

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2016

(Judgment reserved on 02.09.2016)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Cr1.A.No.279 of 2015

C.Murali

.. Appellant/Accused

Vs.

State by Inspector of Police,
All Women Police Station,
Avinashi, Tiruppur.
(Crime No.31 / 2010)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment, dated 18.08.2014 in S.C.No.19 of 2014 on the file of the Magalir Needhimandram, Fast Track Mahila Court, Tiruppur.

For appellant : Mr.R.Sankarasubbu for Mr.J.Franklin
For respondent : Mr.P.Govindarajan, Addl.P.P.

JUDGMENT

This Criminal Appeal is filed against the judgment dated 18.08.2014 in S.C.No.19 of 2014 on the file of the Magalir Needhimandram, Fast Track Mahila Court, Tiruppur, in and by which, the appellant/accused was convicted for the offence under Section 376 (1) IPC and sentenced to undergo seven years rigorous imprisonment and to pay fine of Rs.500/-, in default, to undergo one month simple imprisonment. The trial Court acquitted the appellant/accused of the charge under Section 366-A IPC.

2. The case of the prosecution leading to conviction of the appellant/accused is as follows:

On 31.08.2010, P.W.3 victim girl, studying IX standard, left the house for school at about 8.30 a.m. and on her way to the school, near Kunnathur Bus Stand, the appellant/accused forcibly kidnapped P.W.3 in Omni Van and took her to Kaliyamman Temple and forcibly married her. Thereafter, at about 10 p.m., the appellant/accused took her to his house at Thoppur and forcibly committed rape on her. Since P.W.3 victim girl who left the house for school, had neither attended the school, nor had returned home, her father, i.e. P.W.1, on hearing the same from the school teacher and students, lodged a complaint (Ex.P-2). The said complaint was received by the Sub-Inspector of Police - Yasodha, of All Women Police Station, Avinashi and a case in Crime No.31 of 2010 was registered as "girl missing". Ex.P-10 is the FIR. She forwarded a copy of the complaint/FIR to the concerned

Magistrate and also to P.W.10 Inspector of Police. Thereafter, P.W.10 Inspector of Police proceeded to the place of occurrence and examined the witnesses and recorded their statements. On 01.09.2010, P.W.10 enquired one Dhanabakiyam. On 02.09.2010, P.W.1 father of the victim girl, identified his daughter and the accused near Kunnathur Bus Stand. P.W.10 recorded the statement of P.W.3 victim girl. The accused and P.W.3 victim girl were brought to Police Station and the offence was altered into one under Sections 366 and 376 IPC. Ex.P-11 is the alteration report. On 02.09.2010 at about 6 p.m., P.W.10 arrested the appellant and recorded his confession statement in front of the witnesses and he was sent to judicial custody. P.W.10 recovered the material objects and recorded the statement of the other witnesses. P.W.10 sent the victim girl / P.W.3 for medical examination with Women Constable. As P.W.10 was subsequently transferred to another Police Station, she handed over the file to her successor-P.W.11. P.W.11 received the medical reports and recorded the statement of Doctors. After completing all formalities and after completing the investigation, P.W.11 filed charge-sheet before the trial Court, which was taken on file by the trial Court in S.C.No.19 of 2014. During the course of trial, on the side of prosecution, P.Ws.1 to 11 were examined, Exs.P-1 to P-12 were marked and M.Os.1 to 5 were 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 marked any document. Upon hearing the submissions of both sides and considering the oral and documentary evidence available on record, the appellant/accused was convicted and sentenced by the trial Court as stated above. Challenging the said conviction and sentence, the appellant/accused has filed this appeal.

3. Learned counsel for the appellant/accused submitted that when the trial Court acquitted the appellant/accused in respect of the offence under Section 366-A IPC, it ought to have acquitted him in respect of the offence under Section 376(1) IPC also. Learned counsel further submitted that P.W.5 Doctor who examined the appellant/accused, stated that no evidence could be found to show that the appellant/accused had sexual intercourse recently. But, according to the case of the prosecution, the appellant has committed rape without the consent of P.W.3 victim girl. Though P.W.6 Doctor who examined P.W.3 victim girl, stated in her evidence that there is symptom of sexual intercourse, but, there is no evidence to prove the same. Without considering all the above aspects, the trial Court convicted the appellant/accused. Learned counsel therefore prayed for allowing the appeal by acquitting the appellant/accused. In support of his submissions, learned counsel for the appellant/accused relied on the following decisions:

- (i) 2011 (13) SCC 705 (Baldev Singh Vs. State of Punjab);
- (ii) 2008 (12) SCC 33 (State of Punjab Vs. Rakesh Kumar);
- (iii) 2011 (1) MWN (Cr.) 618 (SC) (Alamelu Vs. State) and
- (iv) 2015 (4) SCC 491 (Ravindra Vs. State of M.P).

4. Countering the above submissions, learned Additional Public Prosecutor appearing for the respondent-Police submitted that it is incorrect to state that the medical report states that there is no symptom of sexual intercourse. In fact, P.W.6 Doctor who examined P.W.3 victim girl, stated in her chief examination that there is symptom to show that P.W.3 had sexual intercourse. Learned Additional Public Prosecutor further submitted that the prosecution has proved its case by cogent and convincing evidence, and there is no compelling circumstance warranting this Court to interfere with the impugned judgment of the trial Court. Hence, he prayed for dismissing the appeal.

5. Keeping in mind the above submissions made on either side, I have carefully considered the same and perused the materials available on record.

6. The only submission made by the learned counsel for the appellant/accused is that P.W.5 Doctor who has examined the appellant, stated that there is no symptom of recent sexual intercourse. But, on a perusal of the evidence of P.W.5 Doctor, it could be seen that the appellant was examined only on 27.09.2010, i.e. after 26 days from the date of the offence committed by the appellant. Further, P.W.6 Doctor has categorically stated in chief examination that she found symptom in the victim girl that she had sexual intercourse. But however, I am of the opinion that the evidence of P.W.3 victim girl, who was aged about 13 years, itself shows that the appellant took her to his house and committed the act of rape on her. Irrespective of the medical evidence, I am of the opinion that the evidence of P.W.3 victim girl, inspires the confidence of this Court. Further, she was only 13 years at the time of commission of the offence. Therefore, irrespective of the medical evidence, the evidence of P.W.3 itself is sufficient to convict the appellant/accused, more particularly, when the evidence of P.W.3 was not shattered in her cross-examination.

7. Moreover, if the medical evidence and oral evidence are contradicting/conflicting with each other, only the oral evidence will prevail over the medical evidence. In this context, it is useful to refer a decision of this Court reported in 2015 (2) LW (Cr1) 368 (in Cr1.A.No.459 of 2008, dated 10.07.2015) (Periyasamy and another Vs. State, rep. by DSP), wherein, it was held when there is conflict between the oral evidence and the medical evidence, the oral evidence will prevail; medical evidence has been pressed into service in a criminal case for the purpose of corroboration; medical evidence cannot be elevated to the status of a substantive piece of evidence and as a corroborative piece, medical evidence has been introduced to test the veracity of oral evidence.

8. Yet another submission made by the learned counsel for the appellant is that when the trial Court acquitted the

appellant/accused in respect of the offence under Section 366-A IPC, it ought to have acquitted him under Section 376(1) IPC also. But, this Court is not inclined to accept the said submission, since, from the evidence of P.W.3 victim girl, it is clear that she was forcibly taken away. Therefore, since the trial Court acquitted the appellant/accused in respect of the offence under Section 366-A IPC, it does not mean that the offence under Section 376(1) is not made out or proved. Hence, I do not find any valid reason to interfere with the impugned judgment of the trial Court and the conviction and sentence imposed on the appellant/accused by the trial Court is liable to be confirmed.

9. Learned counsel for the appellant/accused made an alternative plea for reduction of the sentence imposed on the appellant/accused. But, this Court is of the opinion that there is no special reason for reducing the period of sentence of imprisonment, more particularly, when Section 376(1) IPC prescribes the minimum period of seven years imprisonment. Further, in this case, the age of the victim girl / P.W.3 was 13 years at the time of commission of offence.

10. In the above view taken by this Court, it is not necessary to dwell into the decisions relied on by the learned counsel for the appellant/accused.

11. For the reasons stated above, the appeal is dismissed, confirming the conviction and sentence imposed on the appellant/accused.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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1. The Sessions Judge,
Mahila Court, Fast Track Court, Tiruppur.

2. The Inspector of Police,
All Women Police Station,
Avinashi, Tiruppur.
(Crime No.31 / 2010)

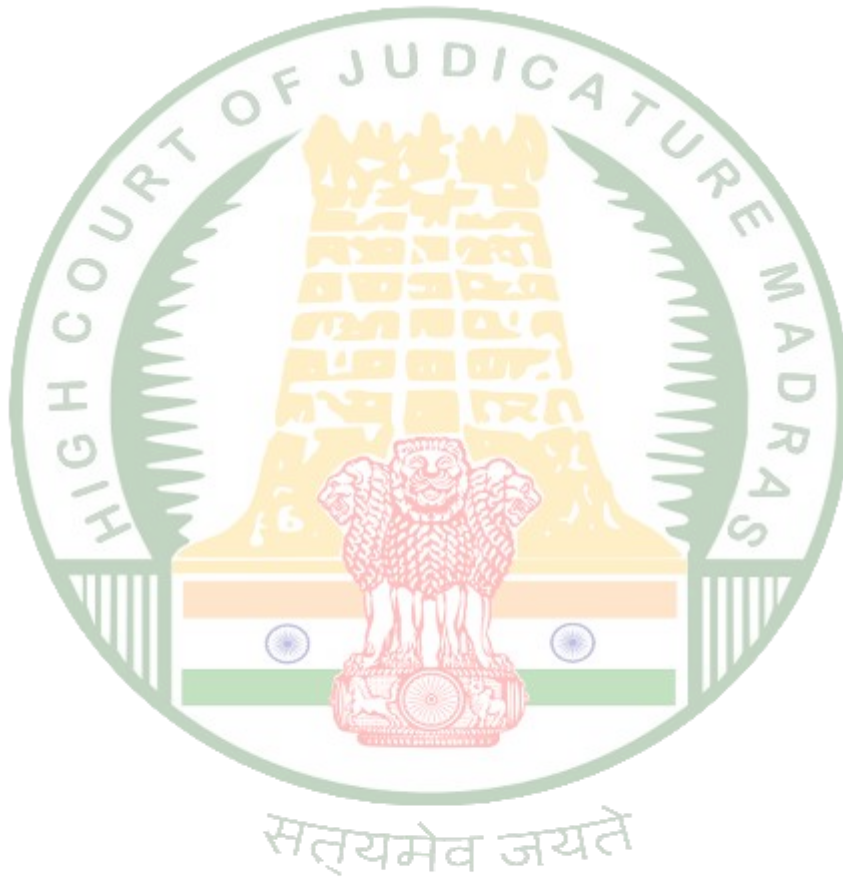
3. The Public Prosecutor, High Court, Madras.

+1 CC to M/S.J.Franklin, Advocate Sr.52607

CO-CTR

ths : 18.10.2016

Judgment in
Crl.A.No.279 of 2015



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