



Crl.A.(MD) No.211 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

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Chinnapandi : Appellant/Accused No.1

Vs.

State rep by
The Inspector of Police,
All Women Police Station,
Thirupparankundram,
Madurai District.
(Crime No.26 of 2009)

: Respondent/Complainant

PRAYER: This Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, to call for the records relates to S.C.No.366 of 2011 on the file of the learned Additional Sessions Judge cum Mahila Court, Madurai and to set aside the conviction and sentence dated 18.05.2016 by acquitting the appellant herein with all charges.

For Appellant : Mr.R.Venkateswaran

For Respondent : Mr.E.Antony Sahaya Prabahar
Government Advocate (crl.side)



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JUDGMENT

This present criminal appeal is directed against the conviction and sentence dated 18.05.2016 passed in S.C.No.366 of 2011 on the file of the learned Additional Sessions Judge cum Mahila Court, Madurai.

2.The appellant is arrayed as first accused in the above referred case and the Accused Nos.2 and 3 are his parents. They stood charged for the offence under Sections 376 and 506(i) of IPC and Section 4 of Dowry Prohibition Act. The accused denied all the charges and opted for trial. Therefore, they were put on trial on the charges.

3.After full-fledged trial, the learned Additional Sessions Judge, Mahila Court, Madurai, found the appellant/first accused guilty for the offence under Section 376 of I.P.C and accordingly, the appellant was convicted and sentenced to undergo ten years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo six months simple imprisonment. In respect to the accused No.2 and 3, the learned Additional Sessions Judge, Mahila court, Madurai, has



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acquitted them from all the charges. Challenging the conviction and sentence, the appellant/first accused is before this Court with the present Criminal Appeal.

4.For the sake of convenience, the appellant hereinafter is called as accused.

5.The case of the prosecution in brief is as follows:-

(i) The accused and the prosecutrix are residing in the same village. Previous to the occurrence, both were fell in love and the same was continued for the period of one year. In the evening hours at around 6.00 p.m they regularly met and discussed the other things. When at the time, the prosecutrix requested the accused to marry her, the accused made promise to marry her, but at the same time the accused made demand to fulfill his lust. Consequentially, on 07.05.2009 at around 7.00 p.m in the vasu garden, the accused forcibly committed sexual assault on the prosecutrix and thereby the prosecutrix became pregnant. Thereafter, on 24.07.2009, when at the time the prosecutrix requested the accused to marry her, the accused refused for the said proposal. However, he requested the victim girl to abort the foetus. In this regard, he threatened the victim girl as



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if the same is disclosed to any others, he would kill her. In the mean time, when the parents of the victim girl requested the second and third accused, who are the parents of the accused for performing the marriage between the victim girl and the accused, they demanded 10 sovereigns of gold and Rupees one lakh as dowry. Even in the panchayat held in the village, the accused refused to marry the victim girl. Hence, PW1 has lodged the complaint under Ex.P1 before the respondent police.

(ii) PW9-R.Lakshmi the then Inspector of Police, All Women Police Station, Thirupparankundram, on 28.07.2009 received the complaint from PW1 and registered the case in Crime No.26 of 2009 under Sections 376, 506 (i) of I.P.C and Section 4 of Dowry Prohibition Act. The printed FIR was marked as Ex.P7. After the registration of FIR, she arrested the accused and sent for remand. She visited the scene of occurrence and in the presence of PW3-Dhavamani and PW4-Raja, prepared an Observation Mahazer under Ex.P2. She drew the Rough Sketch and the same has been marked as Ex.P3. She examined the witnesses and recorded their statements. She submitted an application to the Jurisdictional Court for medical examination to the victim girl



and to the accused.

(iii) Consequentially, PW10-Kayalvizhi the then Head constable, All Women Police Station, Thirupparankundram, produced the victim girl before PW-7 for medical examination, wherein, PW7-Dr.Indirani, Senior Assistant Professor attached with Madurai Government Hospital, on 29.07.2009 at around 12.40 hours examined the victim girl and issued the certificate under Ex.P4 stating that the victim girl is found pregnant and in otherwise there is no contusions and abrasions found in the body of the victim girl.

(iv) Similarly PW8-Dr.Natarajan, the Professor, Forensic Science Department, Madurai Medical College, on 29.07.2009, examined the accused and issued the certificate under Ex.P5, wherein he has stated as follows:-

- 1.For Age Estimation, the person may be referred to the Department of Radiology, Govt, Rajaji Hospital, Madurai.*
- 2.There is nothing to suggest that he is impotent*
- 3.There is nothing to suggest that he is not fit for sexual intercourse*
- 4.There is no evidence of recent sexual intercourse 12-24 hours*



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prior to my examination.

(v) In continuation of investigation, PW11- K.Gokila, the then Inspector of Police, All Women Police Station, Thirupparankundram, took up the investigation and examined the witnesses. During the time of examination, she examined the witnesses namely, Viranan, Paraman, Kayalvizhi and Kamaraj and recorded their statements. Further, she examined the Doctors, who examined the victim girl and the accused and recorded their statements. After completing the investigation, she came to the positive conclusion that the accused committed an offence under Sections 376, 506 (i) of I.P.C and Section 4 of Dowry Prohibition Act and filed a final report accordingly.

6. Based on the materials available on record, the trial Court framed the charges for the offences under Sections 376, 506 (i) of I.P.C and Section 4 of Dowry Prohibition Act. All the accused denied the charges and opted for trial. Therefore, all the accused was put on trial.

7. During the course of trial proceedings, in order to prove their case, on



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the side of the prosecution, as many as 12 witnesses were examined as PW1 to PW12 and 7 documents were exhibited as Ex.P1 to Ex.P.7.

8. (i) Out of the above said witnesses, PW1 is the victim girl in this case. She speaks about the love affair having by her with the accused and about the occurrence as alleged by the prosecution. PW2-Muthuveerapandian is the father of the victim girl. He speaks about the occurrence as on 24.07.2009 he came into the knowledge that her daughter fell in love with the accused and at the time, she was pregnant. PW3-Dhavamani and PW4-Raja speaks about the preparation of Observation Mahazar(Ex.P2) and Rough Sketch (Ex.P3). PW5-Ramaraj the then Head Constable, All Women Police Station, Thiruparankundram, speaks about the production of the accused before the Doctor for Medical examination.

(ii)PW6-Paraman is the witness to the occurrence, before the trial Court, he did not say anything in support of the case of the prosecution. PW7 and PW8 are the Doctors speaks about the examination of the victim girl and the accused. PW9, PW10, PW11 and PW12 are Police Officers speaks about the receipt of complaint, registration of the case, manner of investigation and about the filing of the final report.



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9. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., the accused denied the same as false. However, they did not choose to examine any witness nor mark any document on his side.

10. Having considered all the above, the learned Additional Session Judge, Mahila Court, Madurai, came into the conclusion that the first accused herein found guilty for the offence under Section 376 of I.P.C and accordingly, the appellant was convicted as stated supra. Aggrieved by the said conviction and sentence, the appellant/first accused is before this Court with this appeal.

11. I have heard Mr.R.Venkateswaran, learned counsel appearing for the appellant/accused and Mr.E.Antony Sahaya Prabahar, learned Government Advocate (crl.side) appearing for the State and also perused the records carefully.

12. The learned counsel appearing for the appellant would contend that the alleged occurrence had happened with the pre-consent given by the victim girl. The evidence given by the victim girl is a tuted one and the same cannot be



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inspired the confidence of this Court. He would further contend that during the relevant point of time, both the accused and the victim girl were regularly met and continued the physical relationship. Therefore, it cannot be held that the evidence of PW1 attracted the ingredients, which are necessary to prove the offence under Section 376 of IPC. According to him, the consent given by the victim girl is the pre-consent and therefore, convicting the first accused is not within the purview of settled law. In order to substantiate his claim, he relied upon the following judgments:-

(i) the judgment of this Court reported in (2020) 1 MLJ (Crl) 236 in the case of M.Karthik Vs the Inspector of Police;

(ii) the judgment of the Calcutta High Court reported in 2020 Crl.L.J.396 in the case of Sk.Maidul vs State of West Bengal and another;

(iii) the judgment of the Uttarakhand High Court reported in 2021 Crl.L.J. 1807 in the case of Devendra Singh Khinchiyal vs State of Uttarakhand;

(iv) the judgment of this Court passed in Crl. A.No.76 of 2014 in the case of Thiruvassagam Vs The Inspector of Police, All Women Police Station, Jayankondam, Ariyalur District;

(v) the judgment of this Court reported in (2020) 2 L.W (Crl). 695 in the



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case of V.Kotteeswaran Vs the Inspector of Police, Periyathachur Police Station, Villupuram District and

(vi) the judgment of the Calcutta High Court reported 2020 Crl.L.J. 1576 in the case of Tareque Bazikar Vs State of West Bengal.

13.Per contra, the learned Government Advocate (Crl.side) appearing for the State would contend that the evidence given by the victim girl established the fact that during the relevant point of time, the accused after made threatening and also by making the false promise sexually assaulted the victim girl and therefore, the finding arrived at by the trial Court is found correct and therefore, interference of this Court in the finding arrived at by the trial Court does not require.

14.I have considered the rival submissions made by the learned counsel appearing on either side.

15.Before the trial Court, the complaint said to have been given by PW1 was marked as Ex.P1. In respect to the lodging of complaint, PW1 has stated in her cross examination as the complaint has been written by her. On the other

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hand, on go through Ex.P1 complaint, it appears that the same was typed one. Therefore, in respect to the preparation of complaint, the author of the document, who is PW1 had given contradictive evidence. However, the said contradiction alone is not sufficient to hold that the entire story put forth by the prosecution is a false one.

16.It is the case of the prosecution that due to the sexual assault committed by the accused, the prosecutrix became pregnant. In otherwise, in respect to the date on which the alleged occurrence had happened, PW1 has stated in her evidence that the alleged occurrence had happened on 07.05.2009. Therefore, if the evidence by the prosecutrix is found correct, there was no change for her to reach the menstrual period after 07.05.2009, but in respect to the same, the Doctor, who examined the victim girl has stated in her report (Ex.P4) as last menstrual period is 03.06.2009. Therefore, the said circumstances create a doubt whether the PW1 had lodged a complaint with true averments.

17.Yet another thing, which is necessary to decide in this appeal is that PW1 had complained about the act committed by the accused only on 24.07.2009



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after the lapse of 2½ months. In this regard, she has specifically stated before the trial Court that after fell in love with the accused, they regularly met in the garden and developed her relationship. In this occasion, the act of the prosecutrix clearly reveals the fact that she submitted herself on carnal pleasures of accused on promise of marriage. In the similar situation, this Court, in a decision, reported in **(2020) 1 MLJ (Crl) 236** in the case of **M.Karthik Vs the Inspector of Police, All Women Police Station, Settiathoppe, Cuddalore District**, held as follows:-

Evidence on record clearly shows that young girl was seduced to submit herself to carnal pleasures of accused on promise of marriage. Had the appellant forcibly ravished PW1, she would have given a complaint either immediately or a little later; instead, the complaint in this case (Ex.P1) has been given only, after coming to know about the betrothal of the appellant with another girl. The conviction and sentence slapped on the appellant for the offence under Section 376 IPC is hereby set aside and the appellant is acquitted of the said charge.

18. Further it is not in dispute that on the date of occurrence, the prosecutrix was major around 19 years and the accused/appellant was also major around 21 years. The affairs were continuing between the prosecutrix and the appellant

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for the period of one year. It was not found anywhere in the evidence that the appellant had given any definite date or any timeline to marry the prosecutrix. The prosecutrix had complained about the issue to others only at the time the appellant has disowned his promise. The said circumstances reveals the fact that during the relevant point of time, the prosecutrix was also willing and the accused had also promised to marry her once after the completion of his brother's marriage. Acting on such assurance, the prosecutrix started cohabiting with the accused and the same was continued for several months during which period the accused spent most of the evening hours with her. Eventually, when she conceived and insisted that the marriage should be performed as quickly as possible, the appellant suggested for abortion. Since the proposal was not accepted by the prosecutrix, the appellant disowned the promise and ultimately, the case has been registered. Therefore, the non-raising the resistance at the time of committing the sexual assault as from first time by the accused, it amounts to pre-consent. Accordingly, the consent given by the victim girl, cannot be held as a misconception of fact.



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19.In the light of the above discussions and the reason that the evidence given by PW1 is attracted, in respect to the preparation of complaint as well as in respect to the evidence given by the Doctor, I had a doubt whether the prosecutrix has approached the Police is with full of truth or with false averment. The accused is entitled to avail the benefit now arises as above. Accordingly, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/first accused, by the learned Additional Sessions Judge cum Mahila Court, Madurai, in S.C.No.366 of 2011, dated 18.05.2016, is set aside and the appellant/first accused is acquitted of all the charges. The fine amount, if any, paid by him, shall be refunded to him. The appellant/first accused is directed to be released forthwith, unless his presence is required in connection with any other case.

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To:-

1.The Additional Sessions Judge cum Mahila Court,
Madurai.

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2.The Inspector of Police,
All Women Police Station,
Thirupparankundram,
Madurai District.

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

4.The Section Officer,
Criminal Section records,
Madurai Bench of Madras High Court,
Madurai.



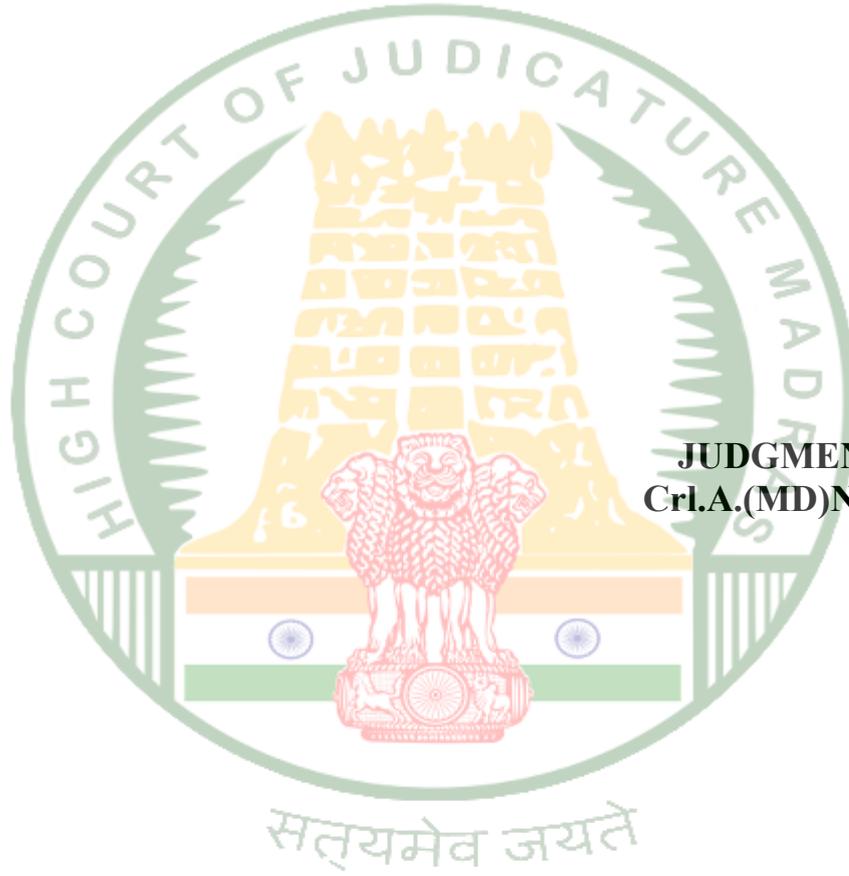
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R.PONGIAPPAN, J.

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**JUDGMENT MADE IN
Crl.A.(MD)No.211 of 2016**

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