

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2018

CORAM:

THE HON'BLE MR.JUSTICE C.T.SELVAM

and

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

Cr1.A.No.276 of 2017

Srinivasan

.. Appellant/Accused

Vs.

State rep. by its
Inspector of Police
All Women Police Station
Sathyamangalam
Erode District
Crime No.13/2015

... Respondent/Complainant

PRAYER:Criminal Appeal has been filed under Section 374 of Criminal Procedure Code to set aside the Judgment passed in S.C.No.165/2015 dated 16.03.2016 on the file of Sessions Court, Mahila Court, (Fast Track Court) Erode.

For Appellant : M/s.T.Muruganantham

For Respondent : Mr.V.Arul

Addl. Public Prosecutor

J U D G M E N T

[Judgment of the Court was delivered by N.SATHISH KUMAR, J.,]

The appellant/sole accused was tried in SC.No.165/2015 for commission of the offence u/s.376[2] IPC [2 counts]. The Trial Court, vide judgment dated 16.03.2016 found the appellant/accused guilty of the said offence and sentenced him to undergo life imprisonment each count and pay fine of Rs.100/- for each count. Sentences to run concurrently. The sentences was ordered to run concurrently. Aggrieved by the said conviction and sentence, the present appeal came to be filed by the appellant herein.

2.Since the victim of rape are minor female children of PW3 and PW4, their names will not be referred by us and PW1 & PW2, the mothers of the respective female children are also referred only as PW1 & PW2.

3.The brief facts of the prosecution case as follows:

PW1 is the mother of the PW3. PW2 is the mother of the PW4. Both children are aged nine years. Both the children were studying together in the Sathyamangalam Municipal Primary School. On 17.06.2015 at about 7.00 p.m. PW3 informed PW1 about pain in her private part. On enquiry, PW3 informed that under the pretext of giving sweets, the accused took PW3 and PW4 to his house and committed rape on PW3 & PW4.

4.Thereafter, PW1 lodged a complaint (Ex.P1) on the next day, i.e., on 18.06.2015, after giving it a day's thought. Similarly, on 18.06.2015, PW4 also informed her mother-PW2 about the pain in her private part. When enquired, PW4 stated that the accused under the pretext of giving sweets, took her and P.W.3 to a petty shop and purchased some sweets and thereafter, took them to his house under the pretext of giving more chocolates and committed the act of rape.

5.PW3 & PW4, the child witnesses, aged about 9 years, despite the cross examination after observing necessary precaution by the Trial Court, in one voice, have stated that on 17.06.2015 after school hours, the accused took them to a nearby petty shop and purchased some chocolates. Thereafter, he took them to his house, under the pretext of giving them some more chocolates and he removed the dresses of PW3 & PW4 and placed his private part over the private parts of PW3 & PW4.

6.PW5 who owns a petty shop in front of the school, has seen PW3 & PW4 studying in the school. The accused used to bring many children to the petty shop and give them sweets. On 17.06.2015, the accused brought PW3 & PW4 to his shop, gave Rs.20/- and purchased sweets for Rs.14/-. Thereafter, collecting the change, he took the minor female children with him.

7.PW6 is the owner of the house, where the accused was residing as a tenant. According to her, the accused resides in her house as a tenant for a monthly rent of Rs.3,000/-.

8.PW7 is the mother of one Jayashree, the student of the same school. On 17.06.2015, she came to the school to pick her daughter. At the time, she saw the accused taking PW3 & PW4 in his motorcycle.

9.PW14, after receipt of the complaint from PW1, registered the crime in Crime No.18/2015 under Section 376(2)(1) IPC and also under Section 6 of the Protection Of Children Sexual Offence Act, 2012. Ex.P11 is the F.I.R. PW15, the Inspector of Police took up investigation and went to the place of occurrence on 19.06.2015 and prepared a rough sketch [Ex.P.12] and observation Mahazar [Ex.P.13]. PW14 in the presence of PW8, arrested the accused on 19.06.2015 at about 4.00 p.m., and sent him for medical examination and also to the Court and also made a necessary request to record the statements of the children u/s.164 Cr.P.C.

10.In the meanwhile, PW9, the Medical Officer of the Government Hospital, Sathyamangalam, examined PW3 and issued Ex.P5., Accident Register Copy, wherein, she had noting down the following:

"Nature of Injuries Treatment: Alleged H/O rape on 18.06.2015 at about 04.20 pm in the accused (Srinivasan) house Thirunagar Colony, Sathyamangalam by unknown one male person, RP-90/mt.

Investigations: O/E-Baby conscious, concluded/as/S1S2 present/RS (n.c) Present PA-Soft/CVS ? Present.

L/E-1. Pubic hair absent 2.Axillary hair absent 3.Breast not well developed. 4.No external injuries over the body. 5.No external injuries over the outer aspect external genitalia. 6.Abrasion about 1 cm x 0.5 cm seen over inner aspect of labia majora on Right side. 7.Hymen intact 8.Vaginal smear could not be taken.

Final Opinion: She may be used for the threatened sexual abuse."

11.Similarly, the Medical Officer has also examined PW4 and issued Ex.P5., Accident Register Copy, noting down the following:

"Nature of Injuries Treatment: Alleged H/O rape on 18.06.2015 at about 04.20 pm in the accused (Srinivasan) house Thiru Nagar Colony, Sathyamangalam by unknown one male person. O/E-Baby conscious/oriented/CVS S1 S2 Present/RS BILSE present.

Investigations: P/A Soft / CVS - Bil PERL (?) present.

L/E-1. Pubic hair absent 2.Axillary hair absent 3.Breast not well developed. 4.No external injuries over the body. 5.No external injuries over the external aspect of external genitalia. 6.Abrasion

about 1.5 cm x 0.5 cm over the inner aspect of Labia majora on both sides. 7.Hymen intact 8.Vaginal smear could not be taken."

Final Opinion: She may be used for threatened sexual abuse.

12.PW10, the Headmaster of the school issued certificates to PW3 & PW4 to prove their date of birth as well as the fact that they came to school on 17.06.2015. PW13, Assistant Medical Officer attached to Sathyamangalam Government Hospital, examined the appellant/accused on 19.06.2015 at 6.10 p.m. and issued copy of Accident Register i.e. Ex.P10, wherein he had opined that there was nothing to suggest that the accused is an impotent.

13.The Investigating Officer, in continuation, has also examined the other witnesses and recorded their statements. After completion of the investigation, laid final report against the accused under Section 376(2)(1) of Indian Penal Code and also under Section 6 of the Protection of Children Sexual Offence Act against the accused before the learned Judicial Magistrate, Sathyamangalam, who took it on file in PRC.No.21/2015 and issued summons to the accused and on his appearance, furnished him copies of the documents u/s.207 Cr.P.C. and having found that the case is exclusively triable by the Sessions Court, committed the same to the Court of the Principal District and Sessions Judge, Erode, u/s.209 Cr.P.C., who in turn had made over the case to the learned Sessions Judge, Mahalir Needhimandram [Fast Track Mahila Court], Erode, who took it on file in SC.No.165/2015 and on appearance of the appellant / accused, had framed the charges u/s.376[2] IPC [2 counts] and questioned him. The appellant / accused pleaded not guilty to the charge framed against him.

14.On the side of the prosecution P.Ws.1 to 15 were examined and Exs.P.1 to 13 were marked.

15.The appellant/accused was questioned under section 313 Cr.P.C., with regard to the incriminating circumstances against him in the evidence rendered by the prosecution and he denied it as false. No oral or documentary evidence was let in on the side of the appellant/accused.

16.The Trial Court, on consideration and appreciation of the oral and documentary evidence and other materials, has convicted and sentenced the appellant/accused as above stated and hence, this appeal.

17.The learned counsel appearing for the appellant would submit that there is a delay in filing F.I.R. which has not been explained by the prosecution properly and further, before the Medical Officer, it was stated by the victims that the alleged offence was committed by an unknown person. This creates a serious doubt about the commission of the offence by the appellant / accused. Having found injuries on the private parts of the minor female children, though two specific charges have been framed by the prosecution, the prosecution has not chosen to prove the charges beyond all reasonable doubt. It is the further contention of the learned counsel for the appellant that life imprisonment is too excessive and some leniency can be shown to the accused and he may be awarded a lesser punishment.

18.Per contra, learned Additional Public Prosecutor submitted that the evidence of PW1 to PW6 established the overt act attributed to the accused. The evidence of PW3 & PW4, minor female children aged about nine years, clearly shows that the accused lured them to his house ; gave them sweets ; removed their dresses and penetrated his private part into the private parts of the children. The medical evidence also clearly shows that there was an abrasion in the labia majora in both the children and these facts clearly prove the offence of rape. PW5 & PW6 have seen the accused taking the minor children to his house after school hours. Even, if it is the case of the accused that someone has committed offence in his house, no proper or plausible explanation is forthcoming from him for the said defence. Hence, submitted that from the evidence of PW3 & PW4, the victims, the charges are clearly proved. Further, the delay in filing the F.I.R. by the PW1 may be due to various reasons. PW1 herself has stated that after giving it a thought, she lodged a complaint. Normally, in sexual offence, delay in lodging the complaint cannot be fatal and the same is bound to happen, since, the reputation of the family and children normally would be considered before taking the decision to go to the police station. Hence it is submitted by the learned Additional Public Prosecutor that the Judgment of the Trial Court warrants no interference at the hands of this Court and prayed for dismissal of this Appeal.

19.We have heard the rival submissions and perused the records.

20.In view of the above submissions, the question that arises for consideration is whether the prosecution has brought home the guilt of the accused beyond all reasonable doubt?

21.PW3 & PW4, young female children aged about nine years, studying together at the Municipal Primary School at Satyamangalam fell prey to the accused, a sexual predator and were lured to his house, by offering sweets to them.

22.Ex.P.11-F.I.R. was registered on 19.06.2015 after the occurrence. PW1 set the law in motion. In her evidence, she had stated that when her daughter complained of pain in her private part and when questioned, she was informed about the sexual act of the accused on the young minor children.

23.The cross examination of PW1 further shows that immediately in order to ascertain the truth of the statement made by PW1, they also went to the house of the accused to question him. Besides, she had also taken the minor children to the hospital. She had also stated that after giving it a thought, she had decided to lodge a complaint.

24.It is to be noted that it is the nature and normal conduct of a mother to think before taking any decision to lodge a complaint, particularly, when the dignity and reputation of the victim girls are involved. In normal course, human conduct of the mother would not like to give publicity to the occurrence involving her own daughter. The delay may be due to various reasons and after much reluctance of the family members, they went to the police station to complain about the incident which concerns the reputation of the young minor girls and also the honour of the family. Therefore, the delay in lodging the complaint cannot be fatal to the prosecution when the evidence of the victim establishes the act of the appellant / accused about the commission of offence. Her evidence cannot be ignored altogether and merely delay in lodging the complaint would not be a ground to ignore the entire case of the prosecution.

25.PW1 & PW2, respective mothers of PW3 & PW4, had seen some unusual pain experienced by the PW3 & PW4 in their private parts. PW3 & PW4, the victims in their evidence stated that on 17.06.2015, after school hours, the accused took them to the opposite petty shop and bought some sweets and also under the pretext of giving them more chocolates took them to his house and removed the dresses of the young female children, after giving them sweets penetrated his private part in their private parts. Though, PW3 & PW4 have not given the exact evidence as required under law about the penetration of private part etc., they have stated in their evidence that the accused placed his object which is used for passing urine in their private parts where they will pass urine. The evidence given by the young

minor girls clearly indicates the fact that they are not in a position to differentiate the parts of the human body. However, the evidence clearly shows that they were subjected to sexual assault by the accused at the relevant point of time.

26.The Medical Officer, viz., PW9, has carefully examined both the children on 19.06.2015. Though PW9 has not noted any external injury on PW3, she found abrasion about 1 cm x 0.5 cm seen over inner aspect of labia majora on Right side and similarly, on PW4, she has noted abrasion about 1.5 cm x 0.5 cm over the inner aspect of Labia majora on both sides. It is to be noted that victims are only aged about nine years The abrasion is found in the labia majora clearly establishes the fact that the accused in fact had tried to penetrate the vagina.

27.Considering the fact, the girls are aged about nine years, complete penetration is highly impossible. Though the accused in fact has aimed an attempt to penetrate his penis which has caused abrasion on labia majora, this fact clearly establishes the offence of rape under the provisions of the Criminal Amendment Act 2013. When the evidence establishes that when penis is penetrated to any extent into the vagina, mouth, Urethra or anus of woman, the same establishes rape. The evidence of the medical officer and PW3 & PW4 prove the offence against the accused. It is further to be noted that PW5-owner of the petty shop in front of the school, has categorically stated in his evidence that on 17.06.2015 in the evening hours, after school time, the accused brought PW3 & PW4 to his petty shop and bought sweets for Rs.14/- and took them back. Similarly, PW7 has also seen the accused taking the PW3 & PW4 in his bike at the relevant point of time. PW3 & PW4 immediately after the occurrence have been dropped by the accused as usual in front of the school. It is not the case of the accused that no such occurrence had taken place. Further, there was no motive whatsoever established against the PW1 & PW2 for the alleged prosecution. It is not the case of the accused that victims namely PW3 & PW4 were never subjected sexual abuse in his house. Whereas, it is the contention of the accused that somebody has committed offence on the victim girls and merely because the offence took place inside his house, he has been made as scape goat. Such strange defence putforth by the accused cannot be countenanced for the simple reason that even assuming and accepting the said contention for argument sake, it is for the accused to explain as to how some third party entered into his house and committed rape on young girls. It is for him to explain who was that third party etc. In the absence of such explanation, the contention of the accused cannot be countenanced at all. When the evidence of the victim is cogent and also has been supported by the medical evidence, we do not

have any reason to disbelieve the evidence of the minor female children.

28. In this regard, the observations in State of Punjab Vs. Gurmit Singh & others ((1996) 2 SCC 384) were reiterated in Ranjit Hazarika Vs. State of Assam ((1998) 8 SCC 635), in the following terms:

"The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the female, and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of a victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation be viewed with doubt, disbelief or suspicion? The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which

is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victims of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable."

29.The aforesaid judgment laid down the basic principles that originally evidence of the prosecutrix should not be suspected and should be believed. More so, the statement of the rape victim has to be evaluated on par with the injured witness in any other case and if the evidence is reliable, no corroboration is necessary. On a perusal of the evidence of PW3 & PW4 and medical officer, there is no reason to disbelieve their evidence. As already stated, there is a sexual assault on the victim girls and the same has not even been disputed by the accused. Admittedly, as per the accused, the occurrence took place in his house. When that being the case, in the absence of explanation from him as to who has come to his house at the relevant point of time, there is no reason to disbelieve the version of the PW3 & PW4. Accordingly, the accused is liable to be punished under section 376(2) IPC.

30.The learned counsel appearing for the accused in his contention requested to show any leniency, which cannot be countenanced and the accused being the adult man, lured the minor female children to satisfy his lust on the girls aged

about nine years, and no leniency can be showed to him. If such offenders are shown leniency, it will be a great injustice to the society. Despite severe punishment, the perpetrator's of the offence on young children still not abated. We are of the view that no leniency can be shown to the offender like the appellant herein, in the given case. Accordingly, the appeal lacks merit and liable to be dismissed.

31.In the result, the criminal appeal is dismissed, confirming the judgment of conviction and sentence passed by the learned Sessions Judge, Mahila Court, (Fast Track Court) Erode in S.C.No.165/2015 dated 16.03.2016. It is made clear that sentences shall run concurrently.

32.It is reported that the appellant/accused is in jail. Hence, he is directed to undergo the period of sentence awarded. It is made clear that the period of incarceration already undergone, shall be given set-off u/s.428 Cr.P.C.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sessions Judge
Mahila Court, Fast Tract Court,
Erode.
- 2.The Principal District and Sessions Judge,
Erode District.
- 3.The Judicial Magistrate
Sathyamangalam, Erode District.
- 4.The Chief Judicial Magistrate
Erode District.
- 5.The Inspector of Police
All Women Police Station
Sathyamangalam, Erode District.
- 6.The Superintendent of Central Prison
Coimbatore.

7.The District Collector
Coimbatore District.

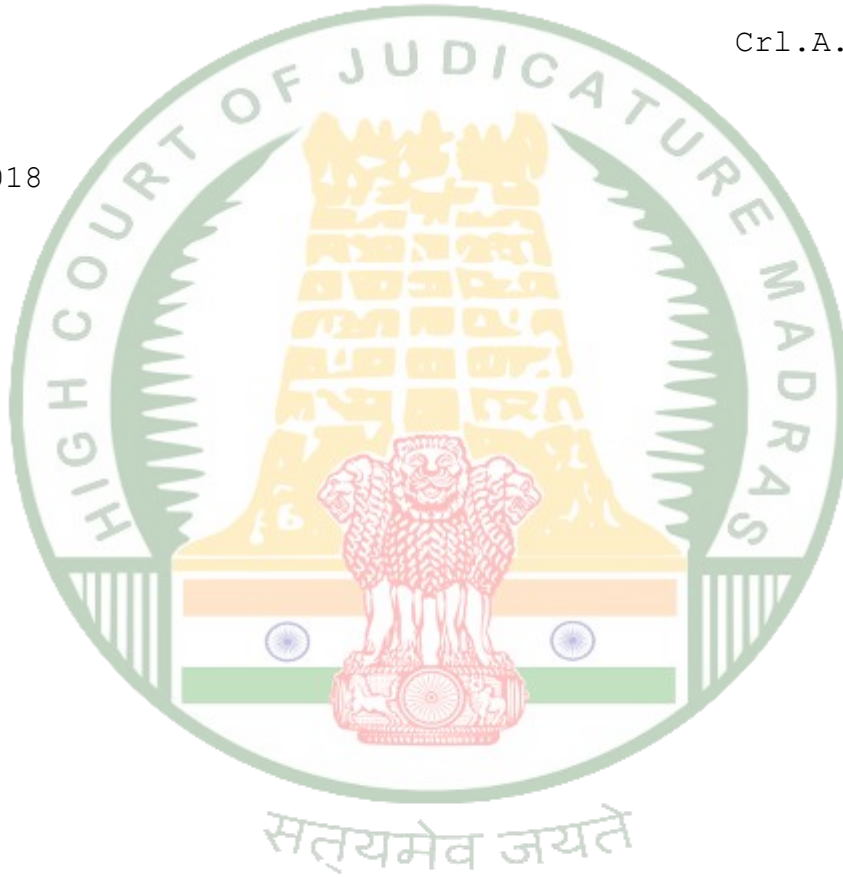
8.The Director General of Police
Mylapore, Chennai-4.

9.The Public Prosecutor
High Court, Chennai.

+1 cc to Mr.T.Muruganatham Advocate sr 13857

Cr1.A.No.276/2017

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