

Crl.A(MD)No.224 of 2018

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.06.2025

CORAM:

THE HON'BLE DR.JUSTICE R.N.MANJULA

Crl.A(MD)No.224 of 2018
and Crl.M.P(MD) No.11619 of 2022

Muthupandian

... Appellant

Vs

The Inspector of Police,
All Women Police Station(Rural),
Tirunelveli,
Tirunelveli District.
In Cr No. 507 of 2014.

... Respondent

Prayer: This Criminal Appeal Case filed under Section 374 of Cr.P.C to call for records from the lower Court in SC No.507 of 2015 on the file of the learned Sessions Judge, Mahalir Neethimantram, Tirunelveli, Tirunelveli District and set aside the Judgment, dated 02.02.2018 by acquitting the accused by allowing the appeal.

For Appellant : Mr.V.Kathirvelu
Senior Counsel
for Mr.K.Prabhu

For Respondent :Mr.A.Albert James
Government Advocate (Crl.Side)



Crl.A(MD)No.224 of 2018

JUDGMENT

WEB COPY

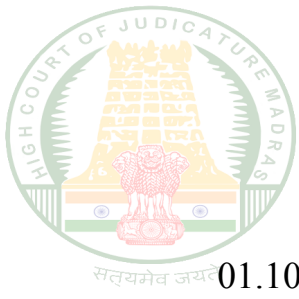
The present appeal has been filed challenging the Judgment of the learned Sessions Judge, Mahalir Neethimantram, Tirunelveli, Tirunelveli District, dated 02.02.2018 made in SC No.507 of 2015.

2.The appellant is the sole accused, who has been convicted and sentenced in the following manner:

S.No	Provisions under which convicted	Sentence of imprisonment	Fine amount
1	366 IPC	5 years rigorous imprisonment	Rs.1,000/- in default to undergo 6 months simple imprisonment
	342 IPC	1 year rigorous imprisonment	Rs.500/- in default to undergo 3 months simple imprisonment
	376(2)(1) IPC	10 years rigorous imprisonment	Rs.2,000/- in default to undergo 1 year simple imprisonment
	506(i) IPC (2 counts)	1 year rigorous imprisonment for each count	Rs.500/- in default to undergo 3 months simple imprisonment for each count

The sentences were ordered to be run concurrently.

3.The case of the prosecution is that the victim woman is a person, who could not speak properly and she was unmarried. On



Crl.A(MD)No.224 of 2018

WEB COPY

01.10.2013 at about 10.30 a.m., when the victim woman was alone at home and when she was behind her house for practical purposes, the accused came there and took her to his house and locked the house and pushed her down and raped her forcibly. He also threatened her that she should not reveal this to anyone. In view of the above said occurrence, the victim got conceived and thereafter only, it came to the knowledge of her mother PW1. When PW1 went and asked the accused, he asked her to abort the fetus of the victim. In the meanwhile, the victim girl has delivered the baby.

4.On receiving the complaint from the mother of the victim, a case in Cr.No.5 of 2014 has been registered. After completing the investigation, charge sheet has been filed against the accused under Sections 366, 342, 376(2)(1) and 506(i) (2 counts) IPC.

5.After taking cognizance of the charge sheet by the learned Judicial Magistrate No.III, Tirunelveli in PRC No.29 of 2015 and after observing the legal mandates, the case was committed to the learned Principal Sessions Judge, Tirunelveli. Subsequently, it was made over to



Crl.A(MD)No.224 of 2018

the learned Sessions Judge, Mahalir Neethimandram, Tirunelveli.

WEB COPY

6.The learned trial Judge has framed charges against the accused under Sections 366, 342, 376(2)(1) and 506(i) (2 counts) IPC and questioned him. As the accused denied the offence and claimed to be tried, trial was conducted.

7.On the side of prosecution, 16 witnesses were examined as PW1 to PW16 and 14 documents were marked as Ex.P.1 to Ex.P.14. When the accused was questioned with regard to the circumstances appearing in evidence against him under Section 313(1)(b) of the Code of Criminal Procedure and the same was denied by the accused. No witness was examined on the side of the accused.

8.After observing the legal mandates consequent to the completion of trial and on hearing both sides and appreciating the evidence on record, the trial Court has found the accused guilty for the offence under Sections 366, 342, 376(2)(1) and 506(i)(2 counts)IPC and convicted and sentenced the accused by imposing the punishment as stated *supra*.



Crl.A(MD)No.224 of 2018

WEB COPY

9. Aggrieved over that the accused has preferred this appeal.

10. The learned Senior counsel for the appellant submitted that the victim woman is not physically challenged as stated by the prosecution and she is able to speak and during her statement under Section 164 of Cr.P.C., she was capable of understanding her deposition and the statement was recorded without the help of any Interpreter. He further submitted that the complaint was given only after a considerable delay and that was not properly explained.

11. The learned Government Advocate (Crl.Side) appearing for the respondent submitted that the evidence of the victim was recorded with the help of an Interpreter and the fact that she could not talk coherently itself is sufficient to consider her as a physically challenged person. He further submitted that the DNA test done on the accused and the child born to the victim due to the occurrence, has confirmed the paternity of the accused for the child.



Crl.A(MD)No.224 of 2018

WEB COPY

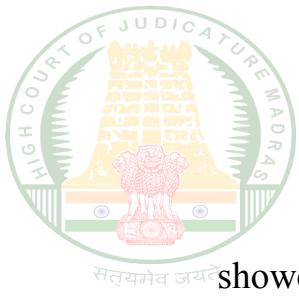
12.I have given my anxious consideration to the submissions made on either side and carefully perused the records.

13.The short contention made by the learned counsel for the appellant is that the victim is not a physically challenged person, because she does not have any physical incapability and she is only a stammerer.

14.The victim woman, who cannot talk coherently was examined during the trial with the help of an Interpreter. Even when the victim woman was questioned regarding where she did her school studies, she has given reply that she is studying in a Special School for Deaf and Dumb for Children.

15. PW10, who is the Interpreter for Deaf and Dumb person has deposed that he assisted the investigation in order to interpret on the hand and gesture made by the victim woman.

16.At the time of examination of the victim before the Court, the Court has also observed during her examination that her right hand is also appeared to be not normal. The victim woman herself



Crl.A(MD)No.224 of 2018

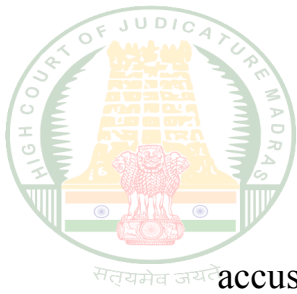
WEB COPY

showed her right hand by showing that she could not do any work with her right hand.

17.The sister of the victim woman was examined as PW4, who had clearly stated that the right hand of the victim is dysfunctional and even while she was speaking, saliva was secreted. So the condition of victim woman is very pathetic. As the victim's physical appearance and her speech would itself show that she is a physically challenged person. Therefore, it is improbable to state that the victim women does not have any physical incapability.

18.The victim woman is not only a physically challenged person, but also vulnerable, because of her status as an unmarried daughter of her widowed mother. In fact, the accused had taken advantage of her incapability and she also lost her father. It is quite possible to keep such a vulnerable person under threat and that was exactly done by the accused. Hence, the charge framed against the accused under Section 376(2)(I) IPC is very much proper.

19.The victim has stated that she was abducted by the



Crl.A(MD)No.224 of 2018

WEB COPY

accused, while she had gone out of the house for practical purposes.

Since he had threatened her, she did not have the courage to tell the occurrence to her mother. Every thing came out only after she was found conceived and the fetus has grown beyond the possibility of medical termination. When the victim disclosed about the occurrence to her mother, she was seven months pregnant.

20. Even after that, the victim's mother had a hesitation in giving complaint, thinking about the social stigma. It is quite natural for PW1 to think twice, since she already has an unmarried daughter, who cannot talk properly.

21. The Hon'ble *Supreme Court* in *State of Himachal Pradesh Vs. Respondent: Sanjay Kumar*, reported in *MANU/SC/1599/2016* has clearly dealt with the risk of social stigma prevails in the society and the relevant portion is extracted hereunder:

“29. Likewise, delay of three days in lodging the FIR by PW-1, after eliciting the information from her daughter PW-2, is inconsequential in the facts of this case. It is not to



WEB COPY



Crl.A(MD)No.224 of 2018

be forgotten that the person accused by the prosecutrix was none else than her Uncle. It is not easy to lodge a complaint of this nature exposing prosecutrix to the risk of social stigma which unfortunately still prevails in our society. A decision to lodge FIR becomes more difficult and hard when accused happens to be a family member. In fact, incestuous abuse is still regarded as a taboo to be discussed in public. This reticence hurts the victims or other family members who struggle to report. After all, in such a situation, not only the honour of the family is at stake, it may antagonize other relations as well, as in the first blush, such other members of family would not take charge of this nature very kindly. We also find that the so-called dispute between the parties was so trivial in nature that it would not have prompted PW-1 to lodge a false complaint, putting her minor daughter of impressionable age to risks of serious kinds, as pointed out above.”

22. Since the accused is a relative of PW1, there was hesitation in the mind of PW1 to take legal action against him. After considering several factors, she came forward to give the complaint. So the delay in this kind of social cultural situation is quite natural and that alone will not defeat the case of the prosecution.



Crl.A(MD)No.224 of 2018

WEB COPY

23.In fact, the accused himself has taken a defence that a false complaint has been given against him, just with intentions of forcing him to marry the victim, who is a physically challenged person. Such a suggestion made during the cross-examination of PW1 itself would show that the accused was aware of the physical challenges of the victim.

24.During the cross-examination of the victim, it was suggested that the victim had an interest on the accused. But it was deceived. Nothing is produced on record to show that the victim had a consensual relationship with the accused.

25.The facts that the victim, who has the physical disability got conceived, due to the criminal act of rape committed by the accused is proved beyond reasonable doubts. The DNA test done on the child born to the victim confirmed the paternity of the accused for the child with 99.999 accuracy.

26.So the evidence available on record clearly proved the fundamental facts that the victim woman is a physically challenged



Crl.A(MD)No.224 of 2018

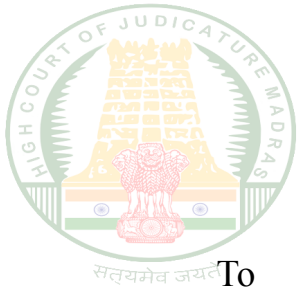
WEB COPY

person and the accused had impregnated her by raping her. The paternity test of the child has also confirmed that the accused is the father of the fetus conceived by the victim. Hence, there is no ground made out to interfere with the well reasoned Judgment rendered by the learned trial Judge and thus, the appeal fails.

27.In the result, this Criminal Appeal stands dismissed and the Judgment of the learned Sessions Judge, Mahalir Neethimantram, Tirunelveli, Tirunelveli District in SC No.507 of 2015, is confirmed. The bail bond executed by the appellant shall stand terminated and the trial Court is directed to take the accused into custody for serving the remaining portion of the sentence. Consequently, connected miscellaneous petition is closed.

30.06.2025

NCC :Yes/No
Index :Yes/No
Internet:Yes/No
PNM



Crl.A(MD)No.224 of 2018

WEB COPY

To

1.The Sessions Judge, Mahalir Neethimantram, Tirunelveli District

2. The Inspector of Police,
All Women Police Station(Rural),
Tirunelveli, Tirunelveli District.

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

4.The Section Officer,
Criminal Record Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



Crl.A(MD)No.224 of 2018

DR. R.N.MANJULA, J.

PNM

JUDGMENT IN

Crl.A(MD)No.224 of 2018
and Crl.M.P(MD) No.11619 of 2022

30.06.2025