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Crl.A(MD)No.351 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	30/10/2024
Date of Pronounced	30/01/2025

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.A(MD)No.351 of 2022

V.Balamurugan : Appellants/Respondent/
Accused

Vs.

The State through
The Inspector of Police,
Thilagarthidal Police Station,
Madurai City.
(In Crime No.229 of 2013)

: Respondent/Petitioner/
Complainant

Prayer: This Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code, to call for the records pertaining to Sessions Case No.260 of 2016 on the file of the Sessions Judge, Mahiliar Neethimandram, Madurai and to set side the order of conviction passed in SC No.260 of 2016, dated 08/04/2022 and acquit the appellant/accused from all the charges and to pass any such order or other orders.

For Appellant : Mr.C.M.Arumugam

For Respondent : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)

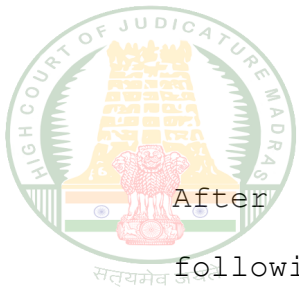


J U D G M E N T

This Criminal Appeal is filed against the judgment of conviction and sentence passed in Sessions Case No.260 of 2016, dated 08/04/2022 by the Sessions Judge, Mahiliar Neethimandram, Madurai.

2.The case of the prosecution in brief:-

On 12/03/2013 at about 09.00 pm, the victim girl along with her mother namely PW1 was waiting in the Madurai Railway Station. The victim girl was mentally retarded. During the above said night hour, the accused kidnapped the victim girl and committed rape upon her. The victim girl came to the place of the mother/PW1. On the next day, 13/03/2013 at about 07.30 pm, both of them travelled in the train from Madurai to Tenkasi. At that time, PW1 found her daughter as tired and there was bleeding in her private parts. So, the victim girl and her mother got down at Thirumangalam and went to the Government Hospital. During that time, the victim girl told that she was taken by one person and committed rape. Based upon the complaint, a case in Crime No.229 of 2013 was registered by the respondent police for the offences punishable under sections 366 and 376 IPC. After completing the investigation, final report was filed. It was taken cognizance in Special SC No.260 of 2016 by the Sessions Judge, Mahalir Neethimandram, Madurai.



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After completing 207 Cr.P.C proceedings, framed the following charges against the accused:-

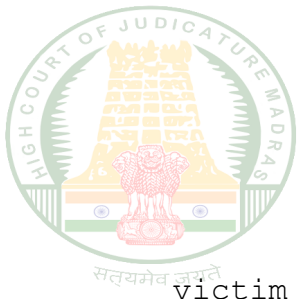
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(i)The victim girl was mentally retarded; On 12/03/2013 at about 09.00 pm, the victim girl along with her mother namely PW1 was waiting in the Madurai Railway Station; During the above said night hour, the accused kidnapped the victim girl and thereby, the accused committed an offence under section 366 IPC; and

(ii)In continuation of the above said occurrence, the accused without the consent of the victim girl, committed rape and thereby the accused committed an offence under section 376 IPC.

3.To that charges, the accused pleaded not guilty and claimed to be tried.

4.During trial, on the side of the prosecution, 17 witnesses were examined and 20 documents marked. Apart from that, 5 material objects were marked. On the side of the accused, no oral and documentary evidence was adduced.



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5.**PW1** is the mother of the victim. In 2013, the victim girl was injured by a known person. For taking treatment, they came to Madurai. On that day night, they stayed in the Madurai Railway Station. At that time, the accused came there, made enquiry and expressed his willingness to marry the victim girl. She told him that the victim is an insane. But in spite of the above said fact, the accused again expressed his willingness. After that, he asked and troubling. The victim girl was taken by the accused. After sometime, she woke up and searched the victim girl. After some-time, the victim girl returned. At that time, she found the victim girl with bleeding in her private parts. But the victim girl did not disclose anything. She was taken to the Government Hospital, Thirumangalam. At that time, the statement was recorded by the Police.

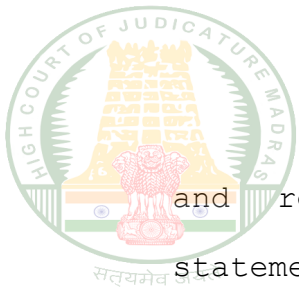
6.**PW15** was working as Inspector of Police attached to Thirumangalam Police Station. On 13/03/2013 at about 03.00 pm, he received intimation from the Government Hospital, Thirumangalam, went to the hospital, found the victim girl insane. He recorded the statement of PW1 and registered a case in Crime No.229 of 2013 under sections 366 and 376 IPC. On the same day itself, he took the investigation, went to the place of occurrence, prepared



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observation mahazar and rough sketch in the presence of the witnesses, recorded the statement of the victim girl. Since the victim girl was insane, he handed over the further investigation to the All Women Police Station, Madurai South.

7. Further investigation was undertaken by **PW17** who was working as Inspector of Police, All Women Police Station, Madurai South. On 14/03/2013, she received the file, again visited the Government Hospital, Thirumangalam and unable to record the statement of the victim girl, but recorded the statement of PW1 and other witnesses and recovered the dress materials from the victim girl by proper mahazar. On 15/03/2013 at about 09.00 am, she arrested the accused in front of Durga Bhavan. In the presence of the witnesses, she recorded the statement of the accused. In furtherance of the statement, at about 10.15 am, she recovered the dress materials produced by the accused from the hidden place under proper recovery mahazar in the presence of the witnesses and further recorded the statement of the other witnesses. The accused was arrested and remanded; made steps to subject the victim and the accused to the medical examination and made a request to the Judicial Magistrate No.2, Madurai to admit the victim girl in the Kilpauk Medical College Hospital, Chennai. Later, she recorded the statement of the Medical witnesses



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and received the Serological report, recorded their statement. After completing the investigation, filed charge sheet under sections 366 and 378(1) IPC.

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8. **PW2, PW3 and PW4** were present when the Investigating Officer visited in the place of occurrence.

9. **PW5** was present when the Inspector of Police recovered the dress materials from the victim girl and he signed in the recovery mahazar.

10. **PW6** was the Medical Officer, who admitted the victim girl in the Government Hospital, Thirumangalam. On his examination, he found that there were injuries in the private parts, hymen was torn, took up vaginal smear and submitted the same for forensic science examination.

11. **PW7** was present when the Investigating Officer recovered the dress materials from the accused.

12. **PW8** was present when the Investigating Officer arrested the accused and during the confession statement as well as the witness to the parvai mahazar, etc.



13.**PW9** was present on the date of the occurrence.

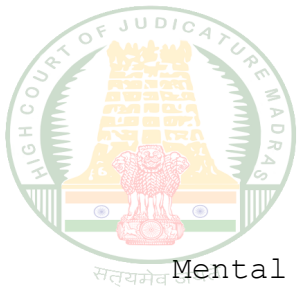
PW10 is the auto driver. On the date of the occurrence, he was hired by a man, who was found with a girl. He identified the accused, was the person who was travelling in his auto with a girl.

14.**PW11** was the Vice President of Railway Junction Auto Driver's Association in Madurai Region and he was informed about the quarrel picked up by the accused and later, he was examined by the Investigating Officer.

15.**PW12** was the Secretary of the above said Auto Drivers Association. He corroborated **PW11** about the complaint made by the Auto driver.

16.**PW13** examined the accused and certified that he is capable of performing sexual activities.

17.**PW14** was the Scientific Assistant attached to the Madurai Regional Forensic Lab. He examined the dress materials submitted to him and other articles. On his examination, he found the dress materials contained human blood, but group could not be identified in some of the articles. Further found that there was no sperm in S.Nos.6 and 1 to 5.



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18.**PW16** was working as Medical Officer in the Mental Health Care Centre Department. She admitted the victim girl on 14/03/2013 till 21/03/2013, she was kept under observation. The victim girl was found in unstable mind and unable to communicate with her. So, she issued a Medical Certificate with the opinion that she was affected by 'PHYCHOSIS NOT OTHERWISE SPECIFIED' under Ex.P6. With that, the prosecution side evidence was closed.

19.The accused was questioned under section 313(1) (b) of the Criminal Procedure Code about the incriminating circumstances against him. He denied the evidence of the witnesses as false and stated that a false case has been foisted. No witness was examined on the defence side.

20.At the conclusion of the trial process, the trial court passed the judgment, dated 06/04/2022 and convicted the accused for the offences under sections 366 and 376 IPC and sentenced him to undergo **10 years RI** and to pay a fine of Rs.10,000/- for each offence, in default to undergo six months SI for each offence and the sentences were directed to run concurrently.

21.Against which, this criminal appeal is preferred by the appellant.



22.Heard both sides.

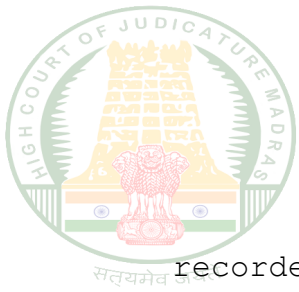
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23.The victim girl is the daughter of PW1, was not examined before the trial court.

24.Now we will straightaway go to the evidence of the Medical Officer, who examined the victim girl about her mental condition.

25.PW16 is the Medical Officer. According to her, on 18/03/2013, the victim girl was admitted in the Mental Health Care Department and she examined her by keeping under observation.

26.As mentioned in the preamble portion, according to her, she was suffering from sleepiness and affected by illusory thinking. From her observation and examination, she came to understand that she is suffering from 'PHYCHOSIS NOT OTHERWISE SPECIFIED' and that document was marked as Ex.P16 on the side of the prosecution. On further examination, she has stated that the information or statement given by the victim girl may or may not be correct and true. According to her, no definite opinion was given as to the information furnished by her. This assumes important, since the entire case rests upon the information furnished by the victim girl to PW1.



27.In this context, we will go to the finding recorded by the trial court.

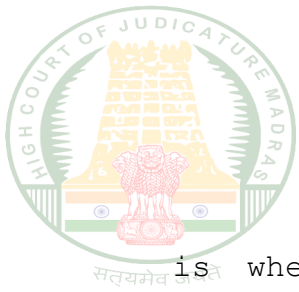
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28.Section 8 of the Indian Evidence Act has been extracted by the trial court, particularly illustration (j), which reads under:-

"The question is, whether A was ravished. The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant."

29.By drawing the illustration under section 8 of the Indian Evidence Act, the trial court recorded a finding of fact that information furnished by the victim to PW1 is the relevant factor and accordingly, it was accepted.

30.This is greatly commented by the appellant herein stating that no such inference ought to have been drawn by the trial court, since the circumstances of the case run against the information.



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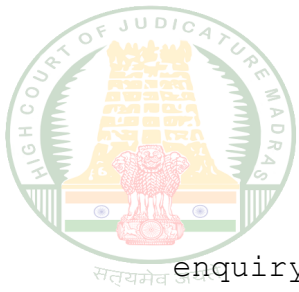
31.So, the question which arises for consideration is whether the trial court has committed an error in drawing inference under section 8 of the Indian Evidence Act.

32.This will be considered in the light of the whole circumstances, since the evidence of PW1, according to the appellant, itself is doubtful one.

33.Regarding the finding of the victim girl that she was affected by mental illness and the evidence of the Medical Officer-PW16 remain unchallenged.

34.Now we will go to the evidence of PW1 on this aspect.

35.As mentioned in the preamble portion, PW1 says that on the date of the occurrence, they were sleeping in the Madurai Railway Junction. At that time, the accused approached him and promised to marry the victim girl. But she informed him about the mental condition of the victim girl. In spite of that, he wanted. But later, she fell asleep, during time, according to her, the accused would have kidnapped the victim girl. She has stated nothing about the alleged kidnapping of the victim girl and the information by the victim girl to her about the alleged rape committed by the accused.



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36.The evidence of PW1, except indicating the enquiry made by the accused with them, nothing has been stated by her to implicate the accused. So, the entire prosecution case relies upon on that circumstance to prove the charges.

37.Now we will go to the aspect of whether the victim girl was subjected to rape. This must be addressed before proceeding further.

38.PW1 says that when the victim girl returned to the place, she found bleeding in her private parts. She was taken to the Government Hospital, Thirumangalam, where she was given treatment, later shifted to the Government Hospital, Kilpauk, Chennai. The evidence of PW1 can be believed to that extent of finding bleeding in the private parts of the victim girl.

39.PW6 was the Doctor, who admitted the victim girl in the Government Hospital, Thirumangalam. She found injuries on the private parts; she was treated; hymen was not intact; apart from abrasion; her virgin smear was taken and sent to the Lab, no symptom of rape was found out as stated by the FSL Scientist namely PW14. Even though, the dress materials seized from the accused and the victim girl did not indicate the presence of semen, but the fact



remains that the injuries found in the private parts clearly shows that the victim girl was subjected to rape.

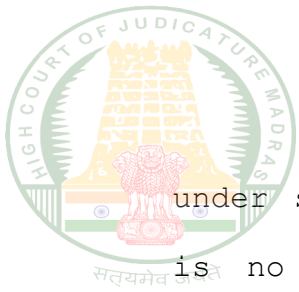
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The evidence of PW1 in this aspect is corroborated by the Medical Officer PW14. So, the prosecution has established the fact of rape.

40.Next comes the involvement of the accused.

41.PW1's evidence can be believed to some extent with regard to the presence of the accused in the place of occurrence till she fell asleep. What happened after that, the prosecution relies upon the eye witness namely PW10. He was the auto driver. According to him, on the particular date of the occurrence, the accused along with a girl hired his auto and he took them to Central Market area; and there arose some issue regarding the fare. At that time, the girl tried to bite him. His evidence also supported the case of the prosecution to some extent to the effect that on the particular date of the occurrence, the accused took the victim girl to the Central Market area through his auto. The girl, according to the prosecution, is the victim girl and none else.

42.Now we will see whether there was any explanation on the side of the accused on the evidence of PW10. To that also, the trial court has drawn inference



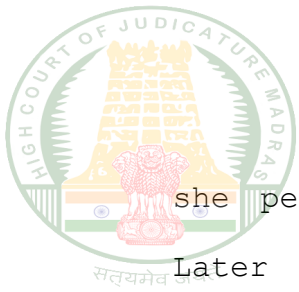
under section 106 of the Indian Evidence Act. Since there is no proper explanation on the part of the accused, inference was drawn. So, there is *prima facie* case on the side of the prosecution to show that the accused made enquiry with PW1 expressing his willingness to marry the victim girl and thereafter, he took or kidnapped the victim girl to some other place through the auto belonged to PW10. Later, the victim girl was found bleeding injuries in her private parts.

43.As mentioned above, these are the clear circumstances available against the accused. Only on that basis, the trial court recorded a finding of guilt.

44.Now we will go to the argument advanced by the appellant on the reliability of the prosecution version.

45.The learned counsel appearing for the appellant commenced his argument by pointing out the contradictions found in the PW1's evidence with that of the averments made in the complaint.

46.No doubt that the complaint under Ex.P1 is more elaborate than that of the evidence given by her before the trial court. In the complaint, she has stated that the accused promised to bring the food. Believing his words,



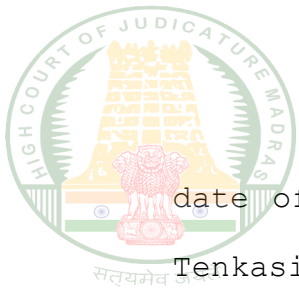
she permitted the accused to take the girl in an auto.

Later she fell asleep. At about 07.30 am, when she was returning to Tenkasi, the victim girl stated about the occurrence. Only at that time, she found bleeding on the private parts, immediately de-boarded the Train at Thirumangalam and went to the Government Hospital, Thirumangalam. But she has not corroborated these things before the trial court. These facts were narrated in the complaint, need not be taken into account.

47.No doubt that the evidence of PW1 to some extent is not telling the correct facts. But absolutely, there is no necessity for her to give a false statement implicating this accused. More particularly, when the victim girl was found with injuries on the private parts.

48.The learned counsel appearing for the appellant would heavily rely upon the averments made in the complaint as to the necessity of the Medical Officer admitting in a Labour Ward. But in my considered view this need not be given any important at all.

49.In the light of the evidence of the Medical Officer PW6, the next argument is that there is no explanation on the side of the prosecution as to what happened between 08.30 am and 01.00 pm on the particular

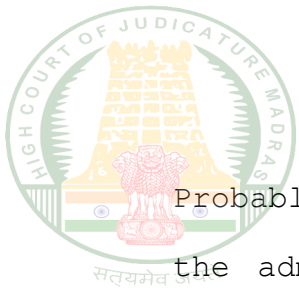


date of the occurrence. As per the complaint, they boarded Tenkasi Train at about 07.30 am. Near Thirumangalam, she found bleeding and alighted. PW15, at about 03.00 am on 13/03/2013, received the intimation from the Government Hospital, Thirumangalam as to the admission of the victim girl.

50.The learned counsel appearing for the appellant referring to the entries made by the Medical Officer regarding the time of admission.

51.No doubt that there was no explanation on the part of the prosecution on this aspect. But this does not assume importance at all, because the victim girl is a mentally ill-patient. PW1 only accompanied her. After alighting from the train, it appears that they went to the Government Hospital, Thirumangalam. But this time gap may not assume any importance, since the evidence of PW6 is more specific. If really, anything had happened in between the time, as mentioned above, there is no necessity for PW1 to implicate the accused in this case. This also does not assume any importance at all.

52.Now the argument of the appellant is that PW6 admitted the victim girl in the Labour Ward, this according to him, creates doubt regarding the admission itself.

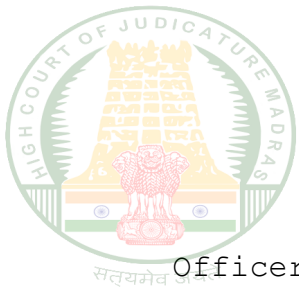


Probably, the case would have been registered even prior to the admission. But no fact was elicited during the cross examination of PW1. If only such things were brought on record by the accused, we can decide it. But for the first time, this ground cannot be raised in the appellate court.

53.A specific question was put to the Investigating Officer on this aspect. He has given answer to that, in between this time, the victim girl and PW1 were available in the hospital premises. Nothing was brought on record to discard this explanation. So, the suggestion made by the accused that time gap between these two occurrences create doubt in the case of the prosecution is not acceptable. So, the contention that before the time of admission of the victim in the hospital, the case was registered is also out of place.

54.The next argument is with regard to the reliability of PW1's evidence. As mentioned above, to some extent, her evidence is not reliable, but these things are the minor contradictions or lapses, which need not be given any importance.

55.The next argument is with regard to the dress materials etc. facts. As mentioned above, recovery of dress materials has no relevancy.



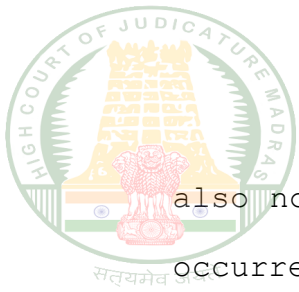
56.The failure on the part of the Investigating Officer to seize the CCTV in the Railway Station is another ground raised by the appellant. But these mistakes in the investigation, unless there are materials in nature, it cannot be taken into account.

57.So, for the reasons stated above, the prosecution has established the fact that the victim girl was subjected to rape. The circumstance clearly indicates that only the accused kidnapped the victim girl and committed rape.

Now the place of the occurrence:-

58.As per the case of the prosecution, the place of occurrence is on the eastern side of the Suguna Chicken Centre. According to the appellant, the observation mahazar runs contra to the sketch prepared by the Investigating Officer. He is referring to some of the contradictions and would submit that the place of occurrence as per the prosecution is the middle of the North-South main road; It would not have happened in a public place. This, according to him, creates doubt in the case of the prosecution.

59.No doubt that from whom the place of occurrence was identified by the Investigating Officer is not stated by him. Whether the place was identified by the accused is

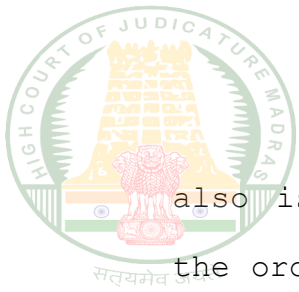


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also not clear on record. PW17 has stated that the place of occurrence was identified by the accused in his confession statement, but that portion of the confession statement was not marked by the prosecution before the trial court. This is the fact, which has been disclosed at the time of giving confession. Based upon the disclosure statement, the place of occurrence was identified by the Investigating Officer. But however, that particular portion was not marked as evidence. It cannot be relied, but even otherwise, if the prosecution has not established the place of occurrence, the other circumstance will be overwhelming as mentioned above. This does not assume importance at all, even though much argument was advanced by the appellant.

60. At the final leg of the argument, the learned counsel appearing for the appellant would submit that due to misidentification, the case has been foisted against the appellant. But absolutely, there is no question of misidentification. As indicated above, PW1 clearly identified the accused. The witness namely PW10 also identified the accused.

61. I find that the prosecution has established the guilt of the accused before the trial court by circumstantial evidence. The argument advanced by the appellant regarding the approach made by the trial court



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also is not convincing. I find no reason to interfere in the order passed by the trial court. Even in sentence also, I find no reason to interfere.

62.In the result, this criminal appeal is dismissed, confirming the judgment of conviction and sentence passed by the trial court.

30/01/2025

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To,

- 1.The Sessions Judge,
Mahalir Neethimandram,
Madurai.
- 2.The Inspector of Police,
Thilagarthidal Police Station,
Madurai City.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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