

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.659 of 2014
and
M.P.No.1 of 2015

Karuppaiah ... Appellant/Accused

vs.

State, represented by
The Inspector of Police,
J-3, Guindy Police Station,
Law and Order,
Chennai-600 032 ... Respondent/Complainant
(Crime No.606 of 2013)

Criminal Appeal filed under Section 374 of Cr.P.C., against
the judgment dated 26.11.2014, passed by Mahila Sessions Court,
Chennai, in S.C.No.4 of 2014.

For appellant : Mr.Ganesh Rajan

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

JUDGMENT

The convictions and sentences, dated 26.11.2014,
passed in Sessions Case No.4 of 2014, by the Mahalir
Needhimandram, Chennai, are being challenged in the present
criminal appeal.

2. The case of the prosecution is that the victim girl
by name, Kokila, is a daughter of the defacto complainant, viz.,
Natarajan. The victim is a slight mentally retarded person.
The defacto complainant, at the time of occurrence, has lived in

a hut in Guindy along with his family members. On 20.05.2013, at about 4.00 p.m., the accused has entered into the hut of the defacto complainant and gagged the mouth of the victim by using his one hand and placed his other hand on the chest of the victim. After occurrence, the defacto complainant has given a complaint and the same has been registered in Crime No.606 of 2013.

3. On receipt of the complaint, the investigating officer, viz., P.W.9, has taken up investigation, examined connected witnesses and after completing investigation, laid a final report on the file of the IX Metropolitan Magistrate, Saidapet, Chennai and the same has been taken on file in P.R.C.No.118 of 2013.

4. The IX Metropolitan Magistrate, Saidapet, Chennai, 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, Chennai Division and the same has been taken on file in Sessions Case No.4 of 2014 and subsequently made over to the trial Court.

5. The trial Court, after hearing arguments of both sides and upon perusing the relevant documents, has framed a charge against the accused under Section 354 of the Indian Penal Code and also under Section 7 r/w. Section 8 of Protection of Children from Sexual Offence Act, 2012 and the same has 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 and Exhibits P.1 to P.7 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 have been let in 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 354 of the Indian Penal Code and sentenced him to undergo one year rigorous imprisonment and also imposed a fine of Rs.2000/- with usual default clause. The accused has also been found guilty under Section 8 of Protection of Children from Sexual Offence Act, 2012 and sentenced to under go five years rigorous imprisonment and also imposed a fine of Rs.5000/- with usual default clause. Against the convictions and sentences passed by the trial Court,

the present criminal appeal has been preferred, at the instance of the accused, as appellant.

9. The consistent case put forth on the side of the prosecution is that on 20.05.2013, at about 4.00 p.m., the accused has entered into the hut of the defacto complainant and suddenly gagged the mouth of the victim by using his one hand and placed his other hand on her chest. Under the said circumstances, the accused has committed offences punishable under Sections mentioned in the charge.

10. The prosecution has set the law in motion only on the basis of Ex.P1, complaint. The author of Ex.P1 has been examined as P.W.1 and other alleged eye witnesses as well as the victim have been examined as P.Ws.2 to 5. The trial Court, after considering their evidence, has invited convictions and sentences as mentioned in the judgment.

11. The learned counsel appearing for the appellant/accused has sparingly contended that the specific case of the prosecution is that the occurrence has taken place on 20.05.2013 at about 4.00 p.m. The defacto complainant has been examined as P.W.1 and during the course of chief-examination, he would say that on the date of occurrence, at about 5.00 p.m., he has gone to Police Station and reported the occurrence and one police constable has reduced the same into writing and he put his thumb impression. But during the course of cross-examination, he would say that on the next day he and Kaliamurthy and others have gone to police station and the said Kaliamurthy has written a complaint, wherein also he put his thumb impression. But the complaint alleged to have been given by P.W.1 on 20.05.2013 has been suppressed by the prosecution and since the earlier complaint alleged to have been given by P.W.1 has been suppressed, the evidence given by P.Ws.1 to 5 cannot be accepted and the trial Court, without considering the vital contradictions found in the case of the prosecution, has erroneously invited convictions and sentences against the appellant/accused and therefore, the convictions and sentences passed by the trial Court are liable to be set aside.

12. The learned Additional Public Prosecutor has contended that in the instant case, the occurrence has taken place on 20.05.2013, at about 4.00 p.m. and after occurrence, the defacto complainant has given Ex.P1, wherein it has been clearly stated about the overt acts alleged to have been committed by the accused. Further, P.Ws.1 to 5 have given cogent/trustworthy evidence for the purpose of proving the offences alleged to have been committed by the accused. The trial Court, after considering the evidence available on record,

has rightly invited convictions and sentences against the accused and the same are not liable to be interfered with.

13. For considering the rival submissions made on either side, the Court has to look into the evidence given by P.Ws.1 and 2. As stated earlier, the author of Ex.P1, complaint, has been examined as P.W.1 and even during the course of chief-examination, he would say that on the date of occurrence, at about 5.00 p.m., he has gone to police Station and reported the occurrence and the same has been reduced in writing by a constable, wherein he put his thumb impression. But during the course of cross-examination, he would say that on the next day, he and Kaliamurthy (P.W.2) have gone to police station and the said Kaliamurthy has written a complaint, wherein also he put his thumb impression.

14. It is an admitted fact that the occurrence has taken place on 20.05.2013, at about 4.00 p.m. It is equally an admitted fact that Ex.P1 has come into existence on 21.05.2013, wherein P.W.2 has put his signature as a witness. Since P.W.1 has given clear evidence even during the course of cross-examination to the effect that on the date of occurrence itself he has given an oral complaint and the same has been reduced in writing by a constable, wherein, he put his thumb impression and the same has not been marked on the side of the prosecution, therefore it is needless to say that the genesis of the case of the prosecution has been purposely suppressed. Further, it is not the evidence of P.W.1 that after occurrence, only on 21.5.2013, he has given a complaint with regard to occurrence. Therefore, the complaint alleged to have been given by P.W.1 on the date of occurrence at about 5.00 p.m., in the police station has been suppressed and since the same has been suppressed, the Court cannot give much utterance either to Ex.P1 or the evidence given by P.Ws.1 to 5.

15. The trial Court, without considering the vital contradictions found in the case of the prosecution and also without considering that the earlier complaint has been suppressed on the side of the prosecution, erroneously invited convictions and sentences against the appellant/accused. In view of the discussion made earlier, this Court has found considerable force in the contention put forth on the side of the appellant/accused and altogether the present criminal appeal is liable to be allowed.

In fine, this criminal appeal is allowed. The convictions and sentences passed by the trial Court under Sections 354 of the Indian Penal Code and under Section 8 of Protection of Children from Sexual Offence Act, 2012, are set

aside. The appellant/accused is acquitted. Fine amount, if any, paid by him is ordered to be refunded forthwith. Connected miscellaneous petition is closed.

sd/-
Assistant Registrar (Cs-IV)

/TRUE COPY/

Sub-Assistant Registrar

msk

To :

1. Mahila Sessions Court, Chennai

2. The Superintendent
Central Prison, Puzhal, Chennai

3. The Inspector of Police,
J-3, Guindy Police Station,
Law and Order,
Chennai-600 032

4. The Public Prosecutor,
High Court, Madras.

+1 CC to MR. Ganesh Rajan Advocate. SR.NO. 2522

Crl.A.No.659 of 2014

CO-BVR
JD 19/01/2016

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