

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.458 of 2015

&

M.P.No.1 of 2015

Senthil alias Kadal Senthil ...Appellant/Accused

vs.

State rep. by
The Inspector of Police,
H.6, R.K.Nagar Police Station
Chennai

...Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C.,
against the judgment dated 18.2.2015 made in S.C.No.289 of 2013
on the file of Mahila Sessions Judge, Chennai.

For appellant : Mr.P.Balamurugan

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

JUDGMENT

The conviction and sentence dated 18.02.2015 passed in
Sessions Case No.289 of 2013 by the Mahila Court, Chennai are
being challenged in the present Criminal Appeal.

2. The case of the prosecution is that prior to 6, 7 months
from 13.11.2008, the accused has acquainted with the prosecutrix
(a disabled girl) and he promised to marry her and also
attempted to rape her. After occurrence, the prosecutrix has
given a complaint and the same has been registered in Crime

No.687 of 2008. The complaint given by the prosecutrix has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigating Officer (P.W.10) has taken up investigation, examined connected witnesses and also made arrangements to conduct medical examination and after completing investigation, laid a final report on the file of XV Metropolitan Magistrate, George Town, Chennai and the same has been taken on file in P.R.C.No.43 of 2010.

4. The XV Metropolitan Magistrate, George Town, Chennai, 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 trial court and the same has been taken on file in Sessions Case No.289 of 2013.

5. The trial court, after hearing arguments of both sides and upon perusing relevant records has framed a charge under section 376 r/w 511 of IPC and the same has been read over and explained to the accused. The accused has denied the charge and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 10 have been examined and Exhibits P.1 to 13 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 let in on the side of the accused.

8. The trial court, after hearing arguments of both sides and upon perusing the relevant evidence available on record has found the accused guilty under Section 376 of the IPC and sentenced him to undergo 7 years Rigorous Imprisonment and also imposed a fine of Rs.10,00/- 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 learned counsel appearing for the appellant/accused has contended that even in the complaint, it has been specifically prayed to perform marriage with the accused and further the evidence given by the prosecutrix is not at all sufficient for coming to a conclusion that the accused has

committed an offence punishable under section 376 of IPC and further the trial court has erroneously found the accused guilty under the said section against the materials found in the charge and therefore, the conviction and sentence passed by the trial court are liable to be set aside.

10. The learned Additional Public Prosecutor has contended that the prosecutrix, as defacto complainant, has lodged a complaint, wherein it has been specifically stated that on several occasions, the accused by way of giving false promise of marrying her, has had carnal copulation with her, but the trial court has erroneously framed a charge under section 376 r/w 511 of IPC.

11. For considering the divergent submissions made on either side, the Court has to look into the allegations made in the complaint, wherein it has been clearly stated that on several occasions, without the consent of the prosecutrix/complainant, the accused has had coition with her and due to that, she has become pregnant. But, as rightly pointed out by both sides, in the charge it has been specifically stated that the accused, by uttering attractive words, has attempted to deflower the prosecutrix/complainant. Therefore, it is quite clear that the materials found in the charge are totally different from the materials found in the complaint. Even though in the charge it has been specifically stated that the appellant/accused has made only an attempt, the trial court has found him guilty under section 376 of IPC. Therefore, the trial court has committed a stupendous mistake in framing the charge. Since the charge framed by the trial court is not in consonance with the materials found in the complaint, the conviction and sentence passed by the trial court are not 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 against the appellant/accused in Sessions Case No.289 of 2013 are set aside and Sessions Case No.289 of 2013 is remitted to the file of the trial court. The trial court is directed to frame appropriate charge in consonance with the materials found in the complaint and proceed with the trial. If the appellant/accused is in duress, it is ordered to set him at liberty. If fresh evidence is required, the trial court is at liberty to take the same. Further, the trial court is directed to dispose of Sessions Case No.289 of 2013 before the end of February 2016 and report the

same to the Registry without fail. Registry is directed to send all records immediately. The connected M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

ajr

To

1. The Mahila Sessions Judge,
Chennai.
 2. -Do- Through The Principal Sessions Judge,
Chennai.
 3. The XV Metropolitan Magistrate,
George Town, Chennai.
 4. -Do- Through The Chief Metropolitan Magistrate,
Egmore, Chennai - 8.
 5. The Superintendent,
Central Prison, Puzhal, Chennai.
 6. The Inspector of Police,
H.6, R.K.Nagar Police Station, Chennai
 7. The Public Prosecutor,
High Court, Chennai
 8. The Section Officer,
Criminal Section,
High Court, Madras - 104.
- 1 CC to Mr.P.Balamurugan, Advocate SR.No. 63515

Cr1.A.No.458 of 2015

UG (CO)
PSI (26.11.2015)