

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.08.2018

Pronounced on : 26. 11.2018

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Criminal Appeal No.625 of 2015
and M.P.No.1 of 2015

Balamurugan @ Bala ... Appellant/Accused

Versus

State Rep. by its
The Inspector of Police
Perambur Police Station,
Perambur,
Nagapattinam District.
[Crime No.431 of 2011]

... Respondent/Complainant

Appeal filed under Section 374(2) of the Criminal Procedure Code, against the Judgment and Sentence passed in SC.No. 41/2013, dated 31.08.2015 on the file of Sessions Judge, (Fast Track Mahila Court), Nagapattinam.

For Appellant : Mr.R.Shivakumar
for Mr.K.M.Vijayan Associates.

For Respondent : Ms. P. Kritika Kamal
Government Advocate (Crl.Side)

JUDGMENT

The convicted sole accused is the appellant herein. He has come forward with this appeal as against the judgment of conviction and sentence passed in S.C.No.41 of 2013 on the file of the learned Sessions Judge, (Fast Track Mahila, Court) Nagapattinam convicting him for the offence under Section 376 of IPC and sentenced to undergo seven years rigorous imprisonment with fine of Rs.5,000/- in default to undergo simple imprisonment for one year and also convicted and sentenced him, to undergo rigorous imprisonment for One year for the offence under Section 506(ii) of IPC. However, the sentences were ordered to run concurrently.

2. The case of the prosecution is that the accused and the victim, PW1, who is a minor, have fallen in love with each other three months prior to the occurrence. While so, on 29.06.2011 at 5.30 pm, when PW1 was alone in his house, the accused came there and asked her to come to Velayudham pumpset at 10.30 pm. When PW1 went there, the accused promised that he would marry her and under the false pretext of marriage, he attempted to have sexual intercourse with her. However, PW1 refused and when she was about to leave, the accused held her hands, made her to lay down and had sexual intercourse with her. When PW1 protested, he criminally intimidated her by showing a knife and by saying that he will kill her, if she disclose the matter to any one. On reaching home, PW1 slept in the cattle shed of her house and when it was questioned by her mother, she disclosed the act of the accused to her mother and she in turn intimated it to the Villagers. Thereafter, on 02.07.2011, a complaint was given to the Police Station. On the basis of such complaint, a case in Crime No. 431 of 2011 was registered. After investigation, a charge sheet was filed alleging commission of offence punishable under Sections 376 and 506 (ii) of IPC before the Judicial Magistrate No.2, Mayiladuthurai, which was taken on file as PRC No.12 of 2012 and numbered as S.C.No.14 of 2013 and it was made over to the Sessions Court.

3. On a consideration of both oral and documentary evidence, the learned Sessions Judge, Mahila Court relied on the version of the victim girl that she was subjected to physical intercourse against her will and she was forced by the accused and criminally intimidated that she should not disclose about his act to anyone. Accordingly, the trial Court laid the conviction as stated supra and hence this criminal appeal.

4. The learned counsel for the appellant contended that there was no recovery of any material object - knife, alleged to have been used in the commission of offence and therefore it should be considered in favour of the accused. Further, there is 3 days delay in intimation of the offence to the police and it is not properly explained. Moreover, the trial Court had failed to properly appreciate the entire evidence of PW.7, who is the Doctor, who examined the victim /PW.1.

5. The learned Government Advocate (Crl.side) made her submissions in support of the case of the prosecution.

6. Points for consideration:

(i) Whether the prosecution has proved the guilt of the accused beyond reasonable doubt for the offence punishable under Sections 376 & 506(ii) of IPC?

(ii) Whether the conviction and sentence of the trial Court is sustainable in law?

(iii) Whether the sentence awarded is excessive or not?

7. During trial, on behalf of prosecution PW's.1 to PW.14 were examined and EX's.P1 to Ex.P8 documents were marked, however, no material objects were produced on the prosecution side.

8. It is seen that the victim girl was examined herself as PW.1, her parents were examined as PW.2 and PW.3. A man, who conducted Panchayat was examined as PW.4 and the attesor of Observation mahazar was examined as PW.5. PW6 was a resident of the same Village, who signed in the observation mahazar, evidencing the arrest of the accused. PW.7, Dr. Rajeswari had examined the victim girl and submitted the Accident Register of the victim girl, marked as Ex.P3. PW.8 was the Head Mistress of the school where the victim girl studied and who could depose regarding the issuance of Education Certificate to the PW1, marked as Ex.P4. PW.9 is the Special Sub Inspector of Police, who has stated that as per the order of the Mahila Court, Mayiladuthurai he had escorted the accused to the hospital for his potency test and the Accident Register issued to the accused was marked as Ex.P5. He also deposed that after the medical test, he entrusted the custody of the accused to the jail authorities. PW13, Dr.Sharmiladevi had deposed about the issuance of age certificate, Ex.P7, wherein she stated that as per the examination, PW1 may be above 16 years and below 18 years.. The Police witnesses PW.9, PW.10, PW.12 and PW.14 have deposed regarding the registration of the First Information Report and filing the charge sheet, after completion of investigation.

9. On perusal of the evidence of the victim girl/PW.1, it is seen that at the time of occurrence, she was 15 years and the accused is living opposite to her residence and 3 1/2 months prior to the incident, the accused and the victim have fallen in love. On 29.06.2011, the parents of the victim girl gone to the Hospital to see her elder daughter, who gave birth to a child. Taking advantage of the situation of absence of the parents of the victim girl, while she was alone in her home, the accused went to her house at 5.30 pm, asked the victim girl to come to Velaiyutham Pumpset at 10.30 p.m. When the victim girl went to that place, the accused committed rape without her consent and against her willingness and at the time of occurrence he gave assurance to marry her and after the incident, the accused refused to marry her. PW.1 has also stated that against her willingness, he had sexual intercourse with her due to which her clothes were torn. Thereafter, he threatened her not to disclose about the incident to anyone by showing a knife and because of the said fear created by the accused, the victim girl did not make any noise. It is the specific case of PW.1 that the accused held her two hands, laid her straight and had sexual intercourse, during which he rubbed her breast and tore her dresses. After the incident, PW1 went to her home and slept in

the cattle shed.

10. PW.2 and 3 are the parents of the victim girl and they have categorically stated that they were roaming throughout mid-night in search of PW1 and in the next morning, they saw the victim girl sleeping in the cattle shed with torn cloths and found her with fearsome face. When they inquired the victim girl / PW.1, she spoken about what had happened and what act the accused had done on her body. Thereafter, they went to Panchayat on the next day of the incident. Since, the parents of the accused were not in their house and the accused has fled away from the Village, the parents of the victim girl lodged the complaint to the Police, after two days of the scene of occurrence.

11. From the evidence of PW.8/Head Mistress of school, who had issued the Ex.P4, it is stated that the victim girl's date of birth is 12.07.1997. Further PW.13/Dr.Sharmiladevi, on perusal of X-ray, has certified that the age of the victim girl might be below 16 years and not exceeding 18 years, which could be seen from Ex.P7 issued by PW13. As per the date of birth certificate, Ex.P4, PW1 has even completed the age of 15 years as on the date of occurrence.

12. By relying upon Ex.P4, Birth Certificate of PW1, the learned Government Advocate has contended that as per Rule 12 of the Juvenile Justice Rules, 2007 and Section 7-A of the Juvenile Justice Act, 2000, the Matriculation Certificate or equivalent School Leaving Certificate can be preferably taken into consideration for determining the age. In the absence of the above, the birth certificate given by the Municipal Authorities can be taken into consideration. In the absence of both, the Medical Certificate for determining age is taken into consideration. Accordingly, the trial Court has recorded the finding based upon the deposition of PW.8/Head Mistress who issued School Certificate, Ex.P4 and the Medical evidence given by the Doctor/PW.13 that the victim girl was a minor at the time of occurrence and it is a well considered and well merited conclusion and such findings regarding the age of the victim girl is hereby confirmed.

13. It has to be stated that in the cross examination of PW.1, it was projected that as if the victim girl had fallen in love with the accused and therefore, at the time of occurrence, she had given her consent for physical relationship, however, it remains to be stated that such an alleged consent of a minor is immaterial. In her deposition, PW1 has clearly deposed regarding the physical sexual assault caused by the accused on her body remains and she stood firm in her statement even in the cross examination. PW.7-Dr.Rajeswari deposed that "காயங்கள் எதுவும் இல்லை. அவர் உடலுறவுக்கு தகுதியானவர் என கண்டறிந்து அவருடைய பிறப்பறுப்பை

பரிசோதனை செய்தபோது கன்னித்திறை ஒழுங்கற்ற முறையில் கிழிந்து காணப்பட்டது, வெஜனா ஒரு விரல் சுலபமாக செல்லும் அளவு இருந்தது.” and under Ex.P.3-Accident Register, it is mentioned as Hymen, form irregularly; vagina easily admits 1 finger and from the above findings, the doctor opined that the victim is not a virgin. Thus, this Court finds the version of PW1-victim girl is cogent as the act of accused about sexual relation and she withstood lengthy cross-examination and firmly stated that without her will, the accused had sexual relationship and her evidence was duly stands corroborated with the medical evidence of P.W.7-Dr.Rajeswari and Ex.P.3-documentary evidence and hence this Court finds that the evidence of P.W.1 is true and genuine and inspires the confidence of the Court to place reliance.

14. Furthermore, the incident occurred on the night at 10.30 pm and therefore, she did not disclose the said fact to her parents P.W.2 and P.W.3, who were away from station. In fact, soon after the occurrence due to fear created by the accused, PW1 slept in the cattle shed, while PW2 and PW3 searched for her throughout the night and only in the morning, they found PW1 was sleeping in the cattle shed. When enquired, PW1 informed the act of the accused and PW2 and PW3 immediately informed it to the Village Panchayat. PW4, one of the Panchayatars deposed that on 30.06.2011 morning, PW2 and PW3 complained about the act of the accused and asked to enquire the accused, but the accused was not in the Village. The complaint given by PW2 and 3 was conveyed to father of the accused and he informed that he do not know anything. Thereafter, PW4 asked PW2 and 3 to give a complaint to the Police. Thereafter Ex.P.1-complaint was lodged before the police. The trial Court has, thus, come to the categorical conclusion that the delay in filing the complaint/Ex.P1 was properly explained and it will not vitiate the case of the prosecution. Such finding of the trial Court, in the opinion of this Court, needs no interference and the same is hereby confirmed.

15. It is seen from the evidence of PW.1 that after committing the offence, the accused criminally intimidated the victim / PW1, with a knife and told her not to disclose it to any one. PW1 due to fear did not disclose it to any one and she went to her house and slept in the cattle shed. On the next day morning, when PW2 and 3 enquired PW1, she was frightened to disclose the matter to her parents and when her mother seen her with clothes torn, and insisted again, she deposed about what had happened. This was clearly deposed by PW1 in her evidence and this portion of evidence of PW.1 remains unchallenged in the cross examination. Based upon the above version of prosecution

witnesses P.W.1 to P.W.3, the trial Court rendered a finding that even though the knife used by accused was not recovered, the threat caused to the victim by accused is sufficient to prove the ingredients of Section 506 (ii) of IPC. Thus, the trial Court rendered a categorical finding regarding the criminal intimidation caused by the accused. In the absence of anything worthwhile answers elicited in the cross examination of PW1, except the family circumstances, I am of the considered view that the conviction laid by the trial Court under Section 506(ii) of IPC cannot be interfered with at the appellate stage, when the evidence of PW.1 remains unshakable and also she withstood the test of cross examination of the defence side. In the absence of any other factors challenging the version of PW.1, this Court finds that the version of PW.1 inspires the confidence of the Court regarding the sexual assault committed by the accused on her body and hence, the conviction laid by the trial Court under Section 376 of IPC, does not call for interference. In this view of the matter the conviction and sentence passed by the trial Court is hereby confirmed and this appeal is devoid of merits and liable to be dismissed. Hence, the Criminal Appeal is dismissed. The respondent / Police is directed to secure the accused / appellant herein and commit him to undergo the remaining period of sentence. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

klt

TO

1.The Sessions Judge,
(Fast Track Mahila Court),
Nagapattinam.

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.M.Vijayan Associates, Advocate, S.R.No. 80270

Cr1.A.No.625 of 2015

RJI (CO)
GN(24/12/2018)