

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08-09-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal No.285 of 2015
and M.P.No.1 of 2015

R. Ram Nivas
S/O.Rajaram

... Appellant/Accused

Vs.

State rep.
Inspector of Police
W-12, All Women Police Station
Harbour Division, Chennai - 600 001
(Crime No.2 of 2013)

... Respondent/Complainant

Criminal Appeal under Section 374(2) of CrI.P.C., against the conviction and sentence passed by the Magalir Neethi Mandram, Chennai in S.C.No.211 of 2014 dated 07-04-2015 imposing punishment for seven years rigorous imprisonment with fine of Rs.5000/- under Section 376 read with 511, IPC.

For appellant :: Mr. R. Priya Kumar

For respondent :: Mr. P. Govindarajan, Addl.P.P.

JUDGMENT

The conviction and sentence dated 07-04-2015 passed in S.C.No.211 of 2014 by the Magalir Neethi Mandram, Chennai are being challenged in the present criminal appeal.

2. The sum and substance of the case of the prosecution is that the prosecutrix has served in Toy shop of the accused, which situates in Rattan Bazaar, Chennai. On 01-09-2013, at about 11:00 a.m., the accused has put off light and promised to love prosecutrix and all of a sudden, he caught hold of her hands and subsequently, deflowered her. On the date of occurrence, the prosecutrix has given the complaint, in question and the same has been registered in Crime No.2 of 2013. The complaint alleged to have been given by the prosecutrix 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 to conduct medical test to the prosecutrix as well as accused. After completing investigation, the Investigating Officer has laid a final report on the file of the Judicial Magistrate Court-VII, George Town and the same has been taken on file

in P.R.C.No.53 of 2014.

4. The Judicial Magistrate No.VII, George Town after knowing the facts that the offence alleged to have been committed by the accused is triable by Sessions Court has committed the case to Magalir Neethi Mandram, Chennai and the same has been taken on file in Sessions Case No.211 of 2014. The Trial Court after hearing both sides and upon perusing the relevant documents has framed a charge against the accused under Section 376 read with 511, IPC and the same has been read over and explained to him. The accused has denied the charge and claimed to be tried.

5. On the side of the prosecution, P.Ws.1 to 19 have been examined and M.Os.1 to 4 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 adduced on the side of the accused.

7. The Trial Court after hearing both sides and also after contemplating the evidence available on record has found accused guilty under Sections 376 read with 511, IPC and sentenced him to undergo rigorous imprisonment for a period of seven years and also imposed a fine of Rs.500/- with usual default clause. Against the conviction and sentence passed by the Trial Court, the present criminal appeal has been preferred at the instance of the accused, as appellant.

8. The consistent case put forth on the side of the prosecution is that on the date of occurrence, the prosecutrix has served under the control of the accused. On the date of occurrence, at about 11:00a.m., all of a sudden the accused has put off light and told her that he has been loving her and suddenly, he caught hold of her hands and thereafter, deflowered her and after sometime, the prosecutrix has given the complaint, in question viz., Ex-P1.

9. On the side of the prosecution for the purpose of proving the alleged guilt of the accused punishable under Sections 376 read with 511, IPC, the prosecutrix has been examined as P.W.1. The mother of the prosecutrix has been examined as P.W.2. One Lakshmanan, has been examined as P.W.3. The Doctor, who conducted potential test to the accused has been examined as P.W.4 and the Doctor, who examined the prosecutrix has been examined as P.W.5.

10. The learned counsel appearing for the appellant/accused has contended that with regard to payment of money a strong motive has been in existence in between P.W.3 and the accused, and only under the instigation of P.W.3, the prosecutrix has given a false complaint and further, the prosecutrix has given inconsistent statements as well as evidence; under the said circumstances, the prosecutrix is

not a believable witness, since the prosecutrix has not taken a definite stand, with regard to the alleged crime, her evidence cannot be looked into and the Trial Court without eschewing the evidence given by the prosecutrix has erroneously found the accused guilty under Sections 376 read with 511, IPC and therefore, the conviction and sentence passed by the Trial Court are liable to be interfered with.

11. In order to sustain the conviction and sentence passed by the Trial Court, the learned Additional Public Prosecutor has contended that in the instant case no motive has been in existence. All of a sudden, the accused has caught hold of the hands of the prosecutrix and subsequently, deflowered her and even on the date of occurrence, Ex-P1 has been given and the Trial Court after considering uncontraverted evidence given by the prosecutrix has rightly found the accused guilty under Sections 376 read with 511, IPC and therefore, the conviction and sentence passed by the Trial Court do not warrant interference.

11. Basing upon the divergent submissions made on either side, the Court has to meticulously analyse as to whether the evidence given by the prosecutrix can be a sole basis for inviting conviction and sentence against the appellant/accused?

12. As adverted to earlier, the specific case put forth on the side of the prosecution is that on 01-09-2013, at about 11:00 a.m., the alleged occurrence has taken place and during the course of the occurrence, the accused has deflowered the prosecutrix.

13. It is seen from the records that the prosecutrix has been subjected to medical examination on 04-09-2013 by P.W.5, Dr. Ananthi and her specific evidence is that she has not found any incriminating materials in the body of the prosecutrix. Further, she simply opined that the prosecutrix has had a sexual intercourse.

14. It is also seen from the records that the prosecutrix has given a statement under Section 164, Cr.P.C., before the concerned Magistrate on 19-09-2013 and the same has been marked as Ex-P2, wherein she simply stated that the accused has pulled her hands. No mention has been made with regard to alleged rape. At this juncture, the Court has to carefully and also dispassionately analyse the evidence given by the prosecutrix. The prosecutrix has been examined as P.W.1 and even in her evidence she has stated that the accused has simply pulled her hands and due to panic she has given a complaint. Further, she has deposed in her evidence during the course of cross-examination that she asked the Police to warn the accused. But the police have directed to give a complaint as per their direction.

15. It has already been pointed out that P.W.5 has not found any incriminating materials on the person of the prosecutrix. Further, in Ex-P2, it has been simply stated that the accused has pulled the

hands of prosecutrix. Further, the prosecutrix has given totally a contra evidence. Except in Ex-P1, the prosecutrix has not stated to the effect that during the course of occurrence, the accused has deflowered her. Simply because in Ex-P1, it has been stated to the effect that the accused has deflowered the prosecutrix, the Court cannot automatically come to a conclusion that the accused has committed offence punishable under Sections 376 read with 511, IPC. Further, the prosecutrix is not a believable person and her evidence cannot be believed in. It has already been pointed out that in so many places, the prosecutrix has given different types of evidence and her evidence is nothing, but, mutually incongruous and the same cannot be a basis for coming to a conclusion that the accused has committed a grave offence punishable under Sections 376 read with 511, IPC. To put it in short, the evidence given by the prosecutrix is liable to be eschewed. The Trial Court without considering the veracity of the prosecutrix and also without considering mutually inconsistent evidence given by her, has erroneously found the accused guilty under Sections mentioned in the charges.

16. In view of the discussions made earlier, this Court has found acceptable force in the contentions put forth on the side of the appellant/accused and altogether, the present criminal appeal is liable to be allowed.

In fine, the criminal appeal is allowed. The conviction and sentence passed by the Trial Court are set aside. The appellant/accused is acquitted. The connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The VII Metropolitan Magistrate,
George Town,
Chennai

2.-do-The Chief Metropolitan Magistrate,
Egmore, Chennai

3.The Sessions Judge,
The Magalir Neethi Mandram, Chennai

4. Inspector of Police
W-12, All Women Police Station
Harbour Division, Chennai - 600 001
5. The Superintendent Central Prison,
Puzhal, Chennai
6. The Public Prosecutor High Court,
Madras
7. The Director General of Police,
Mylapore Chennai
8. The District Collector
Chennai District,
Chennai

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