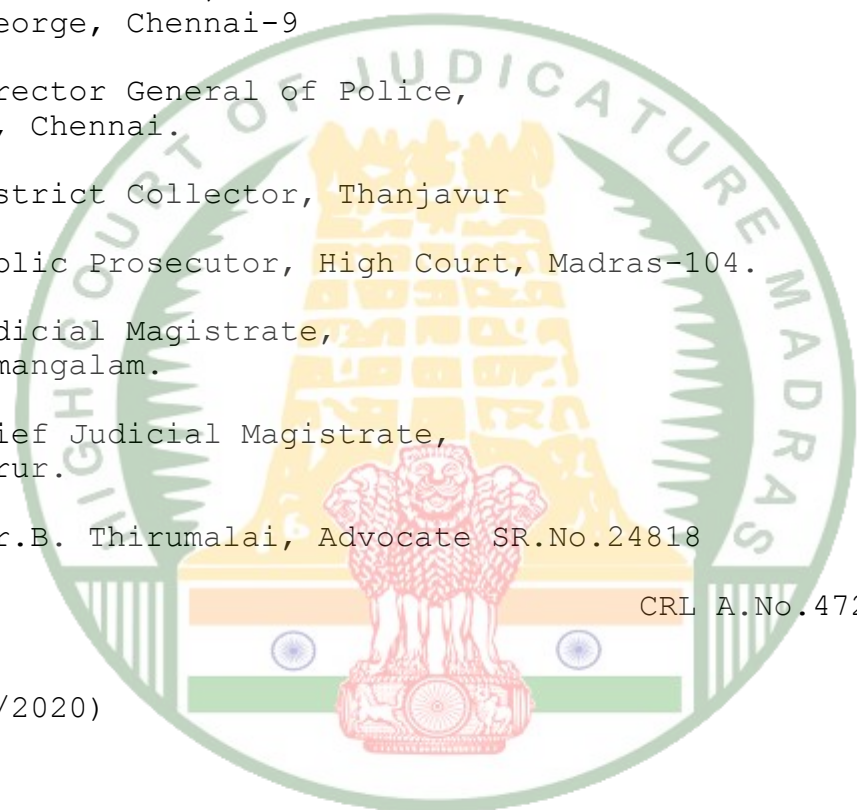
7. The Judicial Magistrate,
Needamangalam.

8. The Chief Judicial Magistrate,
Tiruvavarur.

+1cc to Mr.B. Thirumalai, Advocate SR.No.24818

CRL A.No.472 of 2014

PVS (CO)
GMY (19/08/2020)

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. The gopuram is set against a green background with a white border. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular path around the central image. Below the seal, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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