



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.11.2021

DELIVERED ON : 29.11.2021

CORAM :

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.Nos.33 of 2018 and 443 & 357 of 2021
and
Crl.M.P.No.7201 of 2021

Crl A. No. 33 of 2018

G. Mani @ Mani
S/o.Venkatesh

... Appellant/ Accused-3

Vs.

State Represented by
Inspector of Police,
Royakottai Police Station,
Krishnagiri District,
(Crime No.370 of 2014)

... Respondent/Complainant

Crl A. No. 443 of 2021

T. Prakash

... Appellant/ Accused-4

Vs.

State Represented by
Inspector of Police,
Royakottai Police Station,
Krishnagiri District,
(Crime No.370 of 2014)

... Respondent/Complainant

Crl A. No. 357 of 2021

C. Prakash

... Appellant/ Accused-1

Vs.

State Represented by
Inspector of Police,
Royakottai Police Station,
Krishnagiri District,
(Crime No.370 of 2014)

... Respondent/Complainant



COMMON PRAYER: Criminal Appeals filed under Section 374 (2) of Criminal Procedure Code, 1973 to set aside the conviction and sentence imposed in S.C. No.30/2015 dated 15.10.2015 on the file of the Sessions Judge, Fast Track Mahila Court, Krishnagiri.

For Appellant : Mr. R. Sankarasubbu
(In Cr.A. Nos.33 of 2018 & 443 of 2021)

: Mr. K. Gandhi Kumar
(In Cr.A. No.357 of 2021)

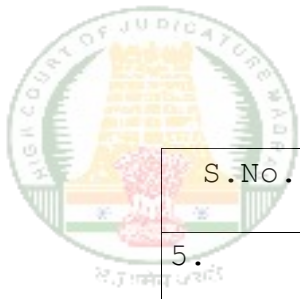
For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor
(In all the three appeals)

COMMON JUDGMENT

Judgment of the Court was delivered by R.HEMALATHA, J.

The appellants, C. Prakash (A1), G. Mani (A3) and T. Prakash (A4), challenged the judgment dated 15.10.2015 passed by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri in S.C. No.30 of 2015, in which the three appellants and Subru @ Subramani (A2) were convicted for the offences punishable under Sections 341, 323, 506(ii), 392 read with Section 379 IPC, 376 (D) IPC and under Section 4 of the Tamilnadu Prohibition of Women Harassment Act, and sentenced to undergo imprisonment as extracted hereunder:

S.No.	Rank of Accused	Conviction	Sentence
1.	A1 to A4	U/s. 341 IPC	Simple Imprisonment for one month with a fine of Rs.500/- each.
2.	A1 to A4	U/s. 323 IPC (A1 - 2 counts)	Simple Imprisonment for one year with a fine of Rs.500/- and Rs.1,000/- each.
3.	A1 to A4	U/s. 506(ii) IPC	Rigorous Imprisonment for seven years with a fine of Rs.5,000/- each.
4.	A1 to A4	U/s. 392 r/w. Sec. 379 IPC	Rigorous Imprisonment for 10 years with a fine of Rs.5,000/- each.



WEB COPY

S.No.	Rank of Accused	Conviction	Sentence
5.	A1 to A4	376 (D) IPC	Rigorous Imprisonment for life with a fine of Rs.5,000/- each.
6.	A1 to A4	U/s. 4 of Tamilnadu Prohibition of Women Harassment Act.	Rigorous Imprisonment for two years with a fine of Rs.10,000/- each.
7.	A1	U/s. 354 IPC	Rigorous Imprisonment for two years with a fine of Rs.5,000/-.
8.	A1	U/s. 67(A) of Information Technology Act, 2000.	Rigorous Imprisonment for two years with a fine of Rs.50,000/-

2. Briefly going into the facts of the case, we find that one Nandhini, 20 years old (P.W.1), a resident of Chanthapuram Village, Kaveripattinam, Krishnagiri District, a college student, along with her lover Seralathan (P.W.3), a driver by profession, had planned to go to a temple at Royakottai. On 18.07.2014, P.W.1, under the guise of going to college, left her residence in college uniform and joined P.W.3 near Royakottai overbridge, where he was waiting in a Tata Indica Car, bearing Registration No. TN07 L6696. Thereafter, they had lunch in a hotel and proceeded towards Royakottai. When the car was passing through Podampatti, a village enroute, around 4 p.m, P.W.1 wanted to ease herself and therefore, P.W.3 stopped the car by the side of the road. P.W.1 got down and went to a secluded place, while P.W.3 was waiting in the car. Suddenly, four persons, who were later identified as the accused surrounded her and physically assaulted her. Her personal belongings, including a pair of gold ear studs (M.O.8 and M.O.9), Sonata watch (M.O.10) were forcibly removed from her person. The accused also started stripping her, which made her scream and hearing her cries, P.W.3 rushed to the spot only to be over powered by the accused causing physical injuries to him. He was also tied up to a tree nearby and was forced to look in the opposite direction. What followed was a horrific gang rape, which was also videographed by A1 in his mobile phone (M.O.23). P.W.3 was helpless and was under threat for his life. From the conversation amongst the four, P.W.1 and P.W.3 gathered the names of three of them, Prakash, Mani and Raju. Selvaraj (P.W.4), belonging to Podampatti village, who was returning with his cattle after grazing, accidentally saw the four accused and



a nude girl lying on the ground. He also saw P.W.3 tied up to a tree with a saree in the same place. The accused sensing that P.W.4 had seen them, thought that they may be in trouble and two of them went in search of P.W.4. P.W.4, who had reached the main road, was in a position to inform few others who came to the same spot in a group, but could not find anyone. In the meanwhile, P.W.1 and P.W.3 were forced to move out to another place nearby where the victim (P.W.1) was again gang raped repeatedly by all the four. However, P.W.4 joined by more villagers, who started searching for the victim reached the white car parked on the main road. The victim(P.W.1) and her lover (P.W.3) returned to the car after sometime and narrated their ordeal. Both P.W.1 and P.W.3 were found in a bad shape with visible injuries on their body. P.W.1 and P.W.3 went to a Government Primary Health Centre and P.W.1 got first aid as an out patient by a staff nurse Poonkodi (P.W.13) at 8.30 p.m. The said Out patient slip (Ex.P.13) was issued by the staff nurse. P.W.1, gave a statement to Devigarani (P.W.25), the Inspector of Police, Royakottai Police Station, on 18.07.2014. On the same night, an F.I.R. in Crime No.370 of 2014 was registered at 10. p.m. by Devigarani ((P.W.25), the Inspector of Police, All Women Police Station, Krishnagiri, for the offences under Sections 341, 342, 366, 354(c), 376(D),506(ii) r/w 397 IPC, Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and 67(A) of Information Technology Act, 2000 against 3 named persons, namely, Mani, Raju, Prakash and one unnamed person. The FIR reached the Judicial Magistrate Court at 11.30 p.m. on the same day. Thereafter P.W.25 sent P.W.1 to the Government Hospital, Krishnagiri for treatment.

3. Ms.Jeyam (P.W.26), the Inspector of Police, took up the investigation in Crime No.370 of 2014, as per the orders of the Deputy Superintendent of Police, Denkanikottai. She then went to the place of occurrence, prepared an Observation Mahazar (Ex.P2) and a rough Sketch (Ex.P34). She also recovered the college bag of the victim (M.O.5) and pair of silver anklets (M.O.6 and M.O.7) from the scene of occurrence. On 19.07.2014, she arrested the accused Subru @ Subramani (A2), I.G.Mani @ Mani (A3) and T. Prakash (A4) near a mango orchard in the Podampatti Village, at about 9.30 a.m. Their police confession statements were individually recorded and based on the confession of Subru @ Subramani, a pair of gold ear studs (M.O.8 and M.O.9) were recovered under the cover of a mahazar (Ex.P5) in the presence of the witnesses Rajesh (P.W.7) and one Hussain (not examined) from the house of the second accused. The third accused had confessed and disclosed the place where he had hidden the Sonata Ladies Watch (M.O.10). His clothes (M.O.11 to M.O.21) were also recovered under the cover of a mahazar (Ex.P.9) in the presence of the same witnesses. The silver waist guard (M.O.4) was recovered from the residence of the fourth accused under the



cover of a mahazar (Ex.P7). On the same day, i.e., on 19.07.2014, C.Prakash (A1) was arrested by Mr.Purushothaman (P.W.24), the Sub Inspector of Police, Kelamangalam Police Station, in connection with another case in Crime No.376 of 2014. A formal arrest was made in the present Crime Number too. On his confession, a mobile phone (M.O.23) with two sim cards (M.O.24) were recovered under the cover of a mahazar Ex.P32. P.W.20 was a computer operator in the District Police Office, Krishnagiri. He ascertained the address of the two sim cards, which were used in the cellphone (M.O.23). According to his verification, the Reliance Company Mobile No.8695226221 was in the name of one R.K. Dharman and the Vodafone Mobile No.9750350121 was in the name of one Sivaprakash. Ex.P27 is his report. All the accused were sent for medical examination for determining the potency as well as their age. All of them were found to be majors and there was nothing to suggest that they were impotent as per the medical certificates Ex. P14 to Ex.P21.

4. An identification parade was also conducted on 06.08.2014 by Mr.Rajkumar (P.W.22), learned Judicial Magistrate No.II, Krishnagiri. All the four accused were identified by P.W.3. The mobile phone, which was used to videograph the entire incident was sent for forensic analysis and it was found that the memory card in the mobile phone contained the video files pertaining to the rape incident. The details of the video files contained in the memory card are as follows:

S.No.	File Name	Duration	Created date and time
1.	Videocon A24-VID-20140718-165203. 3gp	00:00:03	18/07/2014 04:52:02 PM
2.	Videocon A24-VID-20140718-165948. 3gp	00:06:11	18/07/2014 04:59:48 PM
3.	Videocon A24-VID-20140718-174451. 3gp	00:00:05	18/07/2014 05:44:50 PM

According to Maria Selvi Roslin (P.W.19), the raping incident was recorded between 4.52 pm and 5.44 p.m in three spells. These video files were copied in a DVD (M.O.25). The clothes belonging to P.W.1 and the accused were also sent for chemical examination and it was found that blood stains were noticed on P.W.1's saree, inskirt and blouse and semen on her saree and inskirt. Ms. Pushparani (P.W.23), who is a Scientific Officer, Anthropology Division, after examining the face seen in the photographs and video files of the victim and that of the accused concluded that the victim as well as the Accused 2 to 4 were resembling the ones shown to her. It was also clarified that the Accused No.1 was not seen in any of the video files



probably because, he was the one who videographed the entire episode. After completing the investigation, Ms.Jeyam (P.W.26), Inspector of police, filed a final report before the concerned Court.

WEB COPY

5. In order to bring home the guilt of the accused, the prosecution examined 26 witnesses and marked 34 exhibits and also 26 material objects.

6. When the accused were questioned with regard to the circumstances appearing in evidence against them under Sections 313(1)(b) of IPC, they simply denied of having committed any offence.

7. Heard Mr. R. Sankarasubbu and Mr.K. Gandhikumar, counsels appearing for the appellants and Mr.M. Babu Muthu Meeran, Additional Public Prosecutor.

8. The learned counsel for the appellants had raised doubts on some of the important aspects relied on by the trial court for convicting the accused.

- 1) The evidence of P.W.1 and P.W.3 were not corroborative inasmuch as the duration of the incident, which according to P.W.1 is 3 hours and P.W.3 is 1½ hours.
- 2) The P.W.1 had deposed that she went to Royakottai Police Station first and then to the Government Hospital. The complaint given by P.W.1 at the first instance was not produced before the Court. Similarly, there were discrepancies in the time the treatment was given to P.W.1 and also in the time she had given police complaint.
- 3) Ex.P13, out patient slip, issued by the Staff nurse (P.W.13) on 18.07.2014 mentioned that there were three unknown persons who attempted to rape her while the charges have been framed for rape.
- 4) The Crime Number was not mentioned in the Accident Register (Ex.P.22), thereby causing doubt regarding the complaint (Ex.P1). Even in Ex.P22, it is mentioned as "attempt to rape".
- 5) The Identification Parade was an empty formality as the prescribed procedure as regards the number of persons to be paraded vis-a-vis the number of accused, was not followed.
- 6) As regards A1, it was contended that A1 was not guilty of 376 IPC. even assuming that video recording was genuine and to be relied upon.



7) P.W.23, the scientific Officer, had also confirmed that A1 was not found in the video files retrieved by them.

8) The reliance placed on the video files which were allegedly retrieved from the mobile phone belongs to A1 cannot be an admissible evidence in view of the non compliance of Section 65B of the Indian Evidence Act.

9. Per contra, Mr.M. Babu Muthu Meeran, the learned Additional Public Prosecutor, contended that the FIR was registered at 10. p.m. on the same day and was also sent to the concerned Court at 11.30 a.m. i.e. 1½ hours within the registration of the FIR. He would further contend that the medical examination was also done at the earliest point of time and that in the complaint itself the victim had mentioned the names of these accused as she could recollect them talking to each other calling by their names. Interestingly two of them were having the same name, P. Prakash (A1) and C. Prakash (A4). His further contention is that all the witnesses examined on the side of the prosecution had given corroborative evidence and nothing could be deciphered contradictory to the prosecution theory.

10. Before going into the merits of the arguments put forth by the learned counsel for the appellants, it is pertinent to mention that in an earlier appeal filed by Subru @ Subramani (A2) in Criminal Appeal No.629 of 2016, the entire DVD was played in the Court, in camera, in the presence of both the counsels leaving all those present speechless and horrified. In fact, though both the counsels did not want to watch the entire incident on the screen, it was only at the instance of the Division Bench, it was played. Paragraph No.21 of the Judgment in Crl.A.No.629 of 2016 reads as follows:

"21. As a matter of fact, we offered to play M.O.24 and M.O.23 in court, in camera, so that, the counsel for the accused could make any comment regarding the same. Both the learned counsel as well as the learned Additional Public Prosecutor submitted that it was not necessary. However, we played the same and found the horror in the recordings. According to the said recording, a female is found mercilessly being raped by four males one after the other and the female is found almost senseless."

11. This is a unique case where the hapless victim was gang raped repeatedly and also the entire incident was videographed by one of the accused. This videographing of the entire incident assumes significance due to the common intention of the accused to use it as a tool for blackmailing and



threatening the victim in future not only for sexual favours but also for money. The extent of perversity which had crept into the minds of the accused, who were also youngsters, is appalling. In fact, the video shot by them ultimately proved to be an overwhelming evidence in this heinous crime committed by them. In the light of this overwhelming video evidence, any of the objections raised or deficiency pointed out by the learned counsel for the appellants gets relegated to the background. For example, the arguments of the appellants that P.W.1 and P.W.3 were contradictory in the duration of the incident gets defeated on its own. The argument of the learned counsel for the Accused No.1 is that A1, at the most, can only be punished for the other offences and not for Section 376 IPC. It is a tacit admission that such an incident took place and it was immaterial whether it lasted for 1½ hours or 3 hours. Similarly, the pace with which the legal procedure that followed immediately after the crime deserves commendation. The police complaint, the medical treatment of the victim, preparation of FIR and the dispatch of FIR are enough evidence to the genuineness of the narration of the incident by the victim and the sincerity of the police. Similarly, the out patient slip (Ex.P13), which mentioned as "attempted rape by three unknown persons" is not in any way fatal to the prosecution as it was not a thorough physical examination at the time of first aid and only what was understood by the staff nurse at the first instance. Even in the Accident Register (Ex.P22), as pointed out by the counsel for the appellant, though it is written as "attempted rape" initially, in the same page it is written as rape by four unknown persons and elaborates the finding of the physical examination of private parts of the victim. All these findings clearly pointed out forcible sexual activity as narrated by the victim herself. At this juncture, it is pertinent to discuss the evidentiary value of the statement made to a Doctor. In the decision in P.Babu and others vs. State of Andhra Pradesh [(1994) 1 Supreme Court Cases 388], it has been held thus:

"It is a matter of common knowledge that such entry in the injury certificate does not necessarily amount to a statement. At that stage the doctor was required to fill up that column in a normal manner and it was not the duty of the doctor to enquire from the injured patient about the actual assailants and the inquiry would be confined as to how he received the injuries namely the weapons used etc."

Similarly, in the decision in B.Bhadriah and others Vs. State of Andhrapradesh (1995 Supp(1) Supreme Court Cases 262), it has been held that the injured witness is not expected to give a detailed report to the doctor and that the casual way of filling up the column in the medical certificate, would not, in any

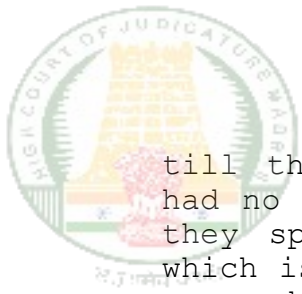


manner, amount to recording the statement of the injured witness. That apart, the entry in the out patient slip (Ex.P13) is only a previous statement of the victim and such a previous statement is not a substantive piece of evidence. It could be only used to corroborate under Section 157 or contradict under Section 145 of the Indian Evidence Act. If the victim is to be contradicted on such previous statements, he/she should have to be confronted with it in the cross examination as mandated under Section 145 of the Indian Evidence Act. That has not been done in the instant case. Therefore, this argument fizzles out. That A1 was not directly involved in the rape as he was not found in any of the video files retrieved from the mobile is not a valid reason to acquit him of the rape charge. He was a participant in the gang rape as narrated by the rape victim herself and corroborated by her lover P.W.3. and he has no escape route to wriggle out of the charge.

12. P.W.1, in her deposition, had clearly mentioned that all the four accused had taken turns in forcing themselves upon her, that too, repeatedly and also performed oral sex on her. Therefore, the contention of A1 also crumbles under the solid evidence of the victim. This Court, in Criminal Appeal No.629 of 2016, had already observed as follows regarding Section 65-B of the Indian Evidence Act.

"20. Of course, it is true that so far as M.O.25, which is a video copy is concerned, it does not satisfy Section 65-B of the Indian Evidence Act and therefore the same cannot be treated as primary evidence. But, in the instant case, M.O.25 is not the primary evidence, but it is the cellphone (M.O.23), containing the memory card, which is the primary evidence. Since the cellphone with the memory card itself is recovered, there is no question of complying with Section 65-B of the Indian Evidence Act. That was analysed by the experts, who have stated that they contained the recording of the rape committed on P.W.1 by these four accused."

13. As regards the contention of the learned counsel for the appellants that the Identification Parade had inherent flaws and prescribed procedures had not been followed, it is note worthy to mention that conducting an Identification parade is not mandatory in all the cases. Furthermore, in the earlier appeal by the second accused, this Court had categorically held that Identification parade is only to ensure that there is no false/mistaken identification and also that it is not the rule of law but a rule of prudence. The victim herself, even before the police, had mentioned that the accused were calling each other by their names. She knew their names by then. Moreover,



till the incident happened, they were unknown persons and she had no motive, whatsoever. Even according to P.W.1 and P.W.3, they spent about more than an hour in the scene of offence, which is enough for anyone to vividly remember the faces of the accused. However, as an abundant caution, the Investigating Officer had conducted an Identification Parade. Nothing was even suggested to her even during the cross examination about the previous acquaintance or enmity and any other kind of relationship with anyone of the accused and therefore, there was no reason to disbelieve the version of P.W.1. The three prosecution witnesses P.W.1, P.W.3 and P.W.4, through their deposition, made out a clear case of the crime committed by the accused. P.W.1, the rape victim, underwent huge physical and mental trauma. P.W.3 (P.W.1's lover) was also an eye witness to the incident that as per his own statement, he was often threatened to turn his face to other side. It is a fact that he was physically assaulted and over powered and then tied into a tree using the saree worn by the victim (P.W.1). The trauma underwent by P.W.3 as an eye witness to the shocking happening, cannot be understated. What started as an enjoyable trip ended as a tragic incident, the scars of which will not fade away by the passage of time. While on the one side P.W.1 bore the brunt of sexual assault which caused physical and mental trauma and anxiety, on the other P.W.3 underwent physical injuries and the extreme sense of guilt due to his helplessness. Both these victims were so much traumatized that they corroborated each other's evidence in all material particulars right from the first instance of narration to the police till the testimony in the Court. P.W.4 was also an eye witness to the occurrence. He was so petrified with the gestures of the accused that he ran for his life only to come back to the scene of crime with more people. His role play as an informer assumes more significance, because he was one who again gathered the villagers and found the car and the victims P.W.1 and P.W.3, who could narrate the incident to them. All the other witnesses were also corroborative and supportive of the prosecution case. P.W.4 had infact seen all the 6 persons including P.W.3 who was found tied to a tree. In view of the video evidence and supporting oral and other documentary evidence, there cannot be an iota of doubt as to the involvement of the accused in the gruesome and ghastly act of rape on P.W.1 and the trial court had rightly convicted all the four accused and sentenced them as stated above. The conviction and sentence passed by the trial court against A2 was confirmed by the Division Bench of this Court in Criminal Appeal No.629 of 2016. In fact, in the said appeal, the Government was directed to pay a sum of Rs.8,00,000/- as compensation to the victim P.W.1 from the Government exchequer.

14. We would like to place on record the commendable efforts made by the police in taking forward this case to a



logical conclusion. Such timely action by the police force helps the society to go a long way in reduction of crimes. The trial court had rightly sentenced the accused and inflicted adequate punishment on the appellants.

WEB COPY

15. In the result,
- i. The Criminal Appeals are dismissed. Consequently, the connected criminal miscellaneous petition is closed.
 - ii. The conviction and sentence passed by the Sessions Judge, Fast Track Mahila Court, Krishnagiri, in S.C.No.30/2015 dated 15.10.2015, is confirmed.
 - iii. The District Legal Services Authority, Krishnagiri, is directed to ensure that, the compensation amount of Rs.8,00,000/- (as ordered in the judgment of this Court dated 25.01.2017, in Crl.A.No.629 of 2016) is paid to the victim, if not already paid, within 3 months from the date of this judgment.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

bga

To

1. The Sessions Judge,
Fast Track Mahila Court,
Krishnagiri.
2. The Inspector of Police,
Royakottai Police Station,
Krishnagiri District.
3. The Secretary,
District Legal Services Authority,
Combined Court Building,
Krishnagiri - 635 002 .
4. The Judicial Magistrate,
Denkanikottai.
5. The Chief Judicial Magistrate,
Krishnagiri.



6. The Superintendent,
Central Prison,
Vellore.
7. The Deputy Superintendent,
Denkanikottai.
8. The Principal Secretary,
Finance Department,
Govt. of Tamilnadu,
Fort St. George, Chennai.
9. The District Collector,
Krishnagiri.
10. The Public Prosecutor,
High Court, Madras.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras

+1cc to Mr.K.Gandhi Kumar, Advocate, S.R.No.61741

CrI.A.Nos.33 of 2018 and 443 & 357 of 2021
and
CrI.M.P.No.7201 of 2021

RR(CO)
SU(16/12/2021)
SU(11/01/2022)