

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.261 of 2014

Beer @ Seit @ Beer Mohamed

.. Appellant/sole
Accused

Vs

The State by the Inspector of Police,
B 14 Kuniamuthur Police Station,
Coimbatore.

.. Respondent/
Complainant

Prayer:- Criminal Appeal filed under Section 374(1) Cr.P.C.,
against the judgment passed in S.C.No.313/2008 dated 11.03.2014,
on the file of the learned Sessions Judge, Mahalir Neethimundram
(Mahila Court), Coimbatore.

For Appellant : Mr.T.Gowthaman

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGEMENT

(Judgment of the Court was delivered by S.Nagamuthu.J)

The appellant is the sole accused in S.C.No.313/2008 on the
file of the learned Sessions Judge, Mahila Court, Coimbatore,
has come up with this appeal challenging the conviction and
sentence for the offences under Sections 363, 366, 342, 376(i) &
506(ii) I.P.C. The trial Court sentenced the appellant/accused
to undergo rigorous imprisonment for 10 years and to pay a fine
of Rs.25,000/- in default to undergo simple imprisonment for a
period of six months for the offence under Section 366 I.P.C.,
(since 366 I.P.C., provides major punishment, the trial Court
has not punished the accused under Section 363 I.P.C.,
separately); to undergo rigorous imprisonment for six months and
to pay a fine of Rs.1,000/- in default to undergo simple

imprisonment for one month for offence under Section 342 I.P.C.,; to undergo imprisonment for life and to pay a fine of Rs.1,00,000/- (on payment of the same shall be ordered to be given as compensation after appeal time is over to the victim under Section 357 Cr.P.C.,) for offence under Section 376(1) I.P.C., and to undergo rigorous imprisonment for one year and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for one month for offence under Section 506(ii) I.P.C. The trial Court ordered to run the above sentences concurrently. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

2.The case of the prosecution, in brief, is as follows:-

P.W.2 is the victim girl in this case. Her date of birth is 10.04.1993. During the year 2006, she was studying IX standard at President Convent Girls Higher Secondary School at Coimbatore. P.W.1 is her father. According to the further case of the prosecution, on one day, in the month of November 2006, P.W.2 was returning from her school during lunch break. The accused was waiting in front of the school. He told P.W.2 that he would take her in his motorcycle and drop her at her house. P.W.2 agreed. But, the accused took her to Sugunapuram Senthil Nagar to his house. The house was then locked. The accused opened the door and took her inside the house. Then he offered juice to her. Simultaneously, he made sexual advances towards her. P.W.2 attempted to raise alarm but, the accused threatened her that he would kill her mother and brother if she raised alarm. Fearing for her life and for the life of her family members, P.W.2 did not raise any alarm. Then he pushed her down, removed her undergarments and made penetration into her vagina by his penis. P.W.2 experienced bleeding discharge from vagina. For about 20 minutes, according to P.W.2, she tried to escape from the clutches of the accused. However, the accused succeeded in having sexual intercourse with P.W.2. Then he returned the dress and other undergarments to her. At that time, he warned her not to disclose the same to anybody. He boarded her in a town Bus and sent her to her house. On returning to her house, P.W.2 did not say anything about the above occurrence to her parents, out of fear. After some time, P.W.2, suffered from abdominal pain and vomiting. Therefore, P.W.1 and the other family members took her to the hospital.

3.Again in the month of January that followed, the accused had sexual intercourse with P.W.2 on few occasions under threat and coercion. Ultimately, when she was examined by Doctor, it was found that she was pregnant. P.W.5 - Dr.Sheela, told the parents of P.W.2 on 17.02.2007 at 1.00 pm after examining her, that P.W.2 was approximately 12 weeks pregnant. She advised that since, P.W.2 was too young, her health would not permit her to bear the child. P.W.2 and other family members therefore,

requested P.W.5 to cause miscarriage of the fetus. Accordingly, she conducted D.N.C and aborted the fetus.

4.P.W.1 and other family members thereafter, enquired P.W.2 as to who was the cause for pregnancy. She disclosed that it was this accused. She further told that out of fear for the accused, due to his threat to kill her and other family members, she did not disclose the same to them. Thereafter, P.W.1 went to Podanur Police station and made a complaint on 07.03.2007 at 5.00 pm. P.W.10, the then Inspector of Police, All Women Police Station, Podanur Police station on receipt of the said complaint registered a case in Crime No.295/2007 for offence under Sections 363, 376(i) & 506(i) I.P.C. Ex.P.6 is the F.I.R. He forwarded both the documents to Court which were received by the learned Judicial Magistrate at 10.00 am on 08.03.2007.

5.P.W.10 took up the case for investigation. She examined P.Ws.1 to 3 and few more witnesses and recorded their statements. On 07.03.2007, at 9.30 pm, she arrested the accused and forwarded him to the Doctor for medical examination. P.W.9 - Dr.Mohana - a Radiologist, examined him on 12.10.2007 and gave opinion that he was capable of performing penile sexual intercourse with a woman. But, she did not notice any injury on him. Similarly, P.W.10, forwarded P.W.2 for medical examination. P.W.8 - Dr.Savithri, examined P.W.2 on 27.03.2007. On examination, she found that there was an abrasion near her right knee which was an old wound. She was informed that P.W.2 had already undergone abortion. She found the hymen in the vaginal cavity of P.W.2 ruptured. But, she did not notice any injury on her private parts. She took vaginal smear and forwarded the same for chemical examination. The report revealed that there was spermatozoa in the same. Finally, P.W.8 gave opinion that P.W.2 had been subjected to sexual intercourse. P.W.10 recorded the statement of P.W.2 on 27.03.2007 itself. Since, P.W.10 was transferred, she handed over the case diary to her successor. P.W.11, the successor of P.W.10 took up the case for further investigation. He examined few more witnesses, collected relevant documents and finally laid charge sheet against the accused.

6.Based on the above materials, the trial Court framed the charges as stated in the first paragraph of this judgment against the appellant. The appellant denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 12 witnesses were examined and 10 documents were exhibited.

7.Out of the said witnesses, P.W.2 is the victim who has vividly spoken about the occurrence. P.W.1 is the father of the victim who has stated that he took the victim/P.W.2 to the

hospital where, he was informed that she was pregnant. He wanted P.W.5 - Dr.Sheela to abort the fetus. Accordingly, the fetus was aborted. He has further stated that since, it involved the modesty of the young girl, he did not prefer any complaint immediately. He has further stated that he made complaint on 07.03.2007. P.W.3, has spoken about the preparation of the observation mahazar and rough sketch. P.W.4 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.5 - Dr.Sheela has stated that on 17.02.2007, P.W.2 was brought to her for treatment and at that time, she found her pregnant by 12 weeks. She aborted the fetus as requested by P.W.1 and the other family members as P.W.2 was too young to bear a child. P.W.6 has spoken on hearsay information. P.W.7 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.8 has spoken about the medical examination conducted on P.W.2. P.W.9 has spoken about the medical examination conducted on the accused. P.W.10 has spoken about the registration of the case on the complaint of P.W.1 and the initial investigation done by her. P.W.11 has spoken about the further investigation done and the final report filed by him. P.W.12, the Head Master of the school where P.W.2 studied has stated that the date of birth of P.W.2 is 10.04.1993.

8. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. On his side, no witness was examined, however, Ex.D.1, a xerox copy of the attendance register where P.W.2 was studied was marked.

9. Having considered all the above, the trial Court found the accused/appellant guilty under the said charges and accordingly, sentenced him as detailed in the first paragraph of this judgment. That is how the appellant is before this Court with this Criminal Appeal.

10. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

11. In this case, as we have already narrated, P.W.2 is the victim of rape. Her date of birth is 10.04.1993. Thus, in the month of November 2006, she was hardly aged 14 years. Thus, she was not fully matured to give consent for sexual intercourse.

12. P.W.2 has vividly stated that it was this accused who had kidnapped her and had sexual intercourse with her on few occasions. But, she did not disclose the same to her parents or anybody else because of the threats made by the accused. When she was taken to the Doctor, the Doctor only found out that she was pregnant by 12 weeks. The fetus was aborted. It was only

thereafter, P.W.2 disclosed that the cause for the pregnancy was this accused.

13.The learned counsel for the appellant would submit that there was enormous delay in disclosure of the vital fact by P.W.2 to her parents, which would create doubt in the case of the prosecution. We find no force at all in the said argument. P.W.2 was admittedly a child. She would not have known the consequences of the sexual act done on her by the accused. Further, she was under the constant threat and that was the reason why she did not disclose about the occurrence even to her parents. Her parents took her to the Doctor (P.W.5) on 17.02.2007. It was only at that time, it came to light that she was pregnant. Immediately thereafter, P.W.2 had disclosed that the accused was responsible for the pregnancy and she disclosed about the occurrence. Thus, the delay on the part of P.W.2 cannot be stated to be unnatural, so as to raise doubt in her veracity. A child who is sexually exploited would suffer from lot of mental as well as health problems. The trauma which is the result of such sexual exploitation would be of greater extent. It is common knowledge that the most common effect of sexual abuse is post traumatic stress disorder which is three times more in children. Thus, the traumatic stress coupled with the threats would have prevented P.W.2 from disclosing about the occurrence. Therefore, on the ground of delay in disclosure of the occurrence by P.W.2 to her parents, we cannot afford to reject her evidence.

14.After the disclosure of the occurrence by P.W.2 to her parents and others and after the fetus was aborted, the complaint was not immediately made. The complaint was made only on 07.03.2007. Thus, admittedly, there is a delay in preferring the complaint. The learned counsel for the appellant would submit that since, there is no explanation at all for this delay, the case of the prosecution needs to be doubted. In this argument also, we do not find any force.

15.The trauma that results from sexual abuse is a syndrome that affects not only the victim but the entire family. P.W.1 has stated with anguish that the sexual exploitation made by the accused on P.W.2 and the disclosure of the same to others may spoil the future of P.W.2. For these reasons, P.W.1 did not go to the Police Station immediately. This explanation offered by P.W.1 is plausible which is acceptable to this Court. Therefore, on the ground of delay in preferring the complaint, we cannot reject the case of the prosecution.

16.P.W.5 has stated that when she examined the victim/P.W.2 on 17.02.2007, she found that P.W.2 was pregnant by 12 weeks. We do not find any reason to reject the evidence of P.W.5. Thus, the evidence of P.W.5 would go to clinchingly prove that

around three months before 17.02.2007, the victim had been sexually exploited resulting in pregnancy. Thus, the medical evidence clearly corroborates the evidence of P.W.2 that the accused had sexual intercourse with her. Though, P.W.2 has been cross examined at length by the learned counsel for the accused, nothing has been elicited even to indicate that somebody else was the cause for the pregnancy of P.W.2 and not this accused.

17.P.W.2, being a child, would not have had any motive against the accused to falsely depose against him. There is no evidence of tutoring also. Thus, from the evidence of P.W.2, it has been clearly established that it was this accused who had sexual intercourse with her and made her pregnant. As we have already pointed out, she was hardly aged 14 years old and thus, she was incompetent to give consent for sexual intercourse. Therefore, the accused cannot plead that P.W.2 consented for sexual intercourse.

18.In view of the above discussion, we hold that the act of the accused in having sexual intercourse with P.W.2 and making her pregnant is an offence under Section 376 I.P.C. The trial Court was therefore, right in convicting the accused for offence under Section 376(i) I.P.C.

19.The trial Court has convicted the accused for the offence under Sections 363 as well as 366 I.P.C. This in our considered view amounts to double jeopardy. There is no evidence that the accused had kidnapped P.W.2 to compel her for marriage. Therefore, the conviction of the accused for offence under Section 366 I.P.C., is not sustainable. But, the conviction of the accused for offence under Section 363 I.P.C., is sustainable. The trial Court has also convicted the accused for offences under Sections 342 & 506(ii) I.P.C. The said conviction and sentence for offences under Sections 342 & 506 (ii) I.P.C., in our considered view, do not require any interference.

20.Now, turning to the quantum of punishment, for the offence under Section 376(i) I.P.C., the trial Court has sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,00,000/-. Going by the age of the accused, his antecedents, the fact that he was driven by sexual urge and all the other attending circumstances, we are of the view that imposing sentence of rigorous imprisonment for 10 years for the offence under Section 376(i) I.P.C., would meet the ends of justice. So far as the fine of Rs.1,00,000/- is concerned, the trial Court has not taken into account the economic status of the accused, which is a relevant factor to be taken into account. It is in evidence that the accused is a poor man. Considering the same, we are of the view that sentencing him to pay a fine of Rs.10,000/- as fine would meet the ends of justice. For the

offence under Section 363 I.P.C., as the trial Court has not imposed any sentence, we cannot impose any sentence on the appellant for the said offence.

21. For the offence under Section 342 I.P.C., the trial Court has sentenced him to undergo rigorous imprisonment for six months and to pay a fine of Rs.1,000/- which in our considered view is appropriate and hence, the same does not require any interference at the hands of this Court. For the offence under Section 506(ii) I.P.C., the trial Court has imposed sentence of rigorous imprisonment for one year and to pay a fine of Rs.10,000/- without having any regard to his financial status and hence, the fine amount is liable to be reduced to Rs.1,000/-.

22. In the result, the Criminal appeal is partly allowed in the following terms:-

(i) The conviction imposed on the accused/appellant for offence under Section 376(i) I.P.C., is confirmed and the substantive sentence of imprisonment for life imposed by the trial Court is reduced to rigorous imprisonment for 10 years and the fine amount of Rs.1,00,000/- imposed by the trial Court is reduced to Rs.10,000/-, in default to undergo rigorous imprisonment for four weeks;

(ii) The conviction and sentence imposed for offence under Section 366 I.P.C., are set aside:

(iii) The conviction of the appellant for offence under Section 363 I.P.C., is confirmed but, since, no sentence was imposed by the trial Court, we are unable to impose any sentence

(iv) The conviction and sentence imposed on the appellant for the offence under Section 342 I.P.C., are confirmed and

(v) The conviction and sentence imposed on the appellant for the offence under Section 506(ii) I.P.C., is confirmed however, the fine amount of Rs.10,000/- as imposed by the trial Court is reduced to Rs.1,000/- in default to undergo rigorous imprisonment for four weeks.

(vi) It is directed that the above sentences shall run concurrently.

(vii) It is further directed that the period of detention already undergone shall be set off as required under Section 428 Cr.P.C.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

jbm

To

1.The Sessions Judge, Magalir Neethimandram
Mahila court coimbatore

2.-do-Thro The Principal Sessions Judge
coimbatore

3.The Judicial Magistrate NO.7 coimbatore

4.-do-Thro The Chief Judicial Magistrate
coimbatore

5.The Superintendent Central Prison,
Coimbatore

6.The State by the Inspector of Police,
B 14 Kuniamuthur Police Station,
Coimbatore.

7.The Public Prosecutor,
High Court, Madras.

8.The Section Officer,
Criminal Section High Court Madras-104

9.The District Collector
Coimbatore

10.The Director General of Police
Mylapore Chennai-600 004

Cr1.A.No.261 of 2014

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