



Crl.A.No.845 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.11.2025

PRONOUNCED ON : 12.01.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.845 of 2018

Kumar

... Appellant

Vs.

State by
The Inspector of Police,
All Women Police Station,
Pennagaram,
Dharmapuri District.
(Crime No.13 of 2015)

... Respondent

PRAYER: Criminal Appeal is filed under Section 374(2) of Code of Criminal Procedure, to set aside the conviction and sentence imposed on the Appellant herein in S.C.N.o.51 of 2016 by judgment dated 11.12.2018 passed by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, Dharmapuri District and acquits the appellant herein from all charges.

For Appellant : Mr.K.Srinivasan, Senior Counsel for
Mr.M.R.Jothimanian

For Respondent : Mr.Leonard Arul Joseph Selvam,
Additional Public Prosecutor assisted by
Ms.Harshana.T



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JUDGMENT

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The appellant was convicted *vide* judgment dated 11.12.2018 in S.C.No.51 of 2016 by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri (trial Court) and sentenced to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.5,00,000/- (Rupees five lakh only) as compensation to the victim/PW2 by the appellant within one month from the date of judgment as per Section 357(3) of Cr.P.C. Challenging the same, present Criminal Appeal filed.

2.Case of the prosecution is that PW2, a deaf-dumb is the victim and PW1 is her mother. On 18.11.2015 at 05.00 p.m., the victim/PW2 went to Kaveriyappa mango grove to collect orchid for tying garland, at that time, the appellant pulled her, forcibly took her into mango grove, pulled her down and committed rape. The victim/PW2 a deaf-dumb girl suffered with pain cried for help, came home, found mother not available unable to disclose and explain to others. She was living with her blind grandmother. From 18.11.2015 to 27.11.2015, the victim's mother/PW1 was in Bangalore since she was sick and taking treatment. When PW1 came back on 27.11.2015, the victim/PW2 cried and disclosed the incident. Thereafter, PW1 along with her relatives went to the appellant's house and questioned him, but he denied. Then, a village



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panchayat held where the appellant refused to marry the victim/PW2, thereafter, PW1 along with her relatives went to the respondent Police Station and lodged a complaint (Ex.P1) to PW13, who registered FIR (Ex.P18) for offence under Section 376 IPC on 28.11.2015 at 10.00 a.m, took up investigation, visited the scene of occurrence at 12.00 noon, prepared Observation Mahazar, Rough Sketch (Ex.P19) in presence of PW12 and another, on the same day, at about 02.30 p.m., arrested the appellant in presence of PW7 & PW8. Thereafter, the statement of victim/PW2 recorded at about 04.30 p.m., in presence of PW4, a Teacher from Deaf-Dumb Government School, Elakiyampatti. The victim/PW2 produced before Doctor/PW5, Government Hospital, Dharmapuri, who examined the victim and gave Accident Register (Ex.P3) and Medical Report (Ex.P4) confirming the evidence of sexual intercourse. The appellant produced for medical examination and the Doctor/PW6 examined the appellant and gave report (Ex.P7).

3.PW1 and PW2 both appeared before PW9, Judicial Magistrate, Pennagaram and gave statements (Exs.P8 & P13) under Section 164(5) Cr.P.C. Ex.P13, the statement of the victim recorded in presence of PW11, a Qualified Teacher holding diploma in Special Education in hearing-impaired and



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working as Teacher in Deaf-Dumb Government School, Elakiyampatti. On collecting evidence and materials, the Investigating Officer altered Section from 376 IPC to 376(i) IPC by alteration report (Ex.P20) on 09.01.2016 and charge sheet filed before the trial Court.

4.During trial, the prosecution examined PW1 to PW13, marked Exs.P1 to P20, no material objects produced. On the side of defence, no witness examined and no document marked. On completion of trial, the trial Court convicted the appellant as above.

5.Learned Senior Counsel for the appellant submitted that in this case, PW2 is the only witness to speak about the occurrence proper. The victim claims that on 18.11.2015 at 05.00 p.m., she went to Kaveriyappa mango grove to collect orchid for tying garland, at that time the appellant forcibly took her into mango grove, pulled her down and committed rape, but the victim not disclosed the incident immediately to her grandmother, relatives and to others who are residing nearby. The victim in her statement (Ex.P2) stated that her dress was torn and blood was oozing out from her private parts and she was suffering from pain, but for nine days she kept quite and only on 27.11.2015 when her mother/PW1 came back from Bangalore, she disclosed



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the incident. In this case, PW1, who claims to have treatment in Bangalore, but not produced any materials with regard to her stay and treatment in Bangalore. On the other hand, PW1 stated that on 27.11.2015 when she came back, the victim informed the incident, thereafter, she along with her relatives went to appellant's house, called for panchayat and panchayat held. PW7/brother of PW1's husband confirms holding of panchayat and the appellant was asked to marry the victim which he refused, thereafter only complaint lodged on 27.11.2015. On 28.11.2015 the Inspector/PW13 registered the complaint (Ex.P1), took up investigation. The specific evidence of PW2 is that her torn dresses handed over to the respondent Police, but in this case, no such materials produced.

6.He further submitted that in this case, the evidence of PW1 & PW2 are contradictory to each other and also contradictory to medical evidence, hence, the evidence of PW2 becomes highly doubtful. PW2 conveniently in her evidence not given any particulars as to the date and time of the incident. PW1 contradicts PW2 in all aspects. Admittedly, PW2 was a deaf-dumb with little or no education except she knows to sign her name, she cannot read or write, which is the admitted position. For this reason, assistance of Interpreter from Deaf-Dumb Government School, Elakiyampatti requested. PW3, the



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Headmistress confirms that on the request of the Investigating Officer, she deputed PW4 on 28.11.2015 when the Inspector recorded the statement of victim and one Sagayaraj interpreted PW2's version at the time of recording of evidence before the trial Court and PW11 interpreted PW2's version at the time of recording of 164(5) statement (Ex.P13). Out of three Interpreters, two examined as witness and said Sagayaraj not examined. Admittedly, no oath administered to Sagayaraj or PW11, Christian Buela and there is no certification in Exs.P2 & P11 and Section 119 of Indian Evidence Act, 1872 a mandatory procedure not followed, hence, the statement and evidence of PW2 becomes inadmissible. For this point, the learned counsel for the appellant relied on the decision of the Hon'ble Apex Court in the case of ***State of Rajasthan v. Darshan Singh Alias Darshan Lal*** reported in (2012) 5 SCC 789 wherein the Hon'ble Apex Court held that *“In case the witness is not able to read and write, his statement can be recorded in sign language with the aid of Interpreter if found necessary. In case the Interpreter is provided, he should be a person of the same surrounding, but should not have any interest in the case and should be administered oath”*. Further the proviso to Section 119 of Indian Evidence Act clearly states that the Court shall take the assistance of Interpreter or a Special Educator in recording a statement and such statement shall be video graphed. In this case, both the conditions not followed.



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7.He further submitted that in the absence of any direct evidence, the other mode is to consider the circumstances to prove by circumstantial evidence and the following conditions to be proved. *“In cases involving circumstantial evidence, it is crucial to ensure that the facts leading to the conclusion of guilt are fully established and that all the established facts point irrefutably to the accused person’s guilt. The chain of incriminating circumstances must be conclusive and should exclude any hypothesis other than the guilt of the accused.”* For this point, the learned Senior Counsel relied on the decision of the Hon'ble Apex Court in the case of ***Nusrat Parween v. State of Jharkhand*** reported in ***2024 SCC On Line SC 3686***.

8.Making the above submissions and relying upon the decisions the learned Senior Counsel reiterated that in this case, no oath administered to the Interpreters namely PW4 & PW11, evidence recorded without any signs and gestures and no video recording of proceedings, thus, the conditions as per Section 119 of Indian Evidence Act, 1872 not followed and in corollary the prosecution failed to prove its case, hence, he prays for acquittal.

9.Learned Additional Public Prosecutor appearing for the respondent Police submitted that in this case, the victim/PW2 is a deaf-dumb aged about



20 years on the date of occurrence. On the fateful day *i.e.*, on 18.11.2015 at 05.00 p.m., the victim went to Kaveriyappa mango grove to collect orchid for tying garland. When the victim coming back home, the appellant, who was in a drunken state, forcibly dragged the victim into mango grove, removed her clothes and committed rape despite her resistance. The victim's mother/PW1 had gone to Bangalore for medical treatment from 18.11.2015 to 27.11.2015. On 27.11.2015 when she came back, her daughter/victim cried and informed the rape committed by the appellant. The victim's mother/PW1 went to respondent Police Station and lodged the complaint (Ex.P1) to PW13 who received the complaint (Ex.P1), registered FIR in Crime No.13 of 2015 for offence under Section 376 IPC on 28.11.2015 at 10.00 hours, took up investigation, visited scene of occurrence, prepared Observation Mahazar, Rough Sketch (Ex.P19) in presence of PW12 at 12.00 noon, arrested the appellant at 02.30 p.m in presence of PW7 & PW8, confession statement (Ex.P9) recorded. Thereafter, PW3, Headmistress of Deaf-Dumb Government School, Elakiyampatti was requested to send an Interpreter/PW4. In presence of PW4, the victim/PW2's statement recorded. Thereafter, victim sent for medical examination, PW5/Doctor on the same day at 07.20 p.m., examined the victim and gave Accident Register (Ex.P3) and Medical Report (Ex.P4) confirming the evidence of sexual intercourse. The appellant produced before



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the Doctor/PW6 for examination who examined the appellant and gave a report (Ex.P7) confirming the appellant was a potent person. PW1 & PW2 produced before the Judicial Magistrate, Pennagaram/PW9 on 14.12.2015, their statements under Section 164(5) of Cr.P.C recorded. Ex.P8 is the statement of PW1 and Ex.P13 is the statement of victim/PW2 recorded with the aid of Interpreter/PW11 who certified the same. Thereafter, vaginal swap sent for forensic examination, PW10/Scientific Officer examined the same and gave report (Ex.P14). PW11 a qualified Interpreter, to confirm the same, Ex.P15 produced. On conclusion of investigation, Section altered from 376 IPC to 376(i) IPC by alteration report (Ex.P20) and charge sheet filed before the trial Court. During trial, PW1 to PW13 examined and Exs.P1 to P20 marked. The trial Court finding that the statement and evidence of victim/PW2, a deaf-dumb girl consistent right from the beginning, supported with the medical evidence and other materials, rightly convicted the appellant. Apart from the jail sentence, the trial Court ordered compensation of Rs.5,00,000/-, the appellant's suspension of sentence petition considered on 02.01.2020 and the order passed by this Court in Crl.M.P.No.12870 of 2019 and the appellant deposited Rs.2,00,000/-, the balance compensation is yet to be deposited. He further submitted that Indian Evidence Act, 1872 is only a procedural law in disposition of criminal cases. When the victim's statement is



clear, categorical and inspires confidence, then the evidence of sole witness can be acted upon and conviction can be sustained. The trial Court analyzed the evidence and materials and rendered a detailed judgment which needs no interference, hence, prayed for dismissal of appeal.

10.Considering the rival submissions and on perusal of the materials, it is seen that the victim is a deaf-dumb girl aged about 20 years on the date of occurrence. The victim in her statement under Section 164(5) Cr.P.C., (Ex.P13) recorded on 14.12.2015 and in her evidence before the trial Court clearly deposed the family background and her health impediment as deaf-dumb, on the fateful day she went to Kaveriyappa mango grove to collect orchid for tying garland, at that time, she was forcibly taken to mango grove by the appellant and the appellant committed rape on her. But the victim had not given specific date of occurrence both in Ex.P13 and in her evidence. PW1/mother of the victim in her statement under Section 164(5) Cr.P.C., (Ex.P8) and in her evidence stated that from 18.11.2015 to 27.11.2015 she was in Bangalore taking treatment and when she came back to native on 27.11.2015, the victim/PW2 informed the rape committed by the appellant. In Ex.P8, PW1's statement is that on 18th November when she came back home, the victim found crying, on enquiry, she informed that the appellant, a Driver



of Backhoe Loader, committed rape on her and also identified the appellant.

But in her evidence before the trial Court, PW1 stated that the victim was raped by the appellant on 27.11.2015. Since the victim/PW2 in her earlier statement and in her evidence has not given the exact date of rape, the contradiction of date as per evidence of PW1/mother gains significance, causing serious doubt on the date of occurrence proper.

11. In this case, the complaint (Ex.P1) received on 28.11.2015 and FIR (Ex.P18) in Crime No.13 of 2015 registered on the same day at 10.00 a.m. PW1's evidence is that she went to the Police Station on 27.11.2015, since the Inspector was not there, her complaint registered on the next day *i.e.*, on 28.11.2015. The evidence of PW3, Headmistress of Deaf-Dumb Government School, Elakiyampatti is that on 28.11.2015 at 01.00 p.m. the Police gave requisition for Interpreter knowing deaf-dumb sign language and PW3 was also present when PW4, a Deaf-Dumb Teacher interpreted PW2's disclosure. From the report (Ex.P2) given by PW4, it is seen that on 28.11.2015 at 04.30 p.m. the victim brought to Deaf-Dumb Government School, Elakiyampatti where the victim was able to write her name alone, nothing more. It is seen from the report (Ex.P2) that the victim disclosed that on 18.11.2015 the occurrence had taken place at 05.00 p.m in mango grove and the appellant's



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name with father's name given. Further there is a reference of blood oozing out from the victim's private part. Since her mother was not available on 18.11.2015, she waited for her mother who came back on 27.11.2015 from Bangalore and thereafter, informed about the act of the appellant. Admittedly, the victim/PW2 was living with her grandmother and her Aunt residing nearby who used to come daily to provide food and other relatives are also residing. It is strange to see the victim not informed to any one till her mother came back on 27.11.2015 and that too when the victim claims blood oozing from private part.

12.In this case, after registration of FIR (Ex.P18) on 28.11.2015, PW13 visited the scene of occurrence, prepared Observation Mahazar, Rough Sketch (Ex.P19) on the same day, after recording the victim's statement (Ex.P2), the victim sent for medical examination at 07.20 p.m. The Doctor/PW5 examined and issued Accident Register (Ex.P3) and Medical Report (Ex.P4). From the medical report (Ex.P4), it is seen that '*hymen is not intact, admits one finger and evidence of sexual intercourse found*' but nothing about any traces of injury in the private part found.



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13. Admittedly, PW1 is an illiterate person, she confirms that she does not know to read or write Tamil and the complaint (Ex.P1) was written by an elderly person present near the Police Station and she signed the complaint (Ex.P1). There is serious doubt cast as regards date of incident whether the victim was subjected to rape on 18.11.2015 or 27.11.2015. The victim in her statement (Ex.P13) clearly disclosed rape committed and identified the appellant.

14. In this case, admittedly, there is delay in lodging the complaint (Ex.P1). The appellant's contention is that the appellant approached for marriage of victim's sister which was refused, but the victim family members forced the appellant to marry the victim and the appellant refused. For this reason, the appellant falsely implicated and he was forced and threatened to marry the victim, hence, the appellant lodged a complaint to Nalanahalli Police Station. Though the appellant took such stand, no further steps taken to produce any materials to substantiate his defence.

15. The evidence of PW2 is in the nature of question and answer. In this case, PW3, PW4 & PW11 confirmed that the victim was a deaf-dumb and with the aid of PW4, the victim's statement (Ex.P2) recorded by the Police and with



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the aid of PW11, the victim's statement under Section 164(5) Cr.P.C (Ex.P13) recorded by PW9. The trial Court while recording the evidence of the victim/PW2 after oath put preliminary questions, found the victim was understanding the question and capable of giving evidence. In abundant caution, to rule out any doubt, an Interpreter one Mr.Sagayaraj summoned and in his presence, the victim's evidence recorded. Mr.Sagayaraj certified to this effect. From the evidence of witnesses it is seen that questions put by the prosecution as well as defence side were translated in sign language by Mr.Sagayaraj, thereafter, the evidence recorded.

16.During trial the appellant raised objection citing Section 119 of Indian Evidence Act, 1872 not followed. The trial Court considering the objection referring to proviso to Section 119 of Indian Evidence Act, 1872 held that Section 119 can be invoked if the witness is unable to communicate verbally and recorded the evidence, but not videographed.

17.The contention of the learned Senior Counsel for the appellant is that as per Section 119 of Indian Evidence Act, 1872, witness who is unable to communicate verbally, record the evidence in any other manner in which he/she can make it intelligible by writing or by signs but such writing must be



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made in open Court and the evidence shall be deemed to be oral evidence. But in this case, there is no recording of signs and gestures. As per proviso, when an assistance of an Interpreter or a Special Educator in recording the statement is taken, then such statement shall be video graphed. In this case, neither there is reference to any signs and gestures nor recording of the statements video graphed, hence the evidence of the victim/PW2 becomes inadmissible. If the evidence of the victim/PW2 is discarded, then there is no other material against the appellant for the charge of rape.

18.The evidence of victim's mother/PW1 is that on 18.11.2015, the victim informed the incident as per her statement (Ex.P8) under Section 164(5) Cr.P.C. But in her complaint (Ex.P1), she stated that from 18.11.2015 to 27.11.2015, she was in Bangalore and after she reached back home on 27.11.2015, the victim informed about the rape committed by the appellant. PW4/Interpreter's report (Ex.P2) is that the victim disclosed she was subjected to rape by the appellant on 18.11.2015. Further, the evidence of PW3 & PW4 is that the victim on 28.11.2015 brought to the Deaf-Dumb School where her initial statement recorded. On the contrary, the evidence of victim's mother/PW1 and Investigating Officer is that the victim never taken to the Deaf-Dumb School. Thus, there is serious doubt with regard to recording of



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first statement.

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19.PW1 admits that a panchayat held in the temple but the appellant not participated which is confirmed by PW7, brother of PW1's husband. Thus, the contradiction whether the incident had taken place on 18.11.2015 or 27.11.2015 cannot be brushed aside and the origination of the case becomes doubtful.

20.In this case, admittedly, PW4 and PW11 are the interpreters, who interpreted the disclosure of PW2/victim. PW4 interpreted when the victim was examined by the Investigating Officer/PW13 at the first instance and PW11 when the victim's statement under Section 164 of Cr.P.C. recorded by the Judicial Magistrate/PW9. Further one Mr.Sagayaraj, another interpreter, interpreted the victim's evidence during trial. In this case there is nothing to show that PW11 and Mr.Sagayaraj both administered oath before interpretation.

21.Added to it, in none of the statements of the victim recorded, there is any reference to the sign and gestures made, which is an important factor to be recorded to give credence to interpretation when witnesses unable to communicate verbally while recording the statements. Further as per proviso



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to Section 119 of Indian Evidence Act, 1872, the condition is that when the assistance of an interpreter or a Special Educator is taken while recording the statement of such witnesses, such statement shall be videographed. In this case no videograph recorded. Thus the condition precedent before considering and acting upon the evidence of verbally disabled person not followed. Thus, no conviction can be sustained primarily on the evidence of the victim/PW2.

22.Now alternatively looking at the attendant circumstances to see whether the case is proved by circumstantial evidence, it is seen that in this case, PW1/mother gives a version that she was informed about the rape by the victim on 18.11.2015. On the other hand, she states that she was informed on 27.11.2015 and thereafter she lodged a complaint (Ex.P1) to the Police. PW6/brother-in-law of PW1 and uncle of PW2 admits a panchayat was held by him in the temple for the marriage between the appellant and victim, the appellant refused, thereafter, complaint lodged. The person, who wrote the complaint not examined. Further PW1 admits that she does not know to read and write. PW6 admits that he is illiterate and what is written during arrest of the appellant and in the confession is not known to him.



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23.The Doctor/PW5, who examined the victim does not find any traces of recent injury in the private parts. In this case, the chain of circumstances is not intact and complete. The confession of the appellant and suggestions to the witnesses is that appellant sought for marriage of victim's sister, which was refused, on the other hand, the victim's family forced the appellant to marry the victim, which the appellant refused. The victim is a major and her statement is that the appellant had physical relationship with her by force. Ex.P4/medical report confirms evidence of sexual intercourse. From the attendant circumstances, it is clear that there is no use of force. The proposal for marriage of victim with appellant is admitted by the appellant, which cannot be a one day affair, without some relationship and substance.

24.In view of the above, this Court finds the conviction of the appellant for offence under Section 376(1) IPC is not sustainable. Hence, the conviction of the appellant for offence under Section 376(1) of IPC is modified to Section 417 of IPC and the sentence is modified to period already undergone and to pay Rs.2,00,000/- (Rupees two lakh only) as compensation under Section 357(3) of Cr.P.C to the victim/PW2.



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25.It is seen that in this case, the appellant deposited Rs.2,00,000/- (Rupees two lakh only) to the credit of S.C.No.51 of 2016 before the trial Court when his sentence was suspended by this Court in CrI.M.P.No.12870 of 2019 dated 19.12.2019. This amount Rs.2,00,000/- (Rupees two lakh only) along with accrued interest if any, to be paid to the victim. Scanned reproduction of the receipt is as follows:

AS per order in Hon'ble B.C. CrI. Mica
petition No. 12870/2019 in CrI. A. 845/18
dated: 19-12-2019.

CR42-2012

HEAD CLERK'S RECEIPT BOOK
Rule 160 and 171, CrP & C.O.

No. **329001** se: 51/16

Cause title **FAST TRACK MAHILA COURT
DHARMAPURI**

Received the sum of Rs. **2,00,000/- (Two Lakh only)**

being the amount deposited by Plaintiff **Acad: Kumar S/o Chinnaraj**
Defendant

Petitioner-Appellant
Respondent

in cash ☒ :
as per Treasury or Bank

Receipt No. **329001** dated **02-01-2020**

**FAST TRACK MAHILA COURT
DHARMAPURI.**

Dated _____ 20

Head Clerk
**Fast Track Mahila Court
Dharmapuri**



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26. In the result, the Criminal Appeal is partly allowed.

12.01.2026

Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

vv2/rsi

To

1. The Sessions Judge,
Fast Track Mahila Court,
Dharmapuri,

2. The Inspector of Police,
All Women Police Station,
Pennagaram,
Dharmapuri District.

3. The Public Prosecutor,
Madras High Court.



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M.NIRMAL KUMAR, J.

vv2/rsi

PRE-DELIVERY JUDGMENT IN
Crl.A.No.845 of 2018

12.01.2026