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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14-10-2026

PRONOUNCED ON : 27.10.2026

CORAM

**THE HON'BLE MR.JUSTICE S.KARTHIKEYAN**

CRL A(MD) No. 286 of 2022
CNR:{HCMD010332632022}

and CRL MP(MD) No. 16219 of 2023

Surendhar

..Appellant(s)

Vs

State represented by,
The Inspector of Police
All Women Police Station, Aranthangi,
Pudukkottai District.(In Crime No.01/2019).

..Respondent(s)

**PRAYER:** Criminal Original Petition filed under Section 374(2) of Cr.P.C., to call for the records relating to the Sessions Case No.85 of 2019 on the file of the Mahila Court, Pudukkottai and set aside the Judgment dated 15.03.2022 passed therein and acquit the appellant by allowing the criminal appeal.

For Appellant(s): Mr.R.Karunanithi
for Mr.A.Arul Jenifer
for M/s.KBS Law Office

For Respondent(s): Mr.A.Robison
Additional Public Prosecutor

## JUDGMENT

This appeal is directed against the judgment of conviction and sentence passed by the learned Sessions Judge, Mahila Court, Pudukkottai, in Sessions Case No. 85 of 2019, dated 15.03.2022.



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2. On careful perusal of the records, it is found that, on 14.01.2019, at around 20.30 hours, P.W.1-Jeya appeared before P.W.6-Shanthi, the then Sub-Inspector of Police, All Women Police Station, Pudukkottai and lodged Ex.P.1-complaint. Based on Ex.P.1-complaint, P.W.6 registered Ex.P.8-First Information Report in Crime No. 1 of 2019 for the offence punishable under Section 376(2)(m) of the Indian Penal Code (IPC). She forwarded the original complaint and the First Information Report to the learned Judicial Magistrate, Aranthangi.

3. P.W.7-Kavitha, the then Inspector of Police, All Women Police Station, Aranthangi, took up the investigation of the case on 14.01.2019 at around 21.00 hours. She examined the de facto complainant and recorded her statement. At around 21.30 hours, she recovered the clothes worn by the victim under Ex.P.9-Form 95. She examined Ajithkumar, Raja and Palaniyayi and recorded their statements. She then sent the victim to the Government Hospital, Aranthangi, for medical examination through WPC 1355-Rajalakshmi.

4. On 15.01.2019, at around 03.30 a.m., she arrested the Accused, who was sleeping at Valividu Vinayagar Temple, Melapattu, brought him to the police station and remanded him to judicial custody. At around 09.00 a.m., she proceeded to the place of occurrence and prepared Ex.P.4 Observation Mahazar



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and Ex.P.10-Rough sketch in the presence of P.W.2-Tamilvendan, Ramanathan, Vellaiyammal and Periyanayaki, as identified by the de facto complainant. She examined Tamilvendan, Ramanathan, Vellaiyammal and Periyanayaki and recorded their statements.

5. On 18.01.2019, she submitted a request to the Judicial Magistrate, Aranthangi, for recording the victim's statement under Section 164 of the Code of Criminal Procedure (Cr.P.C.). The victim was produced before the Magistrate for recording her statement under the said provision. On the same day, she also requested that the Accused be subjected to medical examination.

6. On 22.01.2019, she forwarded the clothes worn by the victim at the time of the occurrence to the Court under Form 95. The clothes were subsequently sent to the Forensic Science Laboratory for chemical examination and Ex.P.11-biological report was obtained.

7. On 23.01.2019, the Accused was taken to the Government Hospital, Pudukkottai, for medical examination through WPC-Karthika and PC 1728-Muruganandam. On 29.01.2019, she examined Dr. Valliyappan, Dr. Abirami, WPC-Karthika and PC-Muruganandam and recorded their statements. On 05.02.2019, she examined Dr. Vizhimozhi, who had conducted the medical



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examination of the de facto complainant, and recorded her statement. She also examined WPC 1355-Rajalakshmi and recorded her statement. On 19.02.2019, she examined Shanthi, the Sub-Inspector of Police who had registered the First Information Report, and recorded her statement. On the same day, she completed the investigation and filed the final report before the learned District Munsif-cum-Judicial Magistrate, Thirumayam.

8. The learned District Munsif-cum-Judicial Magistrate, Thirumayam, took cognizance of the final report and issued summons to the Accused. Upon his appearance, copies of the documents relied upon by the prosecution were furnished to him under Section 207 Cr.P.C. As the offences alleged were exclusively triable by the Court of Sessions, the Magistrate committed the case to the Principal Sessions Court, Pudukkottai, under Section 209 Cr.P.C. The Principal Sessions Court, Pudukkottai, took cognizance of the case in S.C. No. 85 of 2019 and made it over to the Mahila Court, Pudukkottai, as the alleged offences had been committed against women.

9. Upon the appearance of the Accused and after hearing both sides, the trial Court framed charge against him for the offence punishable under Section 376(2)(m) IPC. The charge was read over and explained to the Accused, which he denied. Hence, he was tried by the trial Court.



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10. On the side of the prosecution, P.Ws. 1 to 7 were examined, Exs. P.1 to P.11 were marked, and M.Os. 1 to 3 were also marked.

11. Upon the closure of the prosecution evidence, the incriminating circumstances appearing against the Accused were put to him under Section 313(1)(b) Cr.P.C. The Accused denied the allegations as false and stated that he has witnesses to examine on his behalf. On the side of the defence, D.Ws. 1 to 3 were examined. However, no documents were marked. Thereafter, the defence evidence was closed.

12. After hearing both sides, the trial Court found the appellant guilty of the offence punishable under Section 376(1) IPC and sentenced him to undergo ten years of rigorous imprisonment and to pay a fine of Rs. 5,000/-, with a direction that, in default of payment of the fine, he should undergo simple imprisonment for one year. Aggrieved by the judgment of conviction and sentence, the Accused has preferred the present appeal.

13. In this appeal, the learned counsel for the appellant and the learned Government Advocate (Criminal Side) for the respondent were heard. The records of the trial Court were called for and perused.



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**Point for determination**:

14. Whether the conviction and sentence passed against the appellant herein by the trial Court is sustainable?

**Answer**:

15. On careful perusal of the records, it is found that it is the case of the prosecution that the de facto complainant, P.W.1-Jeya, was aged about 45 years and residing at Melapattu, Keelatheru, within the jurisdiction of the Aranthangi Police Station. The Accused, aged about 20 years, was also residing at Melapattu, Keelatheru, along with his parents. P.W.1 had been living separately from her husband for the past ten years and was residing at the above-mentioned address with her son and mother. While so, on 14.01.2019, at around 06.00 p.m., when P.W.1 had been grazing goats near Melapattu, Pillayar Temple, North channel bund, the Accused herein had gone there, removed his pants and shirt, and carried P.W.1 near the field bund. He had put her on top of the thorny plants and, in spite of P.W.1-Jeya defending herself against him, he had pushed her, removed her saree, and tore her blouse. He had wrestled with her by uttering the words that she has no husband and he would remain as a husband for her, kept his mouth on her breast and sucked and raped her, and sat on top of P.W.1, inserted his private part into her mouth, asked her to lick, and committed rape on her. Further, he caught hold of the neck of P.W.1 tightly and told her that if she



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was left alive, she would tell the matter outside, and had threatened her. Thus, he committed an offence punishable under Section 376(1) I.P.C. To substantiate the said case, the prosecution has projected P.W.1 to P.W.7 and exhibited Ex.P.1 to E.P.11 and M.O.1 to M.O.3.

16. On careful perusal of the records, it is found that the prosecutrix/victim was examined as P.W.1. In her evidence, she deposed that she was engaged in construction work and knew the Accused. She was married and has a son named Ajith Kumar. She had been living separately from her husband for the past ten years, and her husband was residing in Chennai. She was residing at her father's house along with her son. In the year 2019, on the day of the Bhogi festival, she was grazing goats near the channel bund at Melapattu.

17. She further deposed that on 14.01.2019 at around 06.00 p.m., the Accused arrived at the spot, removed his shirt and pants. The victim was under the impression that he was going to wash his hands and legs, and she was looking toward the north. The Accused then came from behind her, lifted her onto the channel bund, pushed her down, and tore her jacket. He demanded that she perform a sexual act on his private parts and further assaulted her by sucking her breast.



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18. She further deposed that the victim informed the Accused that she was his paternal aunt. In response, he stated that let her be the maternal aunt and forcibly engaged in sexual intercourse with her. Although she attempted to push him away, she was unable to do so. She pleaded with him to release her, promising that she would not reveal the incident to anyone. However, he refused to let her go, stating that she would tell others. As she attempted to escape his control, the Accused pushed her again, threw her to the ground, and demanded her to hold his private part.

19. She further deposed that at that time, her neighbour, Vellaiammal, came there and shouted, asking whose goat was grazing in her field. On hearing her voice, the Accused ran away from the place. P.W.1 informed Vellaiammal that the Accused had ravished her. Immediately, Vellaiammal called her son. Her son came and searched for the Accused but could not find him. Vellaiammal advised P.W.1 to go to the Accused's house and enquire about him.

20. She further deposed that accordingly, she went to Accused's house in the same clothes she had been wearing at the time of the occurrence. The mother and sister of the Accused were present there. She informed them that the Accused had ravished her. The Accused's mother asked her not to shout, stating



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that there had already been a problem. She covered P.W.1's mouth with her hands and instructed her not to disclose the incident to anyone, including her family members.

21. She further deposed that his mother went in search of her son. She also came to know that the Accused had committed a similar act against a 60-year-old woman who was on the verge of death. Subsequently, P.W.1 returned to her house, where her son, brother and mother were present. She informed them about the occurrence. Thereafter, she proceeded to the All Women Police Station, Aranthangi, and lodged Ex.P.1-complaint. The complaint was written by her son as per her instructions, and she affixed her thumb impression to it. She handed over the clothes she had worn at the time of the occurrence, namely, M.O.1-jacket, M.O.2-light-green skirt and M.O.3-black saree mixed with rose and cement colours. The police obtained her thumb impression on Form 95. She also gave Ex.P.3-statement under Section 164 Cr.P.C. before the learned Judicial Magistrate, Aranthangi. The police asked her to identify the place of occurrence, and she accordingly showed the place to them.

22. P.W.2-Tamilvendhan, one of the witnesses to the observation mahazar, deposed that the Aranthangi All Women Police Station personnel prepared Ex.P.4 Observation Mahazar to which he had affixed his signature.



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23. P.W.3-Dr. Vizhimozhi, in her evidence, deposed that, on 14.01.2019, at around 10.30 p.m., WPC Rajalakshmi brought the victim, Jeya, to the hospital for medical examination, along with the relevant medical requisition. The victim disclosed that, on 14.01.2019, at around 06.00 p.m., a person known to her had ravished her. Upon examination, the victim complained of pain in her hands and legs. The doctor noted a linear abrasion measuring 3 cm in the upper neck region and multiple linear abrasions on both arms. No other obvious external injuries were found. There were no injuries to her private parts, and no foreign matter was detected. Vaginal and cervical smears were collected and forwarded to the Government Medical College Hospital, Pudukkottai, for examination. On 04.02.2019, a report was received stating that no semen was detected. The doctor opined that the victim was physically capable of having sexual intercourse. However, she stated that it could not be concluded from the medical examination alone that the victim had been subjected to sexual intercourse. No injuries were found on the victim's private parts or elsewhere on her body, except for the linear abrasions on her neck and hands. In this regard, she issued Ex.P.5-accident register.

24. P.W.4-Dr. Valliyappan, who examined the Accused, deposed that the Accused was produced before him on 23.01.2019, at around 02.00 p.m. Upon



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examination, he opined that there was nothing to suggest that the Accused was impotent or incapable of doing sexual intercourse. In this regard, he issued Ex.P.6-certificate.

25. P.W.5-Shanthi was the person who admitted the Accused to the Government Hospital, Pudukkottai. Ex.P.7 is the Accident Register recorded by her.

26. P.W.6-Shanthi was the Sub-Inspector of Police who registered the First Information Report. P.W.7-Kavitha was the Investigating Officer. In her evidence, she spoke about the investigation conducted by her, including the examination of the de facto complainant and other witnesses, the production of the victim and the Accused for medical examination, the preparation of the observation mahazar and rough sketch, the recording of the victim's statement under Section 164 Cr.P.C., the collection of samples from the victim and their forwarding to the Forensic Science Laboratory, the examination of the doctors and the recording of their statements, and the filing of the final report before the jurisdictional Magistrate.

27. On careful perusal of the records, it is found that the case of the prosecution rests entirely upon the solitary evidence of the victim. According to



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the oral evidence of the victim, on the day of Boghi in the year 2019 at around 06.00 p.m., the Accused came there, removed his clothes, lifted her to the channel bund, pushed her down, tore her jacket, asked her to suck his private part, sucked her breast, and ravished her. At that time, D.W.1-Vellaiyammal came there and shouted, asking whose goat was grazing in her field. On hearing her voice, the appellant ran away from the scene.

28. However, on careful perusal of record, it is found that though D.W.1-Vellaiyammal was cited as a prosecution witness, she was not examined on the side of the prosecution before the trial Court. No explanation was offered as to why she was not examined as a prosecution witness. However, the defence examined her as D.W.1. On careful perusal of the evidence of D.W.1, it is found that she has not supported the case of the prosecution.

29. According to her, she was aware of what had happened on the date of the occurrence. In the evening, when she went to her field, she found that P.W.1's goat was grazing there. The Accused's field was adjacent to her field. The Accused had also come to graze his cattle in his field. She shouted at P.W.1 for allowing her goat to graze in her field. At that time, the Accused came there and questioned them as to why they were quarrelling, after which he proceeded to his field. She remained in her field until 06.00 p.m. and then returned home.



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While she was in the field, P.W.1 left the place. She further stated that she had given the same version in her statement to the police.

30. From the evidence of D.W.1, it is evident that she has not supported the case of the prosecution and has given a different version of the occurrence. According to her, no incident had taken place on that day. Though she was cross-examined by the prosecution, her testimony could not be shaken during cross-examination. Even in her cross-examination, she asserted that no occurrence had taken place on the date in question.

31. During the cross-examination of P.W.1, the prosecution sought to contradict her with the statement of D.W.1 recorded under Section 161 Cr.P.C. However, under Section 162 Cr.P.C., a statement recorded under Section 161 Cr.P.C. cannot be used for any purpose except as provided under the said section. On a perusal of the proviso to Section 162 Cr.P.C., it is clear that where a witness is called for the prosecution, the statement recorded under Section 161 Cr.P.C. may be used by the Accused and, with the permission of the Court, by the prosecution to contradict such witness in the manner provided under Section 145 of the Indian Evidence Act.

32. In the present case, D.W.1 was not called as a witness for the



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prosecution but was examined on the side of the defence. Therefore, the prosecution could not contradict P.W.1 by relying on the statement of D.W.1 recorded under Section 161 Cr.P.C. Further, even under the proviso to Section 162 Cr.P.C., the prosecution may contradict a witness with such a statement only with the permission of the Court.

33. On careful perusal of the cross-examination of D.W.1, it is found that the prosecution did not seek the Court's permission to contradict the said witness with her previous statement recorded under Section 161 Cr.P.C. Therefore, the procedure adopted by the prosecution cannot be sustained in law.

34. The learned Additional Public Prosecutor may contend that, by permitting the prosecutor to cross-examine the witness, the Court had accorded its tacit approval. However, the Privy Council, in the case of ***Ammathayarammal Vs. The Official Assignee*** reported in ***Manu/TN/0145/1932***, made it clear that, under Section 154 of the Indian Evidence Act, when the prosecution seeks permission to cross-examine its own witness, such permission shall be expressly granted by the Court. There can be no tacit permission in this regard. Therefore, the attempt made by the prosecution to contradict the witness with her previous statement recorded under Section 161 Cr.P.C. is nothing but a futile exercise.



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35. In the backdrop of the evidence of D.W.1, if we look at the evidence of P.W.1., the evidence of D.W.1 creates doubts in the version spoken to by P.W.1.

36. Further, P.W.1 deposed that the occurrence took place at around 06.00 p.m. She was subjected to medical examination at 10.30 p.m., within four and a half hours of the alleged occurrence. From the evidence of P.W.3-Dr. Vizhimozhi, it is found that vaginal and cervical smears were collected from the victim. However, as per the report, neither semen nor spermatozoa was detected in the vaginal or cervical smears. The absence of semen or spermatozoa raises further doubts regarding the ocular testimony of the victim. Further, the doctor opined that it could not be conclusively stated that the victim had been subjected to sexual intercourse.

37. The medical evidence further reveals that no foreign body was detected in the victim's private parts. Except the injuries on her neck and hands, no other injuries were found on her body. During cross-examination, P.W.3-Dr. Vizhimozhi admitted that the linear abrasions found on the victim's body could have been caused while she was grazing cattle in an area containing thorny bushes. Further, the age of the said injuries were also not proved by the



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prosecution. Therefore, the testimony of the victim was not corroborated by the medical and scientific evidence.

38. Further, from the evidence of P.W.1, it is found that the clothes worn by her at the time of the alleged occurrence were produced and marked as M.Os. 1 to 3. The said clothes were forwarded to the Regional Forensic Sciences Laboratory, Tiruchirappalli, and Ex.P.11-Forensic Science Report was obtained. On a perusal of Ex.P.11, it is found that neither blood nor semen was detected in any of the clothes marked as M.Os. 1 to 3. Therefore, the recovery of M.Os. 1 to 3 does not lend any support to the case of the prosecution.

39. The defence has also brought out, through the evidence elicited from P.W.1 and the testimony of D.W.1, that there was previous enmity between the family of the de facto complainant and the Accused. Therefore, the possibility of the Accused having been falsely implicated in the case cannot be ruled out in view of the alleged previous enmity.

40. Further, from the evidence of the Investigating Officer, it is found that Ex.P.4-Observation Mahazar was prepared in respect of the place identified by P.W.1. The Hon'ble Apex Court, in ***Tort Singh v. State of U.P.,*** reported in ***AIR 1962 SC 399***, has held that the preparation of an observation mahazar based on a



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statement made by a witness or the de facto complainant may attract the bar under Section 162 Cr.P.C. Therefore, since Ex.P.4-Observation Mahazar was prepared in respect of the place identified by P.W.1, the admissibility of the said document requires consideration in the light of the aforesaid decision. The prosecution cannot rely upon the observation mahazar to establish the place of occurrence if it is found to be inadmissible in law.

41. Further, on a careful perusal of Ex.P.4-Observation Mahazar, it is found that no signs of struggle were noted or recorded therein. This aspect was also elicited from the Investigating Officer during cross-examination.

42. It is a well-established principle of law that, where two views are reasonably possible on the evidence on record, the view favourable to the Accused must be adopted. In the present case, two versions emerge from the evidence: one put forward by the prosecution and the other projected through the defence evidence. The testimony of D.W.1 casts doubt on the prosecution's version of the alleged occurrence. Upon an overall consideration of the oral and documentary evidence, this Court is of the considered view that the prosecution has failed to prove its case beyond a reasonable doubt. Consequently, the Accused is entitled to the benefit of the doubts arising from the evidence discussed above.



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43. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellant are hereby set aside. The appellant is in custody and is directed to be set at liberty forthwith, unless his detention is required in connection with any other case. Any fine amount paid by the appellant shall be refunded to him.

**27-10-2026**

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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To

1.The Sessions Judge,
Mahila Court,
Pudukkottai.

2.The Inspector of Police
All Women Police Station,
Aranthangi, Pudukkottai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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**S.KARTHIKEYAN, J.**

PS

Judgment made in
CRL A(MD) No. 286 of 2022
and CRL MP(MD) No. 16219 of 2023

27-10-2026



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