

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.404 of 2015
&M.P.No.1 of 2015

Paramasivam

... Appellant/Single Accused

vs.

State rep.by
The Inspector of Police
All Women Police Station
Tiruppur

... Respondent/Complainant

Criminal Appeal filed under Section 374 of Cr.P.C., against the judgment made in S.C.No.47 of 2012 dated 12.09.2014 on the file of the Mahila Court-Fast Track Court, Tiruppur District.

For appellant : Mr.S.N.Arun kumar

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

JUDGMENT

Challenge in this Criminal Appeal is to the convictions and sentences dated 12.09.2014 passed in Sessions Case NO.47 of 2012 by the Mahila Court (Fast Track Mahila Court), Tiruppur.

2. The case of the prosecution is that the accused by name Paramasivam, S/o.Subramanian, is the Junior Paternal Uncle of mother of the prosecutrix. At the time of the occurrence, the prosecutrix has attained only 14 years of age. The prosecutrix and her mother have resided in Door No.2/85, Kamatchiammankovil Street, Tiruppur. On 20.7.2009 at about 2 p.m., with an intention to rape the prosecutrix, the accused has trespassed into her house and subsequently locked the house inside. Since the prosecutrix has raised objection, the accused has attacked her and thereby caused simple injuries on her person and thereafter he deflowered her. The accused has threatened the prosecutrix not to divulge the same to anybody and subsequently, on three occasions, he committed rape on the prosecutrix and due

to that, she has become pregnant and subsequently made her to abort the same. After occurrence, on 19.01.2010, the prosecutrix has given a complaint and the same has been registered in Crime No.5 of 2010.

3. On receipt of the complaint, the Investigating Officer, viz., P.W.17, has taken up investigation, examined connected witnesses and made arrangements to conduct medical examination to the prosecutrix and accused and accordingly Dr.Barathi (P.W.11) has conducted potential test to the accused and marked Ex.P.8. Likewise, Dr.Gomathi (P.W.13) has examined the prosecutrix and marked Ex.P.10. After completing investigation, the Investigating Officer has laid a final report on the file of Judicial Magistrate Court No.1, Tiruppur and the same has been taken on file in P.R.C.No.3 of 2010.

4. The Judicial Magistrate No.1, Tiruppur, 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, Tiruppur and the same has been taken on file in Sessions Case No.47 of 2012 and subsequently made over to the trial court.

5. The trial court, after hearing arguments of both sides and upon perusing relevant records has framed first charge against the accused under Section 450, second charge against him under section 342, third charge against him under section 323, fourth charge against him under section 376(1), fifth charge against him under section 506(ii) and sixth charge against him under section 312 of 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.

6. On the side of the prosecution, P.Ws.1 to 17 have been examined and Exhibits P.1 to 15 have been marked.

7. When the accused has been questioned under Section 313 of the Criminal Procedure Code, 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.

8. The trial court, after hearing arguments of both sides and upon perusing relevant evidence available on record has found the accused guilty under Section 450 of IPC and sentenced him to undergo 7 years Rigorous Imprisonment and also imposed a fine of Rs.5,000/- with usual default clause. Further, he has been found guilty under Section 376(1) of IPC and sentenced to

undergo 7 years Rigorous Imprisonment and also imposed a fine of Rs.10,000/- with usual default clause. Further, he has been found guilty under Section 342 of IPC and sentenced to undergo 1 year Rigorous Imprisonment. Further he has been found guilty under Section 312 of IPC and sentenced to undergo 7 years Rigorous Imprisonment and also imposed a fine of Rs.5,000/- with usual default clause. Against the convictions and sentences passed by the trial court, the present Criminal Appeal has been filed at the instance of the accused as appellant.

9. The consistent case of the prosecution is that the accused is the junior paternal uncle of mother of the prosecutrix. At the time of the occurrence, she has attained only 14 years of age. Both the prosecutrix and her mother have resided in Door No.2/85, Kamatchiammankovil Street, Tiruppur. On 20.7.2009 at about 2 p.m., with an intention to deflower the prosecutrix, the accused has trespassed into her house and locked the same inside. Since the prosecutrix has raised objection, the accused has attacked her and subsequently deflowered her. Further, the case of the prosecution is that after occurrence, the accused has threatened the prosecutrix not to divulge the same to anybody and thereafter, the accused has raped the prosecutrix and due to his overtacts, the prosecutrix, has become pregnant and subsequently caused miscarriage.

10. The prosecutrix has been examined as P.W.1 and her parents have been examined as P.Ws.2 and 3 and neighbours and other relatives have been examined as P.Ws.4, 6, 7 and 8. The concerned Doctors have been examined as P.Ws.9 to 11 and 13 and they filed relevant documents for the purpose of saying that the prosecutrix has been subjected to sexual intercourse and the accused has had necessary potent at the time of the occurrence. The trial court, after considering the evidence adduced on the side of the prosecution, has invited convictions and sentences against the appellant/accused as noted down earlier.

11. The learned counsel appearing for the appellant/accused has raised the following points to set aside the convictions and sentences passed against the appellant/accused.

(A) The first occurrence has taken place on 20.7.2009, whereas the Complaint, Ex.P.1 has been given by the prosecutrix on 19.01.2010 and no explanation has been given on the side of the prosecution for delay.

(B) The prosecutrix has been examined by P.W.10 and she reported that she has attained 15 years of age and no proper explanation has been given on the side of the prosecution with regard to her age.

(C) The prosecutrix has had love with one Raja and due to that, she has become pregnant and the accused has had no

connection whatsoever with her and he has been falsely implicated.

12. Per contra, the learned Additional Public Prosecutor has contended that in the instant case, the prosecutrix, has been examined as P.W.1 and in fact, she narrated entire occurrences apart from the overtacts committed by the accused. Further, she has been medically examined by Dr.Gomathi (P.W.13) and after making examination, the Doctor has given Ex.P.10. Further, Dr.Veena (P.W.10) has caused abortion to the prosecutrix and marked Ex.P.5 and the trial court, after considering the evidence on the side of the prosecution, has found the accused guilty under the sections mentioned in the judgment and therefore, the convictions and sentences passed by the trial court are not liable to be interfered with.

13. It is an admitted fact that the accused is a junior paternal uncle of mother of the prosecutrix. The specific case of the prosecution is that at the time of occurrence, the prosecutrix has attained only 14 years of age and on 20.07.2009 with an intention to rape her, the accused has trespassed into her house and subsequently raped her and thereafter, on threat, he raped her and due to that, she has become pregnant.

14. The prosecutrix, as P.W.1, has clearly deposed to the effect that on 20.7.2009, the accused has trespassed into her house and by using threat, he deflowered her and due to that she has become pregnant. The evidence given by P.W.1, prosecutrix has to be analyzed with the evidence available in the present case. The Doctor, who medically examine the prosecutrix, has deposed evidence as P.W.13 and her specific evidence is that at the time of examination, the prosecutrix is having 18 weeks pregnancy. The Doctor, who caused abortion to the prosecutrix, has deposed evidence as P.W.10 and her specific evidence is that she caused abortion to the prosecutrix and to that extent, she filed Ex.P.5.

15. Considering the sole testimony of P.W.1, the prosecutrix, coupled with medical evidence as mentioned supra, the Court can very well come to a conclusion that the prosecutrix has been subjected to sexual intercourse by the accused. Further, for the purpose of proving the age of the prosecutrix, at the time of the occurrence, role of P.W.9, viz., Dr.Saroja has been utilized and her specific evidence is that at the time of her examination, the prosecutrix has attained only 14 years of age and to that extent, she filed Ex.P.4, Radiologist Report.

16. The first and foremost contention put forth on the side of the appellant/accused is that even though the first occurrence has taken place on 20.7.2009, the prosecutrix has given Ex.P.1 Complaint on 19.01.2010 and no explanation has been given on the side of the prosecution.

17. It is true that the first occurrence has taken place on 20.7.2009, whereas Ex.P.1 Complaint has come into existence on 19.01.2010. At this juncture, the evidence of P.W.10 has to be looked into. The specific evidence of P.W.10 is that she examined the prosecutrix on 5.1.2010 and found that she is pregnant. Considering the fact that pregnancy of the prosecutrix has been ascertained on 5.1.2010, it is needless to say that there is no inordinate delay in giving Ex.P.1 Complaint. Even assuming without conceding that there is an inordinate delay in giving Ex.P.1, such a delay would not affect the case of the prosecution. Therefore, the first and foremost contention put forth on the side of the appellant/accused cannot be accepted.

18. The second contention put forth on the side of the appellant/accused is that at the time of examination of P.W.10, the prosecutrix has reported her that she has attained only 15 years of age.

19. The specific case of the prosecution is that on the date of the occurrence, the prosecutrix has attained only 14 years of age and in order to encrust the same, P.W.9 has given clear evidence to the effect that she conducted Radiology Test to the prosecutrix and ultimately found that she has attained only 14 years of age. Therefore, the second contention put forth on the side of the appellant/accused is useless and the same cannot be accepted.

20. The third contention put forth on the side of the appellant/accused is that prior to occurrence, the prosecutrix has had love with one Raja and both of them had coition and due to that, she has become pregnant and the accused has no connection whatsoever with the alleged offences.

21. In fact, this Court has perused the entire evidence adduced by P.W.1 and even a suggestion has not been put to her with regard to motive and further she has given clear evidence that the said Raja is a son of her aunt and even after knowing the occurrence, he married her. Since no motive has been existed or established on the side of the defence, since the prosecutrix has given proper evidence with regard to said Raja, the third contention put forth on the side of the appellant/accused also goes out without merit.

22. As noted earlier, in the instant case, the prosecutrix has given clear and picturesque evidence to the effect that on 20.7.2009, the accused has deflowered her and also threatened her not to divulge the same to anybody and subsequently on three occasions, he has committed rape on her. Further, on the side of the prosecution, it is clearly established to the effect that due to overtacts committed by the accused, the prosecutrix has become pregnant and subsequently aborted the same. Since on the side of the prosecution, replete evidence is available for the purpose of proving the offences punishable under sections, 450, 376 (1), 342 and 312 of Indian Penal Code, this Court is of the considered view that there is no inkling for coming to a conclusion that the accused is nothing but an innocent.

23. The trial court, after considering the evidence available on record, has rightly found the accused guilty under the said sections. In view of the discussions made earlier, 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 convictions and sentences passed against the appellant/accused in Sessions Case No.47 of 2012 by the trial court are confirmed. Consequently, the Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

ajr

To :

1. The Mahila Court-Fast Track Court,
Tiruppur District.
2. The Inspector of Police
All Women Police Station
Tiruppur
3. The Public Prosecutor, High Court, Chennai

+1 cc to M/s.S.N.Arunkumar, Advocate, sr.5255

Crl.A.No.404 of 2015

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kra 10.02.2016