



Crl.A.No.600 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.03.2025

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No. 600 of 2019

Semalaiappan

.. Appellant

Versus

State by
The Inspector of Police,
All Women Police Station,
Dharapuram, Tiruppur District,
Crime No.6 of 2011.

.. Respondent

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure to set aside the Judgment dated 27.08.2019 passed in S.C. No. 204 of 2014 on the file of the Magalir Neethimandram (Fast Track Mahila Court), Tiruppur.

For Appellant	:	Mr. C. Prakasam
For Respondent	:	Mrs. G.V. Kasthuri
		Additional Public Prosecutor

JUDGMENT

The challenge in this appeal is against the Judgment of conviction dated 27.08.2019 passed in Sessions Case No. 204 of 2014 on the file of the learned Sessions Judge, Fast Track Mahila Court, Tiruppur, by which the Appellant was sentenced to undergo rigorous imprisonment for a period of 10 years for having committed the offence under Section 376 of The Indian Penal Code.

2. The brief facts, which are necessary for better appreciation and for



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consideration of this Criminal Appeal, are as follows:

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2.1. P.W-1 in this case is the Prosecutrix, who, at the time of the alleged occurrence, was studying VIII Standard in Government High School, Manakkadavu. The Accused is none other than the Uncle of P.W-1. On 09.07.2010 when the victim was alone at home, her parents as well as her brother were away, at about 1.00 a.m. in the early hours when the victim was fast asleep, the Accused came to her house, woke her up, hugged and kissed her much to her chagrin. When she raised an alarm, he hit her and also threatened her. In spite of her refusal, the Accused had forcible sexual intercourse with her on that day and also threatened not to disclose it to any one. In similar fashion, the Accused intruded into the house whenever she was alone and capitalised the situation to have intercourse with her. When the Prosecutrix was studying IX Standard, she felt giddiness and fell down in the class room. Therefore, her parents took her to Rasiya Begum Hospital at Dharapuram. On medical examination, it was revealed that the Prosecutrix was pregnant in her fourth month. When the victim's parents came to know about the same, the victim was 4 months pregnant. When the parents of the Prosecutrix confronted her, she spilled the beans that it was the Accused who had sexual intercourse with her. The parents of the Prosecutrix therefore called upon the Accused and his parents. After deliberations, it was decided to contract the marriage between the Prosecutrix and the Accused. Accordingly,



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on 21.02.2011, the Accused married the victim. On the same night, he absconded. Subsequently, on 30.04.2011 a female child was born to the victim. She was named as Sashmita. The Accused deserted her and the new born child and his whereabouts were not known. Therefore, the Prosecutrix had given a complaint dated 29.06.2011 stating that the Accused deserted her matrimonial company and absconded. When the victim complained it to the family members of the Accused, they informed the victim that they are making arrangements for a second marriage to the Accused.

2.2. On receipt of the complaint dated 29.06.2011 from P.W-1, a case in Crime No. 6 of 2011 was registered on 29.06.2011 against the Accused for the offence under Section 376 of the Indian Penal Code. Ex.P-7 is the first information report.

2.3. On receipt of Ex.P-7, P.W-6, the Inspector of Police, All Women Police Station, Dharapuram had taken up investigation on 30.06.2011. She proceeded to the scene of occurrence and enquired the witnesses Nagaraj P.W-4 and one Dhandapani and recorded their statement. She drew an observation mahazar as well as rough sketch under Ex.P-8 in the presence of witnesses. Later, she had enquired the witnesses Pavithra P.W-1, Aruchamy P.W-2, Sangiliammal, Subramani, Ramesh, Palanisamy, Tamilarasan, Nagarajan and Dhandapani and recorded their statement. It is stated that the Accused was absconding and his whereabouts were not known. When P.W-6 was in search



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of securing the Accused, she was transferred to Coimbatore District and therefore, the investigation was continued by her successor P.W-7.

2.4. P.W-7, during the course of her investigation, once again enquired the witnesses Aruchamy and Sangiliammal and recorded their statement. On the basis of a tip off, on 20.02.2023 at 9.15 pm, P.W-7 arrested the Accused at Dharapuram Bus Stand in the presence of witnesses Kuppusamy and Ramadurai. After recording his statement, the Accused was sent for remand. Since a female child was born out of the relationship between the Accused and P.W-1, on 25.02.2013, P.W-7 had given a requisition letter to the Judicial Magistrate to send the Accused, Prosecutrix and the minor child born to them for a DNA test. On 07.03.2013, such a permission sought for by P.W-7 was granted. Therefore, P.W-7 had subjected them to DNA Test. Subsequently, P.W-7 was also transferred. Therefore, P.W-10 had succeeded P.W-7.

2.5. P.W-10, during the course of her investigation enquired P.W-6 and P.W-7, her predecessors and recorded their statement. P.W-10 re-examined the witnesses P.W-1, P.W-2, Sangiliammal, Ramesh, Palanisamy, Tamilarasan, Subramani, Nagaraj, Dhandapani and recorded their statement. She also received the DNA report from the Forensic Lab. On receipt of such report, P.W-10 enquired P.W-8, The Assistant Director of Forensic Science Laboratory and recorded her statement. Subsequently, on 12.07.2014, she enquired Dr. Periyasamy, P.W-3, who had examined the Accused to ascertain



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as to whether he is potent to commit sexual intercourse or not. Later, P.W-10 had collected the birth certificate of the Prosecutrix under Ex.P-1 as well as the birth certificate of the minor girl born to P.W-1 and the Accused under Ex.P-2. After conclusion of the investigation, P.W-10 filed the charge sheet against the Accused on 12.07.2014 for the offence punishable under Section 376 of the Indian Penal Code before the learned Judicial Magistrate, Dharapuram.

2.6. The learned Judicial Magistrate, Dharapuram taken cognizance of the offence under Section 376 IPC. Since the offence under Section 376 IPC is exclusively triable by Court of Sessions, the final report laid by the Inspector of Police, All Women Police Station, Dharapuram was taken on file as PRC No.20 of 2014. The learned Judicial Magistrate, Dharapuram issued summons to the Accused. On appearance of Accused copies were furnished to the Accused under Section 207 of Cr.P.C. Thereafter, the case was committed to the Court of the learned Principal District and Sessions Judge, Tiruppur under Section 209 (A) Cr.P.C. The learned Principal District and Sessions Judge, Tiruppur on receipt of records from the Court of the learned Judicial Magistrate, Dharapuram in P.R.C.No.20 of 2014 and on appearance of Accused numbered the case in P.R.C.No.20 of 2014 as S.C.No.204 of 2014 and made over the case to the Court of the learned Sessions Judge, Fast Track Mahila Court, Tiruppur and bound over the Accused to learned Sessions Judge, Fast Track Mahila Court, Tiruppur. On appearance of the Accused and on



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receipt of records in S.C.No.204 of 2014 the learned Sessions Judge, Fast Track Mahila Court, Tiruppur, after hearing the learned Public Prosecutor and the learned Counsel for the defence, had framed charge under Section 376 of IPC. The charge was read over and explained in Thamizh to the Accused. The Accused denied the charge and claimed to be tried. Therefore, trial was ordered.

2.7. During the course of trial, on behalf of the Prosecution, P.W-1 to P.W10 were examined and Exs. P-1 to Ex. P-9 were marked. On behalf of the defence, the Accused examined himself as D.W-1 and Ex.D-1, complaint dated 08.03.2011 and Ex.D-2, School certificate of Prosecutrix were marked as document. The learned Sessions Judge, Fast Track Mahila Court, Tiruppur upon considering the oral and documentary evidence, found the Accused guilty of the offence under Section 376 of IPC and sentenced him to undergo rigorous imprisonment for a period of ten years with fine of Rs.5,000/- in default, to undergo rigorous imprisonment for a period of one year.

2.8. Assailing the aforesaid Judgment of conviction and sentence dated 27.08.2019 passed in Sessions Case No.204 of 2014, the Accused has come forward with this Criminal Appeal.

3. Mr. C. Prakasam, learned Counsel for the Appellant submitted that even though the Prosecutrix and the Accused are related to each other, due



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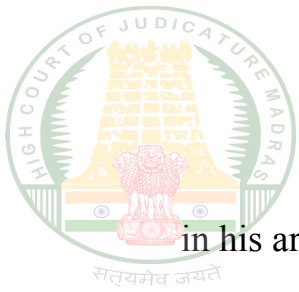
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to a dispute between the parents of both sides with regard to marriage, a false complaint was given by the Prosecutrix only after the birth of the child and not soon after the marriage, when it was alleged that the Accused had absconded. This would expose the ill intention on the part of the Prosecutrix to victimise the Accused-Appellant. The learned counsel for the Appellant invited the attention of this Court to the cross-examination of the Prosecutrix wherein it was stated that her grandmother, brother and all others will remain in their house, while so, it is remotely impossible for the Accused to have frequent sexual intercourse with her. This piece of deposition of the Prosecutrix would vitiate the criminal Prosecution launched against the Appellant. As regards the age of the Prosecutrix, it is contended that the Prosecution failed to prove her age in a manner known to law. The date of birth of the Prosecutrix is mentioned as 11.12.1997 in the birth certificate, Ex.P1 and in the certificate issued by the Headmistress of CSI Girls Higher Secondary School, Dharapuram, the date of birth is mentioned as 11.07.1997, thus, the Prosecution had not proved the correct age of the Prosecutrix. The learned counsel further contended that during the pendency of trial in the case, the Prosecutrix contracted a second marriage with another man but this was not properly appreciated by the trial Court while imposing the punishment of ten years for the Appellant. Therefore, the learned counsel prayed for allowing this appeal by setting aside the conviction and sentence imposed on him.



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4. Per contra, Mrs. G. V. Kasthuri, learned Additional Public Prosecutor appearing for the Respondent/State submitted that the medical evidence in this case over weighed the ocular evidence and therefore it is sufficient to convict the Accused. Referring to the deposition of P.W-8, Assistant Director of Forensic Science Laboratory, Chennai, she would contend that the DNA samples of the victim and the Accused matched with the child in the region of 99.9% and therefore, it is crystal clear that it was the Accused who is the father of the female child born to the Prosecutrix. While so, the contention of the counsel for the Appellant as though the Accused is innocent and he has not committed any offence at all is found unacceptable and unreasonable. When the medical evidence clinchingly proved the offence committed by the Accused, the other evidence have lost the significance in this case. Even though in the cross-examination it was suggested that the grandmother was present in the house and therefore the chance of having sexual intercourse is remote, P.W-1 had deposed that her grandmother resides in the house adjacent to her house and Accused had sexual intercourse with her at 1.00 am in the early morning. Thus, P.W-1 withstood the travails of cross-examination and nothing could be elicited in favour of the Accused from her deposition. The defence could not elicit anything in favour of Accused from the cross-examination of P.W-1. Further, the learned counsel for the Appellant



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in his argument had not advanced anything about the DNA report which clearly proved the paternity of the minor girl Sasmitha. Furthermore, on the date of the alleged occurrence, the victim was a student of Standard VIII and she was aged 13 years. She was incapable of giving consent. As per the complaint given by the victim herself on the date of occurrence, her parents and younger brother have gone to a function to their relatives' house and knowing it, the Accused intruded into her house, embraced her while she was asleep, woke her up by hitting her, then forcibly had sex with her. After having forcible sexual intercourse, he threatened her not to disclose this to anyone outside and using this, he had repeatedly indulged in similar offence. Whenever, she was alone at home, he used to visit her house often, as he happens to be a relative on her Mothers' side. Ultimately, the Accused had promised to marry her and indulged in similar acts. When the offence committed by the Appellant came to light, he has got no other way but to contract the marriage with the Prosecutrix by admitting his involvement.

5. The learned Additional Public Prosecutor submitted that even at the time of marriage, she was a minor. As per the complaint, she delivered a female child on 30.04.2011 at Razia Begum Hospital, Dharapuram. In the course of the investigation, the Investigation Officer had requested medical examination of the victim/Prosecutrix and to collect DNA sample from the



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Accused and the child born to the Prosecutrix at Razia Begum Hospital on 30.04.2011. Accordingly, on the requisition letter of the Investigation Officer, P.W-10, the learned Judicial Magistrate had directed medical examination and also DNA test. P.W-10 collected the DNA sample from the Government Hospital and forwarded it through the Court to the Forensic Laboratory Chennai for DNA test. P.W-8, Lakshmi Balasubramanian, the Assistant Director, Forensic Science Laboratory, Chennai had on forensic analysis of the DNA samples collected from the Prosecutrix/ P.W-1 and the child born to the Prosecutrix had filed the DNA report under Ex.P-9, wherein it was clearly stated that the Accused herein is the biological father of the child born to the Prosecutrix. In the report, it is stated that 99.99% of the blood samples matched and he is the father of the child. Also, the Investigation Officer had produced the birth certificate of the child born to the Prosecutrix and the Accused which was marked as Ex.P-2, in which the parents of the child are shown as the Prosecutrix and the Accused. Therefore, on the date of occurrence and on the date of delivery of the child under Ex.P-2 dated 30.04.2011 she was hardly 14 years old and a mother of the child. After the marriage, on the same night, the Accused absconded which shows the *mens rea* on the part of the Accused to marry the Prosecutrix only to escape from the criminal Prosecution. The Accused had in fact contracted a second marriage, which itself would show the extent to which he had subjected the victim girl and her family to mental



harassment. The Accused knowing fully well of the consequences of his act had contracted another marriage with another woman whereby rendered the matrimonial life of the Prosecutrix otiose. Therefore the learned Additional Prosecutor would submit that no leniency be shown to the Accused in this case. The Appeal preferred by the Accused had to be dismissed as having no merits.

Point for consideration:

Whether the judgment of the learned Special Judge, Fast Track Mahila Court, Tiruppur in S.C.No.204 of 2014 dated 27.08.2019 is to be set aside as perverse?

6. Heard Thiru. C. Prakasam, learned Counsel for the Appellant and Mrs. G.V. Kasturi, learned Additional Public Prosecutor appearing for the Prosecution. Perused the evidence of P.W-1 to P.W-10, the documents marked on the side of the Prosecution under Ex.P-1 to Ex.P-9. Perused the evidence of D.W-1 and the documents Ex.D-1 and Ex.D-2 marked on the side of the Accused. Perused the judgment of the learned Sessions Judge, Fast Track Mahila Court, Tiruppur in S.C.No.204 of 2014 dated 27.08.2019.

7. The Appellant stood charged for the offences punishable under Section 376 I.P.C. Ex.P-1 is the date of birth certificate of the Prosecutrix/victim wherein her date of birth is given as 11.12.1997. She



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delivered the child on 30.04.2011 which could be seen under Ex.P-2.

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Therefore, on the date of delivery of the child by the Prosecutrix on 30.04.2011, she was aged 14 years. On 11.07.2010, she was 13 years 9 months old. Therefore, it is a rape attracting the ingredients of 375 and 376 of I.P.C. As per the complaint under Ex.P-3 after the alleged occurrence and the victim having been diagnosed as pregnant by four months, the parents of the victim contacted the parents of the Accused and performed the marriage of the Accused with the victim. Since the Accused is the relative on the mother side as a cousin (LOITLOIT). On the same night, the Accused absconded from the village and after the prosecutrix delivered a female child the victim lodged a complaint under Ex.P-3. Subsequently, the Accused was arrested and on completion of the investigation the Investigation Officer/P.W-10 laid the final report. On framing of the charge the Accused denied the charge and therefore trial was ordered.

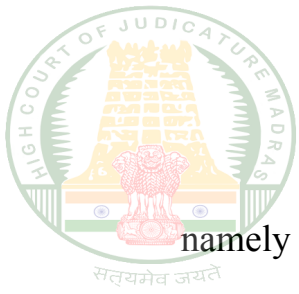
8. During trial, the Prosecution had proved the case through P.W-1 to P.W-10. More particularly through the evidence of P.W-8 Lakshmi Balasubramanian Director, Forensic Scientific Laboratory who had conducted the DNA test and issued the report marked as Ex.P-9 which clearly states that the Accused in this case is the biological father 99.99 percent of the child born to Prosecutrix.



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9. In the course of the argument, the learned Counsel for the Appellant submitted that the Accused had contracted a second marriage and having children through that marriage. He also stated that he is employed as a daily wage labourer. It is further stated that the victim/Prosecutrix also contracted a second marriage and through that marriage she has got another child and both are living separately with their respective spouses. Therefore, the learned counsel contended that if the conviction is upheld, the Appellant has to undergo imprisonment, thereby, punishing the innocent wife of the Appellant and the children for no fault of theirs. Referring to the subsequent developments, the learned Counsel for the Appellant sought to set aside the judgment. In other words, the learned Counsel for the Appellant sought to set aside the judgment only on the basis of the subsequent development and had not argued that the judgment of conviction by the learned Session Judge is perverse. By and large, his attempt is to consider the subsequent developments that had taken place in this case.

10. It is true that the victim had married subsequently and begot a child and the Accused also married and having children. The status of both parties being daily wage labourers. Therefore, through the learned Additional Public Prosecutor, this Court directed the Investigation Officer in this case



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namely the Inspector of Police, All Women Police Station, Dharapuram to conduct enquiry regarding the present status of the Prosecutrix and the Accused and to file a status report. The Inspector of police, All Women Police Station, Dharapuram had filed a report in which it is stated that Accused had married one Deepa in the year 2011 and having one daughter and one son. The Prosecutrix also married one Natarajan in the year 2017 and having one son and the daughter born through the Accused. Sasmitha living with the Prosecutrix. Also the Investigation Officer, Inspector of Police, All Women Police Station, Dharapuram had obtained statement from the Accused and the Victim as on the date of filing of the status report. The Accused was aged 37 years and the victim was 26 years. The status report dated Nil of the Investigation Officer namely N. Manikandan, Inspector of Police, Dharapuram Police Station, Tiruppur District shall form part of the records.

11. As per the status report of the Inspector of Police, All Women Police Station, prior to the trial, the Accused was arrested and sent for remand during the investigation and he was incarcerated from 20.02.2013 to 25.06.2013 (125 days). After the judgment, he had undergone the sentence of imprisonment from 27.08.2019 to 17.05.2021. After filing of this criminal Appeal No.600 of 2019, he was granted bail in Crl.M.P.No 6705 of 2020 dated 18.05.2021. Totally, he had served 630 days (127 days in the year 2019, 366



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days in 2020 and 137 days in 2021). While granting bail during the pendency of the Appeal, he was directed to deposit Rs.50,000/- within 15 days from the date of receipt of copy of the order and further directed to deposit another Rs.50,000/- within four weeks after the first deposit in the name of the Victim girl. Accordingly, the Appellant had deposited Rs.1,00,000/-.

12. In this context, reference was made to the judgment of this Court in the case of *Selvakumar vs. The State, rep. by Inspector of Police, Erumaipaty Police Station, Namakkal District* reported in *2011 (3) MWN (Cri) 249* in which this Court had an occasion to consider a case of similar nature wherein the Prosecutrix was aged 14 years and 9 months. There also the Accused indulged in sexual assault misusing the relationship and subsequent to the registration of the case and the judgment before the trial Court, the victim married another person and the Accused also married another person. Considering the subsequent development, this Court modified the sentence of imprisonment. The facts in that case are identical to the facts involved in the present case.

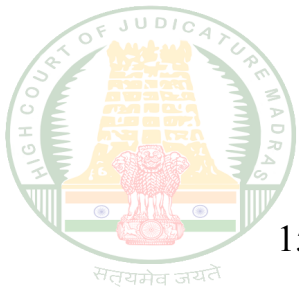
13. Similarly, in an order passed by this Court in **Mayakannan vs. State, by Inspector of Police** reported in **2023 SCC Online Madras 5150** this



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Court considered the subsequent developments in that case for a different offence of a similar nature, where the victim was a minor and it was for the offence under 417 I.P.C, Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, the sentence alone was modified for the person.

14. In this case, the DNA report clearly indicates that it was the Appellant who fathered the minor girl Sashmitha born through P.W-1. To substantiate the same, before the trial Court, the evidence of forensic expert namely Assistant Director of the Forensic Laboratory, Chennai was examined and the DNA report was marked under Ex.P-9. Thus, as rightly pointed out by the learned Additional Public Prosecutor for the respondent, the medical evidence outweighed the ocular evidence. The medical evidence has been produced in this case by adopting sophisticated technology called DNA test. The medical expert was also examined, who has stated that the blood samples of the Accused and the victim girl matched to the extent of 99.9%. Therefore, this report is sufficient to convict the Accused and accordingly, the trial Court convicted the Accused for the offence under Section 376 of IPC. The Appellant had not made out any case for interference by this Court. The appeal is devoid of any merits and it is liable only to be confirmed, except by modifying the sentence imposed on the Accused.



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15. In the light of the above discussion, the point for consideration is answered in favour of the Prosecution and against the Appellant. The judgment of the learned Special Judge, Fast Track Mahila Court, Tiruppur in S.C.No.204 of 2014, dated 27.08.2019 is found proper. However, the sentence alone is to be modified.

In the result, **this Criminal Appeal is partly allowed.** The judgment of the learned Sessions Judge, Fast Track Mahila Court, Tiruppur in S.C.No.204 of 2014, dated 27.08.2019 is confirmed. The conviction is upheld. However, the sentence alone is modified on condition that apart from the sum of Rs.1,00,000/- (Rupees One Lakh) already deposited, the Accused shall deposit a further sum of Rs.2,00,000/- (Rupees Two Lakhs only). If this condition is complied with, then the sentence imposed on the Accused will be modified to the period already undergone by him.

The Registry is, therefore, directed to post the case under the caption for reporting compliance on 19.03.2025.

03.03.2025

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Index : Yes/No
Speaking/Non-speaking order



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To
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1. The Sessions Judge,
Fast Track Mahila Court,
Tiruppur.
2. The Inspector of Police,
All Women Police Station,
Dharapuram,
Tiruppur District.
3. The Superintendent,
Central Jail, Coimbatore,
Coimbatore District.
4. The Additional Public Prosecutor,
High Court, Madras.
5. The Section Officer,
Criminal Section,
High Court Madras.



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SATHI KUMAR SUKUMARA KURUP, J.,

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Judgment
in Crl.A.No.600 of 2019

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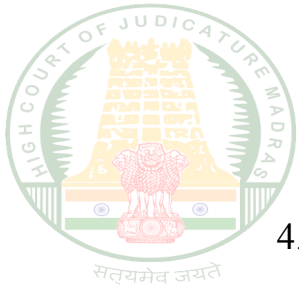
SATHI KUMAR SUKUMARA KURUP, J.,

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Today, 19.03.2025, when the case came up for hearing, the learned Counsel for the Appellant submitted that as per the order passed by this Court on 03.03.2025, a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) was deposited by the Appellant/Accused to the credit of S.C.No.284 of 2014 before the learned Sessions Judge, Fast Track Mahila Court, Tiruppur. Also, he had furnished the e-challan obtained from the Court of the learned Sessions Judge, Fast Track Mahila Court, Tiruppur.

2. The condition imposed on the Appellant/Accused by order of this Court dated 03.03.2025 is complied with. The compliance is recorded.

3. In the light of the compliance of the condition imposed on the Appellant/Accused by order of this Court dated 03.03.2025, the sentence of imprisonment imposed on the Accused/Appellant as per the Judgment of the learned Sessions Judge, Fast Track Mahila Court, Tiruppur in S.C.No.204 of 2014, dated 27.08.2019 is modified to the extent that the period already undergone in detention is treated as period of sentence. Instead of directing the Appellant/Accused to undergo the remaining period of sentence, the victim is compensated by amount of fine imposed on the Appellant/Accused.



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4. The learned Sessions Judge, Fast Court Mahila Court, Tiruppur, is directed to issue summons to the victim in Cr.No.6 of 2011 through the Inspector of Police, All Women Police Station, Dharapuram, Tiruppur District and disburse the amount of compensation deposited in S.C.No.284 of 2014.

19.03.2025

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