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Crl.A.No.647 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.647 of 2023

Selvakumar

...Appellant

Vs.

The State,
Rep. by the Inspector of Police,
All Women Police Station,
Jayankondam, Ariyalur District.

...Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code to set aside the order of conviction passed by the Sessions, Fast Track Mahila Court at Ariyalur in S.C.No.109 of 2019 dated 15.07.2022, under Section 376(2)(1)(n) of the Indian Penal Code, rigorous life imprisonment for the rest of his life and to pay a fine of Rs.25,000/- in default to undergo simple imprisonment for a period of 3 years and under Section 342 of the Indian Penal Code, rigorous imprisonment for a period of 1 year and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for a period of 3 months by allowing the present Criminal Appeal.

For Petitioner : Mr.R.Jayaprakash



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For Respondent : Mr.E.Raj Thilak,
Additional Public Prosecutor
assisted by Mr.C.Aravind

JUDGMENT

*(Judgment of the Court was made by **M.S.RAMESH, J.**)*

The appellant herein has been convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.25,000/- in default to undergo simple imprisonment for a period of 3 years for the offence under Section 376(2)(1)(n) of the Indian Penal Code (IPC) and to undergo rigorous imprisonment for a period of 1 year and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for a period of 3 months for the offence under Section 342 of IPC, through the judgment of the Fast Track Mahila Court, Ariyalur, dated 15.07.2022, passed in Sessions Case No.109 of 2019. The said judgment is put under challenge in the present appeal.

2. For the sake of convenience, the parties to the appeal are addressed according to the rank in the trial Court.

3.1. The brief case of the prosecution is as follows:-



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3.2. On 07.11.2018, when the victim was returning home near the fields of the accused, after collecting firewood, the accused had waylaid her and pulled her into his motor room, where he wrongfully confined her and after tying her hands and legs and gagging her mouth, he raped her. Thereafter, he threatened her not to reveal the incident to anyone and that he would kill her if she discloses it. Subsequently, he had repeated sexual intercourse with her, owing to which, the victim became pregnant. When the victim's mother came to know about her pregnancy, she questioned the accused through a panchayat. However, the accused had abused her with obscene words.

3.3. The victim's mother had given a complaint to the All Women Police Station, Jayankondam, on 23.02.2019 at 12.00 P.M. and a First Information Report (FIR) came to be registered against the accused for the offences under Sections 342, 376, 294(b) and 506(i) IPC. After due investigation, the Investigating Officer had filed the final report against the accused, charging him of having committed the offences under Sections 342, 376(2)(1)(n), 294(b) and 506(ii) IPC.

3.4. The Judicial Magistrate, Jayankondam, took the case on file in C.C.No.34 of 2019 and had supplied the copies of the police report and



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other documents, as required under Section 207 Cr.P.C. Thereafter, the learned Magistrate had committed the case to the Principal Sessions Court, Ariyalur, which was taken on file as S.C.No.109 of 2019. The trial Court had then framed charges against the accused for the offences under Sections 342, 376(2)(l)(n), 294(b) and 506(ii) IPC and when the charges were read over and explained to the accused, he had denied the charges and claimed that he was “not guilty”.

4. Before the trial Court, the prosecution had examined 14 witnesses P.W.1 to P.W.14 and marked 8 documents Exs.P.1 to P.8. Ex.C.1 is the document marked by the Court. No witness or documents were marked on the side of the accused.

5.1. The evidences let in by the prosecution before the trial Court are as follows:-

5.2. P.W.1, namely Manimegalai, is the mother of the victim. According to her, her daughter is aged about 27 years and unmarried, who is suffering from hearing and speech impairment, and she communicated with her only through sign language. She had deposed that a year before Diwali



day, the accused had raped her. According to P.W.1., a panchayat was held, wherein the uncle, sister and brother-in-law of the accused had stated that the accused had refused to marry her daughter. Hence, she had given a complaint (Ex.P.1) before the Police.

5.3. P.W.2 is the victim, who suffers from hearing and speech impairment. Her statement was recorded with the help of a special interpreter (P.W.4). As per the interpretation of the sign language of P.W.2, on one day, when she was going to collect firewood near the fields of the accused, he had forcefully tied her hands and legs and gagged her mouth and thereafter had committed rape. He had then left at 04.00 P.M. and she also in turn informed about this to her mother. She also disclosed the identity of the accused to her mother. She further speaks about P.W.1 giving the complaint to the Police, as well as the statement before the Judicial Magistrate (Ex.C.1). In her cross examination, she would state that she had given a complaint to the Police after 5 days from the date of incident, when she, along with her mother, was taken to the School for hearing and speech impaired persons and inquired.

5.4. P.W.3, namely Rajalakshmi, is the elder sister of P.W.2. In her statement during trial, she had stated that P.W.1 had called her over the



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phone and informed that when P.W.2 had reported of having a stomach ache to her mother, she was taken to the hospital by P.W.1 and the husband of P.W.3. When P.W.3 had gone to her mother's house, she was informed that the accused had originally agreed to marry P.W.2 and thereafter retracted. She also admits that the accused and P.W.2 had physical relationship.

5.5. P.W.4 is a Special Teacher in Helen Keller Special School for Hearing and Speech Impaired Persons. She has stated before the trial Court that about 2 years back, the Investigating Officer had brought P.W.2 to the school to obtain her statements. By interpreting the statements made by P.W.2 through sign language, she had explained her version to the Investigating Officer. According to her, P.W.2 had revealed that on the day of Diwali, some unknown person had raped her.

5.6. P.W.5 to P.W.11 are the villagers and close relatives of P.W.1, who were treated as hostile witnesses by the prosecution.

5.7. P.W.11, namely Balayaa, is the uncle of P.W.2, who had stated that P.W.2 had informed him that she had sexual intercourse with the accused on two or three occasions.

5.8. P.W.12 is the doctor, who tested the potency of the accused. The accident register (Ex.P.2) of the accused and the sperm test report (Ex.P.3),



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evidencing that the accused was potent, were marked through him.

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5.9. P.W.13 is the doctor, who had examined P.W.2. According to her, P.W.2 was brought to the hospital by the Investigating Officer, along with P.W.3. According to the doctor, P.W.3 had informed her that P.W.2 had sexual intercourse with a known person many times, who had threatened her not to reveal the same to anyone. After testing the hymen of P.W.2, she revealed that P.W.2 was 8 to 10 weeks pregnant. The accident register copy along with the doctor's opinion (Ex.P4) and the out patient slip (Ex.P.5) were marked through her.

5.10. P.W.14 is the Investigating Officer, who had taken up the investigation on registration of the FIR (Ex.P6) in Crime No.4/2019. After visiting the scene of occurrence, she had prepared the observation mahazar (Ex.P.7) and rough sketch (Ex.P.8). She had arrested the accused and had produced him before the trial Court for remand. On completion of the investigation, she had filed the final report, charging the accused of having committed the aforesaid offences.

6. On the strength of these oral and documentary evidences, the trial Court had found the accused guilty and sentenced him to imprisonment, as



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stated above.

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7. The learned counsel appearing on behalf of the accused submitted that the initial complaint itself is false. He submitted that there was an inordinate delay of more than 3½ months in making the complaint, as well as an unexplained delay of the FIR being registered on 23.02.2019 at 12.00 P.M., which was transmitted to the Judicial Magistrate at 09.45 P.M. on the same day. He also submitted that apart from P.W.2, the witnesses, who spoke about the incident, are P.W.1 and P.W.3, who are the victim girl's mother and elder sister. He further submitted that the independent witnesses P.W.5 to P.W.10 had not supported the case of the prosecution, since they were treated as hostile witnesses. The learned counsel further submitted that since there are several contradictions between the versions of the victim girl, as well as that of the versions of P.W.1, P.W.3, P.W.11 and P.W.13, no credibility can be given to her statements. He also submitted that none of the witnesses to the observation mahazar (Ex.P7) and rough sketch (Ex.P8) were examined by the prosecution and therefore, the place of occurrence is highly doubtful.

8. The learned Additional Public Prosecutor submitted that P.W.2 is a



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physically challenged person and since she could not hear or speak, her version to the Police, as well as to the Judicial Magistrate, was interpreted by P.W.4. According to him, P.W.2 had taken a stand before the Police, Judicial Magistrate, as well as before the trial Court in her statement made under Section 164 Cr.P.C. (Ex.C.1), as well as during the time of trial that she was forcibly pulled into the motor room by the accused where her hands and legs were tied and her mouth was gagged by the accused, which establishes the offence of rape. He further submitted that this is a case where there were no eye witnesses and therefore, though P.W.1 and P.W.3 may be closely related to P.W.2, they are the only witnesses to whom the victim could have confessed about the incident and therefore, due credibility should be given to their statements. He also drew attention of this Court to the medical evidences let in by the doctors (P.W.12 and P.W.13). According to him, when P.W.13 had confirmed that P.W.2 was subjected to sexual intercourse many times and that she was 8 to 10 weeks pregnant, the occurrence itself stands substantiated. Likewise, when P.W.12 had affirmed that the accused was not an impotent, when read with the oral testimonies of P.W.3, it would substantiate the charges levelled against the accused and hence, there is no infirmity in the findings of the trial Court.



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9. We have given our anxious consideration to the submissions made by the respective counsels.

10. In the present case, the victim (P.W.2) is the only witness put forth by the prosecution to speak about the commission of an offence under Section 376(2)(1)(n) of IPC, since P.W.1 and P.W.3, who are the victim girl's mother and elder sister respectively, are only hearsay witnesses. Admittedly, P.W.2 is a person whose hearing and speech capabilities are impaired.

11. The mode in which witness, who is unable to communicate verbally may testify, is provided for under Section 119 of the Indian Evidence Act. As per the said provision, such a person may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs, but such statements must be written and signs may be made in the open Court, which evidence shall be deemed to be oral evidence. As per the proviso to Section 119, if the witness is unable to communicate verbally, the Court shall take the assistance of an interpreter or a special educator in recording the statement and such statement shall be videographed.



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12. In the present case, there is nothing on record to show that P.W.2 was incapable of testifying by writing. Though P.W.2. has signed her name in Tamil, she claims that she had studied only till 5th Standard. However, before the trial Court, the assistance of P.W.4 was utilized, who is a special educator from a school which specializes in imparting education to the persons with disabilities in hearing and speech. However, there is a specific proviso to Section 119, which is the requirement of recording the testimony through videography. The language employed in the proviso to Section 119 is a mandatory requirement.

13. On an overall appraisal of the proviso, there are twin requirements to record the testimony of a witness, who is incapable of communicating verbally. In such cases, the Court shall first take the assistance of an interpreter or a social educator, who must be duly qualified and experienced in understanding and communicating the sign language of such an impaired person and secondly, the testimony, through the sign language, shall be videographed.



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14. The term 'shall' has been time and again interpreted by the Hon'ble Supreme Court, as well as this Court, to read only as 'must' and thus, videography in cases of this nature is a mandatory requirement. In the absence of such recording through videographing, it would be highly unsafe to rely upon the deposition as recorded by the trial Court. In the case of ***Ravichandran Vs. State represented by The Inspector of Police*** passed in ***Crl.A.No.65 of 2020 dated 22.09.2022***, a learned Single Judge of this Court had observed that the safeguards in Section 119 have been incorporated only to ensure the authenticity of the statements of such witnesses and in the absence of the mandatory requirement of a videography, it would be highly unsafe to rely upon the deposition, based only on the interpretation of the sign language by the expert.

15. In the present case, the interpretation of the sign language was not videographed, which has been admitted by the Investigating Officer in her cross examination. P.W.4 is a duly qualified person to act as an interpreter. In her oral testimony, she has clearly spoken about the statements made by P.W.2 about the incident of rape committed by the accused, before the Police.



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16. P.W.1 and P.W.3, being the mother and elder sister of P.W.2, also appears to understand the sign language of P.W.2. However, there are several discrepancies and contradictions in the statements of P.W.1, P.W.2 and P.W.3. The earliest version of P.W.1 in the complaint (Ex.P.1) is that after the incident on 07.11.2018 at 04.00 P.M., wherein the accused is alleged to have forcibly raped P.W.2, he had threatened her and had sexual intercourse with her on several occasions. She also makes a reference in Ex.P.1 that P.W.2 was two months pregnant on the date of complaint. In her oral testimony before the trial Court, she merely refers to P.W.2's version to her about the isolated incident of rape, before the festival of Diwali about a year back.

17. P.W.2, in her oral testimony, states that she alone had given a complaint and signed the same in Ex.P.1 and that such a complaint was made after three days from the date of incident. When P.W.2 was examined by the Judicial Magistrate and her statements were recorded under Section 164 Cr.P.C., she had answered that her mother had forced her to give police complaint and when she requested her mother not to give any complaint, she was beaten by her mother. After stating so, she had once again reiterated the



incident of forcible rape by the accused.

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18. P.W.3, who is the elder sister of P.W.2, also corroborates the statement of P.W.1 made to her that the accused had originally promised to marry P.W.2 and then subsequently refused. She also speaks about the physical relationship the accused had with P.W.2. Though it is claimed by P.W.2 that she was taken by the Police to the doctor (P.W.13), the doctor gives a different version. According to P.W.13, P.W.2 was brought by P.W.3 and when the doctor had interacted with P.W.3, she was informed that P.W.2 had sexual intercourse with a known person on several occasions. After examining P.W.2, P.W.13 had testified that P.W.2 has had sexual intercourse many times and that she was 8 to 10 weeks pregnant. In the accident register (Ex.P.4), she had recorded her examination of P.W.2 in the following manner:-

“On Examination:

- 1) *Hymen not intact Introitus wide & admits one finger loose no external injuries over body & external genitalia – she is not virgin*
- 2) *Yes she had sexual contact with him several times for past 3 – 4 months.*



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3) *Yes she is pregnant urine test – positive.*”

Likewise P.W.11, who is the uncle of P.W.2, also affirms that she had sexual intercourse with the accused on two or three occasions.

19. When there are so many contradictions in the versions of P.W.2 read with oral testimonies of P.W.1, P.W.3, P.W.11 and P.W.13, the next question that would arise is as to whether it would be safe to place reliance on the sole testimony of P.W.2 with regard to the occurrence.

20. In the case of ***Narender Kumar Vs. State (NCT Delhi)***, reported in **(2012) 7 SCC 171**, the Hon'ble Supreme Court held that if the Court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which may lend assurance to her testimony. In view of the several contradictions in P.W.2's statements, more particularly, in the statement under Section 164(5) Cr.P.C., wherein she had categorically expressed that she was forced and beaten by her mother to give a complaint before the Police, in spite of her request to not give the complaint. In the light of the observations made in ***Narender Kumar's case (supra)***, we had analysed all the other evidences, both oral as well as



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documentary, but could not record any corroboration to the version of P.W.2's statements.

21. P.W.5 to P.W.10 are the villagers whom the prosecution has produced claiming them to be known to the accused. However, all these witnesses have turned hostile to the case of the prosecution. Thus, on an overall appreciation of the evidence of P.W.2 and her conduct before the Judicial Magistrate while making the statement under Section 164 Cr.P.C., read along with the statements of P.W.1, P.W.3, P.W.11 and P.W.13, we are of the affirmed view that it is highly unsafe to place any reliance on her testimony.

22. The Trial Court, however, failed to look into these aspects from the oral evidences before it and had come to the conclusion that the accused had committed the offence under Section 376(2)(l)(n) IPC.

23. Incidentally, it would be pertinent to point out that the charges framed against the accused were also for the offences under Sections 294(b) and 506(ii) IPC. The Trial Court had chosen to acquit the accused for these



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offences. Apparently, there is no material in this case to the effect that the accused had caused threat to cause death, in order to attract the offence under Section 506(ii) IPC. When there are no such material evidences to prove that the accused had threatened P.W.2, the very allegation that he committed the offence of rape, after tying her legs and arms and gagged her mouth and further causing the threat to kill her if she discloses the incident to anyone, is baseless and not supported by any evidence whatsoever. On this ground also, this Court is of the view that the prosecution has failed to establish the charges levelled against the accused.

24. For all the foregoing reasons, the conviction and sentence imposed upon the appellant/accused in Sessions Case No.109 of 2019, dated 15.07.2022, on the file of the Fast Track Mahila Court, Ariyalur, is set aside. Consequently, the appellant is acquitted of all the charges and is directed to be released forthwith, unless his presence is required in connection with any other case. The fine amount, if any, paid by the appellant shall be refunded and the bail bonds, if any, executed shall stand discharged.



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25. In the result, the Criminal Appeal stands allowed.

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**[M.S.R., J] [S.M., J]
24.07.2024**

Index: Yes
Neutral Citation: Yes
Speaking order
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To

1. The Fast Track Mahila Court,
Ariyalur.
2. The Superintendent of Prisons,
Central Prison, Trichy.
3. The Inspector of Police,
All Women Police Station,
Jayankondam, Ariyalur District.
4. The Public Prosecutor,
High Court, Madras.



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