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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2017

C O R A M

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.96 of 2014
and
M.P.No.1 of 2014

Suresh @ Sureshkumar
S/o. Selvam

...Appellant/ Accused

-vs-

The State rep. by
Inspector of Police,
Sivagiri Police Station,
Sivagiri, Erode District.
(Crime No.112/2011)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment of learned II Additional Sessions Judge, Erode, passed in S.C.No.161 of 2012 on 29.04.2013.

For Appellant : Mr.S.Shanmugavelayutham,
senior counsel for Mr.D.Gopal

For Respondent : Mr.M.Mohamed Riyaz
Government Advocate [Crl.side]

J U D G M E N T

This appeal arises against judgment of learned II Additional Sessions Judge, Erode, passed in S.C.No.161 of 2012 on 29.04.2013, convicting appellant/accused for offence u/s.376(2) (f) and 363 IPC and sentencing him to 2 years R.I. and fine of Rs.2,000/- i/d 1 year S.I. for offence u/s.363 IPC and 10 years R.I. and fine of Rs.2,000/- i/d 1 year S.I. for offence u/s.376 (2) (f) IPC.

2. Prosecution case is that PWs.1 and 2 are parents of PW-3, victim girl. Accused is their neighbour. On 03.07.2011, PW-1 went to a pond to wash clothes and on her return, found her



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daughter missing. PWs.1 and 2 went in search of PW-3, victim girl, aged 8 years, heard the cry of PW-3 near a burning ghat and when they went there, found the accused indulging in sexual intercourse with PW-3. PWs.1 and 2 rushed P.W.3 to a hospital nearby. PW-5, Doctor, examined PW-3, gave her first aid and instructed PWs.1 and 2 to prefer a complaint. PW-1 preferred Ex.P1, complaint, before PW-11, Special Assistant Inspector, Sivagiri Police Station. A case was registered in Crime No.112 of 2011 on the file of respondent for offence u/s.376 IPC. Printed First Information Report is Ex.P15. PW-11 seized MO-1, underwear of PW-3, produced along with the complaint. PW-11 forwarded Ex.P15, Printed First Information Report, to Judicial Magistrate, Kodumudi and other higher officials. PW-13, Inspector of Police, took up investigation and visited the place of occurrence, prepared Ex.P14 - Observation Mahazar and Ex.P17 - Rough Sketch. PW-13 examined PWs.1, 2, 3, 10 and others and recorded their statements. PW-13 arrested accused at a bus stop at 08.30 p.m., took him to police station and seized MO-2, underwear worn by accused at the time of occurrence under Ex.P18. PW-13 forwarded the victim girl to Government Hospital, Erode, along with a requisition towards conduct of medical examination. PW-13 forwarded the seized material objects 1 and 2 to Court. PW-13 sent the accused to judicial custody. PW-13 sent a requisition to Judicial Magistrate towards forwarding the seized articles for chemical analysis. PW-13 sent Ex.P19, requisition, to Judicial Magistrate towards conduct of medical examination regards potency of accused. On his transfer, PW-13 handed over investigation to PW-14 on 04.04.2012. PW-14, Inspector of Police, examined PW-8, Doctor, who had examined the victim girl, recorded her statement and obtained medical certificates. On completion of investigation, PW-14 filed a charge sheet informing commission of offences u/s.376 and 363 IPC before learned Judicial Magistrate, Kodumudi and upon committal, the case was tried in S.C.No.161 of 2012 on the file of learned II Additional Sessions Judge, Erode.

3. Before trial Court, prosecution examined fourteen witnesses and marked nineteen exhibits and two material objects. None were examined on behalf of defence nor were any exhibits marked. When questioned u/s.313 Cr.P.C., accused denied charges. On appreciation of materials before it, trial Court, under judgment dated 29.04.2013, convicted accused for offences u/s.376(2)(f) and 363 IPC and sentenced him to 2 years R.I. and fine of Rs.2,000/- i/d 1 year S.I. for offence u/s.363 IPC and 10 years R.I. and fine of Rs.2,000/- i/d 1 year S.I. for offence u/s.376(2)(f) IPC. Trial Court directed that sentences run concurrently. Against such finding, petitioner/accused has filed the present appeal.

4. Heard learned senior counsel for appellant and learned Government Advocate [Crl.side] as also perused materials on record.



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5. Learned senior counsel for appellant submitted that there is no evidence as would inform a case of penetration and in the absence thereof, the conviction for offence u/s.376 IPC is erroneous. Evidence of PWs.1 and 2, father and mother of PW-3, victim girl is no more than that they had seen the accused lying atop PW-3. Submitting as above, learned senior counsel prayed this Court render a finding of acquittal.

6. Learned Government Advocate [crl.side] submitted that Ex.P5, Medical Certificate informs that there is possibility of forcible sexual intercourse within 48 hours of examination. Submitting as above, learned Government Advocate [Crl.side] prayed for dismissal of the appeal.

7. This Court has considered the rival submissions.

8. P.Ws.1 and 2 parents of the victim P.W.3 have spoken to finding the appellant/accused lying atop P.W.3, their 8 year old daughter. They have spoken to the pant of the accused and the underwear of the victim girl having been found removed. P.W.3 aged 9 at the time of deposing in Court has informed of her being enticed away by the accused by promising her sweets and of actions of the accused where upon she suffered pain and bleeding and fainted. P.W.6 - Doctor has deposed to the vagina of P.W.3 having been torn and that examination of the child indicated that she had been subjected to sexual intercourse recently, on 03.07.2011 being the date of occurrence. Such evidence finds support also in Ex.P.5 issued by her on 04.06.2012 to the effect that available history and clinical findings caused her to opine that there was evidence of possible forcible sexual intercourse within 48 hours of her examination.

This Court is of the view that the finding of conviction stands rightly arrived at by the Court below. The sentence awarded is appropriate. This Criminal Appeal shall stand dismissed. Connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

bri/gm



To

1. The II Additional Sessions Judge,
Erode.

2. The Chief Judicial Magistrate,
Erode.

3. The Inspector of Police,
Sivagiri Police Station,
Sivagiri, Erode District.

4. The Superintendent,
Central Prison,
Coimbatore.

5. The Section Officer,
Criminal Records,
High Court, Madras.

6. The Public Prosecutor,
High Court, Chennai.

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