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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

CRIMINAL APPEAL (MD) No.1 of 2015

Chandru @ Gilbert Chandruvadhanan

: Appellant/Sole Accused

Vs.

State represented by
Inspector of Police,
All Women Police Station,
Fort Division,
Trichirappalli District.

: Respondent/Complainant

Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, 1973, against the order of conviction, dated 29.10.2014 recorded in the case in Spl. S.C No.3 of 2014 on the file of the Sessions Judge, Mahila Court, Trichy.

For Appellant : Mr.T.Senthil Kumar

For Respondent : Mr.K.S.Durai Pandian
Additional Public Prosecutor

ORDER RESERVED DT: 26.03.2015

ORDER DELIVERED DT: 01.04.2015

JUDGMENT

(Judgment of the Court was made by **T.MATHIVANAN, J**)

Challenge in this Memorandum of Appeal is made to the order of conviction and sentence, dated 29.10.2014 recorded in the case in Special S.C.No.3 of 2014 on the file of the learned Sessions Judge, Mahila Court, Tiruchirappalli against the appellant/accused under section 5 r/w 6 of the Protection of Children from Sexual Offences Act, 2012 and under section 506(i) of IPC, sentencing him to suffer 12 years of rigorous imprisonment and also to pay a fine of Rs.1,000/-, with usual default clause and also sentencing him to suffer one year rigorous imprisonment and to pay a sum of Rs.500/- with usual default clause respectively.

2. This is a case of child sexual assault. Therefore, the entire case is governed by the provisions of the Protection of Children from Sexual Offences Act, 2012.

3. The case of the prosecution:-

<https://hcservices.ecourts.gov.in/hcservices/>

That on 28.10.2013 at about 07.00 p.m. when PW1 Bhuvaneswari victim child aged about 8 years, was playing in the street near her house, on



the lure of providing Chocolate, the appellant/accused had taken her in his cycle to a lonely place at Bells Ground and committed sexual assault on her by pressing his male organ into her private part. When she was weeping out of pain, the appellant/accused had brought her back and dropped in front of her house. On the disclosure of the victim child, PW2 being her mother had preferred a complaint before PW13 at 11.00 p.m. on the next day i.e., 29.10.2013 and based on her complaint, PW13 had registered a case in Crime No.35 of 2013 under sections 5 and 6 of the Act and then the complaint (Ex.P1) and the First Information Report (Ex.P12) were straightway sent to the learned Sessions Judge, Mahila Court, Tiruchirappalli.

4. PW10 Dr.Karpagam had examined PW1 and PW11 Dr.Saravanan had examined the appellant/accused with regard to his potency.

5. PW14 had taken up the case for investigation and arrested the appellant/accused and after the completion of investigation, he had laid a final report on 20.01.2014 on the file of the learned Sessions Judge, Mahila Court, Tiruchirappalli.

6. It is pertinent to note here that as contemplated under section 33(1) of the Protection of Children from Sexual Offences Act, 2012, (in short herein after may be referred to as 'The Act'], the learned Sessions Judge, Mahila Court, Tiruchirappalli had taken cognizance of the offence under sections 5 r/w 6 of the Act and framed the following two charges:-

- (i) Under section 5 r/w 6 of the Protection of Children from Sexual Offences Act, 2012; and**
- (ii) Under section 506(i) of IPC.**

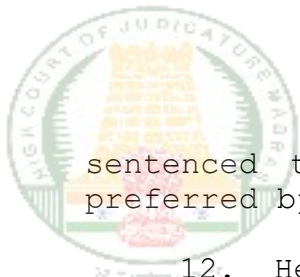
7. When the ingredients of the charges were explained and questioned, the appellant/accused had pleaded innocent and claimed to be tried. Therefore, he was put on trial.

8. The prosecution in order to prove its case, has totally examined 14 witnesses and during the course their examination, Exs.P1 to P19 and MOS1 to 3 were marked.

9. The incriminating circumstances arising out of the testimonies of the prosecution were put to the appellant/accused, during the course of the proceedings under section 313(1)(b) of the Code of Criminal Procedure.

10. While denying their testimonies, he had replied that this case was foisted against him. He had also filed a written statement under section 233(2) of Cr.P.C, which was received and recorded by the learned Sessions Judge.

11. On evaluating the evidences, both oral and documentary, the learned Sessions Judge, Mahila Court, Tiruchirappalli, had found that the appellant/accused guilty under both the charges and convicted and



sentenced thereunder as afore-stated. Hence, the present appeal is preferred by the appellant/accused before this court.

12. Heard **Mr.T.Senthil Kumar**, the learned counsel appearing for the appellant/accused and **Mr.K.S.Duraipandian**, the learned Additional Public Prosecutor appearing for the State.

13. The main contention of Mr.T.Senthil Kumar the learned counsel appearing for the appellant/accused is that there was an inordinate delay of about 27 hours in lodging the complaint and therefore, there might be chances of embellishment in preferring the complaint and there was reason to believe that the complaint could have been lodged after confabulation.

14. Secondly, he would contend that as per the evidence of PW10, Dr.Karpagam, there was no external injuries as well as internal injuries over the private part of the victim child and therefore, the allegations of the sexual assault was ruled out and this was not taken into account by the learned trial Judge.

15. As argued by **Mr.T.Senthil Kumar**, the learned counsel appearing for the appellant/accused, in Ex.A7 Accident Register, Dr.Karpagam has stated that there was no injury over the external part of the genitalia and that the victim had also no external local injury and she has also stated that there was no evidence to suggest sexual intercourse, as her Hymen was found intact.

16. Based on Ex.P7 Accident Register issued by PW10, the entire prosecution case cannot be thrown out. The reason why is that PW1 the victim child has unambiguously spoken to about the overtact of the appellant/accused.

17. She has specifically stated in her evidence that the appellant/accused had held her nighty, kissed all over her body and removed her inner wear and nighty and then, he had pressed his penis in her vagina. When she was weeping out of pain, he had brought her and dropped at her house. This is the clear version given by the victim child.

18. In this connection, we would like to have reference to section 3 of the Act.

19. Section 3 reads as follows:-

"3.Penetrative sexual assault.- A person is said to commit "penetrative sexual assault" if:-

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a ~~the body~~ into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or



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(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus, or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person."

20. In this connection, we would like to point that:-

"to constitute the offence of rape, it is not necessary that there should be complete penetration of the penis with the emission of semen and the rupture of hymen. Partial penetration of the penis within the labia majora or the vulva or pudenda, with or without the emission of semen, or even an attempt at penetration is quite sufficient for the purpose of law. It is, therefore, quite possible to commit legally, the offence of rape without producing any injury to the genitals or leaving any seminal stains. In such a case, the medical officer should mention the negative facts in his report, but should not give his opinion that no rape had been committed.

21. Besides this, with reference to Ex.P7 Accident Register issued by Dr.Karpagan (PW10), we would like to point that rape is a crime and not a medical diagnosis to be made by the medical officer treating the victim. It is a charge made by the investigating officer, on a complaint by the victim. The only statement that can be made by the medical officer is, whether there is evidence of recent sexual activity. Whether the rape has occurred or not is a legal conclusion and not a medical one.

22. Keeping in view of the above context, we make stress upon the point that a complete penetration, to constitute the offence of rape or sexual assault does not require and merely, partial penetration of penis within the labia majora or the vulva or pudenda, with or without emission of semen is sufficient.

23. In **State of Himachal Pradesh vs. Gyan Chand [(2001)2 SCC 118]**, the victim aged five years was raped by a distant relative. Based on the testimony of the victim coupled with that of her mother and the positive medical evidences, the trial court held that rape could not be ruled out and convicted the accused. On appeal he was acquitted by the High Court. The Supreme Court held that acquittal by the High Court was not proper. It further held that a murderer destroys the physical body of his victim and a rapist degrades the very soul of helpless female. The court, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost care. It is not necessary to discover the spermatozoa on the private parts of the victim. Slightest penetration is sufficient to constitute rape. Absence of external marks of violence on the body of



the accused and victim are not necessary when the victim is a child. Medico-legal examination clearly made out the victim having been subjected to rape. The victim has spoken of penetration in her statement. The discovery of spermatozoa in the private part of the victim is not a must to establish penetration. An appeal was allowed.

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24. In an alleged case of rape of a minor girl aged eight years, on examination of the victim after five days, the medical officer found an abrasion on the medial side of labia majora and redness around labia minora with white discharge but the hymen was intact and was admitting the tip of the little finger and in view of the absence of signs of full penetration, the medical officer opined that there was an attempt to rape. The trial court convicted the accused for the offence of rape, but the MP High Court in appeal changed the conviction from under section 376 of IPC to section 354 of IPC (Outraging the modesty of a woman). However, the Supreme Court, on appeal held that under basis of the medical findings, it can be safely concluded that there was partial penetration within the labia majora or vulva or pudenda, which is in legal sense is sufficient to contribute to rape and convicted the accused for the offence of rape **[Madan Gopal Kakkad vs. Naval Dubey and another [(1992) 3 SCC 204]**.

25. Mr.T.Senthil Kumar, the learned counsel appearing for the appellant/accused has mainly articulated his arguments on the following points:-

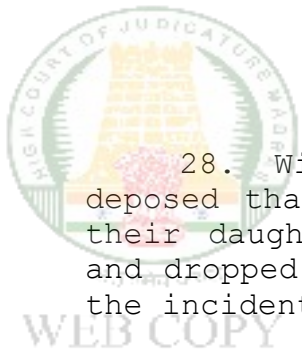
1. There is an abnormal delay in lodging the complaint with reference to the alleged offence.

2. The medical evidence given by PW10 Dr.Karpagam and Ex.P6 and P7 viz., Cytology/Hematology Report and Accident register respectively would be sufficient to disprove the offence of sexual assault.

3. PW2 has wantonly lodged a complaint implicating the appellant/accused, as if he had committed sexual assault on her daughter.

26. On the other hand, Mr.K.S. Durai Pandian, the learned Additional Public Prosecutor, while countering the argument advanced by Mr.T.Senthil Kumar, has adverted to that the evidence of PW1, the victim child, alone would be sufficient to prove the guilt of the appellant/accused, which did not require any corroboration.

27. He has also argued that the prosecuting agency has brought home the guilt of the appellant/accused beyond all reasonable doubts with unassailable evidences and that the learned trial Judge had also, after analyzing the evidences, both oral and documentary, found the appellant guilty in consonance with the charges framed against him and the appellant was also rightly and fairly convicted and sentenced in proportionate to intense of the offence committed by him, which did not require any disturbance and therefore, he has urged to confirm the judgment of the trial court.



28. With reference to the delay, PW2 and PW3 have categorically deposed that on 28.10.2013 at about 9.00 p.m. when they were searching their daughter, she was brought by the appellant/accused in his cycle and dropped in front of their house. When questioned, PW1 had disclosed the incident meted out at the hands of the appellant/accused.

29. On hearing this, both PW2 and PW3 had shouted at the appellant/accused. While so, the parents of the appellant/accused had picked up quarrel with PW2 and PW3 and subsequently, the appellant/accused had gone away.

30. On the next day i.e., on 29.10.2013 at about 6.30 or 7.00 p.m., PW1 the victim girl, had complained her parents (PW2 and PW3) saying that the appellant had again called her to the place where she was taken by him on the previous day. On hearing this, PW2 and PW3 along with some of the street-mates had abused the appellant and subsequently, PW2 went to All Women Police Station, Fort Range, Trichy City and lodged a complaint at 11.00 p.m.

31. PW13 the Sub Inspector of Police, had also registered a case, based on her complaint at 11.00 p.m., in crime No.35 of 2013. This has been ratified by PW13.

32. As argued by Mr.T.Senthil KUMar, the learned counsel appearing for the appellant/accused, the offence of sexual assault was said to have been committed by the accused on 28.10.2013 at 7.00 p.m. and admittedly, the complaint was lodged at 11.00 p.m. on the next day i.e., on 30.10.2013 in pursuance to the calling of PW1 by the appellant/accused to the same place, where she was taken by him on the previous day.

33. Of course, there is a delay but it is completely explained by the prosecution.

34. The offence of sexual assault was made on a child aged about 8 years. PW2 and PW3 being her parents have to see her future as she being a girl child. They have to think about her societal stigma. Therefore, the delay based on the above facts has become pale into insignificance. The delay cannot be considered as fatal to the case of the prosecution.

35. In this connection, we would like to have reference to **State of H.P vs. Shree Kant Shekari [(2004) 8 SCC 153]**.

36. In this case, there is delay of six months in lodging the complaint with reference to the offence of rape. While writing judgment on behalf of the Division Bench of the Hon'ble Apex Court, Hon'ble Mr.Justice Arijit Pasayat has observed in para 18 as under:-

"18.The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging the



first information report cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the court is to only see whether it is satisfactory or not. In case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of the first information report does not in any way render the prosecution version brittle. These aspect were highlighted in **Tulshidas Kanolkar vs. State of Goa [(2003) 8 SCC 590: 2004 SCC (Cri) 44.**

37. On coming to the instant case on hand, admittedly, there is a delay of 27 hours to lodge the complaint, but in the light of the decision of the Hon'bel Apex Court, as cited supra, the delay is immaterial, which would not falsify the case of the prosecution. This aspect with reference to the delay has also been considered by the learned trial Judge and concluded that there was no embellishment or confabulation in lodging the complaint (Ex.P1).

38. Keeping in view of the above fact, we find that the delay is absolutely immaterial. This cannot form basis to disbelieve the case of prosecution.

39. With reference to the second point adverted to by Mr.T.Senthil Kumar, we would like to say that no parents would like to wreck vengeance on a man, connecting their own child with him coupled with serious allegation that he had committed sexual assault on their child.

40. The argument advanced by Mr.T.Senthil Kumar is unimaginable and unethic.

41. According to our view, it is an illogical imagination. Therefore, the argument with reference to foisting of this case as against the appellant to wreck vengeance on him by PW2 and PW3 is liable to be obliterated and brushed aside.

42. In his written statement filed under section 233(2) of Cr.P.C. the appellant/accused has stated that his two brothers are mentally retarded and as they are residing near the house of PW2 and PW3, they would be shouting at their family members as his brothers used to pass the urine and motion in the street and since, they were causing nuisance in the street, PW2 and PW3 would be picking up quarrel with his family members and on account of this reason, they had foisted the present case



against him alleging that he had committed the sexual assault on their daughter.

43. His statement under section 233(2) Cr.P.C. itself deserves to be scrapped and struck off and therefore, we are not here to believe such a statement of defence.

44. In so far as this is concerned, the evidence given by PW1 is trustworthy and unimpeachable. She has also given a vivid account and unfolded the entire episode, when her evidence was recorded by the trial court. We do not find any illegality in recording the evidence of PW1 and the trial court had taken utmost care and followed all the relevant proceedings to record her evidence, which would go a long way to prove the case of the persecution and according to our view, the evidence of PW1 does not require any corroboration.

45. In so far this case is concerned, PW10 Dr. Karpagam had examined the victim child on 30.10.2013 at 3.20 a.m. and after completion of her examination, she had issued Ex.P6 and P7 i.e., Cytology/Hematology report and Accident Register.

46. In Ex.P7 Accident Register, PW10 Dr. Karpagam has stated that there was no external injury and that the external genitalia was normal and no injuries were found.

47. On verification of the Cytology/Hematology test report with regard to spermatogenic, she has stated that the victim had no external local injury and there was no evidence to suggest sexual intercourse.

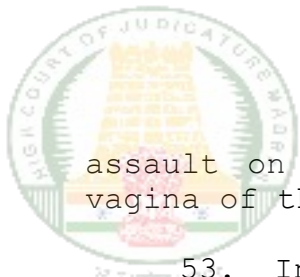
48. Apart from this, she has also stated that the Hymen was intact and no local injury was found.

49. In this connection, Mr.T.Senthil Kumar, the learned counsel has argued that the allegation of rape, as per the case of prosecution, had totally, been disproved by the medical evidence and he has also submitted that the chemical analysis report Ex.P11 also would disprove the case of the prosecution as no semen or spermatozoa or foreign bodies or blood was not detected on any of the items viz., MOs 1 to 3, Nighty, Jatty, 3/4 Black trouser of the appellant.

50. This portion of the argument advanced by Mr.T.Senthil Kumar, is not discernible and therefore, liable to be rejected.

51. At the first instance, he would submit that as per the evidence of PW2, being the mother of PW1, when she had first seen the private part of her daughter, she was able to find redness and swelling. But PW10 Dr.Kargapam would say that no external injuries were found on the private part of PW1 and based on this circumstance, Mr.T.Senthil Kumar has argued that the prosecution was not able to prove the offence of sexual assault as against the appellant/accused.

52. It is absolutely wrong. As discussed in the foregoing paragraphs, to constitute an offence of rape, especially the sexual



assault on a female child, no complete penetration of penis into the vagina of the victim child is required.

53. In so far as the instant case on hand is concerned, we would like to point out that since PW1 victim girl has given a complete account with regard to the sexual assault made on her by the appellant/accused, we are of the considered view that her evidence does not require any corroboration and her evidence itself would be sufficient to prove the guilt of the appellant/accused.

54. In this connection, we would like to place reliance upon the decision in **State of Uttar Pradesh vs. Chhotey Lal [(2011)2 SCC 550]**, wherein the Division Bench of the Hon'ble Apex Court has observed in para 26 as under:-

"26. The important thing that the court has to bear in mind is that what is lost by a rape victim is face. The victim loses value as a person. Ours is a conservative society and, therefore, a woman and more so a young unmarried woman will not put her reputation in peril by alleging falsely about forcible sexual assault. In examining the evidence of the prosecutrix, the courts must be alive to the conditions prevalent in the Indian society and must not be swayed by beliefs in other countries. The courts must be sensitive and responsive to the plight of the female victim of sexual assault. Society's belief and value systems need to be kept uppermost in mind as rape is the worst form of women's oppression. A forcible sexual assault brings in humiliation, feeling of disgust, tremendous embarrassment, sense of shame, trauma and lifelong emotional scar to a victim and it is, therefore, most unlikely of a woman, and more so by a young woman, roping in somebody falsely in the crime of rape. The stigma that attaches to the victim of rape in Indian society ordinarily rules out the levelling of false accusations. An Indian woman traditionally will not concoct an untruthful story and bring charges of rape for the purpose of blackmail, hatred, spite or revenge".

55. The same ratio has been applied by the Hon'ble Apex Court in **Mohd. Imran Khan vs. State Government (NCT OF DELHI) [(2011)10 SCC 192]** and **Om Prakash vs. State of U.P [(2006)9 SCC 787]**.

56. In State of **Punjab vs. Gurmit Singh and others [(1996)2 SCC 384]** also, the Apex Court has held that conviction can be founded on testimonies of the prosecutrix, as it does not require corroboration. It has also been held that the evidence of the prosecutrix is more reliable than that of an injured witness, because she is not an accomplice.



57. As observed by the Hon'ble Apex Court in the decisions cited supra, we are of the considered view that the evidence of the victim child PW1 itself is very much reliable and sufficient to prove the offence of sexual assault committed by the appellant/accused. The evidences given by the other witnesses needs no consideration for the purpose of lending assurance to her evidence.

58. Keeping in view of the above facts, we do not find any illegality or infirmity in the judgment of the trial court and therefore, the appeal preferred by the appellant/accused itself is liable to be dismissed.

59. In the result, the criminal appeal is dismissed and the judgment of conviction and sentence recorded by the trial Judge are confirmed.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

To

1.The Sessions Judge,
Mahila Court, Trichy.

2.The Inspector of Police,
All Women Police Station,
Fort Division,
Trichirappalli District.

3.The Superintendent,
Central Prison,Trichirappalli.
(in duplicate to communicate the appellant)

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

Judgment made in
Cr1.A(MD)No.1 of 2015
01.04.2015

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