



**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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**JUDGMENT RESERVED ON : 10 / 08 / 2023**

**JUDGMENT PRONOUNCED ON: 29 / 09 / 2023**

**CORAM:**

**THE HON'BLE MR.JUSTICE R.SAKTHIVEL**

**CRL.A.NO.575 OF 2016**

Santhosh @ Santhoshkumar ... Appellant / Accused

*Versus*

The Inspector of Police  
Latheri Police Station  
Latheri,  
Vellore District.  
Crime No.226 / 2010

... Respondent / Complainant

**PRAYER:** Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, to call for the records pertaining to the judgment rendered by the Sessions Judge, Magalir Neethimandram (Fast Track, Mahila Court) Vellore, Vellore District in S.C.No.84 of 2012 dated 18.05.2016 and set aside the same.

For Appellant : Mr.M.G.Udaya Shankar  
for Ms.S.Shanthakumari

For Respondent : Mr.A.Gokulakrishnan  
Additional Public Prosecutor



**JUDGMENT**

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This Criminal Appeal is preferred by the appellant / accused in Sessions Case No.84 of 2012 on the file of learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court) Vellore, assailing the judgment passed by the trial court on 18.05.2016 in which he was convicted and sentenced to undergo rigorous imprisonment for seven years with fine of Rs.2,000/- for the offence under Section 376 of 'The Indian Penal Code, 1860' [hereinafter referred to as 'IPC' for the sake of brevity], in default, to undergo two months simple imprisonment.

2.The case of the prosecution, in brief, is as follows :

2.1.P.W.1 is the victim. P.W.2 is her husband. The victim is running a petty shop right opposite her house. She also has two acres of land which is maintained by her husband and mother-in-law. She has three daughters and one son, out of whom, two daughters already got married. The accused is residing in the same hamlet as the victim. On 27.12.2010, at about 07.30 p.m., the victim's husband asked her to come after him to the land after



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closing the petty shop and started to their land. Thereafter, when the victim was in the petty shop, the appellant / accused came and purchased Halls and cigarettes. Later, she closed the petty shop and proceeded to her land. At about 08.30 p.m., she noticed that the accused / appellant was following her while she was crossing Anandan's land. Then, the accused / appellant pushed her down, undressed her and committed rape on her. During the course of occurrence, the victim bit the accused's hand. The appellant / accused threatened to kill her if she discloses the incident to anybody and left the scene of occurrence. P.W.1 told this incident to her husband (P.W.2) with tears who in turn, informed the same to witnesses Suresh (P.W.3) and Deepika (P.W.4). With their aid, the victim was brought to Government Hospital, Adukkamparai in the midnight, as she was suffering from body pain. The next day morning in the Hospital, at about 10.00 am, the victim gave complaint statement (Ex-P.1) to the police and handed over the clothes worn by her at the time of occurrence i.e., yellow, white, brown flowered nylon saree marked as MO-1, blue colour jacket marked as MO-2, dark blue colour inskirt marked as MO-3 to the police.



2.2. Based on the complaint (Ex-P.1), a case under Section 376 of IPC was registered on 28.12.2010. P.W.16 - Inspector of Police, took the case for investigation and handed it over to P.W.17 after substantial completion of the investigation. P.W.17 examined the Doctors and Forensic Officer and recorded their statements. At this stage of investigation, as he was transferred, P.W.18 took over the investigation and filed final report under section 376 of IPC and Section 4 of 'Tamil Nadu Prohibition of Harassment of Women Act, 1998' [hereinafter referred to as 'TNPHW Act' for the sake of brevity].

2.3. The trial court framed charges under Section 376 of IPC and Section 4 of TNPHW Act and read it over to the accused under Section 228 of Cr.P.C. Since the appellant / accused denied the charges, trial was ordered.

2.4. Prosecution examined 18 witnesses as P.W.1 to P.W.18 and marked Ex-P.1 to Ex-P.18 documents and MO-1 to MO-3.



2.5.The trial court after full trial, concluded that the charge under Section 376 of IPC and Section 4 of TNPHW Act has been proved beyond reasonable doubt but in view of Section 71 of IPC, convicted the appellant / accused for the offence under Section 376 of IPC alone as the ingredients of Section 4 of TNPHW Act forms an integral part of the offence of ravishment mentioned in Section 376 of IPC and imposed punishment to undergo rigorous imprisonment for seven years and a fine of Rs.2,000/-, in default, to undergo two months simple imprisonment.

2.6.Feeing aggrieved with the judgment, the appellant / accused preferred this appeal under Section 374(2) of Cr.P.C.

3.The points that arise for consideration in this Criminal Appeal are as follows:

- (i) Whether the charges against the appellant / accused under Section 376 of IPC is proved by the prosecution beyond reasonable doubt?



(ii) Is there any reason to interfere with the trial

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court's judgment?

**Discussion and Decision to Point Nos.(i) and (ii) :**

4.The learned counsel for the appellant / accused argued that there arose a scuffle between the appellant / accused and the victim in connection with a debt of Rs.200/- payable to her by the appellant / accused. During the scuffle, the victim bites the hand of the accused and in order to save her from legal actions, she herself cleverly lodged the present complaint falsely against the appellant / accused. He further submitted that the prosecution has not established the penetrative sexual assault as alleged beyond reasonable doubt and the medical evidence does not corroborate the version of prosecutrix in this regard. He further submitted that the victim has no external or internal injury on her body and private parts except an abrasion below her left eye. Further, he submitted that the Investigating Officer failed to collect the semen of the accused to compare the same with the alleged stain found on the material objects MO-1 to MO3.

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4.1. In a nutshell, the learned counsel submitted that the medical evidence do not support the case of the prosecution and that the DNA test report also is not in favour of the prosecution. Further submitted that the evidence of P.W.1 is an exaggeration and does not contain truth. Therefore, the learned counsel prayed to allow the appeal and acquit the appellant / accused from the charges.

5. Per contra, learned Additional Public Prosecutor submitted that the evidence of victim (P.W.1) is trustworthy and inspires confidence. Further, he submitted that in view of the nature of the offence, there may not be any eyewitnesses. He further submitted that the conviction on the basis of sole testimony of victim is justifiable.

5.1. In support of his contention, learned Additional Public Prosecutor relied on a judgment of the Hon'ble Supreme Court in ***MOHANLAL GANGARAM GEHANI VS. STATE OF MAHARASHTRA [1982 SCC (CRI) 334]*** and judgment of the Hon'ble Supreme Court in ***GANESAN VS. STATE [2020 (10) SCC 573]***.



5.2.Relying on the aforesaid judgment, the learned Additional

Public Prosecutor submitted that it is a settled position of law that conviction can be recorded solely on the basis of the testimony of victim. Further, Section 145 does not apply where the statement made by a person or witness is contradicted not by his own statement but by the statement of another prosecution witness. The Trial Court after considering the entire materials and evidence, passed the judgment. Therefore, there is no necessity to interfere with the said judgment. Accordingly, he prayed to dismiss the appeal.

6.This Court has considered both sides' arguments and perused the entire case file.

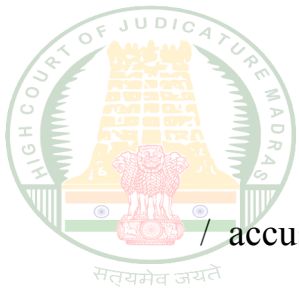
7.The victim was running a petty shop in front of her house. The victim deposed that on 27.12.2010 at about 07.30 p.m., after closing her petty shop, she proceeded to her land. At about 08.30 p.m., while she was crossing Anandhan's land she noticed the appellant / accused was following her. The victim asked the appellant / accused why he's following her. The appellant /





accused replied that he is going to Latheri. When the victim proceeded towards her land, the appellant / accused pushed her into barren land and committed the offence of rape. The victim trying to prevent the appellant / accused from raping her, bit the appellant / accused in his hand and left shoulder. Then appellant / accused threatened the victim not to disclose the incident to anyone. Thereafter, the victim narrated the incident to her husband (P.W.2). Thereafter, since the victim was suffering from body pain, the victim was admitted in Government Hospital as In-patient at about 12'o clock in midnight by her Husband and P.W.3. The next day morning viz., 28.12.2010, P.W.14 – Sub Inspector of Police, recorded statement from the victim and the same was marked as Ex-P.1. The Police collected the clothes worn by the victim at the time of incident which were marked as MO-1 to MO-3.

7.1.The victim was cross-examined by the accused. In her cross-examination, victim admitted that the occurrence happened in a vacant land and some injuries were caused on her back and that there were no blood injuries. She denied the suggestion put forth by the appellant / accused that there was a monetary dispute and prior enmity between her and the appellant



injury to the appellants / accused as he didn't repay the debt. Further, the victim denied the suggestion that appellants / accused fell down near railway gate while she was chasing him.

7.2.P.W.2 is the husband of P.W.1. He deposed that on 27.12.2010 at 09.00 p.m., when he was at his land, P.W.1 came and narrated the incident. The accused side put a suggestion that there occurred a quarrel between the appellants/ accused and the P.W.1 pertaining to the debt. The witness denied the said suggestion.

7.3.P.W.3 - Suresh is a cousin of P.W.2. He deposed that on 27.12.2010 at 09.30 p.m., while he was at home, P.W.1 and P.W.2 came there and P.W.1 narrated the incident to him. Since P.W.1 complained of body pain, they admitted P.W.1 in the hospital. Then, when the police asked for the clothes worn by the victim, the victim changed her dress and handed over the clothes to the Inspector of Police.



7.4. In his cross examination, he deposed that the next day morning at about 05.00 a.m., he handed over the clothes to the police but he did not spread and see the clothes.

7.5. P.W.4 - Deepika is the servant of P.W.3. She corroborates the evidence of P.W.3. In her cross-examination, she deposed that she handed over the clothes that were drying in the clothesline.

8. The learned counsel for the appellant submitted that there was a contradiction among the evidence of P.W.1, P.W.3 and P.W.4. As per the evidence of P.W.4, P.W.3, handed over the clothes that were taken from the clothesline at victim's house. Hence, the recovery of MO-1 to MO-3 is doubtful.

9. It's true that there are some minor contradictions among the evidence of P.W.1 to P.W.3 in this regard. Conjoint reading of the deposition of P.W.1 to P.W.3 would show that on 27.12.2010, when P.W.1 was admitted in Hospital, the Sub-Inspector of Police (P.W.14) came to the Hospital and



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recorded complaint statement from P.W.1 and requested P.W.1 to hand over

the clothes worn by her during the incident. Then, P.W.3 went to P.W.1's

house to get clothes for P.W.1 to change. At that time, P.W.4 had given him

the clothes of P.W.1 that were drying on the clothesline. Thereafter, P.W.3

went to the Hospital and handed over the clothes to P.W.1. After P.W.1

changed to the clothes brought from home, he collected the clothes already

worn by her and handed them over to P.W.16 – Investigating Officer. P.W.16

in his evidence clearly deposed that he received MO-1 to MO-3 (clothes

worn during the incident) from Suresh in Form No.95 at the Police Station

and sent the same for chemical analysis. Hence, this Court is of the view that

the minor contradictions do not affect the veracity of the evidence and

therefore, that MO-1 to MO-3 are clothes worn by the victim during the

incident.

9.1.P.W.5 - Pandurangan is the observation mahazar witness. He

does not support the case of the prosecution.



9.2.P.W.6 - Elumalai deposed about the arrest of the appellant /  
accused on 29.12.2010.

9.3.P.W.7 - Dr.Saravanan deposed that while he was on duty on 27.12.2010 at Government Hospital, Adukkamparai, he medically examined the victim and found an abrasion injury just below the left eye and issued wound certificate (Ex-P.5) to that effect and opined that the above injury is simple in nature. He further deposed that at the time of admission in Hospital, the victim stated that she was attacked and sexually assaulted by a known person (Santhosh) on 27.10.2010 at around 08.30 p.m. in her agricultural land.

9.4.P.W.8 - Dr.Rajeswari deposed that while she was on duty on 28.12.2010 at 02.00 am in the Government Hospital, Adukkamparai, the victim came to her for treatment and informed her that on 27.10.2010 at around 08.30 p.m., when she went to attend nature's call, she was sexually assaulted forcibly by a known person who touched her breast with hands and external genitalia with his penis and hands.



9.4.1. She further deposed that she examined the victim and found no external injury over her breast and external genitalia and that the victim is a married lady who has had sexual intercourse in the past. She collected the vaginal smear for medical examination and sent it for forensic analysis. On receipt of the result that no spermatozoa was found over the vaginal smear, she issued a medical certificate (Ex-P.6) to that effect.

9.5.P.W.9 - Dr.S.Shanmugapriya deposed that while she was on duty on 29.12.2010, at about 03.35 p.m., at Government Pentland Hospital, Vellore, as per the police memo, she examined the accused / appellant medically and found multiple abrasions measuring 0.5 X 0.5 cm over the dorsal aspect of right forearm and abrasions in left little finger measuring 0.5 X 0.5 cm with blood clot and that she issued wound certificate (Ex-P.7) to that effect and opined that the above injuries are simple in nature.

9.5.1. She further deposed that at the time of examination the appellant / accused told her that on 27.12.2010 at 08.30 p.m., a known lady aged 45 years caused the bite injuries near Periyakambantham Railway Gate.



9.6.P.W.10 - Thiru. Ramakrishnan is the observation mahazar witness.

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9.7.P.W.11 - Thiru. Jegannathan, Chemical Examiner of Regional Forensic Sciences Lab, Vellore, deposed that he chemically examined the three material objects forwarded by the Judicial Magistrate, Katpadi and found semen stains over the inskirt (MO-3) and found no semen stains over the other two items(MO-1 and MO-2). He issued Biological report (Ex-P.9) to that effect. He further deposed that he sent samples collected from MO-3 to forensic science laboratory, Chennai for DNA analysis.

9.7.1.It is to be noted that the DNA analysis report, marked as Ex.P18, states that “as no amplicon was resulted no DNA profile could be obtained from the above item”. Further, it’s to be noted here that the prosecution did not collect the semen from the appellant / accused. No explanation was offered by the Investigating Officer in this regard.



9.8.P.W.12 - Tmt.Asha Rani deposed that while she was working

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as Head Clerk of Judicial Magistrate, Katpadi, on 29.12.2010, she received the case properties and as per the requisition of the Inspector, Latheri Police Station, she forwarded yellow, white, brown flowered nylon saree (MO-1), blue colour jacket (MO-2) and dark blue colour inskirt (MO-3) for chemical analysis.

9.9.P.W.14 - Saraswathi, Sub-Inspector of Police deposed that on 28.12.2010 at about 08.30 p.m., when she was on duty at Latheri Police Station, on receiving intimation from the hospital, she went to the Government Hospital, Adukkamparai and examined the victim and recorded her complaint statement (Ex-P.1) and registered F.I.R. (Ex-P.12) in Crime No.226 of 2010 under Sections 376 and 506(i) of IPC on the same day.

9.9.1.In her cross-examination, she deposed that she noticed injuries on the body of the victim and did not enquire the victim about her clothes.



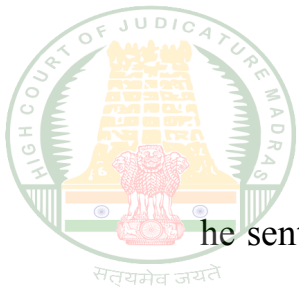


9.10.P.W.15 - Dr.Selvaraj deposed that while he was on duty on

06.01.2011 at Government Medical College Hospital, Vellore, as per the requisition letter from Judicial Magistrate, Katpadi (Ex-P.13) he medically examined the appellant / accused and opined that the accused / appellant is potent and he issued medical certificate (Ex-P.14) to that effect.

9.11.P.W.16 – Thirunavukkarasu, Inspector of Police, deposed that he took the case for investigation; that he went to the place of occurrence and prepared rough sketch (Ex-P.15) and observation mahazar (Ex-P.8) in the presence of witnesses Pandurangan (P.W.5) and Ramakrishnan (P.W.10); that he examined the witnesses Suresh (P.W.3), Deepika (P.W.4), Pandurangan (P.W.5) and Ramakrishnan (P.W.10) and recorded their statements.; that he examined the victim (P.W.1) and her husband (P.W.2) in the Hospital and recorded their statements; that he recovered clothes produced by Suresh (P.W.3) through Form-95 (Ex-P.10); that on 29.12.2010, at about 11.00 a.m., near Paraimedu, Varabathy, Periyakambanatham, he arrested the accused / appellant; that in the presence of Elumalai (P.W.6) and Mohan (P.W.13), he recorded the confession statement (Ex-P.4) of the accused / appellant and that

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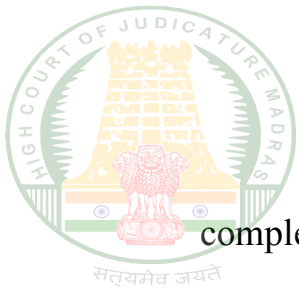
he sent the accused to Government Hospital to take treatment for the alleged bite injury caused by the victim, along with Police Memo No.35 Hospital K2 PS/2010.

9.12.P.W.17 - Thiru. Gengairaj deposed that while he was working as Circle Inspector, Latheri Police Station, he took over the case file for investigation on 18.03.2011; that he examined Dr.Rajeswari (P.W.8), Dr.Shanmugapriya (P.W.9) and Dr.Selvaraj (P.W.15) and recorded their statements and obtained medical certificates from them and that he examined Thiru. Jegannathan, Chemical Examiner and recorded his statement.

9.12.1.In his cross-examination, he admitted that he did not collect the semen of the appellant / accused and send it for DNA analysis.

9.13.P.W.18 - Thiru. Mahendiran, the Inspector of Police who succeeded PW 17 deposed that he continued the investigation, that he obtained X-ray opinion of the victim marked as Ex-P.16, cytology report marked as Ex-P.17 and D.N.A. Test report marked as Ex-P.18. After

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completing the investigation, he filed final report against the accused under

Section 376 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998.

9.13.1. In his cross-examination, he admitted that the cytology report (Ex-P.17) states that no spermatozoa was seen.

10. It is to be noted that the alleged occurrence took place on 27.12.2010 before the substitution of Section 375 vide Act 13 of 2013. The then Section 375 stood thus:

*'375.Rape.- A man is said to commit "rape" who, except in the cases hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-*

*First.-Against her will.*

*Secondly.-Without her consent.*

*Thirdly.-With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.*



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*Fourthly.-With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.*

*Fifthly.-With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.*

*Sixthly.-With or without her consent, when she is under sixteen years of age.'*

11.As per the explanation 1 for the then Section 376 of IPC, penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape i.e., penetration is *sine quo non* for an offence of rape. In order to constitute penetration, there must be clear and cogent evidence to prove that some part of the virile member of the accused was inside the labia of the pudendum of the woman, no matter how little. To make out an offence under Section 375 there need not be a completed act of intercourse, mere penetration is sufficient. But in the present case, P.W.1 did not mention



anything about penetration. She only mentioned that the appellant / accused applied his mouth and bit and sucked her vulva. As per medical evidence, there was no internal or external injury in and around the genitalia and no spermatozoa was found inside the vulva. Admittedly, P.W.1 is a 40 year old married woman. The alleged occurrence occurred in a barren land. Though P.W.1 had stated that she had injuries on her back, the same was not supported by medical evidence. The prosecution did not collect the semen sample from the accused and match it with the stain and therefore, the alleged stain in MO-3, is not connected with the accused.

12.P.W.9 – Dr. Shanmugapriya, who examined the appellant / accused has deposed that he had abrasion injuries over his right forearm and left little finger. The defence of the appellant / accused is that on 27.12.2012, there was a scuffle between him and the victim. In view of the defence and the evidence of P.W.9 – Dr. Shanmugapriya, it's easily discernible that on 27.12.2012 some incident took place between the appellant / accused and the victim. P.W.7- Dr. Saravanan has noted that he was told by the victim that the one Santhosh undressed her and threatened to sexually abuse her. Further,



P.W.8- Dr. Rajeswari has noted that she was told by the victim that, a known person sexually assaulted her forcibly by touching her breast with hands and external genitalia with his penis and hands. There is no evidence to suggest or prove that the accused committed penetration. Absence of Penetration into vulva of victim, as per the explanation of the then Section 375 of IPC which was in force on the date of occurrence, would not constitute the offence of rape. As stated supra, there is no medical evidence available on record to prove or suggest penetration. In these circumstances, the earlier statements of the victim to the medical examiners assume much importance and can't be brushed aside.

13.The victim's evidence, keeping in mind the law in force at that time, attracts only the offence of attempt to rape and not rape itself. It's needless to mention that as per Section 375(d) in force today, the said act of the appellant / accused would clearly attract the offence of Rape.

14.The Hon'ble Supreme Court, in **STATE OF MADHYA PRADESH VS. MAHENDRA ALIAS GOLU** reported in **[(2022) 12 SCC**



442/ has analysed the distinction between preparation and attempt to commit

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***'Distinction between 'Preparation' and 'Attempt' to commit rape***

12. *It is a settled proposition of Criminal Jurisprudence that in every crime, there is first, Mens Rea (intention to commit), secondly, preparation to commit it, and thirdly, attempt to commit it. If the third stage, that is, 'attempt' is successful, then the crime is complete. If the attempt fails, the crime is not complete, but law still punishes the person for attempting the said act. 'Attempt' is punishable because even an unsuccessful commission of offence is preceded by mens rea, moral guilt, and its depraving impact on the societal values is no less than the actual commission.*

13. *There is a visible distinction between 'preparation' and 'attempt' to commit an offence and it all depends on the statutory edict coupled with the nature of evidence produced in a case. The stage of 'preparation' consists of deliberation, devising or arranging the means or measures, which would be necessary for the commission of the offence. Whereas, an 'attempt' to commit the offence, starts immediately after the completion of preparation.*



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*'Attempt' is the execution of mens rea after preparation. 'Attempt' starts where 'preparation' comes to an end, though it falls short of actual commission of the crime.*

*14. However, if the attributes are unambiguously beyond the stage of preparation, then the misdemeanours shall qualify to be termed as an 'attempt' to commit the principal offence and such 'attempt' in itself is a punishable offence in view of [Section 511 IPC](#). The 'preparation' or 'attempt' to commit the offence will be predominantly determined on evaluation of the act and conduct of an accused; and as to whether or not the incident tantamounts to transgressing the thin space between 'preparation' and 'attempt'. If no overt act is attributed to the accused to commit the offence and only elementary exercise was undertaken and if such preparatory acts cause a strong inference of the likelihood of commission of the actual offence, the accused will be guilty of preparation to commit the crime, which may or may not be punishable, depending upon the intent and import of the penal laws.*

*15. [Section 511 IPC](#) is a general provision dealing with attempts to commit offences which are not made punishable by other specific sections of the Code and it provides, inter alia, that,*

*“511. Punishment for attempting to commit offences punishable with imprisonment for life or other*





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*imprisonment.- whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one half of the imprisonment for life or, as the case may be, onehalf of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both”.*

15.In the light of the above legal position, this Court evaluated the evidence of P.W.1 and is of the view that the act of the appellant / accused would amount to attempt to rape which is punishable under Section 376 read with Section 511 of IPC. The appellant / accused has failed to prove his defence that there occurred a scuffle between him and the victim pertaining to a debt of Rs.200/- near Periyakambantham Railway Gate. If really any occurrence had happened as alleged by the appellant / accused, naturally some person would have witnessed it. It's a settled position of law that the defence can be established either by way of cross-examination of the



witnesses and/or by adducing evidence on his behalf, the standard of proof being preponderance of probabilities. Mere suggestion put to the prosecution witness does not amount to proof.

### CONCLUSION

16.In view of the discussion and dispositive reasoning stated supra, this court decides that the charge against the appellant / accused under Section 376 of IPC is not established by the prosecution beyond reasonable doubt but the acts of the accused attract the offence of attempt to rape punishable under section 511 of IPC and that, therefore, there is a reason to interfere with the judgement of the trial court. Para 53 of the trial court judgement reads thus:

*'53.In view of the facts and circumstances of the case, the definition of Sec.4 of Tamil Nadu Prohibition of Harassment of Women Act seems to be forms the integral part of the offence of ravishment that defined u/s. 376 of I.P.C., and since the accused is found guilty for the offence u/s 376 of I.P.C., According to Sec.71 of I.P.C., no separate*



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*punishment for the offence u/s 4 of Tamil Nadu Prohibition of Harassment of Women Act does warranted. '*

Since the State has not preferred appeal against the above said findings, the same has reached finality. Hence, this Court need not consider the above said finding in this appeal. Point Nos.(i) and (ii) are answered accordingly.

17.Resultantly, the Criminal Appeal is partly allowed. The conviction and sentence passed by the trial court in Sessions Case No.84 of 2012 on the file of learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court) Vellore, is modified as follows:

i) the appellant / accused is convicted for the offence of attempt to rape punishable under Section 376 read with Section 511 of IPC and imposed with punishment of rigorous imprisonment for five years and fine of Rs. 2,000/-, in default of which, to undergo simple imprisonment for two months.



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ii) the period of detention already undergone by the appellant / accused shall be given set off under Section 428 of Cr.P.C.

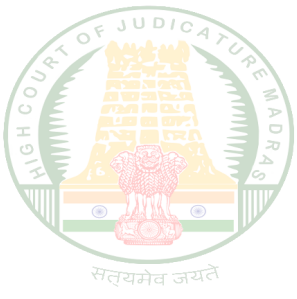
**29 / 09 / 2023**

Index : Yes  
Neutral Citation : Yes  
Speaking order  
TK

To

- 1.The Sessions Judge  
Magalir Neethimandram (Fast Track, Mahila Court)  
Vellore,  
Vellore District.
- 2.The Inspector of Police  
Latheri Police Station  
Latheri,  
Vellore District.
- 3.The Public Prosecutor  
High Court of Madras.

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**R.SAKTHIVEL, J.**

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**PRE-DELIVERY JUDGMENT MADE IN**  
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