



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 15-12-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal No.60 of 2013

Mr. S. Karuppaiah

... Appellant/Sole Accused

Vs.

The State rep. by its
Inspector of Police,
Veppur Police Station
Cuddalore District
(Crime No.436 of 2010)

... Respondent/Complainant

Criminal Appeal under Section 374(2), Cr.P.C., against the judgment dated 17-12-2012 in S.C.No.149 of 2012 on the file of the Sessions Judge, Mahalir Court at Cuddalore District and to set aside the conviction imposed upon the appellant/sole accused.

For appellant :: Mr. M.L. Ramesh

For respondent :: Mr. P. Govindarajan,
Addl. Public Prosecutor

JUDGMENT

The conviction and sentence dated 17-12-2014 passed in S.C.No.149 of 2012 by the Mahalir Neethi Manram, Cuddalore are being challenged in the present criminal appeal.

2. The case of the prosecution is that the prosecutrix by name Chinnapillai alias Jayalalitha is the daughter of the defacto complainant by name Pachaiaammal. On 17-09-2010, at about 7:00p.m., the prosecutrix has gone outside to attend call of nature. At that time, the accused has intercepted her and taken her to an isolated place and subsequently, raped her. After occurrence, the defacto complainant has given a complaint and the same is registered in Crime No.436 of 2010.

3. On receipt of the complaint, the Investigating Officer viz., P.W.8, has taken up investigation, examined connected witnesses and made arrangements to conduct medical examination, both to the prosecutrix and accused. After transfer of P.W.8, his successor-in-office viz., P.W.9 has filed a final report on the file of the Judicial Magistrate Court, Vriddhachalam and taken on file in P.R.C.No.12 of 2012. The Judicial Magistrate, Vriddhachalam after considering the



fact that the offences alleged to have been committed by the accused are triable by the Sessions Court has committed the case to the Court of Sessions, Cuddalore Division and taken on file in S.C.No.149 of 2012 and subsequently, made over to the Trial Court.

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4. The Trial Court, after hearing arguments of both sides and upon perusing relevant records has framed the first charge against the accused under Section 366, second charge against him under Section 376, 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 9 have been examined. Exs-P1 to P10 and M.Os.1 to 2 have been marked.

7. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects 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 after evaluating the evidence on record has found the accused guilty under Section 376, IPC and sentenced him to undergo seven years' Rigorous Imprisonment and also imposed a fine of Rs.5000/- (Rupees Five thousand only) with usual default clause. The Trial Court has also directed the accused to pay a sum of Rs.25000/- (Rupees Twenty five thousand only) as compensation to the prosecutrix. 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/accused has contended that the specific case of the prosecution is that the occurrence has taken place on 17-09-2010 at about 7:00 p.m. and on the next day, the defacto complainant has given a complaint and the same has been registered in Crime No.436 of 2010 and the concerned Investigating Officer has made arrangements to conduct medical examination to the prosecutrix and accordingly, Dr. Vidya, P.W.6, has examined the prosecutrix and she has not found any injury on the person of the prosecutrix and her opinion is that the prosecutrix has been subjected to regular sexual intercourse and the Trial Court without considering that even an iota of evidence is not available so as to prove the offence alleged to have been committed by the accused under Section 376, IPC has erroneously found him guilty under the said Section and therefore, the conviction and sentence passed by the Trial Court are liable to be set aside.

10. Per contra, the learned Additional Public Prosecutor has contended that the defacto complainant has been examined



as P.W.1 and the prosecutrix has been examined as P.W.2 and the Doctor, who has examined P.W.2 has adduced evidence as P.W.6. The Trial Court after considering the evidence given by P.W.2 coupled with medical evidence has rightly found the accused guilty under Section 376, IPC and therefore, the conviction and sentence passed by the Trial Court are not liable to be set aside.

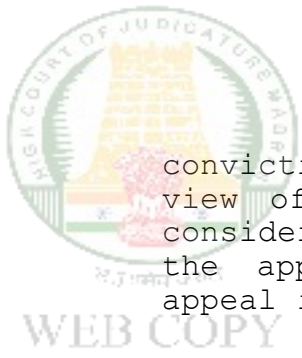
11. On the basis of the divergent submissions made on either side, the Court has to meticulously analyse as to whether the prosecution has established the guilt of the accused, punishable under Section 376, IPC, even without a speck of doubt ?

12. As stated earlier, the prosecutrix has been examined as P.W.2 and her specific evidence is that on the date of occurrence, she has gone out from her house so as to attend call of nature and at that time, the accused has intercepted and lugged her and subsequently, taken her to an isolated place where he forcibly raped her.

13. The Trial Court has completely believed the testimonies of the prosecutrix. At this juncture, the Court has to look into Ex-P6, Rough Sketch wherein it has been clearly stated that the entire occurrence has taken place on a rough surface and that too, in the midst of a garden-land. The specific evidence given by P.W.6, Doctor is that she has not found any injury on the person of the prosecutrix. Further, P.W.6, has clearly opined that the prosecutrix has been subjected to regular sexual intercourse.

14. The specific case of the prosecution is that the accused has taken the prosecutrix forcibly to an isolated place and forcibly raped her. Considering the fact that the entire occurrence has taken place in a garden-land and that too on a rough surface definitely, the prosecutrix would have sustained injury on her person. But, P.W.6, has given evidence otherwise. On the side of the prosecution, an abortive attempt has been made to the effect that the jacket of the prosecutrix has been marked as M.O.2 and M.O.2 is in a torn condition. Even assuming without conceding that M.O.2 belongs to the prosecutrix, on the basis of its condition, the Court can very well infer that the prosecutrix would have sustained some injuries on her body. But, P.W.6, has not found any injury; even a scratch on the person of the prosecutrix. Considering the fact that no injuries are found on the person of the prosecutrix and also considering that the prosecutrix has been subjected to regular sexual intercourse, this Court is of the view that the prosecution has not established the guilt of the appellant/accused, punishable under Section 376, IPC.

15. The Trial Court without considering the vital lapses on the side of the prosecution has erroneously invited the



conviction and sentence against the appellant/accused. In view of the discussion made earlier, this Court has found considerable force in the contentions put forth on the side of the appellant/accused and therefore, the present criminal appeal is liable to be allowed.

In fine, this criminal appeal is allowed. The conviction and sentence passed in Sessions Case No.149 of 2012 by the Trial Court are set aside. The appellant is acquitted. Bail bond, if any executed by the accused shall stand cancelled. Fine amount and compensation amount, if any, paid by the appellant is ordered to be refunded forth with.

glp

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Judicial Magistrate, No.I, Vridhachalam.
 2. -do- thro' The Chief Judicial Magistrate, Cuddalore.
 3. The Sessions Judge, Magalir Needhimandram, Cuddalore.
 4. The Superintendent, Central Prison, Cuddalore.
 5. The Inspector of Police, Veppur Police Station, Cuddalore District.
 6. The Public Prosecutor, High Court, Mds.
- + 1 cc to M/s.V.Rajeswari, Advocate Sr 67257.

TEJ/CO
KR/16/12

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