

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.311 of 2015

Aruldos Ashok @ Ashok

... Appellant

vs.

State: rep.by the Inspector of Police,
All Women Police Station,
Upper Coonoor,
The Nilgiris District

... Respondent

Criminal Appeal filed under Section 374 of Cr.P.C., to call for the records and set aside the conviction and sentence in S.C.No.20 of 2013 dated 21.04.2015, on the file of the Mahila Judge (Fast Track) Court, Uthagamandalam, the Nilgiris District.

For appellant : Mr.V.Chinnasamy

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

JUDGMENT

This criminal appeal has been directed against the conviction and sentence dated 21.04.2015, passed in Sessions Case No.20 of 2013, by the Mahila Judge (Fast Track Court), Uthagamandalam.

2. The case of the prosecution is that on 31.05.2012, at about 10.30 p.m., near 'car care auto care' workshop, the accused has raped the prosecutrix and after occurrence, on 4.6.2012, the prosecutrix has lodged a complaint and the same has been registered in Crime No.182 of 2012. The said complaint has been marked as Ex.P1.

3. On receipt of Ex.P1, the investigating officer, viz., Maragadham (P.W.7), has taken up investigation, examined connected witnesses and after completing investigation, has laid a final report on the file of the Judicial Magistrate Court, Coonoor and the same has been taken on file in P.R.C.No.1 of 2013.

4. The Judicial Magistrate, Coonoor, after considering the fact 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, Uthagamandalam Division and the same has been taken on file in Sessions Case No.20 of 2013 and subsequently made over to the trial Court.

5. The trial Court, after hearing arguments of both sides and upon perusing the relevant documents available on record, has framed a charge against the accused under Section 376 of the Indian Penal Code and the same has been read over and explained to him. The accused has denied the charge framed against him and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 7 have been examined and Exhibits P.1 to P.18 and M.Os.1 to 8 have been marked.

7. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 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.

8. The trial court, after hearing arguments of both sides and upon perusing the relevant evidence, has found the accused guilty under Section 376 of the Indian Penal Code and sentenced him to undergo seven years rigorous imprisonment and also imposed a fine of Rs.1000/-, 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.

9. The learned counsel appearing for the appellant/ accused has contended that the prosecutrix is the wife of uncle of the accused. The specific case of the prosecution is that the occurrence has taken place on 31.5.2012 and Ex.P1 has come into existence on 4.6.2012 and further on 4.6.2012, due to occurrence the prosecutrix has consumed phenol and due to that, she has been admitted in hospital and the said aspect has not been proved on the side of the prosecution. Under the said circumstances, the prosecutrix is not a believable witness and the trial Court, without considering the demeanour of the prosecutrix, has erroneously found the accused guilty under Section 376 of the Indian Penal Code and therefore, the conviction and sentence passed by the trial Court are liable to be interfered with.

10. Per contra, the learned Additional Public Prosecutor, has contended that in the instant case the prosecutrix has been examined as P.W.1 and she has given clear evidence to the effect that in the place of occurrence, the accused has had raped her and apart from her evidence, P.W.6, Doctor Sathyapriya, has given clear evidence to the effect that the prosecutrix has been subjected to

sexual contact and the trial Court, after considering the over all evidence available on record, has rightly found the accused guilty under Section 376 of the Indian Penal Code and therefore, the conviction and sentence passed by the trial Court are not liable to be set aside.

11. On the basis of the rival submissions made on either side, the Court has to meticulously analyse as to whether the prosecutrix is a believable witness?

12. It is seen from the evidence that the prosecutrix is the wife of uncle of the accused. The prosecutrix has been examined as P.W.1 and her specific evidence is that on 31.5.2012, at about 10.30 p.m., in the place of occurrence, the accused has raped her and immediately after occurrence, she has not divulged the same to anybody, including her husband and since she has sustained impudicity, she consumed phenol on 4.6.2012 and subsequently, she has been taken to hospital, where she has been given treatment and on the same day, she has given the complaint, Ex.P1.

13. From the evidence of P.W.1, the Court can easily come to a conclusion that on 4.6.2012, the prosecutrix has consumed phenol and only due to that she has been admitted in hospital. But the Doctor, who examined the prosecutrix in hospital, viz., P.W.5, has not given any evidence to the effect that the prosecutrix has been given treatment with regard to consumption of phenol.

14. It is true that the prosecutrix has taken treatment for ten days and that itself would not be sufficient for coming to a conclusion that an occurrence has taken place on 31.5.2012, as pleaded on the side of the prosecution and due to occurrence, the prosecutrix has consumed Phenol on 4.6.2012. Therefore, it is quite clear that the prosecution has failed to establish the substratum of its case. Since the prosecution has not proved the basis of its case, there is no incertitude in coming to a conclusion that the prosecutrix is not a believable witness.

15. It has already been pointed out that the prosecutrix is the wife of the uncle of the accused. As per the version of the prosecution, the occurrence has taken place on 31.5.2012 at about 10.30 p.m. But the prosecutrix has consumed phenol on 4.6.2012. As pointed out earlier, the prosecution has not established the said aspect. Since the prosecution has not established the said aspect, the Court cannot automatically come to a conclusion that in the place of occurrence, the accused has raped the prosecutrix.

16. It is seen from the medical evidence that the prosecutrix has been subjected to sexual contact. It is an admitted fact that the prosecutrix is a married lady. Under the said circumstances, such thing might have occurred and on that basis, the Court cannot come to a conclusion that the accused has raped the

prosecutrix. Therefore viewing from any angle, absolutely there is no trustworthy/credible evidence on the part of the prosecution for coming to a conclusion that the accused has raped the prosecutrix.

17. The trial Court, without considering the fact that the prosecution has not established the substratum of its case, has erroneously found the accused guilty under Section 376 of the Indian Penal Code.

18. In view of the discussion made earlier, this Court has found considerable force in the contention put forth on the side of the appellant/accused and altogether the present criminal appeal is liable to be allowed.

In fine, this criminal appeal is allowed. The conviction and sentence passed by the trial Court, in S.C.No.20 of 2013, are set aside and the appellant/accused is acquitted. Bail bond, if any, executed by him shall stand cancelled. Fine amount, if any, paid by him is ordered to be refunded forthwith.

msk

s/d-
Assistant Registrar(T&P)

True Copy

Sub-Assistant Registrar

To :

1. The Mahila Judge (Fast Track) Court,
Uthagamandalam, the Nilgiris District
2. The Inspector of Police,
All Women Police Station,
Upper Coonoor,
The Nilgiris District
3. The Superintendent,
Central Prison, Coimbatore,
Coimbatore District.
4. The Public Prosecutor,
High Court, Chennai

+ 1 cc to Mr.V.Chinnasamy, Advocate SR 55227

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