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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.35 of 2015  
and M.P.No.3 of 2015

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Kannan

... Appellant/Accused

vs.

The State, rep.by  
The Inspector of Police,  
J-3, Guindy Police Station,  
Chennai-600 032  
Crime No.5250 of 2012

...Respondent/Complainant

Criminal Appeal filed under Section 374 of Cr.P.C., to call for the connected records in S.C.No.55 of 2014, passed by the Sessions Judge, Chennai (Mahalir Neethimandaram, Chennai) dated 17.12.2014 and set aside the same as illegal.

For appellant : Mr.R.Sankarasubbu  
For Respondent : Mr.P.Govindarajan,  
Additional Public Prosecutor

#### JUDGMENT

The convictions and sentences dated 17.12.2014 passed in Sessions Case No.55 of 2014, by the Mahalir Needhi Mandram, Chennai, are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that during the relevant period, the prosecutrix has studied in the coaching center, run by the accused. The accused directed the prosecutrix to come to coaching center every at 6.15 a.m. and 6.00 p.m. The accused has used to touch some parts of the body of the prosecutrix. On 12.11.2012, the accused has caused sexual harassment to the prosecutrix. After occurrence, the father of the prosecutrix, viz., P.W.2, as defacto complainant, has given the complaint in question and the same has been registered in Crime No.5250 of 2012. The complaint given by P.W.2 has been marked as Ex.P2.

3. On receipt of Ex.P2, complaint, P.W.8 has taken up investigation, examined connected witnesses and also made



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arrangements for conducting medical examination both to the prosecutrix and accused and after completing investigation, has laid a final report on the file of Sessions Court, Mahalir Needhimandram, Chennai and the same has been taken on file in Sessions Case No.55 of 2014.

4. The trial Court, after hearing both sides and upon perusing the relevant records, has framed first charge against the accused under Sections 354 of the Indian Penal Code; second charge against him under Section 376 of the Indian Penal Code and the same have been read over and explained to him. The accused has denied the charges framed against him and claimed to be tried.

5. On the side of the prosecution, P.Ws.1 to 8 have been examined and Exs.P1 to P17 and M.Os.1 to 6 have been marked.

6. 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. On the side of the accused, D.Ws.1 and 2 have been examined and no documentary evidence has been adduced.

7. 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 354 of the Indian Penal Code and sentenced him to undergo one year rigorous imprisonment and also imposed a fine of Rs.1000/- with usual default clause. The accused has also been found guilty under Section 376 of the Indian Penal Code and sentenced to undergo ten years rigorous imprisonment and also imposed a fine of Rs.10,000/- with usual default clause. Against the convictions and sentences passed by the trial Court, the present criminal appeal has been filed, at the instance of the accused, as appellant.

8. The sum and substance of the case of the prosecution is that during the relevant period, the prosecutrix has studied in the coaching center of the accused and for some times, the accused has used to touch some parts of the body of the prosecutrix. On 12.11.2012, the accused has caused sexual harassment to the prosecutrix.

9. On the basis of accusation made against the accused, on the side of the prosecution, the trial Court has framed two charges, punishable under Sections 354 and 376 of the Indian Penal Code.

10. The learned counsel appearing for the appellant/accused has contended that in the instant case, the



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trial Court, without having sufficient materials so as to invoke Section 376 of the Indian Penal Code, has erroneously found the accused guilty under the said Section and sentenced him to undergo 10 years rigorous imprisonment and also imposed a fine of Rs.10,000/- and at the most, the Court can convict the appellant/accused only under Section 354 of the Indian Penal Code.

11. The learned Additional Public Prosecutor has contended that in the instant case, the prosecutrix has been examined as P.W.1 and her specific evidence is that on the date of occurrence, the accused has given her sexual harassment and the prosecutrix has been medically examined by P.W.6-Dr.Anitha and she filed Ex.P8. Further, the specific evidence given by P.W.6 is that the hymen of the prosecutrix is not in tact. Under the said circumstances, the Court can infer that the accused has committed an offence punishable under Section 376 of the Indian Penal Code and the trial Court, after considering the over all evidence available on record, has rightly found the accused guilty under Sections 354 and 376 of the Indian Penal Code and therefore, the convictions and sentences passed by the trial Court do not warrant interference.

12. The first and foremost charge framed against the appellant/accused is under Section 354 of the Indian Penal Code by way of saying that on several occasions, the accused has had touched some parts of the body of the prosecutrix with guilty intention. The second charge framed against him is under Section 376 of the Indian Penal Code stating that on 12.11.2012, the accused had deflowered the prosecutrix.

13. The entire argument advanced on the side of the appellant/accused is that in the instance case, for invoking Section 376 of the Indian Penal Code, on the side of the prosecution, evidence is completely lacking.

14. For the purpose of analysing the contention put forth on the side of the appellant/accused, the Court has to necessarily look into the evidence given by the prosecutrix, P.W.1. Even during the course of chief examination, she would say that the accused has laid his body on her body and subsequently, she has attained grogginess and after some time she has woken up and set right her dress. Except these words, the prosecutrix has not uttered anything further. It is not the evidence of the prosecutrix that after recovering from grogginess, she found something has happened in her labia. If really such occurrence has taken place, after recovering from grogginess, as per the evidence of prosecutrix, she would have known what actually happened. In the instant case, as pointed out earlier, except the words mentioned supra, the prosecutrix has not uttered anything further. Under the said circumstances,



the Court can very well say that on the side of the prosecution, necessary evidence so as to attract penal provision of Section 376 of the Indian Penal Code is completely lacking.

15. On the side of the appellant/accused, the decision reported in State of Rajasthan vs. Sri Chand (2015(6) Supreme 483), is relied upon, wherein, the Honourable Supreme Court has dealt with a case arisen in similar circumstance and ultimately, found that offence under Section 376 of the Indian Penal Code is not made out and at the most, the accused is liable to be mulcted with liability under Section 354 of the Indian Penal Code.

16. In the instant case with regard to first charge, the prosecutrix has given ample/credible evidence. But with regard to second charge framed under Section 376 of the Indian Penal Code, evidence is completely lacking on the side of the prosecution. Even at the risk of repetition, the Court would like to say that except the words uttered by the prosecutrix, she has not adduced anything further, so as to attract the penal provision of Section 376 of the Indian Penal Code. Therefore, it goes without saying that for invoking Section 376 of the Indian Penal Code against the appellant/accused, as pointed out earlier, evidence is completely lacking and at the most, the accused can be mulcted with liability under Section 354 of the Indian Penal Code and to that extent, the present criminal appeal is liable to be allowed in part.

In fine, this criminal appeal is allowed in part. The conviction and sentence passed under Section 354 of the Indian Penal Code, by the trial Court are confirmed. But the conviction and sentence passed under Section 376 of the Indian Penal Code against the appellant/accused are set aside and the appellant/accused is acquitted in respect of the charge framed under Section 376 of the Indian Penal Code and fine amount, if any, paid by him under the said Section is ordered to be refunded forthwith. Connected miscellaneous petition is closed.

sd/-  
ASSISTANT REGISTRAR(CO)

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SUB-ASSISTANT REGISTRAR

msk



To,

1. The Sessions Judge,  
The Mahila Court, Chennai.
2. The Inspector of Police,  
J-3, Guindy Police Station,  
Chennai-600 032
3. The Public Prosecutor,  
High Court, Madras
4. The Superintendent of  
Central prison, Coimbatore
5. The section Officer,  
Records, Criminal Section,  
High Court, Madras

Crl.A.No.35 of 2015

CO-VGK  
JD 14/10/2015