



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.04.2022

PRONOUNCED ON : 21.04.2022

C O R A M

THE HON'BLE MR.JUSTICE R. PONGIAPPAN

CRIMINAL APPEAL NO.342 OF 2020

1.Muniraj

2.Ramamoorthy

...Appellants/A1 & A2

-vs-

The State Rep. By
Inspector of Police,
All Women Police Station,
Denkanikottai,
Krishnagiri District.
(Crime No.1 of 2015)

...Respondent/Complainant

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the conviction and sentence dated 05.02.2019 passed by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, in S.C.No.135 of 2016.

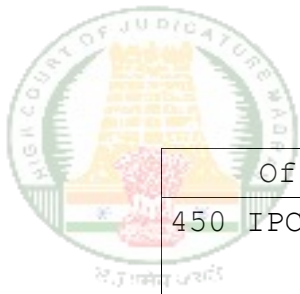
For Appellants : Mr.V.Parthiban (for A1)
Mr.E.Kannadasan (for A2)

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl.Side)

J U D G M E N T

The present criminal appeal has been filed by the appellants to set aside the judgment of conviction and sentence dated 05.02.2019 passed by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, in S.C.No.135 of 2016.

2. The appellants are arrayed as Accused Nos.1 and 2 in the above referred case. They stood charged for the offence under Sections 506(i), 354, 376(2)(1) of IPC. By judgment dated 05.02.2019, the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, came to the conclusion that the appellants are found guilty under Sections 450, 506(i), 354(B), 376(2)(1) and 376(2)(n) of IPC, convicted and sentenced them as follows:



WEB COPY

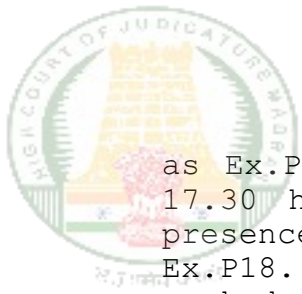
Offence	Sentence
450 IPC	to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for one year.
506(i) IPC	to undergo rigorous imprisonment for six months and to pay a fine of Rs.500/-, in default to undergo rigorous imprisonment for one month.
354(B) IPC	to undergo rigorous imprisonment for four years and to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for six months.
376(2) (l)	to undergo rigorous imprisonment for ten years and to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for two years.
376(2) (n)	to undergo rigorous imprisonment for ten years and to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for two years.
The trial Court also ordered the sentences to run concurrently.	

Challenging the said conviction and sentence, both the accused are before this Court, by way of filing this Criminal Appeal. For the sake of convenience, hereinafter, the Accused Nos.1 and 2 are referred to as 'appellants 1 and 2'.

3.The case of the prosecution is as follows:

(i) PW2-Saratha is the victim girl in the alleged occurrence. She knows the accused as they were residing in Kundumaranapalli and they are brothers. However, they were not related to PW2. Before four years from the date on which PW2 gave evidence before the trial Court that one day, in the evening hours when at the time, she was cleaning rice, the 1st appellant Muniraj came there and took her to the lane which was situated at the back side of her house. On another day, when PW2 watching television, the 1st appellant, by closing her mouth with cloth and tying her hands, took her to the same lane, and sexually assaulted her, however, as someone was nearing, he left her and ran away. Further prior to the complaint, on 14.01.2015 at about 07.30pm, the 1st appellant took the victim girl to a lane, and molested her. The 2nd appellant also had sexually assaulted her. Immediately, the said incidence was reported by PW2 to PW1, who is the mother of PW2. On receipt of the said information PW1-Seethama, preferred a complaint before the All Women Police Station, Denkanikottai.

(ii) PW16- Jayam, the then Inspector of Police, All Women Police Station, Denkanikottai on 15.01.2015, after receipt of the complaint given by PW1, registered a case in Crime No.1 of 2015, under Sections 376 (2) (l) (n) and 506(i) IPC. The printed FIR is marked as Ex.P17. The complaint given by PW1, was marked



as Ex.P16. After registering the case, on the same day around 17.30 hours, she visited the scene of occurrence and in the presence of PW4 and PW9, prepared an observation mahazar under Ex.P18. She had drawn the rough sketch and the same has been marked as Ex.P19. She examined the witnesses and recorded their statements. She made arrangement for producing the victim girl before the Doctor for medical examination.

(iii) Later, in view of the direction given by PW16, PW10-Malarkodi, the then Head Constable, produced the victim girl before the doctor at Denkanikottai Government Hospital for medical examination. Afterwards, PW15-Dr.Deepalakshmi examined the victim girl and found the following symptoms.

(i) Nail abrasion marks present on both breasts

(ii) contusion discolouration (10 x 8 cm) on the left side of thigh

After examining, PW15 issued a certificate under Ex.P12, as the penetrative sexual assault cannot be ruled out. Further she collected the vaginal smear, vaginal wash and pubic hair clippings and sent the same for chemical examination. In the chemical examination report [Ex.P15], no Spermatozoa was deducted.

(iv) In continuation of the investigation, PW16, on the same day around 19.00 hours in Kelamangalam bus stand arrested the accused and sent them for remand. Consequentially, she filed an application before the learned Judicial Magistrate for conducting medical examination to the accused. Thereafter, in view of the above, PW13-Sumathy, the Constable attached with the said police station, along with one Sabari, who is also a constable produced the accused before PW3-Dr.Arun Prabhu attached with Dharmapuri Government Medical College Hospital.

(v) In turn, PW3, after the receipt of the requisition given by the learned Judicial Magistrate examined the accused and issued certificates under Ex.P4 and Ex.P5, as there is nothing to suggest that both the accused, are impotent. Afterwards, PW16 submitted an application before the learned Judicial Magistrate for recording 164 statement from PW2. She examined the other witnesses and recorded their statements. On completion of investigation, she came to the positive conclusion that the appellants are

liable to be convicted under Section 354, 376 (2) (1) (n) and 506 (i) IPC. She filed a final report, accordingly.

4. Based on the above materials, the trial Court framed the charges under Sections 506(i), 354 and 376(2)(1) of IPC and the accused denied the same. They opted for trial. In order prove



their case, on the side of the prosecution as many as 16 witnesses were examined as PW1 to PW16 and twenty two documents, were marked as Ex.P1 to Ex.P22, besides six material objects [M.O.1 to M.O.6].

WEB COPY

(i) Out of the said witnesses, PW1-Seethamma, is the mother of the victim girl. She has spoken about the occurrence as during the relevant point of time, her daughter was not found in her house and therefore, she lodged a complaint before the All Women Police Station, Denkanikottai.

(ii) PW2-Saratha, is the victim girl, spoken about the occurrence as at the time of the occurrence both the accused herein after taking her to a lane, committed the offence of rape.

(iii) PW3-Dr.Arun Prabu, attached with Government Medical College Hospital, Dharmapuri, spoken about the examination of the accused and about the issuance of potency certificate. According to him, both the accused are potent men.

(iv) PW4-Srinivasan, PW5-Varalakshmi, PW6-Ramesh, PW7-Munusamy and PW8-Krishnamurthi, are all the witnesses who know the occurrence. But none of the witnesses gave evidence as during the relevant point of time, the accused herein committed the offence as alleged by the prosecution. Hence, they were all treated as hostile witnesses. The evidences given by them before treating them as hostile witness, is no way relevant to the case of the prosecution.

(v) PW9-Venkateshappa, who is the resident of Kundumaranapalli and alleged to have attested in the observation mahazar has also not given any evidence in support of the case of the prosecution.

(vi) PW10-Malarkodi, the then Constable of Kelamangalam Police Station spoken about the production of the victim girl before the doctor for medical examination.

(vii) PW11-Manimalan, the then Head Constable of Kelamangalam Police Station, also spoken about the production of the accused before the doctor for medical examination.

(viii) PW12-Sujatha, is also a police officer attached to All Women Police Station, Denkanikottai, spoken about the production of material objects, collected during the time of investigation in this case, before the Forensic Science Department, Salem.



(ix) PW13-Sumathi, is the Constable attached to All Women Police Station, Denkanikottai. She has stated about the collection of dresses worn by the victim girl from the Government Medical College Hospital, Dharmapuri and about the production of the same before the Forensic Science Department, Salem.

(x) PW14-Stella Jayanthi, the teacher working in the Kundumaranapalli Government Higher Secondary School, gave evidence as the 1st accused-Muniraj was born on 05.05.1996 and the 2nd accused-Ramamoorthy, was born on 02.04.1995. In this regard, she issued certificates under Ex.P10 and Ex.P11, respectively.

(xi) PW15-Dr.Deepalakshmi, attached with Denkanikottai Government Hospital, spoken about the examination of victim girl and about the issuance of certificate in this regard.

(xii) PW16-Jeyam, the then Inspector of Police, All Women Police Station, Denkanikottai, spoken about the registration of the case, investigation and about the filing of final report.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., both of them denied the same as false. However, they did not chose to examine any witness on their side.

6. Having considered all the above, the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, convicted and sentenced the accused as stated in paragraph No.2 of this judgment. Aggrieved over the said conviction and sentence, the appellants are before this Court, with this Appeal.

7. I have heard Mr.V.Parthiban, learned counsel appearing for the 1st appellant, Mr.E.Kannadasan, learned counsel appearing for the 2nd appellant and Mr.Leonard Arul Joseph Selvam, learned Government Advocate (Crl.Side), appearing for the State and also perused the records carefully.

8. The learned counsel appearing for the appellants would contend that here it is a case in respect to the charge framed against the accused under Section 376(2)(1)(n) of IPC, no evidence has been let in on the side of the prosecution as during the relevant point of time, the accused herein committed an offence. Further, the prosecution has not proved that the victim is a mentally retarded girl. He would submit that in respect to the criminal intimidation, the witnesses examined on the side of the prosecution did not say anything that during the relevant point of time, the accused herein criminally intimidated PW2. Accordingly, he prayed to allow this appeal.



9. Per contra, the learned Government Advocate (Crl.Side) appearing on behalf of the respondent police would submit that here it is a case, the investigation officer fails in her duty to handle this case in accordance with law. However, in respect to the occurrence, evidence given by the victim girl is more than enough and the same has proved the offence as alleged by the prosecution. According to him, the findings arrived at by the trial Court does not require any interference.

10. The submissions made by the learned counsel appearing on either side are considered. Here it is a case, along with the offence under Sections 450, 506(i) and 354 IPC, charge under Section 376(2)(1)(n) of IPC, has been framed as against these accused. In respect to the said offence, it is a primary condition that the prosecution should prove that the accused committed rape on a woman suffering from mental or physical disability, further they committed rape repeatedly on the same woman.

11. In this regard, on going through the evidence given by PW2, she did not say that she is suffering from mental illness. On the other hand, PW1, who is the mother of PW2, gave evidence as PW2, is not capable of understanding things. In this regard PW5-Varalakshmi, gave evidence as she is a special trainee for mentally retarded persons. She has further stated that before the trial Court, she explained the evidence given by the said victim PW2. Accordingly, the prosecution has proved that PW2, is suffering from mild mental illness. However, the Doctor, who examined PW2, gave evidence as while at the time of examining her medically, she did not say anything about her illness. Only PW1 has stated about the occurrence. Therefore, in all, the prosecution has proved that PW2 suffers from some mental illness.

12. On the other hand, the evidence was recorded by the trial Court by appointing a competent person who is having knowledge of persons who suffers some mental illness. In the said occasion, on going through the evidence given by victim girl, she has stated generally as during the relevant point of time, both the accused committed the offence of rape, on the other hand, Section 375 of IPC, reads as follows:

Rape: - A man is said to commit "rape", if he -

(a) penetrates his penis, to any extent, into the vagina, mouth urethra or anus or a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or



WEB COPY

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra or a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:-

First. - Against her will

Secondly. - Without her consent.

Thirdly. - With her consent when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly. - With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. - With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly. - With or without her consent, when she is under eighteen years of age.

Seventhly. - When she is unable to communicate consent."

13. Now, applying the said section with the case on hand, the entire evidence given by PW2 is not in accordance with Section 375 of IPC. At no point of time, the petitioner has stated about the act committed by the accused, which is necessary for constituting the offence under Section 375. In fact, when at the time of cross examination, she has stated that the police has not examined her during the time of investigation. Further, she was brought by PW1 alone. In the said circumstances, PW1, who lodged a complaint before the police gave evidence as she has given complaint only for girl missing and not for the present allegation.

14. As far as offence under Section 354-B of IPC is concerned the evidence given by PW2, is more than sufficient that during the relevant point of time, both the accused herein used criminal force against the victim girl with the intention of disrobing and compelled her to be naked.



15. The evidence given by PW2 in this aspect is very clear that both the accused physically contacted her against her will. Even during the cross examination, she has specifically stated that the evidence given by her in the chief examination against the act of the accused, is true. The entire cross examination of the PW2 is not in the form of impeaching the credibility of the evidence in respect to the act committed by the accused. More than that it is the evidence given by the Doctor, who conducted medical examination of the victim girl that there was a scratches (nail marks) in both the breasts. Thus, the evidence given by the Doctor coupled with the evidence given by PW2 would clearly show that the accused alone committed this offence.

16. In this regard, the learned counsel appearing for the appellants would contend that the evidence given by PW2, is not corroborated through the evidence of others and therefore, the evidence given by PW2 cannot be accepted as she is suffering from some mental illness.

17. Now, on considering the said submission with the relevant records, this Court has already observed about the mental ability of the PW2 as her evidence was recorded only in the presence of a competent person, who understands the evidence given by mentally retarded persons. Therefore, only because of the reason that PW2 is having some mental illness, her evidence cannot be rejected in total. Here it is a case, the evidence given by her is fully supported with the evidence given by the medical officer.

18. In this occasion, it is a settled law that in these type of offences, the sole testimony of the prosecutrix is more than sufficient to accept the case of the prosecution. In the judgment reported in 2010 (8)SCC 191 [Vijay @ Chinee vs State Of M.P], it was held by our Hon'ble Apex Court that the sole testimony of the victim girl is sufficient to accept the entire case of the prosecution.

19. Applying the said principles with the case in our hand, here it is a case, the evidence given by PW2, is corroborated through the evidence given by the medical officer. Though there was some mistake committed by the investigation officer, the said omission cannot be a reason for acquitting the accused from entire charge. In otherwise, it is true, in respect to the charge under Sections 450 and 506(i) IPC, there is no evidence available from the prosecution witnesses.

20. Accordingly, in the light of the above discussions stated supra, I am of the considered opinion that the prosecution has proved the offence under Section 354-B of IPC as



WEB COPY

against both the accused. Therefore, the appeal is partly allowed. The conviction and sentence imposed upon the appellants/Accused Nos.1 & 2, by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, in S.C.No.135 of 2016 dated 05.02.2019, is modified as follows:

(i) The conviction and sentences imposed upon the appellants/accused Nos.1 and 2, by the trial Court for the offence under Sections 450, 506(i), 376 (2) (1) and 376 (2)(n) of IPC, are set aside.

(ii) The conviction of the appellants / accused Nos.1 and 2 for the offence under Section 354-B of IPC, is confirmed. However, the sentence imposed upon them by the trial Court, is modified to the effect that each of the appellants are sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.5,000/- each, in default to undergo rigorous imprisonment for three months.

(iii) The period of remand already undergone by the accused if any, is ordered to be set off under Section 428 Cr.P.C., against the sentence now imposed. Fine amount already paid is directed to be adjusted and excess, if any, is directed to be refunded to the appellants/Accused Nos.1 & 2.

(iv) If the period of remand already undergone by the accused, is two years, they are directed to be set at liberty forthwith unless their custody is required in connection with any other case.

(v) Bail bond executed, if any, shall stand terminated.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

ars

To

1. The Sessions Judge,
Fast Track Mahila Court,
Krishnagiri.
2. The Superintendent of Prison,
Central Prison, Vellore.
3. The Inspector of Police,
All Women Police Station,
Denkanikottai,
Krishnagiri District.



4. The Public Prosecutor,
High Court, Madras.

+2cc to M/s.E.Kannadasan, Advocate, Sr.No.27296, 27295

WEB COPY

Pre-delivery judgment in
Criminal Appeal No.342 of 2020

SSN(CO)

KKV/21/04/2022

(25/04/2022)