

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 16-09-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal No.345 of 2015

D. Sundareswaran

...Appellant/Accused

Vs.

State rep by
Inspector of Police
Puzhal Police Station
Puzhal
(Cr.No.457 of 2009)

...Respondent/Complainant

Criminal Appeal under Section 374 of Cr.P.C., against the judgment dated 09-04-2015 passed in S.C. No.241 of 2012 by the learned Mahila Sessions (Fast Track) Court, convicting the appellant to undergo imprisonment of 5 years and imposing a fine of Rs.1000/- finding him guilty of offence punishable under Section 376 read with Section 511, IPC and awarding an imprisonment of two years with fine of Rs.10,000/- for the offence under Section 23 of Juvenile and Justice (Care and Protection) Act, 2000 read with Section 4 of Women Harassment Act, sentences to run concurrently.

For appellant : Mr. Kumar Talreja

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

JUDGMENT

The convictions and sentences, dated 09-04-2015 passed in Sessions Case No.241 of 2012 by the Mahila Sessions (Fast Track) Court, Thiruvallur are being challenged in the present criminal appeal.

2. The schema of the case of the prosecution is that the prosecutrix is the daughter of the accused. The defacto complainant by name, Santha Kumari is the mother of the prosecutrix. The accused has very often tried to have sexual intercourse with the prosecutrix. On 02-07-2009, at about 8:30 p.m., while the defacto

complainant has gone to Hospital due to her illness, the accused has raped the prosecutrix. After occurrence, on 31-07-2009, the defacto complainant has given the complaint and the same has been registered by the Inspector of Police, (P.W.10) in Crime No.457 of 2009. The complaint given by the defacto complainant has been marked as Ex-P1.

3. On receipt of Ex-P1, the Investigating Officer viz., P.W.10 has examined connected witnesses and also made arrangements to conduct competency test to the accused and the prosecutrix has also been subjected to medical examination. After completing investigation, P.W.10, laid a final report on the file of the Judicial Magistrate Court, Thiruvallur and the same has been taken on file in P.R.C.No.21 of 2010.

4. The Judicial Magistrate, Thiruvallur after considering the facts that the offences alleged to have been made by the accused are triable by Sessions Court has committed the case to the Trial Court and the same has been taken on file in Sessions Case No.241 of 2012.

5. The Trial Court after hearing arguments of both sides and upon perusing the relevant records has framed the first charge against the accused under Section 4 of the Women Harassment Act, 1988 and also under Section 23 of Juvenile and Justice (Care and Protection) Act, 2000 ('JJ Act' in short); the second 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.

6. On the side of the prosecution, P.Ws.1 to 10 have been examined and Exs-P1 to P14 have been marked.

7. When the accused has been questioned under Section 313, CrI.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.

8. The Trial Court after hearing the arguments on both sides and upon analysing the available evidence on record has found the accused guilty under Section 376 read with Section 511, IPC and sentenced him to undergo five years rigorous imprisonment and also imposed to fine of Rs.1000/- with usual default clause. Further, the Trial Court has found the accused guilty under Section 23 of JJ Act read with Section 4 of Women Harassment Act and sentenced him to undergo two years imprisonment and also imposed a fine of Rs.10,000/- with usual default clause. The Trial Court has further directed to give the fine amounts as compensation to the

prosecutrix. Against the convictions and sentences passed by the Trial Court, the present criminal appeal has been preferred at the instance of the accused, as appellant.

9. The consistent case put forth on the side of the prosecution is that the prosecutrix is the daughter of the accused and very often he tried to have sexual intercourse with her and ultimately, on 02-07-2009 at about 8:30 p.m., the accused has raped the prosecutrix.

10. The entire case of the prosecution is based upon Ex-P1, complaint alleged to have been given by the defacto complainant. In Ex-P1, the details of alleged overt acts of the accused have been clearly mentioned. In support of the averments made in Ex-P1, its author has been examined as P.W.1 and she is not an eye-witness to the alleged occurrence. The Trial Court has invited the entire conviction and sentence only on the basis of sole testimony of the prosecutrix, who has been examined as P.W.2.

11. The learned counsel appearing for the appellant/accused has repeatedly contended that the specific case of the prosecution is that occurrence has taken place on 02-07-2009 whereas Ex-P1 has been given on 31-07-2009 and no explanation has been given on the side of the prosecution. Further, the son of the defacto complainant has not at all been examined. Further the prosecutrix has not stated anything to her mother/defacto complainant with regard to alleged attempts made by the accused and the Trial Court without considering lack of evidence on the side of the prosecution has invited the conviction and evidence against the appellant/accused and therefore, the same are liable to be set aside.

12. Per contra, the learned Additional Public Prosecutor has contended that in the instant case, the prosecutrix is none other than the daughter of the accused and no circumstance has warranted on her part to adduce evidence against her father and in fact, she has given picturesque evidence with regard to the overt acts alleged to have been committed by the accused and the Trial Court after considering the trustworthy evidence given by the prosecutrix has rightly invited conviction and sentence against the accused and the same do not warrant interference.

13. As adverted to earlier, in the instant case, the prosecutrix is none other than the daughter of the accused. Since the prosecutrix is none other than the daughter of the accused, the Court has to adopt utmost circumspection in analysing the evidence given by the prosecutrix. Further, the Court has to meticulously analyse as to whether both the defacto complainant and accused have

maintained cordial relationship?

14. It is pertinent to point out that the entire case of the prosecution hinges upon Ex-P1, complaint and its author has been examined as P.W.1. The Court has closely examined the entire evidence given by the P.W.1 and ultimately found that no concordial relationship has been in existence in between the defacto complainant and accused.

15. At this juncture, the Court has to look into the date of complaint alleged to have given by the defacto complainant. The specific case putforth on the side of the prosecution is that the occurrence has taken place on 02-07-2009. But Ex-P1, has come into existence on 31-07-2009. No proper explanation has been given on the side of the prosecution.

16. Now, as pointed out earlier, the Court has to carefully and dispassionately analyse the entire evidence given by the prosecutrix. Even in chief examination, it has been stated that on the date of occurrence due to illness, her mother(P.W.1) has gone out so as to meet a Doctor and at that time, the accused (her father) has asked her to denude herself and as per his direction she removed her clothes and after having denudation, the accused has put his private part in her labia and given pressure. Since she has not been able to bear pain, the accused has not fulfilled his object and immediately her mother has come to home and she has simply gone to bathroom. Further, she deposed to the effect that after sometime, the accused has made a similar attempt and in order to escape from his clutches she herself made injuries on her person. At this juncture, the Court has to look into the evidence given by P.W.9. It is an admitted fact that Dr. Devika (P.W.9) has examined the prosecutrix and her specific evidence is that the prosecutrix has reported that for the past five years her father has tried to misbehave with her.

17. As elucidated earlier, even on the date of occurrence the accused has tried to rape her and during the course of occurrence, P.W.1 has come to house. But the prosecutrix without informing the matter to P.W.1 she has simply gone to bathroom. Further, as per evidence given by P.W.19, the Court can easily discern that the prosecutrix has reported to the effect that for the past five years, her father has done the same thing. If really such occurrence has taken place as spoken by the prosecutrix definitely she would not have remain silent without informing to her mother (P.W.1). Further, no reason has been assigned by the prosecutrix for not informing the alleged overt acts of the accused to P.W.1.

18. It has already been pointed out that both the defacto complainant (P.W.1) and accused are not maintaining concordial relationship. Further P.W.2, has not at all intimated the nefarious acts alleged to have been committed by her father to her mother. If really such occurrence has taken place continuously for a period of five years definitely the prosecutrix would have stated to her mother. As adverted to earlier, no explanation has been given on the side of the prosecution, with regard to such silence on the part of the prosecutrix. Therefore, it is quite clear that the prosecutrix is not at all a believable witness and her evidence cannot be believed in.

19. It has already been pointed out in many places that both the defacto complainant and accused are not having cordial relationship and further the accused has purchased some valuable immoveable properties in the name of the defacto complainant. Under such circumstances, this Court is of the considered view that the prosecutrix has been made as a tool so as to solve the problems that existed to in between the defacto complainant and accused. Further, it has already been pointed out that the prosecutrix is not at all a believable witness and her evidence cannot be believed in.

20. The Trial Court without analysing the evidence given by the prosecutrix properly, has simply relied upon the same and invited the conviction and sentence as noted down earlier. In view of the discussions made earlier, this Court has found considerable and acceptable force in the stand taken by the appellant/accused and altogether the convictions and sentences passed by the Trial Court, are liable to be set aside.

In fine, the present criminal appeal is allowed. The convictions and sentences passed by the Trial Court in S.C. No.241 of 2012, are set aside. The appellant/accused is acquitted. Fine amount, if any, paid by the accused is ordered to be refunded, forthwith.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar

glp

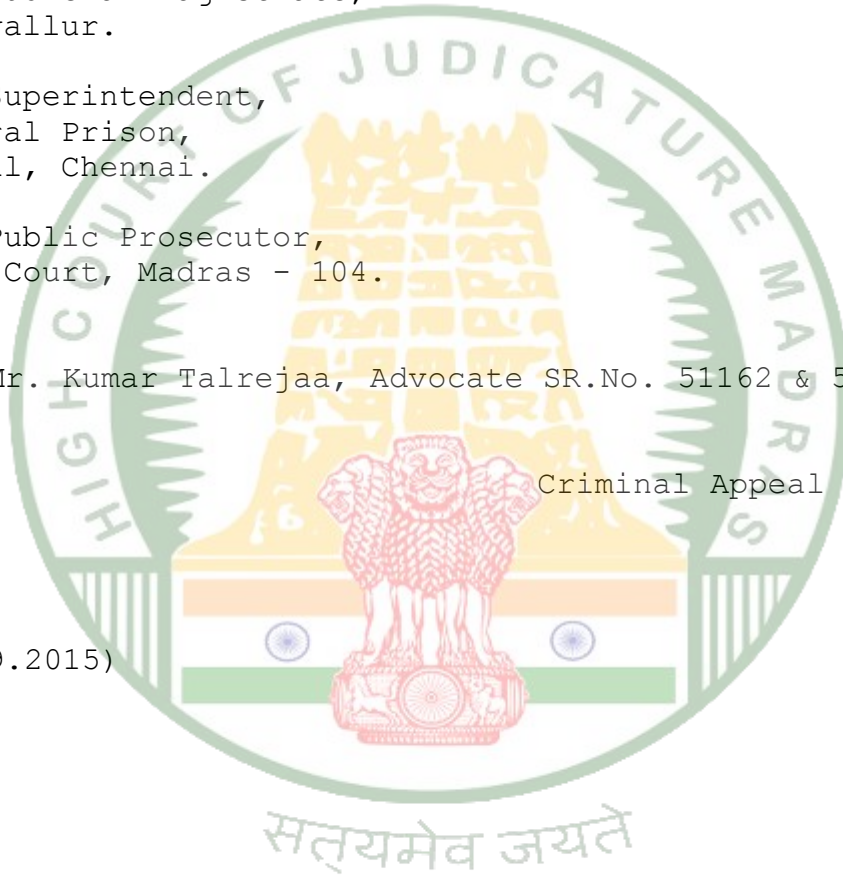
To

1. Inspector of Police,
Puzhal Police Station,
Puzhal
2. Mahila Sessions (Fast Track) Court,
Tiruvallur.
3. The Judicial Magistrate,
Tiruvallur.
4. The Superintendent,
Central Prison,
Puzhal, Chennai.
5. The Public Prosecutor,
High Court, Madras - 104.

2 CCs to Mr. Kumar Talreja, Advocate SR.No. 51162 & 51318

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KGK (CO)
PSI (21.09.2015)



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