

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 16.06.2025

PRONOUNCED ON : 07.08.2025

CORAM:

THE HONOURABLE Dr.JUSTICE R.N.MANJULA

Crl.A.(MD)No.130 of 2017

Y.Jone

... Appellant/sole accused

vs.

The State of Tamil Nadu
Represented by
The Inspector of Police
Colachel All Women Police Station,
Kanyakumari District.
Crime No.5 of 2008

...Respondent

PRAYER : This Criminal Appeal has been filed under Section 374 of Criminal Procedure Code against the Judgement of the learned Sessions Judge, Court of Sessions (Fast Track Mahila Court), Kanyakumari District at Nagercoil dated 28.03.2017 in S.C.No.63 of 2012.

For Appellants : Mrs.Seeni Syed Amma

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



JUDGEMENT

WEB COPY This appeal has been filed challenging the Judgement of the learned Sessions Judge, Court of Sessions (Fast Track Mahila Court), Kanyakumari District at Nagercoil dated 28.03.2017 S.C.No.63 of 2012.

2. The appellant is the sole accused, who has been charged under Sections 376 r/w 511 IPC and 323 IPC and convicted and sentenced by the learned Sessions Judge as under.

Accused	Offences under Sections	Punishment	Fine	In default Sentence
Sole Accused	354 IPC	1 year RI	-	-
	323 IPC	-	Rs.1,000/-	1 month SI

3. 2.The case of prosecution as it appears from the records is that on 21.04.2008, at about 07.15 p.m., the daughter of the defacto complainant was playing near the RC Church at Kurumpanai. At that time, the accused took the victim girl to a bush behind RC Church with an intention to rape her. The accused kissed the victim in different parts of her body, pressed her chest and her private parts and when the victim girl shouted due to



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pain, the accused beat her with his hand on her back and cheek. On hearing the noise, the witnesses came there and tried to catch hold of the accused. The accused threw the child and escaped from the scene of occurrence.

4. On the complaint given by the mother of the victim (PW1), a case has been registered in Crime No.5 of 2008 on the file of the Colachel All Women Police Station, Kanyakumari District. After conclusion of the investigation, charge sheet has been filed against the accused. After completing the legal mandate of furnishing copies and all other legal formalities, charges have been framed against the accused for the offences under Sections 376 r/w 511 IPC and 323 IPC. When the accused was questioned, he denied his involvements and claimed to be tried.

5. Before the Trial Court, on the side of the prosecution PW1 to PW15 have been examined and Exs.P1 to P10 have been marked. On the side of the accused, no oral or documentary evidence has been marked.



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6. After the conclusion of trial, the learned Sessions Judge, Court of Sessions (Fast Track Mahila Court), Kanyakumari District at Nagercoil acquitted the accused from the charge under Section 376 r/w 511 IPC and found the accused guilty for the offence under Sections 354 and 323 IPC and convicted and sentenced him as mentioned supra. Aggrieved over that, the appellant / sole accused has preferred this appeal.

7. The learned counsel appearing for the appellant submitted that the material contradictions in the evidence of the prosecution witnesses have not been appreciated by the Trial Court; the evidence of PW8 Doctor who did not notice any external injuries on the body of the victim child was also ignored to be considered; even PW11 Doctor also did not find any external injuries on the body of the victim.

8. Mr.A.Albert James, learned Government Advocate (Crl. Side) submitted that PW4, PW5 and PW6 are the eye witnesses to the occurrence and they have deposed evidence in favour of the prosecution; there are contradictions since the victim child is minor and the learned

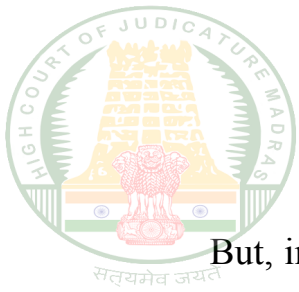


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Trial Judge has rightly ignored the same; the accused had chosen to cross examine the witnesses after a suitable delay; and the evidence of the victim child PW2 and Doctor PW8 themselves are sufficient to hold the accused guilty.

9. Even though charges have been framed under Sections 376 r/w 511 IPC and 323 IPC, the Trial Court had though it fit to convict the accused for the offences under Sections 354 and 323 IPC.

10. The complaint was given by the mother of the victim child (PW1) and she has stated in her evidence that on 21.04.2008, at about 07.15 p.m., when her elder daughter aged 7 years was playing near the Village Church, the appellant / accused lifted her with sexual intention, kissed her on several parts of the body and pressed her private parts. As the child started to cry, he beat and pressed her neck. She has further stated that this was witnessed by PW4 and PW9 who rescued the child from the appellant / accused. Immediately, the child was taken to the Hospital for treatment. PW1 has further stated that only on the information given by her younger daughter, she came to the spot. She has stated that at the time she saw her child, the child was suffocating.



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But, in the complaint she has stated that the child had fainted. However, the above contradiction was not confronted with PW1 during her cross examination. PW1's evidence with regard to substantial part of the occurrence could have been only from what she had learnt from PW4 and PW9.

11. PW4, an eye witness to the occurrence has stated in his evidence that on 21.04.2008, at about 06.15 p.m., he heard a child crying. On hearing the noise, he immediately went to the back side of the Church and found the child lying there. On seeing him, the appellant / accused ran away from the place. PW4 has also stated that the child was not conscious and was immediately taken to the Hospital.

12. PW9, another eye witness to the occurrence has stated in his evidence that on hearing the noise of the child, he went near the Church and found the appellant / accused sexually assaulting the child and on seeing him, the appellant / accused left the place. PW9 and others caught hold of the accused and handed over him to the Police through the father of the Church.



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13. When PW4 has not stated that he had seen the child being assaulted by the accused, PW9 has stated in his evidence that he has seen the accused misbehaving with the child and that the child was seen unconscious. During the examination of PW1, she has stated that the appellant / accused was in their custody when the Police arrived.

14. PW8 Doctor has stated in his evidence that the child was brought to him on 21.04.2008 and he has also issued Wound Certificate Ex.P3 in this regard. So, the child has been taken to the Doctor immediately after she was rescued by PW4 and PW9. PW8 Doctor who had examined the child did not notice any external injuries on the body of the victim child. On the next day, the child was again taken to PW11 Doctor and she also did not notice any external injuries on the body of the victim girl.

15. The victim child was examined as PW2 and she has stated in her evidence that while she was playing near the Church on the alleged day of occurrence i.e., on 21.04.2008, the appellant / accused lifted, took her to the back side of the Church, kissed her on her cheeks and beat her



on the chest. He pressed her chest and when she cried, he again beat her and kept his hands on her private parts. She has also stated that on hearing her noise, PW4 and PW9 came there and on seeing them, the accused ran away.

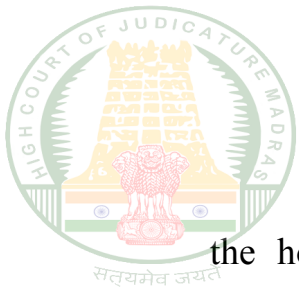
16. The victim child has stated that at that time, she fainted and someone sprinkled water on her face and thereafter, she told what had happened to her. Despite the occurrence had taken place on 21.04.2008, the victim child was examined in the Court only on 07.04.2015. For the occurrence which has taken place when the child was 7 years old, evidence was taken when she was 14 years old. It is hard to believe that the child could depose evidence by rightly re-calling the details of the occurrence from her memory. The broader memory that she was lifted by the accused on that particular day could not have been erased from her mind. However, there may be some contradictions in the minute details of the occurrence. But the whole of the evidence of the victim would only show that she was sexually harassed by the appellant / accused on the day of occurrence.



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17. It was suggested by the defence that there was some motive due to the dispute between two Anbiamis and only because of that a false case has been foisted against the appellant / accused. First of all, the defence side did not establish the fact that there was a dispute between two Anbiamis. Even if there is any such dispute, that will not be avenged by the parents of a small girl like the victim by alleging sexual assault done to her. So, it is difficult to believe that a motivated complaint has been given against the appellant / accused at the cost of the modesty of the child.

18. The occurrence was witnessed by PW9 while he was misbehaving with the child and when PW4 and PW9 had noticed him, he left the child and ran away. Even PW6 has also stated that he had also gone along with PW4 and PW9 and caught hold of the accused who was running. Though there might be delay in examining the child before the Court, she was brought to the Doctor immediately on the day of occurrence and PW8 Doctor has stated in his evidence that the accused had lifted her, bit over her cheeks and beat on chest and back by closing her mouth. Even though the words used by the child was not exactly similar in her evidence as that of what was stated by her to the Doctor,



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the holistic reading and understanding would lead to an irrefutable conclusion that the appellant / accused had lifted the victim girl on the day of occurrence and attempted to misbehave with her.

19. In fact, PW9 has seen the appellant / accused misbehaving with the child. PW9 has stated that on seeing him, the appellant / accused left her. The cross examination of PW9 did not defeat his chief examination and he has stoutly denied the suggestion from the defence that a false case has been given in view of the motive between two Anbiam.

20. Even the appellant / accused is said to have been handed over to the Police through the father of the Church. The evidence of PW15 Investigation Officer reveals that the appellant / accused was arrested near Kurumbanai Bus Stand. Though the offence of rape has not been proved with clear and consistent evidence, there is consistency in the statement of the victim child before the Court and Police Station and evidence of other eye witnesses that the modesty of the victim was outraged by the appellant / accused on the day of occurrence.

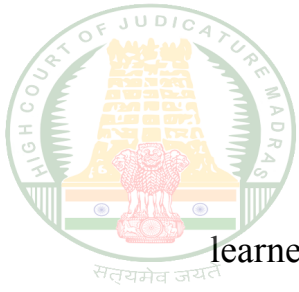


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21. Sofaras the offence under Section 323 IPC is concerned, PW8 Doctor in his evidence has stated that he has not seen any injuries on the body of the victim and the victim child has stated that she has felt pain over her body. The way in which the victim is said to have been handled by the appellant / accused with force itself would have caused pain and hence, I do not find any error in holding that the appellant / accused is guilty for the offence under Section 323 IPC along with Section 354 IPC.

22. It is submitted by the learned counsel for the appellant that the appellant / accused has been in prison for a period of two months and that can be treated as the punishment imposed on the accused. Considering the delay involved in completing the trial of the case, I feel some indulgence to be shown in the quantum of punishment alone by reducing the same.

23. In the result, this Criminal Appeal is **partly allowed** by reducing the punishment imposed against this appellant for the offence under Section 354 IPC and by treating the period of two months of incarceration undergone by the appellant as the punishment for the offence under Section 354 IPC. In all other aspects, the Judgement of the



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learned Sessions Judge, Court of Sessions (Fast Track Mahila Court), Kanyakumari District at Nagercoil remains unaltered. The bail bond, if any, shall stand cancelled and sureties, if any, shall be discharged, if the fine amount imposed for the offence under Section 323 IPC is paid already.

07.08.2025

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To

- 1.The Sessions Judge,
Court of Sessions
(Fast Track Mahila Court),
Kanyakumari District at Nagercoil
- 2.The Inspector of Police
Colachel All Women Police Station,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Dr.R.N.MANJULA, J.

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Pre-Deliver Judgement in
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