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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29 -07-2016

(Judgment reserved on 22.07.2016)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

CrI.A.No.46 of 2013

M.Mariappan @ Marimuthu .. Appellant/Sole Accused
Vs.
State rep. by
the Inspector of Police,
All Women Police Station,
Tiruppur,
(in Crime No.01 of 2007) .. Respondent/Complainant

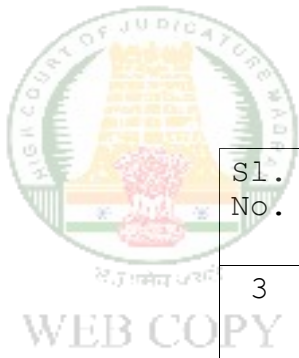
Criminal Appeal filed under Section 374 Cr.P.C., against the judgment, dated 14.12.2012 in S.C.No.29 of 2012 on the file of the Principal Sessions Court, Tiruppur.

For appellant : Mr.V.Parthiban
For respondent : Mr.P.Govindarajan, Addl.P.P.

JUDGMENT

This Criminal Appeal is filed against the judgment dated 14.12.2012 in S.C.No.29 of 2012 on the file of the Principal Sessions Court, Tiruppur, by which, the appellant/accused was convicted and sentenced as follows:

Sl. No.	Offence under Section	Conviction and sentence	Fine
1	448 IPC	Rigorous imprisonment for six months	Rs.500/-, in default, to undergo further rigorous imprisonment for seven days
2	376(1) IPC	Rigorous imprisonment for eight years	Rs.5,000/-, in default, to undergo further rigorous imprisonment for one month



Sl. No.	Offence under Section	Conviction and sentence	Fine
3	506 (Part 2) IPC	Rigorous imprisonment for one year	Rs.2,000/-, in default, to undergo further rigorous imprisonment for 15 days

The trial Court ordered the sentences imposed on the appellant/accused to run concurrently.

2. The case of the prosecution is as follows:

(a) P.W.1 complainant, who was aged about 17 years, is the daughter of P.Ws.2 and 3. On the date of occurrence, they were residing in Thennampalayam, Tiruppur District. P.W.1 was studying +2 at that time. P.W.2 is an Electrician. P.W.3 was also working.

(b) On 22.01.2007, P.W.1 was having revision examination and so, she was having classes only in the morning session. After attending school, she came to her house at about 1.15 p.m. Her parents P.Ws.2 and 3 also returned to their house by 1.30 p.m. for their lunch and after having lunch, they left for work. P.W.1 alone was in the house. Thereafter, P.W.1 covered the door with screen without closing the door and was sleeping. At about 3.30 p.m., she felt as if somebody was entering into the house. When she woke up, she saw the accused standing there with Aruval (M.O.1). She tried to go outside, but the appellant/accused threatened her by showing the Aruval and asked her to remove her dress. When she refused, the appellant/accused again threatened her and asked her to lie down, and on doing so, he committed rape on her.

(c) Thereafter, the appellant/accused left the place and went away. As soon as he left the house, P.W.1 came out of the house and found that P.W.4 Rajamanickam and Samiappan were standing there. P.W.1 shouted after seeing them and both of them came to that place. On seeing them coming, the accused started running away. P.W.1 immediately informed them about the offence committed by the appellant/accused to them.

(d) Thereafter, the offence committed by the appellant/accused was informed to her father P.W.2, who came back and took P.W.1 to a private hospital, where first aid treatment was given to her and thereafter at about 7.30 p.m., she was taken to Government Hospital, where P.W.8 the then Sub-Inspector of Police, All Women Police Station, on telephonic intimation, came at about 9 p.m. and recorded the statement/complaint of P..W.1 victim girl.



(e) Subsequently, P.W.8 came to the Police Station and registered a case in Crime No.1 of 2007 for the alleged offences under Section 376 and 506 (Part-2) IPC. P.W.8 forwarded the FIR Ex.P-7 to the Court, which was taken on file by the Judicial Magistrate-1, Tiruppur. She also gave a copy of the FIR to P.W.9 the then Inspector of Police. P.W.9, after receipt of the FIR, went to the Government Hospital, Tiruppur and recorded the statement of P.W.1 victim girl and also recorded the statement of P.Ws.2 and 3 (parents), P.W.4 Rajamanickam and the said Samiappan. On 23.01.2007, P.W.9 went to the place of occurrence and prepared Ex.P-8 observation mahazar and drew Ex.P-9 rough sketch. P.W.9 also seized the dress of P.W.1 victim girl, which was worn by her at the time of occurrence in the presence of witnesses. P.W.9 also recovered Aruval (M.O.1) from the house of the appellant/accused. P.W.9 thereafter recorded the statement of the witnesses.

(f) After completing the investigation, the charge sheet was filed against the appellant/accused for the offences under Sections 448, 376(1) and 506 (Part-2) IPC, which was taken on file by the trial Court in S.C.No.29 of 2012.

3. During the course of trial, on the side of prosecution, P.Ws.1 to 9 were examined, Exs.P-1 to P-11 were marked and M.Os.1 to 8 were produced. When the appellant/accused was questioned under Section 313 Cr.P.C., he denied his complicity in the crime. He neither examined any witness nor marked any document.

4. Upon hearing the submissions of both sides and considering the oral and documentary evidence available on record, the appellant/accused was convicted by the trial Court as tabulated above. Challenging the said conviction and sentence, the appellant/accused has filed this appeal.

5. Learned counsel for the appellant/accused submitted that even as per the evidence of P.W.1 victim girl, since her parents left the house for work after having lunch, she covered the door with screen, without closing the door and she was sleeping. Hence, learned counsel submitted that the conduct of P.W.1 complainant that she went inside the house without locking the door shows that she was expecting someone to the house in the absence of her parents. Learned counsel further submitted that the Doctor who was examined as P.W.7, stated that there was only rupture injury on the private parts of P.W.1. Except the rupture injury, no other injury was present in the private parts of P.W.1. Therefore, learned counsel submitted that the evidence of P.W.1 that she did not close the door, but she has only covered the door with screen and was sleeping inside, coupled with the evidence of P.W.7 Doctor, shows that P.W.1 had consented for sexual intercourse with the appellant/accused.



6. Learned counsel for the appellant/accused further submitted that as per the version of P.W.1, she came out and shouted on seeing P.W.4 Rajamanickam and one Samiappan. On P.W.1 victim girl raising the alarm, the appellant/accused was running away from the scene of occurrence. P.W.4 in his evidence has not supported the version of P.W.1. P.W.4 has stated in his evidence that he came to the spot only on seeing the crowd on the road. Therefore, the evidence of P.W.1 that she came out of the house and shouted on seeing P.W.4 and one Samiappan, cannot be believed. Learned counsel for the appellant further submitted that though the appellant/accused has committed the offence, M.O.1 aruval was seized only from the house of the father of the accused and not from the appellant/accused. Further, P.W.4 has stated in his evidence that in the crowd, he saw P.W.1 crying and he does not know her name. P.W.4 further stated in his evidence that when he went near the crowd, he was told that, P.W.1, by mentioning the name of the father of a boy, stated that the boy (i.e. the appellant/accused) has committed rape on her. Therefore, according to the learned counsel, the name of the appellant/accused was not directly mentioned by P.W.4. Therefore, it is clear that it is nothing but a consent of a party for having sexual intercourse. Learned counsel prayed for setting aside the judgment of conviction and sentence passed by the trial Court and to allow the appeal. In support of his contentions, learned counsel for the appellant/accused relied on the following decisions:

- (i) 2002 (10) SCC 743 = CDJ 2003 SC 118 (Sudhansu Sekhar Sahoo Vs. State of Orissa);
- (ii) 1998 Cri.L.J. 3209 (Rajasthan High Court) (Chirag Khan Vs. State of Rajasthan) and
- (iii) 2003 (8) SCC 202 = CDJ 2003 SC 874 (The State of Karnataka Vs. Mapilla P.P.Sooopi).

7. Per contra, learned Additional Public Prosecutor appearing for the respondent/Police submitted that the appellant/accused was a life convict, but his life conviction was reduced to three years in appeal. He further submitted that the accused is also a notorious criminal and he committed the offence of rape on P.W.1 by threatening her with M.O.1 Aruval. He also stated that even assuming for the sake of argument that there was consent, obviously, it was only due to fear created by the appellant/accused with M.O.1 Aruval. Learned Additional Public Prosecutor also submitted that P.W.7 Doctor has clearly stated in her evidence that there were injuries on P.W.1's genital parts. Therefore, according to the learned Additional Public Prosecutor, the prosecution has proved its case beyond reasonable doubt by convincing and cogent evidence and he prayed for dismissing the appeal.



8. I have given my anxious consideration to the submissions made on either side and perused the materials available on record.

9. The main submission of the learned counsel for the appellant/accused is that the evidence on record would show that there was a consent between the parties in respect of the offence alleged against the accused. In support of his contention, he contended that at the time of occurrence, P.W.1's parents were not there and P.W.1 was sleeping inside the house without even closing the door and she has covered the door only with screen. But, in my considered opinion, the fact that P.W.1 was sleeping in her house without closing the door and covering the door only with screen, does not mean that she is expecting someone to come inside the house. In fact, though P.W.4 has not supported the case of the prosecution, in his evidence, he has stated that when he came out of his house and saw the crowd, he went near the crowd and saw P.W.1 crying and he was told that, P.W.1, by mentioning the name of the father of a boy (i.e. the appellant herein), stated that the boy has committed rape on her. Though P.W.4 has not supported the case of the prosecution, from his evidence in chief examination, it is clear that the appellant/accused has trespassed into the house and committed rape on her. Had there been any consent, as contended by the learned Additional Public Prosecutor, it is only out of fear in the mind of the victim girl P.W.1. In fact, P.W.1 has clearly stated in her evidence that while she was sleeping, she realised someone entering into the house and when she woke up, she saw the appellant/accused with M.O.1 Aruval and on seeing that, she was unable to raise her voice. In other words, putting P.W.1 under fear, the appellant/accused has committed the act of rape on her, as absolutely there was no possibility for the victim girl P.W.1 to resist the accused. In this connection, it is useful to extract Section 90 IPC, which reads as follows:

"90. Consent known to be given under fear or misconception:- A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception."

10. Though Section 90 IPC does not define "consent", it speaks as to when the "consent" is "not consent", as is envisaged under the Indian Penal Code. Hence, if a person is said to be under fear of injury and if the consent is obtained, the same has to be construed only as "not consent", especially in the case of this nature. Thus, it has to be construed that the act of rape was committed on P.W.1 only out of fear of injury.



11. Though learned counsel for the appellant/accused stated that as per medical evidence, there is only one rupture injury on the genital parts of the victim girl and it was stated to have been due to some other reason, but Ex.P-6 accident register clearly shows that the bleeding on her private parts, was sutured. Irrespective of the medical evidence, in my view, in a case of this nature, the evidence of P.W.1 victim girl itself is sufficient to show that the appellant/accused has committed the offence. In the instant case, only a suggestion was put-forth to the victim girl P.W.1 to the effect that she used to play with the son of the appellant/accused and while playing so, one day, the son of the appellant sustained injuries, and this has resulted in enmity between them, and therefore, P.W.1 is making false accusations on the appellant, which suggestion was denied by P.W.1. The said suggestion is very bald and vague and not supported by evidence. This Court has no reason to disbelieve the evidence of P.W.1, as her evidence inspires the confidence of this Court and that itself is sufficient to base the conviction on the appellant/accused. Therefore, the evidence of P.W.1, which is supported by medical evidence, is crystal clear to come to the conclusion that the offences alleged against the accused, are made out.

12. Since the evidence of P.W.1 inspires the confidence of this Court, the judgments relied on by the learned counsel for the appellant/accused are not relevant to the facts of the instant case, as in this case, the evidence of P.W.1, which is supported by the medical evidence, is crystal clear to come to the conclusion that offences alleged against him had been proved by the prosecution.

13. For the above reasons, it has to be concluded that the prosecution has proved its case beyond reasonable doubt. Hence, I do not find any infirmity in the impugned judgment of the trial Court finding him guilty of the offences and there is no reason warranting interference by this Court. The appeal is bound to fail and accordingly, the appeal is dismissed, confirming the conviction and sentence imposed on the appellant/accused.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

CS



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1. The Principal Sessions Judge, Tiruppur.
2. The Public Prosecutor, High Court, Madras.
3. The Inspector of Police,
All Women Police Station, Tiruppur (Cr.No.1 of 2007).
4. The Record Keeper, Criminal Section, High Court, Madras.
5. The Judicial Magistrate NO.I, Tiruppur.
6. The Superintendent, Central Prison, Coimbatore.

+ 1 CC to Mr.V.Parthiban, Advocate SR NO 43548[24/8/16]

Crl.A.No.46 of 2013

GR(CO)
Eu 05.08.16