

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.232 of 2015
and M.P.No.1 of 2015

S.Subramani

...Appellant

vs.

The State, rep.by
Inspector of Police,
S.5, Pallavaram Police Station,
Crime No.404 of 2009

...Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records in S.C.No.141 of 2011 on the file of the Mahila Court, Chenglepattu and allow the appeal, thereby setting aside the conviction and sentence dated 3.11.2014 imposed on the appellant.

For appellant : Mrs.S.Sridevi for
A.E.Lakshmi Narayanan

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

JUDGMENT

The conviction and sentence dated 03.11.2014 passed, in Sessions Case No.141 of 2011, by the Mahalir Needhi Mandram, Chenglepattu, are being challenged in the present Criminal Appeal.

2. The crux of the case of the prosecution is that both the accused and prosecutrix are residing in old Pallavaram. On 24.5.2009, at about 3.30 p.m., the Prosecutrix has played near a Pillaiyar Koil. At that time, the accused has taken her near a compound wall and disrobed her and also placed his hand on her private part and the same has been witnessed by the defacto

complainant and thereafter, the defacto complainant has given the complaint to the investigating officer, viz., P.W.6 and the same has been registered in Crime No.404 of 2009. The complaint given by the defacto complainant has been marked as Ex.P1.

3. On receipt of Ex.P1, P.W.6 has taken up investigation, examined connected witnesses and also made arrangements for conducting medical examination to the prosecutrix and accordingly, the Doctor, by name, Parimala (P.W.5) has conducted examination. After completing investigation, P.W.6 has laid a final report on the file of the Judicial Magistrate Court, Tambaram and the same has been taken on file in P.R.C.No.60 of 2009.

4. The Judicial Magistrate, Tambaram, after considering the facts that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the same to the trial Court and the same has been taken on file in Sessions Case No.141 of 2011.

5. The trial Court, after hearing both sides and upon perusing the relevant records, has framed a charge against the accused under Sections 376 read with 511 of the Indian Penal Code 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 6 have been examined and Exs.P1 to P7 and M.Os.1 to 4 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 also upon perusing the relevant evidence available on record, has found the accused guilty under Sections 376 read with 511 of the Indian Penal Cod and sentenced him to undergo five years rigorous imprisonment and also imposed a fine of Rs.5000/- 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 specific case put forth on the side of the prosecution is that both the prosecutrix and accused are residing in

old Pallavaram. On 24.5.2009, at about 3.30 p.m., while the prosecutrix has been playing near a Pillaiyar Koil, the accused has taken her near a compound wall and disrobed her and subsequently placed his hand on her private part.

10. The learned counsel appearing for the appellant/accused has contended that in the instant case, from the available evidence on record, it is found that on the date of occurrence, the parents of the prosecutrix are alive, but they have not preferred any complaint, whereas, the defacto complainant, by name, Rani, has given Ex.P1 and she has been examined as P.W.1 and she is not a believable witness. Further, the evidence given by the prosecutrix, as P.W.2, cannot be a basis for coming to a conclusion that the occurrence has taken place as spoken on the side of the prosecution. The trial Court, without considering the veracity of the evidence given by P.Ws 1 and 2, has erroneously invited conviction and sentence against the appellant and the same are liable to be set aside.

11. Per contra, the learned Additional Public Prosecutor has vehemently argued that in the instant case, the prosecutrix has been examined as P.W.2 and her specific evidence is that in the place of occurrence, the accused has disrobed her and subsequently placed his hand on her private part. Under the said circumstances, the Court can very well come to a conclusion that the accused has committed offences punishable under Sections 376 read with 511 of the Indian Penal Code. The trial Court, after considering the trustworthy evidence adduced by the prosecutrix, has rightly invited conviction and sentence against the accused and the same do not warrant interference.

12. On the basis of the divergent submissions made on either side, the Court has to analyse as to whether the defacto complainant has really seen the occurrence and also as to whether the prosecutrix, is a believable witness.

13. In fact, this Court has perused the evidence given by the prosecutrix (P.W.2). During the course of cross-examination, she candidly admitted to the effect that after occurrence, she proceeded towards her house by crying and the same has been questioned by the defacto complainant and she narrated the factum of occurrence. From the evidence given by P.W.2, the Court can easily come to a conclusion that P.W.1-defacto complainant is not at all an eyewitness. But P.W.1 has given a complaint, viz., Ex.P1, as if she has witnessed the occurrence.

14. Now, the Court has to meticulously analyse the evidence given by the prosecutrix. As stated in many places, the specific case of the prosecution is that in the place of occurrence, the accused has disrobed the prosecutrix and placed his hand on her private part.

15. It is an admitted fact that after the alleged occurrence, the prosecutrix has been physically examined by P.W.5- Doctor Parimala and her specific evidence is that she has not found any external injuries on the person of prosecutrix, but she has been subjected to sexual intercourse.

16. It is an admitted fact that at the age of 12 of the prosecutrix, the alleged occurrence has taken place. Since P.W.5 has given such kind of evidence to the effect that P.W.2 has had already coition, the Court can very well come to a conclusion that P.W.2 is not a trustworthy witness.

17. It has already been pointed out that P.W.1 is not at all an eyewitness and further, P.W.2 is not a believable witness. Since the evidence of P.Ws.1 and 2 cannot be relied upon, absolutely there is no evidence on the side of the prosecution so as to come to a conclusion that the accused has committed offences punishable under Section 376 read with 511 of the Indian Penal Code.

18. The trial Court, without assessing the evidence given by P.Ws.1 and 2 and P.W.5 properly, in casual manner, invited conviction and sentence against the accused and therefore, the conviction and sentence passed by the trial Court are not factually and legally sustainable and the same are liable to be set aside.

In fine, this criminal appeal is allowed. The conviction and sentence passed by the trial court in Sessions Case No.141 of 2005 are set aside and the appellant/accused is acquitted. Connected miscellaneous petition is closed

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

msk

To

1. The Mahila Court,
Chenglepattu.
 2. The Judicial Magistrate,
Tambaram.
 3. Inspector of Police,
S.5, Pallavaram Police Station,
 4. The Public Prosecutor,
High Court, Madras
 5. The Superintendent,
Central Prison,
Puzhal, Chennai - 66.
- 1 CC to Mrs.S.Sridevi, Advocate SR.No. 49513

Crl.A.No.232 of 2015

KGK (CO)
PSI (11.09.2015)



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