

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.808 of 2010

Suresh

... Appellant/Accused

vs.

State Rep. By its  
Inspector of Police,  
Panruti Police Station  
Panruti (crime No.468 of 2009)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C.,  
against the judgment made in S.C.No.261 of 2010 dated 8.12.2010  
on the file of the District Mahila Sessions Judge, Cuddalore.

For appellant : Mr.S.Saravanakumar  
For Respondent : Mr.P.Govindarajan,  
Additional Public Prosecutor.

JUDGMENT

The conviction and sentence dated 8.12.2010 passed in  
Sessions Case No.261 of 2010 by the Mahila Neethimandram,  
Cuddalore are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that the prosecutrix is a  
daughter of the defacto complainant by name Meerajothi. On the  
date of the occurrence, the prosecutrix has studied in III  
Standard. On 25.8.2009 at about 6.30 p.m., the prosecutrix and  
some other children have played in a street and at that time,  
the accused has called the prosecutrix by way of saying that he  
is having a doll. The prosecutrix has gone to the place of  
occurrence and the accused has placed her on a quilt and  
subsequently deflowered her. After occurrence, the mother of  
the prosecutrix, viz., Meerajothi has given a complaint and the  
same has been registered in Crime No.468 of 2009.

3. On receipt of the complaint, the Investigating Officer,  
viz., P.W.9, has taken up investigation, examined connected  
witnesses and also made arrangements to conduct medical  
examination to both the prosecutrix and accused. After  
completing investigation, laid a final report on the file of  
Judicial Magistrate NO.1, Panruti and the same has been taken on  
file in P.R.C.No.29 of 2010.

4. The Judicial Magistrate NO.1, Panruti, after considering the facts that the offence alleged to have been committed by the accused is triable by Sessions Court, has committed the case to the court of Sessions, Cuddalore Division and the same has been taken on file in Sessions Case No.261 of 2010 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 a charge against the accused under Section 376 (2)(f) of Indian Penal Code and the same has been read over and explained to him. The accused has denied the charge 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.10 and Material Objects 1 to 4 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 376(2)(f) of the IPC and sentenced him to undergo 10 years Rigorous Imprisonment and also imposed a fine of Rs.1,000/- with usual default clause. Against the conviction and sentence passed by the trial court, the present Criminal Appeal has been filed at the instance of the accused as appellant.

9. The sum and substance of the case of the prosecution is that on 25.8.2009 at about 6.30 p.m., the prosecutrix has played along with some other children and at that time, the accused has called her by way of saying that he is having a doll and believing the words of the accused, the prosecutrix has gone to the place of the accused and all of a sudden, he placed her on a quilt and deflowered her.

10. The prosecution has set the law in motion only on the basis of Ex.P.1, Complaint alleged to have been given by mother of the prosecutrix, viz., P.W.1. In Ex.P.1, it has been clearly stated about the occurrence. The prosecutrix has been examined as P.W.2 and the Doctor, who examined the prosecutrix has adduced evidence as P.W.3 and marked Ex.P.2. The trial court, after considering the materials found in Exs.P.1 and P.2 coupled with the evidence given by P.Ws.2 and 3, has found the accused guilty under section 376(2)(f) of Indian Penal Code and awarded sentence as mentioned in the judgment.

11. The learned counsel appearing for the appellant/accused has raised the following points so as to set aside the conviction and sentence passed by the trial court:

(i) The prosecutrix has been examined as P.W.2 and during the course of cross-examination, she has candidly admitted to the effect that she deposed evidence as per direction of her uncle, but the trial court has failed to look into the same.

(ii) The prosecutrix has been examined by Dr.Kanagalakshmi (P.W.3) and her specific evidence is that no evidence is found place on the person of the prosecutrix for coming to a conclusion that she has been raped, but the trial court, without considering the evidence given by P.W.3, has erroneously found the accused guilty under section 376(2)(f) of IPC.

(iii) The Material Object Nos.3 and 4 have been subjected to chemical examination, but the chemical report has not been received.

(iv) The specific case of the prosecution is that persons, namely Maheswari and Kaliyamoorthy have also witnessed the occurrence, but for the reasons best known to the prosecution, they have not been examined as witnesses on the side of the prosecution.

(v) The trial court has passed its judgment on 8.12.2010 and from the date of judgment, for the past 5 years, the accused is in duress and further due to his family circumstances, some leniency may be shown in awarding sentence.

12. In order to sustain the conviction and sentence passed by the trial court, the learned Additional Public Prosecutor has contended that in a case like this, the evidence of prosecutrix (victim) is very much essential and at the time of the occurrence, the prosecutrix has attained only 8 years of age and she has been examined as P.W.2 and her specific evidence is that in the place of occurrence, the accused has deflowered her and after occurrence, she has been medically examined by P.W.3 and she filed Ex.P.2, wherein it has been clearly mentioned that hymen is totally absence. Further, in Ex.P.2, it is mentioned that prosecutrix has sustained some injuries in her private part and the trial court, after considering the trustworthy testimony of P.W.2, coupled with evidence of P.W.3 and other documents, has rightly invited conviction and sentence against the appellant/accused and therefore, the conviction and sentence passed by the trial court do not warrant interference.

13. On the basis of divergent submissions made on either side, the Court has to carefully and also dispassionately analyze the evidence given by P.W.2, prosecutrix (victim).

14. The specific case of the prosecution is that on the date of occurrence, in the place of occurrence, the accused has deflowered prosecutrix (victim). The said prosecutrix has been examined as P.W.2 and her specific evidence is that prior to

occurrence, she and other children have played in a Street and at that time, the accused has called her by way of saying that he is having a doll and by way of believing his words, she has gone to the place of occurrence and all of a sudden, she has been placed on a quilt and subsequently deflowered her. After occurrence, the prosecutrix , viz., P.W.2 has been medically examined by P.W.3, who filed Ex.P.2. In Ex.P.2, it has been clearly mentioned that hymen of the prosecutrix is totally absence and further in her private part, some injuries are found.

15. Considering the evidence given by the prosecutrix (P.W.2) coupled with evidence given by P.W.3, the concerned Doctor, the Court can easily come to a conclusion that the prosecutrix has been deflowered.

16. The first and foremost argument advanced on the side of the appellant/accused is that during the course of cross-examination, P.W.2, prosecutrix has clearly admitted to the effect that she deposed evidence as per direction of her uncle.

17. It is true that during the course of cross-examination, P.W.2 has admitted that fact, but at the same time, she has stated to the effect that she deposed evidence as to what is really happened. Therefore, on the basis of mere admission given by P.W.2, the Court cannot come to a conclusion that only on the basis of tutoring alleged to have been given by her Uncle, she has given such kind of evidence. Under the said circumstances, the first 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 P.W.3, Doctor, who examined the prosecutrix, has not found any materials for the purpose of showing that the prosecutrix has been deflowered.

19. It has already been pointed out that in Ex.P.2, it has been clearly mentioned to the effect that hymen of the prosecutrix is totally absence. Further, in Ex.P.2, it is mentioned that the prosecutrix has sustained some injuries in her private part.

20. It is a well settled principle of law that in a case like this, a mere penetration is sufficient to constitute an offence under section 375 of IPC. It is true that in Ex.P.2, it has been clearly mentioned to the effect that no external injury is found place for the purpose of coming to a conclusion that the accused has deflowered her. Simply because in Ex.P.2, it has been mentioned as pointed out earlier, the court cannot belittle the fact that in Ex.P.2, it has been mentioned to the effect that hymen of the prosecutrix is totally absence and also the fact that P.W.2, prosecutrix has sustained injuries on her

private part. Therefore, the second contention put forth on the side of the appellant/accused is sans merit.

21. The third contention put forth on the side of the appellant/accused is that M.Os.3 and 4 have been subjected to chemical examination, but the chemical report has not been received.

22. It is seen from the records that M.Os.3 and 4 (dresses of the prosecutrix) have been sent to chemical examination, but the chemical report has not been filed. It is nothing but a lapse on the part of the prosecution and the same cannot militate the case of the prosecution and therefore, the third contention put forth on the side of the appellant/accused also goes out without merit.

23. The fourth contention put forth on the side of the appellant/accused is that the persons, namely Maheswari and Kaliyamoorhty are also said to be eye witnesses, but for the reasons best known to the prosecution, they have not been examined.

24. In the instant case, the mother of the prosecutrix, author of Ex.P.1 has been examined as P.W.1 and the prosecutrix has been examined as P.W.2. Since vital witnesses have been examined on the side of the prosecution as P.Ws.1 and 2, persons mentioned supra need not be examined. Further, it is a well known fact that it is purely discretion of the prosecution to examine minimum number of witnesses to prove its case so that proliferation of evidence could be avoided and therefore, the fourth contention put forth on the side of the appellant/accused also goes out without merit.

25. The last contention put forth on the side of the appellant/accused is that from the date of judgment passed by the trial court, the appellant/accused is in duress and further, due to his family circumstances, some leniency may be shown in awarding sentence.

26. As pointed out earlier, at the time of the occurrence, the prosecutrix (P.W.2) has attained only 8 years of age and on her tender age, she has been deflowered. Since the accused has committed heinous offence not only to the prosecutrix but also to the society at large, this Court is of the considered view that no leniency can be shown in awarding sentence and further, considering the gravity of the offence committed by the accused, the trial court has rightly awarded 10 years rigorous imprisonment. Therefore, the last contention put forth on the side of the appellant/accused also goes out without merit.

27. It has already been pointed out that on the basis of evidence given by P.W.2 and P.W.3 coupled with Ex.P.1 and P.2, the Court can easily come to a conclusion that in the place of occurrence, the accused has deflowered the prosecutrix. The trial court, after considering the evidence available on record, has rightly found the appellant/accused guilty under section 376 (2) (f) of IPC. In view of the foregoing narration of both facts and legal premise, this Court has not found any 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 against the appellant/accused in S.C.No.261 of 2010 by the trial court are confirmed.

Sd/-  
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

ajr

To :

1. The District Mahila Sessions Judge, Cuddalore.
2. The Superintendent Central Prison, Cuddalore.
3. The Inspector of Police,  
Panruti Police Station, Panruti
4. The Public Prosecutor, High Court, Chennai

+ 1 cc to Mr.S. Saravanakumar, Advocate SR.3403

Crl.A.No.808 of 2010

GJ(CO)  
Eu 2.02.16

सत्यमेव जयते

WEB COPY