

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.578 of 2015
& M.P.No.1 of 2015

Amogaraj

... Appellant/Accused

vs.

Inspector of Police,
T.Palur Police Station
Ariyalur District
(Cr.No.285/2013)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment made in S.C.No.66 of 2014 dated 30.06.2015 on the file of the Judge, Fast Track Mahila Court, Ariyalur.

For ppellant : Ms.M.Vijayalakshmi

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

JUDGMENT

Challenge in this Criminal Appeal is to the convictions and sentences dated 30.6.2015 passed in Sessions Case No.66 of 2014 by the Fast Track Mahila Court, Ariyalur.

2. The case of the prosecution is that the prosecutrix by name Ramba is deaf and dumb. On 3.12.2013, while she has been in her house alone, the accused has trespassed into her house and subsequently deflowered her. After occurrence, the step mother of the prosecutrix by name Elammal, as defacto complainant, has given a complaint and the same has been registered in Crime No.285 of 2013. The complaint given by the defacto complainant has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigating Officer, viz., P.W.16, has taken up investigation, examined connected witnesses and also made arrangements to conduct medical examination both to the accused and prosecutrix and accordingly P.W.9 Dr.Senthil Kumar has conducted potential test to the accused. Likewise P.W.11 Dr.Prabavathi has physically examined

the prosecution and issued Ex.P.9. The Investigating Officer, after completing investigation, has laid a final report on the file of the Judicial Magistrate Court, Ariyalur and the same has been taken on file in P.R.C.No.1 of 2014.

4. The Judicial Magistrate Court, Ariyalur, 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 court of Sessions, Ariyalur Division and the same has been taken on file in Sessions Case No.66 of 2014 and subsequently made over to the trial court.

5. The trial court, after hearing arguments of both sides and upon perusing relevant records has framed a charge against the accused under Sections 450 and 376 of the IPC and the same has 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 16 have been examined and Exhibits P.1 to P.16 and Material Objects 1 to 7 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 adduced on the side of the accused.

8. The trial court, after hearing arguments of both sides and upon perusing relevant evidence available on record, has found the accused guilty under Section 376 (2) of the IPC and sentenced him to undergo 10 years Rigorous Imprisonment and also imposed a fine of Rs.5,000/- with usual default clause. He has also been found guilty under section 450 of IPC and sentenced to undergo 5 years Rigorous Imprisonment and also imposed a fine of Rs.1,000/- 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.

9. The sum and substance of the case of the prosecution is that on 3.12.2013 at about 2 p.m., while the defacto complainant has been in her house alone, the accused has trespassed into her house and subsequently raped her.

10. On the side of the prosecution, prosecutrix has been examined as P.W.1 and the defacto complainant has been examined as P.W.3 and the Doctor who conducted potential test to the accused has been examined as P.W.9 and the Doctor, who examined

the prosecutrix has adduced evidence as P.W.11 and marked Ex.P.9.

11. The trial court, after considering the evidence given by the witnesses mentioned supra, coupled with relevant documents, has found the accused guilty under the sections 376 (2) and 450 of IPC.

12. The learned counsel appearing for the appellant/accused has raised the following points to set aside the convictions and sentences passed by the trial court:

(A) The step-mother of the prosecutrix, viz., P.W.3 has received money from the accused by way of loan and since she has not discharged her liability, an animosity has been in existence between them and due to that, Ex.P.1, Complaint has been given and further, the prosecutrix has also been erroneously put into service and therefore, the entire case of the prosecution is liable to be thrown out.

(B) It is an admitted fact that the prosecutrix has been examined by P.W.11 and her specific evidence is that rape could not be ascertained and the trial court has failed to consider the same.

13. The learned Additional Public Prosecutor has contended that in the instant case, the prosecutrix has been examined as P.W.1 and her step mother (defacto complainant) has been examined as P.W.3 and one independent witness by name Davood @ Kumar has been examined as P.W.4 and all of them have clinchingly stated in their evidence to the effect that the accused has involved in the occurrence and the trial court, after considering their evidence coupled with medical evidence, has rightly invited convictions and sentences against the appellant/accused under section 376(2) and 450 of IPC and therefore, the convictions and sentences passed by the trial court need not be set aside.

14. As adverted to earlier, the consistent case of the prosecution is that on 3.12.2013, at about 2 p.m, while the prosecutrix has been in her house alone, the accused has trespassed into her house and subsequently raped her.

15. The prosecutrix as stated earlier has been examined as P.W.1 and her specific evidence is that before occurrence, the accused has come to her house and avulsed her inside the house and subsequently removed her dress and raped her. Further, she would say that at the time of the occurrence, her mother has come to the house and thereafter the accused has scooted from the place of occurrence.

16. The step mother of the prosecutrix has been examined as P.W.3 and her specific evidence is that at the time of occurrence, she has entered into her house and seen the occurrence and after seeing the occurrence, she attacked the accused and all of a sudden, the accused had scooted from the place of occurrence.

17. At this juncture, it would be more useful to look into the evidence given by P.W.4. It is an admitted fact that P.W.4 is an independent witness and his specific evidence is that on the date of occurrence in the house of P.W.3, he has heard some queer noise and at that time, the accused has had come out from the house of P.W.3 and subsequently disappeared.

18. From the cumulative evidence of the evidence given by P.Ws.1, 3 and 4, the Court can easily come to a conclusion that the occurrence has taken place, as spoken by the prosecution. The only suggestion made on the side of the appellant/accused to P.W.1 is that P.W.3 has received money from the accused and since she has not discharged her liability, the present case has been falsely initiated against the accused. In fact, P.W.1 has clearly denied the suggestion made on the side of the accused. Therefore, the motive attributed on the side of the appellant/accused cannot be accepted.

19. Now the Court has to look into the medical evidence adduced by P.W.11. It is an admitted fact that P.W.11 has examined the prosecutrix and filed Ex.P.9.

20. In Ex.P.9, it has been stated that no external injuries seen in the external Genitalia. Vaginal smear sperm not seen, possibilities of rape could not be ascertained.

21. The specific evidence given by the prosecutrix (P.W.1) is that immediately after entering into her house, the accused has made her to lay on the floor and subsequently raped her. Further, she would say that at the time of committing offence, P.W.3 has come to the house. The evidence given by P.W.1 has also been clearly corroborated by P.Ws.3 and 4.

22. It is true that in Ex.P.9, such opinion has been expressed by P.W.11. It is an everlasting principle of law that in a case like this, mere penetration itself would be sufficient to constitute an offence punishable under section 376 of IPC. It has already been stated that motive suggested on the side of the appellant/accused cannot be accepted. Since no motive has been in existence in between the prosecutrix and accused, this Court is of the view that the prosecutrix would not have given

such kind of evidence as mentioned supra. Therefore, viewing from any angle, the contentions put forth on the side of the appellant/accused are not having merits.

23. The trial court, after considering the believable evidence available on the side of the prosecution, has rightly found the accused guilty under the sections mentioned supra. In view of the discussions made earlier, this Court has not found any acceptable force in the contentions put forth on the side of the appellant/accused and altogether the present Criminal Appeal deserves to be dismissed.

In fine, this Criminal Appeal is dismissed. The convictions and sentences passed against the appellant/accused by the trial court in Sessions Case No.66 of 2014 are confirmed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To :

1. The Sessions Judge, Fast Track Mahila Court, Ariyalur.
2. The Inspector of Police, T.Palur Police Station, Ariyalur District
3. The Public Prosecutor, High Court, Chennai
4. The Judicial Magistrate, Ariyalur.
5. The Superintendent, Central Prison, Tiruchirappalli.

Copy to:

The Section Officer,
Criminal Section, High court, Madras 104.

+1 cc to Mr.M.Sampathkumar, Advocate, sr.66670

msm co
kra 18.12.2015

CrI.A.No.578 of 2015

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