

Crl.A(MD)No.493 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 25.06.2025

CORAM:

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

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Vadivel Murugan

... Appellant

Vs

The Inspector of Police,
R.S. Mangalam Police Station,
Ramnad District, Crime No.2/2013.

... Respondent

Prayer: This Criminal Appeal Case filed under Section 374 of Cr.P.C to call for the records and set aside the portion of the order of conviction and sentence passed in SC No.81 of 2014, dated 04.07.2018 on the file of the learned Principal District and Sessions Judge, FAC, Fast Track Mahila Court, Ramanathapuram and allow this appeal and acquit the appellant / accused from the charge leveled against him.

For Appellant : Mr. M.Murugesan

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



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JUDGMENT

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The present Criminal Appeal has been filed challenging the judgment of the learned Principal District and Sessions Judge, FAC, Fast Track Mahila Court, Ramanathapuram, dated 04.07.2018 made in SC No.81 of 2014.

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	376 IPC	10 Years rigorous imprisonment	Rs.25,000/-, in default to undergo 1 year rigorous imprisonment
	307 IPC	10 Years rigorous imprisonment	Rs.20,000/-, in default to undergo 1 year rigorous imprisonment
	307 r/w 511 IPC	Two Years simple imprisonment	Rs.1,000/-, in default to undergo 1 week simple imprisonment

The sentences were ordered to be run concurrently.

3.As per the case of the prosecution, on 01.10.2013 at about 9:30 a.m., when the victim PW1 was at her house, the accused came there and asked her to give some water. After she had given the water, he trespassed inside the house and raped her forcibly and thereafter injured her



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by pushing her on the stone pillar and then, he left the place. PW2, who went to the house of PW1 had seen her lying with blood injuries and came to know about the occurrence by enquiring PW1. Thereafter, she informed the occurrence to her brother and he arranged to take her to the Hospital with the help of the other witnesses.

4.The accused was subjected to trial and at the conclusion of the trial, he was found guilty for the offences under Sections 376, 307, 307 r/w 511 IPC and he was convicted and punished as stated above. Aggrieved over that, the accused has preferred this appeal.

5.The learned counsel for the appellant submitted that it is a false case filed against the accused due to election motive and the allegation that the accused had trespassed into the house of PW1 itself was not proved and that will only imply his non involvement in the entire case. He further submitted that the Doctor's evidence did not support the case of the prosecution and that was only totally ignored by the trial Judge.

6.Per contra, the learned Additional Public Prosecutor submitted that PW1 is the victim, who has stated about the occurrence and



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she was found to be in a dangerous condition by PW2 and thereafter, she was taken to the hospital. As the accused was known to her, she had stated his name and the details of the occurrence and that she was raped by him. The trial Court has given due credence to the evidence of the victim and the other witnesses, who came to know the occurrence through PW1 and the consequence of events that unfolded subsequently.

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

8.The complaint statement was given by PW1, while she was taking treatment at the hospital. The complaint statement of the victim was also attested by PW2 and PW7.

9.PW1 has stated in her evidence that on 01.01.2013 at about 9:30 AM, when she was at her house, the accused came to her house and asked her to bring water. When she brought water from inside, the accused had poured away the water and came into the house and bolted the door and asked her to share bed with him. As she she did not agree, he attacked her,

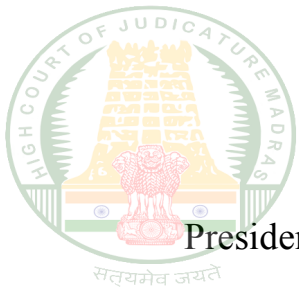


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removed her skirt and buttons of the blouse and lifted her skirt and lied on her. As she would tell the occurrence to others, he attempted to murder her by dashing her against the stone pillar. Thereafter, he went away believing that she died.

10.PW1 was examined as a witness before the Court and she has stated that on the day of occurrence, ie., 01.01.2013 at about 9:30 PM, the accused came to her house and asked some water. After she brought water, he threw away the water and raped her by force. When she told that she would tell this to others, he forcibly hit her against the stone pillar and then went away. At about 3:00 PM, PW2, PW3, PW6 and one Pushpam came and saw her lying in dangerous condition. After she told them about the occurrence, they took her to the hospital. As she was unable to walk, she was taken in an Autorickshaw. Firstly, she was brought to Government Hospital, RS Mangalam and thereafter, she was referred to Government Hospital, Ramnad.

11.In the cross examination of PW1, it was not suggested to her that the accused had contested the election and she had worked against him. It was only suggested that when one Muthusami was the Panchayat



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President and when he contested, PW1 was in support of him. It was suggested to her that one Vedamanickam was contesting the election against Muthusami and the accused had worked in support of Vedamanickam. So it is suggested that she had given complaint only at the instructions of Muthusami. PW1 had denied the same. It is also suggested to her that she used to get seizure and she had taken treatment for the same and it was suggested that on the alleged day, she had seizure and in view of that she fell down on a stone pillar.

12. When the accused was questioned under Section 313(1)(b) of Cr.P.C, he has not stated about any of these aspects in his statement. He had simply stated that he has not involved in the occurrence. Neither the accused was examined as a witness on his side.

13. The day of occurrence was New Year and was a Tuesday. PW1 has stated that she was hit against the stone pillar by the accused. Her evidence on this aspect is consistent, even before the police, during her chief examination and cross examination.



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14.PW2 had invited PW1 for lunch to her house, in view of New Year. Since PW1 has not come for lunch, PW2 had been to the house of PW1. As the front side door was locked, she went through the backside door and noticed that the victim was lying in a pool of blood without any dress on her body. On seeing PW1 in such a pathetic condition, she immediately alerted the neighbours and PW3 and PW5 came there. After sprinkling water on the face of PW1, they enquired PW1. PW1 told them about the occurrence. Thereafter, only PW1 was taken to the hospital in the Ambulance.

15.Even PW2 has stated that she had also seen the accused asking water to PW1. It was suggested to her that she could not have seen the House of PW1. Even if PW2 has not seen the accused asking water from PW1, the evidence of PW1 on this aspect need not be doubted, because her evidence following the occurrence are very much natural and the witnesses have spoken about how they found PW1 in the place of occurrence and how they took her to the hospital. So this natural sequence of events along with the evidence of PW1 cannot be ignored by presuming that there was an election motive as suggested on behalf of the defence.



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16.It is already stated in the 313(1)(b) Cr.P.C., statement that the accused did not state before the court that there was motive for the complainant. In fact, PW2 had informed the occurrence to the brother of PW1, Arockiasamy, who has been examined as PW7 and he had also arrived to the occurrence spot. He was also informed by the witnesses, who had seen PW1 immediately after the occurrence about the involvement of the accused. So as a brother, it is quite natural for him to rush to the spot to help his sister, PW1.

17.It is right for the trial Judge to believe the evidence of the witnesses PW1 to PW7, who have stated about the occurrence and the events following the occurrence in a very natural and cogent manner. Even though there are some minor contradictions they are insignificant.

18.PW6 had seen the accused going to the house of PW1 on the day of occurrence on the way and later, she learnt that he had sexually assaulted PW1. Even during the cross examination, she has stated about the time, when she noticed the accused as 9:30p.m., which tallied with the evidence of PW1.



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19.It is the contention of the appellant that the victim has stated before the Doctor, when she was taken to the hospital for treatment that she was raped by an unknown person. The AR entry and the wound certificate in this regard has been marked as Ex.P.8 and Ex.P.9. The Doctor, who examined the victim (PW1) has been examined as PW11. Even in the evidence, the Doctor has stated that PW1 has given the statement to him that she was sexually assaulted by an unknown person.

20.Strangely, it is seen that in Ex.P.8 that it is mentioned as 'an unknown person'. The handwriting in Ex.P.8 and Ex.P.9 are different. In Ex.P.8, the handwriting is not very clear but running. Close reading of the contents of Ex.P.9, it is seen that the history has been noted as *“Assault with an attempt to rape by a known person at about morning 09.30 p.m., on 01.01.2013”*. If a person, who knows English would only write unknown as 'an unknown'.

21.Even though the handwriting of the Doctor as seen in Ex.P.9 is running, it can be freely read as “a known person” instead of “unknown person”. In Ex.P.8, it is seen that all the words are distinct and it is not running letters. The Doctor appears to have written as “a known person”,



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not “a unknown person”. The pattern of the writing as it appears is that the writer gives a gap between one letter and other letter. But between “a” and “unknown” there is no gap. It gives a doubt whether the letters “un” has been subsequently inserted in the gap between “a” and “known”.

22.Whatever may be the case, the evidence of the Doctor on this aspect about the person, who had involved in the occurrence is not strong enough to defeat the direct account of PW1, where she crystal clearly referred the name of the accused. One thing, which cannot be omitted is that the statement of PW1 given before the Doctor.

23.Even in the complaint statement of PW1, she has not stated unambiguous words that she was raped by the accused. Though the manner in which PW1 was found in the place of occurrence with injuries and the misbehavior of the accused as alleged by her would evidence the fact that the accused had committed sexual assault on PW1, but it was not clear whether he had committed any penetrative sexual assault, like rape.

24.PW16, had examined the victim and assessed her medical age. PW1 is not claimed to be a minor. Hence, it is not known why the



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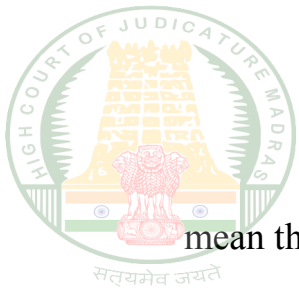
prosecution had taken the pain of subjecting her to radiological examination to ascertain her age.

25.PW16, Doctor has stated in her evidence that when she examined the victim, she did not find any symptoms on the victim that she had recent sexual intercourse. The PW16 had examined the victim only on 04.01.2013 and the occurrence had taken place on 01.01.2013. PW1 was on medical treatment between the period from 01.01.2013 and 04.01.2013, since PW1 was under the medical treatment, the symptoms could have been healed or disappeared. That cannot be taken as an advantage by the accused to claim that the medical evidence is completely against the case of the prosecution.

26.Coming back to the compliant as Ex.P.1, it is seen that some words are intersected as follows:

“என் பாவாடையை தூக்கி என் மேல் படுத்தான்”

Though that part is very important to make out a prima facie case for rape, that has been intercepted and that has been written by making interlineation. But in the evidence of PW1, she has stated that “கெடுத்து விட்டான்”. In villages like PW1's residence, people used to say the word “கெடுத்து” to



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mean the act of rape.

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27. When PW2 and other witnesses came to the house of PW1 and saw her undressed, that would also probablise her statement before the Court, about the act of rape committed by the accused on the date of occurrence. So the concrete evidence of PW1 and the evidence of other witnesses, who had stated about the events following the occurrence would neutralize the significance attached to the interlineation made in the FIR and it could have been a genuine incidental, omission, which was rectified subsequently by interlineation.

28. Fortunately or unfortunately, the SI of Police, who had registered the FIR by getting the complaint statement was examined as PW19. She was not cross examined as to the interlineation in the complaint. Even PW1 or the other witnesses, who attested Ex.P.1 complaint were also not cross examined in respect of the interlineation.

29. The evidence of the witnesses would reveal that the accused had already entered into the house of PW1 by asking water. The learned trial



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Judge arrived at a conclusion that there was no trespass only on that ground that the accused was not found guilty for the offence under Section 450 of IPC and that alone cannot help the accused to get a clean chit in respect of other charges.

30. So far as the offence of rape under Section 376 is concerned, there are sufficient evidence available on record and there is nothing to reject the evidence of the victim, PW1 and rest of the witnesses, who came to the place of occurrence shortly after the occurrence and heard about the occurrence from PW1 and their spontaneous actions, on hearing the same.

31. On the side of accused, it was not suggested to the Doctor, who examined the accused that the accused is impotent. From the evidence of the Forensic Expert, it is seen that the Material Objects did not contain blood or spermatozoa. It all depends on how nearer the objects were available in order to have the stain of blood or spermatozoa. As the victim and the witnesses have stated that the victim was without dress on her, it may not be possible to trace out such a content during the scientific examination.



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32.The learned trial Judge has made proper analysis of the evidence of the victim and other witnesses in a proper perspective and had given sufficient reasons, as to how he relied their evidence in order to convict the accused for the offence under Section 376 IPC.

33.So far as the offence under Section 307 is concerned, it is submitted by the learned counsel for the appellant that the accused did not have any preparation to murder the victim and the injuries on the body of PW1 was found to be simple in nature.

34.Much stress was made in respect of the radiological report, where it is observed that there was no injuries on the body of PW1 except the eye lid contusion. It is surprising to see Ex.P.12, Doctor certificate, which is dated 13.03.2014. As the Doctor had given her opinion after one year, she would have examined the victim on that particular day and hence, PW16 evidence is totally irrelevant and unnecessary.

35.The victim was first seen and treated by PW11, who has issued Ex.P8 and Ex.P.9 and stated that the victim had blood injury on the back of her head and on the left eye and there was a simple injury over her



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upper leg.

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36.In fact, the victim was treated as an inpatient. The records maintained by the Medical Officer show that the victim had taken treatment as an inpatient for nearly ten days. The limited particulars recorded by the Doctor itself is sufficient to come to the conclusion that the victim was sexually assaulted by the accused on the day of occurrence and she was sexually assaulted by committing the offence of rape.

37.It is seen from the complaint of PW1 and her evidence that the accused had the intention to have sex with her and not to murder her. Even according to the evidence of PW1, since she told him that she would tell the occurrence to others, the accused had attacked her by hitting her head on the stone pillar. So the act of the accused on this aspect appears to be sudden and not with an intention to kill her.

38.I feel that the ingredients on this aspect could prove an offence under section 324 and not 307 IPC. As the accused had hit the victim against a rough material like stone pillar and she has suffered injuries, I feel the accused should have been punished for the offence under



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Section 324 instead of 307.

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39. It is strange to see that the charges have been framed under Section 307 r/w 511 IPC. The offence under Section 307 itself is an attempt when there is a specific provision for the offence of attempt to murder, there is no necessity to convict the accused under Section 511 IPC.

40. In fine, this Criminal Appeal is partly allowed in the following terms:

- *the conviction and sentence imposed by the trial Court for the offence under Section 307 r/w 511 IPC are set aside;*
- *the conviction and sentence imposed by the trial Court for the offence under Section 307 IPC are set aside, instead the appellant is convicted for the offence under Section 324 IPC and sentenced to undergo TWO YEARS rigorous imprisonment for the offence under Section 324 IPC;*
- *the conviction imposed by the trial Court for the offence under Section 376 IPC shall remain unaltered;*
- *both the sentences are ordered to be run concurrently;*
- *the period of imprisonment already undergone by the appellant shall be given set off under Section 428 of Cr.P.C;*



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● the bail bond executed by the accused shall stand terminated and
the trial Court is directed to take the accused into custody for
serving the remaining portion of the sentence.

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NCC :Yes/No

Index :Yes/No

Internet:Yes/No

PNM

To

1.The Principal District and Sessions Judge,
Fast Track Mahila Court, Ramanathapuram

2.The Inspector of Police,
R.S. Mangalam Police Station,
Ramnad District, Crime No.2/2013.

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

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



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PNM

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