



CrI.A.No.726 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on	27.09.2023
Judgment Pronounced on	17.04.2024

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CrI.A.No.726 of 2016

Saminathan

... Appellant/Accused-1

-Vs-

1. The State represented by
Inspector of Police
All Women Police Station
Nagapattinam
(Crime No.3 of 2012)

... Respondent/Complainant

2. Rajadurai

... Respondent/Accused 2

3. Karthick

... Respondent/Accused 3

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the judgment passed in S.C.No.166 of 2013 dated 20.08.2015 by the learned Sessions Judge, Fast Track-Mahila Court, Nagapattinam and acquit the Appellant/Accused from all the charges.

For Appellant : Mr. K. Ethirajulu
Legal Aid Counsel

For Respondent 1 : Ms. G.V.Kasthuri
Additional Public Prosecutor



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JUDGMENT

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This Criminal Appeal had been filed seeking to set aside the judgment passed in S.C.No.166 of 2013, dated 20.08.2015 by the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam and acquit the Appellant/Accused from all the charges.

2.The brief facts, which are necessary for proper appreciation of the case, are as follows:-

2.1.The Victim/Prosecutrix/P.W-1 aged about 18 years and the first Accused/Appellant herein were working in Mosquito Coil Company at Thenkudi. At that time, they developed love with each other. Two years back from 31.05.2013, when the Victim/Prosecutrix/P.W-1 was in her uncle Rajamanickam's house at Paramanallur, the first Accused/Appellant herein approached her for sexual intercourse by giving false promise to marry her. In spite of her refusal, the first Accused/Appellant herein had sexual intercourse with the Victim/Prosecutrix/P.W-1.

2.2.Thereafter, the first Accused and the victim met each other near Ganapathipuram Maravadi. They had sexual intercourse and the



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Victim/Prosecutrix/P.W-1 became pregnant. Even after that also, the first Accused/Appellant herein forced her to have sexual intercourse by giving false promise of marrying her. When she became six months pregnant, the first Accused/Appellant herein refused to marry her. However, the Victim/Prosecutrix/P.W-1 repeatedly insisted the first Accused/Appellant herein to marry her.

2.3.In the meantime, one day by 08.00 p.m. the first Accused/Appellant herein with deceiving intention had taken the Victim/Prosecutrix/P.W-1 to Ganapathipuram Maravadi and had sexual intercourse. On that day, when she about to return home, the second and third Accused waylaid her, stating that they had recorded the intimate scenes of P.W-1 with first Accused on their mobiles. They threatened her that they will upload the close intimate videos of the Victim/Prosecutrix/P.W-1 and the Accused/Appellant herein in the internet, if she did not co-operate with them for sexual intercourse. Due to that threat, she could not raise her alarm. The second and third Accused had raped her in the same spot itself. After that, the first Accused/Appellant herin did not meet her, but, refused to marry her. On 31.05.2012 at about 10.00 p.m. the Victim/Prosecutrix/P.W-1 suffered abortion. So, the first Accused/Appellant herein is charge sheeted



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under Section 366 and 376 of IPC and the second and third Accused are charge sheeted under Section 376 of IPC.

2.4.The case was committed to the Court of the learned Principal District and Sessions Judge, Nagapattinam. The Accused were bound over to appear before the learned Principal District and Sessions Judge, Nagapattinam. On receipt of the case records in P.R.C.No.30 of 2013, the learned Principal District and Sessions Judge, Nagapattinam had numbered the case as S.C.No.116 of 2013 and made over the case to the Court of the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam since the victim of the alleged offence is woman. The Accused were bound over to the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam. After hearing the learned Public Prosecutor and the learned Counsel for the defence, the learned Sessions Judge, Fast Track Mahila Court had framed the charges against the Accused for the offences under Sections 366 and 376 of IPC. Since the Accused denied the charges, trial was ordered by the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam. In the trial, the Prosecution had examined 14 witnesses as P.W-1 to P.W-14 and marked documents as Ex.P-1 to Ex.P-10. On completion of prosecution



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evidence, the Accused were questioned under Section 313 of Cr.P.C. On closing of the Prosecution witnesses, the Accused denied the incriminating evidence against them. After hearing the Prosecution and the defence, the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam, by judgment dated 20.08.2015 in S.C.No.166 of 2013 acquitted the Accused Nos.2 and 3 and convicted the first Accused/Appellant herein for the offence under Sections 376 of IPC and sentenced to undergo 10 years of Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo Simple Imprisonment for one year. The period already undergone in Prison is set off under Section 428 of Cr.P.C.

3. Aggrieved by the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam, in S.C.No.166 of 2013 dated 20.08.2015 had preferred this Criminal Appeal seeking to set aside the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam.

4. Mr.K.Ethirajulu, learned Counsel nominated by the High Court Legal Services Committee submitted his arguments on behalf of the



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Appellant/Accused-1 and invited the attention of this Court to the charges framed by the trial Court that the first Accused is alleged to have enticed a minor girl/victim to come to the Timber Depot and thereafter committed rape on her. Subsequently, he blackmailed her and indulged in sexual intercourse. This is the brief history of the case. P.W-1 is the victim. P.W-2 is the Special Sub Inspector of Police who registered FIR. P.W-3 is the mother of victim/P.W-1. P.W-4 is the sister-in-law of the victim/P.W-1. P.W-5 is the mahazar witness. P.W-6 is the elder brother of the victim/P.W-1. P.W-7 is the mahazar witness. P.W-8 is the friend of the brother of the victim/P.W-1. P.W-9 is the Special Sub Inspector of Police who had taken the foetus preserved by the Government Hospital, Nagapattinam to the Forensic Laboratory for forensic test to determine the paternity of the foetus. P.W-10 is the Assistant Surgeon who had preserved the foetus of deceased immatured child and sent it to the Forensic Sciences Laboratory, Cheennai through P.W-9. P.W-11 is the Doctor who had deposed evidence on behalf of Dr.Caroline, who had treated P.W-1 and had gone to Gujarat for higher studies. Therefore, P.W-11 had deposed evidence on behalf of Dr.Caroline who treated the Victim and issued Ex.P-4 discharge summary of victim/P.W-1. P.W-12 is Dr.Thilaga who had conducted DNA test on the



foetus of the victim, collected and preserved by the Doctors at Government Hospital, Nagapattinam. P.W-13 is the contractor who had engaged the Accused 1 to 3 and the victim/P.W-1 in their mosquito coil factory, who remained hostile. P.W-14 is the Inspector, All Women Police Station, Nagapattinam who is the Investigation Officer in this case.

5. The learned Counsel for the Appellant invited the attention of this Court to the admissions made by P.W-1 in the cross-examination wherein it is clear that it was consensual relationship. She is not a minor. The learned Counsel for the Appellant invited the attention of this Court to the discussion of the evidence by the learned Sessions Judge who had acquitted the accused from the charge under Section 366 of IPC but had convicted the Accused No.1 alone for the offence under Section 376 of IPC. The learned Sessions Judge failed to consider the fact that from the evidence of P.W-1/Victim, P.W-3 mother of the Victim and P.W-4 sister-in-law of the victim and in particular, the cross examination of P.W-1, it is nothing but consensual sex. She had suppressed the fact of pregnancy to her mother. There is no evidence regarding the age proof of victim as exhibits before the Court. She had dropped out of the school after studying 6th standard. Since



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it was consensual sex, she herself had purchased medicines from medical store without Doctor's prescription which had resulted in her undergoing bleeding and abortion which made her mother to feel shy of the conduct of her daughter which made the mother P.W-3 not to accompany her and not to attend her during the period of treatment. Only P.W-4 sister-in-law had taken care during the period of treatment. The learned Sessions Judge, Fast Track Mahila Court failed to consider those circumstances and admissions in cross-examination which negatives the charges framed by the Court. The evidence of P.W-1 is clear that it is a consensual sex. She had not given complaint to the Police against the conduct of Accused Nos.2 and 3 in having sex with her by blackmailing her when she was four months pregnant as per her own admission. Therefore, P.W-1 had consensual sex with Accused-1, Accused-2 and Accused-3. Still she did not give a complaint against Accused 2 and Accused 3. The learned Sessions Judge failed to consider those circumstances and had convicted the first Accused on the ground that as per the DNA report, the first Accused is the father of the foetus. Therefore, the learned Counsel for the Appellant seeks to set aside the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam in S.C.No.166 of 2013, dated



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6. The learned Additional Public Prosecutor vehemently objected to the line of arguments made by the learned Counsel for the Appellant stating that the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam had considered all the materials available before the Court and had fairly arrived at a conclusion that the first Accused is the culprit. Under the pretext of promise to marry the victim, the first Accused had forcibly taken the victim to a secluded place near the Timber Depot and committed rape on her. It is not consensual sex. Repeatedly he had sexual intercourse with her and she had in her evidence stated that even though she protested, since the first Accused promised to marry her, believing him she had consented, by the time she informed the first Accused that she was pregnant, her frantic effort to contact him on his mobile phone from the Public Phone booth dropping one rupee coin for more 100 rupees was in vain. Therefore, the victim who was aged less than 18 had in a confusion unable to express anything to her mother. Out of fear, she had purchased medicines across the medical stores which resulted in her suffering pain in her legs and for which she took medicines based on which she suffered bleeding and



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abortion. The entire sufferings of P.W-1 was due to the conduct of the first Accused who is criminally liable for the plight of the victim/P.W-1.

7. Also the learned Additional Public Prosecutor relied on the rulings 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*** for the proposition that when the evidence of the Prosecutrix itself inspires confidence of the Court, the Court can very well convict the Accused even if it is a shoddy investigation. Here the Prosecution is unable to prove the age of P.W-1 who had not studied after 6th standard considering her economic and social background. Hailing from economically weaker section the first Accused had enticed her and had sexual intercourse. When she became pregnant he avoided her. A girl of such teen age being scared of social stigma of becoming pregnant before marriage had purchased medicine to protect her from social stigma attached thereby she ran the risk of her life. The whole incident occurred only due to the conduct of first Accused. Therefore, the first Accused/Appellant herein is to be properly punished. The argument of the learned Counsel for the first Accused/Appellant herein is to be rejected. The judgment of the learned Sessions Judge, Fast Track



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Mahila Court, Nagapattinam, in S.C.No.166 of 2013 dated 20.08.2015 is a well reasoned judgment which does not warrant any interference by this Court. The appeal lacks merit and the same is to be dismissed.

Point for consideration:

Whether the judgment of the conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam convicting the Accused-1 for the offences under section 376 of IPC sentencing the Accused-1 to undergo Rigorous Imprisonment of ten years and to pay fine of Rs.5,000/-, in default, to undergo simple imprisonment for one year is to be set aside as perverse?

8. Heard the learned Counsel for the Appellant Mr.K.Ethirajulu, Counsel nominated by the High Court Legal Services Committee and Mrs.G.V.Kasturi, learned Additional Public Prosecutor for the first Respondent.

9. Perused the evidence of the Prosecution Witnesses P.W-1 to P.W-14 and Ex.P-1 to Ex.P-10.



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10. On consideration of the arguments advanced by the learned Counsel for the Appellant, in the light of the evidence available through P.W-1(Victim), P.W-2(Special Sub-Inspector of Police, Thittacherry Police Station), P.W-3 (Mother of P.W-1) , P.W-4 (Sister in Law of P.W-1), P.W-5 (Mahazar witness), P.W-6 (Elder brother of P.W-1), P.W-7 (Hostile).

11. As per the evidence of P.W-2, he had gone to Government Hospital Karaikal on receipt of information from the hospital on 01.06.2012 on which date the victim was undergoing treatment was not conscious. Therefore, he returned to Police Station without recording statement of victim. Again on 04.06.2012 on which date he was informed by the duty Doctor that P.W-1 was conscious. Therefore, he recorded oral statement of P.W-1 and obtained her signature. After obtaining the oral statement of P.W-1, a complaint was written by the Special Sub Inspector of Police, Thittacherry Police Station (P.W-2). He returned before registering the case as he was informed by his Superior Officers that being an offence where the Victim is a woman, the case has to be registered by the All Women Police Station. On the direction of his Superior Officers, P.W-2 Special Sub Inspector of Police, Thittacherry Police had handed over the complaint



(Ex.P-1) recorded by him in writing based on the oral statement of Victim (P.W-1) to the All Women Police Station, Nagapattinam. Based on the statement recorded by the Special Sub Inspector of Police, Thittacherry Police Station(P.W-2), the Sub Inspector of Police, All Women Police Station, (P.W-14) had registered a case in FIR in Crime No. 3 of 2012 (Ex.P-6) for the offences under section 366(A), 376 of I.P.C against Accused-1 , Accused-2 and Accused-3.

12. As highlighted by the learned Counsel for the Appellant/Accused-1, as per the evidence of the P.W-1 before the trial Court, she did not disclose her pregnancy to her mother. She had procured medicines from the medical store to abort her pregnancy without the knowledge of her mother. She developed swollen leg and pain in her legs and stomach. Only then, she disclosed to her mother that she became pregnant. Her mother directed her to call her sister in law P.W-4 and proceed to hospital the next day morning. Accordingly P.W-1 called her sister in law (P.W-4) and she accompanied P.W-1 and went to the Government Hospital nearby the place of residence. The Doctors there directed them to go to the Government Hospital in Karaikal. P.W.1 was admitted at the Government Hospital, Karaikal. By



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the time she was admitted in the hospital she suffered abortion. The foetus was collected by the Doctor of the Government Hospital, Karaikal and preserved for Forensic Examination. The Doctors in Karaikal Government Hospital had given VHF message to Thittacherry Police Station under which jurisdiction the P.W-1 was actually residing. Therefore based on the information received on VHF message by Thittacherry Police, the Special Sub Inspector of Police P.W-2 had visited Government Hospital Karaikal on 01.06.2012. when he visited the Government Hospital, Karaikal he was informed that P.W-1 was unconscious. Therefore he returned to Thittacherry Police Station, and passed a message to the Doctors to inform him about the condition of the patient, (P.W-1) and also instructed them to inform him immediately as soon as the P.W-1 regained consciousness. Again, on 04.06.2012 he came back to the Government Hospital, Karaikal, on receiving intimation from the duty Doctor that the victim/patient was conscious and recorded the statement of the victim regarding the pregnancy.

13. The Inspector of Police, All Women Police Station, Nagapattinam, P.W-14 had proceeded with the investigation in the place of the residence of the Victim P.W-1, the place of the alleged occurrence and



the place of employment of the Victim and the Accused-1 in the presence of Mahazar witnesses P.W-5 and P.W-7.

14. P.W-14, The Investigation Officer prepared the rough sketch under Ex.P-7 and recorded the statements of the Victim P.W-1, her mother P.W-3, her sister in law P.W-4, who accompanied P.W-1 from her house to the Government Hospital, Karaikal till her discharge from hospital, the Mahazar witnesses P.W-5 and P.W-7, P.W-6 the elder brother of P.W-1, the Doctor who had examined and treated P.W-1 at Karaikal Government Hospital, the Doctor who had preserved the foetus and forwarded the same on the request of the Investigation Officer through the Court of the learned Judicial Magistrate, to the Forensic Department.

15. The foetus was forwarded to the Forensic Department, Chennai through Mrs.Tamilarasi P.W-9, Special Sub Inspector of Police, All Women Police Station, Nagapattinam. The Forensic Report was obtained and forensic expert's statement was also recorded.

16. As highlighted by the learned Counsel for the Appellant/Accused-



1, even though P.W-1 claims that she had stopped her studies after 6th standard, she was able to read and write. No age proof was furnished regarding the status whether she is a minor or major is not available.

17. From the evidence of P.W-1 it is found that it was a consensual relationship as highlighted by the learned Counsel for Appellant/Accused-1, she had in her evidence clearly stated that she had intercourse with the Accused-1 on his request. Even though she resisted the first attempt subsequently they had intercourse. Only when she developed pregnancy she informed the Accused. By that time, she was four months pregnant. Still the Accused-1 invited her for relationship and accordingly when they were having sexual intercourse, Accused-2, who was none other than paternal uncle's son of P.W-1 had recorded the occurrence on his mobile phone along with his friend Accused-3 threatened her that she had to allow them to have intercourse with her, otherwise they would release the recorded video in the Internet. Therefore she had allowed them to have intercourse with her. Therefore there is a case of the offence attracting Section 376(g). When the foetus was sent for DNA test, the query raised by the Investigation Officer was to find out who was the father of the child in the womb of the Victim.



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18. As per the DNA Test Report under Ex.P-5, the involvement of Accused-2 and Accused-3 were excluded. The DNA test concluded that the Accused-1 alone is the father of the foetus. Therefore the Accused-1 was convicted by the learned Session Judge Fast Track Mahila Court, Nagapattinam in the light of the Ex.P-5.

19. On appreciation of the evidence by the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam as highlighted by the learned Counsel for the Appellant/Accused-1, the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam had failed to consider the fact that the Victim was major on the date of the alleged occurrence and she had by her own evidence, she had a consensual sexual relationship with the Accused-2 and Accused-3. Therefore the conviction recorded by the learned Sessions Judge Fast Track Mahila Court, Nagapattinam, convicted the Accused-1 is found to be perverse. It is nothing but consensual relationship. There is clear evidence that P.W-1 did not disclose it to anyone.

20. P.W-4 was in the hospital along with P.W-1 from the date of her admission till the date of discharge. Then P.W-2 the Special Sub Inspector



of Police, Thittacherry Police Station had visited the Government Hospital, Karaikal on 01.06.2012. The Doctors who treated P.W-1 had informed P.W-2 that, the victim P.W-1 was unconscious. Therefore, he returned to Thittacherry Police Station. Again on 04.06.2012, he visited the hospital after receiving information from the Karaikal Government Hospital that P.W-1 had regained consciousness. On 01.06.2012, P.W-2 had sought the complaint from the sister in law of P.W-1 who accompanied her at the time of admission and till the date of discharge. She claimed ignorance regarding alleged occurrence. Only after P.W-1 regained consciousness, she had given a complaint. Therefore the doubt raised by the learned Counsel for the Appellant is that who gave the complaint is not clear and has to be rejected. P.W-4 also in her evidence clearly stated that the visit of Special Sub Inspector of Police, Thittacherry Police Station at Karaikal Government Hospital sought to get details from her and she was unable to give details as she was ignorant of the development resulting in the pregnancy of P.W-1.

21. As rightly contented by the learned Counsel for the Appellant, Ex.P-1-Complaint did not contain the words, “on the pretext of marriage the Accused-1 had intercourse with P.W-1”. In the light of the specific details



in the complaint, the evidence of P.W-1 before the court is to be considered the matter as an after thought.

22. If the Victim/P.W-1 was a minor on the date of the alleged occurrence, then the conviction recorded by the learned Session Judge, Fast Track Mahila Court, Nagapattinam would have been a well reasoned judgment in the eyes of law. Here the facts are not so. There is specific evidence of the P.W-1 that she did not disclose the fact of her pregnancy till she developed swollen leg and pain in her legs as well as the stomach. This was after consuming medicines purchased from the medical store to abort the pregnancy without consulting the Doctor, by her own which resulted in the abortion. Therefore this part of the evidence by P.W-1 is against P.W-1 which will not attract offence under section 376 of I.P.C to punish the Accused-1. P.W-7 is the alleged employer of P.W-1 and the Accused-1 who remained hostile. From the cross examination, the learned Counsel for the Appellant relied on the version of P.W-7 that P.W-6 brother of P.W-1 had given a complaint at Thittacherry Police Station. Except P.W-7 evidence, there is no evidence through P.W-1 to P.W-6 that any of them had given complaint to Thittacherry Police Station.



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23. Therefore, the claim of the learned Counsel for the Appellant that there were two complaints – one by P.W-6 brother of P.W-1 to Thittacherry Police Station and another by the Victim/P.W-1 to the Special Sub Inspector of Police, Thittacherry Police Station which were recorded by the All Women Police Station in the F.I.R, resulting in the charge sheet against the Accused-1 to Accused-3. Therefore the case of the prosecution suppressing the earlier complaint cannot be accepted and has to be rejected. This argument of the learned Counsel for the Appellant is rejected on the ground that there is no basis for arriving at such conclusion based on presumption by the P.W-7. It is not his clear evidence he had spoken about such fact based on his assumption. That has to be rejected. Therefore that part of the argument of the learned Counsel for the Appellant is rejected. Further fact that the F.I.R was belated is accepted. The further attack by the learned Counsel for the Appellant that the village Panchayathars were not examined by the Investigation Officer is also a contributing factor against the prosecution making the case weak. That is considered in favour of the Appellant/Accused-1. P.W-1 to P.W-4, P.W-6, P.W-7 and P.W-8 spoke about Panchayat convened in their village. No Panchayathars had been cited



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as witnesses by the prosecution. Also the learned Counsel for the Appellant highlighted that the complaint itself was interpolated by using whitener this was admitted in cross examination of P.W-2. That gives doubt regarding the complaint. It is because P.W-1 claims that she was unconscious when P.W-2 visited the hospital to record her statement P.W-2 also admitted when he went to hospital P.W-1 was unconscious. Therefore, he again went to hospital on 04.06.2012. The Investigation Officer, P.W-14 had admitted in the cross examination that there is no written order from the Superior Officer (Superintendent of Police) by writing that the complaint recorded by P.W-2 Sub-Inspector of Police Thittacherry Police Station is to be handed over to the Inspector of Police, All Women Police Station. In the course of the evidence P.W-14 Investigation officer had spoken about P.W-2 having visited the All Women Police Station, Nagapattinam, on 01.06.2012 in that fact, when it is stated 04.06.2012, the presence of P.W-2 before the All Women Police on 01.06.2012 is highly improbable. If he had recorded it as on 01.06.2012 then there is a possibility of him visiting All Women Police station on 01.06.2012. Also, rightly pointed out by the learned Counsel for the Appellant, the Doctor who are examined before the Trial Court had stated that P.W-1 was conscious at the time of admission. Whether she was



conscious or unconscious is not recorded in the medical record and cannot be accepted and considered in the course of the examination. Doctors had informed that she lost conscious and subsequently, regained consciousness.

24. In the light of the evidence of P.W-1 alone, there are sufficient materials available to the Court that the case against Accused-1 is not made out attracting conviction under Section 376 as it is a consensual relationship for which the Accused-1 cannot be held liable. In the light of the specific evidence, that P.W-1 did not disclose her pregnancy to her mother, till she was admitted in hospital. In the light of the specific evidence of P.W-1, she herself procured medicine from medical store to abort pregnancy. In the light of the specific evidence of P.W-1 that she had intercourse several times. Subsequent to the first intercourse forced on her by the Accused-1. Not only that, the claim of the P.W-1, during the trial that in one instance when after developing pregnancy in the 4th month, when she sought Accused-1 to marry her, Accused-1 directed her to come to lonely place to have sex with him in the fourth month of pregnancy which was recorded by Accused-2 and 3 on their mobile phone misused the same and they threatened P.W-1 to have sex with them. She consented for that blackmail



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tactics. Therefore she was a consenting party, she had not approached the Police against the Accused 2 and 3. Instead she had consented for their demand even though she was in the fourth month of pregnancy. Therefore, what are all complained by her in the Ex.P-1 cannot be considered as gospel truth. The evidence of P.W.1 does not inspire confidence that she was a victim of rape committed on her by Accused-1. She was a consenting party, she had suppressed the fact of her pregnancy till the 4th month of her pregnancy to her mother. She wanted to abort it without her mother's knowledge. Unfortunately, she developed swelling in her legs, pains in the legs as well as the stomach, forced her to disclose the fact to her mother. Only when she went to the hospital, the hospital authorities came to know about her plight, informed the Police, because of the danger faced by the treating Doctors. As the patient P.W-1/Victim had adopted self treating method by procuring abortion pill from the medical store without the prescription by the physicians competent to prescribe such medicine. Therefore there is a danger of her losing life in which case the Doctors will land up in Criminal cases. That is why the Doctors had informed the Thittachery Police Station through the Police out-post available in the Karaikal Government Hospital. P.W.2 Special Sub Inspector of Police,



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Thittachery Police station had visited the Karaikal Government Hospital to record the statement of the Victim/P.W.1. Till such date, she had not preferred any complaint.

25. Ex.P-1 complaint arose in such circumstances. It is not the case of the Prosecution that P.W-1 preferred a complaint, then based on memo, Police went to the Karaikal Government Hospital. She had gone to the hospital along with P.W-4(her sister in law) to abort the pregnancy. There is evidence of P.W-3 the mother of P.W-1 that she had not at all attended her daughter right from the date of admission till the date of discharge. She had stated through her evidence given her objection to the conduct of her daughter. She had not accompanied her daughter. She objected to the conduct of the daughter having suppressed the pregnancy and taking pills on her own. That is why she had not accompanied her daughter and not been in the hospital from the date of admission till the date of discharge. As a mother she is ashamed to face the society for the conduct of the daughter attracting social stigma. That is the only presumption the court can draw from the evidence of P.W.3 the mother of the Victim. In the light of the those circumstances the judgment of the learned Sessions Judge, Fast Track



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Court, Nagapattinam convicting the Accused for the offences under section 376, 417 of I.P.C is found perverse and the same is set aside. The learned Sessions Judge is directed to cancel the bail bond executed by the Accused.

26. When appeal came up for hearing on 27.09.2023 there was no representation on the side of the Appellant. Therefore, this court had directed the learned Sessions Judge, Fast Track Court, Nagapattinam to secure the Accused in the light of the judgment dated 20.08.2015 in S.C.No.166 of 2013 to detain the Accused in prison to undergo period of sentence of imprisonment imposed on him by the learned Sessions Judge, Fast Track Court, Nagapattinam. On the same day, by the same order, this Court had directed the High Court Legal Services Committee to nominate a Counsel to proceed with the appeal. Accordingly, Thiru.K.Ethirajulu was nominated, he had sought time to argue the case. Meanwhile, the report of the learned Sessions Judge was received by this Court securing the Accused and detained him in prison.

27. In the light of the above discussion, the point for consideration is answered in favour of the Appellant and against the Prosecution. The



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judgment of conviction recorded by the Sessions Court, in S.C.No.166 of 2013 is to be set aside as perverse. The Accused-1 is acquitted from the charges. Bail bond executed by the Accused-1 is to be cancelled.

In the result, **this Criminal Appeal is allowed.** The judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam, in S.C.No.166 of 2013, dated 20.08.2015 is set aside. The Appellant/Accused No.1 is acquitted from the charges. The bail Bond executed by Accused-1 is ordered to be cancelled. The fine amount paid, if any, by the Appellant/Accused-1 is to be refunded.

The learned Counsel for the Appellant as per his undertaking argued the appeal to the best of his ability. In the light of his argument, this Court had reversed the finding of guilt recorded by the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam. This Court expresses its appreciation to the learned Counsel nominated by the High Court Legal Services Committee.

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Index : Yes/No

Speaking/Non-speaking order

To

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