

**BAIL SLIP**

Suresh, Male, 27 years S/o Marudai,
Petitioner/Appellant/Accused is released on bail of this Court order
dated 15.03.2016 made in CRL.MP(MD).No. 194 of 2016 in CRL.A(MD).No.
6 of 2016

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	15.09.2021
Date of Judgment	01.11.2021

CORAM:

THE HON'BLE MR JUSTICE R.PONGIAPPANCrl.A(MD)No.6 of 2016

Suresh : Appellant/Accused
Vs.

The State rep. by
The Inspector of Police,
Lalgudi All Women Police Station,
Trichy District.
(Crime No.8 of 2012)

: Respondent/Complainant

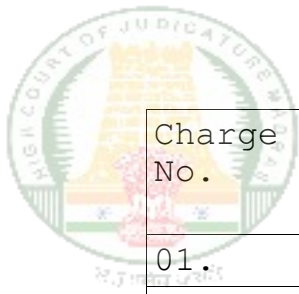
Prayer: Criminal Appeal is filed under section 374(2) of the Criminal Procedure Code, to call for the records pertaining to the judgment made in SC No.7 of 2015, dated 17.11.2015 passed by the learned Sessions Judge, Mahila Court, Trichy and set aside the same

For Appellant : Mr.B.Jameel Arasu
For Respondent : Mr.M.Muthumanikkam
Counsel for Government of
Tamil Nadu (Criminal side)
For Victim : Mr.T.Lenin Kumar

J U D G M E N T

This Criminal Appeal is directed against the conviction and sentence, dated 17.08.2015, made in SC No.7 of 2015 on the file of the Sessions Judge, Mahila Court, Trichy.

2.The appellant is the sole accused. He stood charged for the offence punishable under Sections 417, 376, 294(B) and 506(i) IPC. After full-fledged trial, the learned Sessions Judge came to the conclusion that the accused is found guilty under sections 417, 376, 294(B) and 506(i) IPC and accordingly, he has been convicted and sentenced as detailed below:-



Charge No.	Convicted under Section	Sentence of imprisonment/fine imposed
01.	417 IPC	Rigorous Imprisonment for one year
02.	376 IPC	Rigorous Imprisonment for 10 years
03.	506(i) IPC	Rigorous Imprisonment for one year
04.	294(B) IPC	Fine of Rs.500/-, in default to undergo one month Simple Imprisonment.

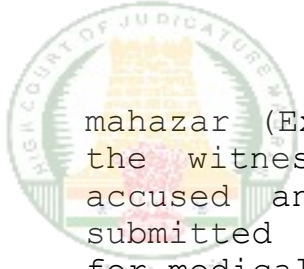
3.Dissatisfied with the said conviction and sentence, the appellant/accused is before this court with this Criminal Appeal.

4.The case of the prosecution in brief is as follows:-

(i)PW1 Agilandam is the victim girl. She is residing in Samayapuram, Mannachanallur Taluk and doing 'Kanmalar' sales business at Samayapuram Temple. Her mother Muniyammal is also doing the same business. The accused Suresh is residing nearby the house of the victim. During the relevant point of time, the accused called PW1 stating that he has to discuss an important matter. Since PW1 refused, the accused pulled her hand and after taking PW1 into his house, the accused locked the door. After locking the door, he gave kiss to PW1 and afterwards, he had sexual intercourse with PW1. After the occurrence, the accused instructed PW1 not to disclose the same to others. Further, he made a promise to marry her.

(ii)In the said circumstances, one day in the month of Aadi (Tamil month), PW1 became unconscious and fell down. After seeing the same, PW2 and the relatives of PW1 brought PW1 to nearby Poovathi Hospital, wherein after examination, the Doctor made a declaration as PW1 became pregnant. After knowing the entire sequence, PW1 and her relatives went to the house of the accused, wherein the accused denied the entire occurrence and told them that he had no relationship with PW1. Further, during that time, he abused PW2 with filthy language and kicked PW1 in her abdomen. Ultimately, PW1 prepared a complaint under Ex.P1 with the help of others and lodged the same before the Lalgudi Police Station. In the meantime, on 20.10.2012, she had given birth to one male child by name Athisree.

(iii)On receipt of the complaint from PW1, PW15-Tmt.Ajeem, then Inspector of Police, attached to Lalgudi Police Station registered a case in Crime No.8 of 2012 against the accused for the offence under sections 417, 376, 294(B) and 506(i) IPC. The printed FIR is Ex.P10. After registration of the above case, she took the same for investigation. She visited the scene of occurrence and in the presence of PW8-Megala and PW9-Anguraj, she prepared observation



mahazar (Ex.P2) and drawn rough sketch (Ex.P11). She also examined the witnesses and recorded their statements. She arrested the accused and sent him to judicial custody, on 05.09.2012. She submitted an application before the Judicial Magistrate, Lalgudi for medical examination of PW1.

(iv) In turn, in view of the proceedings issued by the learned Judicial Magistrate, Lalgudi, PW14 Dr. Prasanna Lakhmi, on 07.09.2013 examined the victim girl and issued a Medical Certificate under Ex.P9 stating that the age of the foetus is 8 months.

(v). In continuation of the investigation, PW15 presented one another application before the Judicial Magistrate, Lalgudi, wherein she prayed to conduct medication examination for the accused. Thereafter, PW10 Dr. Ravikumar, the then Assistant Professor of Trichy Government Medical College, on 26.09.2012 examined the accused Suresh and issued a Medical Certificate under Ex.P14 stating that there is nothing to suggest that the accused is not capable of taking part in sexual intercourse. After came to the knowledge that PW1 gave birth to a male child, PW15 presented an application before the Judicial Magistrate No.3, Trichy, wherein she prayed for conducting DNA test to PW1, the accused as well as to the child born to PW1.

(vi) In view of the above, PW12-Tmt. Lakhmi Subramanian, the Assistant Director of Forensic Department, Chennai, conducted a DNA test and after completion of the same, issued a certificate as the accused herein is the biological father of the child Athisree. Before the trial court, requisition for FTA Card and the DNA report issued by PW12 were marked as Exs.P7 to P8 respectively.

(vii) In the said circumstances, since PW15 got transferred from the said post, she had handed over the case records to PW16- Latha, for further investigation. PW16-Latha, the then Inspector of Police, attached to Lalgudi Police Station, after receipt of the case records from PW15, made efforts to complete the process of DNA test. Afterwards, PW17-Malarkodi continued the investigation and filled a final report stating that the accused is liable to be punished under Sections 417, 376, 294(B) and 506(i) IPC.

5. Based on the above materials, the trial Court framed charges against the accused under Sections 417, 376, 294(B) and 506(i) IPC. The accused denied the above charges and opted for trial. Hence, he was put on trial. In order to prove their case, on the side of the prosecution, 17 witnesses were examined as PW1 to PW17 and 17 documents were marked as Exs.P1 to P17.

(i) Out of the said witnesses, PW1 is the victim girl. She has spoken about the occurred as alleged by the prosecution. PW2 Muniyammal is the mother of PW1. She has spoken about the occurrence that when at the time of questioning the pregnancy of PW1 to the



accused, at that time, he made an abuse by using filthy language and assaulted on the abdomen of PW1. According to PW2, the accused was residing in her neighbouring house.

(ii) PW3 to PW7 are relatives of PW1. They have also spoken about the occurrence as that of the evidence given by PW2.

(iii) PW8 and PW9 have spoken about the preparation of the observation mahazar by PW15.

(iv) PW10 is the Doctor, attached to Trichy Government Medical College Hospital, has spoken about the medical examination conducted to the accused.

(v) PW11 is the Head Constable and she has spoken about the production of PW1 before the Doctor for medical examination.

(vi) PW12 Lakshmi Subramanian is the Assistant Director working in the Forensic Department, Chennai. She has spoken about the details in respect of DNA test conducted to the accused, PW1 and to the male minor child.

(vii) PW13 Pratheeba, is a police officer, has spoken about the collection of blood samples from PW1.

(viii) PW14 Dr. Prasannalakshmi is the Doctor attached with Trichy Medical College Hospital, speaks about the medical examination conducted to the victim.

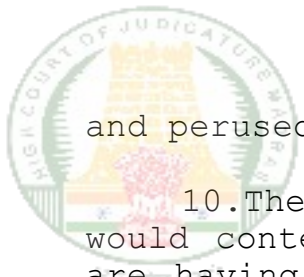
(ix) PW15 to PW17 are the police officers. They have given evidence in respect to the receipt of complaint, registration of the case, investigation and filing of final report.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C, the accused denied the same as false. However, he did not choose to examine any witness or mark any document on his side.

7. On consideration of the rival submission made by the learned counsel appearing on either side, along with relevant materials, the Trial Court found the appellant/accused found guilty for the offence under Sections 417, 376, 294(B) and 506(i) IPC, convicted and sentenced him as stated in Paragraph 2 of this judgment.

8. Aggrieved over the said findings of the trial court, the appellant/accused is before this court with this Criminal Appeal.

9. Heard the learned counsel appearing for the appellant/accused and the learned Government Advocate (Criminal side) appearing for the respondent/State as well as the counsel appearing for the victim



and perused the materials available on record.

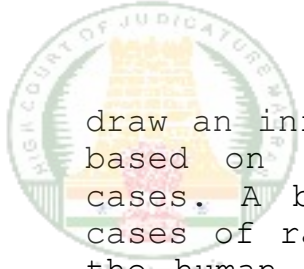
10. The learned counsel appearing for the appellant/accused would contend that the evidence given by the prosecution witnesses are having lot of contradictions and the evidence given by PW1 in her cross examination, established the fact that she is regularly indulging in sexual activities with the accused and therefore, the same would suffice to accept the case of the accused, as the alleged offence of rape committed by the accused is consensual one. It is the further submission of the learned counsel for the appellant/accused that the victim is a wayward girl and she is having relationship with so many persons and therefore, it cannot be said that the appellant, after making a false promise, indulged in sexual intercourse with PW1 and committed the offence of rape and accordingly, he prays for allowing this criminal appeal.

11. Repudiating the claim made by the appellant/accused, the learned Government Advocate (Criminal side) appearing for the respondent/State would contend that in a case registered under section 376 IPC, once the evidence of the victim is believed, it is settled that no corroboration is necessary. He has further contended that here is a case that PW1 in her chief examination stated that during the time of occurrence, the accused committed the offence of rape. Further in order to substantiate the same, the report of the DNA test has been marked as Ex.P8 to the effect that the accused is the biological father of the male child Athisree and therefore, it cannot be said that the alleged offence committed by the accused is with the consent of PW1. According to him, interference in the findings arrived at by the trial court does not require.

12. The rival submissions made by the counsel appearing on either side are considered.

13. Before the trial Court, the result of the DNA test has been marked as Ex.P8. As rightly contended by the learned Government Advocate (Criminal side), in view of the said report, the accused herein is the biological father of the male child, who has begotten by PW1.

14. Now on going through the Evidential Value of DNA Test in Rape Cases, it is a rule which is followed from earlier times that any subject which requires competence or special knowledge will be admissible in the court of law. In these cases, the special knowledge has to be provided by the witness who has acquired the particular knowledge or competence by any study, practice or experience. These kinds of witnesses in the legal terminology are known as "experts". Their opinions are justified to be proper evidence. The reason for such imposition is the lack of expertise of the courts in medical sciences; hence if not provided with the expert information, the court will be unaided and will be unable to



draw an inference to reach a particular conclusion. Such opinion is based on superior knowledge, skills and experience in the rape cases. A biologist can be considered as a perfect expert in the cases of rape as he is aware of the internal and external scars of the human body. The DNA tests used are not to answer the ultimate question but to answer or articulate a particular fact to smoothen the investigation. Although DNA Tests on the face of it appear to be conclusive yet they do not answer the whole question and only part of it.

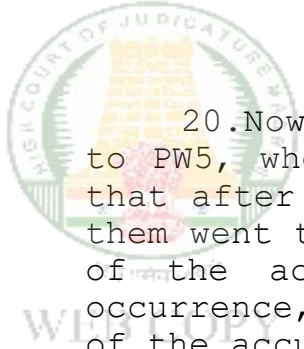
15. In the land mark judgment in the case of "**Kamalanantha Vs. State of Tamil Nadu**, Swami Premanand, a renowned swami had many female disciples. One of them charged him of rape and she also became pregnant. DNA test was ordered for identification of paternity of the father. Blood samples of the swami, disciple and baby were collected and analyzed which led to the conviction of swami.

16. Accordingly, in view of the above, I am of the considered opinion that the report of the DNA test is sufficient to decide the potent and as such, here it is a case, Ex.P8 report is the basic document and it is evident that the appellant herein had indulged in sexual intercourse with PW1. Therefore, it cannot be said that the offence of sexual intercourse cannot be happened between PW1 and the accused.

17. In the above circumstances, it is for the prosecution to prove that the alleged offence committed by the appellant is against the will of PW1. In this regard, on going through the evidence given by PW1, she has stated in her chief examination as during the relevant time, by compulsion, the accused pulled her hand and after taking into his house, locked the door and after giving kiss, had sexual intercourse with her. It is the subsequent evidence given by PW1 that after the occurrence, the accused instructed PW1 not to disclose the same to others.

18. Though PW1 has stated in her chief examination as above, in her cross examination, she has specifically stated that the entire occurrence happened only in the house of the accused. Further, she has stated that the accused had sexual intercourse for six times only by compulsion and without any consent from her and thereby, he committed the offence.

19. It is the specific evidence given by PW1 that on several occasions, when at the time of indulging sexual activities, the accused has stated before her, as he fell in love with her and willing to marry. The said evidence given by PW1 is sufficient to accept the case of the prosecution that during the time of the alleged occurrence, the accused without any consent from the PW1, committed the offence of rape.



20. Now on going through the subsequent act of the accused, PW2 to PW5, who are the relatives of PW1 have stated in their evidence that after came to the knowledge about the pregnancy of PW1, all of them went to the house of the accused and at that time, when the act of the accused was questioned, the accused after denying the occurrence, kicked PW1 on her abdomen. Therefore, the subsequent act of the accused is also admissible in evidence.

21. At this juncture, it is relevant to refer the decision of the Hon'ble Supreme Court in the case of **State of Maharashtra Vs. Chandraprakash Kewl Chand Jain (1990 AIR 658)**, wherein our Hon'ble Supreme court held as follows:-

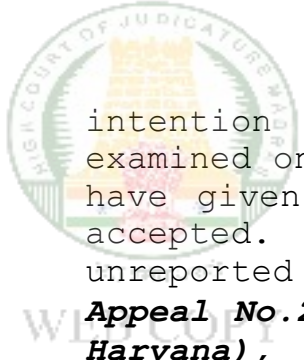
"..This is the conjoint effect of Sections 133 and 114, illustration (b). A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence.

22. Further, in the case of **Yedla Srinivasa Rao Vs. State of A.P [(2006) 11 SCC 615]**, our Hon'ble Apex Court has held as follows:-

"16. If sexual intercourse has been committed by the accused and if it is proved that it was without the consent of the prosecutrix and she states in her evidence before the court that she did not consent, the court shall presume that she did not consent. Presumption has been introduced by the legislature in the Evidence Act looking to atrocities committed against women and in the instant case as per the statement of PW1, she resisted and she did not give consent to the accused at the first instance and he committed the rape on her. The accused gave her assurance that he would marry her and continued to satisfy his lust till she became pregnant and it became clear that the accused did not wish to marry her.

23. Now, by applying the above ratio, laid down in the above referred judgment, here it is a case the evidence given by PW1 in respect of occurrence is narrow and inspire confidence of this court. Therefore, I am of the considered opinion that at the relevant point of time, the appellant/accused herein committed the offence of rape.

24. It is the stand taken by the appellant/accused before the trial court that he, being a married man not at all having any



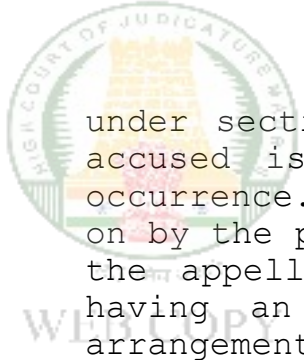
intention to commit such type of this offence. The witnesses examined on the side of the prosecution, being the relatives of PW1, have given false evidence and therefore, their evidence cannot be accepted. In support of his contention, he relied upon the unreported judgment of the **Hon'ble Apex Court made in Criminal Appeal No.2322 of 2010, dated 20.05.2013 (Deepak Gulati Vs.State of Haryana)**, wherein it has been held that due to the reason the prosecutrix after made wait, went along with the accused and indulged in sexual intercourse, the same cannot be treated as offence of rape. Therefore, the facts and circumstances of the above referred case is not applicable to the present case on hand.

25.Further, the learned counsel appearing for the appellant/accused would rely upon the celebrated judgment of the Hon'ble Apex Court in the case of **Uday Vs. State of Karnataka made in Appeal (Crl.) No.336 of 1996, dated 19.02.2003** and made a submission as PW1 being the grown up girl had known the consequence of sexual activities, only due to the reason that she had consent for the alleged offence, she has not disclosed the same for the period of seven months after became pregnant.

26.It is true that the evidence given by PW1 seems that she has not disclosed the matter of pregnancy immediately after the occurrence. Now on going through the deep study of the said evidence with the other facts and circumstances of this case, the same established the story that before the occurrence, PW1 and her mother are doing 'Kanmalar' business nearby the temple, wherein they selling pooja articles to the public. The said situation apparently shows that they were leading a life below the poverty line. In respect of the education qualification, nothing was suggested on the side of the accused as PW1 is an educated lady. PW1 had admitted in her cross examination as she has completed 9th standard. However considering the nature of the work doing by her, the said education qualification is not sufficient to know the consequence of the sexual intercourse. Therefore, even assuming that if the alleged offence is committed with the consent of the victim, the same cannot be treated as voluntary consent in nature. Accordingly in all, the evidence given by PW1 and others are substantially in support of the prosecution and therefore, I am of considered opinion that at the relevant time, the accused without any free consent from PW1, had sexual intercourse with her and thereby committed the offence of rape. Therefore, he is found guilty under section 376 of IPC and accordingly, the findings rendered by the trial court in respect of the offence under section 376 IPC is uphold.

27.Apart from the said findings, the trial court came to the conclusion that the appellant/accused found guilty under section 417, 506(i) and 294(B) IPC.

28.Among the above said offences, in respect of the offence



under section 417 IPC, it is for the prosecution to show that the accused is having an intention of teasing PW1, at the time of occurrence. In this regard, there was no direct eye witness relied on by the prosecution. On the other hand, the subsequent conduct of the appellant/accused would show that if really, the accused is having an intention of cheating PW1, it is for him to make arrangements for solemnizing marriage with PW1.

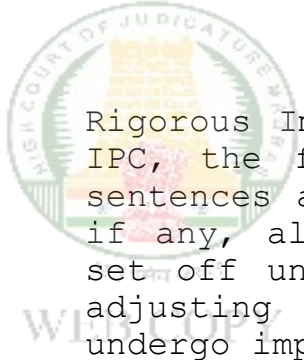
29. The other aspect, which is necessary to be discussed in this case is that it is the case of the defence that during the time of occurrence, the accused was a married man having three children. Therefore, though it was stated as his wife was away from his residence, being the married man, after indulging sexual activities with PW1, he kept quiet for considerable period, which shows that he had no intention of marrying PW1 and the same is sufficient to hold that the accused is an intention of cheating PW1. Accordingly, the findings rendered by the trial court for the offence under section 417 IPC is affirmed.

30. In respect of other offences, namely 294(B) and 506(i) IPC, the witnesses examined on the side of the prosecution did not say about the vulgar words used by the accused, while at the time PW2 to PW5 asked him about the pregnancy of PW1. Mere making assault of PW1 would not be sufficient to hold that the accused committed the offence under section 294(B) IPC. In the same way, the evidence, as referred on the side of the prosecution, does show any criminal intimidation made by the accused.

31. Now turning to the quantum of punishment, as already observed, for the offence under section 376 IPC, the trial court convicted and sentenced the appellant to undergo Rigorous Imprisonment for 10 years. In this regard, it is the stand taken by the witnesses examined on the side of the prosecution that the appellant/accused is a married man having three children. Further, it is the submission of the learned counsel appearing for the appellant/accused that the appellant/accused is the only breadwinner of the family.

32. Therefore, considering the above aggravating and mitigating circumstances, I am of the considered view that in respect of the offence under 376 IPC, sentencing the appellant to the tune of 7 years of Rigorous Imprisonment, would be sufficient to meet the ends of justice. In other words, in respect of the offence under section 417 IPC, the findings of the trial court shall stand unaltered.

33. In fine, this Criminal Appeal is partly allowed. The conviction and sentence imposed on the appellant/accused under sections 294(B) and 506(i) are set aside. In respect of the offence under section 376 IPC, the punishment imposed on the appellant/accused by the trial court is reduced to 7 years of



Rigorous Imprisonment. In respect of the offence under section 417 IPC, the findings of the trial court shall stand unaltered. The sentences are directed to run concurrently. The period of sentence, if any, already undergone by the appellant/accused shall be given set off under Section 428 of Cr.P.C. The appellant/accused, after adjusting the period of imprisonment already undergone, shall undergo imprisonment for the remaining period.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

er

Note:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

1. The Principal Sessions Judge, Trichy

2.The Sessions Judge,
Mahila Court,
Trichy.

3.The Inspector of Police,
Lalgudi All Women Police Station,
Trichy.

4.The Superintendent
Central Prison, Trichy.

5.The Judicial Magistrate, Lalgudi.

6.The Judicial Magistrate No.III,
Trichy.

7.The chief Judicial Magistrate, Trichy.

Copy to

1.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

<https://hcservices.ecourts.gov.in/hcservices/>



2. The Section Officer, (2C)
Criminal Section
Madurai Bench of Madras High Court,
Madurai

WEB COPY

SRK(CO)
KB(15.11.2021) 11P 11C

Cr1, .A(MD) No.6 of 2016
01.11.2021