

CRL MP(MD) NO. 9176 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04-03-2025

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THE HONOURABLE MR JUSTICE B.PUGALENDHI

CRL MP(MD) No. 9176 of 2024

in CRL A(MD)No.480 of 2022

Andavan

S/o.Kamaraj, Periyakottai, Dindigul District (Now confined in Madurai Central Prison)

Petitioner(s)

Vs

The State of Tamilnadu

The Inspector of Police, Dindigul Taluk Police Station, Dindigul District.
Crime No.575/2015.

Respondent(s)

For Petitioner(s):

G.Karuppasamypandiyan
Vignesh R
Vivek J

For Respondent(s):

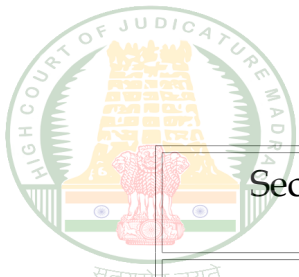
P.Kottaichamy
Public Prosecutor

ORDER

The petitioner is the sole accused in S.C.No.284 of 2018. He was found guilty by the Fast Track Mahila Court, Dindigul, convicted and sentenced as under:-

Offence under

Punishment



Section	
457 IPC	To undergo rigorous imprisonment for three years and to pay a fine of Rs.1000/- i/d to undergo simple imprisonment for three months
397 IPC	To undergo rigorous imprisonment for seven years
376 IPC	To undergo rigorous imprisonment for ten years and to pay a fine of Rs.10000/- i/d to undergo simple imprisonment for six months

2.As against the conviction and sentence imposed, the petitioner has filed an appeal before this Court in CrI.A(MD)No.480 of 2022 and the same was admitted by this Court. Pending the appeal, the petitioner has filed an application to suspend the sentence in CrI.MP(MD)No.9017 of 2022 and the same was dismissed by this Court by its order dated 19.10.2022. Even after the dismissal of the earlier application filed for suspension of sentence, the appeal could not be taken up for final hearing and therefore, this second application is filed by the petitioner to suspend the sentence, pending the appeal.

3.Learned Counsel for the petitioner submitted that in the earlier version of the complaint, there is no reference about the alleged rape. The alleged



occurrence said to have taken place on 09.06.2015 and the complaint was also lodged on 09.06.2015. However, there is no reference about this alleged rape in the earlier complaint. As an afterthought, after two days, a complaint has been lodged on 12.06.2015, as if the accused has committed rape as against PW2. He also submitted that in the FIR, the accused was referred as an unknown person. On the other hand, the prosecution has laid the final report as against this petitioner without even conducting any identification parade.

4. He further submitted that the petitioner was arrested on 12.06.2015 and a knife was also recovered from him. However, the witnesses produced by the prosecution for the arrest and recovery turned hostile and it has not been proved by the prosecution. By referring to the Doctor's evidence, the learned Counsel contended that the Doctor has not noticed any external injury on PW2 and therefore, the prosecution case that this petitioner has raped PW2 at a knife point on the occurrence date is false. The petitioner is languishing inside the prison from the date of conviction for the past three years. Since there are arguable points, he prayed for suspending the sentence pending the appeal.



5. Learned Government Advocate (Crl. Side) raised serious objections that the earlier application filed by this petitioner for suspending the

sentence was dismissed by this Court by order dated 19.10.2022. Without any change in circumstances, the petitioner has renewed this application.

The victim girl is a Staff Nurse working in a Primary Health Centre. She was on duty along with PW1. The accused went to the Primary Health Centre, found that these two ladies are alone in the Hospital, entered again at about 02.00 pm and at knife-point, he has committed rape on PW2 alone. The complaint was lodged by PW1, the friend of PW2, who was also present along with PW2 in the occurrence place. PW2 is a married woman and therefore, she was not inclined to divulge the same, but she refused to attend the duty thereafter. When it was questioned by her husband as to why she was not attending the duty, she was made to reveal the offence committed on her to her husband. Thereafter the complaint has been lodged after two days by PW2, along with her husband.

6. He further submitted that though there is a lapse on the part of the investigation agency in conducting the identification parade during the investigation, PWs.1 & 2 have identified the accused during the trial.



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Therefore, the petitioner cannot take advantage at this stage that the prosecution has laid the final report as against an unknown person without conducting any identification parade. With regard to the Doctor's evidence, learned Government Advocate (Crl. Side) submitted that the victim girl was subjected for medical examination after three days and she was subjected to the commission of rape at knife-point. Therefore, the victim girl was not in a position to make any protests as against the accused at the time of occurrence. He further contended that based on the hostile attitude of the witnesses for arrest and recovery, the evidence of PW1 & PW2 cannot be thrown away. Therefore, he raised serious objections for granting the suspension of sentence.

7.This Court considered the rival submissions made on either side and perused the materials placed on record.

8.The victim is a Staff Nurse working in a Primary Health Centre. The Primary Health Centres were established in the remote villages to ensure that the pregnant women are attended even during the night hours. PWs.1 & 2 were on night duty on the occurrence date. There were nobody else other than them. Both were women. At about 11 pm, the

accused noted down that there is nobody, other than PWs.1 & 2. At



about 02.00 am, in the small hours, he entered into the Primary Health Centre and has committed the offence of rape at knife-point. The

evidence of PWs.1 & 2 are cogent and also disclose that the accused has projected that he would attack on her private part, if she did not oblige him. The statement of PWs.1 & 2 establish a clear case and therefore, this Court is not inclined to accept the minor contradictions with regard to the evidence of arrest and recovery witness and the flaw committed by the investigation agency in not conducting the identification parade. As rightly pointed out by the learned Government Advocate (Crl. Side), PWs.1 & 2 have identified the accused during the trial. Therefore, this is not a fit case for granting the relief. Moreover, there is no change in circumstances from the earlier orders of this Court to reconsider the request of this petitioner for suspending the sentence. Accordingly, this petition is dismissed.

9. Since it is reported that this petitioner is languishing in jail for the past three years and this Court has already rejected his application for suspending the sentence and the typedset of papers has also been prepared, Registry is directed to list this appeal for final disposal in the first week of April, 2025.



04-03-2025

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To

1. The State of Tamilnadu

The Inspector of Police, Dindigul Taluk Police Station, Dindigul District.



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B.PUGALENDHI, J.,
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