

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.825 of 2013
and
M.P.No.1 of 2013

Kaliyappan

... Appellant/Accused

Vs.

The State, rep.by
The Inspector of Police,
Nagapattinam Town Police Station,
Nagapattinam

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence passed by the Assistant Sessions Judge, Nagapattinam, in S.C.No.31 of 2013, dated 30.09.2013.

For appellant : Mr.V.Sathish for
Ms.Geetha Senthilkumar

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

JUDGMENT

Challenge in this criminal appeal is to the convictions and sentences dated 30.09.2013, passed in Sessions Case.No.31 of 2013, by the Assistant Sessions Court, Nagapattinam.

2. The case of the prosecution is that the prosecutrix is a mentally retarded daughter of the defacto complainant by name Karupayee. On 24.5.2009, at about 1.00 a.m./25.5.2009, in Nataraja Pillai Street, Nagapattinam, the accused has trespassed

into the house of the defacto complainant with an intention to deflower the prosecutrix and in pursuance of his intention, he deflowered the prosecutrix and after occurrence, the defacto complainant has given a complaint and the same has been registered in Crime No.281 of 2009, by P.W.14, the Sub Inspector of Police. The complaint given by the defacto complainant has been marked as Ex.P1.

3. On receipt of Ex.P1, the investigating officer, P.W.16, has taken up investigation and made arrangements to conduct medical examination to the prosecutrix as well as to the accused and accordingly Dr.Murali Mohan (P.W.13) has physically examined the accused. Likewise, Dr.Thenmozhi (P.W.15) has examined the prosecutrix. After completing investigation, P.W.15 has laid a final report on the file of the Judicial Magistrate No.I, Nagapattinam and the same has been taken on file in P.R.C.No.4 of 2013.

4. The Judicial Magistrate No.I, Nagapattinam, 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, Nagapattinam Division and the same has been taken on file in Sessions Case No.31 of 2013 and subsequently transferred to the file of the trial Court.

5. The trial Court, after hearing arguments of both sides and upon perusing the relevant documents, has framed first charge against the accused under Section 450 of the Indian Penal Code; second charge against him under Section 376(1) of the Indian Penal Code and the same have been read over and explained to him. The accused has denied the charges framed against him and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 16 have been examined and Exs.P1 to P6 have been marked.

7. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973, as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence has been adduced 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 450 of the Indian Penal Code and sentenced him to undergo three year rigorous imprisonment and also imposed a fine of Rs.500/- with usual default clause. The accused has also been found guilty under Section 376(1) of the Indian Penal Code and sentenced to undergo ten years rigorous imprisonment and also imposed a fine of Rs.2,000/- 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 consistent case put forth on the side of the prosecution is that the house of the defacto complainant is situated in Nataraja Pillai Street, Nagapattinam. On 24.05.2009 at about 1.00 a.m./25.5.2009, with an intention to deflower the daughter of the defacto complainant, the accused has trespassed into the house of the defacto complainant and ultimately deflowered the prosecutrix.

10. The prosecution has set the law in motion only on the basis of Ex.P1, the complaint, wherein it has been vividly stated to the effect that the accused has deflowered the prosecutrix. The defacto complainant has been examined as P.W.1 and her daughter-in-law has been examined as P.W.2 and the prosecutrix has been examined as P.W.3 and all of them have stated in their evidence about the factum of occurrence. Apart from their evidence, P.W.15, Doctor, has been examined to the effect that she physically examined the prosecutrix. The trial Court, after considering the available evidence on record, has invited convictions and sentences against the appellant/accused.

11. The learned counsel appearing for the appellant/accused has raised the following points:

(a) The occurrence has taken place on 24.5.2009, at about 1.00 a.m., whereas, Ex.P1, complaint, has been given very belatedly and the same cannot be given effect to.

(b) During the course of cross-examination, P.Ws.1 to 3 have not supported the version of the prosecution and especially P.W.1 says that she has not mentioned the name of the accused in the complaint and the trial Court, without considering the evidence adduced by P.Ws.1 to 3 in cross-examination, has

erroneously invited convictions and sentences against the appellant/accused.

(c) The Doctor, who physically examined the prosecutrix, has adduced evidence as P.W.15 and during the course of cross-examination, she has admitted certain suggestions and the trial Court has failed to look into the same.

12. The learned Additional Public Prosecutor has contended that in the instant case, P.Ws.1 to 3 and other witnesses have been examined on 17.4.2013 in chief and after lapse of 3 months, they have been cross-examined. Under the said circumstances, they have given different types of evidence during the course of their cross-examination and in fact, in Ex.P1, the name of the accused has been clearly mentioned and further the prosecutrix has been subjected to medical examination by P.W.15 and her specific evidence is that there is a swelling in the hymen of the prosecutrix and she has also found an injury therein and the trial Court, after considering the replete evidence available on the side of the prosecution, has rightly invited convictions and sentences against the accused and therefore, the convictions and sentences passed by the trial Court need not be set aside.

13. As pointed out earlier, the entire case of the prosecution hinges upon Ex.P1, the complaint, wherein, it has been clearly stated about the factum of occurrence and also its details. Further in Ex.P1, the name of the accused has been clearly mentioned. The author of Ex.P1, as stated earlier, has been examined as P.W.1 and during the course of chief examination, she virtually supported the case of the prosecution. But, as rightly pointed out on the side of the prosecution, she has been cross-examined after a lapse of three months. After a lapse of three months, she has taken a slight deviation from the evidence given by her during the course of chief examination. Likewise, the prosecutrix has been examined as P.W.3 and during the course of chief examination she has clearly stated that at the time of occurrence, the accused has gagged her mouth by using a cloth and subsequently raped her. She has also been cross-examined after a lapse of three months, taken slight deviation from the evidence given in chief examination.

14. At this juncture, it would be appropriate to look into the decision reported in AIR 2013 SC 2408 (Mohan Lal and another vs. State of Punjab), wherein the Honourable Supreme Court

has held that if a witness has been belatedly recalled and cross-examined, the said portion of evidence can be rejected or eschewed.

15. In the instant case, it has already been pointed out that after a lapse of three months, P.W.1 and P.W.3, vital witnesses, have been cross-examined on the side of the accused. During the course of chief examination, virtually they supported the case of the prosecution. But in cross-examination, they have taken slight variation and that itself would not pave for coming to a conclusion that the prosecution has not established its version.

16. It is an admitted fact that the prosecutrix has been medically examined by P.W.15 and her specific evidence is that there is a swelling and also injury in the hymen of the prosecutrix. It is true that during the course of cross-examination, she has admitted certain suggestions and the same are nothing but her opinion and not evidence. Therefore, the admissions given by P.W.15 would not help the accused to escape from liability.

17. It has already been pointed out that during the course of chief examination, the prosecutrix has given picturesque evidence to the effect that at the time of occurrence, the accused gagged her mouth by using a cloth and subsequently deflowered her. The evidence given by the prosecutrix has been clearly corroborated by medical evidence given by P.W.15. Therefore, it is needless to say that in the place of occurrence, the accused has raped the prosecutrix by way of trespassing into the house of the defacto complainant.

18. The first and foremost contention raised on the side of the appellant/accused is that there is a delay in giving Ex.P1, even though such occurrence has taken place on 25.5.2009 at about 1.00 a.m. It is true that there is a delay in giving Ex.P1 and that itself would not militate the case of the prosecution, provided, in the present case, replete evidence is available so as to prove the case of the prosecution and with regard to other points raised on the side of the accused, this Court has already given befitting reply. Therefore, viewing from any angle, the contentions put forth on the side of the appellant/accused cannot be accepted and altogether, the present criminal appeal deserves to be dismissed.

In fine, this criminal appeal is dismissed. The convictions and sentences passed by the trial Court in Sessions Case No.31 of 2013 are confirmed. Connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

msk

To :

1. The Inspector of Police,
Nagapattinam Town Police Station,
Nagapattinam
2. The Assistant Sessions Judge,
Nagapattinam
3. The Public Prosecutor,
High Court, Madras
4. The Superintendent,
Central Prison, Trichy.
5. The Judicial Magistrate,
Nagapattinam.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

AK(CO)
CA(25/11/2015)

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