

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.12.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE N. AUTHINATHAN

CRL.A.No.718/2016
and CrI.M.P.No.10398 of 2016

Raman

Appellant

Vs

The State rep by
The Inspector of Police,
All Women Police Station,
Cuddalore

Respondent

Appeal filed u/s.374 Cr.P.C against the judgment in
Spl.S.C.No.6 of 2016 dated 14.09.2016 on the file of District Magalir
Neethimandram, Cuddalore

For Appellant : Mr.R. Sankara Subbu

For Respondent : Mr.P. Govindarajan
Addl. Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by **S.NAGAMUTHU, J.**]

The appellant is the sole accused in Special Sessions Case No.6 of 2016 on the file of District Magalir Neethimandram, Cuddalore. He stood charged for the offence punishable under Sections 450 IPC and and under Sec.6 read with 5K of Protection of Children from Sexual Offences Act 2012. By Judgment dated 14.09.2016, the trial Court convicted the appellant in both the charges and sentenced him to undergo 5 years rigorous imprisonment and to pay fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for six months for the offence punishable under Sec.450 IPC and sentenced to undergo life imprisonment and to pay fine of Rs.5000/-, in default, to undergo rigorous imprisonment for one year for the offence punishable under Sec. 6 read with 5K of Protection of Children from Sexual Offences Act 2012. Challenging the said conviction, the appellant has come up with this appeal.

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

(a) P.W.2 is the victim of the alleged crime. Her date of birth is 20.02.1998. She did not have full mental development. Her mental development was only 45%. She had already attained puberty.

(b) P.W.1 is the mother of P.W.2. P.Ws.1 and 2 were residing in Cuddalore. The husband of P.W.1 had deserted her and thus P.W.1 was living alone with P.W.2. Yet another daughter of P.W.1 had already been given in marriage. The accused also hails from the same village.

© On 24.06.2015, according to the case, P.W.2 alone was at the house, as P.W.1 had gone to her work spot. It is alleged that around 2.00 p.m, on the same day, when P.W.2 was alone in the house, the accused trespassed into the house under the pretext of asking her to give water for drinking. He entered into the house, pushed P.W.2 down and P.W.2 resisted the accused and when P.W.2 raised alarm, the accused fled away from the scene of occurrence. When the accused came out of the house, he was seen by the

neighbours.

d) P.W.1, who was working in the Company, was informed by a relative that P.W.2 was unwell. Immediately, P.W.1 returned home. She found that the clothes of P.W.2 were torn. She enquired P.W.2. P.W.2 at once informed P.W.1 that the accused came to the house, wanted her to bring water for him for drinking and on that pretext, he took her to the bathroom, removed her pant and other garments, and also removed his pant and pushed her down and caused injuries on her breast and other parts of the body and also he lied on her. Then, he ran away from his house.

e) P.W.1, thereafter, gave dress to P.W.2 to wear and then went to Mudhunagar Police Station at Cuddalore and made a complaint under Ex.P.1. P.W.15, the then Inspector of Police, on receipt of the said complaint on 24.06.2015 at 9.00 p.m, registered a case in Cr.No.399 of 2015 for the offence punishable under Secs. 3 and 4 of Protection of Children from Sexual Offences Act 2012. The case was taken up for investigation by P.W.15.

f) P.W.15 the Sub Inspector of Police, went to the place of occurrence, prepared an Observation Mahazar and a Rough Sketch in the presence of witnesses. He further examined P.Ws.1 and 2 and few more witnesses and recorded their statements. Then, as per the order of the Superintendent of Police, the case was taken over for further investigation by P.W.16. P.W.15 sent P.W.2 to Government Hospital, Cuddalore for better treatment. She was examined by the doctor.

g) P.W.16 the Inspector of Police, enquired P.W.2 at Hospital and collected medical records. Then the accused was arrested and he was sent for medical examination. P.W.11, the Doctor, opined that the accused was sexually potential to have sexual intercourse with a female. On completion of the investigation, P.W.16 filed charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges under Sec.450 IPC and under Sec.6 read with 5K of Protection of Children from Sexual Offences Act 2012. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 16 witnesses were examined and 15

documents and 4 material objects were also marked.

4. Out of the said witnesses, P.W.1, who is the mother of P.W.2 has stated that on 24.06.2015 when she was in the Company, P.W.2 alone was in the house. P.W.1's mother also had gone to work. Around 3.00 p.m, she was informed that P.W.2 was unwell. When she returned home, she found P.W.1 at her house. All her dresses were torn. She found injuries on her breast and other parts. P.W.2 narrated the event. Then, P.W.1 made a complaint to the police. P.W.2 is the victim. She has narrated the entire incident.

5. P.W.3 was a Teacher in a School named Oasis School for Mentally Retarded Children at Cuddalore. According to her, P.W.2 was admitted in the School in the year 2013 and she was studying in the school. P.W.3 has further stated that when the learned Judicial Magistrate No.II, Cuddalore had recorded the statement of P.W.2 under Sec.164 Cr.P.C, she assisted P.W.2.

6. P.W.4 is the Correspondent of the Oasis School. She has

stated that P.W.2 joined the School in the year 2013 and as per the School Records, her date of birth is 20.02.1998. Ex.P.3 is the document, showing her date of birth.

7. P.W.5 is yet another daughter of P.W.1. She had already been given in marriage. According to her on 24.06.2015 she heard about the crime. She enquired P.W.2 and informed the same to P.W.1.

8. P.W.6 is a neighbour of P.Ws.1 and 2. According to him, on 24.06.2015, around 2.00 p.m, when he was at his house taking rest, he heard alarm raised by P.W.2. When he rushed to the house of P.W.2, he found the accused fleeing away from the said house. He further found injuries on the lips, neck and chest of P.W.2. Clothes were also torn. The mother of P.W.1 then came to the house. When they enquired P.W.2, she narrated the entire event, P.W.6 has added.

9. P.W.7 the then Judicial Magistrate has stated that he recorded the statement of P.W.2 on 25.08.2015 under Sec.164 of Criminal Procedure Code. Ex.P.2 is the said statement of P.W.2. P.W.8

has spoken about the preparation of observation mahazar and rough sketch and also recovery of garments of P.W.2. P.W.9 Dr.Ramya, attached to Government Hospital, Cuddalore has stated that on 25.06.2015 at 4.30 p.m had examined P.W.2 and at that time, P.W.2 told her that she was raped by a man, aged about 40 to 45 years. On examination, P.W.9 found scratches on the chest of P.W.2. She further found that there was no hymen in the vagina of P.W.2. She further opined that she collected the vaginal smear and sent the same for examination to find out the presence of spermatozoa or semen in the vagina. The report revealed that there was no Spermatozoa in the vaginal smear. Finally, she gave opinion that there were chances that P.W.2 would have undergone sexual intercourse.

10. P.W.10 Kalaiyarasi is the Psychiatrist, attached to Government Hospital, Cuddalore. She has stated that she treated P.W.2 on 22.07.2015. During that period, she found that P.W.2's mental development was only 46%. Ex.P.8 is the Certificate issued by her. P.W.11, Dr.Tamilarasan, has examined the accused and found that he was sexually potential to have sexual intercourse with a

female. P.W.12, Dr.Priyanka, has stated that she examined P.W.2 and gave opinion that she had completed 16 years, but not completed 18 years. Ex.P.10 is the Certificate issued by P.W.12. P.W.13 Dr. Karthika, attached to Government Hospital, Cuddalore, has stated that she admitted P.W.2 in the Government Hospital, Cuddalore on 24.06.2015 for treatment. She has stated that at that time, P.W.2 told that an attempt was made to rape her. She found scratches on her chest. Ex.P.12 is the Accident Register.

11. P.W.14 is the mother of P.W.1 and the grandmother of P.W.2. She has stated that on the date of occurrence, she had gone to work. When she entered home, the accused asked water to P.W.14 and when P.W.14 raised alarm and on hearing the alarm, she found the accused fleeing away from the scene of occurrence. Then, according to her, P.W.2 narrated the entire incident. P.W.15 has spoken about the initial investigation. P.W.16 has spoken about the entire investigation and the final report filed.

12. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. His defence was a total denial. 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. Challenging the said conviction, the appellant has come up with this appeal.

13. We have heard the learned Counsel for the appellant and the learned Additional Public Prosecutor appearing for the State. We have also perused the records carefully.

14. The mother of P.W.2 has stated that P.W.2 was mentally under developed. According to the evidence of P.W.10, Dr.Kalaiyarasi, P.W.2's mental development was only 46%. From these evidences, the prosecution has proved that P.W.2 was mentally iunder developed.

15. P.W.1 and P.W.14 have stated that they went for work leaving behind P.W.2 alone in the house. According to the evidence of P.W.6, around 2.00 p.m, when he was at his house, he heard the

alarm raised by P.W.2 from her house. He rushed to the house. At that time, he found the accused fleeing away from the house of P.W.2. At that time, P.W.14 had already arrived and she also saw the accused fleeing away from the house. When they entered into the house, she found P.W.2 was weeping and her clothes were torn. There were also injuries on her lips, chest and other parts of the body. When they enquired at the earliest point of time, though mentally under developed, P.W.2 vividly narrated the incident. She told that the accused entered into the house under the pretext of taking drinking water from her, took her to bathroom, pushed her down and caused injuries on the chest and on her lips and lied on her. Thus at the earlier point of time, P.W.2 narrated the incident. Thereafter, P.W.1 reached home, to whom also, P.W.2 narrated the happening. We find no reason to reject the evidences of P.W.1, 6 and 14 as their evidences are cogent and convincing. The doctors, who had examined P.W.2 have also found injuries on the lips and chest. Thus medical evidence corroborates the evidences of P.Ws.1, 6 and 14.

16. Now the question is whether the accused had caused any penetrative sexual assault on P.W.2. P.W.13 Dr. Karthika was one who examined P.W.2 at the earliest point of time at 7.00 p.m on 24.06.2015. At that time, P.W.2 told P.W.13 that around 2.00 p.m, when she was alone at her house, an attempt was made by a known person to rape her. This statement of P.W.2 assumes importance. In her evidence, P.W.2 has stated that the accused had entered to the house, took her to bath room and he wanted her to touch his penis. Then he pressed the breast and also caused injuries on her lips. When she refused to touch of his penis, he slapped her and caused injuries to her lips. He lied on her and then ran away from the house. P.W.2 has not stated that there was actual penetrative sexual assault. It is her evidence that she raised alarm and on hearing the alarm, P.W.6 rushed to the house and on seeing P.W.6, the accused fled away from the scene of occurrence. From these evidences, it is crystal clear that the accused made only an attempt to cause penetrative sexual assault. The medical evidence, as spoken by P.W.9 Doctor, would also go to show that there is no medical opinion that the P.W.2 had undergone sexual intercourse, as alleged by the prosecution.

17. According to the evidence of P.W.9, Dr.Ramya, from the absence of hymen in the vaginal cavity of P.W.2 and from the fact that the vaginal cavity had allowed a finger to move freely into the same, it could be said that she would have undergone sexual intercourse. But it is not the evidence of P.W.9 at all that just before the examination, she had undergone any sexual intercourse. There was no Spermatozoa or semen in the vaginal smear. From these evidences, it is crystal clear that the accused only made an attempt to have sexual intercourse with P.W.2 and even before such attempt could succeed, due to the resistance of P.W.2 who raised an alarm and also due to the arrival of P.W.14 to the place of occurrence, the accused ran away from the scene of occurrence.

18. The learned counsel for the appellant would submit that due to previous enmity, this case has been falsely foisted against the appellant. Absolutely, there is no evidence to show that there was enmity between P.W.1 and the accused. Though it is true that P.W.2 was only 46% mentally developed, on that ground we cannot reject the entire evidence of P.W.2. We have to appreciate her evidence not

in the literal sense but in the context of the understanding of P.W.2. Because of her mental under development, she may not be knowing what exactly sexual intercourse is. Though she has stated in her evidence that the accused had spoiled her, in the light of the medical evidence and other evidences, we have to understand the said evidence of P.W.2 to convey the meaning that an attempt was made by the accused to have sexual intercourse with her. Because, P.W.2 is mentally under developed, we cannot give literal meaning to the words spoken by her and we have to understand her evidence in her language. Thus from her evidence and the other evidences, we hold that the accused had made an attempt to have penetrative sexual assault on P.W.2, which is punishable under Sec.18 of Protection of Children from Sexual Offences Act 2012. Since he entered the house of P.W.2 with an intention to commit the crime, the said act is an offence punishable under Sec.450 IPC.

19. Now, turning to the quantum of punishment, considering the age of the accused, status, economic situation and all other relevant circumstances, we hold that sentencing him to rigorous

imprisonment for four years and directing him to pay Rs.30,000/- as fine would meet the ends of justice for the offence punishable under Sec.18 of the Protection of Children from Sexual Offences Act 2012. For the offence punishable under Sec.450 IPC, he is liable to be sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/-.

20. In the result, the appeal is partly allowed; the conviction and sentence imposed by the District Magalir Neethimandram, Cuddalore in S.C.No.6 of 2016 for the offence punishable under Sec.6 read with 5K of Protection of Children from Sexual Offences Act 2012 are set aside and instead, the appellant is convicted for the offence punishable under Sec.18 of Protection of Children from Sexual Offences Act 2012 and sentenced to undergo rigorous imprisonment for four years and to pay fine of Rs.30,000/-, in default, to undergo rigorous imprisonment for twelve (12) weeks and for the offence punishable under Sec.450 IPC, he is sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for two weeks. The he above sentences are ordered to run concurrently. The period of sentence

already undergone by the accused shall be set off under Section 428 Cr.P.C. On realisation of the said amount of Rs.31,000/-, the entire amount shall be paid to P.W.2 through P.W.1 by the trial Court, as compensation without any reference to this Court. Consequently, connected CrI.M.P is closed.

(S.N.J.,) (N.A.N.J.,)
09-12-2016

Index : Yes
Internet : Yes

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To

1. The Inspector of Police,
The Inspector of Police,
All Women Police Station,
Cuddalore
2. The District Magalir Neethimandram, Cuddalore
3. The Public Prosecutor,
High Court, Chennai.

S.NAGAMUTHU,J.
And
N. AUTHINATHAN,J.,

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