



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Criminal Appeal No.440 of 2016

Saravana Kumar .. Appellant / Accused

Vs.

State by

The Inspector of Police

All Women Police Station (Central)

Coimbatore District

Crime No.20 of 2010

..

Respondent/Respondent

Appeal filed under section 374 of Code of Criminal Procedure,
to set aside the judgement and sentence passed in S.C.No.158 of
2011 on the file of Principal Sessions Judge, Mahalir Neethimandram,
Coimbatore dated 08.04.2015 and acquit the appellant.

For Appellant	:	Mr.S.N.Arunkumar for Mr.M.N.Balakrishnan
For Respondent	:	Mr.L.Baskaran Government Advocate [Crl. Side]

**JUDGMENT**

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This Criminal Appeal has been filed against the judgement and order passed by the Principal Sessions Judge, Mahalir Neethimandram, Coimbatore in SC No.158 of 2011 dated 08.04.2015, convicting and sentencing the appellant in the following manner :-

Sl.No.	Offence	Sentence
1.	366 of IPC	<i>Seven years Rigorous Imprisonment and also imposed a fine of Rs.5,000/- and in default, to undergo six months simple imprisonment.</i>
2.	376(1) IPC	<i>Seven years Rigorous Imprisonment and also imposed a fine of Rs.5,000/- and in default, to undergo six months simple imprisonment.</i>

2. The case of the prosecution is that there was a love affair between the appellant and the victim girl (PW2). On 03.08.2010, the appellant is said to have gone to the house of the victim girl at about 8.00 pm and enticed the victim girl to come out of the house. Thereafter, the victim girl was taken to a temple and



the appellant tied a Thali around the neck of the victim girl. The victim girl was thereafter taken to the house of the sister of the appellant (PW5) and no one was there and at that point of time, the appellant is said to have had physical intercourse with the victim girl.

3. In the meantime, a complaint came to be given by the mother of the victim girl (PW1) and based on the same, an FIR came to be registered in Crime No.20 of 2010 on 04.08.2010 at about 9.30 p.m. (EX.P11). The investigation was taken up by PW10 and he arrested the appellant and remanded him to judicial custody. The victim girl was also forwarded for medical examination by PW3 through whom the accident register was marked as Ex.P2. The samples were sent to PW4 and the chemical analysis report that was given by specialist was marked as Ex.P3. The accused person was also sent for potentiality test conducted by PW4 and through this Doctor, Ex.P4 and P5, Chemical analysis reports were marked.

4. The investigation officer (PW10) also recorded the



statement of the witnesses under Section 161(3) of Cr.PC. In the course of investigation, he also prepared the alteration report marked as Ex.P13 and the offence was altered to Section 366 of IPC and 376 (1) of IPC. The observation mahazar and the sketch was also marked through him as Ex.P10 and Ex.P12 respectively.

5. The Investigation was thereafter taken over by PW11, who collected the other reports and ultimately, laid the final report before the Judicial Magistrate III, Coimbatore. After the copies were served under Section 207 of Cr.PC, the case was committed and made over to the file of the Court below and the same was taken on file in SC No.158 of 2011.

6. The Court below framed charges against the appellant for offence under Section 366 and 376(1) of IPC. The prosecution examined PW1 to PW11 and marked Ex.P1 to P13. The incriminating materials that were collected during the course of trial was put to the appellant when he was questioned under Section 313 (1) (b) of Cr.PC and he denied the same as false.



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7. The Court below on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence came to a conclusion that the prosecution has proved the case beyond reasonable doubt and proceeded to convict and sentence the appellant in the manner stated supra. Aggrieved by the same, the present Criminal Appeal has been filed before this Court.

8. Heard Mr.S.N.Arun Kumar, learned counsel for appellant and Mr.L.Baskaran, learned Government Advocate (Crl. Side) for Respondent.

9. In the present case, there is no doubt that there was a previous relationship between the appellant and the victim girl (PW2). This relationship is even spoken to by the mother of the victim girl (PW1) in the chief examination. On the fateful day, the victim girl was staying at her uncle's house at Siddhapudur. The appellant had gone there at about 8.00 pm and had asked the victim



girl to accompany him. The victim girl accompanied the appellant and the victim girl states in her own evidence that the appellant took her to the temple at Echanari and tied Thali. Thereafter, the victim girl was taken to the house of the Sister (PW5) of the appellant and the appellant had physical intercourse with the victim girl.

10. On a careful analysis of the evidence of PW1 and PW2 and the evidence of the Doctor, who was examined as PW3 and also after going through Ex.P2 and Ex.P3, this Court does not find that there was any force exerted by the appellant against the victim girl. The victim girl at no point of time had resisted the appellant and the entire course of events had happened naturally.

11. What is evident is that the appellant did have physical intercourse with the victim girl. There is nothing to discredit the evidence of PW2 in this regard.

12. The next issue to be taken into consideration is as to the



age of the victim girl. If the victim girl is below 18 years of age, whether she consents or does not consent, does not really matter and it will constitute an offense of rape as provided under Section 375 of IPC. Therefore, it must be seen as to whether the prosecution has established the age of the victim girl to be below 18 years.

13. It will be relevant to take note of the evidence of PW7 and PW8 in this regard. PW7 is the Doctor / Radiologist who had assessed the age of the victim girl and he has given a certificate which was marked as Ex.P7 which shows that the age of the victim girl must be between 17 to 18 years. The next evidence that is relied upon by the prosecution is the evidence of PW8. This witness was the Head master of the school in which the victim girl had studied. Through this witness, Ex.P9 was marked. For proper appreciation, the contents of Ex.P9 is extracted hereunder :-

சித்தாபத்தூர் மாகைநாட்சி பெண்கள் உயர்நிலைப் பள்ளியில் பயின்று வந்த 9
ஆம் வகுப்பு மாணவி ஆவணஸ்களின் படி குறிப்பிடப்பட்டுள்ளது என்று
சான்றளிக்கிறேன்,
இணைப்பு ரெக்கார்ட் 22 ட் நகள்
கல்வி ஆண்டு = 2010 = 2011

14. It is clear from the above that the certificate issued by

PW8 does not show the basis on which the certificate was issued. If



PW8 states that the date of birth of the girl is 06.12.1996, then this witness must say from which document he ascertained this Date of Birth. PW8 merely states that he has given this certificate based on the school records. The school records have not been marked before this Court.

15. It is clear from the above that there is no clinching document to ascertain the correct age of the victim girl. The age of the victim girl becomes very material in a case of this nature, since a consensual sexual relationship beyond 18 years will not come within the scope of rape. At the time of the incident, the appellant was aged about 22 years. It is brought to the notice of this Court that he suffered incarceration for nearly 16 months. It is also brought to the notice of this Court that the victim girl is already married and she is living elsewhere with the small kid.

16. Unfortunately, in cases of this nature, adolescent youngsters are driven by their hormones and it ends up in a physical intercourse. It is true that the physical intercourse even if it takes



place with consent, does not really matter, if the victim girl is below 18 years of age. This crucial fact has not been established by the prosecution in this case and hence, this Court is inclined to give the benefit of doubt to the appellant.

17. In the light of the above discussion, this Court is inclined to interfere with the judgment and order passed in S.C.No.158 of 2011 on the file of Principal Sessions Judge, Mahalir Neethimandram, Coimbatore dated 08.04.2015 and the same is hereby set aside. The petitioner was enlarged on bail during the pendency of the Criminal Appeal. Since he is acquitted from all charges, the bail bond executed by the petitioner shall stand cancelled. If the petitioner has paid the fine amount, the same shall be refunded.

18. In the result, this Criminal Appeal stands allowed.



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Internet : Yes/No

Index : Yes / No

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To

1. The Principal Sessions Judge,
Mahalir Neethimandram, Coimbatore.

2. The Public Prosecutor
High Court, Madras.



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N.ANAND VENKATESH.,J

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