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Crl.A.No.8 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2024

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.8 of 2023

Dr.Vetriselvan

... Appellant/Sole Accused

vs.

State represented by
Inspector of Police,
W24, All Women Police Station,
Teynampet, Chennai.
(Crime No.7/2021)

... Respondent/Complainant

Criminal Appeal filed under Section 374 of Code of Criminal Procedure, 1973, to call for the entire records in connection with the S.C.No.178 of 2022 on the file of the learned Sessions Judge, Mahalir Neethimandram, Allikulam, Chennai, and set aside the Judgment dated 30.12.2022.

For Appellant : Mr.A.Ramesh, Sr. Counsel
for Mr.R.Aswin

For Respondent : Dr.C.E.Pratap
Government Advocate (Crl. Side)



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JUDGMENT

This Criminal Appeal has been filed by the sole accused challenging the conviction and sentence imposed upon him vide judgment dated 30.12.2022 in S.C.No.178 of 2022, on the file of the learned Sessions Judge, Mahalir Neethimandram, Allikulam, Chennai.

2(i) It is the case of the prosecution that the appellant and the victim are doctors; that during the Covid period they were made to stay in a hotel (Courtyard Marriot Hotel); that the appellant and the victim were staying in adjacent rooms in the same hotel; that the appellant had been following the victim for quite some time; that the appellant sent her messages to her mobile phone continuously stating that he had been wanting to talk to her for a long time; that on 05.08.2021 the victim came to the appellant's room [Room No.304] and at that time, the appellant is said to have forcibly pushed the victim to the bed, removed her dress and committed rape; that on 21.09.2021, the victim had given a complaint to the Dean, Rajiv Gandhi Government



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Hospital, requesting action against the appellant; that thereafter, on 16.11.2021, the appellant is said to have threatened the victim of dire consequences, if she did not withdraw her allegations against the appellant; that the victim had lodged a complaint to the police on 17.11.2021 which was registered in Cr.No.7 of 2021 for the offences under Sections 376 and 506(i) of the IPC later, altered to Sections 354B, 354D and 376 of the IPC.

(ii) The complaint was registered by PW8, the investigating officer who examined the witnesses, took steps to record the 164 Cr.P.C., statement of the victim-PW1 by the learned XVIII Metropolitan Magistrate, Saidapet and after obtaining the certificate of Medico-Legal Examination certificate of the appellant, filed a final report on 10.03.2022 before the learned XVIII Metropolitan Magistrate, Saidapet, Chennai, against the appellant for the offences under Sections 354B, 354D and 376 of the IPC.

(iii) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with, and the case was committed to the Court of



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Session in S.C.No.178 of 2022 and was made over to the learned Sessions Judge, Mahalir Neethimandram, Allikulam, Chennai, for trial. The trial Court framed charges under Sections 376 (1) and 506(i) of the IPC against the accused and when questioned, the accused pleaded 'not guilty'.

(iv) To prove the case, the prosecution examined 8 witnesses as P.W.1 to P.W.8 and marked 11 documents as Exs.P1 to P11. When the accused was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. On the side of defence, though no one was examined, the refusal letter dated 29.11.2021 from PW1 for medical examination, was marked as Ex.D1.

(v) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established its case beyond reasonable doubt and held the appellant/accused guilty of offences under Section 376(1) of the IPC and sentenced him to undergo rigorous imprisonment for ten years and to pay a fine of Rs.25,000/-, in default to undergo simple imprisonment for six months. The trial Court however found that the offence under Section



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506(i) of the IPC was not established and acquitted the appellant. Hence, the appeal.

3. Heard, Mr.A.Ramesh, learned senior counsel appearing for the appellant/Accused, and Dr.C.E.Pratap, learned Government Advocate (Crl. Side), appearing for the respondent/State.

4 (i) Mr.A.Ramesh, the learned Senior counsel appearing for the appellant would submit that the allegation of rape is an afterthought; that though the incident took place on 05.08.2021, the FIR was lodged belatedly on 17.11.2021; that earlier, the defacto complainant had given a complaint to the Dean on 21.09.2021, in which there is no allegation of rape and that there is only an allegation of sexual harassment; that the victim being a doctor, it cannot be said that she did not know the difference between sexual harassment and rape; that the victim did not subject herself to medical examination and even before the learned Magistrate, she refused to give a statement stating that she did not wish to precipitate the matter and the



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allegation of rape therefore, is an afterthought; and that in fact it is not clear from the evidence as to where the incident took place i.e., whether in the room of the victim or in the room of the appellant

(ii) The learned senior counsel further submitted that wearing apparels of the victim as well as the appellant were not seized and relied upon an article published in **Forensic Science International : Genetics** [*H.Brayley-Morris et al./forensic Science International: Genetics 19(2015) 165-17*], wherein it has been observed that even if the clothes are laundered, there is a possibility of picking up the DNA evidence and also have semen traces; that non recovery of the dress also confirms the defence case; and that therefore, would submit that the prosecution had failed to establish the offence of rape and prayed for acquittal.

5 (i). Learned Government Advocate (Crl. Side) *per contra* submitted that the evidence of the victim is cogent and convincing; and not withstanding her earlier statement, there is no reason to disbelieve her



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version and therefore, the trial Court had rightly convicted the appellant. He also submitted that the evidence of PW2 corroborates the evidence of PW1 and therefore, there is no infirmity in the judgment of the trial Court and prayed for dismissal of the appeal.

6. I have carefully considered the rival submissions and perused all the relevant materials available on record.

7. As stated earlier, the prosecution had examined eight witnesses. PW1 is the victim; PW2 is her friend to whom PW1 is said to have informed about the rape, immediately after the said offence; PW3 and PW4 are the Observation Mahazar witnesses; PW5 is a Doctor who used to allocate duties to the doctors during Covid period; PW6 is a Doctor and a member of Visakha committee, who had submitted a report [Ex.P6] for further action by the police; PW7 is the Doctor who had examined the appellant and issued a certificate [Ex.P7] to the effect that he was potent; and PW8 is the Inspector of Police, who investigated the case, examined the witness and filed the final report.



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8. It is PW1's version that she stayed in room No.304; that on the date of the occurrence, the appellant somehow got to know the mobile number of the victim and started texting her; that she had responded to the said text; that thereafter, the appellant called her to his room and she went to the room of the appellant and there the incident is said to have taken place. However, it is the prosecution case that PW1 stayed in Room No.303 and the occurrence took place in Room No.304. Be that as it may. It is her further version that immediately after the occurrence, she informed PW2 and thereafter, she had sent a message to the appellant that she would lodge a complaint; and that PW2 called the appellant over phone and scolded him. However, the prosecution had not seized the mobile phone of either the victim or the appellant, which would have corroborated the version of the victim. There is no explanation by the prosecution as to why, the mobile phone of either the appellant or the victim were not seized to ascertain the veracity of PW1's version. Hence, the version of the witness-PW1, has to be tested in the light of other evidence on record.



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9. The victim admittedly, refused to subject herself to medical examination, which is clear from the letter written by her to the Inspector of Police on 29.11.2021, which is marked as Ex.D1. The victim had also refused to make any statement before the learned Magistrate, while she was sought to be examined under Section 164 of the Cr.P.C. and she has admitted the said fact in the cross examination. Even in the first complaint given to the Dean, Rajiv Gandhi Government Hospital, which is marked as Ex.P1, requesting action against the appellant, the victim had stated only about the alleged sexual harassment and was not specific about the nature of harassment. The extract from the complaint reads as follows:

“I am [xxxxxx], Covid Medical Officer, complaining about my fellow Colleague Dr.Vetri Selvan, Dept. of Orthopaedics recently finished his final year, who sexually harassed me in an unacceptable way at my accommodation provided (Hotel Marriott, Teynampet). I request you take stringent action against him and ensure the safety of all female Medical Officer in their workplace as well as their accommodation.”

10. In the said complaint, apart from not referring to any alleged act of rape, the victim would also state that the incident took place at her



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accommodation at the hotel, which is contrary to the prosecution case that the incident took place in the appellant's room. Ex.P2 is the statement given by the victim to the Vishaka Committee, in which she had stated about the sexual harassment and was not specific about the nature of harassment.

11. It is PW1's version that after the incident, she informed PW2 immediately about the occurrence; that PW2 had scolded the appellant over phone. However, PW8, the investigating officer had stated in the cross examination that PW2 had not stated about the alleged scolding during investigation. Further, PW2 had not informed about the alleged incident said to have been told to him by PW1. The fact that PW1 had informed PW2 has not been stated by the victim in (i) Ex.P1, the complaint given by the victim to the Dean, (ii) Ex.P2 the statement given by her before the Vishaka committee, and (iii) Ex.P3, the complaint given to the Inspector of Police. Therefore, it is highly unsafe to believe the version of PW1 that she informed PW2 or the version of PW2 that PW1 informed him immediately after the occurrence about the alleged rape.



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12. That apart, though the victim thought it fit to give a complaint to the Dean 43 days after the occurrence, there is no reason why she had not chosen to file a complaint immediately thereafter. The complaint was lodged two months after the complaint given to the Dean, in which an improved version was made.

13. It is also seen that the prosecution had also not taken any steps to otherwise establish the offence by any scientific method by recovery of the clothes of the victim or the appellant or by examining the call detail records of the victim and the appellant. It is also seen that the Vishaka Committee had also not concluded that the victim was subjected to rape. The committee had only recorded the statement made by victim as well as the appellant and had directed the police to take further action. No independent witnesses were examined at the hotel and no registers from the hotel were seized to prove that the victim and the appellant stayed in that hotel.

14. (i) PW5 is the Doctor, who is said to have allotted the work to other doctors and is said to have received a phone call from PW1 during the



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month of September 2021 as regards the alleged rape. According to PW5, she had questioned PW1 as to how, the incident could have happened in the manner stated by her. She further stated that the victim replied that the appellant forcibly committed the act. The relevant portion reads as follows:

“.....கடந்த செப்டம்பர் 2021 அன்று தேதி ரூபகம் இல்லை. மற்றொரு மருத்துவர் மீது பாலியல் சம்பந்தமாக ஒருநபர் என்னிடம் புகார் தெரிவித்திருந்தார். அதற்கு மறுநாள் அ.சா.1 எனக்கு போன் செய்து தனக்கும் அதுபோல் பாலியல் தாக்குதல் நடந்ததாக சொன்னார். அ.சா.1 என்னிடம் மருத்துவர் வெற்றிசெல்வன் ஆர்த்தோ மருத்துவர் என்னை நட்பு முறையில் அறைக்கு அழைத்தார் என்றும் அவர் வேறு இடத்திற்கு பணிமாற்றப்பட்டுள்ளதால் அன்று ரீல்வ் ஆவப்போவதால் தன்னை பார்க்கசொன்னார் என்றும் அது என்னிடம் சொல்வதற்கு ஒருமாதத்திற்கு முன்பு நடந்தது என்றும் தன்னை போர்ஸ்புல்லாக தன்னை தள்ளி எதிரி எல்லாமே பண்ணிவிட்டாக சொன்னார். நான் எப்படி அது முடியும் என்று கேட்டேன். அதற்கு அவர் போர்ஸ்புல்லாக செய்த காரணத்தினால் என்னால் தடுக்க முடியவில்லை என்று சொன்னார்...”

(ii). PW5 further deposed that she asked the appellant and the appellant denied having committed any alleged offence and that the victim has made a false accusation; and that she thereafter told the victim that it



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was not possible for her to take any action.

15. That apart, PW1 had also stated in her deposition that when the appellant is said to have committed the rape, PW1 had asked the appellant as to whether it was the first time for him and the appellant had stated that it is the third time for him. The relevant portion reads as follows:

“.....ஏன் இப்படி நடந்து கொள்கிறீர்களே இதுதான் முதல் முறையா என்று கேட்டேன். படிக்கும்போது நான் இரண்டு அல்லது மூன்று பெண்களை இப்படி செய்துள்ளேன்.....”

The above conversation said to have been made by PW1 with the appellant during the act of rape also appears to be highly improbable and contrary to the allegation that the appellant forced himself on the victim.

16. In the light of the above infirmities in the prosecution case, especially when PW1 chose not to give a complaint immediately; her conduct in not willing to state anything before the learned Magistrate and not subjecting herself to medical examination and alleging rape for the first time nearly 103 days after the alleged occurrence and also considering the infirmity as to the exact place of occurrence, it would be highly unsafe to



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convict the appellant on the basis of the evidence of PW1.

17. Hence, this Court is of the view that the appellant cannot be convicted on the basis of such evidence and that he will be entitled to benefit of doubt. Therefore, the judgment of the trial Court, convicting the appellant is liable to be set aside.

18. Accordingly, the Criminal Appeal is allowed. The conviction and sentence imposed upon the appellant/accused in S.C.No.178 of 2022 dated 30.12.2022, on the file of the learned Sessions Judge, Mahalir Neethimandram, Allikulam, Chennai, are set aside. The appellant/accused is acquitted of the charge and is directed to be released forthwith, unless his presence is required in connection with any other case. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

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Index : yes/no
Neutral citation : yes/no
Speaking/Non-speaking order
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SUNDER MOHAN,J.

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Copy to:

- 1.The Sessions Judge,
Mahalir Neethimandram, Allikulam,
Chennai – 600 003.
- 2.The Inspector of Police,
W24, All Women Police Station,
Teynampet, Chennai.
3. The Superintendent of Prisons,
Central Prison, Puzhal, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.

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