



Crl.A.(MD)No.37 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 13.08.2025

CORAM:

THE HONOURABLE Dr.JUSTICE R.N.MANJULA

Crl.A.(MD)No.37 of 2018

1.Lekkan @ Balakrishnan
2.Adaikalam @ Kathalai

... Appellants

vs.

The State rep. by
The Inspector of Police,
Aruppukottai Town Police Station,
Virudhunagar District.

...Respondent

PRAYER : This Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code against the Judgement of the learned Sessions Judge, Fast Track Mahila Court, Virudhunagar District at Srivilliputhur dated 01.06.2016 in S.C.No.145 of 2010.

For Appellants : Mr.D.Anbarasan,
Legal Aid Counsel for A1

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



JUDGEMENT

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This appeal has been filed challenging the Judgement of the learned Sessions Judge, Fast Track Mahila Court, Virudhunagar District at Srivilliputhur, dated 01.06.2016 in S.C.No.145 of 2010.

2. The appellants are A1 and A2, who have been found guilty for the offence under Sections 394 and 376(E) of IPC and convicted and sentenced by the learned Sessions Judge as under.

Accused	Offences under Sections	Punishment	Fine	In default Sentence
A1	Section 394 IPC	10 years RI	Rs.10,000/-	1 year SI
	Section 376(E)	20 years RI	Rs.50,000/-	2 years SI
A2	Section 394 IPC	10 years RI	Rs.10,000/-	1 year SI
	Section 376(E)	20 years RI	Rs.50,000/-	2 years SI

3. The case of the prosecution is that the defacto complainant who is the victim was studying in a private college. On 26.09.2009, at about 02.00 p.m., the victim called her boy friend and went in a motorcycle with him to a place near a railway cross road. While they were



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conversing there, at about 03.00 p.m., the accused came in a bicycle with an intention to rob the jewels. The accused threatened the victim and her boyfriend with a masonry trowel, robbed the gold jewels owned by the victim and thereafter, dragged the victim to a nearby dilapidated building belonging to a Petrol Bunk Owner, where they had raped the victim repeatedly in the presence of PW2, who is the boyfriend of the victim. They asked PW2 to bring Rs.50,000/- before 10 p.m. by holding the victim with them. As the accused heard people's noise nearby, they left the victim there itself and went away. Thereafter, PW2 arrived and victim accompanied him and gave the police complaint Ex.P1.

4. On the complaint given by the victim, a case has been registered in Crime No.1156 of 2009 on the file of the Aruppukottai Town Police Station, Virudhunagar District. After conclusion of the investigation, charge sheet has been filed against the accused for the offence punishable under Sections 366, 376, 392 and 386 of IPC.

5. After completing the legal mandates of furnishing copies and all other legal formalities, charges have been framed against the accused for the offence under Section 397 r/w 394, Sections 376 and 387 of IPC. When the accused were questioned, they denied their involvement and



claimed to be tried.

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6. Before the Trial Court, on the side of the prosecution PW1 to PW14 have been examined and Exs.P1 to P21 have been marked. Material Objects M.O.1 to M.O.19 have been marked. On the side of the accused, Ex.D1 has been marked and no oral evidence has been marked.

7. After the conclusion of trial, the learned Sessions Judge found the accused guilty for the offence under Sections 394 and 376(E) and convicted and sentenced them as mentioned supra. Aggrieved over that, the appellants / accused 1 and 2 have preferred this appeal.

8. It is reported on either side that pending appeal, the second appellant / second accused passed away on 31.05.2020 and Death Certificate is also produced before this Court.

9. Mr.D.Anbarasan, learned legal aid counsel appearing for the 1st appellant submitted that the medical examination of the victim by PW7 Doctor does not corroborate the evidence of victim (PW1); forensic examination of the Material Objects did not show any stain of blood or semen; and these facts were not properly dealt by the Trial Court.



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10. Mr.R.Meenakshi Sundaram, learned Additional Public Prosecutor appearing for the respondent submitted that the victim PW1 and her boyfriend PW2 have clearly deposed in their evidence about the occurrence and the incriminating act of the appellants and the learned Sessions Judge has rightly dealt with the same. There are sufficient materials available on record to prove the guilt of the appellants and learned Sessions Judge rightly found the appellants guilty, convicted and sentenced them.

11. In the complaint Ex.P1 lodged by the victim, she has stated about the fact that she had accompanied PW2 to the place of occurrence on 26.09.2009 and the appellants who can be identified had dragged them near to palm tree jungle, threatened with masonry trowel and robbed the jewels of the victim. Thereafter, they assaulted them, took them to a nearby dilapidated building and in front of PW2, they forcibly raped the victim repeatedly and threatened PW2 to bring Rs.50,000/- by holding back the victim with them. Even before PW2 returned, they left the place as they heard some noise nearby.

12. The victim / defacto complainant who was examined as PW1 has stated the same facts in her evidence. Even in Ex.P1 complaint itself,

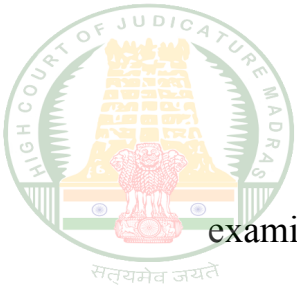


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PW1 has stated the identities of the appellants / accused and that she could identify them. The victim identified the appellants in the Court when she was deposing evidence. In fact, Identification Parade has been conducted in this case, wherein also she has identified the appellants correctly. The victim was tortured in the hands of the appellants when they subjected her to the repeated offence of rape. It is not impossible for her to register their identity in her mind. For the victim, the images of the appellants would be like horror images and she could not have forgotten or confused their identities.

13. It is claimed by the learned counsel for the first appellant that PW1 could identify the appellants only because she was shown by their photographs by the Police. As stated earlier, even without any photo images of the appellants, the victim would have very well registered their faces as she could have seen them in closer proximity, when they committed the offence of rape on her. The Magistrate who conducted Identification Parade has been examined as PW11 and the Identification proceedings has been marked as Ex.P14.

14. PW1 was taken to medical examination on 28.09.2009 i.e., after two days from the date of occurrence. PW7 Doctor who had



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examined the victim has stated that semen stains were not found on her private parts. Within two days interval, there are possibilities that victim could have taken bath and hence, the semen stains cannot be present. However, the Doctor had noticed that her lower lips had swollen and she reported pain on her right elbow. Even to the PW7 Doctor, the victim has stated that she was raped by two identifiable persons. The absence of semen or injuries on the private parts of the victim cannot be considered as something adverse to the case of the prosecution. The evidence of victim is reliable in every aspect of the case. The cross examination of the victim did not bring out any motive.

15. A weak suggestion has been made to the victim that herself and PW2 had physical relationship with each other and that was witnessed by the appellants and they threatened to reveal it to their parents. In view of that motive, the complaint has been given. PW1 and PW2 were conversing in a public place and the appellants being strangers cannot have any access to their parents. It is difficult to imagine that the victim could have made allegations of rape against the appellants at the risk of her own dignity and modesty to take revenge on them.



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16. The boyfriend of victim has been examined as PW2 who has been present with the victim at the time of occurrence, he has stated in his evidence that the victim was raped in his presence despite she resisted and cried. PW2 also identified the appellants during the Identification Parade. Immediately FIR was registered, PW2 was taken to the place of occurrence and he identified the spot where the occurrence had taken place. The appellants were arrested and on their confession, jewels robbed from the victim have been recovered.

17. PW6, Village Administrative Officer stood as the witness for confession and recovery and he has also deposed evidence in support of the part of the investigation conducted in his presence. The appellants were examined by the PW8 Doctor on 30.09.2009. The evidence of PW8 Doctor revealed that there was nothing to suggest that the appellants were impotent. PW11 Magistrate who has conducted Identification Parade deposed evidence saying that PW2 also identified the appellants / accused correctly.

18. So far as the another claim that the forensic examination of Material Objects did not show any stain of blood or semen, it all depends upon where the clothes came into contact during the occurrence. When



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the evidence of the victim (PW1) and PW2 were very much reliable, they also could identify the appellants / accused and in the absence of any motive for them to give a false complaint against the appellants, the negative forensic reports cannot be of any consequence.

19. The testimony of the rape victim can be relied without any corroboration as she stand on a higher pedestal than the injured witness. Only when the victim's evidence on the face of it appears to be doubtful and confusing, the other corroborating evidence needs to be relied on. While corroborating evidence would strengthen the evidence of the victim of sexual violence case, the absence of the same will not weaken her evidence or make it doubtful.

20. In this context, it is appropriate to refer the Judgement of the Apex Court in the case of **Phool Singh vs. State of Madhya Pradesh reported in (2022) 2 SCC 74**. The relevant part of the above Judgement is extracted under.

"5.3 In the case of Pankaj Chaudhary (supra), it is observed and held that as a general rule, if credible, conviction of accused can be based on sole testimony, without corroboration. It is further observed and held that sole testimony of prosecutrix should not be doubted by court merely on basis



of assumptions and surmises. In paragraph 29, it is observed and held as under:

“29. It is now well-settled principle of law that conviction can be sustained on the sole testimony of the prosecutrix if it inspires confidence. [Vishnu v. State of Maharashtra [Vishnu v. State of Maharashtra, (2006) 1 SCC 283]. It is well-settled by a catena of decisions of this Court that there is no rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration and as such it has been laid down that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the “probabilities factor” does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming. [State of Rajasthan v. N.K. [State of Rajasthan v. N.K., (2000) 5 SCC 30].”

5.4 In the case of Sham Singh v. State of Haryana, (2018) 18 SCC 34, it is observed that testimony of the victim is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of the victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is further observed that seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. In paragraphs 6 and 7, it is observed and held as under:

“6. We are conscious that the courts shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an



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otherwise reliable prosecution case. If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations or sexual assaults. [See State of Punjab v. Gurmit Singh [State of Punjab v. Gurmit Singh, (1996) 2 SCC 384] (SCC p. 403, para 21).]

7. It is also by now well settled that the courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. (See Ranjit Hazarika v. State of Assam [Ranjit Hazarika v. State of Assam,



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(1998) 8 SCC 635)."

6. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and as observed hereinabove, we see no reason to doubt the credibility and/or trustworthiness of the prosecutrix. She is found to be reliable and trustworthy. Therefore, without any further corroboration, the conviction of the accused relying upon the sole testimony of the prosecutrix can be sustained.

7. Now so far as the submission on behalf of the accused that as there were no external or internal injuries found on the body of the prosecutrix and therefore it may be a case of consent is concerned, the aforesaid has no substance at all. No such question was asked, even remotely, to the prosecutrix in her cross-examination. Therefore, the aforesaid submission is to be rejected outright."

21. The victims of sexual offence not only injure her physical self, but also her soul. Even without corroboration, the evidence of victim of sexual offence is reliable unless it is rebutted effectively. Except certain minor contradictions which are insignificant, the whole evidence available on record and proper appreciation of the same would only confirm the guilt of the appellants and nothing less.

22. The victim was not only raped repeatedly but has been raped by more than one person, which would fall under the offence of 'gang rape'. However, the learned Sessions Judge has found the appellants guilty for the offence under Section 376(E) IPC instead of 376(D) IPC.



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Section 376(E) IPC is applicable only for those offenders who has already been convicted for the offence under Section 376 IPC and committed the same offence again. In the instant case, the appellants have not been convicted for similar such offence in any earlier instance. As the victim has been raped by more than one person, the appropriate charge ought to have been framed is under Section 376(D) IPC instead of 376(E).

23. To alter the penal provision from Section 376(E) IPC to Section 376(D) IPC, there is no need to frame alteration of charges. Because, the appellants would have taken the very same defence as they understood that they have been tried for the offence of robbery and rape committed against the victim. Even though there cannot be any change in the conviction and sentence of imprisonment, the penal provision for rape needs to be changed from Section 376(E) IPC to Section 376(D) IPC.

24. In view of the above discussions, this Criminal Appeal is **dismissed**. The Judgement of the learned Sessions Judge, Fast Track Mahila Court, Virudhunagar District at Srivilliputhur, dated 01.06.2016 in S.C.No.145 of 2010 is confirmed in all aspects, subject to the



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alteration of penal provision from Section 376(E) IPC to Section 376(D)

IPC. The Sessions Court shall take steps to secure the first appellant / first accused for undergoing the remaining period of sentence, if any.

13.08.2025

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To

1.The Sessions Judge,
Fast Track Mahila Court,
Virudhunagar District at Srivilliputhur.

2.The Inspector of Police,
Aruppukottai Town Police Station,
Virudhunagar District.

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



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Dr.R.N.MANJULA, J.

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