

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Crl.A.No.608 of 2014

& M.P.Nos.1 and 2 of 2014

Sambath @ Sambath Kumar .. Appellant

Vs.

State by Inspector of Police,
E-3 Teynampet Police Station,
(Crime No.1596/2011) ... Respondent

Criminal Appeal filed under Section 374 Cr.P.C., against the judgment dated 27.08.2014 in S.C.No.1 of 2012 on the file of Mahila Court/Sessions Court, Chennai.

For appellant : Mr.G.Jeremiah
For respondent : Mr.P.Govindarajan, Addl.P.P.

JUDGMENT

This Criminal Appeal is filed against the judgment dated 27.08.2014 in S.C.No.1 of 2012 on the file of Mahila Court/Sessions Court, Chennai, convicting the appellant/accused for the offence under Section 366-A and sentencing him to undergo ten years rigorous imprisonment and to pay fine of Rs.10,000/-, in default, to undergo six months simple imprisonment. He was also convicted for the offence under Section 376 IPC and sentenced to undergo ten years rigorous imprisonment and to pay fine of Rs.10,000/-, in default, to undergo six months simple imprisonment. The trial Court ordered the sentences imposed on the appellant/accused to run concurrently.

2. The gist of the prosecution case is that P.W1/de-facto complainant who was stated to be aged about 15 years at the time of occurrence, was residing along with her parents (Sumathi-P.W.2 and P.W.3-Vijayakumar). P.W.1 was studying IX Std. in Guntur Subbiah Higher Secondary School. Knowing fully

well that P.W.1 is a minor, the appellant/accused with an ill-motive to have sexual intercourse with her, approached her and gave a false promise that he would marry her. On 29.07.2011 at about 4 p.m., the appellant kidnapped her (P.W.1) when she was returning from the School in Kaattagaram Village, Krishnagiri District and kept P.W.1 in a house belonging to one Vellaiparayur Kalyanasundaram and committed rape on her in between 30.07.2011 and 18.08.2011. P.W.2, the mother of P.W.1, lodged Ex.P-4 complaint before the Police Station. The case was taken on file by the trial Court in S.C.No.1 of 2012. During the course of trial, on the side of prosecution, P.Ws.1 to 13 were examined, Exs.P-1 to P-14 were marked and M.O.1 was produced. When the appellant/accused was questioned under Section 313 Cr.P.C., he denied his complicity in the crime. He neither examined any witness nor filed any document. The trial Court, upon hearing both sides and on an analysis of the oral and documentary evidence, convicted and sentenced the appellant as stated above. Challenging the same, the accused has preferred this appeal.

3. When the appeal is taken up for consideration, learned counsel for the appellant/accused submitted that in order to prove the age of the minor/P.W.1, Ex.P-1 Birth Certificate was marked on the side of the prosecution, but the said document was not exhibited through P.Ws.2 and 3 (parents of P.W.1-victim girl) during their evidence, and the same was marked only through P.W.1-victim girl, and therefore, Ex.P-1 is not a reliable piece of evidence. Learned counsel further submitted that in order to ascertain the age of the victim girl/P.W.1, on comparing Ex.P-1 Birth Certificate and Ex.P-2 School Transfer Certificate, both of which shows the date of birth of P.W.1 as 07.12.1996 and also Ex.P-9 certificate showing the age of P.W.1 based on radiological test conducted by P.W.9 Doctor, indicating that the victim girl was aged between 16-18 years, and thus, the trial Court came to a conclusion that the victim girl would be aged below 15 years. But, learned counsel submitted that on comparison of Exs.P-1, P-2 and P-9, there will be a margin of difference of two years with regard to the age of the victim girl and hence, the age of the victim girl/P.W.1 was not properly established by the prosecution before the Court below. In support of his submissions, learned counsel relied on the decisions of the Supreme Court reported in CDJ 2015 SC 163 = 2015 (1) MLJ (Cr1) 731 (Ravindra Vs. State of Madhya Pradesh) and 2011 (2) SCC 385 (Alamelu Vs. State).

4. Irrespective of the above submissions made on merits, learned counsel for the appellant/accused submitted that even during the pendency of the trial, the appellant/accused married the de-facto complainant/P.W.1 on 27.03.2014 itself in the

presence of the elders of their respective families. In spite of the same, the trial Court has convicted the appellant. Learned counsel further submitted that since the marriage had taken place between P.W.1 and the accused, compromise affidavits have been filed before this Court on 04.08.2016 by P.W.1 and her mother P.W.2. Hence, by considering the factum of marriage between P.W.1 and the appellant, the sentence imposed by the trial Court may be modified.

5. Heard the learned Additional Public Prosecutor appearing for the respondent-Police on the above aspects.

6. I have given my anxious consideration to the submissions made on either side and perused the materials available on record.

7. It is seen that even during the pendency of trial, the appellant/accused and the victim girl/P.W.1 got married on 27.03.2014 and that the judgment of conviction and sentence was rendered by the trial Court on 27.08.2014. The parents of the victim girl/P.W.1, namely P.Ws.2 and 3 are also present in Court and they confirmed the marriage between P.W.1/victim girl and the appellant/accused, solemnised on 27.03.2014, and this aspect has been confirmed by the Police through the learned Additional Public Prosecutor.

8. It is also to be noticed that P.W.2, the mother of the victim girl/P.W.1 and the victim girl/P.W.1, have filed compromise affidavits on 04.08.2016 before this Court, inter-alia stating that the said marriage took place between the parties and they have decided to lead a peaceful matrimonial life and accordingly, P.Ws.1 and 2 prayed for release of the appellant/accused.

9. At this juncture, it has to be stated that the offences alleged against the appellant/accused under Sections 366-A and 376 IPC are not compoundable under Section 320 Cr.P.C., even though in this case, the appellant/accused has married the de-facto complainant/P.W.1 on 27.03.2014, in proof of which, a copy of the Marriage Certificate is also produced. Though there is an embargo for compounding the offences in this case, in view of the compromise entered into between the parties by marrying each other, which is a sensible step benefiting them and their future so as to avoid unnecessary dispute between them, thereby giving a quietus to the matter by rehabilitation so as to maintain cordial relationship between them by forgetting the past incident and having decided to lead a peaceful life, this Court, while taking into consideration the totality of the entire facts and circumstances of the case and also taking into

account their future, is of the view that while confirming the conviction imposed on the appellant by the trial Court, it would be appropriate to take a lenient view by modifying the sentence imposed on the appellant/accused to the one already undergone by him and the appellant/accused shall pay the fine amounts as ordered by the trial Court. As this Court has taken a lenient view, it is not necessary to delve into the above decisions of the Supreme Court relied on by the learned counsel for the appellant.

10. Since the appellant/accused has married the de-facto complainant/P.W.1, taking into account the submission made by the learned counsel for the appellant/accused that the sentence may be reduced to the one already undergone by him and also taking into account the compromise affidavits filed before this Court on 04.08.2016 by P.W.1/de-facto complainant and her mother (P.W.2) and since the appellant/accused is in jail till now, this Court, while partly allowing this appeal, confirms the conviction imposed on him by the trial Court and modifies the sentence to the period already undergone by him. However, the appellant/accused shall pay the total fine amount of Rs.20,000/- (Rupees twenty thousand only) as ordered by the trial Court, before his release from jail. On payment of the said fine amount, the appellant/accused shall be set at liberty forthwith, unless he is required in connection with any other case. The Miscellaneous Petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

cs

Copy to

1. The Sessions Judge, Mahila Court, Chennai.
2. The Public Prosecutor, High Court, Madras.
3. Inspector of Police,
E-3 Teynampet Police Station, Chennai.
(Crime No.1596/2011)

4. The Superintendent, Central Prison, Puzhal, Chennai.
 5. The Record Keeper, Criminal Section, High Court, Madras.
 - 6 The XVIII Metropolitan Magistrate,
Saidapet, Chennai
 - 7 -do- Thro The Chief Metropolitan Magistrate,
Egmore, Chennai
- +1 CC to M/s. G. Jermiaha, Advocate Sr.No.45094

Crl.A.No.608 of 2014

VD (CO)
MD : 03/10/2016



WEB COPY