

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03 .11.2016
(Reserved on :17.10.2016 ; Pronounced on : 03 .11.2016)

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
Crl.A.No.170 of 2013

and

M.P.No.1 of 2014

Dhanapal

..Appellant/Accused

Vs.

State Rep by
Inspector of Police,
M-3, Puzhal Police Station Chennai
(Crime No.605 of 2009)

..Respondent /
complainant

Prayer: Criminal Appeal filed to set aside the conviction and sentence passed by the learned Additional District and Sessions Judge, Fast Track Court No.4, Ponneri in S.C.No.114 of 2011 dated 30.12.2011.

For Appellant : Mr.S.Nambirajan

For Respondent : Mr.M.Govindarajan
(Additional Public Prosecutor)

J U D G M E N T

The Criminal Appeal arises against the Judgment dated 30.12.2011 in S.C.No.114 of 2011 passed by the learned Additional District and Sessions Judge, Fast Track Court No.4, Ponneri.

2. The appellant herein is the accused in in S.C.No.114 of 2011 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.4, Ponneri. The Trial Court had framed the charges against the accused for the offences under Section 376 IPC and Section 23 of Juvenile Justice (Care and Protection of Children) Act. By Judgment dated 30.12.2011, the Trial Court convicted him under both the charges and sentenced him to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.2000/-, in default, to undergo six months simple imprisonment for the offences u/s.376 of IPC and sentenced to undergo 6 months R.I., for the offence u/s.23 of Juvenile Justice (Care and Protection of Children) Act and both the sentences shall be run concurrently. Challenging the said conviction and sentence, the appellant/accused is before this Court with the present Criminal Appeal.

3. The prosecution story of the case in brief is that:

the accused and PW1 were neighbours and they were residing in the house of PW4. The victim(PW6) is the daughter of PW1 and 2, and she was aged about 6 years at the time of occurrence. On 29.09.2009, at about 2.00 p.m., the victim went to the house of the accused for watching Television. After hearing the crying voice of the victim, PW2, the mother of the victim, went to the house of the accused and saw that the accused was lying on the victim removing her dress. Immediately, when PW2 tried to take her child, the accused pushed her and left the place. She informed the same to the PW1 who is the father of the victim and the husband of PW2. Thereafter, PW1 made a complaint (Ex.P1) in Puzhal Police Station. The Inspector of Police (PW.11) received the complaint from PW1 and register the case in Cr.No.605 of 2009 for the offences u/s. 376 IPC and u/s.23 of the Juvenile Justice (Care and Protection of Children) Act and collected the material objects (MO1 & MO2) under Form -95. Then he proceeded to the place of occurrence on 30.09.2009 at about 10.30 p.m., and prepared the observation mahazar (Ex.P2) and rough sketch (Ex.P11) in the presence of PW5 and one Ilango and he examined the witnesses Shanmuga Rao, Ravanammal, Jaiboombi, Mallika, Kalaivani, and Dhanasekar and recorded their statements. On the same day, at 13.00 hours, he arrested the accused and recorded the confession statement of the accused. Based on the confession statement, he reached the house of the accused and recovered full hand blue colour shirt and a lungi through recovery Mahazar(Ex.P3) in the presence of PW7 and one another witness. On the very same day, he sent the accused to the court and produced the victim girl before the Magistrate and made request to send both the accused and victim for medical examination. He has also examined the doctor (PW10) who examined the victim girl and obtained the certificate. On 02.12.2009, he examined the forensic expert and recorded his statement and also obtained the certificate from him. On 27.01.2010, he has also examined the Medical Officer(PW9), who had examined the accused and obtained certificate.. On 05.02.2010, he laid a charge sheet against the accused before the learned Judicial Magistrate, Thiruvottiyur, for the offences u/s.376 of IPC and u/s. 23 of Juvenile Justice (Care and Protection of Children) Act, 2000.

4. Based on the above materials, the trial court framed the charges against the accused for the offences u/s.376 of IPC and Section 23 of Juvenile Justice (Care and Protection of Children) Act 2000. The accused denied the same. In order to prove the case of the prosecution, as many as 11 witnesses from PW1 to PW11 were examined and 11 documents from Exs.P1 to

P11 were exhibited and also two material objects, MO1 and MO2 were marked on the side of the prosecution.

5. Out of the said witnesses, PW1 is the father of the victim and husband of PW2. The mother of the victim/PW2 is the eye witness for the occurrence. She narrated the facts to her husband and in turn, he preferred the complaint before the Puzhal Police Station. They have spoken about the occurrence and preferred the complaint against the accused. PW6 is the victim girl and she has spoken about the occurrence. The Doctor (PW9) has spoken about the examination of the accused and issuance of certificate regarding the age and potentiality of the accused. The Doctor (PW10) has spoken about examination of the victim girl and issuance of the certificate. In the said certificate, it is mentioned that the victim has abrasion about 2 cms on her left thigh and the injury sustained by her. PW8 is the Assistant Director of Forensic Department and PW11 is the Inspector of Police, Puzhal Police Station, who has spoken about the investigation done by him in this case and filed a final report.

6. When the above incriminating materials were put to the accused under Section 313 of Cr.PC, he denied the same as false. However, he has neither chosen to examine any witnesses nor to mark any document in his favour. His defence was a total denial.

7. Having considered all the above facts, the trial court has convicted the accused for the offence u/s.376 of IPC and Section 23 of Juvenile Justice (Care and Protection of Children) Act, 2000. Aggrieved over the same, the accused/appellant is before this court with this appeal.

8. I have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent. I have also perused the available records carefully.

9. The learned counsel for the appellant would submit that there are certain contradictions between the witnesses that would make their evidence untenable. He would further submit that the evidence of PWs.1 and 3 are only hearsay evidence and the same is not admissible under law. He would further submit that the statement of Assistant Director of Forensic Department

(PW8) shows that no blood stain found in MO1 and MO2 and there was no material to show that accused has committed the offence u/s.376 and 23 of Juvenile Justice (Care and Protection of Children) Act 2000. He further stated that PW10 - Doctor who examined the victim has also stated that only abrasion about 2 cms found on the left thigh of the victim and no injury found in the private part of the victim. PW9-Doctor, who examined the accused and certified his potentiality has also stated that no injury found in the private part of the accused and she has also stated that if the accused had forcibly committed rape on the minor girl, there is possibility for having injury on the private part of the accused. But, no injury was found in his private part. Therefore, under such circumstances, when two views are possible, then the benefit of doubt goes in favour of the accused. Therefore, he prays for the acquittal of the accused.

10. Learned Additional Public Prosecutor vehemently opposed the Appeal. PW1, 2 and 6 have categorically spoken about the entire occurrence, which is duly corroborated with the medical evidence. Thus, according to the learned Additional Public Prosecutor, the conviction and sentence of the appellant does not require any interference at the hands of this court.

11. I have considered the above submissions made by both the learned counsel. PW2, mother of the victim girl has deposed that when she heard the crying voice of her daughter, she went upstairs and saw that the accused had sexual intercourse on her daughter. PW6 is the victim girl aged about 6 years, who has deposed about the occurrence. PW1 is the father of the victim girl, who has spoken that after returned from his work, PW2 narrated the fact to him. Then, he went to the police station and preferred the complaint and FIR was registered. According to the Doctor (PW10), who examined the victim girl, an abrasion about 2 cms was found in the inner part of the left thigh of the victim.

12. Now the question is as to what was the offence that the accused has committed in the said act. In this regard, it is relevant to refer the evidence of Pws.1,2, 6, and 10 which proves the fact that the accused only has committed the offence. Considering the facts and circumstances of the case, this court finds that the accused has committed the offence u/s.376 and 23 of Juvenile Justice (Care and Protection of Children) Act,2000 and the trial court has correctly come to the conclusion that the accused only had committed the offence and convicted the accused and passed the sentence to undergo 7 years rigorous imprisonment and to pay a fine of Rs.2000, in default,

to undergo six months imprisonment for the offence u/s.376 of IPC and 6 months R.I., for the offence u/s.23 of Juvenile Justice (Care and Protection of Children) Act and both the sentences shall be run concurrently. There is no reason to set aside the conviction and sentence passed by the trial court against this accused .

13. Learned counsel for the appellant would submit that from the doctor's evidences, it is clearly proved that the accused and victim had not sustained any injury on their private parts and the material sent for forensic examination proved that the semen was not deducted in that material objects. He further stated that due to prior enmity on the accused and in order to wreck vengeance, PW4 has compelled PW1 to lodge a false complaint against the accused. Therefore, the accused is entitled to get the benefit of doubt and he is entitled to acquittal under the score of benefit of doubt.

14. In this regard, this court is not believing the defence taken by the accused because no parents will spare the life of the victim girl for the dispute between the landlord and his tenant. Further there is no reason either to disbelieve or reject the evidences of PWs.1, 2 and 6. Further, it is a well settled proposition of law that to constitute the offence of rape, it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration within the labia majora of the vulva or pudendum with or without emission of semen is sufficient to constitute the offence of rape as defined in the law. The depth of penetration is immaterial in an offence punishable under Section 376 of IPC. It is therefore, quite possible to commit legally the offence of rape without producing any injury to the genitals or leaving any seminal stains. Therefore, the contention of the defence counsel is not sustainable under law. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecutrix case. In this case, this court has not found any reason to reject the evidence of prosecutrix.

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15. Considering the submissions made on either side and taking note of the fact that the offence committed by the accused/appellant is against the minor girl aged about 6 years which should not be taken lightly. Hence, this Court is not inclined to allow the appeal and consequently, the Criminal Appeal is dismissed and the judgment passed by the learned Additional District and Sessions Judge, Fast Track Court No.4,

Ponneri, is confirmed by the reasons assigned in this appeal.
Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

gv

To

1.The Additional District and Sessions Court,
Fast Track Court No.4, Ponneri,

2.-do-Thro The Principal Sessions Judge,
Thiruvellore District

3.The Inspector of Police,
M-3, Puzhal Police Station Chennai

4.The Superintendent Central Prison
Puzhal Chennai

5.The Public Prosecutor High Court Madras

6.The Judicial Magistrate Thiruvotriyur

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