



Crl.A(MD) No. 422 of 2019

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Bail Slip

PARAMAN, Male, aged about 40 years

S/o.Perumal(Petitioner/ Appellant), Suspension of Sentence was granted vide court order dated 08/11/2019 in Crl.MP(MD) 8328/2019 in Crl.A.(MD) 422/2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	16.12.2024
Pronounced on	:	15.05.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A.(MD)No.422 of 2019

Paraman

... Appellant

vs.

State rep by
The Inspector of Police,
All Women Police Station,
Sivakasi,
Virudhunagar District.
In Crime No.01 of 2006

...Respondent

PRAYER: Criminal Appeal has been filed under Section 374 of Criminal Procedure Code to set- aside the conviction and sentence imposed by the Mahila Court (Fast Track Mahila Court), Virudhunagar District at Srivilliputhur in S.C.No.228 of 2013 on 29.07.2019 and allow this criminal appeal.

For Appellants :Mr.M.Jothi Basu



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WEB COPY For Respondent :Mr.M.Sakthikumar
Government Advocate (Crl.Side)

JUDGMENT

Sole Accused in S.C.No. 228 of 2013 on the file of the Mahila Court, Viruthunagar, has filed this appeal challenging the conviction under Section 376 of IPC and sentence of 7 years Rigorous Imprisonment with fine of Rs.60,000/- with default sentence of one year rigorous imprisonment passed by the impugned judgment dated 29.07.2019 passed against him.

2.Six months prior to the date of complaint, i.e., on 24.05.2006, when P.W.1 victim was working in a factory called Saradha Match factory situated in the remote village of Puliparapatti, Viruthunagar District, under the supervision of the appellant, he harassed her at the work place with the intention of having physical relationship with her, by finding fault with her work and he had committed rape upon her against her will by making a promise to marry her. Due to this incident, she became pregnant and the same was informed to the appellant but he refused to marry her. Therefore, P.W.1 gave a complaint to the respondent police. The

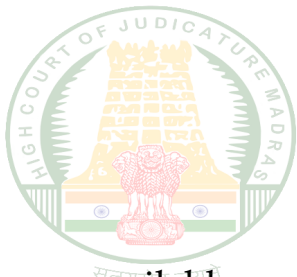


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respondent police registered the case under Section 417 of I.P.C., and conducted investigation and filed the final report under Section 417 of I.P.C., and 4 of Tamilnadu Prohibition of Harassment of Women Act before the learned Judicial Magistrate, Sivakasi. The learned Judicial Magistrate, took cognizance in C.C.No.454 of 2006 and issued summons to the appellant and served copies under Section 207 of Cr.P.C., and framed the charges and questioned the accused and he pleaded not guilty and stood for trial.

3.After examination of number of witnesses, the learned judicial magistrate found that this case was a clear case of rape and offence under Section 376 of IPC was made out. Hence, the learned Judicial Magistrate committed the case to the learned Sessions judge in P.R.C.No.40 of 2013. Thereafter, the learned Assistant Sessions Judge, had taken cognizance in S.C.No.228 of 2013 and charge under Section 376 of IPC was framed against the accused and he was questioned. The accused pleaded not guilty and he stood for trial. Thereafter, since the special Court, namely Mahila Court was constituted to try the offence against women, the case was transferred to the learned Additional Sessions Judge, Srivilliputhur. The learned trial Judge permitted the accused to re-examine the witnesses and examined the accused under Section 313 of Cr.P.C., by putting the incriminating materials



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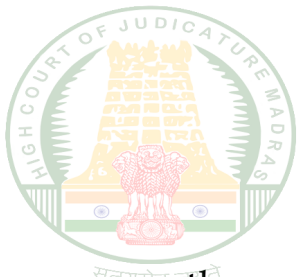
available against him and he denied the same. No defence witness was examined and no document was marked on the side of the accused. The learned trial Judge thereafter considering the evidence on record and the argument of the learned counsel for the accused, passed the conviction and sentence as stated above by passing the impugned judgment dated 29.07.2019. Challenging the same, the appellant herein has filed this Criminal Appeal before this court.

4.The learned counsel for the appellant made the following submissions:

4.1.After the committal to the Sessions Court the procedure stated under Section 323 of Cr.P.C., had not been followed and hence, the entire trial is vitiated.

4.2.The perusal of the evidence of the victim, does not make out the ingredients of Section 376 of IPC and this case is a clear case of consensual sex and hence, he seeks acquittal.

5.The learned Additional Public Prosecutor would submit that P.W.1 clearly deposed about the rape committed by the appellant under threat and coercion and there is no case of consensual sex. The poor victim labour working under the control of the appellant who was working as a foreman of the said match factory forced the victim by causing physical harassment and therefore, the learned trial Judge has



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correctly convicted him under Section 376 of I.P.C.

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5.1.The learned Additional Public Prosecutor would submit that the learned trial Judge has followed the procedure under Section 323 of Cr.P.C., and hence, there is no question of any illegality. Further, the same is not a ground to disbelieve the evidence of the victim to convict the appellant under Section 376 of IPC. Therefore, he seeks to confirm the conviction and sentence imposed against the appellant.

6.This Court considered the rival submissions made by the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent police and perused the materials available on record and the precedents relied upon by them.

7.Whether the conviction and sentence imposed by the learned trial Judge is in accordance with law?

8.The appellant was working as a foreman in Saradha Match Factory situated in, Puliparapatti village. Victim was working under him as a labour. There is no dispute over the said fact. The victim was examined as P.W.1 and she specifically



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deposed as follows:

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மேற்படி ஆபிசில் எதிரி போர்மேனாக பணிசெய்தார். 3 வருடம் வேலைபார்த்தேன். அப்போது எனக்கு திருமணம் ஆகவில்லை. அப்போது வேலை பார்த்தகாலத்தில் திருமணம் செய்து கொள்வதாக கூறி பலமுறை இம்சை செய்து வரவில்லை என்றால் மெழுகு தீயை எடுத்து உன்மேல் எறிந்து விடுவேன் என்று சொல்லி என்னுடன் உடலுறவு கொண்டார்.

9.She was subjected to detailed cross examination and even during her cross examination she reaffirmed the above statement by denying the suggestion made by defence which reads as follows:

எதிரி என் மீது மெழுகுதீயை எடுத்தது ஊற்றி விடுவேன் என்று சொல்லி என்னுடன் உடலுறவு கொண்டார் என்று என் புகாரிலோ போலீஸ் விசாரித்த போது கூறவில்லை என்றால் சரியல்ல.

10.From the above, it is clear that P.w.1 has clearly deposed that she was subjected to rape under coercion that too in her house and as a result, a female child was born. The evidence of P.W.1 is cogent and trustworthy. Therefore, this Court has no hesitation in upholding the conviction on the basis of the evidence of P.W.1. It is a well settled principle that when the evidence of the victim is trustworthy, it would be sufficient to convict to the accused for the offence under Section 376 of IPC. The Hon'ble Supreme Court in 2022 2 SCC 74 in the case of Phoolsingh vs. State of M.P., has reiterated the principle that conviction can be passed on the basis



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of the sole testimony of the prosecutrix, in the following words:

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9. In *Pankaj Chaudhary [State (NCT of Delhi) v. Pankaj Chaudhary, (2019) 11 SCC 575 : (2019) 4 SCC (Cri) 264]*, it is observed and held that as a general rule, if credible, conviction of the accused can be based on sole testimony, without corroboration. It is further observed and held that sole testimony of the prosecutrix should not be doubted by the court merely on basis of assumptions and surmises. In para 29, it is observed and held as under : (SCC p. 587)

“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 : (2006) 1 SCC (Cri) 217]*]. 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 : 2000 SCC (Cri) 898]*].”

11. The argument of the learned counsel for the appellant that it was a case of consensual sex is a misconceived one. From the evidence, it is clear that there is a perceived coercion ie., a situation was created where the individual had been



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subjected to pressure and compelled to have sex. This is the case of sexual coercion.

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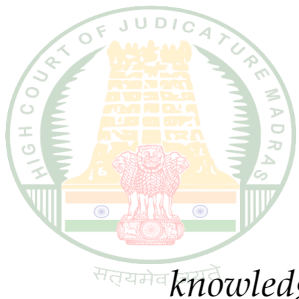
Sexual coercion is when a person puts pressure and, threatens someone to have sex and hence, it can not be a voluntary consent. It is a settled principle that when the consent is under a threat, the case comes under one of the 7 Constituents mentioned in Section 375 of IPC. The third constituent is as follows:

Thirdly- *With her consent, when the consent has been obtained by putting her or any person in whom she is interested, **in fear of death or of hurt.***

12.In the present case, in view of the specific evidence of the victim that she was threatened that she would be inflicted burn injury, the case of the appellant that there was voluntary consent is not acceptable.

13.The Hon'ble Three Judges Bench of the Supreme Court in 2000 7 SCC 224 has held that when rape was committed under the fear of terror, the consent is not a valid consent. The relevant paragraph runs as follows:

The evidence as a whole indicates that there was resistance by the prosecutrix and there was no voluntary participation by her for the sexual act. Submission of the body under the fear of terror cannot be construed as a consented sexual act. Consent for the purpose of Section 375 requires voluntary participation not only after the exercise of intelligence based on the



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knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances.

14. The said principle has also been reiterated in the Judgment of the Hon'ble supreme Court in 2011 2 SCC 550 and the relevant paragraph goes as follows:

15. Be that as it may, in our view, clause Sixthly of Section 375 IPC is not attracted since the prosecutrix has been found to be above 16 years (although below 18 years). In the facts of the case what is crucial to be considered is whether clause Firstly or clause Secondly of Section 375 IPC is attracted. The expressions "against her will" and "without her consent" may overlap sometimes but surely the two expressions in clause Firstly and clause Secondly have different connotation and dimension. The expression "against her will" would ordinarily mean that the intercourse was done by a man with a woman despite her resistance and opposition. On the other hand, the expression "without her consent" would comprehend an act of reason accompanied by deliberation.

16. The concept of "consent" in the context of Section 375 IPC has come up for consideration before this Court on more than one occasion. Before we deal with some of these decisions, reference to Section 90 IPC may be relevant which reads as under:

"90. Consent known to be given under fear or misconception. – A consent is not such a consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the



person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

[Consent of insane person] if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

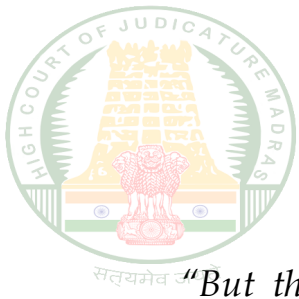
[Consent of child] unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age."

17. This Court in a long line of cases has given wider meaning to the word "consent" in the context of sexual offences as explained in various judicial dictionaries. In Jowitt's Dictionary of English Law (2nd Edn.), Vol. 1 (1977) at p. 422 the word "consent" has been explained as an act of reason accompanied with deliberation, the mind weighing, as in a balance, the good or evil on either side. It is further stated that consent supposes three things – a physical power, a mental power, and a free and serious use of them and if consent be obtained by intimidation, force, meditated imposition, circumvention, surprise, or undue influence, it is to be treated as a delusion, and not as a deliberate and free act of the mind.

18. Stroud's Judicial Dictionary (4th Edn.), Vol. 1 (1971) at p. 555 explains the expression "consent", inter alia, as under:

" 'Every "consent" to an act, involves a submission; but it by no means follows that a mere submission involves consent', e.g. the mere submission of a girl to a carnal assault, she being in the power of a strong man, is not consent (per Coleridge, J., R. v. Day [(1841) 9 C&P 722 : 173 ER 1026] , ER p. 1027)."

Stroud's Judicial Dictionary also refers to the decision in Holman v. R. [1970 WAR 2] wherein it was stated:



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"But there does not necessarily have to be complete willingness to constitute consent. A woman's consent to intercourse may be hesitant, reluctant or grudging, but if she consciously permits it there is 'consent'."

19. In Words and Phrases, Permanent Edition (Vol. 8A) at pp. 205-206, few American decisions wherein the word "consent" has been considered and explained with regard to the law of rape have been referred. These are as follows:

"In order to constitute 'rape', there need not be resistance to the utmost, and a woman who is assaulted need not resist to the point of risking being beaten into insensibility, and, if she resists to the point where further resistance would be useless or until her resistance is overcome by force or violence, submission thereafter is not 'consent'. People v. Mcilvain [55 Cal App 2d 322]

'Consent', within Penal Law, Section 2010, defining rape, requires exercise of intelligence based on knowledge of its significance and moral quality and there must be a choice between resistance and assent. People v. Pelvino [(1926) 214 NYS 577]

'Consenting' as used in the law of rape means consent of the will and submission under the influence of fear or terror cannot amount to real consent. Hallmark v. State [22 Okl Cr 422]

Will is defined as wish, desire, pleasure, inclination, choice, the faculty of conscious, and especially of deliberate action. It is purely and solely a mental process to be ascertained, in a prosecution for rape, by what the prosecuting witness may have said or done. It being a mental process there is no other manner

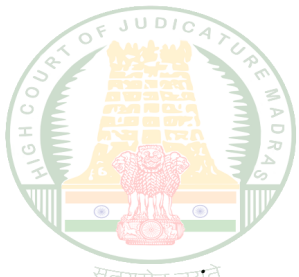


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by which her will can be ascertained, and it must be left to the jury to determine that will by her acts and statements, as disclosed by the evidence. It is but natural, therefore, that in charging the jury upon the subject of rape, or assault with intent to commit rape, the courts should have almost universally, and, in many cases, exclusively, discussed 'consent' and resistance. There can be no better evidence of willingness is a condition or state of mind (sic) no better evidence of unwillingness than resistance. No lexicographer recognizes 'consent' as a synonym of willingness, and it is apparent that they are not synonymous. It is equally apparent, on the other hand, that the true relation between the words is that willingness is a condition or state of mind and 'consent' one of the evidences of that condition. Likewise, resistance is not a synonym of unwillingness, though it is an evidence thereof. In all cases, therefore, where the prosecuting witness has an intelligent will, the court should charge upon the elements of 'consent' and resistance as being proper elements from which the jury may infer either a favourable or an opposing will. It must, however, be recognized in all cases that the real test is whether the assault was committed against the will of the prosecuting witness. *State v. Schwab* [143 NE 29] "

21. In *Uday v. State of Karnataka* [(2003) 4 SCC 46 : 2003 SCC (Cri) 775] this Court put a word of caution that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. The Court at SCC p. 57 of the Report stated: (SCC para 21)

"21. ... In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding



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circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact."

24. *In State of Punjab v. Gurmit Singh [(1996) 2 SCC 384 : 1996 SCC (Cri) 316] this Court made the following weighty observations at pp. 394-96 and p. 403: (SCC paras 8 & 21)*

"8. ... The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix ... 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 ... Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury ... Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given



circumstances....

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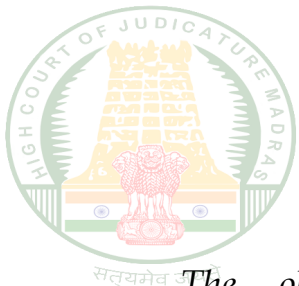
21. ... The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires 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 trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

(emphasis in original)

25. In *Vijay v. State of M.P.* [(2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639] , decided recently, this Court referred to the above two decisions of this Court in *Chandraprakash Kewalchand Jain* [(1990) 1 SCC 550 : 1990 SCC (Cri) 210] and *Gurmit Singh* [(1996) 2 SCC 384 : 1996 SCC (Cri) 316] and also few other decisions and observed as follows: (*Vijay case* [(2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639] , SCC p. 198, para 14)

"14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix."

27. This Court has repeatedly laid down the guidelines as to how the evidence of the prosecutrix in the crime of rape should be evaluated by the court.



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The observations made in *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* [(1983) 3 SCC 217 : 1983 SCC (Cri) 728] deserve special mention as, in our view, these must be kept in mind invariably while dealing with a rape case. This Court observed as follows: (SCC p. 224, para 9)

“9. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society. We must analyse the argument in support of the need for corroboration and subject it to relentless and remorseless cross-examination. And we must do so with a logical, and not an opinionated, eye in the light of probabilities with our feet firmly planted on the soil of India and with our eyes focussed on the Indian horizon. We must not be swept off the feet by the approach made in the western world which has its own social milieu, its own social mores, its own permissive values, and its own code of life. Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the western world. It is wholly unnecessary to import the said concept on a turnkey basis and to transplant it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian society, and its profile. The identities of the two worlds are different. The solution of problems cannot, therefore, be identical.”

28. This Court went on to observe at SCC pp. 225-26: (*Bharwada case* [(1983) 3 SCC 217 : 1983 SCC (Cri) 728] , SCC para 10)



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“10. Without the fear of making too wide a statement, or of overstating the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban as also rural society. It is also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from amongst the urban elites. Because –

(1) A girl or a woman in the tradition-bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred.

(2) She would be conscious of the danger of being ostracised by the society or being looked down by the society including by her own family members, relatives, friends, and neighbours.

(3) She would have to brave the whole world.

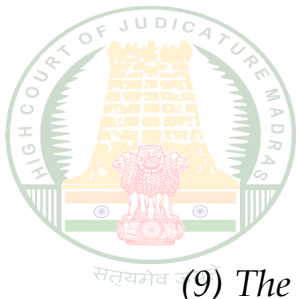
(4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered.

(5) If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family.

(6) It would almost inevitably and almost invariably result in mental torture and suffering to herself.

(7) The fear of being taunted by others will always haunt her.

(8) She would feel extremely embarrassed in relating the incident to others being overpowered by a feeling of shame on account of the upbringing in a tradition-bound society where by and large sex is taboo.



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(9) *The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy.*

(10) *The parents of an unmarried girl as also the husband and members of the husband's family of a married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour.*

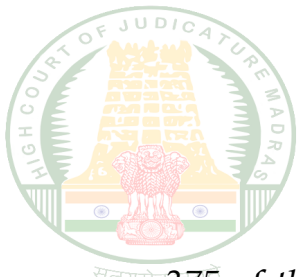
(11) *The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence.*

(12) *The reluctance to face interrogation by the investigating agency, to face the court, to face the cross-examination by the counsel for the culprit, and the risk of being disbelieved, acts as a deterrent."*

15. The legislature in order to save the victim brought section 114 A of the Indian Evidence Act, which reads as follows:

"114A. Presumption as to absence of consent in certain prosecution for rape.

In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian PenalCode, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent. Explanation. - In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section



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375 of the Indian Penal Code.] [Substituted by Criminal Law (Amendment) Act, 2013]

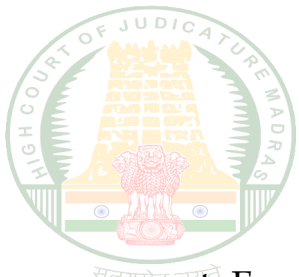
Prior to substitution by Criminal Law (Amendment) Act, 2013 section 114A read as;[114-A. Presumption as to absence of consent in certain prosecutions for rape. [Inserted by Act 43 of 1983, Section 6.]- In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of section 376, of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.]

16. In 2015 4 SCC 762, the Hon'ble Supreme Court considered Section 114 A of the Indian Evidence Act, and held as follows:

“20. No one can dispute that the prosecutrix had no control over the investigating agency and nor could the lapse on the part of the investigating agency in any manner affect the credibility of the statement of the prosecutrix.

22. This takes us to the next two submissions of the learned counsel for the appellant. The courts below have held that the age of the prosecutrix on the date of commission of the offence was around 16 years and 3 months. Assuming this finding to be proper, we are of the considered opinion that these submissions have no merit in the light of the statutory presumption contained in Section 114-A of the Evidence Act, 1872 against the appellant, which in our opinion remain unrebutted at the instance of the appellant.”

17. From the above, it is clear that the appellant has not proved voluntary



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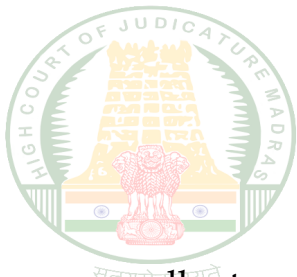
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consent. From the above extracted portion of the cross examination, this Court finds prurient attitude and interest on the part of the appellant and P.W.1 is only a victim of circumstances. Only due to the economic duress and constant fear she has succumbed to the accused and her consent is not a voluntary one, but has been obtained by coercion.

18. As per Section 90 of IPC, when the consent is obtained under the “misconception of fact” the consent is not true consent. The Hon'ble Supreme Court in 2019 9 SCC 608 has held as follows:

18....To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.

19. Suggestion during the cross examination of witness show that he promised to marry her to beget a male child. Both belong to scheduled caste and there is custom of second marriage during the subsistence of the first marriage. The



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appellant was the foreman of the company. He belongs to scheduled caste. He should fight for the cause of the poor scheduled caste woman and always work for the upliftment of women who are both economically and socially weak as envisioned by the Hon'ble Dr.Ambedkar. He must act by keeping in his mind the following words of Hon'ble Dr.Ambedkar to uplift the scheduled caste poor woman:

My people are still sleeping, and that is why I am awake.	“We must stand on our own feet and fight as best as we can for our rights. So carry on your agitation and organize your forces. Power and prestige will come to you through struggle”.
“So long as my people remain oppressed, I cannot rest”.	

20.The appellant failed to safeguard his own villager and not only drove the victim to the position of a helpless woman. He has also forced the child to grow without a father and with a stigma which would not vanish till her life time, apart from suffering economically and socially. Therefore, this Court finds no merit in this appeal and dismisses this appeal

21.The learned counsel for the appellant would submit that no procedure was followed as per Section 323 of Cr.P.C.,. This Court perused the records and finds that the learned Sessions Judge, recalled the material witnesses, namely P.W.1, P.W.



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2, P.W.3, P.W.5 and P.W.13 and allowed the accused to cross examine the witnesses
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and the contents of the proceedings are as follows:

<i>Date</i>	<i>Contents</i>
31.05.2017	Accused present. While perusing the case file, it is noted that after framing charges under Section 376 of IPC by assistant Sessions Judge, no prosecution side witness have been examined. To give notice to Special Public Prosecutor in this aspect and for steps adjourned to 22.06.2017
09.08.2017	P.W.1, P.W.2, P.W.3 recalled and cross examined. To issue summons to P.W.5 and P.W.13
04.10.2017	P.W.5 appeared and cross examined
20.11.2017	P.W.13 Cross examined

22. Therefore, the contention of the learned counsel for the appellant that the procedure under Section 323 of Cr.P.C., was not followed is misconceived and the said submission is against the proceedings of the available records.

23. The duty of this Court does not end with the dismissal of the appeal by confirming the conviction and sentence imposed against the appellant in S.C.No.228 of 2013 on the file of the learned Mahila Judge, Viruthunagar. Due to the act of the appellant, now two children (child through the wife and child through the victim herein) are left in lurch. Mere conviction and sentence of imprisonment in the said circumstances can not meet the ends of justice in the eyes of the children. They have to grow up and therefore, considering this extraordinary situation which demands extraordinary remedy, this Court with a heavy heart hereby directs the jail authority



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to extract labour from the appellant and his salary is to be disbursed equally to the child born through P.W.1 and the other child born through his wife. The Hon'ble Supreme Court has recognized the principle that to meet out the extraordinary circumstances, extraordinary relief can be given. This Court to wipe out the tears of victim and the innocent children, grants this extraordinary remedy to the children. The jail authority is hereby directed to extract work from the able bodied appellant to pay maintenance to the children.

24. This Court feels that this is an extraordinary case, and the constitutional Court has power to mould the Law so as to serve the needs of time in order to secure social justice i.e., to make the payment of maintenance to the children which is the duty of the father, by adopting the law laid down by the Hon'ble Supreme Court in 2012(1)SCC10[Prithipal Singh v. State of Punjab], wherein it has been held as follows:

"50.Extraordinary situations demand extraordinary remedies. While dealing with an unprecedented case, the Court has to innovate the law and may also pass an unconventional order keeping in mind that an extraordinary fact situation requires extraordinary measures."

25. Further, the Hon'ble Supreme Court in B.P.Achala Anand v. S. Appi Reddy, (2005) 3 SCC 313 has held as follows:



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“Unusual fact situation posing issues for resolution is an opportunity for innovation. Law, as administered by courts, transforms into justice.

“The definition of justice mentioned in Justinian's Corpus Juris Civilis (adopted from the Roman jurist Ulpian) states: ‘Justice is constant and perpetual will to render to everyone that to which he is entitled.’

Similarly, Cicero described justice as ‘the disposition of the human mind to render everyone his due’ The law does not remain static. It does not operate in a vacuum. As social norms and values change, laws too have to be reinterpreted, and recast. Law is really a dynamic instrument fashioned by society for the purposes of achieving harmonious adjustment, human relations by elimination of social tensions and conflicts. Lord Denning once said:

“Law does not stand still; it moves continuously. Once this is recognised, then the task of a judge is put on a higher plane. He must consciously seek to mould the law so as to serve the needs of the time.”

26. In the present case also, the extraordinary circumstance demands the extraordinary remedy. According to this Court, the extraordinary remedy that would satisfy the situation of the present case is to extract labour from the appellant in the jail premises and the salary should be equally distributed to both children.

27. This Court hereby directs the jail authority to send a periodical report of the disbursement of amount to the children, every six months. P.W.1 is also at liberty to approach this Court, if there is any failure on the part of the appellant to pay the amount from the jail authorities.



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28. Accordingly, this criminal Appeal stands dismissed with the above directions. Bail bond executed by the appellant shall stand cancel and the learned trial Judge is directed to secure him to undergo the remaining period of sentence imposed in the impugned judgment dated 29.07.2019 in S.C.No.228 of 2013 on the file of the Mahila Court (Fast Track Mahila Court), Virudhunagar District at Srivilliputhur.

29. List this matter for compliance on 06.06.2025.

Sd/-

15.05.2025

// True Copy //

/05/2025

Sub Assistant Registrar
(I / II / III / IV)

sbn

To

1.The Mahila Court (Fast Track Mahila Court)
Virudhunagar.

2.The Inspector of Police,
All Women Police Station,
Sivakasi,
Virudhunagar District.

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



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4.The Section Officer,

Record Section (Criminal)

Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.G.M.LAW OFFICE, Advocate (SR-30915[F] dated 19/05/2025)

CRL.A.(MD)No.422 of 2019

15.05.2025

jj/23.05.2025 25P/7C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023