

CrI.A(MD)No.525 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.08.2025

CORAM:

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

CrI.A(MD)No.525 of 2018

K.Subburaj

... Appellant

Vs

1. Sakthivel

2. The Inspector of Police,
Tirunelveli Town Police Station,
Tirunelveli.

... Respondent

Prayer: This Criminal Appeal Case filed under Section 374 of Cr.P.C to call for records relating to set aside the Judgment of acquittal passed by the learned Sessions Judge, Mahila Court, Tirunelveli, dated 11.07.2011, made in SC No.375 of 2009.



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For Appellant : Mr.Balamurugan

For Respondent :Mr.K.Ganasekaran (R2)
Government Advcoate (Crl.Side)

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JUDGMENT

The present appeal has been preferred by the appellant, who is the defacto complainant and father of the deceased, challenging the Judgment of acquittal of the learned Sessions Judge, Mahila Court, Tirunelveli, dated 11.07.2011, made in SC No.375 of 2009.

2.The accused/first respondent, who has been charged for the offence under Sections 376, 313, 417, 305 IPC and Section 4(b) of TNPHW Act, has been acquitted from all the charges.

3.The case of the prosecution is that the accused had developed an affair with the deceased daughter of PW1, whose date of birth is 06.01.1992; the accused had forcibly committed rape on her by taking her to his house and after she got conceived, he asked her to abort the same with an intention to marry some other person; even after



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marrying another woman, the accused continued to call the deceased to have a sexual relationship with him and threatened her that he would expose about her abortion to all, if she did not co-operate for his intention; he also teased her by being close to his wife; the daughter of PW1 got frustrated due to the action of the accused and committed suicide by pouring kerosene and setting fire upon herself, at about 05.00p.m., on 04.05.2009.

4. Based on the complaint given by the deceased, a case has been registered and taken up for investigation by the respondent Police. After completion of investigation, charge sheet has been filed against the accused for the offence under Sections 376, 313, 417, 305 IPC and Section 4(b) of TNPHW Act. After taking cognizance, charges have been framed against the accused for the above said offence. When questioned, he denied the same and claimed to be tried. At the conclusion of trial, the accused was not found guilty and he was acquitted.

5. Aggrieved over that, the appellant/defacto complainant has preferred this appeal.



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6.The learned counsel for the appellant submitted that even though there are two dying declarations, there is no contradiction between them but the learned trial Judge has not chosen to accept the same and has arrived at a wrong conclusion that the dying declaration of the deceased is not reliable; the Doctor, who was examined as PW11 has stated that the fetus of the deceased was aborted; at the time of treatment, the deceased has not given her original name, since she was afraid about the stigma; but the trial Court ought to have considered the same; the accused had raped the deceased on the assurance to marry her, but had chosen to marry some other person; however, the learned trial Judge has acquitted the accused from all the charges framed against him.

7.The learned counsel for the second respondent has adopted the argument of the appellant.

8.The learned counsel for the first respondent has submitted that the learned trial Judge has rightly observed that the deceased before giving the dying declaration, conversed with the other witnesses like PW1, PW4, PW5 and PW6 and hence, her statement would have been influenced; from the evidence of Doctor, PW11, it cannot be ascertained



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that it was the deceased, whose medical termination was done by him; the age of the deceased was not proved to be below 18 years and hence, the trial Court has rightly observed that she cannot be considered as a minor; even according to the dying declaration of the deceased, she had physical relationship with the accused repeatedly and hence, it is purely a consensual relationship.

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

10. While the deceased was taking treatment at the hospital, a complaint statement has been given by the deceased, based on the same, a case has been registered by the Police. The above complaint statement has been attested by PW1, father of the deceased. In the said statement, she has stated that she had developed an affair with the accused and the accused was giving assurance to her that he would marry her, after he finished his studies. Based on the assurance, on several occasions, they had sexual relationship and due to which, the deceased got conceived. At the advice of the accused, she aborted the fetus also with the help of one Kaliyammal, PW2. Later, he did not marry the deceased, but married some



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other woman. The deceased did not reveal these things to her parents and she focused on her studies. Even after the accused married another woman, he continued to call her to have sexual relationship and the same was objected by her. On 04.05.2009, the accused teased the deceased by getting close to his wife in her presence. Due to this humiliation and frustration, she committed suicide.

11.The learned Magistrate recorded the dying declaration of the deceased while she was in the hospital. The deceased also stated the same facts before the police for the purpose of registering an FIR. However, the learned Trial Judge held that the dying declaration was not acceptable, as the deceased had met several persons before giving the same, creating a possibility of her being tutored.

12.The learned Trial Judge further observed that PW1, in his cross-examination, admitted that he and his relative had beaten up the brother of the accused, and in that case he was arrested. Therefore, the Court held that there existed a motive between PW1 and the accused, and hence, it was possible for PW1 to influence his daughter.



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13. Even for the sake of argument, if it is accepted that there was a possibility of tutoring the deceased before she gave the dying declaration, no woman of her age would falsely state that she had a physical relationship with the accused merely to take revenge against him.

14. As per the case of the prosecution, the occurrence took place in the bathroom of the deceased's house, and it was only at that time that she was speaking with PW1, PW4, PW5, and PW6. Therefore, the dying declaration cannot be outrightly rejected merely on the ground that she had spoken with her father and other witnesses, unless there exists any special reasons to doubt its genuineness.

15. It is difficult to believe that the deceased, while in a painful condition due to burn injuries, would have fabricated a story against the accused or stated under influence that she had a physical relationship with him. Even though PW1, the father of the deceased,



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was not on good terms with the accused and warned her not to associate with him, the deceased nevertheless continued to maintain a relationship with the accused. Hence, the relationship between the accused and the deceased was independent of her father's enmity with the accused. As both her statements before the Magistrate and the Police were identical, the Court ought to have attached due weightage to the dying declaration of the deceased without suspecting its genuineness.

16.The deceased stated in her statement that she was compelled by the accused to have a physical relationship with him and she consented only because she believed that he would marry her one day. So it would be incorrect to presume that the dying declaration of the deceased was given under the influence of her father or any other person.

17.From the complaint statement (Ex.P.1) and the dying declaration (Ex.P.13), it is evident that the deceased had an affair with the accused and she trusted him to the extent of having physical relationship with him, based on his assurance that he would marry her. Even after she



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was aware of his marriage with another woman, she did not lodge any complaint against him. The physical relationship between the deceased and the accused was a recurring one; therefore, it cannot be presumed that the accused had forcibly committed rape on the deceased.

18.It is claimed by the first respondent that the relationship was very much consensual and that no charge can be made out against the accused.

19.Had it been proved before the Court that the deceased was a minor, her consent would have been immaterial. However, the prosecution failed to prove the age of the deceased that she was below 18 years at the time of occurrence. Even though it is claimed by the prosecution that the date of birth of deceased was 06.01.1992, indicating that she was a minor at the time of occurrence, this fact was not proved. Under such circumstances, the consent of the deceased can only be considered as a valid consent. Hence, the trial Court was justified in not convicting the accused for the offence under Section 376 IPC.

20.In order to make out an offence under Section 313 IPC, it



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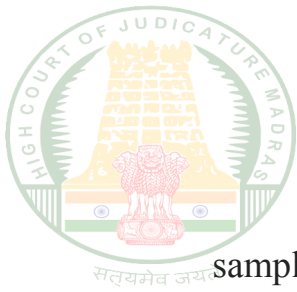
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must be proved before the Court that the accused ought to have voluntarily caused a woman carrying a child to miscarry, or such miscarriage has been caused not in good faith for the purpose of saving the life of the woman. Section 312 IPC, which defines the offence of causing miscarriage, contains an Explanation stating that a woman, who causes herself to miscarry also falls within the scope of the provision.

21.The deceased is said to have accompanied Kalliyammal, PW2 for undergoing medical termination of pregnancy. However, PW2 did not support the case of the prosecution.

22.PW11, the Doctor has stated in his evidence that on 06.12.2018, a person by the name Bhuvaneshwari approached him for medical termination, reporting stomach pain and bleeding. It is claimed by the appellant that the said person was in fact the deceased, who had given a false name to the Doctor in order to conceal her identity.

23.Another Doctor, who examined the tissue samples of the Uterus and Ovary of the deceased was examined as PW10. In her evidence, she stated that no symptoms of abortion were found in tissue



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samples examined by her.

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24.Without any record to show that it was the deceased, who reported to PW11 to undergo termination, it cannot be presumed that someone has caused miscarriage against her will and without any good faith. Even according to the dying declaration of the deceased, the accused had only asked her to terminate the pregnancy, but he did not accompany her or without knowing forcibly caused the miscarriage. It would have been at the best decision of the deceased either to abort or to carry the fetus. Hence, it is right for the trial Judge not to find the accused guilty for the offence under Section 313 IPC also.

25.The deceased came to know about the marriage of the accused with another woman, but even then she did not immediately lodge any complaint alleging that she had been cheated by him. PW1, the father of the deceased, stated in his evidence that he had beaten his daughter as she had overstepped boundaries and invited trouble.

26.The learned trial Judge has relied on Ex.P.5, Record Sheet of the deceased for the period from 2008-2009, in which, one of the pages



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contains a note written by her regarding her relationship with the accused, marked as Ex.P6. In Ex.P6, the deceased refers to her relationship with the accused but makes no mention that she had been cheated by the accused. The deceased was studying in the second year Polytechnic at the time of occurrence, and hence she would have been conscious of her actions.

27.It appears that the extreme decision to end her life was not taken merely because she was unable to marry the accused, but rather because the incident had been exposed and had become known to all her family members. Further, in her dying declaration, it is recorded that her father suggested shifting her residence and expressed regret for the shameful act of the deceased and her brother persuaded her not do anything untoward. Thus, the deceased could have understood the implications of her actions, still she committed suicide.

28.The occurrence had taken place on 04.05.2009 and the marriage of the accused had taken place on 03.12.2008. So, the deceased was not serious to give a complaint against the accused that he had cheated her and she tried to make terms with the life and proceeded to study. In fact, exactly during the month of December when the accused



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got married, the deceased said to have got conceived. At least at that point of time, she could have rebelled against that marriage, but she has not done so. So, an affair between the accused and the deceased and the consequences of the same cannot be considered as cheating in the given circumstances of this case. The trial Court has rightly not found the guilt of the accused for the offence under Section 417 IPC. The occurrence took place on 04.05.2009, whereas the marriage of the accused had already been solemnized on 03.12.2008. So, the deceased was not serious to give a complaint against the accused that he had cheated her and she tried to make terms with the life and proceeded to study. In fact, exactly during the month of December when the accused got married, the deceased said to have got conceived. At least at that point of time, she could have rebelled against that marriage, but she has not done so. So, an affair between the accused and the deceased and the consequences of the same cannot be considered as a cheating in the given circumstances of this case. The trial Court has rightly not found the guilt of the accused for the offence under Section 417 IPC.

29.Though the deceased's dying declaration has been



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accepted, it only reveals that she was frustrated because the accused had had married another woman, maintained a close relationship with her, and appeared in the vicinity of the deceased along with his wife, which made the deceased feel inferior. The conduct of the accused, though possibly irritating to the deceased, does not amount to abetment of suicide. Therefore, the trial Court has rightly held that the accused was not guilty of the offence under Section 305 IPC.

30.In order to punish the accused for the offence under Section 4(b) of the TNPHW Act, it has to be proved that the deceased was subjected to cruelty soon before her death. In fact, after the accused married another woman, the deceased and the accused were living apart and leading separate lives. Therefore, it is right for the trial Court to conclude that there is no evidence to convict the accused under Section 4(b) of the TNPHW Act.

31.In order to reverse a judgment of acquittal, the Court must be satisfied that such reversal is necessary to prevent a miscarriage of justice, and that the acquittal was rendered without due consideration of the material evidence proving the guilt of the accused.



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32.In this regard, it is appropriate to refer the decision of the Hon'ble Supreme Court in ***Chandrappa v. State of Karnataka***, reported in ***2007 AIR SCW 1850***. For the sake of convenience, the relevant portions of the judgment are extracted hereunder:

“From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The [Code of Criminal Procedure](#), 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in



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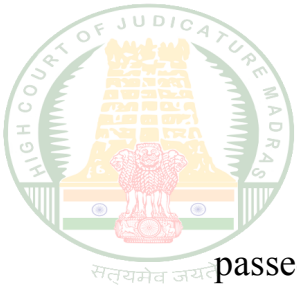
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case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

33.When the trial Court has disbelieved the prosecution's case through a reasoned order, after having thoroughly appreciated the evidence and given the benefit of doubt, the appellate Court would not ordinarily interfere. Further, the judgment of the trial Court does not indicate any perversity or glaring error warranting interference.

34.As the benefit of doubt has already gone in favour of the accused, the appellate Court must exercise caution in reversing a judgment of acquittal. Since the appellant has not advanced any grounds or produced any material to demonstrate that the conclusion of the trial Court is perverse, I refrain from interfering with the judgment of acquittal



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passed by the trial Court.

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35.In the result, *this Criminal Appeal is dismissed, and the Judgment of the learned Sessions Judge, Mahila Court, Tirunelveli, dated 11.07.2011, made in SC No.375 of 2009 is hereby confirmed.*

20.08.2025

NCC :Yes/No
Index :Yes/No
Internet:Yes/No
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To

1.The Sessions Judge,
Sessions Judge, Mahila Court, Tirunelveli

2. The Inspector of Police,
Tirunelveli Town Police Station,
Tirunelveli.

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.



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Dr.R.N.MANJULA,J.

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