

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Date of Reservation : 21.11.2016

Date of Pronouncement : 01.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.869 of 2012

Datchinamoorthy @Anjan (53) Appellant/Accused
(in Jail)

versus

The Inspector of Police,
Karaikal Town Police Station,
Karaikal,
(Crime No.118 of 2007

...Respondent/complainant

Prayer: Criminal Appeal filed under Section 374 (2) of Cr.P.C., to set aside the judgment dated 30.07.2012 made in S.C.No.85 of 2011, on the file of the Additional Sessions Court, Karaikal.

For Appellant : Mr.M.R.Thirugnanam for
Mr.P.Ayyasamy

For Respondent : Mr.M.R.Thangavel,
APP, Pondicherry.

JUDGMENT

This criminal appeal has been filed by the appellant/accused against the judgment of conviction passed by the Additional Sessions Judge, Karaikal in S.C.No.85 of 2011 dated 30.07.2012, in which, the Additional Sessions Judge had convicted the appellant for the commission of offence under Section 376 of I.P.C. and sentenced him to undergo 10 years rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo 2 months simple imprisonment.

2.The case of the prosecution is that the complainant is a flower vendor and residing along with his wife and daughter, the victim girl in Thalatherupet, Karaikal. The complainant used to go for work around 6.00 am and return by

11.00 a.m. the Victim girl, namely Rajasangavi, aged about 6 years used to go the accused house to watch T.V. As such On 16.04.2007, the victim girl went to accused Datchinamoorthy @Anjan's house to watch T.V. At that time the accused herein took the victim girl on his back to the backyard of his house and lifted the long skirt of the victim girl and pressed her private part with his fingers and inserted his penis into her private part and due to pain and bleeding, she cried. Then immediately, she rushed to her parents and when she was enquired, she informed about the occurrence and immediately, the girl was taken to the hospital. Hence, the complainant made a complaint before the police. Therefore, a case was registered against the accused for the offence under Section 376 of I.P.C. by the respondent police in crime No.118 of 2007.

3.After completion of investigation, the Inspector of Police, Karaikal Town Police Station, Karaikal, laid a charge sheet against the appellant before the Judicial Magistrate II, Karaikal, where the case was taken on file in P.R.C.No.11 of 2011 and the case was committed to the Court of Sessions and the same was made over to the Additional District Sessions Court, Karaikal, where the case was taken on file in S.C.No.85 of 2011 and as prima facie case was found against the accused, he was charged for the commission of offence under Section 376 of I.P.C.

4.In order to prove the case of prosecution, on the side of prosecution, as many as 10 witnesses, P.W.1 to 10 were examined and Exs.P1 to 16 and M.Os.1 to 6 were marked. P.W.1 and P.W.2 are the father /complainant and mother of the victim girl. P.W.3 is the victim girl herself. P.W.5 is the person who took P.W.3 to hospital along with P.W.1. P.W.6 and 7 are stated to be the witnesses to the Mahazar and the confession allegedly given by the accused. P.W.8 is the doctor who has examined the victim girl and gave a report. P.W.9 is the Judicial Magistrate, who recorded the statement of the victim girl. P.W.10, is the doctor who has examined the appellant/accused and gave a certificate to the effect that the accused is eligible to have sexual intercourse and gave a report. P.W.13, Inspector of Police has spoke about the complaint given by the P.W.1 and he registered the case and recorded the statement of witnesses and about the investigation conducted by him. P.W.12, Inspector of Police has spoken about the further investigation and filing the charge sheet.

5.After examining the above said witnesses, the incriminating evidence as against the accused were put to him, for which, the accused denied the same as false and in order to disprove the case of prosecution, on the side of the accused, no witness was examined and no document was marked.

6.The trial Court, after completion of trial, on the basis of oral and documentary evidence produced by the prosecution, found the accused guilty for the offence under Section 376 of I.P.C. and sentenced him as stated above. Aggrieved by the said judgment of conviction passed against the accused, the present appeal has been filed.

7.The learned counsel for the appellant would submit that semen has not been detected either in the body of the victim or her clothes or from the appellant/accused and there are no eye witnesses for the occurrence. P.W.4 has not spoken about that the victim girl used to go to watch T.V, in the accused house and therefore, evidence of P.W.4 has not supported the case of prosecution and due to the enmity, a false case has been foisted against the accused and the trial Court has failed to consider the evidence of P.W.4 and also the non detection of semen either from the victim girl or from her clothes or from the accused and the prosecution has not proved the case beyond reasonable doubt and therefore, the benefit of doubt shall be given to the accused and conviction and sentence passed by the trial Court is liable to be set aside.

8.The learned Additional Public Prosecutor appearing for the State would submit that soon after the occurrence, the victim girl rushed to her parents and informed the same. Since, there was oozing of blood in the private part of the victim girl, she was taken to hospital with the help of P.W.5, where P.W.8, examined her and gave a report. The trial Court has correctly come to the conclusion that the accused has committed the offence and found him guilty and hence, the conviction and sentence passed by the trial Court does not warrant any interference and the appeal is devoid of merits and the same is liable to be dismissed.

9.Since the first appellate Court is a fact finding Court, this Court has to come to an independent conclusion as to whether the accused has committed the offence under Section 376 of I.P.C. and the prosecution has proved the charge as framed against the appellant/accused beyond reasonable doubt?

10.Heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on records as well as the judgment passed by the Court below.

11.The brief facts of the case is that On 16.04.2007, the victim girl went to accused Datchinamoorthy @Anjan's house to watch T.V. At that time the accused herein took the victim girl on his back to the backyard of his house and lifted the

long skirt of the victim girl and pressed her private part with his fingers and inserted his penis into her private part and due to pain and bleeding in private part, she cried. She, when enquired, informed about the occurrence, then immediately, she was taken to the hospital and a case was registered against the accused for the offence under Section 376 of I.P.C. by the respondent police in crime No.118 of 2007.

12. In order to find out the correctness of the judgment of the trial Court, it is relevant to refer the evidence of prosecution, which would run thus:

P.W.1 is the father of the victim and P.W.2 is the mother of the victim. P.W.3 is the victim girl. P.W.5 is the person, who helped P.W.1 to take the victim girl to the hospital. P.W.5 has corroborated the evidence of P.Ws.1 to 3. The victim girl herself has stated about the occurrence to P.Ws.1 and 2. P.W.8 is the Doctor, who examined the victim girl soon after the occurrence took place and gave a report, which would show that the victim girl was subjected to rape. P.W.9, Judicial Magistrate has recorded the statement of the victim girl under Section 164 of Cr.P., soon after the occurrence. At that time, the victim girl has stated about the occurrence before the learned Judicial Magistrate and further stated that since there was oozing of blood from the private part of the victim girl, the accused poured water and washed the private part. P.W.13, Sub Inspector of Police received the complaint given by P.W.1 and registered the case in crime No.118 of 2007 for the offence under Section 376 of I.P.C. and P.W.12, Inspector of Police conducted further investigation and laid the charge sheet against the accused.

13. A perusal of the judgment of the trial court and other records would show that P.W.3 had spoken about the occurrence and soon after the occurrence, she has informed the same to her parents viz., P.Ws.1 and 2. Since there was oozing of blood from the private part of the victim girl, P.W.1 has taken her to hospital. P.W.5 has helped P.W.1 to take the victim girl to the hospital and he has corroborated the evidence of P.Ws.1 to 3. Even though, P.W.4, the girl, who stated to be watched T.V. along with P.W.3 has not supported the case of prosecution, except, P.W.4, other witnesses have supported the case of the prosecution. Immediately soon after the occurrence, the victim girl was examined by P.W.8, doctor, and she also gave a report. P.W.9, the learned Judicial Magistrate has examined the victim girl under Section 164 of Cr.P.C. and at that time,

the victim girl has spoken about the occurrence and further she has stated that since there was oozing of blood, the accused poured water and washed the private part of the victim girl. Therefore, the non deduction of semen either in the body of the victim girl, or in the clothes and from the accused/appellant is not vitiated the case of prosecution. P.Ws.1 and 2 have corroborated the evidence of the victim girl. According to P.W.2, on 16.04.2007, when her daughter came with bleeding injury, she enquired the reason for such bleeding and the victim girl has narrated the incident and cried out of paid and hence, the victim girl was taken to the hospital by P.W.1 with the help of P.W.5 by his two wheeler. P.W.5 has also deposed that on 16.04.2007 around 01.00 p.m., when he was going to his job, he helped the parents of the victim girl to take the child in his vehicle to Government General Hospital, Karikal and P.W.6 has also deposed that on 16.04.2007 around 12.45 hours, when he enquired P.W.3, who was standing on the road along with P.Ws.1 and 2 making alarm, she has stated that she was raped by the accused and when he saw P.W.3, there was blood stain on her long skirt. Therefore, his evidence also corroborated the evidence of P.Ws.1 to 3 and 5.

14.A perusal of the evidence of P.W.9, the learned Judicial Magistrate, who recorded the statement of the victim girl under Section 164 of Cr.P.C. has deposed before the Court during his cross examination that on 19.04.2007 around 10.30 hours, on receipt of requisition from the police, he examined the victim girl around 03.00 p.m. And she has stated about the act of the accused committing rape on her and on seeing the blood oozing from her private part, the accused poured water and washed her private part. Therefore, his evidence is also corroborated the evidence of P.Ws.1 to 3.

15.Perusal of the above evidence would show that even though there was no detection of semen either from the body of the victim girl, or from her clothes or from the body of the accused, to prove the ingredients of section 376 of I.P.C. semen need not be detected. It is well settled principles of law that mere penetration is sufficient to attract section 376 of I.P.C. In this case, from the evidence of P.Ws.1 to 3 and other witnesses, especially P.W.8 doctor, who has examined the victim girl in the hospital and his report Ex.P5 and P.W.9, the Judicial Magistrate and Ex.P10, 164 Cr.P.C. statement given by the victim girl, the prosecution has proved that the accused put his finger in to the private part of the victim girl and pressed and thereafter inserted his penis into the private part of the victim girl. Therefore, the non releasing of semen and non detection of semen is not a ground for acquitting the accused/appellant.

16. According to the learned counsel for the appellant, there was enmity between the family of P.W.1 and the accused and hence, a false case has been foisted against the accused. Perusal of the oral and documentary evidence, the accused has not established that there was enmity between him and P.W.1. To prove the enmity, he has not even examined any witness on his side. For wreaking vengeance and the enmity, no parent will spoil the future of his own daughter.

17. For all the above reasons, this Court is of the view that the prosecution has proved its case beyond reasonable doubt and the trial Court has considered all the aspects in a proper manner and convicted the accused for the offence under Section 376 of I.P.C. Therefore, the judgment and conviction passed by the trial Court does not warrant any interference by this court and the same is liable to be confirmed and the appeal deserves to be dismissed.

18. Accordingly, this criminal appeal is dismissed and the judgment and conviction dated 30.07.2012 made in S.C.No.85 of 2011, on the file of the Additional Sessions Court, Karaikal is hereby confirmed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

1. The Inspector of Police,
Karaikal Town Police Station,
Karaikal,
2. The Additional Sessions Court,
Karaikal.
3. -Do- Thro the Principal Sessions Judge,
Puducherry.
4. The Additional Public Prosecutor,
Madras High Court,
Chennai.

5. The Judicial Magistrate II,
Karaikal.

6. -Do- Thro the Chief Judicial Magistrate,
Karaikal.

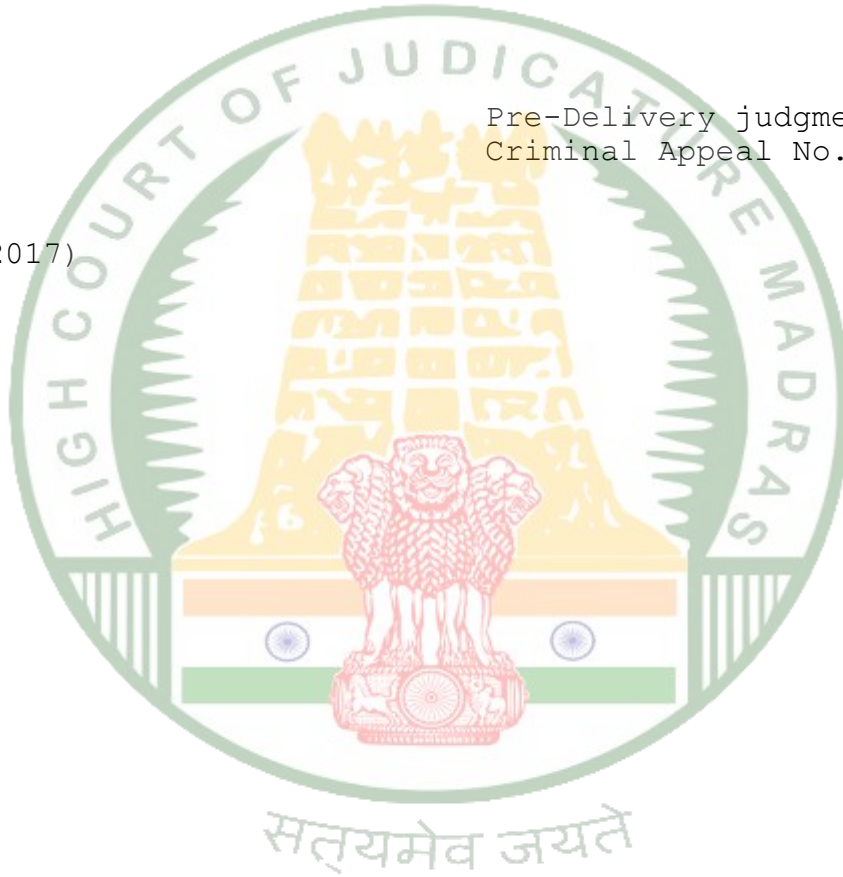
7.The Superintendent, Sub Jail,
Karaikal.

+lcc to Mr.S. Sathishkumar, Advocate Sr. 39377

+lcc to the Government Pleader, Puducherry, Sr. 39376

Pre-Delivery judgment made in
Criminal Appeal No.869 of 2012

SV(CO)
VR(07/06/2017)



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