



Crl.A(MD)No.303 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 04.08.2025

CORAM :

THE HONOURABLE DR.JUSTICE R.N.MANJULA

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Selvam ..Appellant/Sole Accused

vs.

State
rep. By Inspector of Police,
All Women Police Station,
Pattukkottai,
Thanjavur District
(Crime No.17/2012)

...Respondent/Complainant

PRAYER: This Criminal Appeal is filed under 374(2) of Cr.P.C against the judgment and conviction dated 30.06.2017 passed by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahil Court), Thanjavur in S.C.No.283 of 2012.

For Appellant : Mr.S.Deenadhayalan

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



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JUDGMENT

This appeal has been filed by the sole accused challenging the judgment of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahil Court), Thanjavur dated 30.06.2017 in S.C.No.283 of 2012.

2. The appellant is the sole accused, who has been found to be guilty for the offences under Sections 450 and 376(1) IPC and convicted and sentenced him as under:

Offence u/s	Punishment
376(1) IPC	10 years(R.I), a fine of Rs.1000 i/d six months (S.I)
450 IPC	5 years (R.I), a fine of Rs.1000/- i/d six months (S.I)

3. The case of the prosecution is that on 07.08.2011, when the victim child was alone at the house, the accused trespassed into her house with an intention to rape and convinced her that he would marry her and thus compelled her to have sexual intercourse with her and he



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has been doing the same whenever there is no one in the house of the victim and the accused told her that she should not tell the act of the accused to anyone and if she dared to tell, he would do away with her life.

4. On the complaint given by P.W.1, who is the father of the victim on 04.05.2012, by making the allegation that the accused had committed penetrative sexual assault on his daughter on several occasions from 07.08.2011 by taking advantage of her aloneness at home. It is further stated in the complaint that the victim child got conceived due to the occurrence and it got aborted before two months from the date of giving the complaint. Exposing the above occurrence would affect the future of the victim child, P.W.1 did not give any complaint. But however, the accused continued to press her to have sexual intercourse with him. Thereafter, P.W.1 has given the complaint.

5. After completion of investigation, charge sheet has been filed against the accused for the offences under Sections 450, 376, 417 and



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506(1) IPC. The case was taken cognizance and the copies were furnished. When the charges were read over and explained, the accused pleaded not guilty and claimed to be tried.

6. On the side of the prosecution, 12 witnesses were examined as P.W.1 to P.W.12 and 9 documents were marked as Ex.P.1 to Ex.P.9. No witness was examined and no document was marked on the side of the accused. At the conclusion of the trial, the Sessions Judge, Mahalir Neethimandram (Fast Track Mahil Court), Thanjavur, found the accused guilty for the offences under Sections 450 and 376(1) IPC and convicted and sentenced him as under:

Offence u/s	Punishment
376(1) IPC	10 years(R.I), a fine of Rs.1000 i/d six months (S.I)
450 IPC	5 years (R.I), a fine of Rs.1000/- i/d six months (S.I)

Challenging the judgment of conviction, the accused has filed this appeal.



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7. The learned counsel for the appellant submitted that there was a love affair between the accused and the victim girl; there was delay at every stage i.e from registering the FIR and sending it to the court; there are lot of contradictions in the prosecution witnesses and that were not properly appreciated by the trial court.

8. The learned counsel further submitted that the accused has been charged for the offence under Section 6 of the POCSO Act but was convicted for the offences under Sections 450 and 376(i) IPC and before altering the charge, the accused was not given with any opportunity. He also submitted that there is no charge for miscarriage under Section 312 IPC. It is the further submission of the learned counsel for the appellant that in the complaint it has not been stated that the victim was taken to hospital and she got aborted. In the complaint it is stated that she has undergone abortion due to her fear and later during her evidence, there were certain improvements and that was omitted to be considered by the trial court.



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9. The learned Government Advocate (Crl.side) submitted that love affair between the victim girl and the accused would show that the accused had access to the victim and had committed penetrative sexual assault; the offence has been committed from 07.08.2011 and the POCSO Act came into effect from 14.11.2012. When the complaint was given on 04.05.2012, the POCSO Act has not been come into effect and only the Indian Penal Code was ruling the field. Even though the appellant has been charged for the offence under Section 376(1) IPC, the ingredients and punishment are one and the same and no prejudice would be caused to the accused; in this kind of offence, delay would be quite natural and hence, the delay alone cannot defeat the case of the prosecution; the First Information Report cannot be considered as an encyclopedia in order to supply all the details and it is a *prima facie* document to suspect whether the accused had committed certain offence and hence, the claim of the appellant that there are discrepancies in the evidence of the prosecution witness cannot be accepted.



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10. I gave my anxious consideration to the submissions made on either side and carefully perused the materials available on record.

11. The father of P.W.2/victim was examined as P.W.1 and he has stated about how he learnt from his daughter that she was pregnant and by whom. Thereafter also the accused did not come forward to marry the victim and in fact, he had taken her to Rajeshwari hospital and aborted the foetus there. Thereafter, he did not come forward to marry her but only wanted her to satisfy his physical needs. Without any other alternate, P.W.1 has filed the complaint with delay.

12. Before entering into the merits of other grounds, the ground as to delay in registering the First Information Report has to be discussed. Even according to the complaint, the occurrence was taken place on 07.08.2011 and it was repeated on several occasions by the accused. The fact that the accused and the victim had relationship with each other is not disputed. As per the evidence of the victim/P.W.1, when she was alone at home on 07.08.2011, the accused came to her house and taking



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advantage of her aloneness had compelled her to have sexual intercourse with him and he also assured that he would marry her and influenced her to have physical relationship with him. In this kind of offences, there is a possibility for delayed information to the police. In the complaint itself it is stated that P.W.1 did not intend to spoil the life of P.W.2 by exposing her affair with the accused and he was very much concerned that it would affect her studies also.

13. In the society like ours, if a person has been raped by anyone, the family will not come forward to give a complaint on this, due to the fear about the stigma that might be fixed on the victim. At the time of occurrence, P.W.2 was very much a minor and the said fact has not been denied and it might be in the mind of P.W.1 that the studies of P.W.2 should not get spoilt and hence he would have delayed in giving the police complaint. Later when he came to know that the accused was still harassing P.W.2, he found no other alternate except to give a complaint. As the delay has been explained by P.W.1 in the complaint itself, the delay alone cannot be held as a reason for disqualifying the



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complaint(Ex.P.1).

14. As per the school record and other documents, the date of birth of the victim is 28.06.1998 and as the offence has been taken place on 07.08.2011, the victim child would have been below 18 years at the time of occurrence. Though it is initially believed that the accused would have been governed under POCSO Act, later investigating agency appears to have realized that at the time when the offence was committed, the POCSO Act has not come into existence and hence, the accused was convicted for the offence under Section 376(i) IPC by the trial court.

15. In the normal course when a charge has been altered, alteration of charges will be framed and the accused would be given with an opportunity to defend the newly framed charge. In the instant case, the accused has committed an offence under Section 376(1) IPC and that would also refer to the penetrative sexual assault against children but prior to coming into effect of POCSO Act. In fact, the penetrative sexual assault involved in this case is penile-vaginal penetrative assault, which is rape under Section 376 IPC also.



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16. So the penal provision under which the appellant has been punished at the conclusion of the trial does not change the characteristic and ingredients or understanding about the charge for which he had been tried. The accused has been defending, by knowing pretty well that the case filed against him was rape against the victim. Hence, there is no prejudice caused to him for punishing him under Section 376(1) IPC instead of Section 6 of POCSO Act. When POCSO Act has not come into effect at the relevant point of time, the occurrence had taken. It is right for the trial court to find the accused guilty for the offence under Section 376 IPC and punish him accordingly.

17. So far as the contention of the learned counsel for the appellant that the accused has not been charged for the offence under Section 312 IPC is concerned, it is about miscarriage. Section 312 IPC is defined as under:

"312. Causing miscarriage.—Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in



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good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine".

18. For the lapse on the part of the investigating agency, the victim would not be allowed to be left without any relief. Had the investigating agency or the court properly appreciated the evidence, it would have been possible to frame a charge for the offence under Section 312 IPC also against the accused. Failure to do so will not defeat the other charge under Section 376(1) IPC. It would have been right if the prosecution agency had filed a memo asking for framing of an additional charge against the accused. But they failed to do so. I do not understand how the failure to frame an additional charge will go to the detriment of the accused in defending his case for the offence under Section 376(1) IPC.

19. The learned counsel for the appellant further submitted that the



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contradictions in the complaint and the evidence of P.W.1 and P.W.2 with regard to the alleged medical termination of the foetus has not been properly appreciated by the trial court. The categorical evidence of P.W.1 and P.W.2 is that the accused, in the name of love and by giving assurance to marry the victim, had committed the offence of rape on P.W.2 and he repeated the above occurrence for more than once by taking advantage of the time when P.W.2 was alone at her house.

20. As stated already, the victim has not proved to have been attained the age of majority at the time of occurrence and when the complaint was registered. As per the school certificate the date of birth of the victim is 22.06.1998 and at the time of occurrence, the victim would have not crossed the age of 18. Her actual age would be 14 and above. Her medical examination would reveal that she could have been 15 to 17 years. When the school certificate is available, there is no necessity to look into the medical evidence with regard to determination of the age of the victim. Even for any extraneous reason, the age determination through medical examination is accepted, the medical age of the victim is



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above 15 and below 17. In any case, the victim is a child below 18 years and her consent, if any, cannot be considered as a valid consent and hence it is immaterial. The victim, who was examined as P.W.2, has stated in her language about how she happened to meet the accused on the first day of the occurrence when she was alone at home and she narrated the act of sexual intercourse in the language known to her and that would only convey that P.W.2 was raped by the accused. She has stated that the occurrence was repeated on several occasions when she was alone at home. As she got conceived and her enlarged stomach was palpable, she was enquired by her parents and she revealed about the occurrence.

21. Even the parents were devastated and they did not take immediate decision of complaining the matter to the police and she has stated that the accused himself had taken her to the hospital and had aborted the foetus. The learned counsel for the appellant submitted in the complaint that the accused had taken the victim to the hospital for undergoing medical termination or her termination had occurred at the



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house of P.W.2. The fact that the victim had conceived due to the sexual act committed by the accused and that has been stated in the evidence of P.W.2 without any confusion or contradictions. As the accused did not prefer to marry the victim, the parents of the victim had then only decided to expose and seek remedy by giving complaint to the police. Neither P.W.1 nor P.W.2 appear to have got any motive against the accused to implicate him falsely at the cost of damaging the dignity of P.W.2.

22. P.W.1 had no reason to give any false complaint against the accused that he raped his daughter. The delay in lodging the First Information Report itself would show that P.W.1 was very much resistant to expose the matter.

23. After getting confirmation that her foetus was aborted, the victim child started to go to school. As the accused started to go there again and bothered her by assuring that he would marry her, the parents became alert and thought that only police complaint can help to save



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24. In the case of sexual offences, the evidence of the victim should be given into paramount importance and her evidence cannot be doubted unless any apparent motive is seen to be present to implicate the accused falsely.

25. In the context of the points discussed above, it is useful to refer the judgment of the Supreme Court of India in **State of Punjab vs. Gurmit Singh and Others**, wherein it is held thus:

"The courts cannot over-look the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged".

"The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self respecting woman would come forward in a court just to make a humiliating" statement against her



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honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts should not over-look.

The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion?

The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satiny its judicial conscience, since she is a witness who is interested in the outcome of the charge leveled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even



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more reliable. Just as a witness who has sustained some injury in the occurrence which is not found to be self inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape”.

26. The above judgment has been followed in various judgments of the Supreme Court of India. The evidence of the victim in sexual offence has to be considered very seriously than the injured witnesses. Hence, the trial court has appreciated the evidence with due sensitivity and not carried away with the minor contradictions or the contradictions which are not material for the proof of rape. It is not the contention of the accused that he never knew the victim. He was not suggested during his cross-examination that the complaint or the evidence of P.W.1 and P.W.2 are motivated one. The learned trial Judge has appreciated the whole issue in a comprehensive manner and held that the accused was found guilty for the offence under Sections 450 and 376 IPC. As the victim girl



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had started to continue her studies and the parents of the victim girl also did not come forward to give complaint immediately after it occurred, the pressure in the minds of P.W.1 and P.W.2 due to the occurrence is very much understandable. As the accused had gone to the house of P.W.1 at the first instance on 07.08.2011 and thereafter committed the similar offence on several other occasions also. It is right for the trial court to find the accused guilty for the offence under Sections 450 and 376(1)IPC.

27. It is submitted that the accused is aged 43 years and he has got his family depending on him. The trial court has sentenced the accused to undergo 10 years (R.I). The amendment to Section 376 IPC has been brought on 01.03.2024. The occurrence had taken place before the new amendment came into force when the mandatory and minimum punishment was 7 years (R.I) only. Considering the submissions made by the learned counsel for the appellant, I feel the punishment of imprisonment for the offence under Section 376(1) IPC alone can be modified from 10 years (R.I) to 7 years (R.I).



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28. In the result, this criminal appeal is partly allowed by reducing the punishment for the offence under Section 376(1) IPC from 10 years (R.I) to 7 years (R.I). In all other aspects, the judgment of the trial court remains unaltered. The trial court shall take steps to secure the accused to commit them to prison to serve out the remaining period of sentence.

04.08.2025

Index : Yes/No
Internet : Yes/No
CM

To,
1.The Sessions Judge,
Mahalir Neethimandram (Fast Track Mahil Court), Thanjavur

2.Inspector of Police,
All Women Police Station,
Pattukkottai,
Thanjavur District

3.The Additional Public Prosecutor

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Madurai Bench of Madras High Court,
Madurai.

Dr.R.N.MANJULA, J

CM

Judgment made in
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