

In the Court of the Mahila Court, Pudukkottai

Present: Tmt.Dr.R.Sathya,

Sessions Judge,

Mahila Court, Pudukkottai

Friday the 18th day of December 2020

The 3rd day of Markali Sarvari Andu 2050

S.C.No.01/2016

P.R.C.No.17/2015 on the file of the District Munisif cum Judicial Magistrate Court, Keeranur.

Complainant	:	The Inspector of Police, All Women Police Station, Keeranur. Cr.No.06/2013
Name of the accused	:	Bakiyaraj, Aged 28/2013, S/o. Sukkiran, Poonakuthupatti Ennai Village, Illuppur, Pudukkottai.
Case of the Prosecution	:	The accused had committed the offences punishable U/s.417, 420, 376(i), 493, 494, 496 of IPC and Sec.9 of the prohibition of Child Marriage Act 2006.
Charges framed	:	U/s.417, 420, 376(2)(i), 493 of I.P.C and Sec.9 of the prohibition of Child Marriage Act 2006.
Plea of the accused	:	Not guilty.
Finding of the Judge	:	The accused is found guilty u/s. 376(2)(i) IPC and the accused is not found guilty u/s. 417, 420, 493 of I.P.C and Sec.9 of the prohibition

of Child Marriage Act 2006.

Sentence or order of the court : The accused is found guilty u/s. 376(2)(i) IPC, convicted and sentenced to undergo rigorous imprisonment for 10 years with a fine of Rs.20,000/-(Rupees Twenty thousand only) in default to undergo 3 months simple imprisonment for the offence u/s. 376(2)(i) IPC and the period of detention already undergone by the accused is ordered to be set off u/s. 428 Cr.P.C. and the accused is not found guilty u/s. 417, 420, 493 of I.P.C and Sec.9 of the prohibition of Child Marriage Act 2006 and is acquitted from the said charges u/s. 235(1) CrPC. No material objects marked on the side of the prosecution.

As far as compensation to the victim child is concerned the victim girl had suffered rape and had given birth to a girl child and hence this court following the guidelines issued by the Tamil Nadu Government in G.O.(Ms) No.1591 dated 24.09.2018 awards compensation of Rs. 3,00,000/- (Rupees three lakhs only) to the girl child born to the victim and the said compensation has to be paid by the Tamil Nadu Government within a period of 30 days from

the date of receipt of copy of the judgment and it is ordered that the compensation amount to be deposited in the name of minor Subasri with guardianship of her mother the victim girl XXX in any one of the nationalized Bank preferred by the mother of the minor in a interest bearing account. It is further ordered to disburse the interest amount monthly to the mother of the minor namely the victim girl XXX maintenance.

The copy of the judgment is ordered to served to the victim girl for the purpose of getting Compensation, through the Inspector Police, All Women Police Station, Keeranur and the service is ordered to be intimated to this court.

The name of the victim child, her village name and name of her mother PW1 and her brother PW4 are not disclosed in this judgment for reasons of anonymity as mandated by law.

Counsel for the complainant : Tmt. T. Angavi, B.A.,B.L.,
Special Public Prosecutor, Pudukkottai.

Counsel for the accused : Thiru. M.Palaniyappan, B.A., B.L.,

This case has been taken on file by this Court on 28-01-2016 and coming on 23-11-2020 before me for final hearing in the presence of Tmt. T. Angavi, B.A.,B.L., Special Public Prosecutor for the Complainant and Thiru. M.Palaniyappan, B.A., B.L., Advocate for the accused and heard both side arguments, perused the records, and having stood over for consideration till this day, this Court delivered the following,

JUDGMENT

This case was taken on file based on the final report laid by the Inspector of Police, All Women Police Station, Keeranur in Cr. No.06/2013 U/s.417, 420, 376(i), 493, 494, 496 of IPC and Sec.9 of the prohibition of Child Marriage Act 2006.

2) This case relates to cheating, rape, contracting child marriage, marrying again during the life time of wife.

3) The Synopsis of the prosecution case is that the complainant victim girl XXX is residing in Poonakuthuppatti village, within the Keeranur All Women Police Station circle and the accused is also residing in Poonakuthupatti village, Keeranur All Women Police Station circle and the complainant XXX is the younger daughter of XXX and the victim girl XXX had studied upto 9th standard in High School, Illuppur and the date of birth of the victim girl XXX is 13-01-1998 and the accused Backiyaraj belongs to the village of the victim girl XXX

and the accused was already married and had children and the accused was working in a private Mixie company in Mumbai and at the time of his relatives' function and temple festivals, the accused used to come to Poonakuthipatti village and during 2011-2012, one day while the victim girl XXX was studying in 9th standard, a relationship between the accused and the victim girl XXX had formed and they had fallen in love with each other and the accused knowing well that he was married and had children and knowing that if he married the complainant XXX, the marriage will not be valid with the intention to cheat the complainant one day in Tamil month, Iypasi 2011 the accused had taken the complainant XXX to the Aalavayal forest and their in between the R.S. Pathy trees, had forceful sexual intercourse with the complainant and due to which, the complainant had become pregnant and was carrying 7 months and on 19-04-2012, when the village panchayath, was held the accused was questioned regarding the sexual intercourse and regarding the complainant being pregnant and the accused had married the complainant XXX for the second time and on 24-07-2012, a girl baby was born to the complainant XXX and the accused had cheated the complainant and the accused knowing fully well that the accused was already married had using sweet coated words obtained consent from the victim girl, for sexual intercourse and also knowing fully well that the marriage will be not valid, the accused had tied yellow thread on the neck of the victim girl XXXX

and had committed the offences Punishable U/s.417, 420, 376(i), 493, 494, 496 of IPC and Sec.9 of prohibition of child marriage Act, 2006.

4) The allegations against the accused as is found in the final report is as follows:

That the complainant victim girl XXX is residing in Poonakuthupatti village, within the Keeranur All Women Police Station circle and the accused is also residing in Poonakuthupatti village, Keeranur All Women Police Station circle and the complainant XXX is the younger daughter of XXX and the victim girl XXX had studied upto 9th standard in High School, Illuppur and the date of birth of the victim girl XXX is 13-01-1998 and the accused Backiyaraj belongs to the village of the victim girl XXX and the accused was already married and had children and the accused was working in a private Mixie company in mumbai and at the time of his relatives' function and temple festivals, the accused used to come to Poonakuthipatti village and during 2011-2012, one day while the victim girl XXX was studying in 9th standard, a relationship between the accused and the victim girl XXX had formed and they had fallen in love with each other and the accused knowing well that he was married and had children and knowing that if he married the complainant XXX, the marriage will not be valid with the intention to cheat the complainant one day in tamil month, Iypasi 2011 the

accused had taken the complainant XXX to the Aalavayal forest and their in between the R.S. Pathy trees, had forceful sexual intercourse with the complainant and due to which, the complainant had become pregnant and was carrying 7 months and on 19-04-2012, when the village panchayath, was held the accused was questioned regarding the sexual intercourse and the complainant being pregnant and the accused had married the complainant XXX for the second time and on 24-07-2012, a girl baby was born to the complainant XXX and the accused had cheated the complainant and the accused knowing fully well that the accused was already married had using sweet coated words and obtained consent from the victim girl, for sexual intercourse and also knowing fully well that the marriage will be not valid, the accused had tied the yellow thread and had committed the offences Punishable U/s.417, 420, 376(i), 493, 494, 496 of IPC and Sec.9 of prohibition of child marriage Act, 2006.

5) Committal proceedings:-

This case was taken on file by the District Munisif cum Judicial Magistrate, Keeranur as P.R.C.17/2015 on 10.07.2015 and on completion of all formalities the learned District Munisif cum Judicial Magistrate had committed the case to the Court of Hon'ble Principal Sessions Pudukkottai and u/s.209 of Cr.P.C as the case was exclusively triable by Court of Sessions. Thereafter, the

case was made over to this Court for disposal in accordance with law by the Principal Sessions Court, Pudukkottai.

6) Framing of charges :-

On appearance of the accused before this Court memo of appearance was filed on behalf of the accused and the substance of accusation from the documents filed by the prosecution was taken out and questioned and the accused denied the same. Hence, this Court framed charges against the accused U/s.417, 420, 376(2)(i), 493 of I.P.C and Sec.9 of the prohibition of Child Marriage Act 2006 and the accused pleaded not guilty.

7) The prosecution was asked to prove the case against the accused and the prosecution examined witnesses PW1 to PW13 and marked Ex.P.1 to P.9 and in the list witnesses L.W3, LW4,LW9,LW11, LW12, LW13, LW14, LW18 were dispensed by the prosecution. No material objects marked on the side of the prosecution.

8) The Evidence of the prosecution witnesses in brief are as follows:

PW1 XXX the complainant had deposed that she is residing in Poonathupatti village and she is a house wife and she knows the accused and the

accused is her neighbouring house and during the occurrence, she was studying in 9th standard in Government School in her village and was aged about 14 years and her date of birth is 13-01-1998 and in Iypasi Month 2011, while she was studying in school, on school holidays, she had gone for grazing and at that time, the accused had told that he liked her and would marry her and she had objected stating that the accused was already married and having children and the accused had told her that he liked her only and the accused tortured her to have sexual intercourse with him and she told him not to touch her and he had spoken the same for 2, 3 days and she had not told the matter to anyone and then the accused had forced her and had sexual intercourse with her and thereafter the accused was not in the village and she did not know where the accused had gone and in 2012, she felt dizzy and had fallen down and her parents had taken her to Raniyar Government Hospital, Pudukkottai and after medical examination, the doctor told that she was seven month's pregnant and her parents had taken her back to the house and had asked her what happened and she told them that the accused was the reason and had told the occurrence and her parents had gone to the accused's house and had asked his parents and immediately, the accused's parents called the accused and the accused told them that there was no connection between him and her and he told that he did not touch her and then, her parents informed the villagers and a panchayath was held and she does not remember the year, month

and date of the panchayath and in the panchayath , the accused told that he had not seen, touched and had no connection with her and while the villagers were talking, the accused had tied a yellow thread in her neck and her parents had taken her with them and after that the accused had not come home and had not seen her and on 24-07-2012 a girl baby was born to her in Pudukkottai Raniyar Government Hospital and on the date, the accused and his mother had come to hospital and had seen her and had given Rs.1000/- and then she had gone to her parents' house and after the birth of her child, the accused had not seen her and while they asked the villagers, they told there is no connection between them and the matter and then the villagers asked her to give complaint and regarding the same, in 2013, they had gone to All Women Police Station, Keeranur and had given complaint and she does not remember the date and month and the written complaint is Ex.P.1 and regarding the same, the Police had enquired her.

P.W.2 XXX the mother of the victim girl had deposed that she is residing in Poonathupatti village and is doing agricultural work and P.W.1 is her daughter and she knows the accused and the accused is her neighbor and during the occurrence, her daughter was aged about 14 years and her daughter was studying in 9th standard in Government School and one day, her daughter was vomiting in her house and she and her husband had taken her daughter to Pudukkottai Raniyar Government Hospital and after examination, the Doctor told

that she was 7 months pregnant and PW1 had told her the person who was the reason for that and her daughter told that it was Backiyaraj and while she had gone to the accused house and had asked them, but the accused's mother had told that her son is not the reason for that and at that time, the accused was not in his house and his mother told that, she will hand over him within three days and after that the accused had come, and he told that he is not the reason and then they had called for a panchayath and while they were talking, the accused had tied a yellow thread in the neck of her daughter and the accused had taken her daughter to her house and then the accused had not contacted her daughter and she does not know where the accused was and after six months, a girl baby was born to her daughter in Pudukkottai Raniyar Government Hospital and on the same day, the accused and his mother had come to see and had given Rs.1000/- and then the accused had not come and while they had gone to the accused' house, accused parents asked to keep her daughter in their house and when they had told the villagers, they told that they cannot interfere and had asked her to complain before proper forum and then her daughter had given complaint in the All Women Police Station, Keeranur regarding the same and the Police had enquired her.

P.W.3 Karuppaiah had deposed that he is residing in Poonathupatti village and is doing coolie work and on 08-11-2013 at about 2.00 p.m., regarding the accused Backiyaraj having abused the victim girl XXX, the Police had

observed the occurrence place i.e R.S.Pathi forest and had prepared the Observation Mahazar in which, he and one Kannan had signed as witnesses and the observation mahazar is Ex.P.2., and regarding the same, the Police had enquired him.

P.W.4 XXX the brother of victim girl had deposed that he is residing in Poonathupatti village and is doing Tailoring work in Tiruppur and P.W.1 is his sister and he knows the accused Backiyaraj and during the occurrence, he was in Tiruppur and in 2012, her mother had called and told that the accused had abused his sister XXX and after receiving the information, he had gone to the occurrence village and regarding the same they had called for a panchayath on 19-04-2012 and in the Panchayath, the accused told that he had not abused his sister and during argument, the accused had tied a yellow thread in the neck of his sister and after tying the thread, the villagers had asked to give complaint in the Police Station and a female child was born to his sister on 24-07-2012 in Pudukkottai Government Hospital and on the day of the birth of the child, the accused and his mother had come and had seen the child and had given Rs.1000/- to his sister and after that the accused had not come and seen his sister and so, his sister had given complaint against the accused in the Police Station and regarding the same, the Police had enquired him.

P.W.5 Nagarajan had deposed that he is residing in Maathirampatti and

is a Government Contractor and is a Vice-President and he knows the accused and he knows the victim girl XXX and prior to four years, the victim girl and her parents had called him regarding the victim girl being pregnant and during Panchayath, he, Chinnaiah, Pazhani, Suruttaian and others were talking and first the accused had refused and then he accepted the allegation and while they were talking, the accused had tied a yellow thread on neck of the victim girl and since the victim girl was a minor, he told both sides to meet out the case and regarding the same, the Police had enquired him.

P.W.6 Chinnaiah had deposed that he is residing in Poonathupatti and is doing agricultural work and he knows the accused and he knows P.W.1 and prior to 3 1/2, 4 years, the family members of the victim had told him that the victim girl was seven months pregnant and he asked them to tell the same to the elders of the village and panchayath, 40, 50 members were there and in that panchayath, the accused told that there is no connection with the victim girl and ran away and then the known persons had asked the accused and he accepted and had told that he had done a mistake and had tied a yellow thread in the neck of the victim girl and he told both sides that the victim girl is a minor, so to solve the matter before the proper forum and regarding the same, the Police had enquired him.

PW7 had deposed that he is residing in Poonathupatti and he is doing agricultural work and he knows the accused and he knows victim girl XXX and

prior to 4 years victim girl's father mother had told him that the accused had sexually assaulted the said victim girl XXX and had asked him to ask the accused and hence they had called for a village Panchayat and in the Panchayat victim girl XXX and accused family had come and there were around 40 to 50 people in the Panchayat and in the first place the accused had objected later the accused had admitted that he had raped the said victim girl XXX and at that time there was a big dispute and the accused who was having a yellow thread in his hand's had tied the same in the neck of victim girl XXX and later victim girl XXX mother and father had taken the said victim girl XXX to their house and later a case was registered and police had enquired him.

PW8 had deposed that she is presently working as head constable in Keeranur All woman police station and on 08.11.2013 she was working as head constable in the same station and she along with the head constable of Illupur one Mohan Raj had taken the accused connected in crime number 6/13 under section 370, 417, 493 and 496 IPC along with the victim girl XXX and her child Subasri to Chennai Forensic Science Lab along with FTA card and on 3.12.14 had produced the said 3 persons before the Judicial Magistrate, Keeranur along with FTA card and on 7.1.15 on instruction's had submitted the same before the Forensic Science Lab Chennai and the inspector had enquired her.

PW9 Dr. Vijayan had deposed that he is presently doing his higher studies in Madurai government College Hospital and on 6.2.14 morning at around 11:30 when he was in duty in the Pudukottai Government Hospital one Bakiyaraj was brought By the Illuppur police along with memo and on examination of the said Backiyaraj he had referred him for opinion to the civil surgeon and psychiatrist for obtaining opinion and on the basis of the opinion obtained he had issued certificate that the said Backiyaraj was fit mentally and physically and he was fit to have sexual intercourse and said certificate issued by him is EXP3 and sperms were collected from the said Bakiyaraj and on examination it was found that it had spermatozoa and police had examined him.

PW 10 Dr. Lakshmi Priya had stated that presently she is working as senior civil surgeon in Pudukkottai government medical College and on 5.2.2014 in order to get the age certificate of one Backiyaraj on the direction of the Judicial Magistrate Keeranur one Backiyaraj was brought before her and a x-ray was taken in order to assess his age and his age would be between 25 and 30 years and she had issued certificate EXP4 and police had enquired her.

PW 11 Tmt. Nirmala Bai scientific officer of Forensic science department had deposed that she is presently working in Chennai Forensic Science department and on 7.1. 2015 when she was on duty along with the Letter from the Judicial Magistrate, Keeranur Letter No.20/15 dt: 6.1.15 she had received the

FTA blood samples of one Bakiyaraj, Victim girl victim girl XXX and her daughter subasri for conducting DNA profile and she had separated the DNA from the blood samples and by PCR amplified STR she had marked 15 STR and the report had been submitted in I ,II and III report and the DNA report in total with opinion is enclosed in report IV and in a child, under each of the STR locus, one allele should be contributed by the biological mother (maternal) and the other allele should be contributed by the biological father (paternal). Of the two alleles under each of the 15 STR loci found in the child Subasri, one allele (maternal) was contributed by the biological mother Ms.M.victim girl XXX and hence the other allele (paternal) ought to have been contributed by the father to this child. All such paternal alleles, which ought to have been contributed by the father to the child Subasri are found to be present in the alleged father Mr.C.Backiyaraj. Apart from the alleles accounted as present either in the biological mother Ms.M.victim girl XXX or in the alleged father Mr.C.Backiyaraj, no other unaccounted allele is present in the child Subasri. Since the alleged father Mr.C.Backiyaraj is not found excluded from the paternity of the child Subasri under any of the 15 STR loci tested, his probability of paternity has been computed. The cuymulative probability of paternity of the alleged father Mr.C.Backiyaraj for being the father of the child Subasri is 99.999998% and from the analysis it was found that Backiyaraj is the biological father of the child and

report in DNA/PAT/3/2015 Dt 4.5.15 was sent to the Keeranur Judicial Magistrate on 12.5.15 and the same is EXP5.

PW 12 Tmt. Beulah Gnana Vasanthi Inspector of police had deposed that she is working as Inspector of police of all woman police station Pudukkottai and when she was working in Keeranur All woman police station on 8.11.2013 one victim girl XXX of Punathupatti had come to the station in the afternoon at around 12 and had lodged a complaint and she had received the said computer typed complaint and had Registered a case in Cr.No. 6/13 under section 376, 417, 493, 496 IPC and the FIR was sent to the Keeranur Judicial Magistrate court and the FIR is EXP6 and she had sent the copies to the higher officials and had kept a copy in the records and later on the same day had gone to the occurrence place and there enquired the witnesses victim girl XXX, Rengammal, Mukkaiah and recorded their statements separately and at around 14:45 hours in the presence of witnesses Kannan, Karuppaiah had observed the occurrence place and had prepared rough sketch and observation Mahazaar and the rough sketch is EXP7 and on the same day had examined the witnesses and recorded their statements and on the same day at around 15:20 hours on identification by the complainant had arrested the accused who was standing in the Illuppur bus stop and had brought him to the police station and later sent him to judicial custody and on 19.11.2013 had enquired witnesses Marimuthu Nagarajan, Chinnaiah, Surutaiyan,

Palani and recorded their statements separately and on 20.11.2013 had enquired witnesses ponazhagai and recorded her statement and on 17.12.2013 had for the purpose of testing DNA in respect of the child born to Backiyaraj and victim girl XXX had submitted a letter to the Keeranur Judicial Magistrate on 4.2.14 and had produced the accused Backiyaraj before the Pudukkottai Government Hospital on 6.2.2014 for medical examination and on 18. 3.2014 had obtained a letter to the Forensic science division for conducting DNA test from the Judicial Magistrate and had submitted the said letter to the Forensic Science Division and on 21.12.2014 in order to test the DNA profile had obtained FTA card from the Forensic Science Lab and had submitted the same to the Judicial Magistrate and on the same day for all the three persons summons was received from the court and on 30.12.2014 on obtaining the order from the Judicial Magistrate Keeranur had produced the three people along with the FTA card for collecting blood samples and the blood samples were collected and submitted to the Judicial Magistrate Keeranur and then on 7.1.2015 the same was submitted before the Chennai Forensic Science laboratory and on 9.2.2015 the sections were altered from 376, 417, 493, 496 to 417, 420 ,376(ii),493, 496 IPC and Sec 9 of the prohibition of child marriage act and had sent the alteration report to the Judicial Magistrate and the alteration report is EXP8 and on 13.2.15 had examined witnesses Krithika, head constable Narayanan, Mohanraj, Usha Devi and had

recorded their statements separately and on the same day had enquired the Doctor Who had issued certificate to the accused namely Dr. Vijay and Dr. Aruna Giri and Dr. Lakshmi Priya and had recorded their statements separately and on 15.5.2015 had enquired the Forensic science officer and received certificate and recorded her Statement and on 19.5.15 had completed the investigation and laid the charge sheet u/s. 417 ,420,376(ii),493,494,496 and Sec 9 of the prohibition of child marriage Act 2006 as against the accused.

PW 13 Ezhilarasi, Headmaster of Illuppur government higher secondary school had deposed that she is working as headmaster of Illuppur government girls higher secondary school and on Summons had appeared in court and as per school records Mukkan daughter victim girl XXX had studied in their school in the year 2011-2012 calendar year and had produced her transfer certificate in court and as per the transfer certificate her date of birth is 13.1.98 And the transfer certificate is EXP9.

9) After closing the evidence of the prosecution with P.W.13 the accused who faced the trial was questioned u/S.313(1)(b) CrPC. as to the incriminating circumstances that appeared against him and he denied the same and stated that he had defence witness to be examined but had not examined any defence witness.

10) It is the contention of the special public prosecutor appearing for the state that the accused has been charged under section 417,420,376(II),493 and Sec 9 of child marriage restraint Act and PW1 is the complainant as well as the victim girl and on the date of occurrence that is on 30.1.1998 the victim girl was aged 14 years and PW1 parents had stated to the panchayathars that the accused had raped her and had also stated that the accused had given false promises and the panchayathars had questioned the accused regarding the same when he had suddenly tied a yellow thread in her neck and the complainant had stated that she was seven months pregnant and a girl baby was born to her and there is no contradiction in the statement of the victim girl and the occurrence has happened in RS pathy thottam and the observation Mahazar has been prepared in the said place and the witnesses namely the panchayath vice president and the other Panchayathars have deposed regarding the complaint given by the victim girl and had deposed that the accused admitted that he had committed the offence of rape on the victim girl and PW 11 the forensic science expert who had conducted the DNA test for the accused, victim girl and the child had stated that the accused is the biological father of the child and the evidence of PW1 and PW 11 the forensic expert and exhibit P5 the DNA report and the transfer certificate of the victim girl proving that the victim girl was a minor at the time of occurrence the delay in

filing the complaint is not fatal in the nature of the present case and prayed that maximum punishment may be given to the accused and the accused be convicted.

11) The counsel for the accused contended that originally when the FIR was registered the Child marriage act was not included but later on the same has been added and altered and the prosecution has not stated whether the case is for rape or for bigamy and the complaint filed by the complainant in this case is a typed complaint and the complainant PW1 had stated that the police had recorded the statement and later typed the same and in the complaint the place of occurrence has been written in the hand and included and the complainant had stated that the accused had tied a yellow thread and later had not taken her with him and presently is refusing to take her and had asked for reunion and maintenance and the delay in filing the complaint is inordinary and as per the prosecution case the occurrence had happened in 2011 and the complaint has been given in the month of November 2013 and there is no date of occurrence, no time of occurrence and no place of occurrence and the delay of 2 1/2 years in filing the complaint has not been explained properly and the birth certificate of the child mentions the name of the accused as the husband of the victim girl and the 161 Cr.P.C. statement of the victim girl is that the accused had not maintained the victim girl but the police had chosen to file a case of rape, bigamy and Child marriage and the 161 CrPC

statement recorded by the I.O is in contradiction to the complaint and PW5 had stated in the 161 CrPC statement that considering the child welfare they had asked the accused to marry the complainant but in evidence PW5 had stated that suddenly the accused tied the knot in order to save themselves and the prosecution case is contradicted in evidence and as per PW1 evidence the occurrence place is vayalkadu but the SOC mentioned in EXP7 is RS pathy thottam And the prosecution had not stated on which date the victim child was raped by the accused and on what time and the complainant had not gone to the hospital which was 1 km from Illupur but had gone to Ranniyar Hospital so it is proved that the complainant knew that she was pregnant and hence they had gone to the maternity hospital directly and if really they did not know the said fact they would have gone to the hospital at Illupur which is 1 km away from the complainant house and the prosecution had not produced the hospital records of the maternity hospital and the delivery record has also not been filed by the prosecution and the police had developed the case and though the prosecution had stated that the accused is married already they had not mentioned the name of the first wife and whether they are living together and whether they have children and they had not proved the earlier marriage of the accused and the prosecution has not proved the offence of bigamy and the same is not proved through documentary evidence and the first marriage of the accused is not proved and the

victim age has not been proved by bone test and the headmaster of the school has been examined to Prove the age of the victim girl and only the transfer certificate has been marked as EXP9 but the birth certificate of the complainant has not been marked and the age should have been proved through bone test and birth certificate and the defence had objected while marking the transfer certificate and PW1 had admitted during cross-examination that she had given complaint only for the purpose of reunion with the accused and had admitted that the police had only included the place of occurrence in their handwriting in the complaint and as per PW1 on the date of Panchayat and tying of yellow thread the parents of the victim girl were not present but the parents had stated that When the accused tied the yellow thread they were present and PW1 evidence is predominant one and PW2 and PW3 the mother and father evidence is not supporting the evidence of PW1 and PW4 is a hearsay witness and the others are village panchayathars and they had given evidence contrary to the 161 CrPC statement and the prosecution has not proved the case beyond reasonable doubt and prayed that the accused may be acquitted.

12)Now the point to be decided in the present case is as follows:-

Whether the prosecution has proved that the accused had committed the offence of cheating, rape and contracting child marriage and marrying again during the life-time of wife.

13) **Point:-**

As per the prosecution the accused had committed the offence of cheating punishable u/s. 417, 420 IPC, and had committed rape on the victim girl below the age of 16 years punishable u/s. 376(2)(i) IPC and had contracted child marriage punishable u/s. 9 of the prohibition of Child marriage Act and also committed bigamy punishable u/s. 493 IPC ?

It is relevant to extract section 417 IPC which reads as follows

417. Punishment for cheating,- *Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both.*

It is relevant to extract section 420 IPC which reads as follows

420. Cheating and dishonestly inducing delivery of property,- *whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

It is relevant to extract section 376(2)(i) IPC which reads as follows

376(2)(i) Whoever,-

i) Commits rape on a Woman when she is under sixteen years of age; or

It is relevant to extract section 493 IPC which reads as follows

Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

It is relevant to extract section 9 of prohibition of child marriage Act, 2006 which reads as follows

Whoever, being a male adult above eighteen years of age, contracts a child marriage shall be punishable with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both.

14) The prosecution case is that PW1 at the time of occurrence was aged 14 years and had studied upto 9th standard in Illuppur High School and the date of birth of the victim girl PW1 is 13.1.1998 and the accused was aged 28 years and was the neighbouring house of PW1 and was already married and having kids and was working in a private mixie company in Mumbai and used to come to Poonathupatti village during relatives function and temple festivals and during the year 2011 -2012 one day while the victim girl PW1 was studying in 9th standard a relationship between the accused and the victim girl had started while the victim girl had gone for grazing and the accused had knowing fully well that he was married and had children with the intention to cheat PW1 in Tamil month Iyypasi 2011 had taken the victim girl to the Alavayal forest and in between the RS Pathi trees have had forceful sexual intercourse and thereafter was not in the village and in 2012 the victim girl had fallen down feeling dizzy and her parents had taken her to Raniyar Government hospital and an examination PW1 was found 7 month pregnant and her parents had taken her back to the house and had enquired PW1 when she had told that the accused had forcefully had sexual intercourse and later when the parents of the accused enquired the accused he had stated that he had

not touched PW1 and later on informing the Panchyathars the accused while the Panchayathars were enquiring had tied a yellow thread on PW1 neck and later PW1 given birth to a girl baby on 24.7.2012 and the accused had committed the offence of cheating, rape on a minor girl below 16 years marrying again during the life time of wife and contracting child marriage.

15) In order to prove the prosecution case PW1 the complainant and victim girl, PW2 the mother of the complainant, PW4 the brother of the complainant and PW5 to 7 the villagers had been examined by the prosecution. PW1 the victim girl and complainant had deposed in corroboration with her complaint and had deposed that that she is residing in Poonathupatti village and she knows the accused and the accused is her neighbouring house and during the occurrence, she was studying in 9th standard in Government School in her village and during the occurrence, she was aged about 14 years and her date of birth is 13-01-1998 and in Iypasi Month 2011, while she was studying in school, on school holidays, she had gone for grazing and at that time, the accused had told that he liked her and would marry her and she had objected stating that the accused was already married and having children and the accused had told her that he liked her only and the accused tortured her to have sexual intercourse with him and she told him not to touch her and he had spoken the same for 2, 3 days and she had not told the

matter to anyone and then the accused had forced her and had sexual intercourse with her and thereafter the accused was not in the village and she did not know where the accused had gone and in 2012, she felt dizzy and had fallen down and her parents had taken her to Raniyar Government Hospital, Pudukkottai and after medical examination, the doctor told that she was seven month's pregnant and her parents had taken her back to the house and had asked her what happened and she told them that the accused was the reason and had told the occurrence and her parents had gone to the accused's house and had asked his parents and immediately, the accused's parents called the accused and the accused told them that there was no connection between him and her and he told that he did not touch her and then, her parents informed the villagers and a panchayath was held and she does not remember the year, month and date of the panchayath and in the panchayath, the accused told that he had not seen, touched and had no connection with her and while the villagers were talking, the accused had tied a yellow thread in her neck and her parents had taken her with them and after that the accused had not come home and had not seen her and on 24-07-2012 a girl baby was born to her in Pudukkottai Raniyar Government Hospital and after the birth of her child, the accused had not seen her and while they asked the villagers, they told there is no connection between them and the matter and then they told the villagers that they would give complaint, for which the villagers asked her to

give complaint and regarding the same, in 2013, they had gone to All Women Police Station, Keeranur and had given complaint and she does not remember the date and month and the written complaint is Ex.P.1 and regarding the same, the Police had enquired her.

PW2 the mother of the complainant had also corroborated the evidence of PW1 and had deposed that she is residing in Poonathupatti village and is doing agricultural work and P.W.1 is her daughter and she knows the accused and the accused is her neighbor and during the occurrence, her daughter was aged about 14 years and her daughter was studying in 9th standard in Government School and one day, her daughter was vomiting in her house and she and her husband had taken her daughter to Pudukkottai Raniyar Government Hospital and after examination, the Doctor told that she was 7 months pregnant and PW1 had told her the person who was the reason for that and her daughter told that it was Backiyaraj and while she had gone to the accused house and had asked them, but the accused's mother had told that her son is not the reason for that and at that time, the accused was not in his house and his mother told that, she will hand over him within three days and after that the accused had come, and he told that he is not the reason and then they had called for a panchayath and while they were talking, the accused had tied a yellow thread in the neck of her daughter and the

accused had taken her daughter to her house and then the accused had not contacted her daughter and she does not know where the accused was and after six months, a girl baby was born to her daughter in Pudukkottai Raniyar Government Hospital and on the same day, the accused and his mother had come to see and had given Rs.1000/- and then the accused had not come and when they had gone to the accused' house, accused parents asked to keep her daughter in their house itself and when they had told the villagers, they told that they cannot interfere and had asked her to complain before proper forum and then her daughter had given complaint in the All Women Police Station, Keeranur regarding the same and the Police had enquired her.

PW4 the brother of the complainant had also corroborated the version of PW2 and had deposed that he is residing in Poonathupatti village and is doing Tailoring work in Tiruppur and P.W.1 is his sister and he knows the accused Backiyaraj and during the occurrence, he was in Tiruppur and in 2012, her mother had called and told that the accused had abused his sister XXX and after receiving the information, he had gone to the occurrence village and regarding the same they had called for a panchayath on 19-04-2012 and in the Panchayath, the accused told that he had not abused his sister and during argument, the accused had tied a yellow thread in the neck of his sister and after tying the

thread, the villagers had asked to give complaint in the Police Station and a female child was born to his sister on 24-07-2012 in Pudukkottai Government Hospital and on the day of the birth of the child, the accused and his mother had come and had seen the child and had given Rs.1000/- to his sister and after that the accused had not come and seen his sister and so, his sister had given complaint against the accused in the Police Station and regarding the same, the Police had enquired him.

16) PW5 to 7 the villagers had deposed that 4 years prior the victim girl PW1 and her parents had called for a Panchayath regarding the victim girl being 7 month pregnant and the accused being the reason for the same and the accused had accepted the sexual intercourse with the victim girl and had suddenly tied a yellow thread on the neck of PW1 and since PW1 was a minor they had asked PW1 and PW2 to solve the matter before proper forum.

17) It is evident from the evidence of PW1, PW2, PW4 and through the evidence of PW5 to 7 that the accused had on false promise had forced sexual intercourse with the victim girl who was aged 14 years at the time of occurrence and with regard to the age of PW1 the victim girl PW13 the Headmaster Ezhilarasi of Illuppur Government Higher Secondary school has been examined

and EXP9 transfer certificate has been marked which reveals that the date of birth of the victim child is 13.1.1998. The occurrence according to PW1 had happened in the month of Tamil Iypassi 2011 which is the month of October in English calendar. Admittedly the Panchayath had been called for on 19.4.2012 when the victim girl was found to be pregnant and as per the evidence of PW1 a girl child has been born on 24.7.2012. The medical evidence through PW11 and EXP5 DNA report proves that the girl child's biological father is the accused and the evidence of the prosecutrix PW1 stands fully corroborated with the medical evidence and the testimony of PW11. The prosecutrix evidence and the evidence of the prosecution witnesses are trustworthy and there is no reason to doubt genuineness thereof. The victim girl PW1 at the time of occurrence i.e in October 2011 has been aged only 14 years and no matter whether the victim girl consented or not consented to the sexual intercourse the accused had committed the offence of rape and the offence is covered under section 376(2)(i) IPC. In view of PW1 evidence being corroborated through the evidence of PW2, PW4 and the village Panchayathars PW5 to PW7 and corroborated through medical evidence of PW11 and EXP5 DNA report proving that the accused is the biological father of the girl child and also corroborated through the evidence of PW13 Headmaster of the school and EXP9 the transfer certificate proving the age of the prosecutrix and PW1 evidence being corroborated through the evidence of PW3 with regard to the

occurrence place and EXP2 the offence of rape of girl child below the age of 16 years is proved by the prosecution. The accused when questioned regarding the prosecution witnesses PW1 to PW13 evidence had bluntly stated that the witnesses were false evidence and though had stated that he had defence witness to be examined had not examined any defence witness.

18) With respect to the offence u/s. 417, 420 IPC the prosecution had relied on the evidence of PW1 but it is the evidence of PW1 that she had not believed the words of the accused and though the accused stated that he loved her and wanted to marry her she had objected and it is PW1 categorical evidence that the accused had forceful sexual intercourse with her and hence the accused having been found guilty u/s. 376(2)(i) IPC for committing rape on the minor girl PW1 with or without her consent the offence of cheating u/s. 417 and 420 IPC is not attracted.

19) Further with respect to section 9 of prohibition of child marriage Act and 493 IPC, it is the evidence of PW1, PW2, PW4 and PW5 to PW7 that the accused during the Panchayath had suddenly tied a yellow thread on the neck of PW1 and it is the evidence of PW1 during cross-examination that suddenly while the Panchayath was in progress the accused had tied a yellow thread in her neck

and that she is not wearing the same in her neck and it is the evidence of PW2 and PW4 also that the accused had suddenly tied a yellow thread and the vice president of the village PW5 had been cross-examined with respect to the nature of the thread tied on the neck of the minor girl and it is the evidence of PW5 that it was a yellow thread and does not know what was in the yellow thread. Further the tying of yellow thread alone will not constitute a valid marriage. The solemnization of a marriage as per customs prevalent in the village and prevalent in the family of PW1 has not been proved to have been conducted. Hence from the evidence of PW1, PW2, PW4, PW5 to PW7 it is evident that the accused had deceitfully in order to escape from the clutches of the Panchayathars had tied a yellow thread which does not amount to solemnization of a marriage. Hence this court is of the view that the act of the accused tying a yellow thread on the neck of PW1 deceitfully is void as per sec. 12 of prohibition of child marriage Act, 2006 and hence sec. 9 of prohibition of child marriage Act, 2006 does not attract. Further it is the evidence of PW1 that after the Panchayath the accused had not contacted PW1 and had only appeared on the day when the girl child was born and later had never lived (or) been with PW1 and the prosecution having not proved the fact of the earlier marriage of the accused, his wife name and his children name and their place of residence etc through documentary evidence the offence of bigamy is not attracted either.

20) The first bone of contention of the counsel for the accused is that there is an inordinate delay in lodging the complaint and the same is fatal to the prosecution since it creates a doubt on the prosecution case. In this regard admittedly the occurrence as per the complaint had happened on October English calendar month and Iypasi in Tamil month of 2011 and the Panchayath had been called for on knowing that the victim girl was pregnant on 19.4.2012 and the girl child has been born on 24.7.2012 and the present complaint has been lodged on 8.11.2013. In sexual offences and, in particular, the offence of rape and that too on a young girl aged 14 years the delay in lodging the FIR can occur due to various reasons and one of the reason would be reluctance of the prosecutrix or her family members to go the police station and to make a complaint about the incident, which concerns the reputation of the prosecutrix and the honour of the entire family and it has been the consistent view of the Apex court as has been held in *State of Punjab vs. Gurmit Singh* after giving very cool thought and considering all pros and cons arising out of an unfortunate incident, a complaint of sexual offence is generally lodged either by victim or by any member of her family. Further admittedly the witnesses belong to a village and the tendency on the part of villagers and the parents of PW1 would normally be to save the honour of the child as first priority and accordingly PW5 to PW7 the respectables in the village had been requested to intervene in the matter by PW2 the mother of

the victim child to seek compromise since the victim girl had been pregnant 7 months on the date of knowledge and to avoid stigma for a young girl and in fact the complainant PW1 being a young girl with a child would have been worried about her future and would have definitely been in a traumatic state of mind and the family of PW1 namely PW2, PW4 would have been reluctant to go to the police station because of the societies attitude towards PW1 and hence PW1 after the child birth and care of the new born child would have lodged the complaint and it is a normal phenomenon. PW1 had stated and explained the facts and circumstances of the case which is quite natural and the victim girl being young the accused had falsely tied a yellow thread on the neck of the victim girl to make her believe that he had married her and PW1 after the child birth had chosen to lodge the complaint. Further as per the Apex court rulings the delay in lodging an FIR in a rape case is not of much "significance" as the victim has to muster courage to come out in open and expose herself in a "conservative social milieu". In rape cases the delay in filing the FIR by the prosecutrix or by the parents in all circumstances is not significant sometimes the fear of social stigma and on occasions the availability of medical treatment to gain normalcy and above all psychological inner strength to undertake such a legal battle. It has been held in the case of ***Rameshwar V. State of Rajasthan AIR 1952 SC 54*** by the Hon'ble Apex Court that

"unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging first information report cannot be used as a ritualistic formula for discarding prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the Court is to only see whether it is satisfactory or not."

and hence the contention of the defence counsel that the complaint has been lodged with delay is rejected.

21) The second bone of contention of the defence counsel is that the victim girl had lodged the complaint only for the purpose of joining with the accused to live as a family but the police had chosen to file a case of rape. In this connection admittedly the victim girl was aged 14 years at the time of occurrence and as per section 376 (2) (i) IPC the accused had committed the offence of rape on the child below 16 years and her consent is immaterial and further the accused tying a yellow thread in the presence of villagers would not amount to solemnization of a valid marriage and this court from the evidence of the witnesses having held that the accused had deceitfully tied the thread on the neck of PW1 and the same is void the question of the victim girl praying for rejoining the accused is immaterial in the present facts of the case and it has been held in the case of *Mritujoy Biswas Vs. Pranab alias Kuti Biswas and another (2013)* **12 Supreme Court Cases 769 by the Hon'ble Supreme Court** that

"it is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence."

Hence in the light of the Apex court rulings and the core of the prosecution case being that the offence committed by the accused is u/s. 376(2)(i) IPC the contention of the defence counsel is rejected.

22) Thirdly, the bone of contention of the counsel for the defence is that the prosecution has not proved the offence of bigamy and in this regard except the fact that PW1, PW2 had deposed that the accused was already married and was having children no other documentary evidence has been produced by the prosecution in the said regard and this court having held that the tying of a yellow thread on the neck of the victim girl by the accused was deceitful and not a valid marriage this court holds that sec. 494 IPC is also not attracted and not proved by the prosecution.

23) Fourthly, the bone of contention of the defence counsel is that the victim girl age has not been proved through bone test and in this regard PW 13

Headmaster has been examined and EXP9 transfer certificate has been marked which reveals that the victim girl has been born on 13.1.1998 and the same being sufficient to prove the age of the victim girl the contention of the defence counsel is rejected.

In the result, the accused is found guilty u/s.376(2)(i) IPC and the accused is convicted for the same and with regard to the sentence to be imposed the accused was questioned u/s. 235(2) Crpc and he replied as follows.

" வயதான அம்மா இருக்கிறார். என் மனைவி பிள்ளைகளை நான் தான் பராமரித்து வருகிறேன். எனக்கு குறைந்த தண்டனை வழங்குமாறு கேட்டுக்கொள்கிறேன்.

Heard the learned counsel for the accused on the sentence and the learned counsel for the accused also prayed for lesser punishment to the accused. On considering the fact and circumstances involved in this case and in view of the Hon'ble Apex court time and again holding that it is the nature and gravity of the crime but not the criminal which are germane for consideration of appropriate punishment in a criminal trial and the Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belongs and

the punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should " respond to the society's cry for justice against the criminal, this court finds it lawful to impose the following sentence on the accused for the charge proved against him u/s. 376(2)(i) IPC and Accordingly, the accused is convicted and sentenced to undergo rigorous imprisonment for 10 years with a fine of Rs.20,000/-(Rupees Twenty thousand only) in default to undergo 3 months simple imprisonment for the offence u/s. 376(2)(i) IPC and the period of detention already undergone by the accused is ordered to be set off u/s. 428 Cr.P.C. and the accused is not found guilty u/s. 417, 420, 493 of I.P.C and Sec.9 of the prohibition of Child Marriage Act 2006 and is acquitted from the said charges u/s. 235(1) CrPC. No material objects marked on the side of the prosecution.

As far as compensation to the victim child is concerned the victim girl had suffered rape and had given birth to a girl child and hence this court following the guidelines issued by the Tamil Nadu Government in G.O. (Ms) No.1591 dated 24.09.2018 awards compensation of Rs. 3,00,000/- (Rupees three lakhs only) to the girl child born to the victim and the

said compensation has to be paid by the Tamil Nadu Government within a period of 30 days from the date of receipt of copy of the judgment and it is ordered that the compensation amount to be deposited in the name of minor Subasri with guardianship of her mother the victim girl XXX in any one of the nationalized Bank preferred by the mother of the child Subasri in a interest bearing account. It is further ordered to disburse the interest amount monthly to the mother of the child Subasri namely the victim girl XXX maintenance.

The copy of the judgment is ordered to served to the victim girl for the purpose of getting Compensation, through the Inspector Police, All Women Police Station, Keeranur and the service is ordered to be intimated to this court.

The name of the victim child, her village name and name of her mother PW1 and her brother PW4 are not disclosed in this judgment for reasons of anonymity as mandated by law.

Dictated to the Steno Typist, directly typed by her, corrected and pronounced by me in open Court, this the 18th day of December 2020.

SD/Dr.R.Sathya,
Sessions Judge,
Mahila Court,
Pudukkottai.

PROSECUTION SIDE WITNESSES:

P.W.1 –Victim girl XX - complainant
P.W.2 - mother of the Victim girl XXX
P.W.3 – Thiru. Karuppaiah – Observation mahazaar witness
P.W.4 - brother of the Victim girl XXX
P.W.5 – Thiru. Nagarajan - Villagers
PW.6 - Thiru. Chinnaiah - Villagers
P.W.7 – Thiru.Palani – vilagers
P.W.8– Tmt. Ushadevi – Head constable
P.W.9 - Dr. Vijayan – examination of accused
P.W.10 -Tmt. Lakshmi priya - Radiolagist
P.W.11 – Tmt. Nirmal Bai DNA expert
P.W.12 – Tmt. Beulah Gnana Vasanthi - Inspector of police
P.W.13- Ezhil Arasi Head master

EXHIBITS MARKED ON THE PROSECUTION SIDE:

<u>Sl.No.</u>	<u>Date</u>	<u>Description of the Documents</u>
Ex.P1	8.11.2013	Complaint (PW1)
Ex.P2	8.11.2013	Observation mahazaar (PW3)
Ex.P3	6.2.2014	medical examination report of bakiyaraj (PW9)
Ex.P4	5.2.2014	Radiological assessment of age bakiyaraj (PW10)
Ex.P.5	4.5.2015	DNA report (PW11)
Ex.P.6	8.11.2013	FIR (PW12)
Ex.P.7	8.11.2013	Rough sketch (PW12)
Ex.P.8	9.02.2015	alteration report (PW12)

Ex.P.9

xerox copy of transfer certificate (PW13)

WITNESSES AND EXHIBITS MARKED ON THE SIDE OF THE ACCUSED:

NIL

MATERIAL OBJECTS MARKED ON THE PROSECUTION SIDE:

NIL

SD/Dr.R.Sathya,
Sessions Judge,
Mahila Court,
Pudukkottai.

//True copy//

Sessions Judge,
Mahila Court,
Pudukkottai.

Judgment
S.C.No.1/2016
Dated :18.12.2020