



WEB COPY



Crl.A.No.145 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.01.2026

CORAM

THE HONOURABLE MR. JUSTICE **M. NIRMAL KUMAR**

Crl.A.No.145 of 2018

G.Thirumavalavan

..... Appellant/Accused

Vs

State represented by
The Inspector of Police,
Kunnam Police Station,
Perambalur District.

..... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, praying to call for the records and to set aside the judgment and sentence dated 06.01.2018 imposed in S.C.No.14 of 2011 on the file of the Mahila Court, Perambalur.

For Appellant

: M/s.A.Veeramarthini
Legal Aid Counsel

For Respondent

: Mr.S.Udayakumar
Government Advocate (Crl.side)
Assisted by Harshana.T.

JUDGMENT

The Appellant/Accused in S.C.No.14 of 2011 was convicted by the Trial Court by Judgment dated 06.01.2018 for the offence under Section 376 of IPC



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and sentenced him to undergo 10 years rigorous imprisonment and to pay fine of Rs.5,000/-, in default to undergo three years simple imprisonment. Aggrieved against the said conviction, the appellant/accused filed this appeal.

2. The case of the prosecution is that the P.W.3, the defacto-complainant, is the victim in this case. On 20.06.1998, when the victim went to take bath near the Kattaiyankulam well and was returning home, the appellant/accused, who was following her for about six months, on the promise of marrying her, was standing near a bush. At that time, the appellant suddenly caught and pulled the victim, forcibly dragged her to a bush, removed her clothes, tore her blouse and committed rape. After the occurrence, the victim returned home in a distressed condition and informed to her parents about the incident. Thereafter, parents of the victim went to the house of the appellant and questioned his parents. The appellant not available. An attempt was made to convene a village panchayat, but appellant absconded and panchayat could not be done. Subsequently, on 22.06.1998, a complaint was lodged.

3. P.W.13, the Head Constable, received the complaint, which is marked as Ex.P1 and registered a case in Crime No.275 of 1998 for the offence under Section 376 of IPC. The FIR marked as Ex.P5 At the relevant point of



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time, PW.10 was the Inspector of Police in charge. On receipt of the information and the complaint, he visited the scene of occurrence in presence of P.W.11 and another witness, prepared the Observation Mahazar and Rough Sketch and referred the victim for medical examination. P.W.9, the Doctor, examined the victim on 23.06.1998 and opined that the hymen was not intact and that there was possibility of sexual intercourse. The medical report marked as Ex.P4.

4. P.W.1 brother of the victim and P.W.4 mother of the victim. P.W.12 seen the victim near the Kuttaiyankulam well crying, who enquired the victim and was informed about the rape committed. Thereafter, appellant absconded and went abroad and not available during investigation. In the meanwhile, the Investigating Officer examined the other witnesses and collected documents. The appellant obtained anticipatory bail on 21.07.2005, however, he did not report thereafter. Consequently, a Non-Bailable Warrant was issued. The appellant was later arrested and produced before the Court. P.W.8 examined the appellant on 11.08.2005 and issued potency certificate, which are marked as Ex.P2 and Ex.P3. After completion of the investigation, final report filed against the appellant.



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5. During trial, on the side of the prosecution, PW1 to PW14 examined and Exs.P1 to P8 marked. On the side of the defence, no witnesses examined and no documents marked. On conclusion of trial, the trial Court convicted the appellant as stated above.

6. The learned counsel appearing for the appellant submitted that P.W.3, the victim, admitted that the appellant was in love with her for about six months and also promised to marry her. When the parents and family members of the victim demanded immediate marriage, the same was refused by the appellant and his family. Therefore, a complaint was lodged alleging that forcible rape committed on her. It was further alleged that the alleged occurrence is said to have taken place on 20.06.1998, but the complaint lodged after two days on 22.06.1998. Further, the FIR reached the Court after seven days, and all documents and materials reached the Court after 6½ years, and no proper explanation given by the prosecution.

7. P.W.1, the brother of the victim, admits that he was informed about the incident by his sister. Further, he states that the victim is now married another person of her choice and he has no relationship with his sister presently. He also states that he does not know where the victim is presently residing.



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P.W.2, neighbour, not supported the case of the prosecution. P.W.4, mother of the victim, admitted she was informed about the incident by P.W.3. She further stated that her daughter had produced torn blouse to the police, but police not taken any action.

8. P.W.5, relative of the victim, admits that he came to know about the alleged incident only after he returned from Dubai in December 1998. P.W.6, another relative of the victim, not supported the case of the prosecution. P.W.11, witness for the Observation Mahazar and Rough sketch, admits that there was no light at the scene of occurrence, and that the place was bushy and thorny and that it is situated far away from the town. P.W.12, witness, states that he had seen the victim coming crying, after the incident; however, he admits he was examined by the police 16 days after the incident. P.W.13, Head Constable who registered the FIR, confirms that the FIR reached the Court with a delay of seven days. Further, he admitted that there were contradictions in the statements given by the victim, further victim had given exaggerated and inconsistent versions. The victim had stated that she sustained injuries on her chest near the breast and on her private parts and that her dress was torn. However, P.W.8, the Doctor who examined the victim two days after the alleged occurrence, recorded that no nail marks, injuries found either on the private



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parts or on the body of the victim. Thus, the medical evidence does not corroborate the version of the victim.

9. P.W.10, Inspector of Police who examined the witnesses during the course of investigation, stated that one Mohandoss was deputed to assist the investigation and that he had subsequently passed away. This witness confirmed the contradictions and exaggerations in the statements given by P.W.1. In this case, the denial of marriage has been exaggerated and projected as if the appellant committed rape on the victim. It is seen that the allegation is that the appellant had given a false promise of marriage.

10. The learned Government Advocate (Crl.Side) strongly opposed the contention by the appellant and submitted that P.W.3 is the victim, who had gone to take bath near the Kuttaiyankulam well at about 8.00 p.m, which is in an isolated place. Taking advantage of the remoteness and darkness, the appellant followed the victim, watched her taking bath and thereafter, when she came back, dragged her into the bushes, removed her clothes, when resisted, promised to marry her and committed rape on her. Thereafter, the victim came out crying. P.W.12 saw the victim coming crying, when victim enquired she informed P.W.12 forcible rape committed by the appellant. P.W.3 went to house



crying and informed her parents. On the next day, her parents, along with family members and villagers, went to the house of the appellant, enquired his parents and demanded marriage be performed. In fact, a village panchayat was also held. However, the family members of the appellant refused to consent for marriage. Thereafter, P.W.3, along with her parents, went to the police station and lodged the complaint.

11. P.W.13, the Head Constable, received the complaint and registered FIR in Crime No.275 of 1998 on 22.06.1998, which was marked as Ex.P8. Since the regular Inspector of Police was on leave, incharge Inspector who took up investigation. He visited the scene of occurrence, prepared observation mahazar and rough sketch, examined the victims and other witnesses and recorded their statements. The victim was sent for medical examination and the Doctor examined her and opined that the rape had been committed on the victim. The accused fled to abroad and therefore, the investigation could not be completed immediately due to his non-availability. After lapse of 6 ½ years, the accused returned and he was arrested and produced for medical examination. P.W.8 examined the appellant, issued potency certificate, which is marked as Ex.P3. After collecting the medical records and other documents, P.W.1 to P.W.14 examined and Ex.P1 to Ex.P8 marked in this case. P.W.3, the victim,



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narrated how she was dragged into the bushes and forcibly raped, which is corroborated by the medical evidence. The Trial Court, on appreciation of the oral and documentary evidence, convicted the appellant.

12. Considering the submissions made on either side and on perusal of the materials on record, it is seen that P.W.3 is the victim in this case. On 20.06.1998, at about 8.00 p.m. she had gone to take bath near the Kattaiyankulam well. After bath, when she was returning, the appellant, who following her, dragged her and pushed her into the bushes and committed rape on her. Further promised to marry her and later refused to marry. The appellant was keeping eye on the victim for more than six months, followed her and proposed love and promised to marry her. In this case, the occurrence taken place on 20.06.1998 but complaint lodged on 22.06.1998 with two days delay. However, the said delay explained by the prosecution stating that family members of the victim and villagers attempted for a compromise, by persuading the appellant to marry the victim, which was refused and thereafter, the complaint lodged. Hence, two days delay.

13. In this case, P.W.4, mother of the victim, and P.W.1, brother of the victim, both were informed about the incident by P.W.3. The victim, in her



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evidence, states that she sustained injuries on her chest, nail marks and injuries on her private parts and that there was bleeding due to forcible rape committed by the appellant. P.W.1 and P.W.4 corroborated the version of the victim with regard to the alleged injuries. However, P.W.9, Doctor who examined the victim on 22.06.1998, in her medical report Ex.P4, records there is no nail marks and no injuries either on the private parts or on the breast of the victim. Further there was no sperm or discharge found on the victim. The medical evidence confirms no force used and no injuries caused. The victim a major at the relevant point of time. The evidence on record shows that the victim and the appellant were in love relationship for some time. Later, the appellant refused to marry her and there was panchayat, which is spoken by other witnesses.

14. From the evidence and materials on record, it is seen that it is the case of false promise to marry. Both appellant and P.W.3 victim were in love and close relationship which is the admitted position. There is delay at each stage of the case, delay in lodging the complaint, delay in forwarding the FIR to the Court. Further, there is an unexplained delay of nearly 6 ½ years in the progress of the case, and no proper explanation given by the prosecution. From the above facts and circumstances of the case, it cannot be a case of rape. The ocular evidence contra to the medical evidence and evidence of P.W.3 suffers



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from contradictions and exaggerations becomes highly doubtful. In such circumstances, it would be improper to convict the appellant for the offence under Section 376 of IPC. It is not in dispute both appellant and the victim are majors and were in a consensual relationship. The appellant earlier promised to marry the victim, but subsequently, failed to marry the victim and hence the above case.

15. Considering the facts and circumstances of the case, the conviction of the appellant under Section 376 is set aside and is modified to one under Section 417 of IPC. It is seen that the appellant was in custody from 06.01.2018 to 18.06.2018 i.e., as convict, earlier as undertrial for a short period. Accordingly, the sentence for the offence under Section 417 of IPC is imposed to the period already undergone by the appellant.

16. In the result, this Criminal Appeal stands partly allowed.

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Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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To

- 1.The Mahila Court,
Perambalur.
- 2.The Inspector of Police,
Kunnam Police Station,
Perambalur District.
- 3.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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