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Order QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.11.2026

PRONOUNCED ON : 11.11.2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No. 545 of 2022

CNR:{HCMA010820112022}

Case QR

Thakapillai
S/o Ramasamy, Marriyamman Koil Street,
New Colony, Parigam Village,
Chinnasalem Taluk.

..Appellant(s)

Vs

State Rep By
The Inspector Of Police,
All Women Police Station, Kallakuruchi,
Villupuram.
(Crime No.03/2017)

..Respondent(s)

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, against the conviction of the appellant/sole accused and sentence imposed on him in S.C.282 of 2017 dated 21.04.2022 on the file of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram and set aside the conviction and sentence and allow this appeal.

For Appellant(s): Mr. V. Krishnamoorthy
for Mr.V.Gunasekar

For Respondent(s): Ms. Sharada Vivek
Additional Public Prosecutor

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Judgment

This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him for the offences under Sections 376 and 366 of the IPC, vide judgment dated 21.04.2022 in S.C.No.282 of 2017, on the file of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram.

2 (i) It is the case of the prosecution that the accused, aged about 30 years and the victim, aged about 55 years, are known to each other; that the accused had promised the victim that he would secure a sweeper's job in any Government department; that on the said promise, on 21.01.2017 at about 7.00 p.m., he went to the house of the victim and after the victim's son left the place, he called the victim by stating that he would take her to meet a person who would give her a job; that he took her in a bike to a remote place (a pit), which is two kilometers away from her house and committed rape; and that thereafter, he threatened her of dire consequences, if she disclosed it to anyone else.

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(ii) It is the further case of the prosecution that after committing rape, the accused abandoned her; that when the victim was walking alone, PW8 met her and after she had narrated the occurrence, he dropped her at her residence; that thereafter, the victim told the other neighbours, including her sons, about the act of the accused; that a complaint was lodged against the accused to the respondent police, the next day morning at about 8.00 a.m.

(iii) On the complaint [Ex.P1] given by the victim [PW1], an FIR [Ex.P8] was registered in Cr.No.3 of 2017, against the accused for the offence under Section 376 of the IPC, by the Inspector of Police [PW17]. The investigation was conducted by PW17, the Inspector of Police, who, subjected the victim to medical examination and on completion of investigation, filed the final report against the accused for the offences under Sections 366, 376 and 341 of the IPC, before the learned Judicial Magistrate No.1, Kallakurichi.

(iv) On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with, and the case was committed to the Court

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of Sessions i.e., Principal Sessions Court, Villupuram and was taken on file as S.C.No.282 of 2017. Thereafter, the case was made over to the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram, for trial. The trial Court framed two charges under Section 366 and 376 IPC against the accused and when questioned, the accused pleaded 'not guilty'.

(v) To prove its case, the prosecution had examined 17 witnesses as P.W.1 to P.W.17 and marked 13 exhibits as Exs.P1 to Ex.P13, besides 2 material objects as M.O.1 and M.O.2. When the accused was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The accused examined himself as DW1 and marked 4 documents as Ex.D1 to Ex.D4, on his side.

(vi) On appreciation of oral and documentary evidence, the trial court found the accused guilty of both the offences and sentenced him as follows:

Sl.No.	***Offence under Section***	***Sentence imposed***
1	376 IPC	To undergo rigorous imprisonment for ten years and to pay a fine of Rs.50,000/- in default to undergo

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Sl.No.	*Offence under Section*	*Sentence imposed*
		simple imprisonment for three months.
2.	366 IPC	To undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for one month.
The sentences were directed to run concurrently.		

Hence, the accused has preferred the instant appeal challenging the said conviction and sentence.

3 (i) The learned counsel for the appellant would submit that the appellant has been falsely prosecuted; that the victim's version that she was promised a Government job is opposed to common sense, inasmuch as a lady of that age (55 years) would not be given a Government job; that the evidence of PW8 and other witnesses do not inspire confidence; that there was no reason for the delay in lodging the complaint; and that the medical evidence would show that there were no signs of sexual assault on the victim.

(ii) The learned counsel for the appellant would further contend that the defence had established that the appellant had lodged a complaint against the victim's close relative and since the appellant had refused to

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turn hostile in that case, the victim had lodged a false complaint. He pointed out to the evidence of DW1 and Ex.D1 to Ex.D4 and prayed for setting aside the impugned judgment.

4. The learned Additional Public Prosecutor, *per contra*, would submit that the evidence of the victim is cogent and convincing; that the evidence of the victim is corroborated by the evidence of her sons and other neighbours who came to know of the occurrence; that the delay in a case of this nature would not be fatal to the prosecution case, as it is not unusual for a victim who was aged about 55 years to discuss with her relatives before lodging a complaint; and that the medical evidence is not conclusive and merely because there is no definite medical evidence, the victim's evidence cannot be disbelieved. Therefore, she submitted that the impugned judgment does not suffer from any infirmity whatsoever and prayed for dismissal of the appeal.

5 (i) As stated above, the prosecution had examined 17 witnesses. PW1 is the victim and the defacto complainant. PW2 is the brother-in-law of the victim and the neighbour of the appellant, who had seen the victim

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going with the appellant in the bike at 7.15 p.m., and heard about the occurrence from the victim. PW3 is the nephew of the victim. He also had seen the victim going with the appellant at 7.15 p.m. PW4 is another nephew of the victim and he also had seen the victim going with the appellant at 7:30 p.m. PW5 is the son of the victim and deposed that the appellant came to his house on 21.01.2017 and handed over a calendar, and when he went to keep the calendar in his house, the victim went along with the appellant. PW6 is another son of the victim and is a hearsay witness.

(ii) PW7 is the witness to the seizure mahazar [Ex.P4]. PW8 is the witness with whom the victim is said to have returned to the house. PW9 is related to the victim and belongs to the same village. She is a hearsay witness. PW10 is the sister of the victim and speaks about the lodging of the complaint. PW11 is another relative who states that she saw the victim going with the appellant on 21.01.2017. However, in the cross-examination, she would state that she had not seen the victim going with the appellant. PW12 is the witness to the seizure mahazar [Ex.P5].

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(iii) PW13 is the Head Constable who had taken the victim to the hospital. PW14 is the Head Constable who had taken the appellant from the jail for medical examination. PW15 is the doctor who had issued potency certificate [Ex.P6] to the appellant. PW16 is the doctor who had examined the victim and had issued a medical examination report [Ex.P7]. PW17 is the Inspector of Police who conducted the investigation and filed the final report.

6. The prosecution case insofar as the offence of rape rests on the sole testimony of the victim. The fact that the victim went with the appellant on a bike at 7.15 p.m. on 21.01.2017 is spoken to by PW2, PW3, PW4, PW5 and PW11. All the witnesses are closely related to the victim.

7. As stated above, PW2 is the brother-in-law; PW3 is the nephew of the victim; PW4 is another nephew of the victim; PW5 is the son of the victim, PW11 is the nephew of the victim. All of them have uniformly stated that they saw the victim and appellant going on a bike between 7.15 p.m. and 7.30 p.m., on 21.01.2017. The victim in her cross-

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examination would state that between 7.00 p.m. and 8.00 p.m., on the date of occurrence she was at home and it was only thereafter, the appellant took her on a bike and she returned home within ten minutes. Thus, there is a contradiction with regard to when the appellant took the victim from her house. If viewed in isolation, this contradiction by itself would not discredit any of the witnesses.

8 (i). Be that as it may. The victim had deposed in her evidence that after the offence of rape, while she was returning alone from the place of occurrence, PW8-Annamalai saw her; that she informed PW8 about the occurrence; and that thereafter, PW8 dropped her back home. The version of PW1 in her complaint [Ex.P1] is that she knew PW8 earlier. However, PW8's evidence is contrary to the evidence of PW1 inasmuch as he had stated that PW1 was a stranger to him. The relevant portion of PW8's evidence reads as follows:

> “mg;nghJ ,ut[Rkhu; 7/30 kzp ,Uf;Fk; muir kuj;ij nehf;fp brd;nwd;/ nfhKfp nlk; mUfpy; ,Ue;j xj;j murkuj;ij nehf;fp ehd; tz;oapy; brd;wnghJ xU bgz; fj;jpf;bfhz;nl Xote;jhu;/ ehd; tz;oia epWj;jp nfl;lnghJ jk;gp ehd; tpUj;jhk;ghs; vd;Wk;. jhfg;gps;is jd;id bfLj;Jtpl;ljhft[k; Twpdhu;/”

(ii) PW8 reiterates this version in the cross examination and the

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relevant portion reads as follows:

> “m/rh/1 brhy;yp jhd; mtu; bgau; vdf;F bjhpa[k; vd;W Kjy; tprhuizapy; brhy;ypa[s;nsd; vd;why; Vw;fdnt mtu; bgau; vdf;F bjhpa[k;/ xnu fl;rpapy; ,Ue;J. vjphpapd; kidtp bgau; bjhpahjh vd;why; bgz;fs; bgau; vdf;F bjhpahJ/ rk;gt njjpapy; neuk; vd;d ,Uf;Fk; vd;why; Rkhu; 7. 7/30 kzp ,Uf;Fk;/ rhpahd neuk; vdf;F epidtpy;iy/ ehd; vf;!;vy; tz;oapy; te;njd;/ mtu; me;j neuj;jpy; vd;d nriy mzpe;Jte;jhu; vd;why; mtu; gjl;lkhf Xote;jtiu ahuk;kh vd;W nfl;lt[ld; bgaiu brhd;dhu;/”

(iii) However, he would specifically state that PW1 was not related to him. This is contrary to the evidence of PW3 and PW4, who are the nephews of the victim. Both of them had stated that Annamalai [PW8] was their uncle. The relevant portion of PW3's evidence in the cross examination reads as follows:

> “rhl;rp mz;zhkiyia bjhpa[k;/ mtu; vdJ khkh/”

(iv) Similarly, PW4's evidence in the cross examination reads as follows:

> “rhl;rp mz;zhkiy vdf;F khkh/”.

(v) Likewise, the son of the victim [PW5] would also say that PW8 was his uncle. The relevant portion of PW5's evidence in the cross

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examination reads as follows:

“rhl;rp mz;zhkiy vd; khkh Mthu;/”

(vi) The victim herself would state that PW8 was a close relative. That being the case, the version of PW8, that he was not related to PW1 raises a suspicion.

9. It is the specific case of the defence that PW8, on account of certain political rivalry, was instrumental in lodging this complaint against the appellant. When it is the version of the victim and all her close relatives, viz., PW3, PW4 and PW5, that PW8 was closely related, there is no reason why PW8 had denied that relationship. In fact, his evidence that when he saw the victim, he stopped the vehicle and asked for her name, also appears to be artificial.

10 (i) The complaint was lodged the next day at about 8.00 a.m. before the respondent police. In the complaint, there is no reference to lodging of any other complaint. The explanation offered by PW1 that she consulted her children before lodging the complaint is unbelievable, more so because PW1 herself in the cross-examination has stated that

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immediately after the occurrence, at about 7.30 p.m, they went to another Police Station at Kachirapalayam and lodged the complaint. PW2 and PW3, the brother-in-law and the nephew of the victim, respectively, would state that they went to the Kachirapalayam police station on the same evening. PW5, son of the victim, would not state about going to the Kachirapalayam police station. It is not known as to why the Kachirapalayam police had not registered any FIR. Even assuming that the Kachirapalayam police refused to register the FIR and directed the witnesses to All Women Police Station at Kallakurichi, there is no explanation by the witnesses as to why they had not immediately gone to the All Women Police Station at Kallakurichi and lodged the complaint.

(ii) The cross-examination of these witnesses, viz., PW1, PW2, PW3 and PW5, would reveal the fact that the delay in lodging of the complaint is unexplained and the earliest complaint at Kachirapalayam police station has been suppressed. In fact, the investigating officer [PW17] in the cross-examination denies knowledge of any complaint lodged by the witnesses to Kachirapalayam police station.

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11 (i) The doctor [PW16], who examined the victim [PW1] and had issued the medical examination report [Ex.P7], has stated in the said report, as follows:

> "Report:
>
> 1. From the clinical examination and investigations, it cannot be ascertained that she is sexually assaulted.
> 2. A hair like approx.1.5cm and 0.5 cm abrasion fresh. But this cannot be co-related with a sexual assault alone.
> 3. Victim is having fresh wound but in the external genial region but it cannot be co-related to a sexual assault alone."

(ii) The evidence of the doctor [PW16], therefore, suggests that sexual assault could not be ascertained and the injuries found on the victim cannot be correlated to a sexual assault. The doctor confirms the said fact in her deposition and would state as follows in the cross-examination as follows:

> "vd;dplk; nfl;fg;gl;l K:d;W nfs;tpfSf;Fk;. td;g[zu;r;rp ele;jjhf brhy;y KoahJ vd;W bjhptpj;Js;nsd; vd;why; rhpjhd;/"

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(iii) In fact, to a question put by the Court, the doctor [PW16] had answered that the injuries sustained by the victim could have been sustained during a sexual assault, which is contrary to his subsequent admission in the cross-examination. Further, the doctor had also found that the vaginal smear and swab did not contain any traces of sperms. The doctor had stated that the victim told her that there was no ejaculation by the appellant.

12. The medical examination of the victim was conducted at 5:30 p.m., on 22.01.2017. The complaint is said to have been lodged at 8.30 a.m., on 22.01.2017 and the investigating officer [PW17] has stated that the victim was immediately subjected to medical examination. The doctor [PW16] in the report [Ex.P7] has clearly stated that the victim was examined only at 5.30 p.m., on 22.01.2017. There is no explanation for this delay as well. The FIR was sent to the Court only on 23.01.2017 at

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6:30 p.m. Therefore, the prosecution case that the complaint was lodged at 8:30 a.m. on 22.01.2017 is also doubtful.

13. From the above discussion, it would be clear that PW8, who is accused of making a false allegation against the appellant, for reasons best known to him had denied his relationship with PW1, which is contrary to the record. The medical evidence does not corroborate the version of PW1 as regards the alleged sexual assault. The complaint was lodged with a huge delay of nearly 12 hours and the FIR and the complaint was sent to Court only on the next day. Even assuming that the complaint was lodged at 8.30 a.m., there was no reason for the belated medical examination of the victim, as in a case of this nature, the examination at the earliest possible time would be necessary to ascertain the truth.

14. The victim in her deposition would state that she had handed over the clothes that she wore at the time of the occurrence to the investigating officer [PW17]. However, in her evidence PW17 would

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state that the victim had told her that she had washed the clothes the same evening. Yet another important material in an offence of this nature has not been collected by the prosecution and the explanation offered by PW17 is contrary to the evidence of PW1 on this aspect.

15. The appellant had examined himself as DW1 and would state that he was attacked by close relatives of the victim in the year 2006, that his fingers were cut and a Sessions Case for the offence under Section 307 IPC is pending trial against the victim's close relatives. He had marked Ex.D1 to Ex.D4 to substantiate his version. Ex.D1 is the FIR dated 21.06.2006 in Cr.No.170 of 2006 on the file of Kachirapalayam Police Station. Ex.D2 is the Accident Register. Ex.D3 is the final report filed against the accused therein [relatives of the victim herein] in the complaint lodged by the appellant. Ex.D4 is the printout of the case history, pending on the file of the learned IX Additional Sub Judge, Kallakurichi. The case was posted on 03.01.2017 for evidence and again on 06.02.2017. It is the version of the appellant that on 21.01.2017, between the two hearings, the victim and her son Sundaramurthy [PW6], approached him to turn hostile in the said case and when he refused, this

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complaint had been lodged. The prosecution had cross-examined the appellant and tried to establish that the case was totally unrelated to this occurrence. However, in the cross-examination, appellant reiterated that the accused therein were the sons of one Kindal @ Ramaswamy, who was related to the victim as in-laws of one of her children (rk;ge;jp)/

16. Therefore, in the light of the fact that no independent witnesses had seen the appellant and the victim going together at 7:15 p.m., on 21.01.2017; the evidence of the doctor [PW16], which suggests that there is nothing to indicate sexual assault; the delay in lodging of the complaint; the suppression of the earlier complaint given to Kachirapalayam police station on the same day; the appellant who was examined as DW1, has not been discredited; and the false evidence of PW8, denying the relationship with PW1, this Court is of the view that it would be highly unsafe to hold the appellant guilty on the sole testimony of the victim, which does not inspire confidence. Hence, for all the aforesaid reasons, this Court is of the view that the impugned judgment holding the appellant guilty of the offence is liable to be set aside.

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17. In the result, this Criminal Appeal is allowed. The conviction and sentence passed in S.C.No.282 of 2017, dated 21.04.2022 on the file of learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram, are set aside. The appellant is acquitted of all the charges. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

11.11.2026

Index : yes/no
Speaking /Non-speaking order
Neutral citation : yes/no

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To

1. The Sessions Judge,
   Magalir Neethi Mandram,
   (Fast Track Mahila Court), Villupuram

2. Inspector of Police,
   All Women Police Station,
   Kallakurichi, Villupuram.

3. The Public Prosecutor,
   High Court, Madras.

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Order QR

SUNDER MOHAN J.

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Pre-delivery judgment in
CRL A No. 545 of 2022

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