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Criminal Appeal No.429 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2023

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No.429 of 2015

Vinayagam

... Appellant

Versus

State of Tamil Nadu
Represented by Inspector of Police,
All Women Police Station, Villupuram,
Villupuram District.
(Crime No.6 of 2013)

... Respondent

Criminal Appeal filed under Section 374 of Criminal Procedure Code seeking to call for the records relating to the proceedings in Special Sessions Case No.1 of 2014 on the file of the Court of Sessions Judge, Fast Track Mahila Court, Villupuram and set aside the judgment of conviction dated 14.05.2014 and set the Appellant at liberty.

For Appellant

: Mr.M.Devaraj

For Respondent

: Mrs.G.V.Kasthuri

Additional Public Prosecutor

JUDGMENT

This Criminal Appeal had been filed to set aside the judgment of conviction dated 14.05.2014 passed by the learned Sessions Judge, Fast Track Mahila Court, Villupuram in Spl.S.C.No.1 of 2014.



Appeal, are as follows:

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2.1. The members of the family of the victim are the permanent residents of Kothamangalam Village. The father of the victim was working as a mason in Bengaluru. The mother of the victim was working as a daily wager in the village. She had been rearing goats and grazing the goats. On the date of occurrence on 12.11.2012, by around 2.00 p.m. when the victim went to the lake side away from her house to throw the goat dung in a specified spot near the lake, the Accused in this case, who was hiding behind the sugarcane field, caught hold the hands of the victim and pulled her inside the sugarcane field. He had tied her hands behind her back and had tied her legs with the towel of the Accused and had undressed the victim. He had thrust his lungi in the mouth of the victim and indulged in sexual intercourse. After the sexual intercourse, he had released her by threatening her if she discloses this fact to any other person she and her family members will be wiped out. He had repeatedly indulged in the same acts by threatening her that her family will be murdered if she does not co-operate with him. By the conduct of the Accused, the victim girl became pregnant. When she was three months pregnant, her maternal grandmother came to know about it. Therefore, she took her to a hospital where the Doctors found out that the victim was three months pregnant. The mother and maternal grandmother of the victim slapped her and enquired her. At that time, she broke down narrating the entire incident. They



were taken aback and were shocked. The mother of the victim informed her father. The victim's father who was away in Bengaluru as a mason, on hearing the news came down to the village. He gathered his relatives and went to the residence of the Accused and questioned him. At that time, the Accused had abused the father of the victim, the mother of the victim and other relatives who went to the house of the Accused. Also he threatened them and challenged them stating that “ஆமாம் நான் அப்படித்தான் செய்வேன் உன்னால் என்ன செய்ய முடியுமோ செய்” “Yes I will do so, you do whatever you can.” Therefore, the father of the victim gave a complaint under Ex.P-1 before the All Women Police Station, Villupuram.

2.2. On receipt of the complaint under Ex.P-1, P.W-16 Head Constable Ms.Ananthi had registered a case in Crime No. 6 of 2013 on the file of the All Women Police Station, Villupuram, for the offence under Section 376, 294(b) and 506(ii) of IPC r/w. Section 4 of the Protection of Children from Sexual Offences Act, 2012 and forwarded the original FIR and Original Complaint to the Court of the learned Judicial Magistrate No.II, Tindivanam and copies of the same to the higher officials of the Police Department including the Inspector of Police, All Women Police Station, Villupuram. P.W-20 Ms.Revathi, Inspector of Police of All Women Police Station, Villupuram took up the investigation, visited the scene of occurrence, prepared the rough sketch



and the observation mahazar in the presence of the witnesses. She had forwarded the victim to the Government Hospital with a requisition letter to the learned Judicial Magistrate No.II, Tindivanam for medical examination of the victim before the Villupuram Government Medical College Hospital. P.W-10 Vijaya, Woman Constable accompanied the victim to the Villupuram Government Medical College Hospital. Also P.W-20 Inspector of Police arrested the Accused and sent a requisition to the learned Judicial Magistrate No.II, Tindivanam and forwarded the Accused for medical examination before the Villupuram Government Medical College Hospital regarding potency certificate. Accordingly, P.W-12 Dr.Baskaran had examined the Accused and issued potency certificate under Ex.P-4. The victim was examined by P.W-13 Dr.Shanthi and had issued Ex.P-6 medical certificate regarding sexual offence. Also the victim was examined by P.W-15 Dr.Priyanka, Radiologist and had issued Ex.P-10 radiologist report stating that the age of the victim will be around 16 to 18. The parents of the victim and the maternal grandmother of the victim were examined and their statement were recorded. The witnesses to the observation mahazar and the rough sketch were examined and their statement were recorded. The Accused apprehending arrest had surrendered before P.W-8 Village Administrative Officer who had recorded the confession of the Accused and handed over the Accused to the Inspector of Police, All Women Police Station, Villupuram. P.W-20 Inspector of Police, All Women



Police Station recorded the statement of P.W-8 Village Administrative Officer and his Assistant P.W-9 Kuppan. P.W-20 Inspector of Police had also recorded the statement of P.W-12 Dr.Baskaran who had issued potency certificate under Ex.P-4 for Accused, P.W-13 Dr.Shanthi who had examined the victim and issued the certificate for victim of sexual assault under Ex.P-6 and P.W-15 Dr.Priyanka who had examined the victim and issued age certificate. Also, P.W-20 had issued a requisition letter to the learned Chief Judicial Magistrate, Villupuram to record the mandatory statement of the victim of sexual assault under Section 164 Cr.P.C. The learned Chief Judicial Magistrate, Villupuram had nominated the learned Judicial Magistrate No.1, Tindivanam to record the statement under Section 164 of Cr.P.C. of the victim. Accordingly, P.W-17 Saritha, learned Judicial Magistrate No.I, Tindivanam had recorded the statement of the victim under Section 164 of Cr.P.C. The Investigation Officer had recorded the statement of the Doctors, learned Judicial Magistrate No.I, Tindivanam and the Police Officials who assisted the investigation.

2.3. On completion of the investigation, she laid the final report before the learned Judicial Magistrate No.II, Tindivanam. The learned Judicial Magistrate No.II, Tindivanam, had taken on record and since the offences are triable by Court of Sessions, the learned Judicial Magistrate No.II, Tindivanam,



committed the case to the Court of Sessions. On appearance of the Accused, copies were furnished to him under Section 207 of Cr.P.C. On appearance of the Accused, on committal proceedings, the learned Principal District and Sessions Judge had made over the case to the Court of the learned Sessions Judge, Fast Track Mahila Court and bond over the Accused to the Court of the learned Fast Track Mahila Court.

2.4. On appearance of the Accused and on receipt of the records from the learned Principal District and Sessions Judge, the learned Sessions Judge, Fast Track Mahila Court, Villupuram, after hearing the arguments of the learned Public Prosecutor, Fast Track Mahila Court and the learned Counsel for the Accused framed charges under Section 4 of the Protection of Children from Sexual Offences Act, 2012 and under Section 294(b) and 506(ii) of IPC. Since the Accused denied the charges, the learned Sessions Judge, Fast Track Mahila Court, Villupuram, ordered trial. During trial, the Prosecution had examined witness P.W-1 to P.W-20 and marked documents Ex.P-1 to Ex.P-24. After completion of the Prosecution evidence, the Accused was examined under 313 Cr.P.C. The incriminating evidence available through the witnesses P.W-1 to P.W-20 had put to the Accused. The Accused denied the incriminating evidence against him. The Accused did not let in rebuttal evidence as per the provisions of the Protection of Children from Sexual



Offences Act, 2012. On completion of the evidence, after hearing the arguments of the learned Public Prosecutor attached to the Court of the learned Sessions Judge, Fast Track Mahila Court, Villupuram and the learned Counsel for the Accused, the learned Sessions Judge, Fast Track Mahila Court, on appreciation of evidence, by judgment dated 14.05.2014 had convicted the Accused for the offence under Sections 4 of the Protection of Children from Sexual Offences Act, 2012 sentencing the Accused to undergo 7 years Rigorous Imprisonment and imposed with a fine of Rs.500/-, in default, to undergo simple imprisonment for one month. The Accused was acquitted from the charges under Sections 294(b) and 506 (ii) of IPC. The period of detention already undergone by the Accused was set off under Section 428 of Cr.P.C.

3. Aggrieved by the judgment of the learned Session Judge, Fast Track Mahila Court, Villupuram, this Appeal had been preferred by the Accused as Appellant.

4. The learned Counsel for the Appellant submitted that the case was registered under Section 376, 294, 506(ii) of IPC r/w. Section 4 of Protection of Children from Sexual Offences Act, 2012, as per the FIR in Crime No.6 of 2013 on the file of the All Women Police Station, Villupuram. The trial Court



had framed charge under Section 4 of the Protection of Children from Sexual Offences Act, 2012, Section 294(b) and 506(ii) of IPC. It is the submission of the learned Counsel for the Appellant that the Protection of Children from Sexual Offences Act, 2012 came into effect from 14.11.2012 itself after the date of alleged occurrence dated 12.11.2012.

5. The learned Counsel for the Appellant further submitted that as per Article 22 of the Constitution of India regarding right to fair trial and right to speedy trial which is guaranteed by the Constitution of India to the Accused, the newly enacted laws shall not be invoked against the Accused for the offence alleged to have taken place prior to the date of notification of the Act. Even though the FIR under Ex.P-11 was registered only on 18.02.2013 for the offence alleged to have taken place on 12.11.2012. On that ground, the learned Counsel for the Appellant sought to set aside the judgment of conviction and sentence of imprisonment imposed on the Appellant under Section 4 of the Protection of Children from Sexual Offences Act, 2012.

6. The learned Counsel for the Appellant also submitted that the age of the victim was not established by the Prosecution during trial. To attract the provisions of Protection of Children from Sexual Offences Act, 2012, the victim should be a child as defined under Protection of Children from Sexual



Offences Act, 2012. In support of his contention, the learned Counsel for the

Appellant relied on the reported decision of the Sikkim High Court in **2016**

Cri.L.J. 523 [State of Sikkim -vs- Amit Darjee (Darnal)] wherein it is held as

under:

“(A) Evidence Act (1 of 1872), S.79 – Photostat copy of birth certificate – Admissibility in evidence – Photostat copy of birth certificate, attestation of which is doubtful, cannot be admitted as evidence for want of proof of its contents.

(B) Protection of Children from Sexual Offences Act (32 of 2012), S.3 – Sexual assault – Age of victim – Ossification test report showing age of victim 17-18 years – Variation of 3 years possible – Victim cannot be held to be below 18 years of age on date of incident.

(C) Protection of Children from Sexual Offences Act (32 of 2012), S.3 – Sexual assault – Consent – Accused alleged to have committed sexual intercourse with victim against her wishes – Evidence of victim clearly showing that she knew Accused very well and she went to several places with him on day of incident and ultimately reached school in which she was studying in night, stayed there for whole night where sexual intercourse was performed – Keeping silent and not disclosing act of Accused to anyone either in school premises or even when victim returned from school to her friend's house showing that she was consenting party to sexual intercourse – Acquittal of Accused, proper.”

7. The learned Additional Public Prosecutor Mrs.G.V.Kasthuri appearing for the Respondent vehemently objected to the line of argument made by the learned Counsel for the Appellant stating that the investigation was shoddy due to the influence wielded by the Accused. The victim is aged less than 18 as per Section 2 of the Protection of Children from Sexual



Offences Act, 2012. The Radiologist had given the opinion under Ex.P-8 that the age of the victim is between 16 and 18. If the victim was more than 18, the Protection of Children from Sexual Offences Act, 2012 will not be applicable. The Radiologist who had given the age certificate had stated in Ex.P-8 that the victim is aged between 16 and 18. Therefore, the learned trial Judge who had conducted the trial had the opportunity to observe the victim had specifically raised a query in the discussion whether the victim was a child as per the definition under Section 2(d) of the Protection of Children from Sexual Offences Act, 2012 and in paragraph 11 of the judgment, the learned Judge had discussed about the same and arrived at a conclusion that the Protection of Children from Sexual Offences Act, 2012 is attracted in this case. The finding of the trial Judge has more weightage before the Appellate Court.

8. The trial Judge had the advantage of observing the demeanour of the witnesses and the Accused. Therefore, the observation of the learned trial Judge had to be given due weightage which advantage is not available to the High Court or the Appellate Court. The learned Sessions Judge who had convicted the Accused was also a woman and a trained Judicial Officer. She had based on her experience as a Judge and as an ordinary woman arrive at a conclusion that the victim in this case was a child under the definition of Section 2(d) of the Protection of Children from Sexual Offences Act, 2012.



Therefore, the same has to be accepted by this Court. The technical plea taken by the Accused that the offence under the Protection of Children from Sexual Offences Act, 2012 was not proved through educational certificate and birth certificate will not hold good as the Accused was an influential person who had influenced the investigation. Therefore, the same has to be rejected. The learned Judge had also raised a query as to whether the Accused person committed penetrative sexual assault upon the victim as point No.2 and had answered the same in paragraph No.11. Even if the case of the Prosecution that the age certificate was not produced, still the Accused can be convicted for the offence under Section 376 of IPC as the ingredients of Section 376 of IPC also was made out in this case. When the victim was aged between 16 and 18 and the Accused aged about 40 and above all, the victim is incompetent to give consent. It is to be noted that the Accused is alleged to have threatened the victim that if she discloses it to others outside, the entire family will be murdered. The threat held out by the Accused who was the then Village Panchayat President was stated as defence by the Accused himself. Out of political vengeance, this case was framed up is also a defence of the Accused. The Investigation Officer had not collected sufficient materials only due to the influence wielded by the Accused. Therefore, the shoddy investigation will not help the Accused to come out from the charges framed by the Court. The Court can rely on the evidence available before the trial Court. Here the victim



had given her statement under 164 Cr.P.C. before the learned Judicial Magistrate under Ex.P-23 and she had withstood the cross examination. The evidence of the victim had to be considered by this Court even if the mandatory provisions had not been followed the ingredients of Section 376 of IPC is made out from the evidence available before the trial Court. Therefore, the Court can very well convict the Accused even though the charge was not framed under Section 376 of IPC. Even though the charge under Section 4 of the Protection of Children from Sexual Offences Act, 2012 was invoked and the trial proceeded after completion of the Prosecution witnesses, the Accused had the right to depose rebuttal evidence. The Accused had not discharged the burden cast upon him. Therefore, the conviction under Section 4 of the Protection of Children from Sexual Offences Act, 2012 had to be upheld by this Court. The technicalities of the law invoked by the Accused in the Appeal has to be rejected. The judgment of the learned Sessions Judge, Fast Track Mahila Court, Villupuram is a well reasoned judgment and it does not warrant any interference by this Court. This Appeal lacks merit and it has to be dismissed.

Point for consideration:

Whether the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Villupuram in Spl.S.C.No.1 of 2014, dated 14.05.2015 is to be set aside as perverse?



9. Heard the learned Counsel for the Appellant Mr.M.Devaraj and the learned Additional Public Prosecutor Mrs.G.V.Kasthuri for the State. Perused the deposition of the witnesses P.W-1 to P.W-20, the documents under Ex.P-1 to P-24 and the judgment of the learned Sessions Judge, Fast Track Court, Villupuram in Spl. S.C.No.1 of 2014, dated 14.05.2015.

10. The submission of the learned Counsel for the Appellant that the case was registered under Sections 376, 294, 506(ii) of IPC r/w. Section 4 of Protection of Children from Sexual Offences Act, 2012, as per the FIR in Crime No.6 of 2013 on the file of the All Women Police Station, Villupuram. The trial Court had framed charge under Section 4 of the Protection of Children from Sexual Offences Act, 2012, Section 294(b) and 506(ii) of IPC. It is the submission of the learned Counsel for the Appellant that the Protection of Children from Sexual Offences Act, 2012, came into effect from 14.11.2012 itself after the date of alleged occurrence.

11. The further submission of the learned Counsel for the Appellant that as per Article 22 of the Constitution of India regarding right to fair trial and right to speedy trial which is guaranteed by the Constitution of India to the

Accused, the newly enacted laws shall not be invoked against the Accused for



the offence alleged to have taken place prior to the date of notification of the Act. On that ground, the learned Counsel for the Appellant sought to set aside the judgment of conviction and sentence of imprisonment imposed on the Appellant under Section 4 of the Protection of Children from Sexual Offences Act, 2012. The FIR under Ex.P-11 was registered on 18.02.2013. The occurrence is on 12.11.2012 to 18.02.2013 which is a continuous cause of action. The ingredients of the offence under Section 376 of IPC is made out. The FIR was properly registered under Section 376 of IPC. However, the trial Judge while framing charge had left out the offence under Section 376 of IPC and on the basis of the materials available, as the victim was aged 14 on the date of alleged occurrence, had framed charge under Section 4 of the Protection of Children from Sexual Offences Act, 2012. On technicality of law, the submission of the learned Counsel for the Appellant regarding Protection of Children from Sexual Offences Act, 2012 is found acceptable in the light of the constitutional provisions. Therefore, the conviction under Section 4 of the Protection of Children from Sexual Offences Act, 2012 is to be set aside. At the same time, there are materials available that the Accused had committed sexual offence on the victim based on the evidence of the Prosecutrix. If the evidence of the Prosecutrix inspires confidence of the Court, the Court can convict the Accused.



12. As per the amendment brought to Section 376 of IPC prior to notification of the Protection of Children from Sexual Offences Act, 2012, the ingredients of such offence is attracted. Here the Accused is alleged to be a well influenced person in the area. He is alleged to have caught hold of the victim when she went to throw the goat dung in the place to deposit for future use as fertilizers in farms. At that time, the Accused was hiding behind the sugarcane field, came from behind and caught hold the victim, tied her hands with a cloth in his hand and dragged her inside the sugarcane field so that the occurrence will not be noticed by the passersby or by other people and threatened the victim and he had forcibly removed her dress and indulged in sexual offence. Also, after that, he had threatened her stating that he will finish off her elders in the family, if she ever discloses it to others. There is evidence from the victims mother and other relatives before the Court who deposed evidence as witnesses. P.W-1 is the victim. P.W-2 is the father of the victim. P.W-3 is the grandmother of the victim. P.W-4 is the mother of the victim. P.W-5 is the another uncle of the victim who are all relatives. In cases of this nature, third parties will not voluntarily be a witness even though they have the knowledge of the occurrence.

13. The only difference between Section 376 of IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 is that there is a



strong presumption in favour of the victim who is a child as per Section 22 of the Protection of Children from Sexual Offences Act, 2012. Also, the case was registered under Protection of Children from Sexual Offences Act, 2012. As per Section 29 of the Protection of Children from Sexual Offences Act, 2012, the Court is duty bound to believe the version of the child and accordingly, the judgment will be favouring the victim and against the Accused. Under Section 376 of IPC, there is no such presumption. Still in a case registered under Section 376 of IPC when the evidence of the Prosecutrix withstands cross-examination, the evidence of the Prosecutrix P.W-1 will be sufficient to convict the Accused. In cases under Protection of Children from Sexual Offences Act, 2012, the Accused is expected to give any rebuttal evidence. That duty is cast on the Accused, when the Accused faces a charge under Section 376 of IPC. Here in this case, there are shoddy investigations as per the report of the forensic expert regarding DNA typing under Ex.P-18 which had not established the Accused regarding the collecting samples for forwarding to Forensic Department if by negligence or by inadvertence something is caused which damages the tissue collected, it will not give a report incriminating against the Accused or any other person against whom such doubt is raised. Here the foetus tissue is only collected and based on the tissue, the forensic department was unable to establish the involvement of the Accused. That cannot be used favouring the Accused as the victim had already



identified the Accused who is well-known person in the locality and who had wielded influence. When the father of the victim along with her relatives went to the house of the Accused, the Accused had challenged them stating that you do whatever you want. Therefore, he is a person of influence. He can even meddle in the investigation process while collecting materials by the Investigation Officer or others who aid the investigation. Therefore, something had gone fishy in collecting the foetus. Therefore, the Forensic Department is unable to give a report regarding DNA typing to establish the guilt of the Accused involved in a rape case. That will not help the Accused to wriggle out of this case. The evidence of the Prosecutrix itself is sufficient to convict the Accused, particularly, the Statement under Section 164 of Cr.P.C. recorded by the learned Judicial Magistrate-P.W-17 under Ex.P-12 in which the victim had fairly stated the incidents. Also, the parents and grandmother of the victim had deposed evidence before the Court. The Doctor, who had examined the victim regarding the sexual assault, had corroborated the same. Dr.Santhi – P.W-13 who had issued Ex.P-5 and Ex.P-6 had corroborated the evidence of P.W-1 Prosecutrix. The defence of the Accused is that he belongs to a different political party. The father of the victim belongs to a different political party. Therefore, the case was foisted against him. The same cannot be accepted by this Court in the light of the clear evidence of the Prosecutrix who was aged 14 years. Therefore, there cannot be consent. It is a case of rape of a minor girl



aged about 14 years at the time of occurrence. Therefore, the judgment of the learned Sessions Judge convicting the Accused for seven years Rigorous Imprisonment is found justified but the conviction under Section 4 of the Protection of Children from Sexual Offences Act, 2012 is to be set aside, instead it is altered as 376 of IPC as the ingredients of Section 376 of IPC is made out.

14. The reported decision of the Sikkim High Court in **2016 Cri.L.J. 523 [State of Sikkim -vs- Amit Darjee (Darnal)]** cited by the learned Counsel for the Appellant is not helpful to the case of the Accused. The facts of the reported decision is that the Prosecutrix/Victim was aged around 17 to 18 years on the alleged date of occurrence. The Victim in the reported decision had not spoken about the alleged occurrence for quite a long time. Therefore, she was a consensual party for the alleged occurrence. The facts of the case before this Court is different. In the facts of the case before this Court, the victim as per the school records and as per the medical records, is aged 14 years. The Accused is aged 40 years on the date of the alleged occurrence. The father of the victim on coming to know about the alleged occurrence gathered their relatives and went to the house of the Accused who was a familiar figure in the area holding a responsible post in the Panchayat and he had protested in front of the house of the Accused in which the father of the victim stated that the



Accused is like a father to the victim, how can he commit such outrageous act?

For which, the Accused is alleged to have replied that “you do whatever you want” “உன்னால் என்ன செய்ய முடியுமோ செய்” and thereby challenged the victim's family members. Also, there is evidence through the Prosecutrix in this case that the Accused threatened the victim. She should not inform to any others. If she informs, the elders in that family will be murdered by him. As per the defence of the Accused before the trial Court, the defence of the Accused is that he belongs to a different political party. The father of the victim belongs to a different political party. Therefore, to wreck vengeance on political enmity he was framed. The defence of the Accused is reflected from the fact that the Accused is influential person. He had influenced the investigation process by which the DNA test was not conclusive to fix the Accused. Therefore, the evidence available before the Court through the Prosecutrix was accepted. Since the Prosecutrix was aged 14 years, she is not capable of giving consent or can be treated as consenting party. Therefore, the fact of the reported decision will not be helpful to the Accused/Appellant herein. The same is rejected.

15. The submission of the learned Counsel for the Appellant that as the alleged date of occurrence i.e., 12.11.2012 is two days prior to the date of notification of the Protection of Children from Sexual Offences Act, 2012, this



Act cannot be invoked against the Appellant/Accused is found justified. Still

the ingredients of the offence under Section 376 of IPC is attracted. The victim in this case was aged 14 years on the date of alleged occurrence. As per the order of this Court, the learned Judge of this Court had directed the Investigation Officer to appear before the Court and she was directed to produce the Transfer Certificate or Educational Certificate of the victim in which case it was found out that the date of birth of the victim was 1999 on the alleged date of occurrence, the victim was 13 years. Therefore, the certificate under Ex.P8 is found to be under the influence of the Accused wherein the age of the victim was given as 16 to 18. When the date of birth of the victim as per the School Certificate is 1999 as produced by the Inspector of Police on the direction of this Court by the learned Judge who presided over this roster earlier, the victim was a minor on the date of alleged occurrence. Therefore, even though the Protection of Children from Sexual Offences Act, 2012 came into effect as notified two days after the alleged date of occurrence, the submission of the learned Counsel for the Accused, if invoked, it will result in travesty of justice by acquitting the Accused who is aged that of the father of the victim girl viz., 40 years to be considered as a girl of 13 years and he has committed the offence under Section 376 of IPC in which case the victim is incapable of giving consent. The victim was repeatedly raped by him over a period of time exhibiting his status as a powerful person in the village and



threatening the victim that he will finish off her family. This much evidence is available in the 164 statement of the victim which was marked under Ex.P-23.

Therefore, the conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Villupuram, under Section 4 of the Protection of Children from Sexual Offences Act, 2012 is to be set aside as per Articles 21 and 22 of the Constitution of India.

16. In the light of the above discussion, the point for consideration is answered against the Appellant and in favour of the Respondent. The judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Villupuram in Spl.S.C.No.1 of 2014, dated 14.05.2015 a well reasoned judgment which does not warrant any interference by this Court.

In the result, **the Appeal is dismissed.**

The judgment of the learned Sessions Judge, Fast Track Mahila Court, Villupuram in Spl. S.C.No.1 of 2014, dated 14.05.2015 is modified only with respect to the conviction. The Appellant/Accused is convicted for the offence under Section 376 of IPC instead of Section 4 of The Prevention of Children from Sexual Offences Act, 2012. However, the sentence of seven years of Rigorous Imprisonment awarded by the Trial Court is confirmed. The learned Sessions Judge, Fast Track Mahila Court, Villupuram, is directed to issue



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warrant to the Appellant/accused to secure him to undergo the remaining period of sentence of imprisonment. The period of sentence already undergone by the Appellant/Accused is directed to be set off as contemplated under Section 428 of the Code of Criminal Procedure.

12.12.2023

srm

Index : Yes/No

Internet : Yes/No

Speaking/Non-speaking order

To

- 1.The Sessions Judge,
Fast Track Mahila Court,
Villupuram.
- 2.The Additional Public Prosecutor,
Madras High Court,
Chennai-600104.



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Criminal Appeal No.429 of 2015

SATHI KUMAR SUKUMARA KURUP, J.,

SRM

3. The Inspector of Police,
All Women Police Station,
Villupuram,
Villupuram District.
4. The Superintendent,
Central Prison,
Cuddalore.
5. The Section Officer,
Criminal Section,
High Court, Madras.

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12.12.2023