



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.42 of 2014
and M.P.No.1 of 2015

Mohan

... Appellant

vs.

State by
Inspector of Police,
N.3, Muthiyalpet Police Station
Chennai 600 001

... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment and conviction made in S.C.No.200 of 2012 dated 27.11.2013 on the file of the Mahila Court, Chennai.

For appellant : Mr.C.M.Gunasekaran

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor.

JUDGMENT

The conviction and sentence dated 27.11.2013 passed in Sessions Case No.200 of 2012 by the Mahila Court, Chennai are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that the prosecutrix by name Bavani @ Jansi Fidariyar has attained only 14 years of age and during the relevant period, she studied VIII Standard. In the year 2000, a summer camp has been conducted, wherein the accused has acquainted with the prosecutrix. One Stephen has been acted as liaison officer in between the accused and prosecutrix. On 23.4.2011, at about 23 hours, during Easter festival, the accused has visited the house of her elder sister for the purpose of taking dress. At that time, a friend of the accused by name Mano has met the prosecutrix and directed her to go to the house of the accused, since he wanted to talk to her and accordingly on 24.4.2011, at about 2 a.m., the prosecutrix has gone to the house of the accused bearing Door No.43/21, where the accused has deflowered her. After occurrence, the mother of the prosecutrix has given a complaint and the same has been registered in Crime No.344 of 2011. The complaint alleged to have been given by her has been marked as Ex.P.1.



3. On receipt of Ex.P.1, the Investigating Officer, viz., P.W.16 has taken up investigation, examined connected witnesses and also made arrangements for conducting medical examination both to the accused and prosecutrix and accordingly P.W.11 Dr.Balasubramanian has conducted potential test to the accused and his report has been marked as Ex.P.7. Likewise, Dr.Shanthi has examined the prosecutrix and her certificate has been marked as Ex.P.9. After completing investigation, the investigating officer has laid a final report on the file of XVI Metropolitan Magistrate, George Town, Chennai and the same has been taken on file in P.R.C.No.27 of 2012.

4. The XVI Metropolitan Magistrate, George Town, Chennai, after considering the facts that the offence alleged to have been committed by the accused is triable by Sessions Court, has committed the case to the Court of Sessions and the same has been taken on file in Sessions Case No.200 of 2012 and subsequently made over to the trial court.

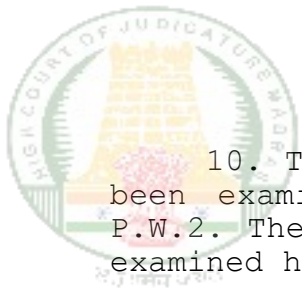
5. The trial court, after hearing arguments of both sides and upon perusing relevant records, has framed a charge against the accused under Section 376 of the IPC and the same has been read over and explained to him. The accused has denied the charge and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 16 have been examined and Exhibits P.1 to 16 have been marked.

7. When the accused has been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

8. The trial court, after hearing arguments of both sides and upon perusing the relevant evidence available on record, has found the accused guilty under Section 376 of the IPC and sentenced him to undergo 10 years Rigorous Imprisonment and also imposed a fine of Rs.10,000/- with usual default clause. Against the conviction and sentence passed by the trial court, the present Criminal Appeal has been filed at the instance of the accused as appellant.

9. The sum and substance of the case of the prosecution is that from the year 2010, both the accused and prosecutrix have acquainted with each other. On 23.4.2011, at about 23 hours, due to Easter festival, the prosecutrix has gone to the house of her elder sister for taking dress and one of the friends of the accused by name Mano has met her and directed her to meet him in his house, since he wanted to talk to her and accordingly she has gone to the house of the accused bearing Door No.43/21, where the accused has deflowered her.



10. The defacto complainant, viz., mother of the prosecutrix has been examined as P.W.1. The mother of P.W.1 has been examined as P.W.2. The prosecutrix has been examined as P.W.5 and the Doctor who examined her has adduced evidence as P.W.12 and marked Ex.P.9.

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11. The trial court, after considering the sole testimony of the prosecutrix coupled with medical evidence, has found the accused guilty under section 376 of IPC and sentenced him to undergo imprisonment as mentioned supra.

12. The learned counsel appearing for the appellant/accused has sparingly contended that specific case put forth on the side of the prosecution is that entire occurrence has taken place inside the house of the accused and during the course of cross-examination, the prosecutrix has candidly admitted that she does not know the place where the house of the accused is situate and further the prosecutrix has given contra evidence and the trial court, without considering the evidence given by her and also evasive opinion given by the Doctor (P.W.12), has erroneously found the accused guilty under section 376 of IPC and therefore, the conviction and sentence passed by the trial court are liable to be interfered with.

13. Per contra, the learned Additional Public Prosecutor has repeatedly contended that at the time of occurrence, the prosecutrix has attained only 14 years of age and the specific case put forth on the side of the prosecution is that entire occurrence has taken place inside the house of the accused and since the prosecutrix is only a minor at the time of the occurrence and even at the time of giving evidence, she has accidentally admitted to the effect that she has not known the place where the house of the accused is situate and that itself is not sufficient to disbelieve the version of the prosecution and the trial court, after considering the evidence adduced by the prosecution coupled with medical evidence, has rightly invited conviction and sentence and further as per provision of Section 114-A of Indian Evidence Act, 1872, a presumption can be drawn and therefore, the conviction and sentence passed by the trial court are not liable to be interfered with.

14. Basing upon the divergent submissions made on either side, the Court has to look into as to whether the sole testimony of the prosecutrix would be sufficient to come to a conclusion that the accused has committed an offence punishable under section 376 of IPC or as to whether the prosecutrix has given a believable evidence.

15. The prosecution has set the law in motion only on the basis of the complaint, wherein it has been clearly stated that P.W.4 has met the prosecutrix and told her to the effect that the accused wanted to talk to her and further he told her that she should go to the house of the accused and accordingly she has gone there, where the accused has deflowered her.



16. The trial court has solely relied upon the evidence given by the prosecutrix, P.W.5. In fact, this Court has meticulously analyzed the evidence given by her. During the course of chief-examination, she would say that before going to the house of the accused, the accused has met her and compelled her to come along with him, otherwise he would do something against her as well as her mother and only due to coercion made by the accused, she has accompanied with him to his house, where he deflowered her.

17. In fact, this Court has also equally analyzed Ex.P.1, Complaint, wherein, the said aspect is not found place, but in Ex.P.1, it has been stated that P.W.4 has directed the prosecutrix to go to the house of the accused and accordingly she voluntarily has gone there, where he raped her.

18. The specific case of the prosecution is that entire occurrence has taken place inside the house of the accused and even in the charge, it has been mentioned as stated supra, but during the course of cross-examination, P.W.5 would say that she does not know the place where the house of the accused is situate. Since entire case of the prosecution is to the effect that occurrence has taken place inside the house of the accused and even in Ex.P.1, it has been stated as mentioned supra and since the prosecutrix has given contra evidence during the course of cross-examination, the Court can easily come to a conclusion that the prosecutrix is not a believable witness.

19. The specific case of the prosecution is that in the place of occurrence, the accused has raped the prosecutrix. It is an admitted fact that P.W.12, Dr.Shanthi, has physically examined the prosecutrix and her initial opinion is that she is not certain enough to say that the prosecutrix has had sexual intercourse.

20. It has already been pointed out that the prosecutrix has given evidence against the materials found in Ex.P.1. Further, the prosecutrix has candidly admitted to the effect that she has not known the place where the house of the accused is situate and the same is totally against the case of the prosecution. Further, on the side of the prosecution, medical evidence is also insufficient for coming to a conclusion that the prosecutrix has been subjected to sexual intercourse. By way of eschewing the vital infirmities found on the side of the prosecution, the Court cannot come to a conclusion that on the basis of sole testimony given by the prosecution to the effect that she has been subjected to sexual intercourse by the accused.

21. Of course, it is true that in a case like this, sole testimony of the prosecutrix would be sufficient to come to a conclusion that an offence of rape has been committed by the concerned accused, but at the same time, veracity of the prosecutrix has to be scrutinized by the court carefully and also dispassionately. In the instant case, the prosecutrix has given a clear go-by against the origin of the prosecution case. Further, the prosecutrix has clearly



admitted to the effect that she does not know the place where the house of the accused is situate. Further, medical evidence is also insufficient. Under the said circumstances, the conviction and sentence passed by the trial court are not factually and legally sustainable. Further, on the basis of Section 114-A of Indian Evidence Act, 1872, a presumption cannot be drawn voluntarily, unless some piece of evidence is available on the side of the prosecution. Therefore, viewing from any angle, the contentions put forth on the side of the appellant/accused are really having subsisting force and altogether the present Criminal Appeal is liable to be allowed.

In fine, this Criminal Appeal is allowed. The conviction and sentence passed against the appellant/accused in Sessions Case No.200 of 2012 by the trial court are set aside. The accused/appellant is acquitted. Fine amount if any paid by him is ordered to be refunded forthwith. Consequently, connected M.P.No.1 of 2015 is closed.
ajr

Sd/-
Assistant Registrar (CCC)

/True Copy/

Sub-Assistant Registrar

To :

1. The District and Sessions Judge,
The Mahila Court, Chennai
2. The Inspector of Police,
N.3, Muthiyalpet Police Station
Chennai 600 001
3. The Public Prosecutor,
High Court, Chennai
4. The Superintendent,
Central Prison, Puzhal,
At Chennai - 600 066

+1 C.C. To Mr.C.M.Gunasekaran, Advocate in SR.NO.66191

Cr1.A.No.42 of 2014

GK(CO)
sd : 09/12/2015