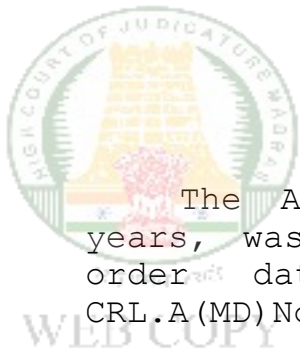




Bail Slip

The Appellant/Sole Accused viz, Kumar, male aged about 27 years, was directed to be released on bail, vide this court's order dated 30.06.2017 made in CRL.MP(MD)No.1103/2017 in CRL.A(MD)No.37/2017.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.06.2021

DELIVERED ON : 03.09.2021

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.A.(MD)No.37 of 2017

Kumar : Appellant/Sole Accused

Vs.

State

represented by Inspector of Police,
All Women Police Station,
Pudukottai.

(Crime No.13 of 2014)

: Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the judgment and conviction, dated 31.01.2017 by the learned Sessions Judge, Mahila Neethimandran, Pudukottai in S.C.No.179 of 2014 and acquit the appellant.

For Appellant : Mr.AR.L.Sundaresan
Senior Counsel
for Mr.D.Ramesh Kumar

For Respondent : Mr.T.Senthil Kumar
Government Advocate (Crl.side)

JUDGMENT

The appeal is filed by the accused, who had been convicted for an offence under Section 376(1) IPC and sentenced to undergo ten years rigorous imprisonment and fine of Rs.2,000/- and in default, to undergo one year rigorous imprisonment, by the learned Sessions Judge, Mahila Neethimandran, Pudukottai in S.C.No.179 of 2014, dated 31.01.2017.



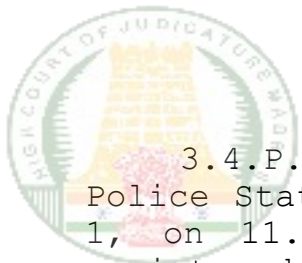
2. Heard Mr. AR. L. Sundaresan, learned Senior Counsel appearing on behalf of Mr. D. Rameshkumar, learned Counsel for the appellant and Mr. T. Senthil Kumar, learned Government Advocate (Crl. side) appearing for the respondent.

3. The brief facts, which are relevant for the disposal of the appeal, are as follows:

3.1. The victim is a resident of Murattusolaganpatti within the local limits of Kandharvakottai Police Station. She is residing with her parents and sister. The accused, Kumar, son of Shanmugam, is also the resident of the same village. On 10.08.2014, the victim's house construction was carried on. The mason, who was working there, was assisted by the victim, as a helper. By around noon, the mason sought water to drink from the victim. When she went inside the house, she found that water was not available. Therefore, she went with pot to bring water from the public tank. While going out to bring water, she wanted to answer nature's call. Therefore, by around at 12.30 pm., she had gone to the deserted place on the bank of Sivanthan tank. When she was returning after answering nature's call, the accused, who is a cousin to the victim and a neighbour, caught hold of her shirt collar and dragged her into the bushes on the side of the Sivanthan tank. He had clogged her mouth to prevent her from shouting. Holding her hands behind her back and dragged and taken her into a plot belonging to one Rangarajan, which is surrounded by bushes and forced himself on her and forcibly had sexual intercourse with her. He had bitten her cheeks and breasts. She struggled.

3.2. P.W-2-Lakshmi, the elder sister of the victim girl finding that the victim had not returned after fetching water, went in search of her near the pump. On hearing her crying for help, she went in search of the place, from where the cries emanate. When she was approaching the place, where the accused had forcible himself on the victim girl, on seeing P.W-2 approaching, he suddenly stood up and ran away from the place of occurrence. P.W-1-victim girl accompanied her to the house.

3.3. On returning of their parents, P.W-1-victim girl and P.W-2-elder sister, informed their parents. Since the accused, Kumar, happened to be a relative, cousin and residing in the same village, the parents of the victim girl, approached the parents of the accused and demanded to marry the victim girl. They declined. Therefore, a panchayat was held by P.W-5- Palanivel. Since the parents of the accused was not amenable to the suggestion for amicable settlement for marrying the victim girl to the accused Kumar, P.W-5 asked the parents of the victim to approach the police and initiate legal action. Accordingly, P.W-1-victim, along with her parents, came to All Women Police Station, Pudukottai and preferred a complaint under Ex.P-1.



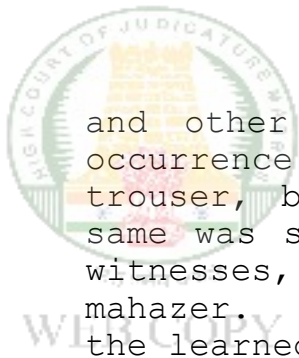
3.4.P.W-15-Mallika, Woman Sub Inspector of Police, All Women Police Station, Pudukottai, on receipt of the complaint under Ex.P-1, on 11.08.2014, at around 01.00 a.m., from the victim girl, registered a case in Cr.No.13 of 2014 of All Women Police Station, Pudukottai under Section 376 IPC under Ex.P-19 and sent the express FIR to the Court of the learned Judicial Magistrate and place the same to the Inspector of Police, for investigation.

3.5.P.W-17-Kayalvizhi, Inspector of Police, All Women Police Station, on receipt of the FIR, under Ex.P-19, commenced the investigation. She visited the occurrence village, Murattucholaganpatti, where the alleged crime had taken place. She had examined the victim, P.W-1 and recorded her statement. On the same day, she had recovered the dress worn by victim, P.W-1, such as, brown colour inskirt, blood stained orange colour inskirt, sandalwood colour collar shirt, green colour jacket, under Form-95.

3.6.P.W-17-Kayalvizhi, Inspector of Police, All Women Police Station, had visited the place of occurrence, the plot belonging to Rengarajan and prepared observation mahazer under Ex.P-2, seizure mahazer under Ex.P-3 and rough sketch under Ex.P-21 in the presence of witnesses, Muniraj and P.W-6-Chinnappa and examined the witnesses, Muniraj and P.W-6-Chinnappa. She had examined the sister of the victim girl, P.W-2-Lakshmi, P.W-3-Kamaraj, P.W-4-Asaithambi, Senthil Kumar and Boopathy and recorded their statements. Also, she had sent a requisition to the learned Judicial Magistrate to forward the victim girl for medical examination to determine her age and to determine the fact of sexual assault on her.

3.7.P.W-17-Inspector of Police, had forwarded the victim girl through memo from the Police Station to the Government Head Quarters Hospital, Pudukottai for medical examination, where P.W-7-Dr.Lakshmi Priya, had subjected the victim to medical examination through radiological examination and issued the age certificate of the victim girl between 20 and 25 years under Ex.P-7. P.W-1-Victim girl was also subjected to medical examination by P.W-12-Dr.Mala and she had issued Ex.P-16, regarding the examination conducted on her regarding the allegations of sexual assault, wherein, she had stated that bite markings were seen over her right breast and right cheek; her vagina admits two fingers; her hymen not intact; bleeding PV at present.

3.8.On receiving the information that the accused was found near bus stand at Gandharvakottai, P.W-17-Inspector of Police, proceeded to Gandharvakottai bus stand and in the presence of witnesses, Muniraj and P.W-6, arrested the accused and recorded his confession statement. He had confessed to the Investigation Officer that if he is taken to his residence, he will hand over the lungi



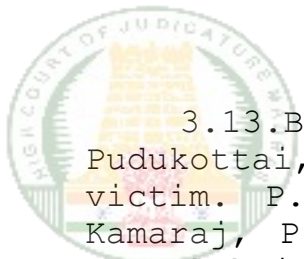
and other dress materials worn by him at the time of alleged occurrence and accordingly, he had handed over the black colour trouser, brown colour lungi and green colour checked shirt. The same was seized by P.W-17-Investigation Officer in the presence of witnesses, Muniraj and P.W-6-Chinnappa, under Ex.P-5, seizure mahazer. She had forwarded the accused for remand to the Court of the learned Judicial Magistrate on 11.08.2014.

3.9.P.W-17, the Inspector of Police, had forwarded a requisition letter along with the remand request to the Court of the learned Judicial Magistrate, requesting to remand the accused and also to request for medical examination regarding the age of the accused, regarding the medical examination on his mental strength and regarding the potency of the accused. Based on the letter of request by the learned Judicial Magistrate, the accused, was forwarded to the Government Hospital, Pudukottai, regarding the medical examination to determine the age of the accused, to determine his mental status and to determine his potency, whereupon, P.W-8-Indu Priyadharshini, had examined the accused and after examination of the accused, she had issued the age certificate of the accused as between 20 and 25 years, based on the radiological test, under Ex.P-6. Also, P.W-8-Dr.Indu Priyadharshini, had examined the accused based Accident Register under Ex.P-8 and issued report under Ex.P-9 regarding the normal health and he is not impotent.

3.10.She had further examined the witnesses, Sekar, Karuppiyah and P.W-5 and recorded their statements. P.W-17 had further examined the doctors, P.W-7-Dr.Lakshmipriya, P.W-8-Indu Priyadarshini and P.W-12- Dr.Mala. She had sent requisition letter to the learned Judicial Magistrate to forward the materials seized by her for forensic examination.

3.11.The materials sent from the Court of the learned Judicial Magistrate to the Forensic Lab was examined by Forensic Experts, P.W-10-Jeya and P.W-16-Nirmala Bhai. Based on the forensic examination of the dresses worn by victim girl and the accused, P.W-10-Jaya had issued Ex.P-10. P.W-16-Nirmala Bhai, had issued Ex.P-20, which is the DNA test report. P.W-17 had examined the forensic experts, P.W-10 and P.W-16. After completion of investigation, P.W-17-Inspector of Police, had laid charge sheet before the Court of the learned Judicial Magistrate.

3.12.The case was taken up by the learned Sessions Judge, Mahila Court and numbered as S.C.No.179 of 2014. On perusal of the records and materials available before the learned Sessions Judge, Mahila Court, Pudukottai, the charges were framed against the accused under Section 376(1) of IPC. The accused pleaded not guilty to the charges and claimed to be tried.

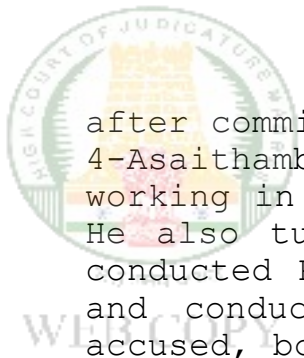


3.13. Before the learned Sessions Judge, Mahila Court, Pudukottai, witnesses P.W-1 to P.W-17 were examined. P.W-1 is the victim. P.W-2- Lakshmi, is the elder sister of victim. P.W-3- Kamaraj, P.W-4-Asaithambi, P.W-5-Palanivel, P.W-6-Chinnappa, P.W-7-Dr.Lakshmipriya, P.W-8-Dr.Indhupriyadharshini, P.W-9-Sekar, P.W-10-Jaya, Forensic Expert, P.W-11-Kribhakaran Madhuran, learned Judicial Magistrate, who recorded 164 statement of victim, P.W-12-Dr.Mala, P.W-13-Soosai Manoharan, P.W-14-Anuradha, P.W-15-Mallika, Sub Inspector of Police, P.W-16-Nirmala Bhai, Forensic Experts and P.W-17-Kayalvizhi, Inspector of Police, were examined and Ex.P-1 to Ex.P-22 and M.O-1 to M.O-8 were marked.

3.14. As per the evidence available before the learned Trial Judge, the incriminating evidence against the accused was put to him. The accused denied the incriminating evidence. The defence of the accused is that the victim girl is a cousin of the accused. The victim girl is the paternal aunt's daughter. The parents of the accused arranging the marriage of the accused with his maternal uncle's daughter. The parents of the victim girl approached the parents of the accused to marry to the victim girl to the accused, which was declined by the parents of the accused. Enraged by the same, the parents of the victim with the help of an influential woman in the locality had foisted a false case against the accused, as though the accused committed rape on the victim girl on 10.08.2014 by around 12.30 p.m. near their residence, when the victim girl had gone to fetch water for the mason, who was working in their house. The date and time of occurrence is imaginary one. The case had been foisted on him.

3.15. After due trial and appreciation of evidence and after hearing the arguments, the learned Sessions Judge, Mahila Court at Pudukottai, had by judgment, dated 31.01.2017, found the accused guilty and convicted him for the offence under Section 376(1) IPC and sentenced him to undergo ten years rigorous imprisonment and a fine of Rs.2,000/-, in default, to undergo one year rigorous imprisonment. Aggrieved by the same, the present appeal is filed.

4. Mr. AR. L. Sundaresan, learned Senior Counsel for the Appellant had invited the attention of this Court to the deposition of witnesses, particularly, P.W-1-victim and P.W-2-elder sister of the victim and also to the fact that Ex.P-1-complaint lodged by the victim girl. The complaint was lodged one day after the alleged occurrence. So there was a delay. There was ample time to design the complaint and after due consultation, they had foisted the case through Ex.P-1 complaint. He further invited the attention of this Court to the list of witnesses. P.W-1 is the victim girl. P.W-2 is the elder sister of the victim girl. P.W-3 is the alleged person, who is said to have accompanied P.W-2-Lakshmi, on the date of occurrence near the place of occurrence, whereupon, on seeing P.W-2-Lakshmi and P.W-3-Kamaraj, the accused is alleged to have ran away



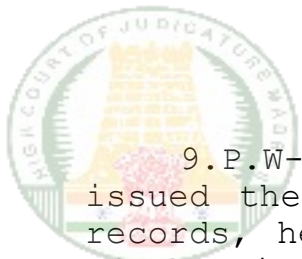
after committing sexual assault. P.W-3 was turned as hostile. P.W-4-Asaithambi, is the alleged person, who is said to have been working in the house of victim on the date of occurrence, as Mason. He also turned hostile. P.W-5-Palanivel, is the person, who had conducted Panchayat in the village regarding the alleged occurrence and conducted a mediation to marry of the victim girl to the accused, both being cousins. Therefore, he had directed the parents of the victim girl to approach the police as per law.

5.P.W-6-Chinnappa, witness regarding observation mahazar and seizure mahazar. P.W-7-Dr.Lakshmi Priya had issued Ex.P-6 regarding the age of the accused. There is no dispute regarding the age of the accused. P.W-7 had issued certificate after medically examining the accused regarding his mental health, physical health and potency and issued certificate of potency, for which there is no dispute. P.W-9-Sekar, who was working as a conductor, had been examined regarding the issuance of ticket for Rs.8/- alleged to have been seized from the alleged place of occurrence. But, P.W-9-Sekar, could not identified the accused, however, the accused could have travelled in the bus with the said ticket for Rs.8/-. Therefore, there is no dispute regarding the same.

6.P.W-10-Jaya, who is employing as Expert in the Regional Forensic Science Laboratory, Trichy, had, in her evidence, deposed that the materials sent to her under M.O-1 to M.O-8 did not contain either semen or saliva or blood. The dresses worn by the victim girl on the alleged date of occurrence did not contain the blood and whether the blood was menstrual blood or normal blood, they were unable to give opinion. For which she had issued Ex.P-12.

7.Ex.P-11-Kirubakaran Madhuran, learned Judicial Magistrate, who had recorded the statement of the victim under Section 164 Cr.P.C., through whom, Ex.P-13 to Ex.P-15 were marked. P.W-12-Dr.Mala, who had examined the victim girl and issued the medical examination report under Ex.P-16.

8.Mr.AR.L.Sundaresan, learned Senior Counsel invited the attention of this Court to the portion of Ex.P-16 and the evidence of P.W-12- Dr.Mala, wherein, she had stated that on examination of the victim girl, she found that there were bite markings on the right cheek and right breast of the victim girl. On examination of her genital, slight vaginal swap was taken for forensic examination. On her oral examination, the victim girl stated that she had suffered bleeding twenty days prior to the date of occurrence. Her hymen was not ruptured, but, it was not intact. Her vagina admits fingers. In her cross examination, she had stated that rupture in the hymen may be caused due to several factors. She had admitted that she had not offered any details explaining the bite markings seen on the right breast and right cheek of the victim girl.



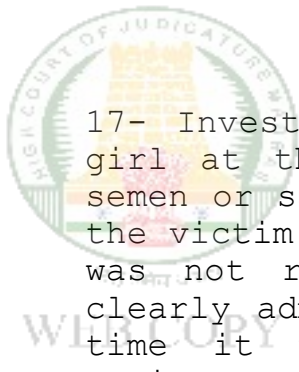
9.P.W-13-Soosai Manoharan, who is working as Headmaster, had issued the age certificate for the victim girl and as per school records, he had issued the age certificate regarding date of birth of the victim as 19.04.1995 under Ex.P-18 and she was a major on the date of occurrence and therefore, no issue regarding the age of the victim girl. P.W-14- Anuradha, had taken the material objects to the Regional Forensic Science Laboratory, Trichy, on the orders of the learned Judicial Magistrate, Pudukottai. No dispute regarding her evidence.

10.P.W-15-Mallika was working as Sub Inspector of Police, All Women Police Station on the date of receipt of the complaint under Ex.P-1 and registered the FIR under Ex.P-19. Mr.AR.L.Sundaresan, learned Senior Counsel invited the attention of this Court to the portion in the cross examination of P.W-15-Mallika, wherein, she had stated that she does not know whether the Inspector of Police, All Women Police Station, had forwarded the victim girl with the same dress, which she had worn at the time of alleged occurrence and she came to the police station and lodged the complaint, to the medical examination.

11.The learned Senior Counsel for the appellant read out from the portion of the deposition of P.W-16 regarding the forensic examination and her deposition in the cross examination. He submitted that in the cross examination, she had stated that in cases where blood samples are collected, there is a prescribed format, which is issued to the Court of the learned Judicial Magistrate in criminal cases, wherein, DNA tests are undertaken. This format has to be used through the office of the learned Judicial Magistrate when forwarding the samples to DNA examination and the blood samples are collected based on the said format through Doctors in the Government Hospital on the orders of the learned Judicial Magistrate. The suggestion by the learned Counsel for the accused during trial, that was put up in the cross examination, was denied by P.W-16 that the said procedures were not followed in this case.

12.P.W-17-Investigation Officer had spoken to about the proceedings with the investigation after receipt of the FIR under Ex.P-19 and examination of the witnesses, preparation of the observation mahazar, seizure mahazar, rough sketch and recording the statement of victim girl and other witnesses, arrest of the accused and forwarding the accused to the medical examination and forwarding the victim girl to the medical examination and laying of final report.

13.The learned Senior Counsel had invited the attention of this Court to the portion of the deposition in cross examination of P.W-



17- Investigation Officer. The dress materials worn by the victim girl at the time of the alleged occurrence might have contained semen or saliva of the accused, the blood of the accused as well as the victim girl. But, Form-95 prepared by the Investigation Officer was not received in the Court. The Investigation Officer had clearly admitted that Form-95 does not contain the details at what time it was received in the Court of the learned Judicial Magistrate. She had denied the suggestion that on 11.08.2014, the alleged seizure of the dress materials of the victim girl was not handed over to the Court of the learned Judicial Magistrate. She admitted that on 12.08.2014, the dress materials were handed over to the Court of the learned Judicial Magistrate was not found in Form-95. She had denied the suggestion that the dress materials of the victim girl was not at all seized under Mahazar and not at all handed over to the Court under Form-95. She also denied the suggestion that the ticket alleged to have been seized from the place of occurrence and the dress worn by the accused was also prepared subsequently, is an after-thought to suit the case. She admitted the fact that the dress materials of the accused, when subjected to forensic examination, did not contain the semen or blood or saliva. She denied the suggestion that the case was framed case.

14.The learned Senior Counsel read out from the cross examination of P.W-1, victim girl where she had conceded that she came to know about the marriage arrangement between the accused and his maternal uncle's daughter., "எதிரி என் அதை மகன். கனகா என்ற பெண்ணைத் தெரியும். அது எங்களது பங்காளி வீட்டுப் பெண். அதனை எதிரிக்கு கல்யாணம் செய்து வைப்பதாக பேசினார்கள். எங்கள் வீட்டில் என்னை எதிரிக்கு திருமணம் செய்து வைப்பதற்கு எண்ணம் உண்டு. என்னை திருமணம் செய்து வைப்பதற்கு எதிரியின் பெற்றோர்கள் ஒத்துக் கொள்ளவில்லை."

15.P.W-1 had caused the disappointment on her. She had conceded that they have a pet dog on her home. She had denied the suggestion that this case was foisted on the accused to settle a score for their parents not agreeing to marry the victim girl, who is the paternal aunt's daughter, to the accused. The same fact had been conceded in the cross examination of P.W-2.

16.While describing the bite markings on the right cheek and right breast of the victim girl, P.W-12-Dr.Mala, had in her cross examination stated that she had not mentioned the details of the tooth mark. Therefore, the learned Senior Counsel for the appellant submitted that even by bite of the pet dog, the bite markings can be inflicted. The said suggestion of the learned Senior Counsel for the appellant cannot be accepted, especially, when this was not put to P.W-12-Dr.Mala in her cross examination, the bite marks caused by the pet dog will be surely different from the bite marks of a human being. That is why, the learned Counsel for the accused during the trial, had stopped with the suggestion that the Doctor had not given



17.If the line of arguments of the learned Senior Counsel for the appellant in this appeal is to be accepted, there should have been suggestion, that is put to P.W-1, that bite markings seen on the right breast and right cheek of the victim girl was caused by the pet dog. That is why, the learned Counsel for the accused during the trial had stopped with the cross examination of P.W-1 regarding victim girl having a pet dog at home and had not put suggestion regarding the bite marking seen on the right cheek and right breast of the victim girl was caused by the pet dog.

18.The arguments of the learned Senior Counsel regarding the forensic examination is found acceptable and reasonable that the blood or saliva had not been found on the dress materials of the victim girl. As per the evidence of the P.W-16 that this may be due to lackadaisical shoddy investigation of the Investigation Officer. The evidence of P.W-12 is found acceptable regarding the medical evidence regarding the sexual assault.

19.The arguments of the learned Senior Counsel that the place of occurrence is very near to their house. The scene of occurrence, as alleged by the victim girl, is not far away from the Ration Shop and near the house of the victim girl. P.W-4 is said to have been working as mason on the date of occurrence in the house of P.W-1-victim would have heard the cries of the victim girl, if she had really been assaulted sexually by the accused. Since nobody heard the same, the said case is a cooked up case. That is why the dress materials worn by the victim girl did not contain semen, saliva, etc.

20.By way of reply, Mr.T.Senthil Kumar, learned Government Advocate (Crl. Side) submitted his arguments. As per his oral arguments, the learned Trial Judge had relied on the evidence of P.W-1, P.W-2, P.W-10, P.W-11, P.W-16 and P.W-17 in support of the case of the prosecution. Apart from all these evidence, P.W-11, Kirubakaran Madhuran, learned Judicial Magistrate, who had recorded the statement under Section 164 Cr.P.C., of the victim girl, was examined. The learned Trial Judge, in Paragraph Nos.10, 11, 14, 18 and 19, had discussed in detail regarding the medical evidence and forensic evidence and the valuable defence that was put in the arguments before the learned Trial Judge, rejected the contention of the learned Defence Counsel and arrived at a just opposite conclusion that the occurrence alleged to have been taken place, as per the evidence of prosecutrix, had inspired confidence in the learned Sessions Judge to arrive at a just conclusion that the guilty of the accused had been proved beyond reasonable doubt.

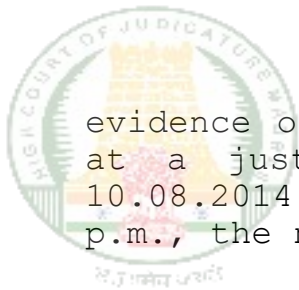
21.The learned Government Advocate (Crl. Side) invited the attention of the Court to the discussion of the learned Sessions



Judge in paragraphs Nos.10, 11, 13, 14, 18 and 19 in the judgment. Also, the learned Government Advocate (Crl. Side) submitted that the learned Trial Judge had the benefit of watching demeanour of the witnesses and the accused, which is not available before the Appellate Court. Therefore, as per the principles governing the appeals, when a finding of learned Trial Judge is based on proper appreciation of evidence as per the Indian Evidence Act, by the learned Trial Judge, even if the Appellate Court comes to a just opposite conclusion on the same set of evidence, the finding given by the learned Trial Judge has more weightage, as the learned Trial Judge has the benefit of demeanour of witness and demeanour of accused. Therefore, under those circumstances, the finding arrived at by the learned Sessions Judge on proper appreciation of evidence shall not be disturbed. Therefore, this Appeal lacks merits and the Appellate Court shall not interfere with the findings arrived at by the learned Trial Judge and the Appeal has to be dismissed, as having no merits.

22.On perusal of the Judgment of the learned Sessions Judge, dated 31.01.2017, as pointed out by the learned Government Advocate (Crl. Side), the learned trial Judge had elaborately discussed the evidence available before him including the Doctor's evidence and the Forensic Expert's evidence and had arrived at a just conclusion that the charges framed against the accused under Section 376(1) of IPC had been proved by the prosecution beyond reasonable doubt.

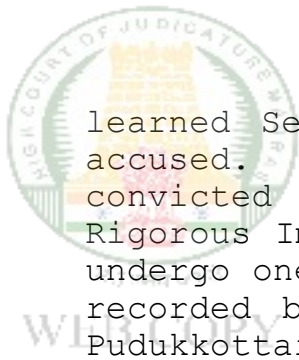
23.The delay in FIR is justified. The accused is a relative of the Prosecutrix. P.W-5-Palanivel, is the prominent person in the village, who had conducted the Panchayat at the behest of the family of the victim. He had deposed in his evidence that he had conducted the meeting by summoning the accused and his parents to appear before the Village Panchayat. The accused and his parents did not appear. Therefore, the Villagers directed the victim's family to approach the Police for their redressal. Only then, the FIR was registered. Therefore, there is a delay of one day in lodging the FIR. This had been explained by the Prosecution through P.W-5. P.W-5 had denied the suggestion of the defence that he had given false evidence at the behest of the family of the victim. The evidence of P.W-5 is natural regarding the delay in lodging the FIR. Even though, the other witnesses had remained hostile, the prosecutrix evidence was supported by the evidence of her sister P.W-2-Lakshmi. The learned Judicial Magistrate, Alankudi, Thiru.Kirubakaran Madhuran, had deposed evidence as P.W-11. He had recorded the statement of the victim/prosecutrix under 164 Cr.P.C. P.W-12-Doctor Mala, who had examined the prosecutrix on the direction of the learned Judicial Magistrate had issued Ex.P-16, wherein she had stated about the bite marks on the cheek and breast of the prosecutrix. She had also observed that while examining the prosecutrix, she observed that bleeding on her vagina and hymen was not intact. Therefore, the learned Sessions Judge based on the



evidence of the witnesses of P.W-1 to P.W-5 and P.W-11 had arrived at a just conclusion that the occurrence had taken place on 10.08.2014 at 12.00 p.m. and she was examined on 11.08.2014 at 3.15 p.m., the next day, after the occurrence.

24.As pointed out by the learned Senior Counsel, there are loopholes in the investigation, but the result of the shoddy investigation cannot be used in favour of the accused, particularly, in offences against women, particularly, sexual assault. If the evidence of the prosecutrix inspires confidence of the Court, the accused can be convicted. P.W-2 is the sister of the prosecutrix. P.W-1 and P.W-2 had admitted in their cross examination that they are aware that the accused and parents of the accused had arranged marriage with the maternal uncle's daughter with the accused, whereas the prosecutrix is the paternal uncle's daughter and that cannot be a ground to believe that it is a foisted case. Therefore, the submission of the learned Senior Counsel that based on the admission in cross examination of P.W.1 and P.W.2 that this is a foisted case, is rejected.

25.On perusal of the judgment of the learned trial Judge, the learned trial Judge had elaborately discussed the evidence and arrived at a just conclusion that the apparel worn by the victim girl contained blood stain of the accused Kumar, which is marked as Ex.P-20. P.W-16-Forensic Expert was examined regarding the procedure adopted in DNA examination. She had stated about card, which was sent to the Hospital through the Police, based on which the samples are obtained. In the cross examination of P.W.16-the details regarding the Reception Guard was put before her, for which, she had stated that the person in charge of the Reception Department of the Forensic Department receives the case properties from the Courts concerned. The Reception Department is satisfied with the seals found on the case properties are intact. Only then, the case properties are taken for forensic analysis. The cross examination of P.W-16 is unwarranted. The Court had already issued guidelines that the Forensic Experts need not be examined during trial, as they are performing their duties as per the scientific methods and principles. Their opinion is only an opinion. There is presumption available before the Court under Section 114 of Indian Evidence Act. The officers of the State are presumed to be as per law. Deposition of P.W-16 had clearly stated about the test carried out by the Forensic Department on the blood stain of the accused/Kumar on the apparel worn by the prosecutrix at the time of the crime. Therefore, based on the said report of the Forensic Expert under Ex.P-20, the learned Sessions Judge, Fast Track Mahila Court, Pudukottai, by his judgment dated 31.01.2017 had arrived at a logical conclusion that the accused herein alone had committed the offence of rape under Section 376(1) of IPC. The charge framed under Section 376(1) of IPC was proved by the prosecution beyond reasonable doubt. Therefore, by the judgment, dated 31.01.2017, the



learned Sessions Judge had recorded the findings of guilt on the accused. The learned Sessions Judge, Fast Track Mahila Court, had convicted the accused and sentenced him to undergo 10 years of Rigorous Imprisonment and pay a fine of Rs.2,000/-, in default, to undergo one year of Simple Imprisonment. The judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Pudukkottai, is confirmed.

26.However, considering the age of the accused and the relationship, sentence of 10 years of Rigorous Imprisonment is modified to 7 years of Rigorous Imprisonment.

In the result, this Criminal Appeal is partly allowed. The conviction is upheld and the sentence alone is reduced.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cmr/dh

To

- 1.The Sessions Judge, Mahila Neethimandram, Pudukottai.
- 2.The Judicial Magistrate,Pudukkottai.
- 3.The Chief Judicial Magistrate,Pudukkottai.
- 4.The Superintendent,
Central Prison,Trichy.
- 5.The Inspector of Police,
All Women Police Station,
Pudukottai.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CRL.A. (MD) No.37 of 2017
03.09.2021

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