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Crl.A.No.292 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 30.06.2023]

[Pronounced on : 24.08.2023]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.292 of 2017

Andi

... Appellant/accused

.. Vs ..

State rep by
Inspector of Police,
All Women Police Station,
Kondalampatti,
Salem District.
(Crime No.01 of 2015)

... Respondent/complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records pertaining to the judgment dated 30.05.2017 passed in S.C.No.135 of 2015 by the learned Sessions Judge, Mahila Court, Salem convicting the appellant under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act and sentencing him to undergo rigorous imprisonment for three years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for three months convicting the appellant under Section 376(1) r/w. 511 IPC and sentencing him to



Crl.A.No.292 of 2017

undergo rigorous imprisonment for five years and to pay Rs.12,000/-, in default, to undergo simple imprisonment for three months and total fine amount is Rs.22,000/- of which Rs.10,000/- is ordered to be compensated to the defacto complainant under Section 357(1) Cr.P.C. for her mental agony, set aside the same.

For Appellant : Mr.K.Selvakumaraswami

For Respondent : Mr.L.Baskaran
Government Advocate (Crl.Side)

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JUDGMENT

Convicted sole accused is an appellant herein. This Criminal Appeal before this Court against the judgment dated 30.05.2017 passed in S.C.No.135 of 2015 by the learned Sessions Judge, Mahila Court, Salem. The appellant is convicted and sentenced as follows:-

Offence u/s. IPC	<i>Sentence of imprisonment</i>	<i>Fine</i>	<i>In case of default to pay the fine</i>
4 of Tamil Nadu Prohibition of Harassment of Women Act	R.I. for three years	10,000/-	S.I. for three months
376(1) r/w. 511 IPC	R.I. for five years	12,000/-	S.I. for three months

2. The case of the prosecution is that according to FIR, the occurrence had taken place on 28.12.2014 at 05.00 p.m. and the



Crl.A.No.292 of 2017

WEB COPY

complaint as regards the alleged incident was given only on 02.01.2015 at 01.00 p.m. According to the prosecution, the victim Shanthavalli was washing clothes in the river alone. At that time, the appellant came there, gagged her mouth with a cloth and took her to a nearby field. At that time, PW2 to PW6 coming to him, ran away from the scene of occurrence. After four days, PW1 lodged a complaint before the respondent police.

3. The respondent police, on completion of investigation, filed a final report against the appellant and the same was taken cognizance by the learned Sessions Judge, Mahila Court, Salem, in S.C.No.135 of 2015. On the side of the prosecution fourteen witnesses were examined and twenty exhibits were marked.

4. The trial Court has convicted and sentenced the appellant as stated above. The appellant, aggrieved by the conviction and sentence awarded by the Trial Court is preferring this appeal before this Court. The Trial Court convicted the appellant by its judgment dated 30.05.2017 in S.C.No.135 of 2015.

5. Heard the learned counsel for the appellant and learned



Crl.A.No.292 of 2017

Government Advocate (Crl.side) for the respondent.

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6. The learned counsel for the appellant emphasized that the *de-facto* complainant PW.1 version is totally contrary to her complaint. She has not narrated anything in her complaint and the version of the admission of the PW.1 herself, she has made a promise to her husband that she could not have any affair with any other men.

7. The case of the prosecution is that, on 28.12.2014, when the *de-facto* complainant was washing her clothes in the river, at that time, the appellant came there, gagged her mouth with a cloth, took her to a nearby field and tried to commit a sexual offence and hence, the charge.

8. The case of the defence, as could be seen from the cross examination of PW.1 to PW.8 is that, there is a quarrel in the village with regard to conducting of festival. Three villages by name Pudhur, Kadumarathur and Semmanatham jointly together used to conduct festival of Mariamman Temple, in which the private prosecution witnesses PW.2, PW.3, PW.4, PW.5 & PW.6 were all parted to him and there is a dispute with regard to the same and accordingly, jointly conducting of the temple festival was broken and with that in mind, the



Crl.A.No.292 of 2017

private prosecution witnesses have used PW.1 as tool and filed a false case.

9. PW.1 is the victim girl. PW.2 to PW.8 are private prosecution witnesses. PW.9, PW.10, PW.11 and PW.12 are medical witnesses, depose regarding issuance of certificate Ex.P.5, Ex.P.6, Ex.P.7, Ex.P.8, Ex.P.9, Ex.P.10, Ex.P.11 touching upon the potential certificate of the accused and age certificate of the victim girl and certificate of examination for sexual offences and biological report with Doctor final opinion.

10. From the medical witnesses PW.9 to PW.12, it is seen that there is no external injury on the body of the victim girl and she is aged about 38 years. Based upon the request made by the Investigation Officer, the age of victim was assessed as under Ex.P.8 and PW.11 Dr.Suganthi, stated that no external injuries over body, no injury over breast. On internal examination of the above said victim her Hymen is not intact. Her vagina admits two fingers. No external injuries over body and no injuries over external genitalia. She collected vaginal smear from her vagina and sent it for chemical analysis report. Smear did not detect any spermatozoa, based on the above finding, doctor gave final



Crl.A.No.292 of 2017

opinion as she is a parous women (Delivered lady). The certificate of examination for sexual offences report is Ex.P9. Scan report is Ex.P.10. Biol report with final opinion of the Doctor is Ex.P.11.

11. The sum and substance of the version PW.1 in the witness box are to the effect that she was washing the cloth in the river. At that time, the accused approached her and offered to give Rs.300/- for sexual favour. When she refused, he gagged her mouth and taken her to an isolated place. On hearing the hue and cry, private witness PW.2 to PW.6 came there and the accused ran away.

12. On the combined reading of Ex.P1 complaint and version of PW.1, I find that, the version of PW.1 suffers from material contradiction, with regard to the manner of the assault said to have been carried on by the accused. In the cross examination, PW.1 has categorically stated that she suffered abrasion, when she was dragged on to the thorny bush by the accused. However, the Doctor PW.11 would stated that there is no such injury and also opined that the victim is a parous women (Delivered lady) and hence, I find that there is no positive evidence with regard to charge under Section 376 read with 511 of IPC. The private prosecution



Crl.A.No.292 of 2017

witnesses PW.2 to PW.6 are not in connection with the said charge and hence, I find that the evidence of PW.1 with regard to the above said charge is not made out, there is a material contradiction on material particular with her own statement before the police under Ex.P1 complaint.

13. Further more, defence witnesses DW.1 & DW.2 have categorically stated that, since the accused questioned the village Head man Kuppusamy regarding Mariamman Kovil Festival, his supporters along with Kuppusamy assaulted the accused at his right cheek, left hand and abdomen on 28.12.2014 at 6.00 p.m. He was also admitted at Pappireddipatty Govt. Hospital and got treatment as inpatient. The Yercaud Police also came to Pappireddipatty G.H. and recorded the complaint statement of the accused and not registered an FIR against Shanmugam, Pounraj, Ramesh. Hence he sent the complaint through R.P.A.D. to Deputy Superintendent of Police, Superintendent of Police, of Salem, and he also filed a private complaint before learned Judicial Magistrate V, Salem and according to the direction of learned Judicial Magistrate V, Salem, the Yercaud Police registered a case in Yercaud P.S.



Crl.A.No.292 of 2017

WEB COPY

Crime No.39 of 2017 under Section 294(b), 323, 506(i) of IPC. And the doctor who gave treatment at Pappireddipatty G.H. to the accused on 29.12.2014 was examined as DW.1. Ex.D.1 and Ex.D.2 (attested xerox copy of A.R. copy of the accused and attested xerox copy of wound certificate) are marked through him. The present Inspector of Yercaud P.S. was examined as DW.2 and attested xerox copy of FIR in Cr.No.39 of 2017 was marked as Ex.D3. According to the instigation of Kuppusamy Village head man this case was foisted against the accused by the PW.1.

14. Admittedly, the counter case was filed at the instance of the accused herein, after he moved an application before the learned Judicial Magistrate under Section 156(3) of the Cr.P.C. He has also suffered injuries. And hence, I find that there is no positive evidence much in it. The evidence of the PW.1, which is found to be at material contradiction with her own statement Ex.P.1 in connection with the alleged sexual assault and attempt to commit sexual offence and the allegation in this regard is unbelievable as the same suffers from material contradiction as indicated above. Accordingly, the conviction and the sentence passed by



Crl.A.No.292 of 2017

the learned Sessions Judge, Mahila Court, Salem in connection with offence under Sections 376 r/w 511 IPC is set aside.

15. On the charges under Section 4 of Tamil Nadu Prohibition of Women Harassment Act 1998, the evidence of PW.1 partly appears to be exaggerated as the same was not spoken by her, during the investigation, as could be seen from the cross examination of the Investigation Officer. PW.14 Investigation Officer, who had registered the Ex.P.13 First Information Report in the cross examination admitted that she has not stated anything about the alleged injury of the PW.1 in the report as she has not stated any injury to her. She also admitted that the complaint is undated. In the cross examination, she has also admitted as follows,

“எதிரி என்னை புதருக்கு இழுத்துபோனதால் என் உடம்பெல்லாம் காயம் ஆனது. (சாட்சி முதுகு புறத்தை சுட்டிக்காண்பிக்கிறார்.) சம்பவத்தின் போது நான் கட்டியிருந்த சேலையில் அதனால் இரத்தம் ஆகவில்லை. உடம்பில் தான் காயம் ஆனது. என்னை புதருக்கு எதிரி இழுத்து போனபோது என் சேலை கிழியவில்லை. ஜாக்கட் தான் கிழிந்தது. ஜாக்கட்டை போலிசாரிடம் ஒப்படைக்கவில்லை. போலிசார் கேட்கவும் இல்லை நான் கொடுக்கவும் இல்லை. போலிசாரிடம் ஜாக்கட் கிழிந்த விபரத்தை சொன்னேனா? என்றால் சொன்னேன். ”

And hence, I find that charges under Section 4 of Tamil Nadu Prohibition of Women Harassment Act 1998 is made out. However, taking into the



Crl.A.No.292 of 2017

act of the accused, which is held to be proved in the manner known to law in the decision in the preceding paragraphs, a fine of Rs.10,000/- is enhanced to Rs.20,000/-.

16. In the result, the Criminal Appeal is partly allowed. Conviction and Sentence laid by the learned Sessions Judge, Mahila Court, Salem in S.C.No.135 of 2015 in respect of charge under Sections 376 r/w 511 IPC is set aside and the conviction under the Section 4 of Tamil Nadu Prohibition of Women Harassment Act 1998 is confirmed. And as against the Sentence, the period already undergone is given set off and the fine amount is increased from Rs.10,000/- to Rs.20,000/- to be payable within fifteen days from date of receipt of a copy of this order. On such payment, the fine already paid Rs.10,000/- and now ordered to be paid another Rs.10,000/- shall be disbursed to the *de-facto* complainant/PW.1. This Criminal Appeal is partly allowed to the extend indicated above.

24.08.2023

mpl
Index:Yes/No
Speaking Order:Yes/No
Neutral Citations: Yes/ No



CrI.A.No.292 of 2017

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To

1. The Sessions Judge, Mahila Court, Salem
2. The Inspector of Police,
All Women Police Station,
Kondalampatti,
Salem District.
3. The Public Prosecutor,
High Court, Madras.



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Crl.A.No.292 of 2017

RMT.TEEKAA RAMAN,J.

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Pre-delivery order in
Crl.A.No.292 of 2017

24.08.2023