

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Criminal Appeal No.32 of 2010

Mohan

.. Appellant

Vs

State rep. By
Inspector of Police,
All Women Police Station,
Kondalampatti,
Salem.

.. Respondent

Prayer:- Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment and conviction made in S.C.No.330 of 2008 dated 08.01.2010 on the file of the Sessions Judge, Mahila Court, Salem and to set aside the conviction and sentence imposed against him in S.C.No.330 of 2008 dated 08.01.2010 on the file of Sessions Judge, Mahila Court, Salem and acquit the appellant.

For Appellant : Mr.M.Senthil Kumar

For Respondent : Mr.E.Raja,
Additional Public Prosecutor

JUDGEMENT

The sole accused, in S.C.No.330 of 2008 on the file of the learned Sessions Judge, Mahila Court, Salem is the appellant herein. He stood charged for offences under Sections 366 and 376 IPC. By judgment dated 08.01.2010, the trial court convicted the accused under Sections 366 and 376 IPC and sentenced him to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.1000/- with defaulting sentence for one three months under section 366 IPC and sentenced him to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.1000/- with defaulting sentence of one year under section 376 IPC. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

2. Based on the materials filed by the prosecution, the trial Court framed charges as mentioned in the first paragraph of the judgment and the accused denied the same. In order to prove its case, on the side of the prosecution, as many as 13 witnesses were examined and 14 documents were exhibited.

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

The accused and the victim are residents of Andipatty Panankadu village. Both of them are working in a lathe factory. As the victim P.W.4, daughter of P.Ws.1 and 2, has not come to the house in time, P.W.1, the father

of the victim, when enquired came to know that his daughter was kidnapped by the accused. Hence, he lodged a complaint with P.W.13, the Inspector of Police. P.W.2, mother and P.W.3, who is the son of P.W.1, P.W.6, P.W.9 also made enquiries about the whereabouts of the victim.

4. While P.W.4 was also working in the lathe factory, where the accused was also working, in the year 2007, one Ramachandran, Somasundaram and Ganesan forcibly conducted the marriage of P.W.4 with the accused herein. Before that the accused also forcibly raped the victim. Thereafter, the accused tied thali to P.W.4 in a temple situated at the foothills of Yerkaud.

5. P.W.13, after receipt of Ex.P.1, first information, registered a crime in Crime No.15 of 2007 under section 366 of IPC in Ex.P.11. Thereafter, he proceeded to the place of occurrence and prepared Observation Mahazar Ex.P.3 in the presence of P.W.9 and also drawn a rough sketch, Ex.P.12. Thereafter, he recorded the statement of the witnesses and arrested the accused on 20.12.2007 and recorded his confession in the presence of P.W.5. and P.W.12 and referred the victim girl and the accused for medical examination. Then he altered the crime under Ex.P.14 alteration report.

6. P.W.10 Gynecologist attached to the Mohana Kumaramangalam Government Hospital examined the victim girl and found hymen was not intact and vagina admitted two fingers and opined that P.W.4 was subjected to sexual

intercourse and issued Certificate Ex.P.5 and Report Ex.P.6 in this regard. P.W.11, the Medical Officer has examined the accused with regard to his potency and issued Ex.P.8 and 9. P.W.13, in continuation of his investigation examined the medical officers and recorded their statements and laid charge sheet as against the accused under section 366 and 376 IPC.

7. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. On the side of the defence D.W.1 and D.W.2 were examined and Ex.D1 to Ex.D.4 were marked.

8. The accused was examined as D.W.1. According to him, the victim and himself were working in the same lathe factory and they were in love and they married and their marriage was also registered. Thereafter, they were living together. After some time, the parents of the victim forcibly took the victim to their home and thereafter, the police arrested him. Their marriage registration certificate is Ex.D.1, Divorce Deed is Ex.D.3. D.W.2, Head Clerk was examined to show that at the time of filing of the affidavit filed by the victim and it is also marked as Ex.D.4.

9. Heard the learned counsel for the appellant and the learned Additional Public prosecutor for the respondent.

10. The learned counsel appearing for the appellant submitted that the victim and the accused were working together in a lathe factory and they

were in love which resulted in their marriage without the consent of their parents. The victim is more than 20 years at that time of the alleged marriage with the accused. Infact, she herself voluntarily gone with the accused and she consented for the marriage. Absolutely, there is no evidence on record to show that the victim was forcibly kidnapped by the accused. The own declaration affidavit given by the victim itself shows that she was a consenting party for the marriage also for the alleged sexual intercourse and the marriage certificate filed on the side of the defence also proves her marriage. Besides the mother of the victim, namely, P.W.2 has also stated in her evidence that P.W.2 was more than 20 years at the relevant time. Hence, it is the contention of the learned counsel that P.W.1 and P.W.4 are highly unreliable and creates doubt and prayed for allowing the appeal.

11. Whereas, it is the contention of the learned Additional Public Prosecutor that the parents and the other relatives have spoken about the missing of the victim and the victim P.W.4 in her evidence has also stated that she has been forcibly raped by the accused. Therefore, submitted that the judgment of the trial court is well balanced and does not require any interference.

12. In the light of the above submissions, now the point arises for consideration is whether the prosecution has proved the guilt of the accused in both charges beyond all reasonable doubts.

13. The law was set in motion on the basis of Ex.P.1, the first information given by P.W.1, father of P.W.4. It is an admitted fact that P.W.4 and the accused were working together in a lathe factor for some time. P.W.1 and P.W.2 are the parents of the victim. P.W.1 has lodged first information since his daughter did not come to their house in time. P.W.1 and P.W.2 evidence when carefully seen, they have never spoken about the direct connection of the accused with the alleged kidnapping. Their evidence appears to be hear say only. Similarly the other witnesses examined by the prosecution, particularly P.W.5, P.W.6, PW.7, P.W.8 and P.W.9 also are not useful for the prosecution in establishing the alleged kidnap and the rape.

14. The only evidence available on record to prove the alleged kidnap and rape is that of the victim P.W.4. Though, it is the contention of the prosecution that the victim was below 18 years at the relevant time, the same is falsified by the evidence of P.W.2, mother of the victim. P.W.2, mother of the victim in her cross examination has categorically admitted that the victim is more than 20 years at the relevant time. It is further corroborated by the evidence of P.W.10, the doctor and she has also stated that the victim is more than 20 years. The marriage certificate filed on the side of defence proves the marriage of the victim with the accused. Her own statement before the Marriage Registrar show that she is 20 years at the relevant time. Besides unregistered deed of divorce entered into between the parties has also been marked as

Ex.D.3 on the side of the defence also clearly shows that infact the victim was a consenting party to the marriage and she had sexual intercourse while living with the accused as husband and wife.

15. As per the evidence of P.W.4, in her evidence she has stated that her marriage was forcibly done by one Ramachandran, Somasundaram and Ganesan with the accused besides she has also stated that she has been forcibly raped by the accused. Her evidence does not show that when such occurrence took place, where she was subjected to sexual assault. Though she had stated that she was forcibly raped, her conduct assumes significance particularly when she never whispered the same to any one. She has not even preferred to give any complaint immediately after such incident. These facts create a serious doubt about her version that she has been forcibly raped and kidnapped.

16. Further the evidence of P.W.4 also does not show that she has been forcibly kidnapped by the accused or somebody. When this part of the her substantive evidence is considered along with the documentary evidence adduced on the side of the accused, the Marriage Register certificate clearly show that in the year 2007, the marriage between the accused and the victim was registered on the file of Marriage Registrar and three witnesses namely has signed as a witness. The documentary evidence adduced on the side of the accused clearly falsify the evidence of P.W.4 that her marriage has been conducted forcibly. Infact, after the marriage was registered, the complaint has

been lodged on 20.12.2007, as per Ex.P.1. In the year 2008, unregistered divorce deed has also been entered into between the parties in the presence of witnesses, wherein also it is stated that they married and were residing together. In view of the victim's parents, they have decided to sever their ties. All these facts clearly falsifies the evidence of P.W.4. Further her evidence of rape for once is also not substantiated by the medical evidence. P.W.10, the Medical Officer who examined the victim did not find any external injuries and her evidence also shows that she had sexual intercourse repeatedly. Therefore, the evidence of P.W.4 that she was forcibly raped once is also not reliable. Further, her conduct in keeping silent and not informing to anybody about the forcible marriage and rape, force this Court to raise inference against her evidence.

17. Admittedly, P.W.4 is a major at the relevant time. She was conscious enough with her decision about her life at the relevant time. Therefore, the possibility of consensual sex with the victim cannot be ruled out. Therefore, this Court is of the view that the charges levelled against the accused have not been proved beyond reasonable doubt and the benefit of doubt has to be given to the accused.

18. Accordingly, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellant in S.C.No.330 of 2008 dated 08.01.2010 by the Sessions Judge, Mahila Court, Salem are set aside and the accused is acquitted of the charges under Sections 366 and 376 IPC.

Fine amount paid shall be refunded. Bail bond, if any, executed by the accused, shall stand cancelled.

02.06.2017

vrc

Index : Yes/No

Internet : Yes/No

Speaking/Non Speaking Order

To

1. The Sessions Judge,
Mahila Court,
Salem.

2. The Public Prosecutor,
High Court, Madras.

N.SATHISH KUMAR

vrc

Crl.A.No.32 of 2010

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