

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.04.2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MRS. Dr.JUSTICE ANITA SUMANTH

CRL.A.No.166 of 2017

Dharbendra ... Appellant/Single Accused

Vs

State rep by
The Inspector of Police,
All Women Police Station,
Coimbatore District
(Crime No.1002/2010)

.... Respondent /Complainant

Appeal filed u/s.374 (2) Cr.P.C., seeking to set aside the judgment passed in S.C.No.101/2011 on the file of the learned Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore dated 29.06.2016

For appellant : Mr.T. Muruganantham

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 S.C.No.101/2011 on the file of learned Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore. He stood charged for the offence under Sec.376(2)(f)(g) of IPC. By Judgment dated 29.06.2016, the trial Court convicted the accused under Sec. 376(2)(f)(g) IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for two months. Challenging the said conviction and sentence, the appellant has come up with this appeal.

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

(a) P.W.1 was a resident of Srinivasa Nagar at Coimbatore. The accused hails from Bihar State. He knows only Hindi language. He had come down to Coimbatore to fix marble tiles in

the construction companies. He was staying in the house situated near the house of P.W.1. P.W.1's daughter is a child, hardly aged about 2 years. On 07.08.2010 around 8.00 p.m, P.W.1 returned home after work. At that time, she heard the cry of the child. At that time, it is alleged that the accused left the child in front of the house of P.W.1. P.W.1 found that there was inflammation in the vagina and bleeding. When P.W.1 enquired the accused, he spoke something in Hindi and went into his house. It is the case that the accused along with one juvenile by name Trilogi @ Trilogikumar had committed rape on the child.

(b) P.W.1 thereafter, with the help of neighbour, took the child to P.W.6-Dr.Anand. P.W.6 gave first aid treatment. He found blood stains near vaginal cavity. Thereafter, P.W.1 went to Pothanur Police Station and made a complaint at 4.00 p.m on 08.08.2010. Based on the complaint (Ex.P.1), the present case was registered in Cr.No.1002/2010 under Sec.376(2)(g) IPC against three persons by name Dharbendra (the accused herein), Trilogi @ Trilogikumar and Vikaram. The case was investigated by P.W.17. She forwarded the child to Government Medical College Hospital, Coimbatore for treatment.

© P.W.9 Dr.K. Murugalakshmi attached to Coimbatore Medical College, examined the child and found no external injuries on the body of the child. The Hymen was also intact. She took the vaginal smear from the body of the child and forwarded the same for chemical examination, which revealed that there was neither spermatozoa nor semen. P.W.17, on completing the investigation, laid charge sheet against the accused alone.

3. Based on the above materials, the Trial Court framed lone charge as detailed in the first paragraph of the judgment. In order to prove the case, on the side of the prosecution, as many as 17 witnesses were examined and 12 documents and 4 material objects were also marked.

4. Out of the said witnesses, P.W.1, the mother of the child has stated that when the child was left in front of her house, she found inflammation on the vaginal cavity and she further stated that she took the child to the doctor. She has further stated that on the next day, she went to the police station and made a complaint. P.W.2-neighbour has stated that on the day of occurrence, P.W.1 told her that there was inflammation in the vaginal cavity of the child. P.W.2 also found the same. Even P.W.2 advised P.W.1 to take the child to doctor and then go to police station. P.W.3 has stated that he accompanied P.W.1 to take the child to the hospital for treatment. P.W.4 has spoken about the preparation of observation mahazar and rough sketch at the place of occurrence. P.W.5-neighbour has stated about the arrest of the accused. P.W.6

Dr.Anand has stated that on 09.08.2010 at 10.00 a.m, the child, in question, was brought to him for treatment. He found that there were injuries near the vaginal cavity of the child. P.W.7 Dr.K.Jayalakshmi, attached to Government Medical Hospital, Coimbatore has stated that she examined the child and opined that the child is aged about 2 to 3 years. P.W.8 Dr.Uma Shankar, attached to Government Medical College has stated that he examined the accused and opined that the accused is aged about 22 years. P.W.9 Dr.K. Murugalakshmi, attached to Government Hospital, Coimbatore has stated that on 10.08.2010, she examined the child and found that there was no injury at all. There were no blood stains. She took the vaginal smear from the body of the child and forwarded the same for chemical examination, which revealed that there was neither spermatozoa nor semen. P.W.11 Dr.Raguramaiya, attached to Government Medical College at Coimbatore has stated that he examined the accused on 24.09.2010 and found him sexually potent to perform sexual intercourse. P.W.12, the then Head Constable has stated that he produced the child before the doctor for examination, as directed by the learned Magistrate. P.W.13 yet another neighbour has stated that she found the child crying on the day of occurrence. P.W.14 the then Head Constable has stated that she forwarded the material objects to Forensic Lab for chemical examination. P.W.15 Dr.Mangaiyarkarasi, attached to Government Hospital, Coimbatore has stated that she examined the blood group of the accused and found the same as " A +ve". P.W.16, the then Head Constable has spoken about the registration of the case. P.W.17 has spoken about the investigation done and final report filed.

5. 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. On the side of the Court, one Mr.Syed Rafi, an Assistant of the Principal District Court, Coimbatore was examined as C.W.1. He has stated that he translated the crux of the judgment to the accused when he was questioned about the quantum of punishment. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph and that is how, the accused has come up with this appeal.

6. 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.

7. As we have already stated, there is no eyewitness to the occurrence. Since the alleged victim was hardly aged about 2 to 3 years, she was not in a position to say about what had happened to her. P.Ws.1 and 2 have stated that at the time of

occurrence, the child was left in front of the house of P.W.1 by the accused and at that time the child was crying. The accused spoke something in Hindi. According to P.W.1, at that time, there was inflammation in the vaginal cavity and there was bleeding. She has stated that she took the child to doctor on the same day that was on 7.08.2010. P.W.6 Dr.Anand examined the child only on 09.08.2010. Therefore, it is not known as to what was the condition of the child as on 07.08.2010. Above all, P.W.9 Dr.K. Murugalakshmi, attached to Coimbatore Medical College and Hospital, examined the child and found no external injuries and marks on the body of the child. The Hymen was also intact and there was no scratch mark. From the evidence of P.W.9, the evidence of P.W.1 has become doubtful. Assuming that there is a truth in the evidence of P.W.1, it cannot be safely concluded that the accused herein is responsible for the said injury found on the private parts of the child. According to the first information report, there were three persons involved. Among three, the possibility of other two persons, being responsible for having caused the injuries, cannot be ruled out. At any rate, in our considered view, from the evidence of P.W.1, which is not corroborated by medical evidence, it is difficult to hold that the accused had raped the child..

8. In our considered view, there are lot of doubts in the case of the prosecution. It would not be safe to sustain the conviction. We hold that the prosecution has failed to prove the case beyond reasonable doubt.

9. In the result,

(i) the appeal is allowed and the conviction and sentence imposed on the appellant by the learned Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore dated 29.06.2016 made in S.C.No.101 of 2013 are set aside and he is acquitted.

(ii) The fine amount, if any paid, shall be refunded to him.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sr

To

1.The Sessions Judge,
Magalir Neethimandram,
(Mahila Court), Coimbatore.

2. The Inspector of Police,
All Women Police Station,
Coimbatore District.

3. The Superintendent,
Central Prison,
Coimbatore.
(In Duplicate for Communication to the Detenue)

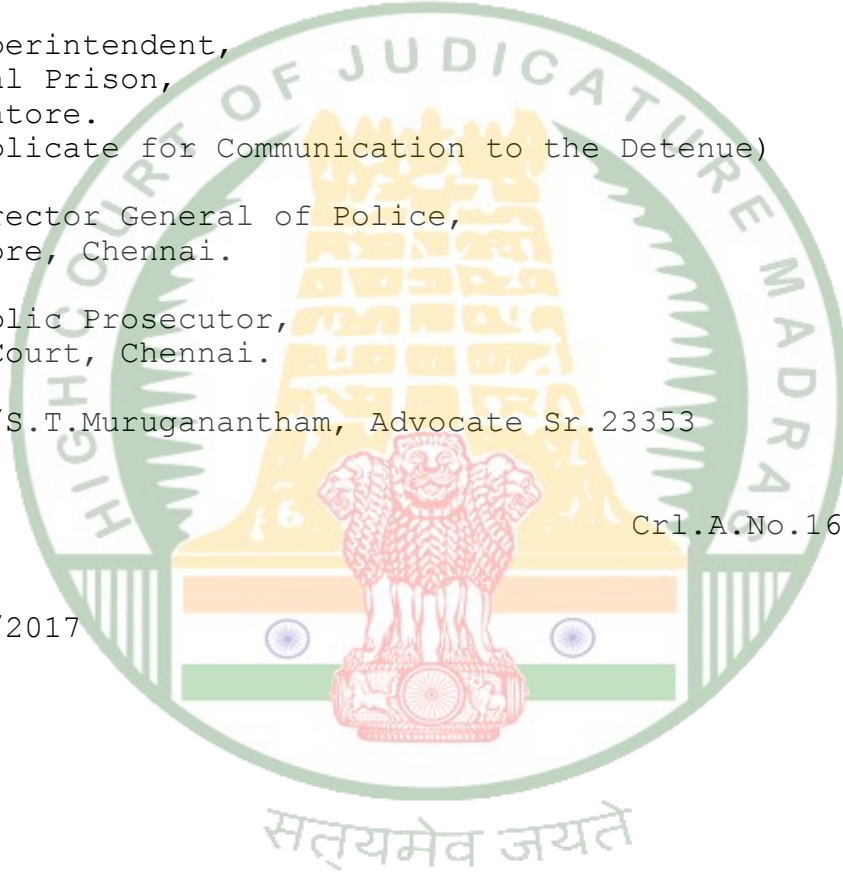
4. The Director General of Police,
Mylapore, Chennai.

5. The Public Prosecutor,
High Court, Chennai.

+1cc to M/S.T.Muruganantham, Advocate Sr.23353

Crl.A.No.166 of 2017

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srg 24/05/2017



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