

Crl.A.(MD)No.418 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 31.07.2025

CORAM :

THE HONOURABLE **DR. JUSTICE R.N.MANJULA**

Crl.A.(MD)No.418 of 2017

Arivazhagan

... Appellant/Sole Accused

versus

The State rep., by
The Deputy Superintendent of Police,
Thiruvudaimaruthur Sub Division,
Thanjavur District.
Crime No.208 of 2014
registered at Thirupanandal Police Station,
Thanjavur District.

... Respondent/ Complainant

Prayer : Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, to call for the entire records pertaining to the judgment rendered by the learned I Additional District and Sessions Judge (PCR) Thanjavur in S.S.C.No.89 of 2016 dated 06.10.2017 and set aside the same and consequently, acquit the appellant.

For Appellant	: Mr.M.S.Jeyakarthick Legal Aid Counsel
For Respondent	: Mr.K.Gnanasekaran Government Advocate (Crl.side)



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JUDGMENT

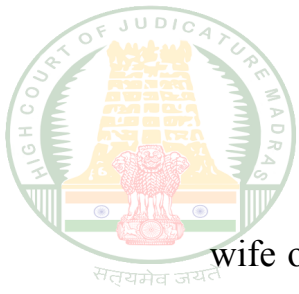
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This criminal appeal has been preferred as against the judgment of conviction and sentence, dated 06.10.2017 made in S.S.C.No.89 of 2016 by the learned I Additional District and Sessions Judge (PCR), Thanjavur, thereby convicting and sentencing the appellant as under:

Found guilty for the offence u/s	Punishment
452 of IPC	To undergo three years (R.I) and to pay a fine of Rs.3,000/-, i/d to undergo six months (S.I)
354 of IPC r/w 3(2)(va) of SC/ST (POA) Amendment Ordinance	To undergo one year (R.I) and to pay a fine of Rs.2,000/-, i/d to undergo three months (S.I)
3(1)(w)(i) of SC/ST(POA) Amendment Ordinance	To undergo three years (R.I) and to pay a fine of Rs.5,000/-, i/d to undergo six months (S.I)

The sentences were ordered to run concurrently. Set off under Section 428 of Cr.P.C., is also ordered.

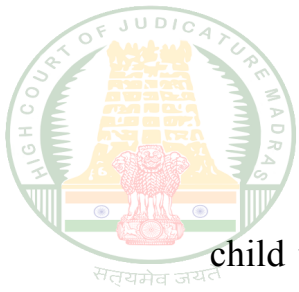
2. The case of the prosecution is that the defacto complainant, Pushpavalli /P.W.1, was residing with her mother, Santha /P.W.2 at Vinayagar Street Colony, Anaikarai. The accused was residing at Olugacheri, Anaikarai. The defacto complainant belonged to Scheduled Caste Community and the accused belonged to some other community. The father of the defacto complainant died, when she was 1 ½ years old. The



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wife of accused is one Vanitha (wrongly mentioned as Amutha). When the defacto complainant was working as a Mason (சித்தாளர்) at Anaikarai, she had developed acquaintance with the accused, who was doing Mason work. As the accused had assured that he would marry her, both fell in love with each other. Thereafter, the accused took the defacto complainant with him to Vagarampalayam at Coimbatore, where they lived together for about one year, by which, the defacto complainant became pregnant. Thereafter, the defacto complainant asked the accused to marry her and the accused has assured that he would marry her after purchasing gold thali, but did not marry her, instead, he started to drink liquor regularly and beat the defacto complainant.

2.1 The defacto complainant, who was at the advanced stage of pregnancy, consulted with the Government Hospital, Vagarampalayam. In the hospital, it was stated that normal delivery was not possible and cesarean has to be conducted. Hence, the defacto complainant without intimating the accused, came to her maternal house at Anaikarai. The mother of the defacto complainant has taken the defacto complainant to the Government Hospital, Kumbakonam and admitted her there for delivery. On 25.10.2011 the defacto complainant begotten a male child by name Abinash. Thereafter, the accused took the defacto complainant and the



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child to Solakattupalayam and lived there for about three months. During the said three months, the accused used to drink liquor and thrash the defacto complainant. Hence, the defacto complainant left him and returned to her maternal home at Anaikarai, where she was residing earlier. The accused came there also in a drunken state and harassed the defacto complainant. The defacto complainant asked the accused to marry her as they have a son now, but the accused denied the same and abused her by making casteist remarks.

2.2 Since the accused refused to marry the defacto complainant and in order to provide her a better life, the mother of the defacto complainant has performed marriage of the defacto complainant with one Alagesan, after explaining the true state of affairs before five months to the occurrence. The defacto complainant got pregnant through Alagesan and again, came to her maternal home at Anaikarai for treatment. On 30.07.2014 at around 03.00 pm., when the defacto complainant was alone at her mother's house, having known that the defacto complainant is all alone, the accused with an intention to have sexual intercourse with her, trespassed into her house and called her for sexual intercourse, since she refused, he abused her by saying that she had already shared bed with him and also degraded her by insulting her with community slurs and pushed her down, torn her saree and blouse,



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and had put Aruval on her neck and attempted to have a forcible intercourse. At that time, on hearing the noise, the nearby people came there and on seeing them, the accused threatened the defacto complainant and went away saying that he would kill her any time.

2.3 On the complaint given by the defacto complainant, case has been registered and taken up for investigation. After completion of investigation, charge sheet has been filed against the accused. Since the offence is triable by the Sessions Court, the case was committed to the Sessions Court. The trial Judge has taken cognizance in S.S.C.No.89 of 2016 and after completing the legal mandate of furnishing copies and all other legal formalities, the trial Judge framed charges against the appellant for the offences under Sections 450, 294(b) and 506(ii) of IPC r/w Section 3(2)(Va) of SC/ST(POA) Act, Section 376(1) r/w Section 511 IPC r/w Section 3(2) (v) of SC/ST(POA) Act, 3(1)(r)(s), 3(1)(w)(i) of SC.ST (POA) Act. When the accused was questioned, he pleaded innocent and claimed to be tried.

2.4 During trial, on the side of the prosecution, P.W.1 to P.W.22 were examined and Ex.P1 to Ex.P21 were marked. Besides, M.O.1 to M.O.3 were marked. On the side of the defence, no oral and documentary evidence was let in.



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2.5 After completion of trial, based on the oral and documentary evidence, the trial Judge has convicted and sentenced the accused as stated supra. Aggrieved over the same, this appeal has been preferred.

3. The learned counsel appearing for the appellant submitted that the legal infirmities in the evidence of prosecution witnesses have not been properly appreciated. The learned trial Judge has convicted the appellant primarily based on the evidence of interested witnesses P.W.1, P.W.2 and P.W.14. Except for these witnesses, other independent witnesses have been declared 'hostile'. Furthermore, the delay in filing the FIR has not been properly appreciated. The prosecution has failed to examine the husband of the defacto complainant, Alagesan, as a witness. Additionally, the victim's examination did not reveal any external injuries. In the light of these factors, the judgment of the trial Court ought to be set aside.

4. The learned Government Advocate (Crl.side) appearing for the State submitted that P.W.1 is not only the defacto complainant, but also the victim of crime and the trial Court has rightly appreciated her evidence, which is highly reliable. Even though P.W.2 and P.W.14 are mother and sister of the defacto complainant, there is nothing on record to discredit their evidence. Moreover, even without the testimony of the witnesses, who



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have turned hostile, there are sufficient materials available on record to establish the guilt of the accused for the offence under Section 452 of IPC, 354 of IPC r/w 3(2)(va) of SC/ST (POA) Amendment Ordinance 3(1)(w)(i) of SC/ST(POA) Amendment Ordinance and hence, it was right for the trial Court to convict the accused.

5. The defacto complainant, P.W.1 and the accused are not strangers; both were involved in a relationship while the wife of the accused was alive. The complaint lodged by P.W.1 is specifically regarding the incident that had occurred on 30.07.2014, when she was alone at her house. In her evidence, P.W.1 not only detailed the occurrence happened on 30.07.2014, but also described the preceding offences. Even during her cross-examination, P.W.1 has not denied the fact that without the knowledge of their respective family members and relatives, she and the accused were living together by renting a house at Coimbatore. During that time, the victim conceived and as suggested by the doctors, her delivery was performed by cesarean section, she then went to her mother's house. After her delivery, the victim was staying at her mother's house. According to the evidence of P.W.1, she lived with the accused until she was eight months pregnant. After the delivery, she was again taken to the house of the accused by force. She has stated that after the delivery of child, she was ill-



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treated by the accused and his parents. Unable to endure the torture, she returned back to her mother's house. Although P.W.1 has stated about the ill-treatment meted out to her while living with the accused, after the birth of their child, the complaint has been given only in respect of the occurrence that had taken place on 30.07.2014.

6. Even though the accused had lived with P.W.1, he did not marry her. However, during cross-examination, it was suggested that the marriage between the accused and P.W.1 had not been dissolved. When the marriage itself has not taken place, the question of dissolving the marriage that never existed, does not arise. P.W.1, in fact, is an unwed mother of the child born to the accused and the accused did not deny the paternity of the child. Nevertheless, for reason best known to the investigating agency, DNA analysis was conducted to establish the child's paternity. The test once again confirmed that the accused is the biological father of the child delivered by P.W.1. The evidence of P.W.1 regarding the events that occurred prior to the incident dated 30.07.2014 is relevant to the extent of understanding the emotional and physical relationship between P.W.1 and the accused, as well as the antecedents leading to the occurrence.



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7. It is learnt that the wife of the accused passed away at some point of time. However, no marriage took place between the accused and P.W.1, even after the birth of their child, who was 2 ½ years old at the relevant point of time and thereafter, the mother of P.W.1 has arranged the marriage of P.W.1 to one Alagesan and the marriage between P.W.1 and Alagesan was going smoothly. As a result of the said marriage, P.W.1 conceived. When she was three months pregnant, she went to her mother's house for medical examination. Thus, the occurrence originates from this point.

8. On 30.07.2014, at around 03.00 pm., the accused trespassed into her house and asked her as to why she shared bed with a person belonging to scheduled caste, while uttering caste-based slurs, he demanded her to engage in a sexual relationship with him immediately. When P.W.1 refused, he caught hold of her hands and stated that she had engaged in such acts with him previously and also, harassed her claiming that she could not refuse his demand. When P.W.1 resisted the accused, he sat on her and held a knife on her neck. She managed to escape with great difficulty and during that course of the struggle, the accused torn her blouse and saree. On hearing the noise, the nearby residents came to her rescue and reprimanded the accused. Thereafter, a complaint was lodged.



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9. The accused had also damaged the television, mixie, grinder and fan in the house of P.W.1's mother. P.W.1 stayed in her mother's house for two days, after the complaint and thereafter, she went to her husband's place. In the complaint, P.W.1 briefly mentioned her prior relationship with the accused and stated that the accused was unwilling to marry her due to her caste.

10. Despite the fact that P.W.1 had given birth to a child through the accused, her mother and relatives made an effort to arrange her marriage. Consequently, she was married to one Alagesan, who was informed about her previous relationship with the accused. On the alleged date of occurrence i.e., on 30.07.2014, P.W.1 was at her mother's house, at about 03.00 pm., when P.W.1 was alone at her house, the accused trespassed into house and tried to rape her and abused her with caste-based slurs and compelled her to share bed with him. When P.W.1 refused the same, he held a knife on her neck and while P.W.1 attempted to escape, he tore her blouse and saree.

11. So far as the life of P.W.1 with the accused prior to the occurrence is concerned, she felt it as a nightmare and after a certain point, she was not interested in getting married to the accused.

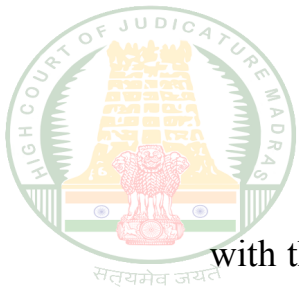


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12. After making terms to life, she has chosen to marry a person of her choice. When her life with her husband was going peacefully, her past partner came suddenly and demanded sexual favour in a most indecent manner and he also abused her with caste-based slur and abused her by stating that she had already shared bed with him and hence, nothing would happen if she did the same thing once again with him.

13. The evidence of P.W.1 on the material aspect tallies with her complaint. It was suggested to P.W.1 that she had fabricated the allegations related to the occurrence and that her evidence was based on her own imagination. The cross-examination of P.W.1 on behalf of accused would show that the accused was aware about the community, to which the husband of P.W.1 belonged to. The accused was in the habit of visiting P.W.1 before her marriage, however, after their separation, while she was residing at her mother's house, P.W.1 did not want him to come there. She had complained about him to the village elders. On one occasion, when the accused came at midnight around 12.00 O'clock, the villagers reprimanded him that since he did not accept her as his wife, he need not come there. However, the victim did not lodge any complaint regarding the said occurrence. As the mother of the victim thought it fit to get her married to someone else, who came forward despite knowing her previous relationship



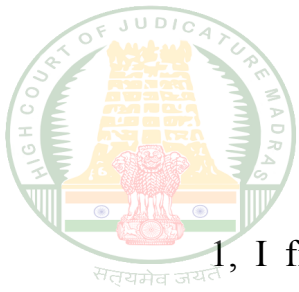
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with the accused and that she had given birth to a child. After the marriage, P.W.1 was residing with her husband at a different place. At the time of the occurrence, she had come to her mother's house/ place of occurrence for a medical check up.

14. In the complaint, she stated that the accused had torn her clothes. In her evidence, she had elaborated that the accused had torn her blouse and saree when she refused to consent to his sexual demand. The torn saree and blouse of the victim have been seized by the investigating officer and has been marked as M.O.1 and M.O.2.

15. Though P.W.9 and P.W.10 stood as witnesses to the seizure and observation mahazars, they had stated in their evidence that they did not know the contents of seizure and observation mahazar, but they admitted to having signed them.

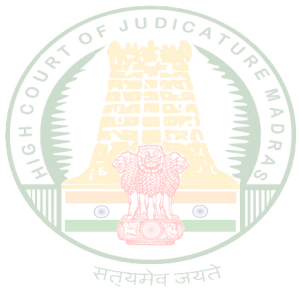
16. The investigating officer, who was examined as P.W.22, has stated in his evidence on how he recovered the torn clothes of P.W.1 from the place of occurrence and that it was only through him, those clothes were marked as MO1 to MO3. As the above corroborative evidence of P.W.22, along with material objects, strengthens the oral testimony of P.W.



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1, I find nothing to discredit such important materials and the evidence given before the Court. The learned trial Judge had also appreciated the same in the right perspective.

17. P.W.2, the mother of the victim, has stated in her evidence regarding the antecedents of the occurrence in the same manner as deposed by P.W.1. As the accused continued to visit during the night hours even after P.W.1 had separated from the accused, P.W.2 intended to settle her daughter's life by finding a suitable groom for her marriage. Since P.W.1 was not married to the accused and he had no intention of marrying her, he had no right to interfere when she married another person and moved on with her life. Though P.W.2 is not an eyewitness to the occurrence as it happened when P.W.1 was alone at her house, she arrived thereafter and found her daughter lying unconsciously. Subsequently, she took her daughter to the police station and gave a complaint. She also took her daughter to the hospital for treatment. The Suggestion made to P.W.2 on behalf of the accused was that she was supporting the case of the prosecution by concealing the fact that P.W.1 had eloped with one Alagesan. As P.W.2 had voluntarily got her daughter married to Alagesan, there was no need for her to conceal her daughter's relationship with Alagesan in order to support the false case alleged against the accused.



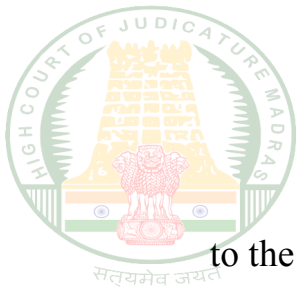
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18. P.W.3, who is the neighbour, stated in her evidence that she was also aware of the accused visiting P.W.1's house and engaging in quarrels. Although the independent witnesses and the witnesses who stood for observation and seizure mahazar, have turned hostile, the evidence of P.W.1, P.W.2 and P.W.14 are supportive to the prosecution's case.

19. P.W.14, who is the sister of P.W.1, stated in her evidence that she came to the place of occurrence upon hearing the noise of fight between P.W.1 and the accused. As she was working in a nearby field, she ran to the scene, where she found the accused threatening her sister and thereafter, he ran away. She had also seen P.W.1's saree and blouse were torn.

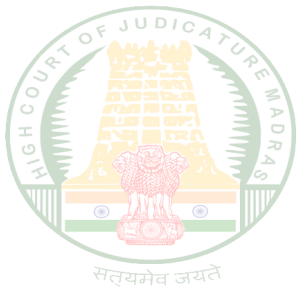
20. The learned counsel for the appellant submitted that P.W.1, P.W.2 and P.W.14 are interested witnesses and the learned trial Judge has relied on their evidence without looking for any independent evidence. The evidence of incidental and independent witnesses can be more supportive to the case of the prosecution. If the independent witnesses do not come forward to give evidence in support of the victim, there is nothing wrong in relying on the evidence of interested witnesses. In other words, the evidence of interested witnesses need not be disbelieved on the ground that they are interested witnesses. They are interested witnesses, as they are affected due



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to the offence and hence, their evidence needs to be valued and can be relied upon if it inspires the confidence of the Court. In this regard, it is appropriate to refer the judgment of ***State of Punjab Vs., Gurmit Singh and others (1996 SCC (2) 384***), wherein it is held that the evidence of victim of sexual assault has to be kept one step above the evidence of injured witnesses. As the victim of sexual offence are also affected both physically and mentally, their evidence cannot be discarded by demanding corroboration. The relevant paragraph of the above said judgment is extracted hereunder:

“.....9. The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled 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 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. “



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21. In the instant case, P.W.1 is the victim of sexual assault and hails from a marginalised and downtrodden community and what had happened to her is gender violation. P.W.1 is affected not only because she is a woman, but also because she belongs to a Scheduled Caste community, thereby compounding the nature and impact of the offence. She faced dual layers of oppression and vulnerability; first on account of her gender being a woman, and second due to her identity as a member of a Scheduled Caste community. Her ex-partner had no genuine intention to marry her, despite fathering a child with her. It is solely because she belonged to Scheduled Caste community.

22. When P.W.1 asked the accused to marry her, he refused stating that she belonged to Scheduled Caste community and marrying her would lead to his expulsion from his own community. A person, who did not want to take the risk of marrying a woman belonged to Scheduled Caste community, had engaged in an emotional cum physical relationship with her to an extent of fathering a child with her. He is concerned to preserve his so-called dignity by being included in his own community. However, he showed complete disregard for the emotional and physical consequences of his actions on the defacto complainant and the damage caused to her dignity and reputation.



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23. P.W.1 with the support of her mother P.W.2 courageously faced the society and took the full responsibility for carrying the child. Even though P.W.1 was no longer interested in maintaining the empty relationship with the accused, who did not have any intention to give a meaningful relationship to P.W.1, P.W.2 thought it fit to ensure a better future for her daughter and arranged a marriage for P.W.1 with one Alagesan.

24. Thereafter, the accused cannot claim any moral or legal right to continue his relationship with P.W.1. If anything remains between them, it is only the child born to her during their cohabitation. The accused, who had shown no concern or responsibility for the maintenance of the child born to him, became enraged, when he came to know about the marriage between the P.W.1 and Alagesan.

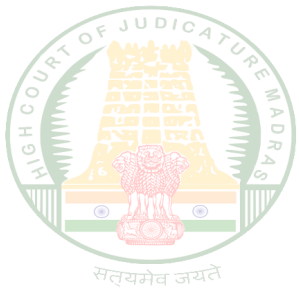
25. The accused, who showed no concern for the physical, mental and emotional well-being of P.W.1 after withdrawing himself from her life by refusing to marry her, had no moral or legal basis to assert any claim over her body on the date of alleged occurrence. To the eyes and mind of the accused, the defacto complainant appeared to be nothing more than an 'object' for his use and convenience. In his imagination, the 'object' was to



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be at his disposal irrespective of his commitment in terms of moral or financial obligations. The soul of P.W.1 had found no place in the mind and heart of the accused and hence, it decided to settle somewhere with someone who could respect her for what she is and not just as a source of pleasure.

26. The reckless domination marked by unreasonableness creates an oppressive mentality. The oppressor lacks the sensitivity to recognize his fellow human beings as person with emotions, feelings and rights. In his rush to establish domination, he becomes insensitive to the emotional values and rights of others. In the instant case, the intersectional social identity of P.W.1 as a woman belonging to a Scheduled Caste community, emboldened the accused to assert his superiority and interfere with her life, which she had chosen after realising the beastliness of the accused. P.W.1, P.W.2 and P.W.14 being members of a downtrodden community, deserve appreciation for their courage in standing against the injustice inflicted upon P.W.1 by a person belonging to a different community and their evidence cannot be taken lightly. Unless the evidence of P.W.1, P.W.2 and P.W.14 is tainted with any motive, there is no reason to discredit their testimony. Moreover, their evidence can be accepted even if there are minor contradictions.



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27. At no point of time, P.W.1 thought it fit to initiate any legal action against the accused for abandoning his commitment towards her or the child born to her through him. Neither P.W.2 had opted to file any proceedings on behalf of P.W.1 to hold the accused financially responsible for the maintenance of P.W.1 and the child born to him. It is also not the case of the defence that P.W.1 and P.W.2 pursued the accused for money or property. It appears to have been a poor decision on the part of P.W.1 to choose to live with the person like the accused for some time without any foresight about her future. However, it was within her rights to change course and choose a safer path, as how her reason dictated. The accused was neither under the control of P.W.1 nor connected to her either socially or financially. The accused has no authority over the decisions made by P.W.1 with her own free will. The accused could have thought that P.W.1, being an unwed mother to his child, would not be accepted by anyone in the society and she could never become the 'wife' for anyone and that she would remain merely a doll possessed by him.

28. P.W.1 and P.W.2 shattered the societal barriers by thinking progressively and proved that a better life is always possible for a survivor of a sexual violence like P.W.1. The intolerance exhibited by the accused on seeing P.W.1 with her spouse, if allowed unchecked, will spoil the



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physical and mental well-being of P.W.1 and her family. P.W.1, P.W.2 and P.W.14 did not have any motive to file a false case against the accused.

When nothing prevented the accused from living a life of his choice, he should understand the same liberty is available to P.W.1. She cannot be prevented by the accused merely because she is a woman, belonging to Scheduled Caste community. In fact, P.W.2 should be appreciated for supporting P.W.1's life by taking strong decision rather than waiting in vain for a miracle to happen to restore the lost pleasure and peace of P.W.1.

29. Though P.W.1 and P.W.2 may belong to a downtrodden section in the society, they proved to be progressive in their actions and demonstrated courage by fitting to the standards of the survival of the fittest.

30. The actions of the accused proved through the evidence of P.W.1 is seen to be having all the ingredients of Section 354A(1) and (2) IPC. For the sake of clarity, the above provision is extracted as under:

“354. Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty, 1 [shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine].



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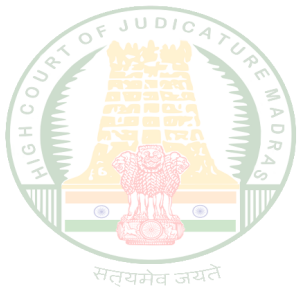
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In Section 354 of the Penal Code, the following proviso shall be inserted, namely: — Provided that where offence is committed, under this Section by a relative, guardian or teacher or a person in a position of trust or authority towards the person assaulted, he shall be punishable with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years and shall also be liable to fine.

2 [354A. Sexual harassment and punishment for sexual harassment.—(1) A man committing any of the following acts— (i) physical contact and advances involving unwelcome and explicit sexual overtures; or

(ii) a demand or request for sexual favours; or (iii) showing pornography against the will of a woman; or (iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment. (2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both. “

31. As the accused trespassed into the house of P.W.1, after their relationship became strained, with an intention of committing the offence of sexual assault upon her and with the knowledge that she belonged to a Scheduled Caste community, the learned trial Judge was right in convicting the accused for the offence of house trespass. Though the charge sheet was filed for attempt, the Court was convinced that the accused had committed the assault with the intention to outrage the modesty of a woman.



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32. The occurrence had taken place on 30.07.2014, on which date, the criminal amendment has come into force and there is a specific provision has been introduced under Section 354A of IPC with effect from 03.02.2013.

33. Section 354A of IPC has been inserted as specific provision for punishment for sexual harassment. Hence, the learned trial Judge ought to have found the accused guilty and convicted the accused only for the offence under Section 354 A of IPC. The words used by the accused would show his sexual intention. It is wrong on the part of the trial Court to ignore the above material evidence and reduce the charges to Section 354 of IPC, instead of Section 354A of IPC.

34. It appears that the trial Judge had invoked 3(2)(v)(a) also, but Section 3(2)(v)(a) has come into effect only on 26.01.2016 in view of Act 1/ 2016. Since the offence had taken place prior to the said date, it was not right on the part of the trial Judge to invoke Section 3(2)(v)(a) of SC/ST Act. Hence, the correct provisions ought to be under Section 3(2)(v), instead of 3(2)(v)(a) of SC/ST Act, even 3(2)(v) of SC/ST Act has got amended by Act 1/2016 and the words “*on the ground that such person*” has been replaced by the words “*knowing that such person is a member*”.



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Section 3(2)(v), which stood prior to 26.01.2016 is that commission of any offence under IPC punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is the member of Scheduled Caste and Scheduled Tribes and such property belonged to such member. In this regard, it is relevant to extract the judgment of the Hon'ble Supreme Court in the case of ***Patan Jamal Vali Vs., State of A.P., ((2021) 16 SCC 225***, wherein it has been held as follows:

“63. It is pertinent to mention that Section 3(2)(v) was amended by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, which came into effect on 26 January 2016. The words “on the ground of” under Section 3(2) (v) have been substituted with “knowing that such person is a member of a Scheduled Caste or Scheduled Tribe”. This has decreased the threshold of proving that a crime was committed on the basis of the caste identity to a threshold where mere knowledge is sufficient to sustain a conviction. Section 8 which deals with presumptions as to offences was also amended to include clause (c) to provide that if the accused was acquainted with the victim or his family, the court shall presume that the accused was aware of the caste or tribal identity of the victim unless proved otherwise. The amended Section 8 reads as follows:

“8. Presumption as to offences. - In a prosecution for an offence under this Chapter, if it is proved that

(a) the accused rendered [any financial assistance in relation to the offences committed by a person accused of], or reasonably suspected of, committing, an offence under this Chapter, the Special Court shall



presume, unless the contrary is proved, that such person had abetted the offence;

(b) a group of persons committed an offence under this Chapter and if it is proved that the offence committed was a sequel to any existing dispute regarding land or any other matter, it shall be presumed that the offence was committed in furtherance of the common intention or in prosecution of the common object.

[(c) the accused was having personal knowledge of the victim or his family, the Court shall presume that the accused was aware of the caste or tribal identity of the victim, unless the contrary is proved.]”

64 The Parliament Standing Committee Report on Atrocities Against Women and Children has observed that, “high acquittal rate motivates and boosts the confidence of dominant and powerful communities for continued perpetration” and recommends inclusion of provisions of *SC & ST Act* while registering cases of gendered violence against women from SC & ST communities⁵³. However, as we have noted, one of the ways in which offences against SC & ST women fall through the cracks is due to the evidentiary burden that becomes almost impossible to meet in cases of intersectional oppression. This is especially the case when courts tend to read the requirement of “on the ground” under *Section 3(2)(v)* as “only on the ground of”. The current regime under the *SC & ST Act*, post the amendment, has facilitated the conduct of an intersectional analysis under the Act by replacing the causation requirement under *Section 3(2)(v)* of the Act with a knowledge requirement making the regime sensitive to the kind of evidence that is likely to be generated in cases such as these.

65 However, since *Section 3(2) (v)* was amended and Clause (c) of *Section 8* was inserted by Act 1 of 2016 with effect from 26 January



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2016 these amendments would not be applicable to the case at hand. The offence in the present case has taken place before the amendment, on 31 March 2011. Therefore, we hold that the evidence in the present case does not establish that the offence in the present case was committed on the ground that such person is a member of a SC or ST. The conviction under [Section 3\(2\)\(v\)](#) would consequently have to be set aside.”

35. If the learned trial Judge has not found the accused guilty for the offence under Section 376(1) r/w Section 511 of IPC and found him guilty for the offence under Section 354 of IPC, there is no need to invoke Section 3(2)(v) of SC/ST Act, in view of the fact that the maximum punishment for the offence under Section 354 IPC is five years only. Even if the right provision under Section 354 A is invoked, the maximum punishment could be three years and hence, the framing of charge under Section 3(2)(va) or 3(2)(v) of SC/ST (POA) Amendment Ordinance, is unnecessary.

36. The next provision invoked by the learned trial Judge to charge the accused is 3(1)(w)(i) of SC/ST (POA) Amendment Ordinance. For the sake of clarity the above provision is extracted as under:

“3(1)(w)(i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient’s consent;



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(ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.

Explanation.—For the purposes of sub-clause (i), the expression “consent” means an unequivocal voluntary agreement when the person by words, gestures, or any form of non-verbal communication, communicates willingness to participate in the specific act:

Provided that a woman belonging to a Scheduled Caste or a Scheduled Tribe who does not offer physical resistance to any act of a sexual nature is not by reason only of that fact, is to be regarded as consenting to the sexual activity: Provided further that a woman’s sexual history, including with the offender shall not imply consent or mitigate the offence;

37. In the case on hand, the victim did not give her consent for the accused to touch her and she resisted his act and hence, the offence under Section 3(1)(w)(i) and (ii) of SC/ST (POA) Amendment Ordinance is very much made out.

38. The accused, in view of his past connection with P.W.1 with the knowledge that she belonged to Scheduled Caste community, intentionally touched her and compelled her to have sexual intercourse with him, as she had married a person from her own community and consented to live with him in a marital relationship. Such comparison made during the sexual



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harassment caused to P.W.1 would only indicate that he had taken advantage not only because of his past relationship with P.W.1, but also that she belongs to a Scheduled Caste community and married a person belonging to the same caste and chose to live with him unmindful of her past relationship with him.

39. As the maximum punishment for the offences proved against the accused is five years of imprisonment, for the offence of house trespass, the learned trial Judge ought to have invoked Section 451 of IPC, instead of 452 of IPC.

40. Accordingly, the learned trial Judge ought to have found the accused guilty for the offences under Sections 451 and 354A IPC and Section 3(1)(w)(i) and (ii) of SC/ST (POA) Amendment Ordinance Act alone.

41. The learned counsel appearing for the appellant submitted that the wife of the appellant already died and the children born to her are in the custody of the appellant, after the case was filed, the accused has been keeping himself away from P.W.1 and therefore, some leniency may be considered in the matter of punishment. He further submitted that even



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while questioning the accused under Section 313 of Cr.P.C., he has voluntarily expressed his willingness to maintain the child born to him and P.W.1 and therefore, the change in his conduct can be considered as a factor to reduce the punishment. Even the prosecution did not allege that the accused continued to harass P.W.1 during the pendency of the case.

42. The appellant has shown a change in attitude and willingness to take care of his child born to him and P.W.1. He has two children born to his first wife, who is no more. The appellant/accused is the first offender and his emotional connection with P.W.1 led him to act irrationally and commit the offence. Taking into consideration of all these facts and especially his special circumstances, where he needs to take care of his two children, who were born to him through his deceased wife, I am inclined to show some indulgence and reduce the punishment.

43. In result, this Criminal Appeal is **partly allowed**. The judgment of conviction and sentence imposed on the appellant/accused made in S.S.C.No.89 of 2016, dated 06.10.2017, by the learned I Additional District and Sessions Judge (PCR), Thanjavur,, is hereby modified. Accordingly,



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(i) The appellant/accused is found guilty and convicted for the offences under Sections 451 and 354A IPC and Section 3(1)(w)(i) and (ii) of SC/ST (POA) Amendment Ordinance Act and sentenced to undergo six months of rigorous imprisonment and to pay a fine of Rs.3,000/-, in default to undergo one month of simple imprisonment for the offence under Section 451 of IPC; to undergo six months of rigorous imprisonment along with fine amount Rs.2,000/-, in default to undergo one month of simple imprisonment for the offence under Section 354A of IPC; and to undergo six months of rigorous imprisonment along with fine amount of Rs.5.000/- in default to undergo one month of simple imprisonment for the offence under Section 3(1)(w)(i) and (ii) of SC/ST(POA) Amendment Ordinance.

(ii) It is further directed that the period of detention already undergone by the accused, if any, shall be given set off under Section 428 Cr.P.C and the sentences shall run concurrently.

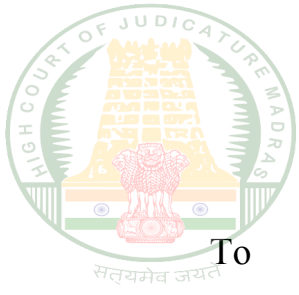
(iii) The trial Court shall take steps to secure the accused to commit him to prison to serve out the remaining period of sentence.

31.07.2025

Index : Yes/No

NCC : Yes/No.

Rmk



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To

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1. I Additional District and Sessions Judge (PCR) Thanjavur.
2. The Deputy Superintendent of Police,
Thiruvidaimaruthur Sub Division,
Thanjavur District.
3. The learned Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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R.N.MANJULA, J.,

Rmk

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