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Crl.A.No.246 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2023

CORAM:

The Honourable MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.A.No.246 of 2016

K.Saravanan

...Accused/Appellant

-Vs-

State rep. By,
Inspector of Police,
Coonoor All Woman Police Station,
Solumattam Police Station,
The Nilgiris.
(Crime No.3 of 2012)

...Complainant/Respondent

Prayer:- Criminal Appeal filed under Section 374 of the Criminal Procedure Code, 1973, to set aside the judgment made in S.C.No.25 of 2013 on the file of the learned Sessions Judge, Fast Track Mahila Court, Udthagamandalam, dated 03.09.2015.

For Appellant : Mr.T.Saravanan
Legal Aid Counsel

For Respondent : Mr.V.Meganathan,
Government Advocate (Crl.Side)



Crl.A.No.246 of 2016

J U D G M E N T

WEB COPY This Criminal Appeal is filed by the sole Accused, who had suffered conviction and sentence of imprisonment, challenging the judgment passed by the learned Sessions Judge, Fast Track Mahila Court, Udthagamandalam, in S.C.No.25 of 2013, dated 03.09.2015.

2.The brief facts which are necessary for the disposal of this Criminal Appeal are as follows:

2.1.The Victim/Prosecutrix and the Accused are cousins. On the date of occurrence i.e., on 16.01.2012, the Victim had completed 17 years of age. The Accused is the son of maternal uncle of the Victim/Prosecutrix. They belong to Kurumba community of Udthagamandalam. On 16.01.2012 by around 8.00 P.M. when the Victim had gone to the house of her elder paternal uncle Subramani to watch TV programme, at that time, the Accused opened the door and gagged the mouth of the Victim and pulled her towards the house of Rani – P.W-3. The house of Rani was vacant. The Accused took her inside the house in a room and forcibly had sexual intercourse with her against her consent. The mother of the Victim/Prosecutrix P.W-2 and aunt of the Prosecutrix P.W-3 Rani came in search of her, calling her but she did not respond. One Ravi



Crl.A.No.246 of 2016

a boy in the neighbourhood also searched for her and he came inside the room of the vacant house. He informed the mother and aunt of the Victim/Prosecutrix. They came inside the room and they slapped the Prosecutrix. They took her to her house. The next day, she felt that her neighbours had come to know about the same and she consumed poison (artificial cowdung powder) and she informed the same to her grandmother P.W-5. P.W-5 informed the mother of the Prosecutrix P.W-2 and her aunt P.W-3. They took her to hospital. At that time only the mother of the Prosecutrix came to know about the act committed by the Accused on the Prosecutrix. Therefore, she preferred a complaint under Ex.P-1 to P.W-13 Special Sub Inspector of Police, Sholurmattam Police Station. Based on the complaint of P.W-1 Prosecutrix from the hospital bed, the Special Sub Inspector of Police P.W-13 had recorded the oral complaint and on reaching the Police Station he had registered a case in FIR in Crime No.3 of 2012 of Sholurmattam Police Station, for the offence under Section 376 of IPC under Ex.P-13 and sent the express FIR to the Court of the learned Judicial Magistrate, Coonoor, along with the original complaint. A copy of the same was also sent to the Inspector of Police, Sholurmattam Police Station and the higher official of the Police Department including P.W-16 Inspector of Police, Sholurmattam Police Station. On receipt of the copy



Crl.A.No.246 of 2016

of the FIR, P.W-16 proceeded with the investigation, visited the scene of occurrence, prepared Ex.P-18 Rough Sketch in the presence of the witnesses. She had recorded the statement of the witnesses including the Doctors who examined the Accused and the Victim. The Accused and the Victim were forwarded to Government Hospital to subject themselves to medical examination and a letter was addressed to the learned Judicial Magistrate, Coonoor, for the same. The Accused was arrested and produced before the Medical Officer to determine whether he is potent. After completion of the investigation regarding the statement of the Doctors who had examined the Prosecutrix and the Accused, P.W-16 laid final report before the Court of the learned Judicial Magistrate, Coonoor. On receipt of the final report, the learned Judicial Magistrate, Coonoor, issued summons to the Accused. On appearance of the Accused, copies were furnished to him under Section 207 of Cr.P.C. and the offence being tried by the Sessions Court, the Accused was directed to appear before the Sessions Court and the case was committed to the Court of Sessions. On appearance of the Accused before the Court of Sessions, on taking cognizance of the offence, the learned Principal Judge of the Nilgiris at Uthagamandalam had made over the case to the Court of the learned Sessions Judge, Fast Track Mahila Court, Uthagamandalam. On



Crl.A.No.246 of 2016

appearance of the Accused, after hearing the Prosecution and the defence, the learned Judge had framed Charge under Section 376 of IPC. The Accused denied the charges and therefore, the learned Sessions Judge, Fast Track Mahila Court, ordered trial. In the trial the Prosecution had examined 16 witnesses and marked 22 documents and 6 material objects, to prove the charges against the Accused.

2.2. On appreciation of evidence, the learned Sessions Judge, Fast Track Mahila Court, Udthagamandalam had convicted the Accused for the offence under Section 376(1) of IPC and sentenced to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.5,000/- and in default, to undergo two years of simple imprisonment for one year vide judgment dated 03.09.2015, in S.C.No.25 of 2013. Trial Court had granted set-off under Section 428 Cr.P.C. for the period of incarceration undergone by the Accused during investigation/trial.

3. Aggrieved by the same, the Accused had preferred this Appeal, seeking to set aside the judgment of the learned Sessions Judge, Fast Track Mahila Court, Uthagamandalam.



4. Thiru.T.Saravanan, learned Counsel nominated by the Legal Aid Committee submitted his arguments on behalf of the Appellant.

5. The learned Counsel for the Appellant submitted that the Accused in this Appeal had been convicted by the learned Sessions Judge, Fast Track Mahila Court, Udthagamandalam, in S.C.No.25 of 2013 by judgment dated 03.09.2015 convicted the Accused for the offence under Section 376(1) of IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/-. Aggrieved by the same, the convicted Accused had preferred this Appeal.

6. Learned Counsel for the Appellant invited the attention of this Court to the charges framed by the learned Sessions Judge, Fast Track Mahila Court, Udthagamandalam. The only charge framed by the learned Sessions Judge, Fast Track Mahila Court, Udthagamandalam, is for offence under Section 376(1) of I.P.C. Since the Accused denied the charges, the learned Trial Judge ordered trial.

7. The Prosecution had examined 16 witnesses and marked 22 documents and 6 material objects, to prove the charges against the



Accused.

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8. Learned Counsel for the Appellant invited the attention of this Court to the evidence of the Prosecutrix as P.W-1. The mother of the Prosecutrix was examined as P.W-2. P.W-3 is Rani, the neighbour and relative of P.W-1 and P.W-2. P.W-4 is the grandmother of the Prosecutrix. P.W-5 is a relative of P.W-1. P.W-6 turned hostile. P.W-7 is the Head Constable. P.W-8 is the special Sub-Inspector of Police, who had registered the case on receipt of the complaint under Ex.P-1. P.W-9 is the Doctor, who had examined the Accused and issued the certificate regarding potency under Ex.P-7. P.W-10 is the Doctor, who had examined the Prosecutrix and issued the age certificate under Ex.P-8. P.W-11 is the Doctor, who had examined the Prosecutrix and issued Ex.P10 Certificate. Except, the official witnesses, the witnesses examined by the prosecution are all relatives.

9. Further, the learned Counsel for the Appellant submitted that on the date of the alleged occurrence, the Prosecutrix had attained the age of majority. She had admitted the same in the cross-examination.



10. Learned Counsel for the Appellant invited the attention of this

Court to the portions in the cross-examination of the Prosecutrix as P.W-1, which reads as follows:

“ரவி என்ற பையன் உள்ளனே வந்து ராணியின் வீட்டிற்கு கூட்டிப்போனார். ராணியும் என் அம்மாவும் என்ன நடந்தது என்று என்னை கேட்டார்கள். நான் பயந்து கொண்டிருந்ததால் எதுவும் சொல்லவில்லை. என் அம்மா என்னை இரண்டு அடி அடித்தார். காலையில் நான் சோகமாக இருந்ததால், என்ன ஆச்சு என்று கேட்டதால், நான் அம்மாவிடம் சரவணன் இழுத்துப்போய் கெடுத்தான் என்று சொன்னேன். ஊர்காரர்களுக்கும் தெரிந்துவிட்டது. ஊர்காரர்கள் ஒருமாதிரியாக பேசிக்கொண்டிருந்ததால், எனக்கு அவமானமாக இருந்ததால் நான் மதியம் 12 மணிக்கு சாணிப்பவுடர் மருந்து குடித்துவிட்டேன்.

எங்கள் ஊரில் உள்ள அனைவரும் கூலி வேலை செய்பவர்கள் என்று சொன்னால் சரி. கூலி வேலைக்கு போய்விட்டு எல்லோரும் வருவதற்கு 7-7.30 மணி ஆகும். இரவு 7.30 மணிக்கு மேல்தான் பிரிவு பிரிவுகளாக வேலைக்கு செல்ல உட்கார்ந்து பேசி முடிப்பார் என்று சொன்னால் சரி. இரவு 9 மணி வரை ஆண்களுடைய நடமாட்டம் அதிகமாக இருக்கும் என்று சொன்னால் சரி. சுப்பிரமணி வீட்டை சுற்றி ஆட்கள் நிறைய பேர் இருந்தது என்றும், நான் சொன்னதுபோல் எதிரி என் வாயை பொத்தி இழுத்துபோயிருக்க முடியாது என்று சொன்னால் சரியல்ல.

என் அப்பாவின் சித்தப்பா, பெரியப்பா மகளின் மகன் தான் எதிரி. 16.01.2012ல் 18 வயது நிறைவேற்றி விட்டிருந்தது என்று சொன்னால் சரி. எதிரி என் துணியை கழற்றும் போது நான் சத்தம் போடவில்லை. சத்தம் போட முடியவில்லை. எதிரி என் வாயைப்பொத்தி இழுத்துச்சென்ற போது என் காலிலோ, கையிலோ,



முகத்திலோ காயங்கள் எதுவும் ஆகவில்லை. சம்பவம் நடந்த இரவு பஞ்சாயத்து பேசவில்லை. இதுபோல் சம்பவம் நடந்தால் எங்கள் சங்கத்தில் மீட்டிங் கூட்டப்படும் என்று சொன்னால் சரி. இதுபோல் சம்பவம் எதுவும் நடக்காததினால் தான் மீட்டிங் வைக்கவில்லை என்று சொன்னால் சரியல்ல. மீட்டிங் வைக்கவேண்டும் என்று இருந்தார், அதற்குள் நான் மருந்து குடித்துவிட்டேன். நான் சொன்னதுபோல் 16.01.2012 அன்று எதிரி எந்த தவறான காரியமும் செய்யவில்லை என்று சொன்னால் சரியல்ல, அன்று இரவு 8 மணிக்கு நடந்தது. பக்கத்து வீட்டில் குடியிருக்கும் ராணி என் அம்மாவின் அக்கா. ருக்மணி எனக்கு பாட்டி ஆகவேண்டும். மிச்சி என் சித்தி. மாசி என்னுடைய பாட்டி. இந்த வழக்கில் சாட்சியாக உள்ள அனைவரும் என் உறவினர்கள் என்று சொன்னால் சரி. போலிஸ் சொல்லிக்கொடுத்ததின் பேரில் நான் பொய் சாட்சி சொல்கிறேன் என்று சொன்னால் சரியல்ல.

எதிரிக்கும் எனக்கும் சம்பவத்திற்கு முன்பு கல்யாணம் பேசப்பட்டதா என்றால் இல்லை, கல்யாணம் செய்யும் முறை உள்ளதா என்றால் உள்ளது. சம்பவத்தின்போது நான் போட்டிருந்த உடைகளை என் வீட்டிலிருந்து என் அம்மாவிடம் போலிஸ் கேட்டு வாங்கிக்கொண்டு போனார்”.

11. Also, he invited the attention of this Court to the cross-examination of the mother of the Prosecutrix as P.W-2, neighbour of the Prosecutrix as P.W-3 and the grandmother was not cross-examined. The learned Trial Judge had convicted the Accused based on the examination-in-chief of the witness and had not considered the materials available in the cross-examination of the witnesses.



Crl.A.No.246 of 2016

WEB COPY 12. Learned Counsel for the Appellant also invited the attention of this Court to the evidence of the Doctor, who had examined the Prosecutrix and issued Ex.P-10, in which it is clearly stated that there is no injury on the body of the Prosecutrix.

13. Learned Counsel for the Appellant also invited the attention of this Court that the Prosecutrix was admitted in the hospital after she consumed poison, as she felt that neighbours came to know about the fact and felt ashamed. She had clearly admitted in the cross-examination that the Accused is a cousin and in their community, cousin marriage is practiced. The Accused is related to the father of the Prosecutrix. The mother of the Accused is a cousin to the father of the Prosecutrix (அத்தை மகன் மாமன் மகள்).

14. Further, the learned Counsel for the Appellant invited the attention of this Court to the cross-examination of the Prosecutrix, where she stated that the alleged occurrence took place in a room in a vacant house belonging to P.W-3. The mother of the Prosecutrix and her Aunt,



Crl.A.No.246 of 2016

P.W-2 and P.W-3 came in search of the Prosecutrix calling her. She did not respond to their calls. She was found in the room by a boy by name Ravi. The mother of the Prosecutrix, P.W-2, slapped her. She had clearly stated that when her mother slapped her, she was in the room in the vacant house of P.W-3, and the boy by name, Ravi, entered the room and informed her mother. The boy, by name Ravi, was not cited as a witness by the prosecution. She had clearly stated that she had not disclosed the fact to her mother. Only after consuming poison (சாணிப்பவுடர்), she had informed the fact to her grandmother who in turn informed to P.W-2 and later took her to the hospital for treatment. Therefore, it is a clear case of consensual sex, whereas the learned Trial Judge had ignored the materials available in the cross-examination of the Prosecutrix and the mother of the Prosecutrix and convicted the Accused for the offence under Section 376(1) of IPC, which is to be treated as perverse and is to be set aside.

15. Learned Government Advocate (Crl.Side) appearing for the Respondent vehemently objected to the line of argument to the learned Counsel for the Appellant, stating that there is clear evidence of the Prosecutrix that the Accused had indulged in sexual assault without



CrI.A.No.246 of 2016

consent of the victim. Therefore, she had consumed poison.

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16. Learned Government Advocate (CrI.Side) also invited the attention of this Court to the evidence of P.W-2 and P.W-3 and also to the evidence of Doctor, P.W-11 under Ex.P-10.

17. It is the submission of the learned Government Advocate (CrI.Side) that based on the testimony of P.W-1 alone, the Court can convict the Accused. The learned Trial Judge had by well-reasoned judgment arrived at the conclusion that the Accused in this case had convicted the Accused under Section 376(1) of IPC. Therefore, the judgment of the learned Trial Judge is a well-reasoned judgment that does not warrant any interference by this Court.

18. Learned Counsel for the Appellant by way of rejoinder, invited the attention of this Court to the forensic expert opinion that, among the six items sent, only one item was found containing semen and it was not subjected to the DNA test to connect the Accused to the offence. The prosecution failed to prove the charge, to link the Accused to the crime.

Therefore, in the light of the above circumstances, the benefit of doubt is to



Crl.A.No.246 of 2016

be extended to the Accused. Instead, the learned Trial Judge failed to appreciate the materials available in the cross-examination of the witnesses and had mechanically convicted the Accused. Therefore, the same is to be set aside.

Point for consideration:

Whether the judgment of the learned Sessions Judge, Fast Track Mahila Court, Udhagamandalam, in S.C.No.25 of 2013 dated 03.09.2015 is to be set aside as perverse?

19. Heard the learned Counsel for the Appellant and the learned Government Advocate (Crl.Side) appearing for the State.

20. Perused the evidence of the Prosecution Witnesses 1 to 16 and the documents under Ex.P-1 to Ex.P-22 and the judgment of the learned Sessions Judge, Fast Track Mahila Court, Udhagamandalam, in S.C.No.25 of 2013 dated 03.09.2015.

21. On appreciation of the evidence, the judgment of the learned Sessions Judge, Fast Track Mahila Court, Udhagamandalam, cannot be considered as a well-reasoned judgment considering the fact that there is



evidence to prove the Prosecutrix herself had not disclosed the fact immediately after the occurrence to her mother or aunt or grandmother.

22. From the evidence available to the Court, it was found that it was consensual sex. She had stated in her evidence that she consumed poison after coming to know that the neighbours had come to know about the fact and looked down upon her, she felt ashamed. The materials available before the Trial Court in the cross-examination of P.W-1, P.W-2 and P.W-3 had not been considered by the learned Trial Judge.

23. Further, as pointed out by the learned Counsel for the Appellant, there was no witness who had seen the Accused and the Prosecutrix together either before entering the room or coming out of the room. The evidence of the Prosecutrix stating that one Ravi came in search of her and found her in the room. This boy Ravi was not cited as witness. Therefore, in the light of the facts available in the cross-examination of P.W-1, P.W-2 and P.W-3, the conviction of the Accused by the learned Sessions Judge, Fast Track Mahila Court, Udthagamandalam, is found perverse, the same is set aside.



Crl.A.No.246 of 2016

24. This Court appreciates the learned Counsel for the Appellant, who has been nominated by the Legal Aid Committee attached to this Court for his services.

In the result, the Appeal is allowed. The judgment of conviction and sentence of imprisonment imposed by the learned Sessions Judge, Fast Track Mahila Court, Udthagamandalam, in S.C.No.25 of 2013 dated 03.09.2015 is set aside. The Accused is acquitted under Section 235 from the offence under Section 376(1) of IPC and the fine already deposited before the Trial Court is to be refunded.

13.09.2023

cda

Index : Yes/No

Speaking/Non-speaking order

To

- 1.The Sessions Judge, Magalir Neethimandram
(Fast Track Court), Erode.
- 2.The Public Prosecutor,
High Court, Madras.
- 3.The Section Officer, VR Records,
High Court, Chennai.



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Crl.A.No.246 of 2016

SATHI KUMAR SUKUMARA KURUP, J.,

cda/srm

Crl.A.No.246 of 2016

13.09.2023