

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.318 of 2015
and
M.P.No.1 of 2015

Gowthaman Appellant/Sigle Accused

vs.

State, represented by
The Inspector of Police,
G-7, Chetpet Police Station,
Chennai-600 031 Respondent/Complainant

(Crime No.727/2013)

Criminal Appeal filed under Section 374(2) of Cr.P.C.,
against the judgment dated 29.04.2015, passed by the Mahila
Sessions Judge, Chennai, in S.C.No.153 of 2014.

For appellant : Mr.K.L.Sekar

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

JUDGMENT

Challenge in this criminal appeal is to the conviction
and sentence dated 29.4.2015, passed in Sessions Case No.153 of
2014, by Mahalir Needhimandram, Chennai.

2. The nubble of the case of the prosecution is that
the victim is one of the daughters of the defacto complainant
and at the time of occurrence, she is aged about 16. The
accused is an uncle of the victim. Both the accused and his
wife, by name, Valarmathi, are residing in a house bearing Door
No.14/13, Jaganathapuram 3rd Street, Chetpet, Chennai-31. On
5.5.2013, at about 10.00 a.m., while the wife of the accused has
gone out from the house, he asked the victim to come to his
house for the purpose of washing clothes and accordingly, the
victim has gone there, after finishing work, the accused has
threatened the victim and has had sexual intercourse with her.
On 12.5.2013 and 26.5.2013, the accused has continued sexual

intercourse with victim and due to that she has become pregnant. After occurrence, the mother of the victim, as defacto complainant, has given a complaint and the same has been registered in Crime No.727 of 2013.

3. On receipt of the complaint, the investigating officer, viz., P.W.16, has taken up investigation, examined connected witnesses and also made arrangements for conducting medical examination both to the accused and victim. After completing investigation, has laid a final report on the file of the trial Court and the same has been taken on file in Sessions Case no.153 of 2014.

4. The trial Court, after hearing arguments of both sides and upon perusing the relevant records, has framed first charge against the accused under Sections 376 of the Indian Penal Code r/w. Section 6 of Protection of Children from Sexual Offence Act, 2012; second charge against him under Section 506 (ii) of the Indian Penal Code and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

5. On the side of the prosecution, P.Ws.1 to 16 have been examined and Exhibits P1 to P16 have been marked.

6. 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 adduced on the side of the accused.

7. The trial court, after hearing arguments of both sides and after pondering the available evidence on record, has found the accused guilty under Section 6 of Protection of Children from Sexual Offences Act, 2012 and sentenced him to undergo ten years rigorous imprisonment and also imposed a fine of Rs.5000/- with usual default clause. Against the conviction and sentence passed by the trial Court, the present criminal appeal has been preferred, at the instance of the accused, as appellant.

8. The crux of the case of the prosecution is that the victim is related to the accused. On 5.5.2013, while the wife of the accused has left house, the accused has directed the victim to come to his house for washing clothes and accordingly she has gone there, after finishing work, the accused has threatened her and subsequently has had coition with her. The further case of the prosecution is that on 12.5.2013 and 26.5.2013, the accused has committed the same act and due to

that, the victim has become pregnant.

9. On the side of the prosecution, the victim has been examined as P.W.2 and the Doctor, who examined her, has deposed evidence as P.W.12 and marked Ex.P9. The Doctor, who examined the accused has been examined as P.W.13 and marked Ex.P10. The trial Court, after considering the evidence of vital witnesses in the present case, has invited conviction and sentence against the appellant/accused.

10. The learned counsel appearing for the appellant/accused has contended that the initial occurrence has taken place on 5.5.2013, whereas, Ex.P1, complaint, has been given after a lapse of six months. The prosecuting agency has not followed Sections 19 and 24 of the Protection of Children from Sexual Offences Act, 2012. The trial Court has failed to consider the evidence given by P.Ws.1 and 2 during the course of cross-examination and also failed to consider the vital contradictions in giving complaint in the police station and further, the trial Court has erroneously drawn presumption available under Section 29 of the said Act. Under the said circumstances, the conviction and sentence passed by the trial Court are not factually and legally sustainable and the same are liable to be set aside.

11. As a repartee to the contention put forth on the side of the appellant/accused, the learned Additional Public Prosecutor has contended that in a case like this, the evidence of prosecutrix (victim) must be looked into meticulously and in the instant case, the concerned victim has been examined as P.W.2 and during the course of chief-examination, she narrated the entire episodes taken place on 5.5.2013, 12.5.2013 and 26.5.2013 and further, her evidence has been corroborated by medical evidence and the trial Court, after considering the evidence available on the side of the prosecution, has rightly invited conviction and sentence against the appellant/accused under Section 6 of Protection of Children from Sexual Offences Act, 2012 and the same are not liable to be interfered with.

12. It is an admitted fact that the accused is an uncle of the victim (P.W.2). The specific case of the prosecution is that on three occasions, the accused has had carnal copulation with the victim by way of threatening her.

13. The specific contention of the prosecution is that at the time of occurrence, the victim (P.W.2) has attained only 16 years of age and for the purpose of proving the same, Ex.P3, birth certificate, has been filed. Considering the fact that on the side of the prosecution, it has been clinchingly established

to the effect that at the time of occurrence, the victim has just attained 16 years of age and also considering that the specific case of the prosecution is that she has been raped on three occasions by the accused, the Court has to carefully and also dispassionately analyse the evidence given by her.

14. In fact, this Court has perused the entire evidence given by P.W.2 in chief-examination, wherein, she has clearly stated that on three occasions, due to compulsion, the accused has had sexual intercourse with her. After occurrence, P.W.2 has been subjected to medical examination by P.W.12, Doctor Hemalatha. After having thorough examination, P.W.12 has opined that P.W.2 has been subjected to sexual intercourse and she is also having pregnancy and to that effect, she has filed Ex.P9. Therefore, from the evidence given by P.W.2, coupled with the evidence given by P.W.12 and Ex.P9, there is no incertitude in coming to a conclusion that P.W.2 has been subjected to sexual intercourse.

15. The specific evidence given by P.W.2 is that on three occasions, the accused has had coitus with her.

16. The learned counsel appearing for the appellant/accused has endeavoured to set aside the conviction and sentence passed by the trial Court by way of raising the points mentioned supra.

17. The first and foremost point raised on the side of the appellant/accused is that initial occurrence has taken place on 5.5.2013 and after a lapse of six months, Ex.P1, complaint, has come into existence. It is a settled principle of law that in a case like this, delay in lodging the complaint would not militate the case of the prosecution, provided, the prosecution has adduced unimpeachable evidence with regard to charges framed against the accused. Therefore, the first and foremost contention put forth on the side of the appellant/accused is sans merit.

18. The second contention put forth on the side of the appellant/accused is that the investigating officer has not followed the provisions of Sections 19(6), 24 and Section 27(3) of Protection of Children from Sexual Offences Act, 2012.

19. It is an admitted fact that certain guidelines have been given in the Act itself to Investigating Agency. Simply because the said guidelines have not been followed by the investigating agency, the Court cannot come to a conclusion that the entire case of the prosecution is false. It is also equally a settled principle of law that a faulty investigation would not

be a ground to militate the entire case of the prosecution.

20. The third contention put forth on the side of the appellant/accused is that during the course of cross-examination, both P.Ws.1 and 2 have given clear evidence in favour of the accused and the trial Court has failed to consider the same.

21. It is seen from the records that both P.Ws.1 and 2 have been examined in chief on 22.7.2014 and after a lapse of one month, they have been recalled and cross-examined on 27.8.2014. In fact, P.W.1 has stated in her evidence that after going to police station, she has simply given a police complaint and she does not know what has been written in it. Likewise, P.W.2, the victim girl, has stated in her cross-examination to the effect that only due to compulsion made by P.W.1, she stated the name of the accused.

22. It has already been pointed out that P.W.2, victim girl, has given picturesque evidence in chief examination, with regard to occurrences which have taken place on 5.5.2013, 12.15.2013 and 26.5.2013.

23. As stated earlier, after a lapse of one month, both P.Ws.1 and 2 have been recalled and cross-examined.

24. It is a settled principle of law that if any witness has been cross-examined after lapse of time, the materials found in the cross-examination can easily be eschewed. In the instant case, as animadverted to earlier, after a lapse of one month, both P.Ws.1 and 2 have been recalled and cross-examined. Therefore, the evidence given by them during the course of cross-examination cannot be taken into consideration. Further, no motive has been suggested to P.W.1. Therefore, the said contention put forth on the side of the appellant/accused cannot be accepted.

25. It is true that some flimsy contradictions are available in the evidence of P.W.1 in giving Ex.P1, complaint, and the same are nothing but a nugae and the same cannot be a basis for rejecting the case of the prosecution.

26. Even at the risk of repetition, the Court would like to point out that motive has not been established between the families of P.W.1 and accused. Further, P.W.2, the victim, has given clear evidence to the effect that on three occasions, the accused has had sexual intercourse with her and the evidence of P.W.2 has been clearly corroborated by way of examining P.W.12, Dr.Hemalatha and also filing Ex.P9. Therefore, it is

needless to say that on the side of the prosecution, unimpeachable evidence is available for the purpose of proving that on three occasions, the accused has had carnal copulation with P.W.2, victim.

27. The trial Court, after considering the replete evidence available on record, has rightly found the accused guilty under Section 6 of Protection of Children from Sexual Offences Act, 2012. In view of foregoing enunciation of both factual and legal aspects, this Court has not found any acceptable force in the contentions put forth on the side of the appellant/accused and altogether, the present Criminal Appeal deserves to be dismissed.

In fine, this criminal appeal is dismissed. The conviction and sentence passed by the trial Court in Sessions Case No.153 of 2014, are confirmed. Connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

msk

To :

1. The Mahila Sessions Judge, Chennai

2. The Inspector of Police,
G-7, Chetpet Police Station,
Chennai-600 031

3.The Public Prosecutor,
High Court, Madras.

4.The Superintendent,
Central Prison, Puzhal, Chennai.

+1 cc to Mr.K.L.Sekar, Advocate, sr.2907

sv co, kra 08.02.2016

CrI.A.No.318 of 2015