

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.119 of 2009

Ramachandran

..Appellant/Accused

Vs

State by

The Inspector of Police,
Kothagiri Police Station,
Kothagiri Udhagai District,
Crime No.891 of 2004

..Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the conviction and sentence in S.C.No.53 of 2007 dated 25.07.2008 on the file of the Assistant Sessions Judge, Udhagamandalam at Neelagiri District and to set-aside the same.

For Appellant : Mr.M.N.Balakrishnan

For Respondent : Mrs. M.F.Shabana,
Govt. Advocate (Criminal) side

JUDGEMENT

The sole accused in S.C.No.53 of 2007 on the file of the Assistant Sessions Court, Udhagamandalam, is the appellant herein. He stood charged for the offences under Sections 307 and 376 IPC. The trial Court, by judgment, dated 25.07.2008, convicted the appellant/accused under Section 376 IPC and sentenced him to undergo rigorous imprisonment for 10 years and also to pay a fine of Rs.2000/-, in default, to undergo rigorous imprisonment for 6 months and convicted him under Section 324 IPC instead of 307 IPC and sentenced him to undergo rigorous imprisonment for 3 years, and the sentences are directed to run concurrently. Challenging the above said conviction and sentence, the appellant is before this court with this appeal.

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

P.W.2 is the victim in this case. She is 7 years old child. The accused was working as cooking assistant, and on

20.11.2004, he was engaged in a marriage function at Thotakombai in Nilgiri District. On the same day, at about 6.00 p.m., while P.W.2, the victim was going alone to her grandmother's house, the accused waylaid her, threatened her, then took her to a nearby water tank, dashed her head against a stone and then he raped her. P.W.1, mother of P.W.2 found her daughter missing and searching for her, at about 7.00 p.m., she found P.W.2, near a water tank in an unconscious stage with bleeding injuries on her head and in her private part. Immediately, the husband of P.W.1 took P.W.2 to Government Hospital, Kothagiri. P.W.14, a doctor, examined P.W.2, and after giving first aid, he referred her to Government Medical College Hospital, Coimbatore. P.W.17, Doctor, working in the Government Hospital, Coimbatore, had given treatment to her and he has also given an Accident Register(Ex.P.15) and she was given treatment for 15 days in the hospital as inpatient.

3. P.W.20, Sub-Inspector of Police, working in the respondent police, on receipt of the memo issued from the Government Hospital, Kothagiri, went there and since P.W.2 was in an unconscious stage and admitted in ICU, P.W.20 recorded the statement of the father of P.W.2. Based on the statement, he has registered a case in Crime No.891 of 2004, for the offences under Sections 376 and 307 IPC and prepared an First Information Report (Ex.P.25).

4. P.W.21, Inspector of Police, Kothagiri Circle, on receipt of the First Information Report, on 22.11.2004, proceeded to the scene of occurrence and prepared an Observation Mahazar(Ex.P.2) and drew a Rough Sketch (Ex.P.26) in the presence of the witnesses and also recovered the bloodstained soil(M.O.4) and sample soil(M.O.5) under the cover of Mahazar from the scene of occurrence. He also seized a bloodstained Stone (M.O.2) and sample stone(M.O.3), blood stained plants (M.O.6) and sample plants(M.O.7), and blood stained cement slab (M.O.8), and sample cement slab(M.O.9) from the scene of occurrence, and recorded the statements of the other witnesses. Then, he proceeded to the Government Hospital, Coimbatore, and recovered the dress worn by P.W.2 under the cover of Mahazar. On the same day, he sent the victim girl for medical examination. On 23.11.2004, he arrested the accused and on such arrest, he has voluntarily given a confession, and based on the disclosure statement, he recovered the clothes worn by the accused, at the time of occurrence, in the presence of the witnesses and remanded him to judicial custody, P.W.21 also sent the accused for medical examination. After recording the statement of the doctor, since he was transferred, handed over the investigation to P.W.22.

5. P.W.22, Circle Inspector, continued the investigation and recorded the statement of the Doctors, the victim, and Sub-Inspector of Police, who registered the case, and after completion of investigation, he laid the charge sheet against the accused.

6. Based on the above material, the trial court framed charges as mentioned in paragraph 1 of the judgment and the accused denied the same. In order to prove its case, on the side of the prosecution, as many as 22 witnesses were examined and 30 documents were exhibited, besides 15 material objects were marked.

7. Out of the witnesses examined, P.W.1 is the mother of the victim girl. According to her, on the date of occurrence, her daughter was found missing and she searched for her and at about 7.00 p.m., she saw the victim girl in an unconscious stage near a water tank, and her husband, took the victim to the Government Hospital, Kothagiri, thereafter, she was shifted to Government Hospital, Coimbatore. P.W.2 is the victim girl. According to her, on the date of occurrence, at about 6.00 p.m., when she was going alone to her grand-mother's house, the accused waylaid her and took her to the nearby water tank and dashed her head against a stone and she was unconscious and after she recovered conscious found that she was admitted in the Hospital.

8. P.W.3 is a resident of the same village and he engaged the accused for cooking to his daughter's marriage, according to him, and after the occurrence, he found the accused missing. P.W.4 is only a hearsay witness. P.W.5 is another villager. According to him, he saw the accused talking to the victim/P.W.2, at about 6.00 p.m., and subsequently, he came to know that the victim was raped by the accused. P.W.6 Jeep Driver, took the victim, P.W.2, to the hospital in his jeep. P.W.7 is a witness to the Observation Mahazar and recovery of blood stained soil(M.O.4), Sample Soil(M.O.5) and other material objects from the scene of occurrence. P.W.8 is an employee working along with the accused in cooking, according to him, the accused was found missing from 6.00 p.m., and he turned hostile. P.W.9 is also a cook, who was working along with the accused. According to him, the accused was found missing at about 6.00 p.m., on the date of occurrence.

9. P.W.10 is a hearsay witness. P.W.11, owner of the jeep, in which P.W.2 was taken to hospital. P.W.12 is a witness to the arrest and confession given by the accused. P.W.13 is the Doctor, admitted P.W.2 in Government Medical College Hospital, Coimbatore and given an Accident Register, Ex.P.7.

P.W.14 is a Doctor, working in the Government Hospital, Kothagiri and has given a first aid to P.W.2 and referred her to the Government Medical College Hospital, Coimbatore and also issued an Accident Register, Ex.P.9. P.W.15 is a radiologist, working in the Government Hospital, Coimbatore, has taken x-ray to P.W.2 and fixed the age of the victim/P.W.2 as above 7 years and below 10 years and given the certificate Ex.P.13.

10. P.W.16 is the Scientific Officer in the Forensic Lab, Chennai. He examined the bloodstained material objects and has given report Ex.P.14, also collected the evidence from the scene of occurrence. P.W.17 is the Doctor, who treated P.W.2. He has given a wound certificate, EX.P.15, and discharge summary, Ex.P.16. P.W.18 is the Doctor, working in the Forensic Science Department, examined the bloodstained material objects and given a report and also submitted the serology report, Ex.P.22. P.W.19, examined the accused and had given certificate with regard to potency of the accused. P.W.20, Sub-Inspector of Police, has spoken about the registration of the case and preparation of First Information Report. P.W.21, Inspector of Police, conducted investigation, arrested the accused and recorded the statements of the witnesses. P.W.22, continued the Investigation and after recording the statement of doctor, and other witnesses, completed the investigation and laid charge sheet against the accused.

11. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false and he examined himself as DW.1 and marked three documents as Ex.D.1 to Ex.D.3. Deposition of P.W.21 in S.C.No.27 of 2005 was marked as Ex.D.1, the documents given to the accused in S.C.No.27 of 2005 was marked as Ex.D.2 and the copy of the judgment in S.C.No.27 of 2005 was marked as Ex.D.3.

12. Having considered all the above materials, the trial Court convicted the accused as detailed in the first paragraph of this judgment. Challenging the same, the present Criminal Appeal has been filed.

13. I have heard the Mr. M.N.Balakrishnan, learned counsel appearing for the petitioner and Mrs.M.F.Shabana, learned Government Advocate (Crl. Side) for respondent and I have also perused the records, carefully.

14. It is a heinous crime committed by the accused against an innocent 7 years old school going girl. P.W.2 is a victim girl in this case. According to her, on the date of occurrence, at about 6.00 p.m., while she was going to her grand-mother's house, the accused waylaid her, threatened her and took her to a nearby water tank and dashed her head against

the wall and she was unconscious. P.W.1 is mother of the deceased, who found her daughter missing, searched for her and found her in an unconscious stage near a water tank. Then, P.W.1's husband took P.W.2 to the Government Hospital, Kothagiri, P.W.14, Doctor, working in the Government Hospital, admitted P.W.2 and found bleeding injuries in the left hand side of the forehead and he also found bleeding injury in the private part of the victim girl, after giving first aid, he referred her to Government Medical College Hospital, Coimbatore and issued an Accident Register, Ex.P.9. Then P.W.13, Doctor, working in the Government Hospital, Coimbatore, admitted P.W.2 in the Accident ward and he also issued an Accident Register, Ex.P.7. P.W.17 is a Doctor, who admitted the victim girl in the hospital and issued an Accident Register, Ex.P.15 and the medical legal opinion is marked as Ex.P.10.

15. P.W.2 also identified the accused in the court. The evidence of P.W.2 is also corroborated by medical evidence. The presence of the accused in the scene village also proved by the co-workers. From the above evidence, the prosecution has clearly proved that it is this accused only committed the offence. Considering all the above material, the trial court convicted the accused for offences under sections 324 and 376 IPC and I find no infirmity or perversity in the judgment of the court below, and I am of the considered view that the prosecution has established the guilt of the accused beyond any reasonable doubt.

16. Learned counsel for the appellant submitted that the appellant has already undergone the entire sentence and he was also released. On verification learned Government Advocate (Crl. Side, also confirmed the same. In the above circumstances, the accused had already undergone the sentence, he need not be sent back to jail.

17. In the result, the Criminal Appeal fails and accordingly, the same is dismissed. The judgment of the trial Court in S.C.No.53 of 2007 dated 25.07.2008 is hereby confirmed.

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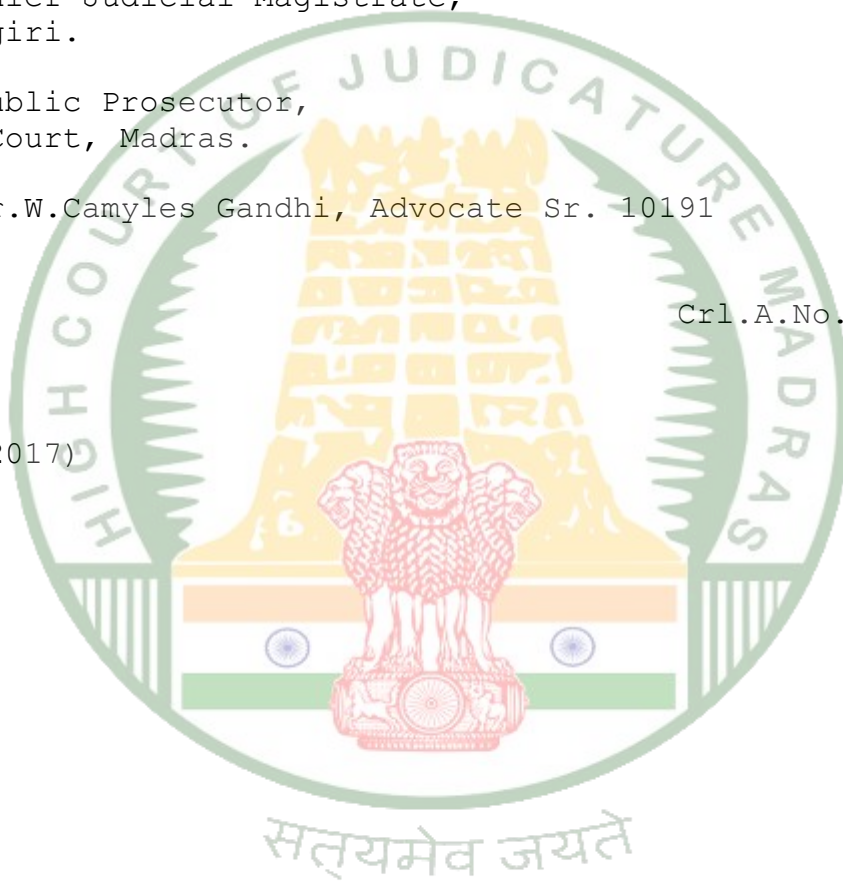
To

1. The Assistant Sessions Judge,
Udhagamandalam.
2. The Judicial Magistrate,
Kothagiri.
3. The Chief Judicial Magistrate,
Kothagiri.
4. The Public Prosecutor,
High Court, Madras.

+lcc to mr.W.Camyles Gandhi, Advocate Sr. 10191

Crl.A.No.119 of 2009

NM(CO)
VR(14/06/2017)



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