

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.932 of 2007

Bhaskar

.. Appellant

Vs

State rep. By
The Inspector of Police,
Chitlapakkam Police Station,
(Cr.No.105 of 2003)

.. Respondent

Prayer:- Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the judgment dated 24.09.2007 passed in S.C.No.510 of 2005 on the file of the Principal Sessions Court, Chengalpattu.

For Appellant : Mr.S.Nambirajan

For Respondent : Mr.M.F.Shabana,
Gov. Adv. (Crl. Side)

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JUDGEMENT

The sole accused in S.C.No.510 of 2005 on the file of the Principal Sessions Court, Chengalpattu, is the appellant herein. He stood charged for the offences under Sections 366-A, 376 and 3(2)(v) of SC/ST (Prevention of Atrocities) Act . By Judgment dated

24.09.2007, the trial court convicted the appellant/accused under Section 366(A) IPC and sentenced him to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for 3 months and also convicted him for the offence under Section 376 IPC, and sentenced him to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for 3 months, and acquitted him from the charge under Section 3(2)(V) of SC/ST (P.A) Act. The trial court ordered the sentences to run concurrently. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

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

P.W.4 is the victim in this case. She is the daughter of P.Ws.1 and 2. The victim/P.W.4's family was residing in the house of the accused as tenant. At the time of occurrence, the accused was studying 7th standard. On 06.03.2003, while the victim/P.W.4 was alone in her house, the appellant/accused told her that he is willing to marry her and then, the accused took the victim to Trichy and in Sri Uchipillaiyar Temple, he tied a sacred thread. Thereafter, he took the victim to Madurai and from Madurai to Ramanathapuram and there, they stayed in the house of a Mechanic, and the accused had a

sexual intercourse with the victim. On the next day morning, they went to the house of the aunt of the accused. In the meantime, P.W.1, the father of the victim, found his daughter missing and searched her for two days and since, he did not find her, on 08.03.2003, he lodged a complaint before the respondent police.

3. P.W.7 Sub-Inspector of Police, on receipt of the complaint, registered a case in Crime No.105 of 2003 for girl-missing and prepared Ex.P-6, First Information Report, and sent the same to the jurisdictional magistrate. Then, on 08.03.2003, he proceeded to the scene of occurrence and prepared Ex.P-2, Observation Mahazar and drew Ex.P-7 Rough Sketch, in the presence of the witnesses. Thereafter, he has recorded the statements of the witnesses. In the meantime, P.W.9 Inspector of Police found the accused, at Tambaram Sanatorium, along with the victim and arrested the accused and recorded the statement of the victim. Based on the same, P.W.7 altered the case into under Sections 366-A and 376 IPC, and prepared Ex.P-8, Alteration Report.

4. P.W.9, Inspector of Police, attached to the respondent police, continued the investigation and recorded the statements of the witnesses and arrested the accused and remanded him to judicial custody. Thereafter, he sent the victim girl for medical examination.

5. P.W.8 Doctor, working in the Government Medical College Hospital, Chennai, examined the victim/P.W.4 and he has given Ex.P-10 Report, which reads as follows:

“Moderately nourished female individual.

Examination of private parts:

Vulva	: Normal
Vagina	: Admits one finger
Hymen	: Healed laceration in 5,7,9,11 O'clock positions.
Fourchette	: Normal
Perineum	: Intact
Cervix	: Normal”

She has also taken X-ray of the victim and based on the same, she has also issued Ex.P-11 certificate, stating that the age of P.W.4 was above 14 years and below 16 years.

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6. Then, P.W.9 continued the investigation and during investigation, he came to know that victim/P.W.4, belongs to Schedule Caste community, and he obtained a certificate from the RDO and altered the case by adding the offence under Section 3(2)(v) of the Schedule Caste and Schedule Tribe (Prevention of

Atrocities) Act and then, he handed over the investigation to P.W.10 Deputy Superintendent of Police.

7. P.W.10, once again examined the witnesses and obtained the Community Certificate of the accused and the victim and after completion of investigation, he laid the charge sheet.

8. Based on the above materials, the trial Court framed charges as mentioned in paragraph 1 of the judgment. The accused denied the same. In order to prove its case, on the side of the prosecution, as many as 10 witnesses were examined and 15 documents were exhibited.

9. Out of the witness examined, P.W.1 is the father of the victim girl. According to him, he was a tenant under the appellant/accused and while her daughter was studying 7th standard, on 06.03.2003, she was found missing and he searched her for two days and thereafter, he lodged a complaint before the respondent police and when he was enquired by Police, he told that the accused was also found missing.

10. P.W.2 is the mother of P.W.4. She has also spoken about the missing of P.W.4. P.W.3 is the brother of P.W.1. He has

also spoken about the missing of P.W.4 and also filing of the complaint by P.W.1. P.W.4 is the victim girl. She has deposed that while she was studying 7th standard, when she was alone in her house, the appellant/accused approached her and told her that he wants to marry her and on 06.03.2003, he took her in a motorcycle to Chrompet Railway Station and from there, he took her to Sri Uchipilliyar Temple, Trichy and he tied sacred yellow thread. On his neck. Thereafter, he took her to Ramanathapuram and they stayed in a house of a Mechanic and there, the appellant had intercourse with her. Then, the appellant took P.W.4 to his aunt's house and there he had intercourse with her thrice. Since P.W.4, wants to meet her mother, the appellant/accused took her to Chennai and at Tambaram Sanatorium bus-stand, the police arrested the accused.

11. P.W.5 is the witness to the observation mahazar. P.W.6 Doctor, examined the appellant/accused and given Ex.P-4 certificate stating that the appellant is potent. P.W.7 Sub-Inspector of Police has spoken about the registration of the case and preparation of Observation Mahazar and Rough Sketch and also the preparation of alteration report. P.W.8 Doctor, examined P.W.4 and gave Ex.P-10 Certificate and also conducted radiological test to P.W.4 and gave an opinion that the age of the victim/P.W.4 is above 14 years and below 16 years.

12. P.W.9 Inspector of Police, continued the investigation, arrested the accused and recorded the statements of the witnesses and also altered the case by including the offence under Section 3(2)(v) of the SC/ST (P.A.) Act and handed over the case to Deputy Superintendent of Police. P.W.10 Deputy Superintendent of Police, took up the case for further investigation and examined the witnesses and obtained Community Certificates of the appellant/accused and the victim/P.W.4 and on completion of investigation, he laid charge sheet against the accused.

13. 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 examine any witness nor marked any documents on his side.

14. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

15. I have heard Mr.S.Nambirajan, learned counsel appearing for the appellant and Mrs.M.F.Shabana, learned

Government Advocate (Crl.Side) appearing for the State and also perused the records carefully.

16. P.W.4 is the victim girl. According to her, at the time of occurrence, she was studying 7th standard and P.W.8 Doctor, who examined P.W.4, has given Ex.P-10 report and also conducted radiological test and opined that the age of P.W.4 is above 14 years and below 16 years. In the absence of any other evidence to prove the age of the victim girl, the radiological report has to be accepted and the age of the victim girl/P.W.4 has to be considered as above 14 years and below 16 years, and she was a minor at the time of occurrence. It is the evidence of P.W.4 that the accused promised her that he will marry her and took her to various places and he had intercourse with P.W.4. P.W.8 Doctor examined P.W.4, and has stated that P.W.4 was subjected to intercourse. Hence, the evidence of P.W.4 is also supported by the medical evidence of P.W.8.

17. The learned counsel for the appellant would submit that there was no kidnapping, as the victim herself voluntarily went along with the appellant/accused and with the consent of P.W.4, the accused had intercourse with her and hence, the appellant cannot be convicted for the offences under Sections 366-A and 376 IPC.

18. The above contention of the learned counsel for the appellant cannot be accepted, because, in this case, at the time of occurrence, the victim girl was a minor, who was below the age of 16 years. Even assuming that she was a willing party and consented that is not a valid consent, as the victim was a minor at the time of occurrence. Apart from that, admittedly, only this accused has taken the victim to various places and also had intercourse with her. In the case of this nature, the victim evidence alone can be made as a sole basis for conviction provided it is reliable and trustworthy. In the instant case, P.W.4, a minor girl clearly stated that only the accused kidnapped her and had sexual intercourse with her and there is no reason to disbelieve her evidence. Hence, the prosecution has proved the offences under Sections 366-A IPC and 376 IPC. The trial court, considering all the materials, rightly convicted the appellant/accused under Sections 366-A and 376 IPC. In the above circumstances, I do not find any perversity or illegality in the judgment of the Court below and there is no reason to interfere with the same.

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19. The learned counsel for the appellant would submit that the accused is a young man and he has no bad antecedent and now, he got married and having 3 children, likewise, the victim girl, P.W.4 also got married and living happily. Learned counsel for the appellant also relied upon a judgment of the **Hon'ble Supreme Court**

reported in 2006(4) SCC 347 (Ramkumar /vs/ State of Haryana), in which, it is held as follows:

" However, at the time of hearing it is brought to our notice that the girl has now got married and living with her husband. The said statement is also ratified by the evidence of the father of the girl. Having regard to the peculiar facts and circumstance of the case, we are of the view that the sentence imposed by the Sessions court and as affirmed by the High Court under Sections 366 and 376 of the Penal Code is on the highside. In our opinion, ends of justice would be amply met if we reduce the sentence to three years. We do so accordingly."

20. Following the judgment of the Hon'ble Supreme Court and since the appellant is a young man and having a family to maintain, and he was already confined in jail for more 2 ½ years; considering the mitigating as well as aggravating circumstances, while confirming the conviction under Sections 366-A and 376 IPC, in the interest of justice, the sentence imposed on the appellant under Sections 366-A and 376 IPC, is modified to that of the period already

undergone

21. In the result, the Criminal Appeal is partly allowed and the conviction imposed on the appellant in S.C.No.510 of 2005 under Sections 366-A and 376 IPC is confirmed, and the sentence is modified to that of the period already undergone and imposes the fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for four weeks for the offences under Section 366-A IPC and also imposes fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for four weeks for the offence under Section 376 IPC.

14.02.2017

mrp
Index:Yes

To

1. The Principal Sessions Judge,
Chengalpattu.

2.The Public Prosecutor,
High Court, Madras.

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V.BHARATHIDASAN.J.,

mrp



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