



Crl.R.C.No.503 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 26.07.2022

Pronounced on : 01.08.2022

Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Criminal Revision Case No.503 of 2015

Prabhakaran

... Petitioner/Accused

/versus/

State Rep. by
Inspector of Police,
All Women Police Station,
Arakkonam,
Vellore District.

... Respondent/Complainant

Prayer:- Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., to set aside the judgment of the Learned II Additional Sessions Judge-cum-Sessions Judge, Vellore District at Ranipetti dated 29.04.2015 and made in C.A.No.10 of 2009 confirming the conviction and sentenced passed by the Learned Assistant Sessions Judge, Ranipettai, Vellore District by Judgment dated 30.10.2008 and made in S.C.No.441 of 2005.

For Petitioner

: Mr.L.Mahendran

For Respondent

: Mr.N.S.Suganthan,
Government Advocate (Crl.Side)



ORDER

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The accused found guilty of offence under section 376 (1) of I.P.C by the Trial Court in S.C.No.441/2005 and sentenced to undergo 7 years R.I and to pay fine of Rs.5000/- in default, to undergo further period of 3 months R.I. The Criminal Appeal in C.A.No.10/2009 preferred before the Appellate Court was dismissed, confirming the conviction and sentence imposed by the trial Court. Being aggrieved by that, the present Revision Case is filed.

2. The background facts:-

On 31/08/2005, at about 9.15 a.m [P.W-1] was brought to the Arakkonam Government Hospital by her mother PW-2 for treatment, alleging that P.W-1 has consumed odallam seeds (arali vidai) following an attempt to rape her by a known person the day before at 9.30 a.m. P.W-4 [Dr.Malliga] recorded the Accident Register marked as Ex.P.2 and treated her. P.W-1 was physically examined, vaginal smear swab was taken and sent for chemical analysis. On receipt of intimation from the hospital, P.W-11 [Lakshmi], the Inspector of Police attached to All Women Police Station, Arakkonam, went to the hospital and recorded the statement of P.W-1 (Ex.P-1) and registered F.I.R (Ex.P-5) in Crime No.38/2005



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under Sections 417, 376, 306 and 506(ii) I.P.C. After preliminary enquiry, arrested the accused Prabakaran on 31/08/2005 at about 4.00 p.m and produced him before the Judicial Magistrate for remand. On transfer of P.W-11, [Lakshmi] the investigation was continued by P.W-12 [Gajendran], he after recording the statements of witnesses has filed alteration report against the accused for offences under Section 376(1) I.P.C and 506 (ii) I.P.C, stating that, P.W-1 a minor girl aged 15 years, was enticed by the accused with sweet words on the last Sunday of the Tamil Month of Aadi and had forcible intercourse against her consent. When she resisted, the accused threatened to liquidate her family. After that, on 30/08/2005, while she was washing cloths in the front yard of her house, the accused came and forcibly took her inside her house and raped her. Her brother (P.W-3), who came to home saw the accused and P.W-1 naked in compromising position. P.W.3 immediately went to the place where his mother (P.W-2) grazing duck and reported. In the evening, P.W-2 came home and told her husband about the incident. P.W-1, who overheard their conversation got ashamed and fearing, if the matter is exposed, the accused may liquidate her family, took Odallam seeds to end her life. The next day (i.e., 31/08/2005), P.W-2 noticing her daughter vomiting and look dizzy, enquired P.W-1 and thereafter knowing that, she has consumed odallam seeds a



poisonous substance, took P.W.1 to the hospital for treatment.

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3. The Trial Court, on appreciating the evidence placed by the prosecution held the accused guilty of offence under Section 376(1) of I.P.C and sentenced to undergo 7 years R.I and to pay fine of Rs.5000/- in default, three months R.I.

4. Aggrieved by that, the accused has preferred appeal before the Additional District and Sessions Court, Ranipettai in C.A.No.10 of 2009. The appeal was dismissed confirming the judgment of conviction and sentence imposed by the trial Court. Hence, the present revision petition is filed.

5. The Learned counsel appearing for the petitioner submitted that the Trial Court failed to consider the fact that the evidence of P.W.1 bristles with self contradiction and their evidence not been corroborated by the other prosecution witnesses. The contemporaneous document namely the Accident Register [Ex.P.2] recorded as per the information given by P.W.1, was only an attempt to rape by an known person. Therefore, she consumed Odallam seeds. This Accident Register



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was recorded on 21.08.2005 at 9.15 a.m thereafter, the victim has given statement Ex.P.1 to the police at 11.00 a.m., and based on the statement, the F.I.R was registered and forwarded to Judicial Magistrate at 7.30 p.m. The version as found in the statement marked as Ex.P.1 itself not recorded as spoken by P.W.1. While so, when she was examined as witness in the Court, contrary to her previous statement, had falsely implicated the accused as if, she had been sexually assaulted even prior to the alleged incident on 30.08.2005 at about 8.30 a.m.

6. Initially, the Police registered a case for cheating and rape alleging that the accused promised to marry P.W.1, had intercourse with her and later, refuse to marry her. As a consequence, P.W.1 attempted to commit suicide. Later, the prosecution has fabricated the theory as if, on the last Sunday of Tamil month Aadi, she was forcible raped by the accused and threatened her not to disclose it to anyone. Thereafter, again on 30.08.2005, she was forcibly raped at her house and that was witnessed by her brother, P.W.3. However, in the cross examination, she has admitted that earlier to 30.08.2005 or subsequent to 30.08.2005, she was not raped. The alteration of date in the Accident Register marked as Ex.P.2 from 21.08.2005 to 31.08.2005 and the delay in reporting the case to the police expose



the falsity of the prosecution.

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7. Further, the Learned counsel appearing of the petitioner submitted that the Doctor P.W.4, who physically examined P.W.1 has collected smear swab and sent for analysis. The report of the analyst not marked, since the chemical analysis test did not disclose presence of sperm. The doctor, who physically examined P.W.1 has not recorded any sign of violence on the private part of P.W.1. The doctor also opined that, P.W.1 vagina admits two fingers freely which indicates that, she is accustomed to sexual intercourse. The doctor, who has treated P.W.1 has not collected samples to test whether P.W.1 consumed any poisonous substance and if so, the nature of the substance.

8. The Courts below erroneously believed the theory of prosecution that, P.W.1 has consumed Odallam seeds (arali vidai) and she was admitted in the hospital. In the course of treating, she disclosed about the attempt to rape. Except the victim, her mother and brother, rest of the independent witnesses turned hostile to the prosecution. The evidence of P.W.1 to P.W.3 are self serving made with an ulterior motive not been supported by either medical evidence or other ocular



evidence. The theory of the prosecution that the accused lifted P.W.1 and forcibly took her inside her house and committed rape leaving the house door open for P.W.3 to come and see the crime is unbelievable. Further, the case of the prosecution is highly improbable that, P.W.3, who saw the occurrence at 9.30 a.m and informed his mother immediately but his mother P.W.2 came to home only at the evening and did not report the matter immediately to the police. Only, when P.W.1 was taken for treatment to the hospital next day and the police reached the hospital receiving intimation from the hospital, the story of attempt to rape on 30.08.2005 recorded. Later same was improved as previous rape during the last Sunday of Tamil Month Aadi and again on 30.08.2005. This improvisation was in order to force the petitioner to marry P.W.1.

9. The Learned Counsel appearing for the Petitioner submitted that relying upon the evidence of P.W.1 to P.W.3 ignoring the inconsistency and contradictions in their version and all being interested witnesses, the Courts below has wrongly convicted the petitioner. Further, the Learned Counsel appearing for the petitioner submitted that in the Accident Register [Ex.P.2] given by Dr.Malliga examined as P.W.4. It is specifically mentioned that history of attempt to rape by an



known person on 31.08.2005 at around 9.30. The accident register indicates that, there is no external injury over the genitalia or breast. Abrasion over the right side of the face 1 c.m and abrasion on the left side of the neck 2 c.m noted. The vagina orifices admits two fingers freely, swab of smear was taken. The doctor has deposed that, she has no opinion about the virginity of PW.1. She admits that, she has not stated anything about the presence or absence of hymen. She admits that, on examining of her private part, she did not find any new or old injuries. Therefore, the Learned Counsel submitted that, in this case, when the evidence of PW.1 is self contradictory and the medical evidence does not support her case of forcible rape, the benefit of doubt ought to have been extended to the accused. The Courts below had erred in not considering the improbability in the case of the prosecution.

10. The Learned Counsel for the Petitioner also submitted that, P.W.3 admits, in his cross examination that labourers were working in the nearby field, when he entered the house. He saw P.W.1 and the accused naked in compromising position. If, it was a forcible sex, P.W.1 should have raised alarm attracting the attention of the labourers, who were working in the nearby field. According to P.W.3, on seeing the occurrence, he immediately went to the place where his



mother was grazing ducks and informed her. On hearing it, P.W.2 mother of P.W.1 has not rushed back to the home to enquire. She returned back to home as usual and alleged to have discussed with her husband but not given complaint. Even on the next day, she had not given the complaint had taken his daughter to the hospital for her ailment of vomiting and dizziness occurred due to the alleged consumption of odallam seeds. The medical evidence does not support the case of the prosecution that, she consumed any poisonous substance.

11. The Learned Government Advocate (Crl.Side) appearing for the respondent submitted that, P.W.1 was a minor girl at the time of occurrence. P.W.10 [Rajendran], the Headmaster of the School given a letter informing P.W.1 studied till 8th standard. The letter certifies that the date of birth of P.W.1 as per the record in the school register is 18.04.1990 (i.e.,) 15 years. In the Accident Register [Ex.P.2], the age of the girl is mentioned as 17 years. In any event, the victim girl was below 18 years. The medical opinion as per the Accident Register (Ex.P.2) indicates that, P.W.1 is accustomed to sexual intercourse. Further, Learned Government Advocate for the respondent submitted that, since the evidence of P.W.1, the victim girl implicates the accused is a person who forcibly had



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intercourse with her and same been witnessed by her brother P.W.3 who has deposed before the Court about the incident which he witnessed are sufficient proof beyond doubt that the accused had sexual intercourse with the minor girl. Hence the judgment of the trial Court as confirmed by the appellate Court has to be upheld.

12. Heard the Learned Counsel for the appellant and the Learned Government Advocate (Crl.Side) for the respondent and records perused.

13. The Courts below has ascertained the age of the victim girl, as per the letter (Ex.P.4) given by headmaster. The deposition of P.W.10 [Rajendran], Headmaster of the middle school, indicates that, P.W.1 pursued her studies till 8th standard. In the cross examination, he admits that, his letter Ex.P.4 is not based on birth certificate and not sure whether it is based on the register maintained by School. Perusal of the letter [Ex.P.4], this Court finds that, it is a letter which is written in hand by the headmaster of the Panchayat Union Middle School, Kilvenkatapuram, in response to the request of the police to inform date of birth of P.W.1 as per school record. In his letter (Ex.P.4), there is no reference about the source of the information. P.W.10, in his letter has simply mentioned the date of



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birth and other details of P.W.1 and admits in the cross examination that he is not sure whether those informations are based on the register maintained by the school.

The doctor who has physically examined the girl had mentioned her age as 17 years.

The swab test for chemical analysis and the report received from the State Forensic Laboratory addressed to Judicial Magistrate not marked in the course of the trial.

14. However, this Court able to find it from the case record. On 31.10.2005, Mr.Srinivasan, Scientific Assistant Grade-I, and Assistant Chemical Examiner of State Forensic Laboratory, had issued the report addressed to Government Hospital, Arakkonam regarding the test conducted on the swab collected from “X” aged about 16 years. The report indicates that the swab did not deduct semen in items 1 & 2. The Judicial Magistrate, who received it from the Government Hospital had forwarded it to the Assistant Sessions Judge, Ranipettai, along with her letter dated 20.11.2006, but the prosecution has failed to mark it. In any event, being the opinion of a Scientific Expert attached to the State Forensic Laboratory, even without examining him his report are admissible in evidence under Section 293 of Cr.P.C. Therefore, Court takes judicial notice of this report.



15. Absence of semen in the swab collected or absence of sign of violence on the private part of the victim minor girl is *per se* cannot be a reason to suspect the case of the prosecution. But, when the inconsistency and self contradictions found in the evidence of the girl victim and the other witnesses is seen predominantly then, absence of sign of violence and absence of semen in the private part gains significance. The investigation in this case, though started that it is consensual sex with the minor girl on promise to marry later, in final report filed turned into rape by force against consent and wish. However, the witnesses who have spoken about the incident, particularly P.W.3, who happened to see the crime of rape when he entered his house on 30.05.2008 at 9.30 a.m. P.W.3 had not seen any struggle or sign of violence, he had seen P.W.1 and the accused lying naked involved in the act of sex. On seeing him, the accused went out from the house. Even thereafter, P.W.1 has not raised any alarm or called for any help from the neighbours, who were working in the nearby field. Therefore, the case of the prosecution that the accused forcibly raped P.W.1 has become highly doubtful.

16. Thereafter, also neither P.W.2 [mother] nor father of the victim had taken up the matter to the Police or to Panchayat. Accused is not a stranger, but



resident living opposite to the house of P.W.1. Strangely, in this case, neither the victim nor her parents had given any complaint on their own. Only when P.W.1 was admitted in the hospital for consumption of poisonous substance, incidentally, the case of rape has come to the knowledge of P.W.4 Dr.Malliga, who has recorded it in the Accident Register and intimated the same to the Police. Therefore, the entry made in the Accident Register also gains significance. Both, in Ex.P.2 & Ex.P.3 which are Accident Registers for P.W.1 and the accused. In both the Accident Registers, it is recorded that, it is a case of attempt to rape. In the Accident Register for P.W.1 which is marked as Ex.P.2, the alteration of the date from 21.08.2005 to 31.05.2005 is obviously seen. Though, P.W.4 Dr.Malliga, has written the Accident Register in green ink and signed with date as 31.08.2005, the document has reached the Court only on 14.11.2005. This delay also causes enough doubt in the mind of the Court that the offence of rape on 30.08.2005 not proved beyond doubt.

17. In the complaint (Ex.P.1), it is stated by P.W.1 that, on 30.08.2005 at about 9.30 a.m, when P.W.1 was washing cloths, the accused dragged her inside the house at Vadakandikai village and force her to have intercourse and had intercourse with her. P.W.1's bother saw the incident and informed her mother [P.W.2] who was grazing ducks at Illupaithandalam Village. Her mother returned



home at Vadakandikai evening and was discussing with her father. At that time, she consumed odallam seeds and did not disclosed it to her mother. But, she and her mother came to Nemili Village, Arakkonam, she vomited and was dizzy. Even at that time, P.W.1 did not disclosed it to her mother that she has consumed odallam seed. She returned back to the village only on the next day at 31.08.2005 at 6.00 a.m. When her mother woke up, she told her mother that she has consumed odallam seed. Then she was taken to Government Hospital, Arakkonam by her mother for treatment. P.W.2's mother, though came to know about the incident through her son in the morning itself around 9.45 a.m to 10.00 a.m, she has returned home at 6 o'clock and thereafter, called her son and had discussed. In the cross examination, P.W.2 admits that, on 30.08.2005 itself, P.W.1 was frequently vomiting. But, she could not take her to the hospital for want of bus facility. On the next day, she was taken to Government Hospital, Arakkonam for treatment.

18. On combined reading of the deposition of P.W.1, P.W.2 and P.W.3, the sexual intercourse between P.W.1 and the accused is proved through eye witness as well as the evidence of P.W.1. At the same time, absence of any struggle mark and the active participation of P.W.1 in the sexual intercourse with the



accused could be inferred from the fact that both were naked and lying together seen by P.W.3 without any struggle and absence of any violent injury on P.W.1. Hence, this Court views that it is a consensual sex. Absence of sperm from her smear collection, non recovery of cloths of victim as well as the accused by the prosecution and the entry in the Accident Register marked as Ex.P.2 that it was only an attempt to rape all put together strengthens the view that consensual sex which has been exposed when P.W.3 saw the act of sex later turned into case of rape.

19. The excuse of P.W.1 for not informing the earlier incident and the subsequent incident also but for her brother who saw the sexual activity and informed the mother is an afterthought. P.W.1, who was found with the accused in a compromising positions. She heard her parents discussing about it, thereafter P.W.1 had consumed odallam seed. There is no explanation for two abrasions which were found over the P.W.1's right side face and over the left side of the neck. The incident alleged to have occurred on 30.08.2005 prior to amendment to Section 375 of I.P.C. At that time of occurrence of the crime, any sexual intercourse with the woman with or without her consent if she is under 16 years of age defined as offence of rape. Though, prosecution states that, P.W.1 was below 16 years on the



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day of occurrence, for which, they rely upon Ex.P.4 letter given by the Headmaster of the school which indicates the date of birth of the victim girl was 18.04.1990, the said letter is not an extract of the Register maintained by the School. P.W.10, the Headmaster of the School, who has given the letter admits that, he is not sure that the information furnished by him to the Inspector, All Women Police Station is based on the record. Contrarily, the doctor, who has recorded the Accident Register has mentioned the age of the girl as 17 years. Ex.P.4 is the only a letter and not the extract of school Register. In such circumstances, the opinion of the doctor will prevail over the letter. Since the doctor has opined that the age of the girl is 17 years. On the date of occurrence, consensual sex with the woman above 16 years does not fall under the definition of Rape.

20. For the said reasons, this ***Criminal Revision Case is allowed.*** The judgment of the Courts below are liable to be set aside. Fine amount paid if any, shall be refunded to the petitioner. Bail bond executed shall stand discharged.

01.08.2022



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Index :Yes/No.

Internet :Yes/No.

Speaking order/Non-speaking order
bsm

Copy to:-

1. The II Additional Sessions Judge-cum-Sessions Judge, Vellore District, Ranipetti.
2. The Assistant Sessions Judge, Ranipettai, Vellore District.
3. The Inspector of Police, All Women Police Station, Arakkonam, Vellore District.
4. The Public Prosecutor, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

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Pre-delivery order made in
Crl.R.C.No.503 of 2015

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