



*Crl.A.(MD).No.274 of 2020*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 27.06.2024

CORAM

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA  
AND  
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

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C.Chinnappan

.. Appellant/Sole Accused

Vs.

State represented by  
The Inspector of Police,  
All Women Police Station,  
Vallam Police Station,  
Thanjavur District.  
(Crime No.7/2014)

.. Respondent/Complainant

**PRAAYER:** Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the conviction and sentence passed by the learned Sessions Judge, Mahila Court, Thanjavur in S.C.No.303 of 2015 dated 27.02.2017 and acquit the appellant/sole accused of the charge.

For Appellant : Mr.S.Sivasubramanian  
for Mr.E.Somasundaram

For Respondent : Mr.R.Meenakshi Sundaram  
Additional Public Prosecutor



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## **JUDGMENT**

**(Judgment of the Court was made by A.D.JAGADISH CHANDIRA,J.)**

This Criminal Appeal is filed against the judgment dated 27.02.2017 passed in S.C.No.303 of 2015, by the learned Sessions Judge, Mahila Court, Thanjavur.

2. The Trial Court framed the following charges against the appellant/accused, as detailed below:

| <b>Charge No.</b> | <b>Penal Provision</b> |
|-------------------|------------------------|
| I                 | 376(2)(I) IPC          |
| II                | 506(i) IPC             |
| III               | 324 IPC                |

3. By judgment dated 27.02.2017, the Trial Court convicted the appellant/sole accused and sentenced him, as detailed below:

| <b>Section of Law</b> | <b>Sentence of imprisonment</b> | <b>Fine amount</b> |
|-----------------------|---------------------------------|--------------------|
| 376(2)(I) IPC         | life imprisonment               | -                  |
| 324 IPC               | 3 years rigorous imprisonment   |                    |
| 506(i) IPC            | 2 years rigorous imprisonment   | -                  |



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The sentences imposed on the accused were ordered to run concurrently.

The period of incarceration already undergone by the accused was ordered to be set off under Section 428 Cr.P.C.

4. The case of the prosecution is as under:

4.1. P.W.2, the victim girl is the sister of P.W.1 Selvi and she is deaf and dumb. Eight months before on 31.07.2014, when the victim girl was alone in the house of P.W.1, the accused had taken her and had sexual intercourse with her and he had also threatened to kill her if she revealed the same to anybody. The accused had also caused burn injuries in her left hand by using cigarette butt. On 31.07.2014, when the victim girl was taken to hospital due to her illness, it was found that she was pregnant and that the accused had forcible intercourse with her.

4.2. On the basis of the complaint/Ex.P1 given by P.W.1, sister of the victim girl, P.W.15, Sub Inspector of Police, Vallam All Women Police Station, registered the First Information Report (Ex.P10) in Crime No.7 of



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2014 for the offences under Sections 376, 506(i) IPC and Section 4 of TNPHW Act, 2002.

4.3. On receipt of the FIR, on 31.07.2014, P.W.16, Inspector of Police, Vallam All Women Police Station took up the case for investigation and visited the scene of occurrence and examined the witnesses Yesu (P.W. 7), Raja and prepared observation mahazar Ex.P2 and rough sketch Ex.P11. She examined P.W.1 Selvi and recorded her statement. Thereafter, on identification, P.W.16 arrested the appellant/accused in the Vallam Bus stop at about 11.00 PM and sent him to judicial custody. Thereafter, P.W.16 sent the victim girl for medical examination through Grade I Constable Udhayakumari (P.W.9). Since the Doctor was on leave, the victim girl was subjected for medical examination on 04.08.2014. Thereafter, on 08.08.2014, P.W.16 examined the witnesses John Peter (P.W.3), Gnanaprakasam and recorded his statement. On 10.09.2014, twin girl babies were born to the victim girl. On 26.09.2014, P.W.16 examined the witnesses, Head Constable Anbazhagan (P.W.10), Grade I Constable Udhayakumari (P.W.9) and recorded their statements. Thereafter, on



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30.09.2014, P.W.16 examined the witnesses, Doctor Tamizhmani (P.W.12) and Doctor Shyamala Jothi (P.W.8) and recorded their statements.

4.4. On 09.11.2014, P.W.16 received information that one of the twins given birth by the victim died on 08.11.2014 and the body of the child was sent to Thanjavur Medical College Hospital for postmortem. On 10.11.2014, P.W.16 sent a requisition to Court for examining the body parts of the deceased child and for DNA test and Head Constable Gowthami (P.W.4) was sent to Chennai to obtain FTA card. On 12.11.2014, the thigh bone of the deceased child was handed over for DNA test in Chennai and on 15.11.2014, P.W.16 examined Head Constable Pushpalatha (P.W.14) and recorded her statement. On 17.11.2014, a requisition for medical examination of the victim and her child and the accused was filed before the Court. Thereafter, on 19.11.2014, the victim girl, her child and the accused were subjected for blood test in Thanjavur Medical College Hospital. While so another child died on 21.11.2014 and the body of the child was sent for Thanjavur Medical College for Postmortem through Head Constable Kalathi (P.W.6) and her statement was also recorded. On 24.11.2014, P.W.16



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examined the witness Head Constable Indiragandhi (P.W.5) and recorded her statement. After collecting the medical reports, P.W.16 completed the investigation and filed a final report against the accused under Section 376(2)(I), 506(i) and 324 IPC on 12.03.2015. On 23.03.2015, P.W.16 examined the witness Doctor Tamilmani (P.W.12) and recorded her further statement and on 14.05.2015, after the DNA test result, P.W.16 examined the Scientific Officer Thara (P.W.11) and recorded her statement.

4.5. The final report was taken on file in PRC.No.18/2015 by the learned Judicial Magistrate No.2, Thanjavur. After compliance of the mandate under Section 207 Cr.P.C., finding that it is a case triable by the Court of Sessions, the case was committed to the file of the learned Principal District and Sessions Judge, Thanjavur and the case was taken on file in S.C.No.303 of 2015 on 19.06.2015 and made over to the file of the learned Sessions Judge, Mahila Court, Thanjavur. The Trial Court framed the charges against the accused as stated above.



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5. On the side of the prosecution, P.W.1 to P.W.16 were examined and Ex.P1 to Ex.P12 were marked. When the appellant was questioned under Section 313 of the Code of Criminal Procedure on the incriminating circumstances appearing against him, he denied the same and did not come forward to give any plausible explanation. However, no witnesses were examined on the side of the accused nor any documents marked.

6. The Trial Court, after hearing the arguments, had convicted the appellant /accused as stated above. Against the judgment of conviction and sentence, the present Criminal Appeal is filed.

7. The learned counsel for the appellant /accused would submit that the victim though a deaf and dumb is a major woman aged about 25 years at the time of occurrence and the consent to the physical relationship was conscious and an informed choice was made by her after due deliberation and the consensual relationship has been spread over several times and she has not preferred any complaint and the complaint/Ex.P.1 was given by her



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sister Selvi/P.W.1 only after coming to know about pregnancy. The victim till her pregnancy was known to her sister PW1 had not disclosed the same to anyone and thereby it could not be said by any stretch of imagination that the appellant/accused had committed rape under the circumstances falling under the seven descriptions within the meaning of Section 379 r/w. Section 90 of IPC. Though a presumption of absence of consent is available against the appellant /accused under Section 114A of the Indian Evidence Act 1972 a bounden duty is cast on the prosecution to prove that the victim has either been subjected to rape against her will or that her consent was obtained by putting her or any person in whom she is interested in the fear of death or hurt. Further in this case the appellant was not represented by an advocate and despite request the appellant /accused was not afforded legal aid and the trial court without affording adequate legal representation and without affording the opportunity of fair trial had convicted the appellant /accused based on the evidence of the witnesses untested by cross examination which has resulted in grave miscarriage of justice. The Trial Court further erroneously holding that the appellant /accused had not co-operated for the trial had cancelled the bail and while he was in Prison with utter disregard



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to the guarantees granted under Articles 21 and 39A of the Constitution of India, without providing legal aid and without providing opportunity to cross-examine the witnesses, found the appellant /accused guilty and rendered the judgment of conviction and thereby, the learned counsel would seek for setting aside the judgment.

8. Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that the appellant /accused 8 months prior to 31.07.2014 had committed forcible intercourse with PW2/victim, a deaf and dumb girl aged 28 years due to which she became pregnant. The appellant /accused had threatened her not to disclose the same to anyone and had caused burn injuries with cigarette butts. Later she delivered twin girl children on 09.09.2014 at Government Raja Hospital Tanjore and the children later died due to natural causes. The trial court had framed charges against the accused for offences u/s 376(2)(1), 324 and 506(ii) IPC. The appellant was initially represented by a counsel, who had failed to cross-examine the witnesses. On account of non-cross examination of the witnesses and on account of non-cooperation for trial, the Trial Court had



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ordered notice for cancellation of bail to the appellant /accused and after hearing him, the bail was cancelled on 05.11.2016. On the same day, the appellant /accused has filed a petition seeking legal aid and he had filed bail application and an application under Section 311 Cr.P.C. through a private counsel seeking to recall the witnesses. However, the Trial Court finding that the appellant /accused had willfully avoided cross-examining the witnesses, had dismissed the said application and continued with the trial and basing reliance evidence placed on record, had rightly convicted the appellant /accused and he would seek for dismissal. However he would further submit that if in the event this court is of the opinion that the appellant /accused has not been afforded free legal aid and sufficient opportunity this court can remit the matter back to the trial court for retrial.

9. Heard the learned counsels on either side and perused the records.

10. The appellant /accused has been tried and found guilty for the offences under Section 376(2)(1), 506(1) and 324 IPC. While raising legal grounds on merits and facts of the case it is also the case of the



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appellant /accused that the trial court with utter disregard to the guarantees granted under Articles 21 and 39A of the Constitution of India, without providing legal aid and without providing opportunity to cross-examine the witnesses had convicted him and thereby the trial stands vitiated.

11. We have perused the records of the trial court. On perusal of records, it is seen that charges were framed against the appellant /accused on 09.07.2015 and the trial had commenced on 24.11.2015. The prosecution witnesses, namely, P.W.1 to P.W.15 were examined on various dates from 18.12.2015 to 03.11.2016. The appellant /accused was on bail and he had not engaged counsel and he had not cross-examined the witnesses till 03.11.2015. The Trial Court had issued notice of cancellation of bail on the ground of non-cooperation for trial and non-cross examination of the witnesses on 05.11.2016 and on the same day, the bail granted to the appellant /accused had been cancelled. The appellant /accused had filed a petition seeking legal aid on the same day. However, without appointing a legal aid counsel for the appellant /accused, the Trial Court proceeded to examine the next witness, P.W.16 on 14.11.2016 and adjourned the case to



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21.11.2016 for questioning the accused under Section 313 Cr.P.C. On 21.11.2016, the appellant /accused had been questioned under Section 313 Cr.P.C. since no witnesses were examined on the side of the appellant /accused, the Trial Court had adjourned the case to 05.12.2016 for arguments and it was again adjourned to 19.12.2016 and 26.12.2016 for want of counsel for the accused. Subsequently, on 03.01.2017, the appellant /accused had filed an application to recall the witnesses under Section 311 Cr.P.C, whereas, the Trial Court had dismissed the application on 09.01.2017 and thereafter, without rendering any legal aid to the appellant /accused, had delivered the judgment of conviction on 27.02.2017.

12. Admittedly the appellant /accused hails from a poor background and he is an illiterate. The trial court had cancelled the bail of the appellant /accused on 05.11.2016 and remanded him to judicial custody. The appellant /accused had filed a petition seeking free legal aid on the same day, however he was remanded to judicial custody. Further without affording free legal aid had also dismissed the petition filed u/s 311 Cr.P.C to recall the witnesses and continued with the trial and without any



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arguments being advanced on behalf of the accused had found the appellant/accused guilty and convicted him.

13. We also called for report from the trial Court and the report vide D.No.346/2024 dated 18.06.2024 has been received stating that no legal aid counsel appointed for the appellant/accused.

14. In this regard, it is relevant to refer to the judgment of the Hon'ble Supreme Court in *Anokhilal Vs. State of Madhya Pradesh* reported in **(2019) 20 SCC 196**, wherein, the Hon'ble Supreme Court has considered the scope of Article 39-A of the Constitution of India and held as follows:

*"20.1. Article 39-A inserted by the 42nd Amendment to the Constitution, effected in the year 1977, provides for free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The statutory regime put in place including the enactment of the Legal Services Authorities Act, 1987 is designed to achieve the mandate of Article 39-A.*

*20.2. It has been well accepted that right to free legal services is an essential ingredient of "reasonable, fair and just" procedure for a person accused of an offence and it must be held implicit in the right guaranteed by Article 21. The extract from the decision of this Court*



*inBest Bakery case[Zahira Habibulla H. Sheikhv.State of Gujarat, (2004) 4 SCC 158 : 2004 SCC (Cri) 999] (as quoted in the decision inMohd. Hussain[Mohd. Hussainv.State (NCT of Delhi), (2012) 9 SCC 408 : (2012) 3 SCC (Cri) 1139] ) emphasises that the object of criminal trial is to search for the truth and the trial is not a bout over technicalities and must be conducted in such manner as will protect the innocent and punish the guilty.*

15. Further the Hon'ble Supreme Court in the case of ***Mohd.Hussain @ Zulfikar Ali .vs State(Governemnt of NCT of Delhi)*** reported in ***(2012)2 Supreme Court Cases 584***, wherein it is held as follows:

*"51. In my opinion, the right of a person charged with crime to have the services of a lawyer is fundamental and essential to fair trial. The right to be defended by a legal practitioner, flowing from [Article 22 \(1\)](#) of the Constitution has further been fortified by the introduction of the Directive Principles of State Policy embodied in [Article 39A](#) of the Constitution by the 42nd Amendment Act of 1976 and enactment of sub-[section 1](#) of [Section 304](#) of the Code of Criminal Procedure. Legal assistance to a poor person facing trial whose life and personal liberty is in jeopardy is mandated not only by the Constitution and the [Code of Criminal Procedure](#) but also by International Covenants and Human Rights Declarations. If an accused too poor to afford a lawyer is to go thorough the trial without legal assistance, such a trial cannot be regarded as*



*reasonable, fair and just. The right to be heard in criminal trial would be inconsequential and of no avail if within itself it does not include right to be heard through counsel.*

*52. One cannot lose sight of the fact that even intelligent and educated men, not trained in law, have more than often no skill in the science of law if charged with crime. Such an accused not only lacks both the skill and knowledge adequately to prepare his defence but many a time loses his equilibrium in face of the charge. A guiding hand of counsel at every step in the proceeding is needed for fair trial. If it is true of men of intelligence, how much true is it of the ignorant and the illiterate or those of lower intellect! An accused without the lawyer faces the danger of conviction because he does not know how to establish his innocence.*

16. In the present case, after thoroughly perusing the records and the evidence of prosecution witnesses we find that without providing free legal aid and without opportunity of fair trial and without the evidence of witnesses being tested by way of cross examination and without any arguments advanced on behalf of the accused, the trial Court had found the appellant/accused guilty and convicted him, which in our opinion is in utter violation of Article 21 and Article 39-A of the Constitution of India and



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Section 304 of Cr.P.C. The petitioner has been denied due process of law and the trial Court has held against him in contrary to the established procedures under the Constitution and the Code of Criminal Procedure. This in our opinion has resulted in failure of justice. In such circumstances without going into the merits of the case, we deem it appropriate to invoke the provisions under Section 386 of Cr.P.C to reverse the findings and set aside the order of conviction and remit the matter back to the trial Court for retrial for the purpose of cross examination of prosecution witness and to continue with the trial from that stage.

17. Accordingly, the judgment of conviction and sentence passed by the learned Sessions Judge, Mahila Court, Thanjavur in S.C.No.303 of 2015 dated 27.02.2017 is set aside and the matter is remitted back to the Trial Court for retrial to the limited extent of permitting the appellant /accused to cross examine the witnesses and continue with the procedure at the stage therefrom.



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18. Pursuant to the bailable warrant issued the appellant/accused has been produced before this court today. The said warrant is hereby recalled and the appellant/accused is informed and directed to appear before the Trial Court on 22.07.2024. On such appearance the bail bonds executed at the time of Suspension of Sentence before the committal Court shall be directed to be transferred to the trial court by the Magistrate concerned. The trial court shall provide free legal aid if required by the appellant/accused and thereafter fix the date for cross examination of the witnesses and the trial Court shall ensure that the witnesses were cross examined on the same day of their appearance. The re trial shall be completed as expeditiously as possible.

**(A.D.J.C.,J.) (K.R.S.,J.)**  
**27.06.2024**

NCC : Yes / No  
Index : Yes / No  
Lm

Note:

- 1) Issue order copy on 12.07.2024
- 2) Registry is directed to return the records to the trial court forthwith



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To

1.The Sessions Judge,  
Mahila Court (Fast Track Court), Thanjavur.

2.The Inspector of Police,  
All Women Police Station,  
Vallam Police Station, Thanjavur District.

3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

4.The Record Keeper,  
Vernacular Records Section,  
Madurai Bench of Madras High Court,  
Madurai.

5.The Section Officer,  
Criminal Records,  
Madurai Bench of Madras High Court.

6.The Judicial Magistrate No.II,  
Thanjavur.



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**A.D.JAGADISH CHANDIRA,J.**  
**and**  
**K.RAJASEKAR,J.**

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