

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.465 of 2015
and M.P.No.1 of 2015

Raj

... Appellant/Accused

vs.

The Inspector of Police
H-1, Washermenpet Police Station
Chennai-600 021(Cr.No.643 of 2012) ... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment dated 06.07.2015 passed in S.C.No.54 of 2014 by the Mahalir Sessions Court, Chennai.

For appellant : Mr.P.K.Mohan Vel
For respondent : Mr.P.Govindarajan,
Addl.Public Prosecutor

JUDGMENT

This Criminal Appeal has been directed against the conviction and sentence dated 06.07.2015 passed in Sessions Case No.54 of 2014 by the Magalir Needhimandram, Chennai.

2. The case of the prosecution is that the victim by name Gowri is a daughter of the defacto complainant by name Sarala. At the time of occurrence, the victim has just attained 14 years of age. On 25.04.2012, during evening hours, while the victim has proceeded to the house of her grandmother, the accused has followed her and kidnapped and subsequently taken her to various places. The further case of the prosecution is that on the same day, the accused has taken her to the Bus Stand, Villupuram and during night hours, he raped her. After occurrence, the mother of the victim as defacto complainant has given complaint in question and the same has been registered in Crime No.643/2012. The complaint alleged to have been given by the defacto complainant has been marked as Ex.P.3.

3. On receipt of Ex.P.3, the Investigating Officer viz., P.W.8 has taken up investigation, examined connected witnesses and also made arrangements to conduct medical examination to the victim and

after completing investigation, he has laid a final report on the file of the 15th Metropolitan Magistrate, Georgetown and the same has been taken on file in P.R.C.No.31/2013.

4. The 15th Metropolitan Magistrate, Georgetown, after considering the facts that the offences alleged to have been committed 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.54 of 2014.

5. The trial court, after hearing arguments of both sides and upon perusing the relevant documents has framed the first charge under Section 363 of the Indian Penal Code (hereinafter called as "IPC"), second charge under Section 376 of the 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 8 have been examined and Exhibits P.1 to P.14 have been marked.

7. When the accused has been questioned under Section 313 of the Criminal Procedure Code, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. However, 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 after evaluating the relevant evidence available on record has found the accused guilty under Section 363 of the IPC and sentenced him to undergo 7 years Rigorous Imprisonment and also imposed a fine of Rs.10,000/- with usual default clause. The trial court has acquitted the accused from the charge framed under Section 376 of the IPC. 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 has contended that there is no specific evidence on the side of the prosecution to the effect that the accused has kidnapped the prosecutrix and in the said circumstances, 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 on the date of occurrence, the prosecutrix has just attained 14 years of age and since she is a minor, a specific charge has been framed against the accused under Section 363 of the IPC and further the prosecutrix has been recovered from the clutches of the accused near Basin Bridge and therefore, the trial court has rightly found the accused guilty under the said section and under the said circumstances, the conviction and sentence passed by the trial court

do not require interference.

11. The first and foremost charge framed against the appellant/accused is under Section 363 of the IPC. It is seen from the records that the prosecutrix has got birth on 15.04.1999. The occurrence has taken place on 25.04.2012. Considering the date of birth of the prosecutrix, the court can easily come to the conclusion that on the date of occurrence, she has just attained 14 years of age. Since, she has just attained 14 years of age, the consent of the prosecutrix is immaterial.

12. It is not the defence of the accused to the effect that with the consent of lawful guardian, he has taken the prosecutrix under his control. Further, the defacto complainant, mother of the prosecutrix has given specific evidence to the effect that the prosecutrix has been recovered from the clutches of the accused near Basin Bridge. Therefore, it is quite clear that the accused has kidnapped the prosecutrix without the consent of lawful guardian and therefore, he has committed an offence punishable under Section 363 of the IPC.

13. The learned counsel appearing for the appellant/accused has contended that the accused is aged about 25 years and also got married and under such circumstances, some leniency may be shown in awarding sentence.

14. Considering the age of the accused and also considering that he is the first offender, this court is of the view that some leniency can be shown in awarding sentence and to that extent, this Criminal Appeal is liable to be allowed in part.

In fine, this Criminal Appeal is allowed in Part. The conviction passed under Section 363 of the IPC by the trial court is confirmed. However, the quantum of sentence imposed under the said section by the trial court is modified as follows:-

"The appellant/accused is sentenced to undergo 3 years rigorous imprisonment instead of 7 years and no modification with regard to fine amount."

Consequently, connected M.P.No.1 of 2015 is closed.

WEB COPY
-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To :

1.The Judge,The Mahalir Sessions Court, Chennai.

2.The Inspector of Police
H-1, Washermenpet Police Station
Chennai-600 021 (Cr.No.643 of 2012)

3.The Superintendent,
Central Prison,
Puzhal Chennai

4.The Prisoner, Central Prison, Puzhal,
Chennai

5. The Public Prosecutor High Court, Madras
sr.53241

6.The Section Officer, Crl.Section, High Court,
Madras

+2 cc to Mr.K.Shanmugam Advocate sr.53282,53241

Cr1.A.No.465 of 2015

aa06/10/2015

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