



Crl.A.No.288 of 2017

IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED : 18.10.2023

CORAM:

The Honourable MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.A.No.288 of 2017

Sivakumar

...Appellant / Accused

-Vs-

State rep. by
The Inspector of Police
Mathikonpalayam Police Station,
Dharmapuri District.
(Crime No.38 of 2013)

...Respondent / Complainant

Prayer:- Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, 1973, to set aside the judgment of conviction and sentence passed by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri District, in S.C.No.71 of 2015 dated 16.12.2016.

For Appellant : Mr.V.Raja mohan

For Respondent : Ms.G.V.Kasthuri
Additional Public Prosecutor



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J U D G M E N T

WEB COPY The Appellant is the sole Accused in Sessions Case No.71 of 2015 dated 16.12.2016 on the file of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri.

2. The Trial Court, vide impugned judgment in Sessions Case No.71 of 2015 dated 16.12.2016, has convicted the Sole Appellant/Accused as follows:-

Conviction under section	Sentence Awarded
Section 363 of IPC	To undergo three years of rigorous imprisonment and to pay a fine of Rs.1,000/- and in default, to undergo three months imprisonment.
Section 376 of IPC	To undergo ten years of rigorous imprisonment and to pay a fine of Rs.1,000/- and in default, to undergo three months imprisonment.

The Trial Court ordered the sentences to run concurrently and has also granted set-off under Section 428 Cr.P.C. for the period of incarceration undergone by the Accused during investigation/trial.

3. The challenge in this Appeal is to the above said judgment of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri.



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4. Brief facts which are necessary for the disposal of this Criminal Appeal, are as follows:-

- a) As per the Prosecution case, the victim in this case was alleged to have been stalked by the Accused when she was going to School on her bicycle. The Accused is alleged to have followed her on his two-wheeler and made advancement to the victim, stating that he is married and does not have children. Therefore, he wanted to marry her and get children, which was stoutly objected by the victim.
- b) On 23.02.2013, while the victim proceeded on her bicycle for her School, he followed her and dashed his two-wheeler on the bicycle, placing a knife near the neck, threatened her, and took her forcibly on the two-wheeler thereby attracting Section 366(A) of IPC. When the parents of the victim found out that she did not reach the School, they searched for her. A School student who witnessed the incident is alleged to have informed the father of the victim. Based on which, the father of the victim had given a Police complaint. Based on the Police complaint, the Police had registered the case under Section 366(A) of IPC.
- c) It is the further case of the Prosecution that the Accused is alleged to have detained the victim in a pump house belonging to him and had



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forcibly indulged in sexual intercourse. When the Accused was not in the room and went out placing his mobile in the said room, the victim is alleged to have contacted her father. Based on which, he had informed the Police. With the help of the Police, the victim's father had recovered her from the place, where she was detained by the Accused. Also, the Police had arrested the Accused.

- d) In the course of the investigation, the Police found out that the victim was raped by the Accused and following the due procedures regarding sexual offence, they had subjected the Accused and the victim to medical examination. After receipt of the report of the medical examination and completion of the investigation, the Investigation Officer laid the final report before the Court of the learned Judicial Magistrate No.I, Dharmapuri.
- e) After taking cognizance of the offence by the learned Judicial Magistrate No.I, Dharmapuri, since it is not triable by the learned Judicial Magistrate, and it is exclusively triable by the Court of Sessions, had furnished copies to the Accused. The learned Judicial Magistrate No.I, Dharmapuri, committed the Accused to the Court of Sessions and sent the records to the Court of Sessions. The learned Principal Sessions Judge on receipt of the Court records and on



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appearance of the Accused, made over the case to the Court of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri.

- f) On appearance of the Accused before the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, after hearing the arguments of the learned Additional Public Prosecutor and the learned Counsel for the Defence, the learned Sessions Judge had framed the following charges:

No. of charges	Charges framed
Charge 1	Section 366(A) of IPC
Charge 2	Section 9 of Prohibition of Child Marriage Act, 2006.
Charge 3	Section 376 of IPC

Since the charges were denied by the Accused, the learned Sessions Judge ordered trial.

- g) The Prosecution had examined witnesses P.W-1 to P.W-16 and marked documents Exs.P-1 to P-13.
- h) P.W-1 is the victim; P.W-2 is the father of the victim, the Complainant in this case; P.W-3 is the mother of the victim; P.W-4 is the maternal grandmother; P.W-5 is the maternal uncle of the victim; P.W-6 is the uncle of the victim and co-brother of P.W-2; P.W-7 is also related to P.W-2, the cousin of P.W-2; P.W-8 and P.W.9 are



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also residents of the same village. Also, they are relatives of P.W-2, father of the victim; P.W-10 is the head constable, who had accompanied the Accused for medical examination; P.W-13 is the Doctor, who had examined the victim and issued Ex.P-6, report of the medical examination regarding sexual assault; P.W-14 is the Doctor, who had examined the Accused and issued potency certificate under Ex.P8; P.W-15 is the Sub Inspector of Police of Mathikonpalayam, Dharmapuri District, who had received the complaint from P.W-2, father of the victim and registered the case in Crime No.38 of 2013 under Ex.P-9; P.W-16 is the Inspector of Police, who had proceeded with the further investigation and laid the final report before the Court of the learned Judicial Magistrate No.I, Dharmapuri.

- i) On appreciation of evidence, the learned Sessions Judge had acquitted the Accused for the offence under Section 9 of the Prohibition of Child Marriage Act, 2006, and Section 366(A) of IPC. The learned Sessions Judge had convicted the Accused for the offence under Sections 363 and 376 of IPC.



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5. It is the submission of the learned Counsel for the Appellant that the offence under Section 376 of IPC was a minimum punishment, which is enhanced to 10 years by amendment in the year 2018. The alleged offence occurred in the year 2013. The judgment of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, was pronounced on 16.12.2016. As per the IPC provision, on the date of pronouncement of the verdict, the minimum sentence was 7 years. Whereas the learned Sessions Judge had sentenced the Accused to the minimum as per the amended Act. Therefore, the first objection is with regard to the sentence. The second objection is that there are doubtful circumstances pointed out by the defence in the evidence of the Prosecution Witness that there was previous enmity between the Accused and the father of the victim. Therefore, the false complaint has been given as though the Accused had forcibly taken away a minor girl from the lawful custody of the parents with an intention to commit sexual assault.

6. The learned Counsel for the Appellant further submitted that the date of birth of the victim is given as 21.05.1996, and that on the date of occurrence, 18.02.2013, she was 17 years old. Therefore, the learned Sessions Judge had convicted the Accused and the judgment of conviction



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made in S.C.No.71 of 2015 is perverse and is to be set aside.

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7. The learned Counsel for the Appellant invited the attention of this Court to the evidence of P.W-1 to P.W-16. The learned Counsel for the Defence had raised doubts regarding the delay in lodging the complaint. They are pointed out in the cross-examination that the father of the victim, P.W-2, had stated that by going to School had informed him that the Accused had forcibly taken his daughter after mowing down the bicycle driven by the victim and forcibly taken her on the two-wheeler driven by him. Still, he had lodged the complaint only the next day by 12'o clock.

8. The learned Counsel for the Appellant invited the attention of this Court to Ex.P-9, FIR registered by P.W-15, wherein the FIR is dated 19.02.2013, and column no.3(a) occurrence of the offence was mentioned as 18.02.2013. The FIR was received in the Court of the learned Judicial Magistrate on 21.02.2013. Therefore, the delay had not been properly explained by the Prosecution. The alleged kidnapping of the minor girl cannot be committed by a single individual. The Prosecution is unable to answer whether it was committed by a sole person. The investigation itself is shoddy. Therefore, there are many loopholes in the case of the



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Prosecution, which was ignored by the learned Sessions Judge and had convicted the Accused based only on the testimony of the victim, which was corroborated by her relatives. None of the witnesses are independent witnesses all are interested witnesses. Therefore, the same is to be set aside and the Appellant is to be acquitted from the charges under Sections 363 and 376 of IPC.

9. Learned Additional Public Prosecutor vehemently objected to the line of argument to the learned Counsel for the Appellant. The learned Additional Public Prosecutor submitted that as per the reported ruling of the Hon'ble Supreme Court in the case of ***Ganesan Vs. State Represented by its Inspector of Police*** reported in ***(2020) 10 SC 573*** stating the delay in lodging the complaint or registering the FIR need not be given due importance regarding sexual offence, the same can be ignored. Also, in the same judgment, it had been laid down that if the evidence of the victim of sexual assault inspires confidence of the learned Sessions Judge, the other points raised by the Counsel for the Defence before the Trial Court can be ignored and the Court has to convict the Accused.



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10. Further, the learned Additional Public Prosecutor submits that here is the case where the evidence of the relatives who are natural witnesses to the missing of a schoolgirl who had left home for School was not found out, and it was cogent, inspiring the confidence of the learned Sessions Judge. The learned Sessions Judge had on proper appreciation of evidence, had arrived at the conclusion that the Prosecution case is proved through cogent evidence, including medical evidence. Therefore, the judgment of the learned Sessions Judge is not perverse. The Appeal lacks merit and is to be dismissed by confirming the judgment of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri.

11. Further, the learned Additional Public Prosecutor submits that, as per the materials available in the evidence of P.W-1 to P.W-7, they had gone to the parents of the Accused when the minor girl, the victim, had complained to her parents against the conduct of the Accused in stalking her continuously when she was going to School and returning from School. Accordingly, the parents of the Accused had reprimanded him and stated that the Accused was already married and had children. After such incident, the Accused had gone to the residence of the victim in the presence of her parents and other witnesses who had been examined before



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the Court, P.W-1, the victim; P.W-4, the maternal grandmother of the

victim; P.W-5, the maternal uncle of the victim; P.W-6, the uncle and co-

brother of the victim. The Accused had apologized and assured the victim,

her parents and her relatives that he will not disturb her when she was

going to School and returning from School. After giving such an assurance

to the elders of the victim (P.W-1 to P.W-6), the conduct of the Accused in

forcibly taking away the victim on his motorcycle after mowing down the

bicycle driven by the victim with the two-wheeler driven by the Accused on

the way to School cannot be condoned. It has to be condemned. It was

done on the very next day after giving an assurance that he will not stalk

her. That shows the criminal intention of the Accused, which resulted in the

minor girl, a student of the higher secondary class, discontinuing her

education because of the criminal act of the Accused. Therefore, the learned

Additional Public Prosecutor vehemently opposed to the submission of the

learned Counsel for the Appellant seeking to set aside the judgment of

conviction thereby acquitting the Accused from the charges and to confirm

the judgment of conviction passed by the learned Sessions Judge, Fast

Track Mahila Court, Dharmapuri, in S.C.No.71 of 2015 for the offence

under Sections 363 and 376 of IPC.



12. It is the further submission of the learned Additional Public Prosecutor that the evidence of the victim, P.W-1, is corroborated by the medical evidence of P.W-13, the Doctor, who examined her and issued Ex.P-6, certificate regarding sexual assault. That itself will be sufficient to confirm the judgment of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, in S.C.No.71 of 2015 dated 16.12.2016.

13. **Point for consideration:**

Whether the judgment of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, in S.C.No.71 of 2015 dated 16.12.2016 is to be set aside as perverse?

14. Heard the learned Counsel for the Appellant and the learned Additional Public Prosecutor for the State.

15. Perused the evidence of Prosecution Witnesses, P.W-1 to P.W-16 and Ex.P-1 to Ex.P-13, and the judgment of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, in S.C.No.71 of 2015 dated 16.12.2016.

16. On perusal of the evidence of the Prosecution Witnesses, P.W-1 to P.W-16, and the judgment of the learned Sessions Judge, Fast Track



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Mahila Court, Dharmapuri, there are loopholes in the investigation. There

is delay in lodging the complaint; there is delay in registering the FIR; there is delay in FIR reaching the Court. Since the evidence of the victim is corroborated by the evidence of P.W-2, father of the victim; P.W-3, mother of the victim; P.W-4 is the maternal grandmother; P.W-5 is the maternal uncle; P.W-6 is the co-brother of P.W-2 and also uncle of the victim. P.W-7 is the cousin of P.W-2 and also the uncle of the victim; considering the fact that there cannot be witnesses to the sexual assault, there is evidence regarding the fact that P.W-1, the victim, complained of the conduct of the Accused, who was aged 26 years old on the alleged date of occurrence and the victim was 17 years old. She had expressed her fear naturally as a minor girl, where she was stalked by a man, a stranger aged 26 years continuously when she was going to School and on her return from School. She had complained to her parents and elders at home. Finding out about the Accused, they went to the house of the Accused and complained to the parents of the Accused. Based on which, the Accused is alleged to have visited the parents of the victim and assured them that he will not disturb her. As per the evidence of the parents of the victim as well as the maternal uncle and maternal grandmother, the Accused fell down at the feet of the elders of the victim, apologized for his conduct, and assured that he will not



disturb her. The next day, he took her on his two-wheeler by mowing down her, riding the bicycle on her way to School, and placing the knife on her neck. He threatened her and took her on his two-wheeler. This was witnessed by a School student who had informed the father of the victim. Immediately, the father of the victim, P.W-2, along with P.W-4, P.W-6 and P.W-7, searched for the victim in the School with the Headmaster and other teachers. Usually, in cases of this nature, the parents will search for minor children near their place of residence and also with the families of the relatives; only then they prefer a complaint. Even if the complaint is lodged, the Police advise them to trace them in relatives house. Therefore, it is natural. In such circumstances, there will be delay in lodging the complaint. Here, the father of the victim, had lodged the complaint on the next day by 12 'O' clock. As per the evidence of P.W-2, after one day, when the Accused had charged the mobile in the motor room and went out, the victim had used this opportunity to call her father.

17. This is established by evidence of P.W-2, P.W-3, P.W-5 etc. It is true that in the cross-examination of the witnesses, they did not mention the mobile number from which P.W-1 had contacted them. Also, the witnesses had not mentioned the name of the School student who had informed P.W-



2 about the kidnapping of the minor girl by the Accused. From these circumstances, the submission of the learned Counsel for the Appellant that there is delay in lodging the complaint, there is delay in registration of the case, there is delay in FIR reaching the Court of the learned Judicial Magistrate No.I, Dharmapuri, even though found acceptable, cannot be considered to reject the Prosecution case.

18. As rightly pointed out by the learned Additional Public Prosecutor the fact that the minor girl was kidnapped by the Accused and committed sexual assault on the victim is made out from the evidence of P.W-1, the victim and corroborated by the evidence of Doctor, P.W-13 through Ex.P-6. That would be sufficient to convict the Accused for the offences under Section 376 of IPC. Therefore, there is nothing perverse in the judgment of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, in convicting the Accused for the offence under Section 376 of IPC. The submission of the learned Counsel for the Appellant regarding the delay in lodging the complaint, delay in registering the FIR, delay in FIR reaching the Court are rejected even though they are true. The submission of the learned Additional Public Prosecutor regarding the same is accepted in the light of the reported ruling in the case of **Ganesan Vs. State**



Represented by its Inspector of Police reported in (2020) 10 SC 573.

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19. Also, in many cases, the Hon'ble Supreme Court has laid down that if the evidence of the prosecutrix inspires the confidence of the learned Trial Judge, the learned Trial Judge can convict the Accused regarding sexual assault. However, in this case, the evidence of P.W-1 is corroborated by the evidence of P.W-13 through Ex.P-6. It is true as pointed out by the learned Counsel for the Appellant, that all the Prosecution witnesses, P.W-1 to P.W-8, are relatives of the victim. In cases of this nature, independent witnesses will not volunteer to depose evidence, as witness. From the evidence, it is found that the Accused, who is aged 26 years old and was already married, had attempted to exploit the minor girl under the pretext of marriage, and she has not cooperated with him. He had mowed her on the alleged date of occurrence when she was driving bicycle to attend School and forcibly taken her to the place where he had locked her. The victim was detained by him in the motor room and he had sexually assaulted her during the period of illegal custody. Therefore, the said conduct of the Accused has to be condemned. As rightly pointed out by the learned Additional Public Prosecutor the conduct of the Accused had made the victim to drop out of School after such incident. Therefore, the



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conviction of the Accused by the learned Sessions Judge for the offence

under Sections 363 and 376 of IPC is found reasonable and does not

warrant any interference by this Court. Further, as per the guidelines issued

by the Hon'ble Supreme Court in appreciation of evidence by the Appellate

Court when the learned Trial Judge had arrived at the conclusion based on

proper appreciation of evidence on assessing the entire materials available

before him or her. The learned Appellate Judge shall not disturb the finding

if it is based on proper appreciation of fact, appreciation of evidence. There

is no doubt to the fact that the learned Trial Judge had the advantage of

observing the demeanour of the witness and the Accused. Whereas the

Appellate Judge does not have the said advantage. Under those

circumstances, the finding of the learned Sessions Judge is found

acceptable. Therefore, the submission of the learned Counsel for the

Appellant is rejected. The submission of the learned Additional Public

Prosecutor is accepted and the Appeal is dismissed as having no merits,

thereby confirming the judgment of conviction recorded by the learned

Sessions Judge, Fast Track Mahila Court, Dharmapuri, in S.C.No.71 of

2015 dated 16.12.2016.



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20. The point for consideration is answered in favour of the Prosecution and against the Appellant.

21. In the argument, the first objection of the learned Counsel for the Appellant is with regard to the minimum period of sentence. Taking into consideration, the valuable point regarding the minimum sentence under Section 376 of IPC which has been enhanced the minimum period of sentence as on the date of pronouncement of judgment by Trial Court 16.12.2016, the said amendment has not come into effect. Therefore, the period of sentence 10 years of rigorous imprisonment awarded by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, is reduced.

Accordingly, **the Criminal Appeal is partly allowed** and the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, in Sessions Case No.71 of 2015 dated 16.12.2016 is confirmed. However, the sentence imposed by the Trial Court for the offence under Section 376 of IPC is modified and reduced from 10 years to one of 7 years of Rigorous Imprisonment. The period already undergone in detention is to be set off under Section 428 of Cr.P.C.



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The Appellant/Accused is directed to surrender within 15 days from the date of uploading a copy of this judgment on the website of this Court.

The learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, is directed to issue warrant in the light of the judgment of conviction recorded in S.C.No.71 of 2015, dated 16.12.2016. The Inspector of Police, Mathikonpalayam Police Station, Dharmapuri District, is directed to secure and produce the Accused before the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri to undergo the period of detention. If the Accused absconds, after dismissal of this appeal, the Inspector of Police, Mathikonpalayam Police Station, Dharmapuri District, is directed to file petition under Section 82 of Cr.P.C. before the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, to declare the Accused as Proclaimed Offender so that the movable and immovable properties of the absconding Accused has to be attached. Also, the photograph of the Accused, reporting absconding Accused shall be circulated in the daily newspaper having wide circulation in Tamil Nadu and neighbouring states.

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Index : Yes/No

Speaking/Non-speaking order



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To

- 1.The Sessions Judge,
Fast Track Mahila Court,
Dharmapuri.
- 2.The Inspector of Police
Adhiyamankottai Police Station,
Dharmapuri District.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Section Officer, VR Records,
High Court, Chennai.

Copy to: (Sent through e-mail)

- 1.The Principal Secretary to Government,
Home Department,
Fort St. George,
Chennai – 600 009.
- 2.The Director General of Police,
O/o. The Director General of Police,
Mylapore, Chennai – 600 004.
- 3.The Additional Director General of Police (Law and Order),
O/o. The Additional Director General of Police,
Mylapore, Chennai – 600 004.
- 4.The Inspector General of Police (West Zone),
O/o. The Inspector General of Police,
Coimbatore.
- 5.The Deputy Inspector General of Police,



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O/o. The Deputy Inspector General of Police,
Salem Range, Salem.

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6.The District Collector,
Collectorate,
Dharmapuri District.

7.The Superintendent of Police,
O/o. The Superintendent of Police,
Dharmapuri District.

8.The Deputy Superintendent of Police,
O/o. The Deputy Superintendent of Police,
Dharmapuri District.



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SATHI KUMAR SUKUMARA KURUP, J.,

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