

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.04.2015

PRONOUNCED ON : 24.04.2015

CORAM :

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.A.No.770 of 2011

Dr.L.Prakash

...

Appellant / A1

vs.

State, Rep. by
Assistant Commissioner of Police
(Law & Order), T.Nagar Range,
R-8, Vadapalani Police Station,
Crime No.1466 of 2001
Chennai City.

...

Respondent

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, against the Judgment of Conviction, dated 06.02.2008 made in S.C.No.9 of 2004 on the file of the learned Additional District & Sessions Judge (Fast Track Court No.V), Chennai.

For Appellant : Mr.A.Ramesh, Senior Counsel
for Mr.B.Natarajan

For Respondent : Mr.Shanmugavelayutham
Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by S.TAMILVANAN,J)

The Criminal Appeal has been preferred under Section 374 (2) of the Code of Criminal Procedure, by the appellant / A1 against the judgment of conviction, dated 06.02.2008 made in S.C.No.9 of 2004 on the file of the Additional Sessions Judge / Fast Track Court No.V, Chennai.

2. The appellant / A1 stands convicted and sentenced by the learned Additional Sessions Judge, holding that the alleged guilt against the appellant / A1 has been proved beyond reasonable doubt. Accordingly, the appellant / A1 was

convicted under Section 506 (ii) IPC and sentenced to undergo 7 years R.I and to pay a fine of Rs.5000/- with default sentence of 6 months R.I; convicted under Section 67 of Information Technology Act, 2000 and sentenced to undergo 5 years R.I and to pay fine of Rs.1,00,000/- with default sentence of 6 months R.I; convicted under Section 367 IPC and sentenced to undergo 10 years R.I and to pay a fine of Rs.5000/- with default sentence of 6 months R.I; convicted under Section 5 of the Immoral Traffic (Prevention) Act, 1956 and sentenced to undergo 7 years R.I and to pay fine of Rs.5000/- with default sentence of 6 months R.I; convicted under Section 6 of the Immoral Traffic (Prevention) Act, 1956 and sentenced to undergo Life Imprisonment and to pay a fine of Rs.5000/- with default sentence of 6 months R.I; convicted under Section 4 read with Section 6 of Indecent Representation of Women (Prohibition) Act, 1986 and sentenced to undergo 2 years R.I and to pay fine of Rs.2000/- with default sentence of 6 months R.I; convicted under Section 27 of the Arms Act, 1959 and sentenced to undergo 7 years R.I and to pay fine of Rs.5000/- with default sentence of 6 months R.I. As per the Judgment, all the sentences were ordered to run concurrently.

3.The case of the prosecution, in a nut shell, is as follows:-

[a] A1, the appellant herein is an Orthopedic surgeon, having his clinic at II Main Road, Anna Nagar, Chennai, under the name and style of "Institute for Special Orthopedics". During the period of occurrence, he was having a farm house at Kalanchikuppam near Ennore Port, Ponneri Taluk, Thiruvallur District and a rental guest house at Valasaravakkam, Chennai-116. A2 to A4 were employees under A1, as such A2 - Saravanan [Ward Boy] ; A3 - Vijayan [Driver] and A4 - Azir [Lab Technician] used to procure young girls/ladies with the help of one Chitra [turned approver], used to detain them in the said Farm house or guest house. Between 2000 and 2001, the accused involved the young girls/ladies, forcibly and without their consent, into various sexual activities with S.Ganesan [complainant herein] or A2 , A3 A4 or other male persons and A1, had photographed and also videographed the same. A1 used to send those photographs and videographs to his younger brother Pradeep Laxshmanan [absconding accused], who is employed in USA, used to upload the said videos and photos in the website for commercial purpose. At times, A1 used his licensed gun to threaten the girls/ladies to involve in such activities.

[b] It is further stated that P.W.1, S.Ganesan, was one of the victims of A1, Dr.Prakash, who in his evidence has deposed about the illegal and immoral activities of the appellant / A1 in extenso. He was threatened at gun point by A1 to have a sexual relationship with the ladies/girls and A1

used to videograph and also take photographs of the same. Despite the complainant's repeated request, A1 uploaded the photographs and videographs in the web site, which was watched and informed by his friend at Pondicherry. Upon the advise of his uncle, P.W.1 went to Vadapalani Police Station and lodged a complaint [Ex.P.1].

[c] P.W.28 - Chitra, in her evidence has deposed vividly about her acquaintance with A1. She had stated that subsequent to her marriage with Narendran, she came to Anna Nagar and got settled and that she had interest in dancing. While so, during the year 2000, her car met with an accident due to drunk and driving by her husband, thereby she sustained fracture and that, she went to A1's clinic for taking treatment. After sometime, Chitra met A1 in a Dance Party, wherein she introduced A1 to her husband. After the party, A1 offered lift to the couple and he also gave his visiting card to her. A week later, when Chitra contacted A1, he invited her to his farmhouse at Kalanjeepuram. While she was proceeding in a jeep, as directed by A1, Ammu, Sunitha and Uma got inside the vehicle and they also accompanied her to the farm house. In the farm house, she was offered a soft drink, however, after consuming the same, she lost her consciousness. When she regained consciousness, she found herself nude and that a red-coloured saree was put on her. Upon enquiring Sandhya, wife of a watchman of the farm house, she could find A1 with a camera along with other girls. Chitra questioned the conduct of A1, however A1, after pacifying her, asked her to give heed whenever he calls. When she refused, A1 called Chitra to his clinic and showed the nude photographs and videographs of Chitra. A1 also threatened her with dire consequences. Being afraid of A1's threatening, Chitra started procuring girls for him, viz., Rekha, Narmadha, Bhuvana etc. At a later point of time, Chitra came to know about the arrest of A1 through media and she surrendered herself before the Court at Chengalpattu on 08.02.2002 and she was taken into police custody for interrogation on 14.02.2002. She confessed before the learned Judge concerned.

[d] The other prosecution witnesses have also given corroborative evidence, implicating the accused persons in this case and material documents have also been furnished to that effect.

[e] On the side of the prosecution before the Trial court, in order to bring home the guilt of the accused, examined P.Ws.1 to 56, marked Exs.P.1 to 214 and produced material objects, M.Os.1 to 267.

4. After the prosecution evidence, when the appellant / A1 was questioned u/s.313 Cr.P.C., with regard to the circumstances appearing against him based on the

evidence adduced by the prosecution, he denied each and every circumstances as contrary to the facts and stated that he has been falsely implicated in the case. On the side of the defence, D.Ws. 1 to 11 were examined and Exs.D1 to D31 were marked.

5. Upon consideration of the oral and documentary evidence, the Trial Court acquitted A1 for the offences u/s. 376, 120 (B) and 307 IPC, however, convicted the appellant / A1 as stated supra, aggrieved by which, the present appeal has been preferred.

6. Mr.A.Ramesh, learned Senior counsel appearing for the counsel for the appellant on record, while assailing the impugned Judgment of conviction and sentence, would put forth the following contentions:-

[a]The sentence imposed on the appellant under section 6 of the Immoral Traffic [Prevention] Act, 1956 is not proportionate to the gravity of the offence, but the same is exorbitant. As per Section 6 of the Act, minimum sentence shall not be less than 7 years imprisonment and the maximum sentence awarded may be either for life or a term, which may be less than life imprisonment and also liable for fine. According to the learned Senior Counsel, there is no guiding principles provided in the statute for any mandatory sentence, by way of any sentencing policy.

[b]The appellant was found guilty of the offence u/s.506[ii] IPC and was sentenced to undergo 7 years rigorous imprisonment; though no charge had been framed in respect of the offence u/s.506[iii] IPC.

[c]The questioning of the appellant u/s.313 Cr.P.C., was done in violation of Article 21 of the Constitution of India, as the appellant was asked a single question running to six pages and was asked to offer his explanation on the same.

[d]The investigation done by P.W.53 - Assistant Commissioner of Police, is not fair and the same is a "Pick and Choose Investigation" for the simple reason that the prosecution witnesses, Raja, Iqbal, Babular and Ganesan had also committed the very same illegal activities, as per the prosecution, however, they were treated not as accused, but

only prosecution witnesses, while Saravanan [A2], Vijayan @ Vijayakumar [A3] were shown as accused persons in the case.

7. Learned Senior counsel for the appellant further argued, without prejudice to his contentions and submitted that the accused is in prison for the past 13 years and 3 months, from the date of his arrest since 24.12.2001. The main argument advanced by Mr.Ramesh, learned Senior counsel is that the sentence of life imprisonment imposed by the trial court, as highly disproportionate and according to him, the sentence is more than the gravity of the offence. It is an admitted fact that the fine amount of Rs.1,22,000/- was not remitted by the appellant.

8. Per contra, Mr.Shanmugavelayutham, learned Public Prosecutor, while refuting the arguments advanced by the learned Senior Counsel appearing for the appellant, contended that there is sufficient evidence on record to prove the offence, even in the absence of framing a charge, hence, the accused can be convicted. In support of his arguments, he relied on the decision of the Hon'ble Apex Court in Willie Staney V. State of Madhya Pradesh reported in AIR 1956 SC 116 [para 80]. The learned Public Prosecutor further submitted that in respect of compounded questions put to the appellant / accused u/s.313 Cr.P.C., that the appellant was well aware of the substance of accusation and the charges levelled against him and whenever, an objection is raised by the accused, the burden is on the accused to prove how he has been prejudiced by such questioning. In the instant case, at no point of time, the appellant had raised any objections. He would further submit, in respect of the contentions with regard to the sentencing policy raised by the learned Senior counsel appearing for the appellant, that the offence is serious in nature, which affect the society at large and therefore, it cannot be construed that the sentence is exorbitant or disproportionate. Lastly, with regard to the contention of "Pick and Choose Investigation" done by P.W.53, the learned Public Prosecutor submitted that there is no flaw in the investigation done by P.W.53 and according to him, the persons were arrayed as accused and prosecution witnesses depending upon the role played by them.

9. Learned Public Prosecutor drew the attention of this Court to the evidence available on record and in support of his arguments, he relied on the following decisions:

1. Willie (William) Slaney v. State of MP, AIR 1956 SC 116

2. Santosh Kumari v. State of Jammu and Kashmir and

3. Mohan Singh v. State of Bihar, (2011) 9 SCC 272
4. Sarwan Singh s/o. Rattan Singh v. State of Punjab, AIR 1957 SC 637
5. Prithipal Singh and others v. State of Punjab, (2012) 1 SCC 10
6. State of H.P v. Gian Chand, (2001) 6 SCC 71
7. Dahari and others v. State of Uttar Pradesh, (2012) 10 SCC 256.
8. Ranchhod Lal v. State of Madhya Pradesh, AIR 1965 SC 1248
9. Shyam Narain v. State (NCT Delhi), (2013) 7 SCC 17
10. State of M.P v. Saleem, (2005) 5 SCC 554
11. State of Madhya Pradesh v. Pappu, (2008) 16 SCC 758

10. In order to decide the appeal, we heard Mr.A.Ramesh, learned Senior Counsel appearing for the appellant and Mr.Shanmugavelayutham, learned Public Prosecutor appearing for the State and perused the entire materials available on record including the impugned judgment of conviction and sentence.

11. It is seen that the law was set in motion on the written complaint given by Ganesan, P.W.1, to the Inspector of Police, R-8 Police Station, Vadapalani, Chennai on 22.12.2001 and the case was registered in Crime No.1466/2001, for the offences punishable under Section 67 of the Information Technology Act, Section 27 of the Arms Act, Section 4 read with Section 6 of the Indecent Representation of Women (Prohibition) Act and Sections 120 (B) and 506 (ii) IPC, however, it is seen that no charge was framed under Section 506 (ii) IPC. There were 5 accused in this case and the appellant was Ranking A1. Though final report was filed on 22.03.2002, as per the order, dated 02.07.2002, further investigation was also conducted. Thereafter, based on the final report, the case was committed to the Court of Sessions for Trial by the committal Magistrate.

12. After the trial, the appellant / A1 was not found guilty under Sections 376, 120 (B) and 307 IPC by the Additional Sessions Judge, however, he was found guilty under Section 67 of Information Technology Act, 2000; under Section 367 of IPC; under Sections 5 and 6 of the Immoral Traffic (Prevention) Act, 1956 ; under Section 4 read with Section 6 of Indecent Representation of Women (Prohibition) Act, 1986 and under Section 27 of the Arms Act, 1959 and was convicted

and sentenced as stated supra. It is not in dispute that the substantive sentences imposed under various provisions were ordered to run concurrently.

13. Mr.A.Ramesh, learned Senior Counsel mainly argued that the sentences imposed under Sections 5 and 6 of the said Act is exorbitant and is not proportionate to the gravity of the offence and therefore, his argument is based mainly on the sentencing policy, relating to criminal cases. The argument of the learned Senior counsel for the petitioner is that the offence committed by the appellant is lesser grave in nature, comparatively than certain heinous crimes, however, sentence of life imprisonment imposed on the appellant / A1 is on the higher side, disproportionate to the gravity of the offence.

14. It is not in dispute that the appellant has committed the alleged offences and the prosecution has brought home the guilt of the accused from the conspectus of the proved facts. However, the issue to be decided in the instant case is as to whether the sentence imposed on the appellant u/s.6 of the Immoral Traffic [Prevention] Act, 1956 is exorbitant or disproportionate, as argued by the learned Senior counsel for the appellant / A1.

15. We are of the view, for better appreciation, to refer to section 6 of the Immoral Traffic [Prevention] Act, 1956, which reads thus:-

"Section 6: Detaining A [PERSON] IN PREMISES WHERE PROSTITUTION IS CARRIED ON:-

[1]Any person who detains [any other person, whether with or without his consent]-

[a]in any brothel,

[b]in or upon any premises with intent [that such person may have sexual intercourse with a person who is not the spouse of such person] 2[that such person may have sexual intercourse with a person who is not the spouse of such person],shall be punishable [on conviction, with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term of less than seven years]."

16. It cannot be disputed that the offence committed by the appellant is a crime against the society, especially against women, by way of sexual assault, hence, the same is on a different pedestal. Such offences should be dealt with iron hands since the impact of such offence is against the society as a whole and the same cannot be lost sight of. The act of the appellant has been clearly and explicitly proved by the prosecution beyond reasonable doubt, based on evidence recorded from the victims, viz., P.Ws.1, 24 to 30, 34 to 39. As rightly cited by the learned Public Prosecutor, the Hon'ble Apex Court in State of M.P. V.s Saleem reported in [2005] 5 SCC 554 has held as follows:-

"Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime, e.g., where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system."

सत्यमेव जयते

17. Therefore, from the evidence available on record and the arguments advanced by both the learned Senior counsel and the learned Public Prosecutor, this Court is of the considered view that the appellant is guilty of the offences, as discussed above and hence, the Court has to confirm the conviction, in respect of the offences, for which charges were framed by the Court below and consider only the quantum of sentence awarded for the offence u/s.6 of the Immoral Traffic [Prevention] Act, 1956. According to Mr.A.Ramesh, learned Senior counsel, the sentence of life imprisonment imposed on the appellant / A1 is exorbitant and it is not proportionate to the gravity of the offence, hence, he pleaded for reduction of sentence.

imprisonment for the alleged offence u/s.6 of the Act and the sentences imposed under all the provisions of law have been ordered to run concurrently. It is not in dispute that the appellant / A1 has already undergone more than 13 years and 3 months of the sentences on the date of arguments, including the default sentences for the non-payment of the fine amounts. Having considered the facts and circumstances, this Court is of the view that it would suffice to modify the sentence from that of life imprisonment to one of the period of imprisonment already undergone, as the appellant / A1 has undergone more than 13 years of imprisonment, since life imprisonment is not mandatory for the charges proved.

In the result, the criminal appeal is partly allowed, whereby the conviction made by the Trial Court on the appellant under Section 67 of Information Technology Act, 2000; Section 367 IPC; Section 5 of the Immoral Traffic (Prevention) Act, 1956; Section 6 of the Immoral Traffic (Prevention) Act, 1956; Section 4 read with Section 6 of Indecent Representation of Women (Prohibition) Act, 1986; Section 27 of the Arms Act, 1959 by the learned Additional Sessions Judge / Fast Track Court No.V, Chennai, dated 06.02.2008 made in S.C.No.9 of 2009 is confirmed, however, the conviction and sentence imposed under Section 506 (ii) IPC is set aside, as no charge had been framed under the said provision of law. Having considered the facts and circumstances, the sentence of imprisonment is modified to one of the period already undergone.

The appellant / A1 has been a Specialist Doctor and not a poor person, incapable to pay the fine amount, hence, no leniency is required to be shown by this Court in favour of the appellant / A1, in respect of the fine amounts. Therefore, the appellant / A1 is directed to pay the fine amount of Rs.1,19,000/- imposed by the Trial Court, within a period of eight weeks from the date of receipt of a copy of this order, failing which, he shall undergo the default sentence, as imposed by the impugned Judgment. It is made clear that only upon the payment of the said fine amount, the appellant / A1 is directed to be released forthwith from the prison, unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar(CS II)

//True Copy//

ap / tsvn

To

1. The Addl. District & Sessions Judge, FTC 5, Chennai.
2. Do Thro The Principal Sessions Judge, Chennai.
3. The Superintendent, Central Prison, Puzhal, Chennai.
4. Assistant Commissioner of Police
(Law & Order), T.Nagar Range,
R-8, Vadapalani Police Station,
Chennai City.
5. The Public Prosecutor
High Court of Madras,
Chennai.

mg co
kra 04.02.2016

Crl.A.No.770 of 2011



WEB COPY