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Crl.A.No.219 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.09.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.219 of 2018

The State represented by
The Public Prosecutor,
High Court, Madras – 104.
[Kurinchipadi P.S.,
Crime No.228 of 2013]

... Appellant

Vs

1. Arumugam

2. Sumathi

...Respondents

PRAYER : This Criminal Appeal has been filed under Section 378(i)(b) of Criminal Procedure Code, to allow the appeal and set aside the judgment of acquittal of the respondents/accused [A-1 & A-2] Sessions Case No.95 of 2016 dated 14.09.2017 by the District Sessions Mahila Court, Cuddalore and convict the respondents/accused [A-1 & A-2] for the charges framed against them.

For Appellant : Mr.R.Murthi
Government Advocate (Crl. Side)

For Respondents : No appearance



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JUDGMENT

This appeal is arising out of the Judgment of acquittal of respondents 1 and 2 herein in Sessions Case No.95 of 2016 dated 14.09.2017 on the file of the District Sessions Mahila Court, Cuddalore.

2. The case of the prosecution is that A1 is the maternal uncle of the victim. It is alleged that A1 gave some sedative medicine mixed with Fanta Cool drinks to the victim and raped the victim, due to which, she got conceived. Hence, the complaint.

3. In order to prove the case, the prosecution has examined P.W.1 to P.W.10 and marked the exhibits P.1 to P.8. No one was examined and no exhibits were marked on behalf of the respondents herein. A perusal of the material evidence, the Trial Court found that the respondents are not guilty and concluded from the charges under Sections 376, 506(2) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act as against the first respondent and insofar as the second respondent is concerned, she was also not found guilty and concluded and acquitted for the offences punishable under Section 352 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. Aggrieved by the same, the petitioner herein filed this appeal.



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4. The learned Government Advocate (Crl.Side) submitted that the Trial Court failed to consider the DNA report which was marked as Ex.P.5 which cogently proved the birth of female child viz, Divyadharshini, is the daughter of the first respondent herein. The evidence of P.W.1 and P.W.2 are cogent and corroborative to each other. Without even considering the evidence of P.W.1 and P.W.2, the Trial Court acquitted the respondents.

5. A perusal of the evidence of P.W.1, who is the victim revealed that on 20.06.2011, the first respondent committed rape on the victim, due to which, she got pregnant and delivered a female child. In order to prove that the female child was born through the first respondent herein, the samples were taken for examination to Forensic Sciences Department. The forensic science laboratory report was marked as Ex.P5. After conduction of DNA test, found that the first respondent is the father of the female child born to the victim.

6. The case of the victim is that she is aged about 40 years. The first respondent is her maternal uncle. The second respondent is the wife of the first respondent. On 09.09.1990, the victim got married with one Sridhar. After a



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period of eight years from the date of their marriage, through test tube they gave birth to a child. The said Sridhar was employed in Dubai in a company. In the same company, the first respondent was also working as a Manager. While being so, on 13.06.2011, the first respondent herein attended the house warming ceremony of the victim's brother. After house warming ceremony, when the father of the victim and the first respondent were consuming alcohol, it was condemned by the victim. At that juncture, the first respondent offered for a cool drink called “fanta” to the victim and after consuming the same, the victim fell unconscious and thereafter, the first respondent committed rape on her. In fact, the very next day also he attempted to commit rape on the victim. Thereafter, the victim got pregnant. However, when the victim's husband visited India, she did not disclose her pregnancy. After returning to Dubai, she informed to him that she got pregnant. After the delivery, when her husband visited India, he questioned the victim about her pregnancy. Thereafter, the matter was placed before the Panchayat and before the Panchayat, the first respondent agreed to pay a sum of Rs.5000/- as monthly maintenance and Rs.7,50,000/- as full and final settlement. On the strength of the said communication, the victim had withdrawn her complaint. Thereafter, the victim lodged a complaint and after completion of investigation, the appellant filed a



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final report for the offences under Section 352 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act as against the second respondent herein.

7. A perusal of records revealed that the first respondent though committed rape on the victim on 20.06.2011, the victim went for the first respondent's house warming ceremony, which was held on 01.09.2011. It is also corroborated by the statement of P.W.2. If at all, the victim was raped by the first respondent on 20.06.2011, the victim could not have attended the house warming ceremony of the first respondent herein. In fact, it was not informed even to her mother. When her husband visited India, it was also not disclosed to him. Only after her husband questioned about the birth of a female child, the victim disclosed that the first respondent committed rape on her. Therefore, only on the victim's consent, she had physical relationship with the first respondent herein. After giving birth to a female child, there was a Panchayat and in the Panchayat, the first respondent agreed to maintain the child and also agreed for full and final settlement. Thereafter, the first respondent failed to comply with the said conditions and as such, the victim lodged a complaint.



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8. Therefore, the prosecution failed to prove any of the charges framed as against the respondents 1 and 2 herein. Hence, the Court below rightly acquitted the respondents 1 and 2 herein and this Court finds no infirmity or illegality in the order passed by the Court below and this appeal is liable to be dismissed.

9. Accordingly, this Criminal Appeal stands dismissed.

26.09.2022

Speaking order/Non-speaking order

Index :Yes/No

Internet :Yes/No

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To

1. The District Sessions Mahila Court, Cuddalore

2. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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