

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2015

CORAM:

THE HONOURABLE MS. JUSTICE R. MALA

Criminal Appeal No.674 of 2009

T.Gandhi

.. Appellant/ Accused

v.

State by
Inspector of Police
Kandhikuppam Police station
Krishnagiri.
Cr.No.287 of 2007

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 (2) of Cr.P.C., against the judgment of conviction and sentence dated 22.10.2009, made in S.C.No.34 of 2009 on the file of the learned Principal Assistant Sessions Judge, Krishnagiri.

For Appellant : Mr.L.Mahendran

For Respondent : Mr.V.Arul
Government Advocate (crl.side)

J U D G M E N T

The criminal appeal arises out of the judgment of conviction and sentence, dated 22.10.2009 made in S.C.No.34 of 2009 on the file of the learned Principal Assistant Sessions Judge, Krishnagiri, whereby the accused was convicted for the offence under Section 376(ii)(f) IPC and sentenced to undergo ten years simple imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo three months simple imprisonment and convicted for the offence under Section 506(ii) IPC and sentenced to undergo one year simple imprisonment and to pay a fine of Rs.500/-, in default, to undergo one month simple imprisonment. The sentences are ordered to run concurrently. Against which, the present appeal has been filed.

2.The case of the prosecution is as follows:

(i) P.W.1/Elisabeth Rani is a resident of Varatanapalli. She married the accused before 10 years and their marriage is a love marriage. After marriage, the accused and P.W.1/Elisabeth Rani lived in Varatanapalli Village. Due to their wedlock, they blessed with three children, namely, Kushmitha/P.W.2, Kumaravel and Santhosh. The accused is a Tata Sumo Driver. After the marriage, the accused had illegal contact with one Sathiya and insist his wife/P.W.1 to give consent for the second marriage with the said Sathiya. But, P.W.1 refused for the request of the accused. Before two years at about 6.30 p.m. the accused took his daughter/P.W.2 along with him in a Hero Honda Motor Cycle and returned home at about 8.30 p.m. Then the accused went to Bargur for his work. P.W.1/Elisabeth Rani questioned P.W.2/Kushmitha that where she went along with the accused. For that, P.W.2 has not given any reply. Then, P.W.1 insisted P.W.2 and for that, P.W.2 stated that the accused went to a house keeping her to sit under a Mango tree and thereafter, she saw the accused talking with one Sathiya. Then, the accused threatened P.W.2 with dire consequences if she revealed anything regarding the conversation between the accused and the said Sathiya. Therefore, a dispute arose in between the accused and P.W.1. Then, P.W.1 made a complaint to the Villagers and the Village people also enquired the matter. Hence, P.W.1 went to the house of her sister, namely, Meena/P.W.3 and returned to her house after two years. At that time, P.W.1 found that her daughter/P.W.2 is having pain in her vaginal part and also bleeding. Therefore, she taken her daughter/P.W.2 to Jeeva Hospital for treatment. The Doctor examined P.W.2 and gave tablets for the injuries. Thereafter, P.W.1 went along with her daughter/P.W.2 everywhere and she never left her daughter alone. Then the accused taken his daughter/P.W.2 to his mother's house and committed rape. On 10.08.2007, P.W.1 reveal the act of the accused to the public. She stated about the activities of the accused to the Councilor, namely, Murugesan/P.W.4, one Pandiyan, Krishnan and Sundarajan. Again, P.W.1 took her daughter/P.W.2 to Jeeva Hospital for treatment. At that time, the authorities of Jeeva Hospital refused to give treatment and advised her to go to Government Hospital. Therefore, P.W.1 took her daughter to Government Hospital after twenty days. After seeing her daughter, the authorities of Government Hospital intimated to the Police. Then, Police came to the hospital and P.W.1 lodged complaint/Ex.P.1 against the accused.

(ii) P.W.10/Kalaivani, Sub-Inspector of Police, received the written complaint from P.W.1 and registered a case in Crime No.287/2007 for the offence under Sections 376(2)(f) and 506(ii)

IPC and prepared printed F.I.R. Ex.P9 and also forwarded copy of Ex.P1 to the Circle Inspector of Police for investigation.

(iii) P.W.11/Arulmozhiarasu, Circle Inspector of Police, Bargur, took up the case for investigation. P.W.11 went to the place of occurrence and prepared observation mahazar Ex.P.2 and drew rough sketch Ex.P.10 in the presence of the witnesses P.W.5/Mani, Village Administrative Officer and one Narasimman. On the same day, P.W.11 examined P.W.1/Elisabeth Rani, P.W.2/Kushmitha, P.W.3/Meena, P.W.4/Murugesan, P.W.5/Mani, Krishnan, Pandiyan, Sundarajan, Narasimman and recorded their statements. Then, P.W.11 seized the prescription given by Jeeva Hospital from P.W.1 under Seizure Mahazar, Ex.P.3. Ex.P.7 is the prescription given by Jeeva Hospital. Then, he enquired the accused person and came to know that the accused was found near Varatanapalli R.I. Office. Therefore, he went to the said place and arrested the accused person in the presence of independent witnesses and went to police station. Then, P.W.11 enquired the accused about the injuries sustained by the accused and for that, the accused told him that somebody assaulted him. Then, he recorded his statement, which is marked as Ex.P.11. Then, P.W.11 sent the accused person to judicial custody for remand after obtaining the medical report from the hospital authority regarding the injuries sustained by the accused, which is marked as Ex.P.12.

(iv) Then, P.W.11 examined P.W.8/Dr.Parimala Sritharan, the Doctor of Jeeva Hospital, who gave treatment to P.W.2 and recorded her statement. Then, he examined P.W.7/Jonadevi, who is the Head mistress in Varatanapalli Panchayat Union School and recorded her statement after obtaining the letter regarding the age of P.W.2, which is marked as Ex.P.6. Then, he recorded the statement of P.W.10/Kalaivani, Sub-Inspector of Police.

(v) Then, P.W.11 sent the accused as well as P.W.2 for medical examination and also sent vaginal semen for chemical examination through Judicial Magistrate. He obtained the report of P.W.2 from the Medical Officer, which is marked as Ex.P.5 and also the accident register, which is marked as Ex.P.4. Then, he examined the Medical Officer, namely, P.W.6/Dr.Rajalakshmi and also P.W.9/Panneerselvam, Lecturer in Department of Forensic, Medical College Hospital, who conducted the medical examination upon the accused and obtained the medical certificate, which is marked as Ex.P.8.

(v) After completing investigation, P.W.11 filed a charge sheet against the accused under Sections 376(2)(f) and 506 (ii) IPC.

3.The Trial Court placed the incriminating evidence

before the accused under Section 313(1)(b) of Cr.P.C. and the accused denied the same in toto. On the side of the defence, no oral evidence was examined and Ex.D.1 and Ex.D.2 were marked. After considering the oral and documentary evidence, the trial Court convicted the accused for the offence under Sections 376(2)(f) and 506(ii) IPC and sentenced him as stated above. Aggrieved over the same, the accused/appellant has preferred this appeal.

4.Challenging the conviction and sentence passed by the trial Court under Sections 376(2)(f) and 506(ii) IPC, the present appeal has been preferred by the accused/the appellant herein.

5.The learned counsel appearing for the appellant would submit that the delay in preferring the complaint has not been properly considered by the Trial Court. He would further submit that P.W.1 has foisted a false case against the accused for taking her vengeance against the accused, who is having illegal intimacy with one Sathiya and that Sathiya was also not examined. Further, P.W.2, in her evidence, has stated she was not examined by the Police. He further submits that the evidence of P.W.8/Dr.Parimala is not an admissible evidence. Further, Ex.P.7 is only the prescription and it does not mention the nature of injuries. That factum was not considered by the Trial Court. He would further submit that no semen was detected as per the Forensic report and that factum was also not considered by the Trial Court. Therefore, without considering all these aspects the Trial Court has convicted the accused. Hence, he prayed for setting aside the order passed by the Trial Court.

6.Resisting the same, the learned Government Advocate (crl. Side) would submit that the age of the victim is 8 years, who is none other than the daughter of the accused/the appellant herein. The father himself has molested his daughter and that has been proved by way of examining P.W.1, P.W.2, P.W.3 and corroborated by P.W.8. The evidence of P.W.6 is also corroborating the evidence of P.W.8. He would further submit that in the offences like female child abuse, delay is not fatal and the delay has also been properly explained and that factum has been considered by the Trial Court. Therefore, the Trial Court has considered all the aspects in proper perspective and came to the correct conclusion. Hence, he prayed for dismissal of the appeal.

7.Considered the rival submissions made on both sides and perused the typed set of papers.

8.The admitted facts are that P.W.1 is none other than the wife of the accused/appellant herein and they got married 10 years prior to the alleged occurrence. Out of their wedlock, they

were blessed with three children, viz., P.W.2 and two sons. The case of the appellant is that since he was alleged to have illegal intimacy with one Sathiya, a false case has been foisted against him. But on perusal of the evidence of P.W.1, P.W.2, P.W.3 and P.W.8, I am of the view that there is no reason for discarding their evidence. In the cross examination P.W.1 to P.W.3 has stated that the accused was affectionate with his daughter/P.W.2 once and subsequently the accused has stated his daughter/P.W.2 as mad. P.W.2 was aged about 8 years at the time of alleged occurrence and she was aged about 9 years at the time of recording the evidence. The first incident said to have taken place on 07.07.2007 and on that day itself P.W.2 was having bleeding and immediately she was taken to Jeeva Hospital by P.W.1 and P.W.3 and P.W.2 was treated by P.W.8. After that, in the second incident, i.e. on 14.07.2007, P.W.2 was having swelling in vaginal part and that has been corroborated by P.W.1 to P.W.3 and P.W.8. The evidence of P.W.8 shows that P.W.2 has sustained some bleeding and also swelling in the vaginal part on 07.07.2007 and 14.07.2007 respectively. The motive assigned by the appellant is that because he had illicit intimacy with one Sathiya a false case has been foisted against him is unacceptable. Further, a suggestion was posed to him that the father of the appellant owned 10 acres of land and the appellant got the said property from his father under a settlement deed and P.W.1 wants to get the property in favour of her sister/P.W.3 and since the appellant refused for the same, a false case has been given against him. But, on perusal of the record would show that much prior to the occurrence, the appellant got the property from his father and also sold the same in favour of P.W.3 in the year 2005. There is no evidence to show as to why the wife of the accused, namely, P.W.1 has foisted a false case against her husband. Furthermore, after the alleged occurrence on 07.07.2007, P.W.1 returned back to the appellant's house and later, on 14.07.2007 also the accused alleged to have taken his daughter/P.W.2 to his mother's house and molested the child. Immediately she was taken to the hospital. It is true that there will not be any eye witness for this sexual offences. But here, the father himself has molested the child and the injuries sustained by P.W.2 has been fortified by the evidence of P.W.8. There is no evidence for discarding the evidence of P.W.8. Since the offence alleged to have committed by her husband, P.W.1 has consulted with others in the Village and then only she gave complaint. So, the delay in lodging the complaint has been properly explained. Further, the evidence of P.W.1, P.W.2, P.W.3 and P.W.8 has clearly prove that P.W.2 was subjected to rape.

9.The learned counsel appearing for the appellant mainly focus on the evidence of P.W.6, in which she stated that it is possible that the hymen got fractured, while the victim girl was riding bicycle and one part of hymen was fractured. She further

stated that since the hymen was small, it cannot admit even one finger. In such circumstances, considering the evidence of P.W.6 along with P.W.8, Doctor who treated P.W.2 on 07.07.2007 and 14.07.2007, I am of the view that P.W.2 was subjected to rape and the evidence of P.W.1 to P.W.3 has proved that the accused/the appellant herein has committed the rape against his own daughter/P.W.2. So, the Trial Court has considered all the aspects in proper perspective and came to the correct conclusion. So, I am of the view that there is no reason for setting aside the conviction and hence, the sentence passed by the Trial Court under Section 376(ii) (f) IPC is hereby confirmed. In respect of Section 506(ii) IPC is concerned, the appellant not only threatened P.W.2 but also threatened P.W.1 not to give any complaint. Hence, the Trial Court has considered all the aspects in proper perspective and so, I do not find any reason to interfere with the conviction and the sentence passed by the Trial Court under Section 506(ii) IPC and the same is hereby confirmed.

10. In fine,

(i) The Criminal Appeal is dismissed.

(ii) The judgment of conviction and sentence dated 22.10.2009 in S.C.No.34 of 2009 on the file of the Principal Assistant Sessions Judge, Krishnagiri is hereby confirmed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

सत्यमेव जयते

cse

To

1. The Principal Assistant Sessions Judge,
Krishnagiri.
2. Do-Thro' The Principal Sessions Judge, Krishnagiri
3. Inspector of Police
Kandhikuppam Police station
Krishnagiri.

WEB COPY

4 The Superintendent,
Central Prison, Vellore.

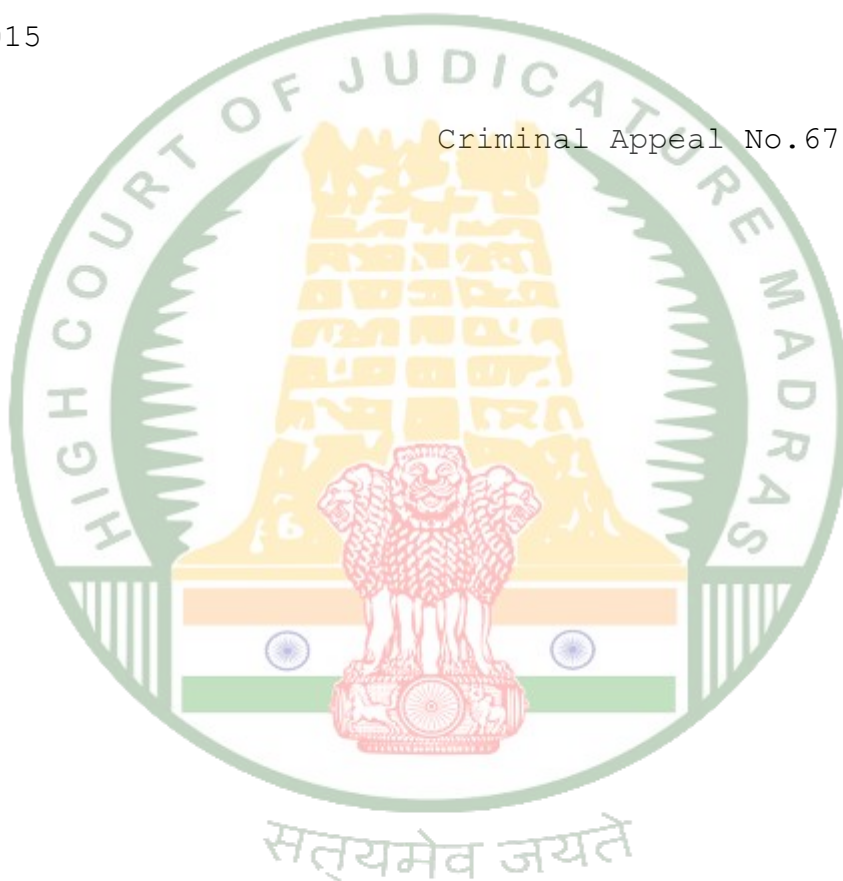
5.The Public Prosecutor
High Court, Madras.

6.The Record Keeper
Criminal Section, High Court, Madras.

CO-CA

ths : 21.02.2015

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