

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2016

(Reserved on :18.10.2016 ; Pronounced on : 03 .11.2016)

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.467 of 2011

Murugesan @ Samy

..Appellant/ Accused

Vs.

State Rep by
Inspector of Police,
Karungalpalayam Police Station,
Karungalpalayam, Erode,
Erode District.
(Crime No.826 of 2009)

..Respondent /complainant

Prayer: Criminal Appeal filed to set aside the conviction and sentence passed by the II Additional Assistant Sessions Court, Erode made in S.C.No.128 of 2010 dated 22.11.2010.

For Appellant : Mr.T.M.Ramalingam

For Respondent : Mr.P.Govindarajan
(Additional Public Prosecutor)

J U D G M E N T

The Criminal Appeal arises against the Judgment dated 22.11.2010. in S.C.No.128 of 2010 passed by the learned Additional Assistant Sessions Judge, Erode.

2. The appellant herein is the accused in in S.C.No.128 of 2010 on the file of the learned Additional Assistant Sessions Judge, Erode. The Trial Court had framed the charges against the accused for the offences under Section 376 of IPC and sentenced him to undergo 10 years R.I., and pay a fine of Rs.1,000/- in default, to undergo 6 months simple imprisonment and also convicted the appellant under Section 506(ii) to undergo one year R.I., with a fine of Rs.500/-, in default, to undergo 3 months S.I., Challenging the said conviction and sentence, the appellant/accused is before this Court with the present Criminal Appeal.

3. The prosecution case, in brief, is that

the accused and PW1 are neighbours. On 26.12.2009, at about 10.00 a.m., the accused called the daughter of PW1, who is aged about 8 years at the time of occurrence, made her nude and committed the offence of rape and he had committed the same offence on her, for four times on different dates earlier to the above said occurrence. He has also threatened her with dire consequences. Thereafter, the PW1/father of the victim girl and husband of PW3, made a complaint in the Karungalpalayam Police Station. The Special-Sub-Inspector of Police, Karungalpalayam Police Station, received the complaint from PW1 on 26.12.2009 at 10.00 p.m., and registered the case in Cr.No.826 of 2009 for the offences u/s.376 and 506(ii) of IPC. He sent the FIR with original complaint to the Judicial Magistrate No.1,. Erode. Then, he placed a copy of the FIR and complaint to the Inspector of Police. Thereafter, the PW1/Inspector of Police, Karungalpalayam Police Station, took the case for further investigation and on 27.12.2009, at about 7.00 a.m., he proceeded to the place of occurrence where he prepared an Observation Mahazar and a rough sketch in the presence of the witnesses, PW5/Raman and another witness. On the same day, on an information, he arrested the accused in the presence of PW6/Marimuthu and another witnesses. Then, he recorded the confession statement. Based on the confession statement, he recovered the material objects from the accused. He examined the PW1 and recorded the statement and produced the victim before the learned Magistrate. Thereafter, he made arrangements to produce the accused and the victim girl before the Medical Officer for Medical Examination and recorded the statements from the witnesses. Further, he recorded the statement from the Medical Officer, who have examined the victim, the accused and also the Radiologist, who has examined the victim for assessing the age of the victim. He examined the Forensic expert and recorded their statements and also obtained certificates from the respective authorities. After completion of the investigation and getting opinion from the Government Advocate, he laid a charge sheet before the learned Magistrate on 29.03.2010 against the accused for the offences u/s. 376 and 506(ii) of IPC.

4. Based on the above materials, the Trial Court framed the charges against the accused for the offences u/s.376 and 506 (ii) IPC. When the accused was questioned about the charges, he denied the same. In order to prove the case of the prosecution, as many as 11 witnesses were examined and 23 documents were exhibited and also 4 materials objects were marked on the side of the prosecution.

5. Out of the said witnesses, PW1 is the father of the victim, who has spoken about the complaint given before the PW10/Special Sub-Inspector of Police, Karungalpalayam. PW2 is the victim girl, who was aged about 8 years at the time of occurrence and she is the eye witness and she has spoken about the entire occurrence. PW3 is the mother of the victim before whom PW2 has narrated all the facts of the occurrence. PWs.4 and 5 are neighbours and they have spoken about their presence when the victim girl narrated the occurrence before her mother PW3. PW5 is the Mahazar witness, who has spoken about the preparation of Mahazar by PW11. PW6 is the witness for the arrest of the accused by PW11. PW7 is the radiologist, who has spoken about the examination of the victim and gave the , Ex.P6 after assessing the age of the victim and PW8 is the Doctor/Priya, who examined the accused, has spoken about the medical test conducted to the accused. PW9 is Ms.Deepa, the Doctor, who examined the victim, has spoken about the medical examination conducted to the victim and injury sustained by her. PW.10 is the Special Sub-Inspector of Police, Karungalpalayam, who received the complaint and registered the FIR. PW.11 is the Inspector of Police, Karungalpalayam, who has spoken about the investigation done by him in this case and filed a final report.

6. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. However, he has chosen to examine one defence witness and marked one document.

7. Having considered the above facts, the Trial Court has convicted the accused for the offences u/s.376 and 506(ii) IPC. Aggrieved over the same, the accused/ appellant is before this court with this appeal.

8. Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent. I have also perused the available records carefully.

9. The learned counsel for the appellant would submit that there are certain contradictions between the witnesses that would make their evidence untenable. He would further submit that since the evidence of PW3, mother of the victim had a illegal intimacy, with the other person, the appellant warned her. Therefore, she has foisted the false case. The Trial Court has failed to accept the defense case and erroneously convicted the accused and the prosecution has failed to

investigate properly and the medical evidence also did not corroborate with the offence. Therefore, the benefit of doubt goes in favour of the accused and the accused is entitled to acquittal.

10. Learned Additional Public Prosecutor vehemently opposed the Appeal. PW2/the victim has clearly spoken about the entire occurrence which is duly corroborated with the medical evidence. The Radiologist, who has examined the victim has clearly stated that the age of the victim would be between 6 and 10 years, which clearly shows that she is a minor girl. PW9/Doctor, who has examined the victim girl and the certificate given by her duly corroborated with the evidence of the victim girl. Thus, according to the learned Additional Public Prosecutor, the conviction and sentence of the appellant does not require any interference at the hands of this Court.

11. I have considered the above submissions made by both the learned counsel. PW2 is the victim girl and the accused is the neighbour to her house. The accused son and daughter used to come to the victim girl's house and the victim also used to go to the accused house and the children are friends and they used to play together. The accused used to send the victim girl to the shop for getting cigarette and other things. She has also used to go and get the things for him. In that manner, one day when she was playing, the accused took the victim girl and went to his house and had sexual intercourse with her. He further threatened her that if she reveal the occurrence to anyone, he will kill her and throw her in the canal.

12. One day when she was not feeling well, the mother of the victim girl asked why she was inactive. She replied that she was having pain in the private part and hence, PW3 asked the victim girl to narrate what had happened. Then, mother of the victim told the occurrence to her husband/PW1 and thereafter, he gave a complaint before the Karungalpalayam Police Station. PW7 is the Radiologist who has spoken about the age of the victim girl that she is aged between 6 and 10 years. Ex.P6 is the certificate given by him. Even the birth certificate/Ex.P2 dated 07.11.2002 shows that the victim girl is a minor aged about 8 years. The evidence of PW9/Doctor Deepa examined the victim who has spoken about the fact there was a swelling in the private part of the victim. During the course of examination, she was asked about the occurrence and she told the fact that four times, the accused has committed the said act.

13. Now the question is as to what was the offence that the accused has committed in the said act. In this regard, it is relevant to refer the evidence of PWs.1, 2, 3, 7 and 9 which prove the fact that the victim is a minor girl and the accused is the one who has committed the offence. Considering the facts and circumstances of the case, this court finds that the accused has committed the offences u/s.376 and 506(ii) of IPC and the Trial Court also has correctly come to the conclusion that the accused only committed the offence under Section 376 of IPC and convicted the accused and sentenced him to undergo 10 years R.I., and pay a fine of Rs.1,000/- in default, to undergo for 6 months simple imprisonment and also convicted the appellant under Section 506(ii) and sentenced him to undergo one year R.I., and pay a fine of Rs.500/-, in default, to undergo 3 months S.I., There is no reason to set aside the conviction and sentence passed by the Trial Court against this accused .

14. Learned counsel for the appellant would submit that from the doctor's evidences (PW9), it is clearly proved that the hymen of the victim is intact and there was no external injury either on the part of the body of the victim or on the private part. The material sent for forensic examination proved that the semen was not deducted in the material objects. He further stated that due to the animosity between the accused and PW3, she made a false complaint before PW1 and in turn, PW1 has given a complaint in writing before the Karungalpalam against the accused. Therefore , the accused is entitled to acquittal under the score of benefit of doubt.

15. As far as the defence taken by the accused that due to enmity between the accused and PW3, they have given a false complaint against him, is concerned, this Court is not believing the same because specifically DW1 has not specifically stated that with whom PW3/mother of the victim girl had a illegal intimacy and also he has not named any of the persons. Simply he had stated that after PW1 goes to his job, some persons used to come to the house of PW1. The accused has not chosen to come to the box and also he has not examined his wife. Even though their houses are located in the same line and also several houses are located in the line, he has not examined any persons, except DW1 especially the female members residing in the line houses and the defense as taken by the accused has not been proved as known to law. Therefore, the contention of the defence counsel is not sustainable under law. Further, the learned counsel would submit that from the medical report, it is proved that the hymen of the victim is intact and no semen and other fluid found in the material objects. Therefore, the accused has not committed any offence

as alleged in the complaint and the prosecution has not proved the case. This Court not accept the contents raised by the defence counsel in this regard because it is a well settled proposition of law that to constitute the offence of rape, it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration within the labia majora of the vulva or pudendum with or without emission of semen is sufficient to constitute the offence of rape as defined in the law. The depth of penetration is immaterial in an offence punishable under Section 376 of IPC. It is therefore, quite possible to commit legally the offence of rape without producing any injury to the genitals or leaving any seminal stains".

16. Further, it is a settled legal proposition that once the statement of the prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. In this case, the victim girl, in her evidence, has clearly stated that the accused has committed the same act four times in different dates. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. Therefore, this Court has not found any valid reason either to disbelieve or reject the evidence of prosecutrix.

17. Considering the submissions made on either side and taking note of the fact that the offence committed by the accused/appellant is against the minor girl aged about 8 years which should not be taken lightly. Hence, this Court is not inclined to allow the appeal and consequently, the Criminal Appeal is dismissed and the judgment passed by the learned Additional Assistant Sessions Judge, Erode, is confirmed by the reasons assigned in this appeal.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

Gv

To

1.The II Additional Assistant
Sessions Judge
Erode

2. Thro The Principal Sessions Judge
Erode

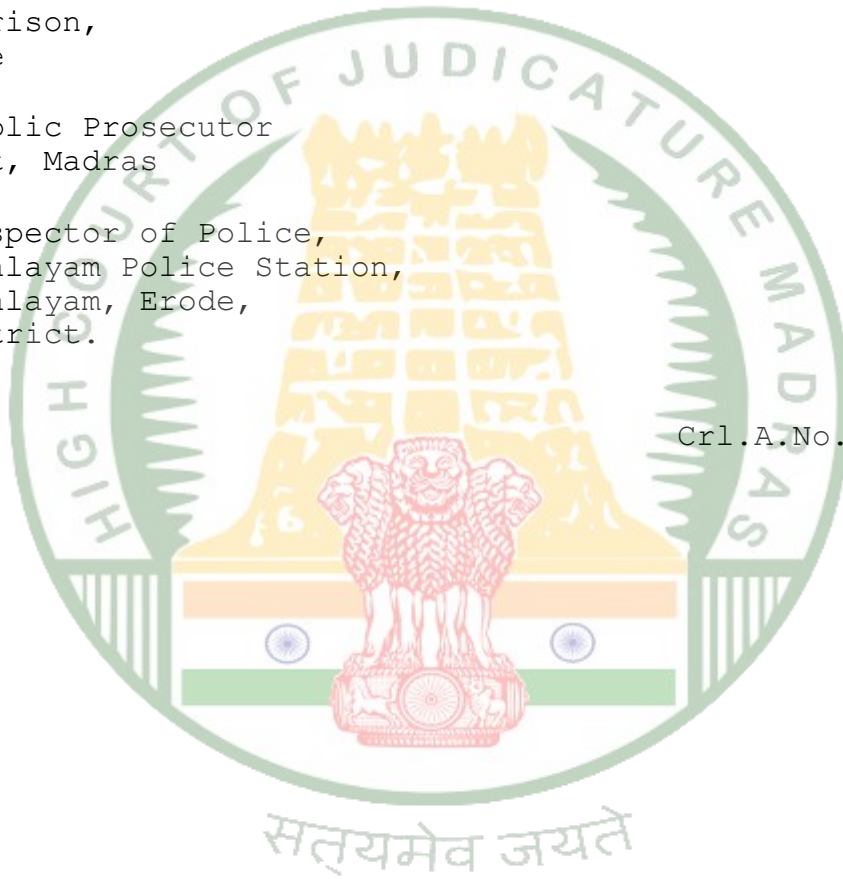
3. The Superintendent
Central Prison,
Coimbatore

4. The Public Prosecutor
High Court, Madras

5. The Inspector of Police,
Karungalpalayam Police Station,
Karungalpalayam, Erode,
Erode District.

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SAI (CO)
kk 25/11



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