



Crl.A.Nos.73 of 2017 & 106 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

RESERVED ON : 22.11.2021

DELIVERED ON : 07.12.2021

CORAM :

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.Nos.73 of 2017 & 106 of 2019

Crl A. No.73 of 2017

Munna

... Appellant/ Accused 2

Vs.

The State of Tamil Nadu,
Represented by the Inspector of Police,
Palacode Police Station,
Dharmapuri District
(Ref: Crime No.360/2014)

... Respondent/Complainant

Crl A. No. 106 of 2019

Sivaraj

... Appellant/ Accused-1

Vs.

The State of Tamil Nadu,
Represented by the Inspector of Police,
Palacode Police Station,
Dharmapuri District
(Ref: Crime No.360/2014)

... Respondent/Complainant



Crl.A.Nos.73 of 2017 & 106 of 2019

COMMON PRAYER: Criminal Appeals filed under Section 374 of Criminal Procedure Code, 1973 against the judgment of conviction and sentence dated 18th January 2017 passed by the learned Sessions Judge, Fast Track Mahila Court at Dharmapuri, in S.C.No.109/2015.

For Appellant : Mr. R. Baskar (in Crl.A.No.73 of 2017)
Mr. R. Rajasekar
for Mr. R. Ramesh (in Crl.A.No.106 of 2019)

For Respondent : Mr. M. Babu Muthu Meeran
Additional Public Prosecutor in both appeals

COMMON JUDGMENT

Judgment of the Court was delivered by R.HEMALATHA, J.

The present appeals are filed against the judgment dated 18.01.2017 passed by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, in S.C. No.109 of 2015 in and by which A-1 (the appellant in Crl.A. No.106 of 2019) was convicted for the offences punishable under Sections 376 (4 counts) IPC and 66(E) (4 counts), 67A(4 counts) Information Technology Act and A-2 (Appellant in Crl A. No.73 of 2017) was convicted for the offences under Section 292 IPC and under Sections 66(B), 67(A) Information Technology Act 2000 and sentenced to undergo imprisonment as extracted hereunder:



WEB COPY

S.No.	Rank of Accused	Conviction	Sentence
1.	A-1	U/s. 376 IPC (4 counts)	Life Imprisonment for each count, and a fine of Rs.1,000/- for each count, in default, to undergo Rigorous Imprisonment for two months.
2.	A-1	U/s. 66 (E) Information Technology Act (4 counts)	2 years imprisonment for each count and a fine of Rs.10,000/- for each count, in default, to undergo Rigorous Imprisonment for 4 months each count.
3.	A-1	U/s. 67 (A) Information Technology Act (4 counts) IPC	3 years imprisonment for each count and to pay a fine of Rs.50,000/- for each count in default, to undergo Rigorous Imprisonment for 6 months each count.
4.	A-2	U/s. 292 IPC	One year Rigorous imprisonment and to pay a fine of Rs.1,000/- in default, to undergo Rigorous imprisonment for 2 months.
5.	A-2	U/s. 66(B) Information Technology Act.	2 years Rigorous Imprisonment and to pay a fine of Rs.10,000/- in default to undergo Rigorous imprisonment for four months. for life with a fine of Rs.5,000/- each.
6.	A-2	U/s. 67(A) Information Technology Act.	3 years Rigorous Imprisonment and to pay a fine of Rs.50,000/- , in default, to undergo rigorous imprisonment for six months



Crl.A.Nos.73 of 2017 & 106 of 2019

2. The case of the prosecution is that Sivaraj (appellant in

WEB COO Crl.A.No.106 of 2019 and A-1) doing private lending business owned a terraced farm house at Kuppankottai, Palacode, Dharmapuri District. He was known to give loans at cheaper interest rates, due to which he was able to lure many women folk who were in need of hand loans. It is the case of the prosecution that atleast 29 women who approached him to borrow money were sexually assaulted after they were asked to come to his farm house and the sexual acts were videographed by him using two mobile phones (M.O.1 and M.O.2), only to be used as a tool to threaten them and extract more sexual favours from them as and when he desired. Munna (appellant in Crl.A.No.73 of 2017 and A-2), was a mobile phone technician who was able to access the video files in the mobile phones of A-1 when they reportedly were handed over to him for repair. He downloaded them, made copies and circulated them in the web and also sold them to the public.

3. K.S.Vijayan (P.W.1), the Village Administrative Officer of Palacode, was the complainant after he got information of this scandal involving many women living in the locality. On receipt of his complaint (Ex.P1), on 06.10.2014, Senkathir (P.W.17), the Special Sub Inspector of

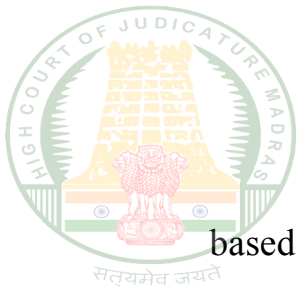


Police, Palacode Police Station, registered an FIR in Crime No.360 of

2014 of Palacode Police Station under Sections 292 IPC and 67, 67 (A)

and 67 (B) of Information Technology Act, against Sivaraj (A1).

4. Somanrajan (P.W.22), the Inspector of Police, Palacode Police Station, took up the investigation, went to the scene of occurrence and prepared an Observation Mahazar (Ex.P32) and a rough sketch (Ex.P33). He arrested A-1 on the same day at about 04.30 P.M. and recorded his confessional statement in the presence of P.W.1 and his assistant Subramaniam (not examined). Based on the confession of the first accused, one Nokia mobile with two sim cards and one memory card (M.O.2) and one Karbon mobile phone with two sim cards (M.O.1) were recovered under the cover of a mahazar (Ex.P3) in the presence of the same witnesses. Out of the 29 women who were the victims of this scandal, six of them namely, (P.W.2), (not examined), (not examined), (P.W.3), (P.W.4) and (P.W.5) were examined by P.W.22. Four of them namely P.W.2 to P.W.5 were examined under Section 164 Criminal Procedure Code by the Judicial Magistrate (P.W.18), Fast Track Court, Dharmapuri. Subsequently, Munna (A-2) was arrested on 30.10.2014 at 06.00 P.M.



based on A-1's confession. A-2's police confession was recorded, based on which one Apple i-phone (M.O.3) and one Joy digital phone with 2 GB memory chip (M.O.4) were recovered under a mahazar (Ex.P5) in the presence of P.W.1 and P.W.6.

5. The first accused was medically examined for potency (Ex.P10) and it was found that there was nothing to suggest that he is impotent. The mobile phones seized from both the accused were sent to the forensic department on 02.12.2014 (Ex.P13) and the report (Ex.P14) mentioned that 65 video files were in the memory card of Nokia mobile phone (M.O.2) and 40 video files in the memory card of Joy digital phones (M.O.4) and all of them had contents which were obscene in nature. They were retrieved and copied to a DVD and forwarded to the Physics Division of the Forensic Science Department, for further examination. Tmt.Maria Selvi Rosalin (P.W.19), Assistant Director, Forensic Science Lab, was examined regarding the report (Ex.P14).

6. Ex.P31 is the report of Physics Division, Forensic Science Lab, in which the video files extracted from the memory cards of mobile phones (M.O.2 & M.O.4) were examined and found to be genuine and



not doctored ones. Tmt.Hemalatha (P.W.21), Assistant Director, Forensic Science Department, was examined in this regard.

7. The photographs of P.W.2 to P.W.5 (M.O.5) were forwarded to the Forensic Science Department with a CD containing the photo of A-1 (M.O.6). Ex.P24 is the report submitted by Alarmel Mangai (P.W.20) in which the four females P.W.2 to P.W.5 and that of the accused whose photographs were sent for comparison with the contents of the DVD, were found to be the same. It was also confirmed that all the video files in the DVD had sexual content.

8. After completing the investigation, a final report was filed by P.W.22 against both the accused for the offences under Sections 292, 354, 354(B), 354(C), 506(ii), 376 IPC and Under Section 4 of Tamilnadu Prohibition of Harassment of Women Act, 1998 and 66(B), 66(E), 67(A) of Information Technology Act.

9. In order to bring home the guilt of both the accused, the prosecution examined 22 witnesses and marked Ex.P1 to Ex.P36. M.O.1 to M.O.6 were also adduced.



10. Mr.R.Rajasekar, learned counsel for A-1 pointed out the

following deficiencies in the case of the prosecution :

- 1) Non-examination of Palaniammal and the auto driver who allegedly took these women P.W.2 to P.W.5 to the farm house of A-1 is fatal to the case of the prosecution.
- 2) There are contradictions in the evidence of P.W.2 to P.W.5 and clearly appears to be an after thought after the case was filed against A-1. Their statements also before the Magistrate differed from their depositions.
- 3) A-1 was in no way connected to A-2 and therefore, had no role to play in circulating videos containing sexual content. Therefore, Section 67-A of Information Technology Act could not be applied to him.
- 4) There is no rape and hence 376 IPC is not attracted in the instant case against A-1. According to the counsel, the sexual acts could at the most be consensual and cannot be classified as forced sex or rape.

11. Mr.R. Baskar, learned counsel for A-2 contended that Deposition of P.W.6 is unreliable since he gave three different versions in 162 Cr.PC statement before Police, Chief examination in the court and



then in the cross examination.

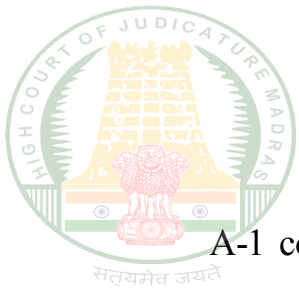
WEB COPY) The Joy Digital phone (M.O.4) did not have any memory card.

Moreover, the Apple i-phone seized also did not have any sexual content. The 2 GB memory chip was not marked separately.

2) The activities of A-1 were never known to A-2 and A-2 has been implicated with no proper material or evidence against him.

12. Per contra, Mr.Babu Muthu Meeran, learned Additional Public Prosecutor contended that proper prescribed procedure of getting the material objects which contained the electronic evidence was followed, that initially four mobile phones M.O.1 to M.O.4 along with all sim cards and memory cards were seized and sent for forensic examination, and that the forensic lab reports Ex.P14, Ex.P24 and Ex.P31 clinched the case in favour of the prosecution. He would further submit that this being a very sensitive issue it was the courage displayed by four women (P.W.2 to P.W.5) who were ready to face the test of cross examination, fully aware of the fact that it may cause huge embarrassment and humiliation to them and leave an indelible social stigma on them, which brought the accused to be booked for the offences.

13. The arguments of the learned counsel for A-1 was that



A-1 could have at the most indulged only in consensual sex with all the women named in the chargesheet, therefore, it does not constitute rape as

defined by IPC. However, the depositions of the witnesses P.W.2 to P.W.5 tell a different story. P.W.2 was categorical in stating that she was forced into sexual activity with A-1 when A-1 physically abused her and also showed the mobile camera with which A-1 was videographing the same. Her deposition before the court is very clear and she has withstood the testimony of cross examination. Similarly, (P.W.3) had a different experience to narrate, when she was stripped and raped at knife point by A-1 and was subsequently threatened that the video of the sexual activity would be sent to her family members if she reveals about the incident to anyone. (P.W.4) who went along with P.W.3 was

made to wait outside the residence of A-1 and it was only after P.W.3 was sent out she was allowed inside. She was stripped by A-1 and threatened that it would be difficult for her to escape as she would be thrown into the well, if she resists. What followed was another incident of rape which was also videographed by A-1. (P.W.5) another

victim also narrated her ordeal in her deposition before the trial court. She was also coerced to have sex with A-1 and the act was also filmed.

These statements by the victims do not arouse any suspicion of this



Crl.A.Nos.73 of 2017 & 106 of 2019

Court. In fact there is no need for the victims to tell lies or imaginary stories. In the light of these four victims deposing as prosecution witnesses, the non-examination of one Palaniammal who guided these women to A-1 for getting hand loans or the non-examination of the auto driver became insignificant and cannot be termed fatal to the case of the prosecution.

14. One striking aspect in all these depositions is that they narrated the incidents which had happened a few years before. But this does not reduce the severity or seriousness of the acts of A-1. These victim women belong to a Credit Society from which they had borrowed. They were all in need of money to settle the dues to the society. They were forced to sex in a farm house, which is in a secluded place. The video recordings A-1 had made, were also working against them in their minds. The fact that these sexual acts were videographed has not been denied by A-1. On the contrary, it was only contended that at the most it could have been consensual sex. It is not just one woman but a group of women who are the victims. We have no reason to disbelieve the versions of the victims as it requires sheer courage and determination to tell the truth of such nature. P.W.3 and P.W4 were infact ostracized by their



society for coming out in open. The risk factor in such revelations is evident. But they faced it. They raised above their inhibitions and social status. They stood firm. They stood solid.

15. The forensic report of P.W.19 (Ex.P14) reveals that the date the video recordings were made by A-1 and the date of creation of these files in the memory chip of A-2 were corresponding to each other. Therefore A1 is guilty of circulating the obscene videos to A2 thereby committing the offence under Section 67A of Information Technology Act. The learned counsel for A2 would contend that there is no memory card mentioned in the list of seized articles though the mobiles and the sim cards were recovered. The memory chip though not marked separately, is a part and parcel of the Joy digital phone and has found mention in Ex.P5, the seizure mahazar and in Ex.P13, the forwarding letter to the Forensic Department by the concerned Magistrate. In fact, the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, had also, in her judgment dated 18.01.2017, directed that the memory card and the sim cards shall be destroyed after the expiry of the appeal time, which means that the memory card and the sim cards were marked along with the mobile phones. The relevant portion of the judgment is extracted



hereunder.

WEB COPY *"The material objects 1 to 4 cell phones are ordered to be confiscated to the Government and the memory cards and sim cards are ordered to be destroyed after appeal time is over. M.O.5 and M.O.6 are ordered to be kept along with the case bundle."*

Therefore, there is no doubt about the 2 GB memory chip/card found in the Joy Digital phone seized from A-2. Moreover, A2 also admitted at the time of questioning under Section 313 Cr.PC that the police recovered two mobile phones from him. He never stated that the Joy Digital Mobile phone did not contain 2 GB memory card. Therefore, A-2 is guilty of Sections 292 IPC and also 66-B of Information Technology Act as he had copied the video files into CDs and upload in the net clandestinely. He also made CDs out of them to be sold and shared them with others. P.W.6 is a vital witness who not only withstood the testimony of cross examination by spilling beans by pointing out how the videos were sold in the market by A-2. He was one of the buyers of the video. In fact, P.W.6, during the course of cross examination had deposed that he



Crl.A.Nos.73 of 2017 & 106 of 2019

purchased CD from A2 for Rs.250/- two or three days prior to the date of

WEB COPY

his examination by the police. Therefore, the conviction of A-2 under Section 292 of IPC, under Section 66-B and 67-A of the Information Technology Act are all properly justified by the trial court. Similarly, the provision of Section 66-E applies to A-1 as he had exposed the private area of the victims and his own in the videos shot by him. The intent of A-1 while filming his sexual acts cannot be said as purely for the purpose of threatening the victims. He threatened the victims that the videos would be uploaded in the net. The only difference between both the accused is that A-1 was involved in the sexual acts while A-2 was not involved. All the victims were categorical in stating that the video files were uploaded in the net. Thus Section 376 IPC and Section 67-A and 66-E of Information Technology Act were applicable to A-1. As regards A-2, Section 292 of IPC and Section 66-B and 67A of Information Technology Act were applicable to him and has been convicted accordingly. The contention regarding the production of certificate required under Section 65B of the Information Evidence Act not complied with by the prosecution fails in the light of the facts that Ex.P31 certified that the video files are genuine. Moreover, the video files numbering 105 retrieved from the memory cards were copied into a DVD and



certified by the forensic authorities in Ex.P13, Ex.P24 and Ex.P31.

WEB COPY

16. The Hon'ble Supreme Court in the decision in *Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and others [(2020) 7 Supreme Court Cases 1]*, held as follows:

73.2. *The clarification referred to above is that the required certificate under Section 65-B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone by stepping into the witness box and proving that the device concerned on which the original information is first stored, is owned and/or operated by him. In cases where the "computer" happens to be part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the court, then the only means of providing information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4). The last sentence in para 24 in*



WEB COPY

Anvar P.V.² which reads as "... if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act..." is thus clarified; it is to be read without the words "under Section 62 of the Evidence Act,..". With this clarification, the law stated in para 24 of Anvar P.V. does not need to be revisited."

In the instant case, the mobile phones were recovered from A-1 & A-2 and they contained the sim cards and the memory cards.

17. This is a shocking case of two accused, one of whom under the pretext of giving loans for cheap interest rates could lure women and exploit them sexually, forcing himself upon them and filming the acts and the other who is a mobile phone repair technician, making the videos earn him a fortune by selling them. The nasty trail of events is only a tip of the iceberg in our society where moral values and ethics have been trampled upon by unscrupulous and pervert elements. Perversity has encroached the minds of these undesirable elements to that extent, that one wonders about the total absence of conscience and morality. The most shocking aspect is the huge number of victims numbering to almost



29 out of which only 6 were willing to come forward to complain and 4 of

WEB COPY

them were examined as prosecution witnesses (P.W.2 to P.W.5). They

have to be commended for their courage and their will to withstand the

onslaught of cross examination. P.W.1, the Village Administrative Officer

of Palacode was the complainant. He had received information about

videos circulated on internet showing some women residents of the

locality. He approached the police who took his complaint and acted

swiftly upon it. The raid by the police on the premises of the A-1 and

consequent recovery led to the seizure of the two mobile phones used by

the accused A-1 for this nefarious activity. Ex.P13, Ex.P14 and Ex.P21

are the forensic reports which proved to be the last nail in the coffin.

These reports elaborate not only on the contents of the video files

recovered from the memory card but also certifies that the videos are

genuine with no tampering or morphing in them. This certification is in

compliance of the Section 65-B of the Information Technology Act. It is a

matter of huge shame that technical defence is attempted to be put up by

the accused to wriggle out of these damning charges. The old adage goes

to say that as long as gullible persons exist, cheats will thrive.



WEB COPY

18. Men, generally, in our society are glorified for their sexual adventures. They are also forgiven easily. But in case of women it is not so. The social stigma, if they go astray, is lifelong. We have all our religious preachings guiding us to lead a life with good morals but such incidents which are on the rise take our society backwards. Treating women as an object of desire and portraying them so in movies and even in soap operas have a detrimental effect on the society. Education in the school is deprived for many and the family circumstances also cause such imbalances. Morality is the buzz word for this society to prosper and make such shameful acts a thing of past.

19. We do not hesitate to confirm the conviction and sentence of the learned trial Judge. The prosecution, according to us, has proved the case beyond any reasonable doubt and the conviction should prove to be a deterrent for unscrupulous elements indulging in such activities.



20. In the result,

WEB COPY

- i. The Criminal Appeals are dismissed.
- ii. The conviction and sentence passed by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, in S.C.No.109/2015, dated 18.01.2017, is confirmed.
- iii. Munna, the appellant in Crl.A. No.73 of 2017 (second accused in S.C. No. 109/2015), shall surrender before the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, within 15 days from today, failing which, the Trial Court shall take steps to secure him for undergoing the sentence.

(P.N.P., J.)

(R.H., J.)

07.12.2021

bga

Index : yes/no

Speaking /Non speaking Order

To

1. The State of Tamil Nadu,
Represented by the Inspector of Police,
Palacode Police Station,
Dharmapuri District. (Ref: Crime No.360/2014)
2. The Sessions Judge, Fast Track Mahila Court, Dharmapuri.
3. The Public Prosecutor, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras



WEB COPY

WWW.LIVELAW.IN



CrI.A.Nos.73 of 2017 & 106 of 2019

P.N.PRAKASH, J.
and
R.HEMALATHA, J.

bga

Pre-Delivery Judgment in
CrI.A.Nos.73 of 2017 & 106 of 2019

07.12.2021