

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06-11-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal No.207 of 2015

C. Jayasiva

...Appellant

Vs.

State

Inspector of Police,
W.18, All Women Police Station
MKB Nagar, Chennai - 600 039
(Crime No.301/2012)

...Respondent

Criminal Appeal under Section 374(2), Cr.P.C., against the order of conviction dated 01-04-2015 passed in S.C.No.434 of 2013 on the file of the Mahila Court Judge, Chennai by convicting the appellant for offence under section 376,IPC and sentencing him to undergo 10 years RI and imposed a fine of Rs.10,000/- in default to undergo 6 months simple imprisonment and prays for setting aside the same.

For appellant : Mr. S. Silambu Selvan

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

JUDGMENT

This criminal appeal has been directed against the conviction and sentence, dated 01-04-2015 passed in Sessions Case No.434 of 2013 by the Mahalir Neethi Manram, Chennai.

2. The case of the prosecution is that the prosecutrix has attained 14 years of age and is living in No.82-B, Kalyanapuram, 1st Street, Chennai. The prosecutrix has studied upto sixth standard. Both the prosecutrix and accused have acquainted themselves in workplace and due to that prior to seven months from 17-03-2012, the accused has directed the prosecutrix to come to his house and accordingly, she has gone there. The accused has given a promise of marrying her and

subsequently, raped her. Due to overtacts alleged to have been committed by the accused, the prosecutrix has become pregnant. After occurrence, the mother of the prosecutrix, by name Rajalakshmi has given a complaint and the same has been registered in Crime No.301 of 2012. The complaint given by the said Rajalakshmi has been marked as Ex-P1.

3. On receipt of Ex-P1, the Investigating Officer viz., P.W.7, has taken up investigation, examined connected witnesses and also made arrangements for conducting medical test, both to the accused and prosecutrix and accordingly, Dr.Balasubramaniam, P.W.5 has conducted potential test to the accused and Dr. Anitavirginkumari (P.W.6) has examined the prosecutrix. Since P.W.7 has been transferred, successor-in-office viz., P.W.8 has conducted further investigation and after completing the same, laid a final report on the file of X Metropolitan Magistrate, Chennai and the same has been taken on file in P.R.C.No.130 of 2013.

4. The Trial Court after hearing arguments of both sides and upon perusing the relevant records has framed a charge under Section 376, IPC and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

5. On the side of the prosecution, P.Ws.1 to 8 have been examined and Exs-P1 to P11 have been marked.

6. When the accused has been questioned under Section 313, Cr.P.C., as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been let in on the side of the accused.

7. The Trial Court after hearing the arguments on both sides and after contemplating the evidence available on record has found the accused guilty under Sections 376, IPC and sentenced him to undergo ten years' RI and also imposed a fine of Rs.10,000/- (Rupees Ten thousand only) 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.

8. The learned counsel appearing for the appellant/accused has raised the following points so as to set aside the conviction and sentence found against the appellant/accused:

(a) The specific case of the prosecution is that at the time of occurrence, the prosecutrix has not attained majority and for the purpose of proving the same, her alleged birth certificate has been marked as Ex-P2 and in order to prove the same, no further evidence has been given on the side of the prosecution and therefore, no credence can be attached to Ex-P2;

(b) The specific contention put forth on the side of the prosecution is that the entire occurrence has taken place inside the house of the accused, but the prosecuting agency has not prepared any Mahazar nor rough plan for the purpose of showing the place of occurrence;

(c) It is seen from the evidence that the prosecutrix has studied upto sixth standard and for the purpose of proving her age, concerned school authority has not been examined on the side of the prosecution;

(d) For the purpose of proving paternity of the child of the prosecutrix, DNA test has not been conducted on the side of the prosecution.

9. In order to sustain the conviction and sentence passed by the Trial Court, the learned Additional Public Prosecutor has sparingly contended that the prosecutrix has been examined as P.W.2 and she has given clear evidence with regard to the factum of occurrence and further, she has been examined by P.W.6. Since the prosecutrix has given clear evidence with regard to factum of occurrence and the same is corroborated by medical evidence, the Court can very well come to the conclusion that the accused has committed an offence punishable under Section 376, IPC and further, with regard to Ex-P2, birth certificate, the specific evidence given by prosecutrix is that, sufficient information might have been given by her parents and therefore, no infirmity is attached to Ex-P2. The Trial Court after considering the overall evidence available on record has given a specific finding to the effect that in the place of occurrence, the accused has raped the victim and therefore, the conviction and sentence passed by the Trial Court need not be set aside.

10. The consistent case put forth on the side of the prosecution is that during the relevant period, the prosecutrix has attained only 14 years of age. Both the prosecutrix and accused have acquainted with each other and due to that, prior to seven months from 17-03-2012, the accused has directed her to come to his house and accordingly, she has gone there and by way of giving false promise of

marrying her, he deflowered her.

11. The entire case of the prosecution is based upon the evidence given by the prosecutrix coupled with Ex-P2.

12. The prosecutrix has been examined as P.W.2 and her specific evidence is that she and accused are acquainted with each other and due to that, he directed her to come to his house and accordingly, she has gone there and he promised to marry her and subsequently, raped her. She further adduced to the effect that she has become pregnant. Further, she would say that for Ex-P2, necessary information might have been given by her parents.

13. It is an admitted fact that Ex-P2 is nothing but birth certificate of the prosecutrix wherein it has been clearly stated that the prosecutrix has got birth on 23-03-1998. The entire occurrence has taken place in the year 2011. Therefore, at the time of occurrence, the prosecutrix has attained only thirteen years of age.

14. The main argument put forth on the side of the appellant/accused is that for proving Ex-P2, no further evidence has been adduced on the side of the prosecution. As stated earlier, Ex-P2 is a birth certificate, wherein the date of birth of the prosecutrix has been mentioned as 25-03-1998. Unless some connected persons would have given proper information, the date cannot be mentioned as 25-03-1998. Further, for disproving Ex-P2, on the side of the accused, contra-evidence is not available. Since contra-evidence is not available, for the purpose of disbelieving Ex-P2, the Court can necessarily accept the same. Therefore, the first and foremost contention put forth on the side of the accused is sans merit.

15. The second contention put forth on the side of the accused is that the occurrence has taken place inside the house of the accused, but the Investigating Officers have not prepared any Mahazar or rough plan. It is true that the Investigating Officers for the purpose of showing the place of occurrence have not prepared Mahazar or rough plan and the same is nothing but an omission on the part of the Investigating Officer and that itself would not affect the case of the prosecution, since in the instant case, the prosecutrix has given clear evidence to the effect that in the place of occurrence, the accused has raped her by way of giving false promise of marrying her. Therefore, the second point urged on the side of the accused also goes out without

merit.

16. The third point put forth on the side of the appellant/accused is that for the purpose of proving the date of birth of the prosecutrix, the concerned school authority has not been examined.

17. It has already been pointed out that Ex-P2 can very well be relied upon, since contra-evidence is not available on the side of the accused. Under the said circumstances, examination of school authority for the purpose of proving the said aspect is unwarranted and therefore, the third contention put forth on the side of the appellant/accused cannot be accepted.

18. The last contention put forth on the side of the appellant/accused is for the purpose of proving the paternity of the child of the prosecutrix, DNA test has not been conducted. It is also nothing but an omission on the part of the prosecution. Since an omission has occurred on the part of the prosecution for conducting such test, concrete as well as acceptable evidence given by the prosecutrix cannot be rejected. Therefore, viewing from any angle, the contentions put forth on the side of the appellant/accused are not having merits.

19. The Trial Court after considering the evidence given by the prosecutrix meticulously, has rightly found the accused guilty under Section 376, IPC. Further, in the instant case, the evidence given by the prosecutrix has been clearly corroborated by medical evidence by way of examining P.W.5. Therefore, viewing from any angle, the conviction and sentence passed by the Trial Court has not suffered from any infirmity or illegality and altogether, the present criminal appeal deserves to be dismissed.

In fine, this criminal appeal is dismissed. The conviction and sentence passed by the Mahila Court Judge, Chennai dated 01-04-2015 in S.C.No.434 of 2013 are confirmed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

glp

To

1.The Mahila Court Judge,
Chennai.

2.The 10th Metropolitan Magistrate,
Egmore, Chennai.

3.The Inspector of Police,
W.18, All Women Police Station
MKB Nagar, Chennai - 600 039

4.The Superintendent,
Central Prison,
Puzhal, Chennai.

1 CC to Mr. S. Silambu Selvan, Advocate SR.No. 61512

Crl.A.No.207 of 2015

KGK (CO)
PSI (07.12.2015)



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