

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2016

THE HON 'BLE MR.JUSTICE S.NAGAMUTHU
AND
THE HON 'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.344 of 2016

P.Seerangan

.. Appellant/Accused

vs

State, By Inspector of Police,
Anthiyur Police Station,
Erode District
(Crime No.149 of 2009)

.. Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of the Criminal Procedure Code, against the judgment of the learned Sessions Judge, Mahila Court (F.T.C.), Erode, in S.C.No.126 of 2014, dated 31.03.2016.

For Appellant : Mr. A.Thiyagarajan, for, Mr. T.Balaji
For Respondent : Mr. E.Raja, A.P.P.,

J U D G M E N T

(Judgement of the Court was delivered by S.Nagamuthu. J.,)

The appellant, who is aged about 50 years, is the sole accused in S.C.No.126 of 2014, on the file of the learned District and Sessions Judge, Fast Track Court (Mahila Court), Erode. He stood charged for the offence under Section 376 (1) IPC., By judgment, dated 31.03.2016, the trial court convicted him under Section 376 (1) IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for two years. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

2. The case of the prosecution, in brief, is as follows:-

P.W.1 is a resident of Chennampatti Village, Jerathal, Anthiyur Taluk, Erode District. P.Ws.2 to 6 are his neighbours. P.W.8 is his sister. She is the victim of the offence of rape, in the instant case. P.W.8 was aged about 30, at the time of occurrence. She is a physically challenged woman. She was a deaf-and-dumb. On account of the said disabilities, there was no marriage for her and she remained as a spinster. The accused, in this case, also belongs to the same village. P.W.8 used to go for answering nature's call, everyday to a nearby place. On few occasions, the accused came there and with an evil intention, he spoke to her,

removed her dress and had sexual intercourse with her. He did so, on few occasions. This resulted in pregnancy. But this was not known to P.W.1 and other family members.

3. On 23.09.2009, at about 07.00 am, P.W.8 complained of ill-health. Therefore, P.W.1 took her to the Government Hospital at Kuruvareddiyur. They were accompanied by their mother and another sister. On examination, at the hospital, it came to light that P.W.8 was eight months pregnant. Therefore, they brought P.W.8 back to their house. When they enquired P.W.8 about the pregnancy, P.W.8 was unable to realise as to what had happened to her. After three days, by means of signs and gestures, she told that it was the accused, who had sexual intercourse with her, by force. Thereafter, P.W.1 told the same to the villagers. The villagers convened a Panchayat and tried to persuade the accused to accept the fatherhood for the child in the womb and to marry P.W.8. The accused was evasive for sometime and finally refused to marry. Therefore, the villagers advised P.W.1 to make a complaint to the police. Accordingly, on 02.10.2009, at about 04.30 pm, he went to the Vellithiruppur Police Station, Erode District, and made a complaint under Ex.P-1. P.W.7, the then Sub-Inspector of Police, on receipt of the said complaint, registered a case in Crime No.149 of 2009 under Section 376 IPC against the accused. Ex.P-3 is the First Information Report. He forwarded both the documents to the Court, which were received by the learned Magistrate at 10.00 pm on the same day.

4. P.W.10, the then Inspector of Police, took up the case for investigation. He examined P.W.8 with the help of one Ravi, as an Interpreter. Then, he examined many more witnesses, including P.W.1. Then, he arrested the accused at 07.15 pm on 02.10.2009, in the presence of the witnesses. He forwarded the accused to the hospital for medical examination. Ex.P-8 is the said request. But neither the report of the Doctor has been proved nor the Doctor has been examined. P.W.10 forwarded P.W.8 also for medical examination. Ex.P-7 is the request. Neither the Doctor, who examined her, has been examined nor any medical report has been marked.

5. It appears that P.W.8 gave birth to a male child on 01.01.2010. On 12.04.2010, the accused and P.W.8 were sent for Deoxyribo Nucleic Acid (DNA) examination to find out the paternity of the child. P.W.12 collected the blood samples from the accused, P.W.8 and the child and sent the same to the Forensic Lab for examination. P.W.11, the Additional Director, Forensic Lab, Government of Tamil Nadu, Chennai, who was in the DNA Division of the said Lab, conducted DNA examination and found that the accused is the biological father of the child. The investigation was thereafter continued by P.W.13, who laid charge sheet against the accused.

6. Based on the above materials, the trial court framed a charge under Section 376 (1) IPC. The accused denied the same. In order to prove the case of the prosecution, as many as 13 witnesses were examined and 11 documents were exhibited.

7. Out of the said witnesses, P.W.1, the brother of the deceased, has stated that on 23.09.2009, when P.W.8 was taken to the hospital, he came to know that she was pregnant. Then he has further stated that he told the same to the Villagers. The villagers convened a Panchayat, in which the accused had not accepted the fatherhood of the child of P.W.8. He also refused to marry P.W.8. He has further stated that, as per the advise of the villagers, he made a complaint to the police.

8. P.Ws.2, 3, 4 and 5 are the villagers, who have stated that the accused had refused to marry P.W.8. P.W.6, yet another Villager, has stated that, on few occasions, he had seen the accused following P.W.8 towards the place of occurrence. P.W.7 has spoken about the registration of the case on the complaint of P.W.1.

9. P.W.8 is the victim. She had vividly spoken about the entire occurrence, as we have already narrated. P.W.8, due to inability, was unable to understand many questions and only with the help of Interpreter, she was examined before the Court. P.W.9 is the Interpreter. P.W.10 has spoken about the investigation done by him initially. P.W.12 has spoken about the collection of blood samples from the accused, P.W.8 and the child, for the purpose of conducting DNA Examination. P.W.11 has spoken about the DNA conducted. P.W.13 has spoken about the further investigation done and the final report laid on the accused.

10. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor mark any document, on his side. Having considered all the above, the trial Court convicted the accused under Section 376 (1) IPC. Challenging the same, the appellant is before this Court with this Criminal Appeal.

11. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

12. In this case, from the DNA examination conducted by P.W.11, it has been clearly established that the appellant / accused was the biological father of the male child delivered

by P.W.8. Thus, the prosecution has clearly established that the accused had sexual intercourse with P.W.8, as spoken by P.W.8.

13. The learned counsel for the appellant would submit that P.W.8 was not a consulting party and therefore, the act of the accused, in having sexual intercourse with her, would not amount to rape.

14. We do not find any force at all in the said argument, for more than one reason. P.W.8 is not a woman of ordinary prudence. She is deaf-and-dumb. Her cognitive faculty was not fully matured. It is evident from the fact that she was examined in chief, initially on 17.04.2015, but the examination could not be completed, because she was unable to understand many questions and even the Interpreter was not able to interpret as to what she was trying to convey, by means of signs and gestures. Therefore, yet another skilled Interpreter was engaged and she was further examined on 16.09.2015. Even on that date, she was not able to convey clearly that she was raped by the accused. Only by gesture, she was able to show that the accused had sexual intercourse with her. Many answers conveyed by her would also go to show that she was not capable of giving full consent for sexual intercourse. In such view of the matter, we hold that the plea of the accused that P.W.8 gave full consent for sexual intercourse cannot be accepted. We hold that, by abusing the subnormal physical and mental incapacity of P.W.8, the accused had sexual intercourse with her by force. Thus, the act of the accused would squarely fall within the definition of 'rape' and therefore, he is liable to be punished for the offence under Section 376 (1) IPC.

15. Now turning to the quantum of punishment, the learned counsel for the appellant would submit that the accused is an elderly man, he is very poor, he has a big family to take care of and he has got no bad antecedents.

16. Having regard to all the above mitigating as well as aggravating circumstances, we are of the view that sentencing the accused to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.5,000/-, in default, to undergo Rigorous Imprisonment for four weeks would meet the ends of justice.

17. In the result, this Criminal Appeal is partly-allowed. The conviction imposed on the accused for the offence under Section 376 (1) IPC are confirmed. However, the sentence of imprisonment for life and to pay a fine of Rs.10,000/- imposed on the appellant by the trial court is hereby set-aside and instead, he is sentenced to undergo

Rigorous Imprisonment for seven years and to pay a fine of Rs.5,000/-, in default, to undergo Rigorous Imprisonment for four weeks. It is directed that the period of sentence already undergone by the accused shall be set-off, as provided under Section 428 of the Criminal Procedure Code.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

srk

To

1. The District and Sessions Judge, Mahila Court (F.T.C.), Erode.
2. The Public Prosecutor, Madras.
3. The Judicial Magistrate Bhavani.
4. The Cheif Judicial Magistrate, Erode (for Information)
5. The Inspector of Police Anthiyur Police Station, Erode District.
6. The Superintendent Central Prison, Coimbatore.
7. The District Collector, Erode.
8. Teh Director General of Police, Mylapore, Madras.4

+ 1 cc to Mr.A. Thiagarajan, Advocate SR.45100

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KSJ(CO)
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