

Crl.A(MD)No. 483 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 03.04.2025

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

AND

THE HONOURABLE **MS.JUSTICE R.POORNIMA**

CRL.A(MD)No. 483 of 2021

Chinnathurai @ Vinoth Chakaravarthi

... Appellant/Accused

-Vs-

State represented by
The Inspector of Police,
Manamelkudi Police Station,
[Crime No.244 of 2003]

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 374 [2] of Cr.P.C., to call for the records relating to the Judgment in S.C.No. 94 of 2020 dated 09.09.2021 passed by the Learned Family Court Sessions Judge, Mahila Court, Full Additional Charge, Pudukkottai District and set aside the same and acquit the appellant by allowing this Criminal appeal.

For Petitioner : M/s.K.Bala Sundharam, Senior Counsel,
for A. Arul Jenifer

For Respondent : Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor

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JUDGMENT

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DR.G.JAYACHANDRAN, J.

AND

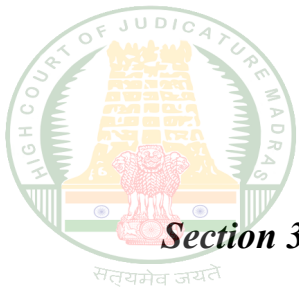
R.POORNIMA, J.

This Criminal Appeal is preferred by the appellant/accused, being aggrieved by the conviction and sentence imposed by the Mahila Court, Pudukkottai District, holding in guilty of offence under Section 376[2][f] of IPC, and sentenced to undergo *LIFE* imprisonment with fine of Rs.2 Lakhs, in default to undergo One year of Simple Imprisonment.

2. The substance of the charge against the appellant on completion of investigation reads as below:

On 02.11.2003, at about 03.45 p.m., the appellant had entered the house of the victim child, aged 4 years, took her into his house and removed the under garment of the victim child and placed his private part to the private part of the minor child and forcibly penetrated and caused injury to her private part. Her mother the defacto complainant, when came in search of her daughter, the appellant fled from the scene of occurrence. Since the child was four years old studying UKG at that point of time, the Court below has framed the charge ***under***

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Section 376[2][f] of IPC, as it then reads as below:

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376[2] [f] of IPC : *Whoever commits rape on a woman when she is under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:*

3. The prosecution has to prove the charge has examined P.W.1 to P.W.13 and marked Ex.P.1 to Ex.P.15 and M.O.1 was marked. On the side of the accused, D.W.1 and D.W.2 were examined.

4. The case of the prosecution, as unfolded through the prosecution witnesses, is that based on the complaint given by the father of the minor child, a case in Crime No.244 of 2003 was registered by the Manalmelugudi P.S. on 03.11.2003. The appellant has absconded and the police were not able to secure him. Thereafter, at the instance of the victim's mother, this Court directed the investigation to be done by CBCID. Accordingly, the Additional Director of CBCID, entrusted the investigation to P.W.12/Sukumar. He took up case for investigation and filed final report before the Learned Judicial Magistrate-II, Pudukottai, which was taken on file, as PRC No.1 of 2018. Thereafter in view of the long delay, the matter was posted in the long pending register. At that



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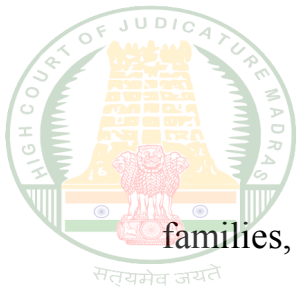
circumstances, on specific information received by P.W.13 Inspector of Police, attached to CBCID, Pudukkottai, on 07.08.2020 a warrant was obtained from the Learned Judicial Magistrate and the accused was arrested on 08.08.2020 at Kunjalpatel, the State of Karnataka. He was brought and produced before Learned Judicial Magistrate-II, Pudukkottai and remanded into judicial custody on 09.08.2020. The complainant Ravichandran, the father of the victim died soon after the occurrence. The mother of the victim child was examined as P.W.1 and she has narrated about the incident and the conduct of the occurrence who fled from the scene of occurrence. The signature found in 164 of Cr.P.C., statement of the minor child was identified by her which was marked as Ex.P.3 and the signature of her husband was marked as Ex.P.1. The inner garment of the minor child was identified by her and marked as M.O.1. The victim child has attained the age of 21 Years, by the time was examined as P.W.2. she has implicated the accused for the offence of rape and she has reiterated what she has said before the Learned Judicial Magistrate recorded under Section 164 of Cr.P.C. statement and the signature found in the statement has also been identified by her. She had been subjected to intensive cross examination. P.W.3 to P.W.5 are the villagers were gathered soon after the incident have spoken about the admission of the minor child in the Hospital. The witness to the observation mahazar was examined as P.W.6, however, he has not supported the prosecution case, hence he



treated as hostile witness and P.W.7 has supported the case of prosecution regarding preparation of observation mahazar. The doctor, who examined the minor child was examined as P.W.9 and she has spoken about the injuries found on the private part of the minor child and opined that the injury might have caused due to forcible sexual act.

5. The Trial Court after considering the unassailable evidence against the accused and the conduct of the accused, after committing the crime his long absconding, marrying P.W.11, suppressing his act of crime and concealing his identity by converting himself to Islamic religion had waived the mitigating circumstances, considered the aggravating factors, and sentenced him to undergo life imprisonment with a fine of Rs.2 Lakhs, in default, to undergo one year of Simple Imprisonment.

6. The defence raised by the accused, by examining D.W.1 & D.W.2 to project as if the complaint was given to settle a private dispute, was not convincing to the Trial Court. The Learned Counsel appearing for the appellant, while assailing the Judgment of the Trial Court, submitted that at the time of alleged occurrence, the appellant was 20 years old and that he and his family were residing opposite to the house of the victim. There was a dispute between the two



families, which led to the filing of a false complaint. The Trial Court ought to have believed the evidence of D.W.1 and D.W.2 in order to disbelieve the case of the prosecution. The contradiction between the evidence of P.W.1 and the complaint given by her husband was not properly appreciated by the Trial Court. The Learned Counsel further submitted that, according to P.W.1, the mother of the victim, her husband/the defacto complainant was very much present in the house and sleeping at the time of the incident. However, it was P.W.1 who went in search of her daughter and found her in a disheveled and panicked state of mind. The defacto complainant is not the person who saw the accused fleeing from the scene of occurrence. It was P.W.1 who claimed to have seen the accused fleeing from the scene. Except for her evidence, there is no witness to corroborate the presence of the accused at the scene of occurrence. Mere abscondence cannot be a ground to presume the guilt of the appellant. The statement under Section 164 Cr.P.C. was not recorded immediately but only after a considerable delay, on 06.12.2005. Therefore, the delay in recording the 164 statement, which also contains material contradictions with the complaint (Ex.P.1) was not duly noted or appreciated by the Trial Court.

7. The Learned Counsel for the appellant also submitted that the appellant had gone to Bangalore, settled there, and married P.W.11, with whom he



has two children. A sentence of life imprisonment would not only be a punishment to the appellant but would also adversely affect P.W.11 and the two children born to him through P.W.11. These mitigating circumstances not been considered by the Trial Court while exercising the discretion available under the Proviso to **Section 376 (2)(f) of IPC, which reads as below:**

“Whoever,— being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

8. The Learned Additional Public Prosecutor appearing for the respondents submitted that the occurrence took place on 02.11.2003. Since there was no effective progress in the investigation, the mother of the victim resorted to judicial remedy by filing a petition before this Court and had the investigation transferred to the CBCID. Soon after the transfer, P.W.12 commenced the investigation, recorded the statements of witnesses, and also produced the victim child before the Judicial Magistrate for recording her statement under Section 164 Cr.P.C. Accordingly, her statement, Ex.P.3, was recorded on 06.12.2005. At that



time, the victim was 6 years old, and she vividly narrated the crime committed against her by the appellant. She entered the witness box on 22.02.2021, after the appellant was secured by the police and the trial commenced. Her testimony corroborates her earlier statement, and the doctor's certificate, Ex.P.9 dated 02.11.2003, adequately proves the prosecution's case beyond reasonable doubt.

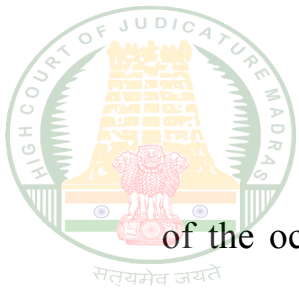
9. The Additional Public Prosecutor submitted that the subsequent marriage of the appellant with P.W.11 and the fact that he has two children cannot be considered a mitigating circumstance. Instead, it should be viewed as a calculated attempt by the appellant to escape the clutches of the law under a false guise. He even changed his identity through conversion. He further submitted that, at the time of the incident, the victim was only 4 years old. Although the legal provisions at that time were not as stringent, the Court cannot lose sight of the Protection of Children from Sexual Offences (POCSO) Act, which came into force in 2012. The Act prescribes severe punishment for committing aggravated penetrative sexual assault on a minor child below 12 years of age.

10. This Court, after giving anxious consideration to the rival submissions, takes note of the fact that the occurrence took place in broad daylight in the house of the appellant. The victim was 4 years old child was taken



away forcibly, while she was watching Television. The mother of the victim, was examined as P.W.1, deposed about the statement given by her minor child regarding the sexual assault on her. Two years thereafter, the child also had narrated the incident to the Magistrate, and the same was reduced to writing under Section 164 Cr.P.C., which is available for appreciation by this Court as Ex.P.3. Merely 17 years later, she entered the witness box, identified her signature on the statement, and also narrated what had happened to her. The medical evidence, in the form of the accident register (Ex.P.9 and Ex.P.10), along with the testimony of the doctors (P.W.9 and P.W.10), indicates that the victim has suffered forcible penetrative sexual assault and her hymen has teared and blood stains were found in her vaginal area. The evidence of the prosecution witnesses clearly establishes the offence under Section 376(2)(f) of the IPC. The attempt by the accused to fabricate a motive, claiming to be implicated in a property dispute, carries no merit in light of the overwhelming evidence presented by the prosecution.

11. Regarding the sentence, the evidence of P.W.11 shows that the accused, living under a disguise, married P.W.11 without disclosing his antecedents, and she is now the mother of two children. Certainly, this fact has some bearing and should be considered as a mitigating circumstance. At the time



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of the occurrence, the punishment prescribed rigorous imprisonment for a term not less than 10 years, which may extend to life, and the accused is also liable to a fine. Although the proviso provides discretion to the Court to impose a sentence of less than 10 years for adequate and special reasons, such discretion cannot be exercised in this case.

12. At the same time, taking into consideration the plight of P.W.11 and the two children born to her through the appellant, we are of the considered view that the minimum sentence prescribed for the said offence at the time of committing the crime should be imposed.

13. In fine,

(i). This Criminal Appeal is partly allowed.

(ii) The Judgment in S.C.No. 94 of 2020, dated 09.09.2021 passed by the Learned Family Court Sessions Judge, Mahila Court, Full Additional Charge, Pudukkottai District is hereby modified.

(iii) The sentence of life imprisonment with a fine of Rs.2 Lakhs, in default, one year simple imprisonment, stands modified to ten years of rigorous



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imprisonment and a fine of Rs.2 Lakhs, in default one year

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[G.J., J.] & [R.P., J.]

03.04.2025

NCC : Yes / No

Index : Yes / No

KSA

Note : Issue a copy of order on 17.04.2025

To

1. The Family Court Sessions Judge,
Mahila Court, Full Additional Charge,
Pudukkottai District.
2. The Inspector of Police,
Manamelkudi Police Station.
3. The Jailor,
Central Prison,
Trichy.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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Judgment made in
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