



**Bail Slip**

The Appellant / Sole Accused viz., Antony Xavier Raja was directed to be released on Bail by the order of this Court dated 08/02/2016 and Made in MP.1 of 2015 in Crl.A 380 of 2015.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 05.07.2021

JUDGMENT PRONOUNCED ON : 29.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

Crl.A.(MD) No. 380 of 2015

Antony Xavier Raja  
S/o.Siluvai Mariyan

: Appellant/Sole Accused

-vs-

State through  
The Inspector of Police,  
All Women Police Station,  
Tiruchendur,  
Thoothukudi District.  
(Crime No.6 of 2011)

: Respondent / Complainant

**PRAYER:-** Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the conviction and sentence passed against the appellant by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi, in Sessions Case No.148 of 2015, dated 11.12.2015 and acquit the Appellant/Accused.

For Appellant : Mr.M.Saravanan  
For Respondent : Mr.T.Senthil Kumar  
Government Advocate (Crl.Side)

**JUDGMENT**

This Criminal Appeal has been filed against the Judgment and Conviction dated 11.12.2015 by the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi in S.C.No.148 of 2015.

2. The facts, which are relevant for consideration in this appeal, as per the prosecution case, are briefly as follows:

2.1. The prosecutrix and the accused are related to each other. The accused used to visit the house of the prosecutrix often and used to talk with her. On 19.07.2005 by around 11.00 a.m., when the prosecutrix was alone in the house, the accused came to the house of the prosecutrix and forcibly had intercourse with her. When the prosecutrix scolded him, he consoled her saying that he will marry her and he promised to marry her in the name of god. Also he had



requested her not to disclose it to any one. Again on 27.07.2005 by around 11.00 a.m., when the prosecutrix was alone in the house, the accused came and forcibly took her to the field nearby and in the guise of promise to marry her, had intercourse with her. Thereafter, the accused had intercourse with the prosecutrix several times. On 17.09.2005 by around 6.00 p.m., when the accused was standing near the water tank, the prosecutrix approached him and requested him to marry her, as he had raped her. The accused refused to marry her. On 23.04.2006 the prosecutrix delivered a male child in Christopher Hospital, Thisaiyanvilai. On 13.05.2011 by around 4.00 p.m. when the accused was sitting in front of St. Antony's Church, the prosecutrix approached him and questioned him, how he is making arrangement to marry another girl after cheating the prosecutrix and her child. To this, the accused scolded her and abused her in filthy language stating that he is not the father of the child. Therefore, the prosecutrix approached All Women Police Station, Tiruchendur and lodged a complaint under Ex.P-1. Based on the complaint of the prosecutrix under Ex.P-1, P.W-12-Sub Inspector of Police, All Women Police Station, had registered an FIR under Ex.P-9 and sent the same to the Court of the learned Judicial Magistrate, Sathankulam. P.W-12 placed the copy of the same to the higher officials of police department. P.W-13-Rajamani, Inspector of Police, All Women Police Station, Tiruchendur had taken up the investigation of the case registered in Crime No.6 of 2011 of All Women Police Station, Tiruchendur under Sections 417, 294(b) of IPC and Section 4 of the Tamil Nadu Prevention of Harassment to Women Act. He had examined the witnesses. Already, P.W-12-Rajakumari had commenced the investigation, she had arrested the accused and forwarded him to remand with remand request to the Court of the learned Judicial Magistrate, Sathankulam. She had requested the learned Judicial Magistrate, Sathankulam, to forward the accused and the prosecutrix for medical examination to the Duty Medical Officer, Government Hospital, Sathankulam. P.W-12 had examined the witnesses and placed the Case Diary file to P.W-13-Inspector of Police, P.W-13 had examined the witnesses. Since all the witnesses had stated the same facts as was stated to P.W-12, she had not recorded the statement afresh. She had examined the Doctor who had examined the accused as well as the prosecutrix and obtained the medical examination report. She had obtained the forensic examination report regarding the paternity test on the paternity of the child delivered by the prosecutrix. She had examined the forensic expert as well as the Doctor who had taken blood samples from the prosecutrix and the accused from the Government Hospital and forwarded to the Forensic Department for paternity determination test.

2.2. On completion of the investigation, P.W-13 had laid final report of the investigation before the Court of the learned Judicial Magistrate, Sathankulam. Subsequently, she was transferred. Therefore, she handed over the investigation case diary file to P.W-14-Durjoy Kumar, Inspector of Police, All Women Police Station,



Tiruchendur, had perused the case diary file and the investigation having been completed, she had obtained legal advice from the Assistant Director of Prosecution and laid the final report under Sections 376, 417 and 450 of I.P.C. and Section 4 of the Tamil Nadu Prevention of Harassment to Women Act.

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2.3. The learned Judicial Magistrate, Sathankulam, had issued summons to the accused after taking the Investigation report on file. On appearance of the accused, copies were furnished to him under Section 207 of Cr.P.C. and questioned the accused whether he has the resources to engage a counsel. The accused answered that he had the resources. Therefore, the case was committed to the Court of the learned Sessions Judge, Thoothukudi. The accused was bound over to the Court of the learned Sessions Judge, Thoothukudi. Since the offences alleged are triable by the Court of Sessions, Fast Track Mahila Court, the case was made over to the Court of the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi. The accused was bound over to the Court of Sessions, Fast Track Mahila Court, Thoothukudi.

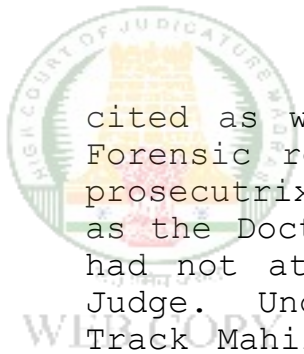
2.4. On appearance of the accused, the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi, after hearing the prosecution and the defence, framed charges against the accused under Section 376 and 417 of IPC. The accused pleaded not guilty to the charges and claimed to be tried. Therefore, the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi, had ordered trial.

2.5. During trial, the prosecution had examined witnesses P.W-1 to P.W-14 and marked documents Ex.P-1 to P-13. On completion of the prosecution evidence, the accused was examined under Section 313 of Cr.P.C. regarding the incriminating evidence appearing against him and the accused denied the incriminating evidence.

2.6. After examination of the accused under Section 313 of Cr.P.C., the arguments of the prosecution and the defence were heard. On appreciation of the evidence through P.W-1 to P.W-14 and on perusal of Ex.P-1 to P-13, the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi, had arrived at a logical conclusion thereby acquitting the accused from the charge under Section 376 of IPC and convicted him for the charge under Section 417 of IPC and sentenced him to undergo imprisonment for one year and fine of Rs.75,000/- (Rupees Seventy Five Thousand only).

3. Aggrieved by the judgment of conviction and order of sentence, this appeal had been preferred.

4. Mr.M.Saravanan, learned Counsel for the Appellant/Accused submitted that the conviction and sentence imposed on the accused by the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi, is perverse warranting interference by this Court. The Doctor who had

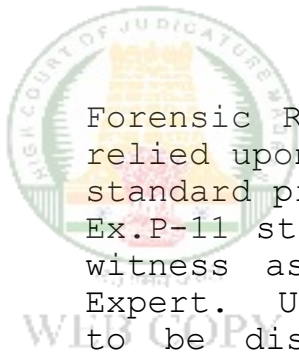


cited as witness by the prosecution. The reliance placed on the Forensic report regarding the paternity of the child born to the prosecutrix and based on which the accused was convicted is perverse as the Doctor who had taken blood sample allegedly from the accused had not at all been cited as witness before the learned Sessions Judge. Under those circumstances, the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi arriving at a conclusion that the accused is culpable for the offences under Section 417 of IPC is perverse. Therefore, the judgment of conviction and sentence of imprisonment imposed on the accused by the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi, by judgment dated 11.12.2015 in S.C.No.148 of 2015 is to be set aside.

5. Mr.T.Senthil Kumar, learned Government Advocate (Crl. Side) appearing for the respondent, had by way of reply stated that the arguments of the learned Counsel for the Appellant/Accused cannot at all be accepted, on perusal of the judgment of the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi, from paragraph Nos.6 to 22. Therefore, on proper appreciation and assessment of evidence only, the learned Sessions Judge acquitted the accused from the charge under Section 376 of IPC and had convicted the accused on the ground that the accused got consent of the prosecutrix and had sexual intercourse on the pretext of marrying her. After intercourse, in stead of marrying the prosecutrix the accused absconded. The occurrence took place in the year 2005. The accused came back to the village only in 2011. Only then, the prosecutrix had approached him to marry her and for the refusal of the accused, the prosecutrix had lodged a complaint under Ex.P-1 resulting in the filing of the charge sheet. The learned Sessions Judge had analysed the evidence and based on proper appreciation of evidence had convicted the accused for the offence under Section 417 of IPC and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.75,000/- (Rupees Seventy Five Thousand Only).

6. The learned Counsel for the Appellant/Accused submitted that the Doctor was not examined and therefore, the reliance placed on the Forensic report regarding the paternity of the child cannot at all be accepted as it is a lapse committed by the Investigation Officer by inadvertence.

7. At the same time, the Forensic expert who was examined as P.W-11-Dr.Mahalakshmi had clearly stated in her evidence regarding the paternity test, the FTA card is used to determine the paternity. It is a standard procedure followed to determine the paternity throughout the world. Therefore, the presumption under Section 114 of Indian Evidence Act is to be applied that all the acts done by the Government Officials in the discharge of the official functions had been carried out as per law. If the argument of the learned Counsel for the Appellant/Accused is to be accepted, it is for the Appellant/Accused to disprove the paternity test. He had not done



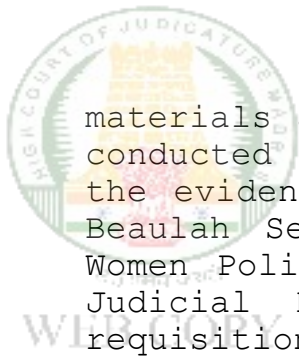
Forensic Report to disprove his contention that the blood sample relied upon by the prosecution is not that of his blood. As per the standard procedure in the Forensic Department that test report under Ex.P-11 states that the experts need not be summoned to Court as a witness as Section 91 of Cr.P.C. is in favour of the Forensic Expert. Under those circumstances, this appeal lacks merits and is to be dismissed. The judgment of conviction and sentence of imprisonment of one year and fine of Rs.75,000/- imposed on the accused is to be confirmed.

8. Point For Consideration:

**Whether the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi, in S.C.No.148 of 2015, dated 11.12.20215 is perverse warranting interference by this Court as Appellate Court?**

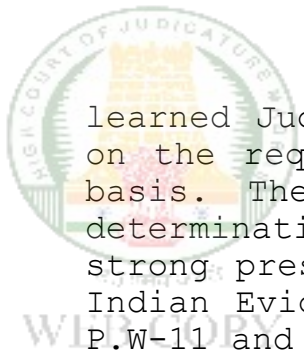
9. On perusal of the entire judgment and the evidence of witnesses P.W-1 to P.W-14, it is found that the prosecutrix had clearly stated that the accused herein who was a relative of the prosecutrix had come to her house under the guise of talking with her. The accused during the course of interaction impressed her and forced her to have intercourse with him and also threatened her that she should not disclose anything to any one. He also consoled her saying that he will marry her and subsequently, he had intercourse with her under the pretext of getting married. On the other hand, he had refused to marry her and made an arrangement to marry another girl. Therefore, the prosecutrix had approached the villagers of the accused. The villagers and the elders in the family of the prosecutrix had conducted garland exchange ceremony at St. Antony's Church, Thisaiyanvilai. Subsequently, the accused stayed in the house of the prosecutrix for two or three days. Thereafter, he absconded. The prosecutrix came to know that the accused had returned to the Village only in the year 2011 by which time she had delivered a male child and that she was under the impression that the accused will return to her and live with her. Instead, the accused made an arrangement to get married with another woman. Therefore, by that time, six years had gone by and that had been challenged in the trial Court on behalf of the accused. The learned Sessions Judge had by her reasoned order rejected the defence of the accused. Since the prosecutrix was a major on the date of occurrence, the learned trial Judge had considered the sexual intercourse between the prosecutrix and accused as a consensual sex. At the same time, there is enough evidence to prove the charge against the accused under Section 417 of IPC through the witnesses P.W-1 to P.W-14. Therefore, the learned Sessions Judge had convicted the accused for the charge under Section 417 of IPC.

10. The learned Sessions Judge had discussed the entire



materials available through the prosecution, particularly, DNA test conducted on the child born to the prosecutrix and the accused and the evidence of P.W-5-Dr.Judi Vinothini and the evidence of P.W-8-Beaulah Selvakumari, Grade-I Police Constable in Tiruchendur All Women Police Station. She had obtained the letter of the learned Judicial Magistrate, Sathankulam, on 16.08.2011 and with the requisition of the learned Judicial Magistrate, went to the Forensic Laboratory, Madurai and received FTA Card which is a card to obtain blood samples and thereafter, to conduct the test on the determination of the paternity of the child. Based on the FTA card obtained from the Forensic Laboratory, Madurai, she had produced the prosecutrix and her child David Yabesh and the accused Antony Xavier Raja before the learned Judicial Magistrate, Sathankulam. Thereafter, produced them before Dr.Sivakami, Medical Officer. She had handed over the FTA Card with blood samples to the learned Judicial Magistrate, Sathankulam and as per the order of the learned Judicial Magistrate, she handed over the same to the Forensic Laboratory, Madurai, with passport for that purpose.

11. P.W-11, Mahalakshmi, who conducted the forensic test had in her evidence stated that the test conducted on the basis of FTA card received from the Court of the learned Judicial Magistrate and on the basis of the Forensic Examination, the test revealed the cumulative probability of paternity of Antony Xavier Raja being the father of the male child David Yabesh is found to be 99.99999998%. The report is marked as Ex.P-11. The FTA Card was issued from the Forensic Laboratory, Madurai on the requisition of the learned Judicial Magistrate, based on the requisition of the Investigation Officer, during the custody of the accused. Accordingly, FTA Card was issued from the Forensic Laboratory, Madurai to Grade-I Police Constable -P.W-8 who had accompanied the accused and the prosecutrix along with their child to the Government Hospital where the Duty Medical Officer, Dr.Sivakami had obtained blood samples from the accused, during the period of arrest and custody of the accused. Therefore, the presumption regarding Forensic Analysis Report under Ex.P-11 FTA Card does not give an iota of doubt regarding the paternity of the child as the child is born to the prosecutrix and the accused. The argument of the learned Counsel for the Appellant/Accused cannot at all be accepted in the light of the presumption available under Section 114 of the Indian Evidence Act. The non-examination of Dr.Sivakami by the Investigation Officer is not at all fatal to the prosecution case. There is evidence that P.W-8-Beaulah Selvakumari had accompanied the accused and the prosecutrix along with their child to the Duty Medical Officer viz., Dr.Sivakami for taking blood samples as per the instructions in FTA Card which is a modern development regarding determination of paternity test being carried out throughout the world. The instructions are given to the Medical Officer under the FTA Card issued on a case to case basis by the Forensic Department only on requisition of the learned Judicial Magistrate concerned. The



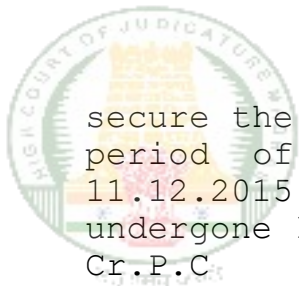
learned Judicial Magistrate addresses the Forensic Laboratory based on the requisition of the Investigation Officer on a case to case basis. Therefore, FTA Card issued is a standard procedure for determination of the paternity of the child. Therefore, there is a strong presumption available to the Court under Section 114 of the Indian Evidence Act regarding the test done by the Forensic Expert P.W-11 and the evidence of P.W-8-Woman Constable who had accompanied the accused and the prosecutrix along with the child born to the prosecutrix for taking blood sample before the Duty Medical Officer at Government Hospital. Nothing is found lacking or creating doubt in the prosecution case. Therefore, the Court has to draw strong presumption against the accused. The presumption in favour of the act done by the Investigation Officer through P.W-8 and issuance of FTA card by the Forensic Expert P.W-11 falsifies the claim of the accused. Therefore, nothing is found perverse. The learned Sessions Judge had elaborately discussed the evidence in her judgment and arrived at a logical deduction that the accused herein had by his conduct attracted the offence under Section 417 of IPC. Therefore, the argument of the learned Counsel for the Appellant/Accused is rejected.

12. As per the ruling of the Hon'ble Supreme Court, in appreciating the evidence by the Appellate Judge, if the learned trial Judge had appreciated the evidence properly and arrived at a just conclusion, the judgment of the learned trial Judge shall not be disturbed by the Appellate Judge, even though the Appellate Judge comes to a different view from that of the learned trial Judge in the same set of evidence. The learned trial Judge had the advantage of observing the demeanour of the witnesses and the accused. This advantage is not available to the learned Appellate Judge. Therefore, the finding of the learned trial Judge is to be given due weightage.

13. In the light of the above guidelines, this Court arrives at a just conclusion that the reasoned order of the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi, does not warrant any interference as it is not found perverse. Point for consideration is answered in favour of the prosecution and against the accused/Appellant. The judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi in S.C.No.148 of 2015, dated 11.12.2015 is not perverse.

**In the result, this Criminal Appeal is dismissed.**

The judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi in S.C.No.148 of 2015, dated 11.12.2015 is confirmed. The learned Sessions Judge, Fast Track Mahila Court, Thoothukudi, is directed to issue warrant to



secure the accused to forward him to prison to undergo the remaining period of sentence imposed on the accused by judgment dated 11.12.2015 in S.C.No.148 of 2015. The period of detention already undergone by the Appellant/Accused is set off under Section 428 of Cr.P.C.

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Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

SRM

To

1.The Sessions Judge,  
Fast Track Mahila Court,  
Thoothukudi.

2.-do-Through The Principal Sessions Judge, Thoothukudi.

3. The Inspector of Police,  
All Women Police Station,  
Tiruchendur,  
Thoothukudi District.

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

5.The Section Officer,  
Criminal Records,  
Madurai Bench of Madras High Court,  
Madurai. (2 COPIES)

+1 CC to M/s.M.SARAVANAN, Advocate ( SR-33466[F] dated 01/11/2021 )

**Cr1.A.(MD) No.380 of 2015**

**29.10.2021**

RD(03.02.2022) 8P 8C