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Crl.A.No.350 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2023

CORAM:

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No. 350 of 2017
and
Crl.M.P.No.7804 of 2017

Ramesh

.. Appellant

Versus

State Rep. by its
The Inspector of Police
Kadaladi Police Station,
Kadaladi, Tiruvannamalai District.
(Crime No.106 of 2010)

.. Respondent

Criminal Appeal is filed under Section 374 (2) of the Criminal Procedure Code, 1973, to set aside the conviction and sentence passed by the learned Sessions Judge (FAC), Fast Track Mahila Court, Tiruvannamalai, in S.C. No. 13 of 2011 dated 28.02.2017 and acquit the Appellant.

For Appellant	:	Mr. T. Prabhu (Legal Aid Counsel)
For Respondent	:	Mrs. G.V. Kasthuri Additional Public Prosecutor

JUDGMENT

The Appellant is the sole Accused in Sessions Case No.13 of 2011 on the file of the learned Sessions Judge (FAC), Fast Track Mahila Court,

<https://www.mhc.tn.gov.in/judis>



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Tiruvannamalai. After conclusion of trial, by the judgment dated 28th February 2017, the Appellant was convicted and sentenced for the following offences:-

Convicted for the offence	Period of Sentence
S. 366 A of Indian Penal Code	To undergo rigorous imprisonment for a period of 10 years with fine of Rs.2,000/-, in default to undergo rigorous imprisonment for a period of one year
S. 376 of Indian Penal Code	To undergo rigorous imprisonment for a period of 10 years with fine of Rs.2,000/-, in default to undergo rigorous imprisonment for a period of one year

2. However, the substantial sentences imposed against the Accused were ordered to run concurrently and the period of sentence already undergone by him from 14.02.2010 to 22.04.2010 shall be set of under Section 428 of the Code of Criminal Procedure.

3. The case of the Prosecution, as could be unfolded from the deposition of P.W-1, is succinctly narrated hereunder:-

3.1. According to P.W-1, on the fateful day on 13.02.2011 at about

5.30 pm when he was in the land of Chairman Subramani and doing work, he



had seen his daughter (P.W-2) and wife (P.W-3) washing their clothes in the pump shed nearby. Later, P.W-3 left to her house leaving P.W-2 in the pump shed as P.W-2 stated to come home along with her father (P.W-1). Sometime later, P.W-1 heard the noise of his daughter and he rushed to the land of Saminathan where he saw the Accused running from that place. On searching for his daughter, P.W-1 saw his daughter with bleeding on her mouth and chest and is lying without dress. According to P.W-1, at the time of occurrence, her daughter was 7 years old and studying third standard in a School. When P.W-1 asked his daughter as to what has happened, she has narrated to him that the Accused told him to take her to her father, closed her mouth, took her to the sugar cane garden of Swaminathan where he put her on the ground, bite on her chest and mouth. Immediately, the Villagers came there and asked P.W-1 to take P.W-2 to the hospital, but P.W-1 took P.W-2 to her house and from where both P.W-1 and P.W-3 took P.W-2 to the hospital.

3.2. It is seen from the records that the victim girl was admitted in Tiruvannamalai Government Hospital. On intimation from the Doctor, P.W-9, Sub-Inspector of Police, rushed to the hospital on the intervening night of 13.02.2011 and 14.02.2011 at 12.00 hours where he recorded the statement of P.W-1. Later, on 14.02.2010 at about 6.00 am, he went to the Police Station



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and based on the statement of P.W-1, he registered a case in Crime No. 106 of 2010 for the offences under Sections 376, 511, 324 and 377 of IPC. Ex.P-7 is the First Information Report in this case.

3.3. On receipt of Ex.P-7, First Information Report, P.W-12, Inspector of Police, Kadaladi Police Station had taken up the case for investigation and went to the scene of occurrence at about 8.00 am on 14.02.2010 where he drew a sample sketch under Ex.P-9. He also prepared an observation mahazar signed by P.W-6 and one Ravi. He also recorded the statement of one Periyasamy, Velu (P.W-4), Mani (P.W-5), Swaminathan, Rajini (P.W-6) and recorded their statement. He also recorded the statement of P.W-1, P.W-3 and P.W-2 (victim) girl and recorded their statement. On the same day at about 01.30 pm, he arrested the Accused in the Coot Road, Kanchi and remanded him to judicial custody. Later, he had sent the Accused to medical examination with a requisition letter addressed to the Medical Officer, Government Medical College and Hospital, Thiruvannamalai. On examination of the Accused, P.W-7, the Doctor assessed his age as above 21 years. Subsequently, P.W-12 has given a requisition letter addressed to the Judicial Magistrate, Polur seeking to subject the victim girl for medical examination. Accordingly, the victim girl was subjected to medical examination by P.W-8,



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Dr. Ramaa. The Accident Register issued by P.W-8 was marked as Ex.P-5.

After concluding his investigation, P.W-12 has filed the final report against the Appellant/Accused for the offences punishable under Sections 366 and 376 of IPC.

3.4. The learned Judicial Magistrate, Polur, before whom the charge sheet was filed, taken it on record. Since the offences covered in the charge sheet are triable by a Court of Sessions, the case was committed to the Court of Sessions. On appearance of the Accused and after hearing the Prosecution and the defence, the learned Sessions Judge (FAC), Fast Track Mahila Court, Tiruvannamalai, had framed charges against the Appellant for the offences under Sections 366 (A) and 376 of IPC. When questioned, the Accused denied the charges and therefore, trial commenced.

3.5. During trial, in order to prove the charges against the Appellant, the Prosecution had examined P.W-1 to P.W-12 and marked Ex.P-1 to Ex.P-9. That apart, M.O-1 and M.O-2 were also marked. On appreciation of evidence, the learned Sessions Judge (FAC), Fast Track Mahila Court, Tiruvannamalai, by the impugned Judgment dated 28.02.2017 in S.C. No. 13 of 2011 convicted and sentenced the Appellant/Accused, which are more fully set out



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at the beginning of this Judgment. Aggrieved by the Judgment dated 28.02.2017, the instant Appeal has been filed by the Appellant.

4. When this Appeal came up for hearing, there was no representation for the Appellant. The Appellant also did not appear before this Court. Therefore, this Court addressed the Legal Aid Committee attached to this Court to nominate a Counsel having sufficient experience on the criminal side to appear on behalf of the Appellant. Accordingly, the Legal Aid Committee attached to this Court had nominated Mr. T. Prabhu and Ms. V. Hemalatha, Legal Aid Counsels, on behalf of the Appellant.

5. Today, when the case came up for hearing, Mr. T. Prabhu, learned Counsel from Legal Aid appeared on behalf of the Appellant and submitted his argument.

6. The Learned Counsel appearing for the Appellant invited the attention of this Court to the contents of the FIR under Ex.P-7. As per the FIR, the alleged occurrence took place on 13.02.2010 by around 17.30 hrs but the complaint was lodged on 14.02.2010 by 06.00 a.m. This delay, according to the learned Counsel for the Appellant has not been explained by the



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Prosecution properly and it vitiates the entire theory put up by the Prosecution.

Further, the learned Counsel invited the attention of this Court to the contents of the complaint under Ex.P-1. As per the complaint, Head Constable 786 Sreenivasan came to Kadaladi Police Station and reported P.W-9 that he had recorded the statement of P.W-1 at Government Hospital. He also stated that he had gone to the ward, examined the father of the victim, and recorded the oral complaint, based on which, the First Information Report in Crime No.106 of 2010 was registered at the Kadaladi Police Station, Tiruvannamalai. As per the Prosecution case, P.W-2, the victim was present along with her father in the agricultural field. When P.W-1 was about to return home, he found that his child was missing. He went in search of the child and he heard some cries from the sugarcane fields. When he went along with P.W-4, he saw the Accused running from the sugarcane field. At that time, he had seen his daughter coming out of the field crying and they came to know that she had been sexually assaulted by the Accused. According to the learned Counsel, P.W-1 had stated to the Doctor that the occurrence had taken place in his field, whereas, in the first information report, it was stated that the occurrence had taken place in the sugar cane field of Saminathan. Further, in the complaint, he has stated that he saw his daughter without any dress, which was not corroborated by any other witnesses. It is also stated by P.W-1 that no one has



seen the victim girl without dress, but P.W-4, Velu said that he immediately reached the scene of occurrence and saw the victim girl without dress.

Similarly, the injuries said to have been suffered by P.W-2, injured girl, as stated by P.W-1 and other witnesses substantially differs. Moreover, the victim girl, clearly stated that at the time when his father came to rescue her, she was wearing the underwear. This portion of the deposition demolishes the deposition of P.W-1 and P.W-4 that they saw the victim girl without dress. Even though P.W-4 and others asked P.W-1 to go to hospital immediately, he casually taken the child to his house. In any event, there is enormous delay in giving the complaint and therefore, the case projected by the Prosecution is unbelievable.

7. It is the submission of the learned Counsel for the Appellant that the report prepared by P.W-8 under Ex.P-6 states that no semen was found in the specimen taken from the victim. The forensic report dated 03.03.2010 received by her also states that there is no semen in the samples sent for examination. Thus, it is clear that the theory of rape put forth by the Prosecution has not been proved. The Prosecution failed to prove the charge against the Appellant for the offence under Section 376 of IPC in the light of the evidence adduced by the Prosecution Witnesses. Further, it is the



contention of the learned Counsel for the Appellant that the charge under Section 376 of IPC is not made out. Such a charge is baseless and it was not spoken to even by medical witnesses or ocular witnesses. Therefore, the learned Counsel for the Appellant submits that there are glaring inconsistencies in the case projected by the Prosecution, while so, it is unsafe to pass a judgment of conviction on the Accused. Accordingly, he seeks to set aside the judgment of conviction recorded by the learned Sessions Judge (FAC), Fast Track Mahila Court, Tiruvannamalai and to allow this Criminal Appeal.

8. Per contra, the learned Additional Public Prosecutor vehemently objected to the line of argument made by the learned Counsel for the Appellant, stating that Ex.P-6 is sufficient to convict the Accused. Under Ex.P-6, it is clearly recorded that the victim suffered injuries in her vagina. The Doctor had deposed clearly before the Court that, on touching the vagina, it bled, which suggests there was sexual assault on the child by the Accused. P.W-4 is an independent witness. He states that at the time of occurrence, on hearing the cries of P.W-1, he went there and saw P.W-1 rescuing his daughter from the sugarcane field. At that time, the victim girl was without dress and there are injuries on her chest, cheek and vagina. Further, P.W-1 shouted that



the victim Ramesh is running and P.W-4 heard P,W-1 saying so. Therefore, the presence of the Appellant/Accused at the scene of occurrence is proved by P.W-1 as well as P.W-4.

9. The learned Additional Public Prosecutor would submit that in a case of this nature, the deposition of the victim girl is sufficient. The victim girl was examined before the Court and at that time, she was studying in VIII Standard. At the time of occurrence, the victim girl was studying Third Standard. The victim girl, in her deposition clearly stated that the Accused had caused injuries by biting her vagina. She also deposed that since she shouted, the Accused bite her in the mouth and caused injury there also. This piece of deposition of P.W-2 is sufficient to convict the Appellant/Accused. The deposition of P.W-2 is natural and consistent with the medical evidence. In this context, the learned Additional Public Prosecutor relied on 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 SCC 573***, wherein it was held that when the evidence of the Prosecutrix/victim of crime inspires confidence of the learned Trial Judge, the Court can convict the Accused.

10. The learned Additional Public Prosecutor submits that the



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Accused is having bad antecedent even while in Jail. The learned Additional Public Prosecutor submitted that after conviction by the trial Court, the Appellant/Accused was secured and was in jail. While in Jail, he was engaged in gardening work. At that time, on 03.07.2019 the Appellant/Accused escaped from the jail. In this context, a case in Crime No. 278 of 2019 for the offence under Section 224 of IPC was registered on the file of Bagayam Police Station. Subsequently, the said case was taken on file in S.T.C. No. 817 of 2021 in which also, the Appellant/Accused was convicted and sentenced to undergo rigorous imprisonment for a period of one year. Therefore, the learned Additional Public Prosecutor submitted that the appeal deserves to be dismissed as having no merits. It is also submitted that the judgment of the learned Sessions Judge (FAC), Fast Track Mahila Court, Tiruvannamalai, is based on the material evidence let in by the Prosecution and it cannot be found to be perverse. Accordingly, the learned Additional Public Prosecutor prayed for dismissal of the appeal.

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



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Point for consideration:

Whether the judgment of the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai, in S.C.No.13 of 2011 dated 28.02.2017 is to be set aside as perverse?

12. Perused the evidence of prosecution witnesses, P.W.1 to P.W.12, and Ex.P1 to Ex.P9 as well as M.O-1 and M.O-2. Also, perused the judgment of the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai, S.C.No.13 of 2011, dated 28.02.2017.

13. To prove the charges against the Appellant/Accused, the Prosecution has examined as many as 12 witnesses. P.W-1 is the father of the victim girl, P.W-2 in this case. P.W-3 is the wife of P.W-1 and mother of P.W-2. P.W-4 is one of the Villagers in the occurrence Village and is known to P.W-1 as well as the Accused. P.W-5 is the brother of P.W-1. P.W-6 is also one of the Villagers in the occurrence Village. P.W-7 and P.W-8 are Doctors and P.W-9 is the Head Constable attached to Kadaladi Police Station. P.W-10 is the Doctor before whom the Appellant was produced and who had performed the potency test on him. P.W-11 is the Special Sub Inspector of Police and P.W-12 is the investigation officer in this case.



14. On consideration of the rival submission and on perusal of the judgment of the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai, it is evident that on the fateful day, P.W-1, on hearing the cries of the victim girl, rushed to the sugarcane field where he rescued the minor girl without dress. At the same time, P.W-1 also saw the Appellant/Accused fleeing from the scene of occurrence. When P.W-1 shouted, P.W-4 came to the scene of occurrence. P.W-1 informed P.W-4 that the Accused is running away. P.W-4 also corroborated the deposition of P.W-1 that P.W-1 shouted that the Accused is running away. P.W-4 also corroborated the deposition of P.W-1 that he saw the minor girl, without dress. However, when the victim girl was examined, she has stated that when her father rescued her from the sugarcane field, she was wearing an underwear. This inconsistency, in the opinion of this Court, may not in any manner affect the credibility of the case of the prosecution.

15. In this context, on perusal of the deposition of P.W-2/victim girl, it is clear that her deposition is natural and cogent. P.W-2 clearly deposed that the Appellant fell her to the ground and bite her vaginal portion. When P.W-2 cried aloud, the Appellant also bite the mouth of the Accused. In fact, P.W-8, Dr. Ramaa, who issued P.W-6 has noticed contusion and pain in the vaginal



portion of the victim girl. She has stated that even if a finger is penetrated into the vaginal portion, the victim girl felt enormous pain. She also stated that the victim girl suffered 3 bruises injuries of 1 x 1 cm in mandible. When the vagina was examined, P.W-8 has stated that it had the tendency that if it is touched, blood may ooze out. She also noticed blood stains in her vaginal area. The deposition of P.W-8, Doctor and the Accident Register issued by her under Ex.P-6 clearly shows that the victim girl had suffered injury at the instance of the Appellant/Accused. The injuries suffered by the victim girl has been clearly noted under Ex.P-6 by the Doctor, P.W-8.

15. It is true that except P.W-2, there is no eye witness to the occurrence when the Appellant sexually assaulted the victim girl. P.W-1 reached the scene of occurrence on hearing the cries of his daughter/P.W-2. P.W-3 is the mother of the victim girl/P.W-2 and she is only a hear-say witness. P.W-4 is one of the Villagers, who rushed to the scene of occurrence on hearing the cries of P.W-1. P.W-4 has stated that P.W-1 shouted that the Accused is running away. On a careful examination of the deposition of P.W-1 and P.W-4, coupled with the deposition of the victim girl P.W-2, it is evident that it was the Appellant/Accused who had caused the injuries on the body of the victim girl when he sexually assaulted the victim girl. This Court is also



satisfied that the testimony of the victim girl is natural and cogent. The deposition of P.W-2 alone is sufficient to convict the Accused.

17. During the course of argument, the learned Additional Public Prosecutor brought to the notice of this Court the antecedent of the Appellant/Accused. When the Appellant/Accused was undergoing incarceration, he escaped from the jail and later he was apprehended by the Bagayam Police Officials. Thus, the Appellant is not having good conduct and he had even managed to scale up walls of the prison to escape from the clutches of law. Such a conduct of the Appellant/Accused is also taken note of by this Court.

18. On an overall assessment of the deposition of Prosecution witnesses and on perusal of the Judgment of conviction passed by the trial Court, this Court is of the view that the Judgment of conviction passed against the Appellant/Accused is proper and it is based on material evidence made available by the Prosecution. In such circumstance, this Court is of the view that interference of this Court is not warranted.

19. In the light of the above discussion, the point for consideration is



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answered against the Appellant/Accused and in favour of the Prosecution.

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The Judgment dated 28.02.2017 made in Sessions Case No. 13 of 2011 by the learned Sessions Judge (FAC), Fast Track Mahila Court, Tiruvannamalai is found proper and the same is to be confirmed.

In the result, **this Criminal Appeal is dismissed.** The Judgment dated 28.02.2017 made in Sessions Case No. 13 of 2011 by the learned Sessions Judge (FAC), Fast Track Mahila Court, Tiruvannamalai is confirmed. Consequently, connected Criminal Miscellaneous Petition is closed.

18.10.2023

cda

Internet : Yes/No

Index : Yes/No

Speaking/Non-speaking order



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To

- 1.The Sessions Judge (FAC),
Fast Track Mahila Court,
Tiruvannamalai.
- 2.The Inspector of Police
Kadaladi Police Station,
Tiruvannamalai
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Section Officer,
VR Records,
High Court, Chennai.



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SATHI KUMAR SUKUMARA KURUP, J.,

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