

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on :27.09.2018
Orders Pronounced on: 02 -11-2018

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN
Crl.A.No.686 of 2015

Selvam

... Appellant

Versus

State rep.by
Inspector of Police,
Barur Police Station,
Krishnagiri District.

... Respondent

Appeal filed under Section 374(2) of Criminal Procedure Code against the judgment dated 07.08.2015 passed in S.C.No.69 of 2015 by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri.

For Appellant : Mr.L.Baskaran

For Respondent : Mrs.Sarathadevi,
Government Advocate (Crl.side)

JUDGMENT

This appeal relates to an offence committed prior to the coming into force of The Protection of Children from Sexual Offences Act (in short POSCO), 2012. The alleged occurrence had taken place on 19.01.2011, and prior to the date of commencement of coming into force of POSCO Act.

2. The convicted accused is the appellant herein. He challenges the correctness of the Judgment of conviction passed by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri dated 07.08.2015 in S.C.No.69 of 2015 for the offence under Sections 376 of IPC and sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.10,000/- in default to undergo six months simple imprisonment.

3. The case of the prosecution is that the complainant/PW.1/Victim girl by name Surya, who was a minor girl, aged 14 years as on 2011, was residing with her mother. The victim's father had separated from her mother and living separately. The mother of the victim was doing coolie work in Chennai and used to come to the house once in a month. The

complainant/victim and her brother are studying and staying in the house of her grandmother. At that time, the accused developed contact with the victim and used to come to her house. When the complainant was alone in her house, the accused committed rape forcible on the victim and also threatened the victim that if she discloses the incident to anyone, he will kill her. Further, the accused had frequently committed the same offence on the victim as a result of which the victim became pregnant and also delivered male child on 19.01.2011. Hence, PW1/complainant/victim lodged a complaint before the respondent police station. The case was registered in Barur P.S.Cr.No.19 of 2011 under Section 376 and 506(i) of IPC. The investigation, in this case was taken up by the Inspector of Police, Pochampalli Police Station and charge was filed. The trial Court after full fledged trial convicted the appellant/accused for the offence under Section 376 and sentenced him to undergo seven years rigorous imprisonment and to pay a fine of Rs.10,000/- in default to undergo six months simple imprisonment. Aggrieved by the same, the accused has come up with this appeal.

4. The learned counsel for the appellant would contend that the trial Court has erred in finding the appellant guilty of the offences under Section 376 of IPC. The trial Court failed to note that the prosecution miserably failed to prove its case beyond all reasonable doubt and it ought to have acquitted the accused. According to the counsel for the appellant, the trial Court erred in believing the interested testimony of PW.10, PW.12 and PW.16 to convict the appellant/accused. In a case of circumstantial evidence, the prosecution is bound to establish the guilt of the accuse beyond all reasonable doubt excluding the every hypothesis. But in the case on the hand the evidence adduced by the prosecution is lacking in several aspects and the chain of circumstances relied on by the prosecution is not cogent and reliable to establish the guilt of the accused. It is the vehement contention of the counsel for the appellant that even PWs 1 to 3 have turned hostile. PW1 is the victim, PW2 is the mother and PW3 is the grand mother and all of them did not support the case of the prosecution. Furthermore, there is no independent witness available to prove the guilt of the accused. In such circumstances, the trial Court ought to have acquitted the accused/appellant of the charge under Section 376 of IPC.

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

6. It appears from the records that, in order to prove the charges, the prosecution examined PWs.1 to PW.18 and marked and Exs.P1 to Ex.P11. PW.1 is the victim girl, PW.2 is the mother of the victim girl and PW.3 is the grand mother of the victim girl. It is true that the three witnesses namely PWs 1 to 3 have turned hostile witness. PW.4 and 5 are the teachers working in the school were PW-1, victim girl was studying and who have

noticed the physical changes in the stomach of the victim girl and informed it to PW.10, Sivaji, the President of the Parent Teacher Association of the School, thereby the Criminal law was set it into force. The Forensic Officer, PW.16 Uvarani had given clear D.N.A report and during her evidence, she had stated that accused Selvam is the Biological father of the child born to the victim, PW1 and the victim, PW.1 is the Biological mother of the child.

7. Heard both sides and perused the materials available on the records. The points that arise for consideration in this appeal is:

(i) Whether the prosecution has proved the guilt of the accused for the offence punishable under Section 376 of IPC.

(ii) Whether the conviction of the trial Court is sustainable in law.

(iii) Whether the sentence awarded is excessive.

8. It is seen from the evidence of the some of the prosecution witnesses have turned hostile and they include PWs 1 to 3. Further, PW.7, PW.8 and PW.9 have also turned hostile since they are only hearsay witnesses and therefore, the trial Court disregard their evidence as stated supra, PW.4, PW.5, and PW.10 are School teachers and the President of the Parent Teacher Association of the School respectively, where the victim/PW.1 was studying. The trial Court, taking into consideration of the evidence of PWs 4, 5 and 10 coupled with Ex.P8 (DNA) report, convicted the accused.

9. From the evidence of PW.2 and PW.3, who are the mother and grandmother of the victim girl, it appears that for the reasons best known, they did not support the case of the prosecution and therefore, it appears that the trial Court relied upon the independent evidence of PW.10 and Medical evidence, PW.12/ Dr.Hariram, who examined the victim girl when she was admitted in the hospital through her mother with Labour pain and where the victim girl delivered a male child. PW.12 has also issued the birth certificate of the male child under Ex.P3. PW13 / the Doctor, who examined the accused and forwarded the blood and semen samples of the accused. According to PW13, he obtained a report from the Forensic Laboratory as per which he deposed that it was the accused who fathered the minor child born to PW1. Ex.P7 is the Accident Register issued by PW14. PW16 was the Scientific Officer, who has deposed that she received the blood samples of the accused, PW1 and the minor child. After examination of the blood samples, PW16 has categorically deposed that the accused is the biological father of the minor boy baby born to PW1. The above said deposition of PW14 and 16 are not challenged, during the cross examination.

10. On going through the evidence of PW.4 and PW.5, the school teachers, it is seen that they have inquired about the bulging of the stomach of the victim girl after it was informed to them by some students studying with the victim girl. On being questioned, PW.1 deposed about the physical relationship, she had with the accused. Based upon the statement of the PW.1, PW.4 & PW.5 have referred the matter to the President of the Parent Teacher Association of the School/PW10 and thereafter, Ex.P1/complaint was lodged before the police station. A few weeks later, the victim girl /PW1 gave birth to one male child on 19.01.2011. PW12 was the Doctor who attended the victim girl at the time of delivery and who has issued the birth certificate, marked as Ex.P3.

11. During the course of investigation, in order to prove that the accused was the father of the male child born to the victim girl, the accused was subjected to medical examination. As per Ex.P6/ DNA test, it was clearly proved that it was the accused who is the Biological father of the child born to the victim girl. Hence, as per the deposition of PW4 and PW5, School teachers where the victim girl studied, apart from the deposition of PW9, who was also studying along with the victim girl in IX standard, during the relevant time, and who was enquired about PW1 before the PW10/President of the Parent Teacher Association of the School, it is clear that the prosecution has clearly proved the coming into existence of complaint, and that part of the prosecutions case, beyond all reasonable doubts. Further, PW9, a student of the school who studied with the victim was an independent witness and she has stated about the act of the accused and the victim girl/PW1 during the enquiry at the school. She has stated that it was the accused who was responsible for the pregnancy of the victim girl. Thus, even though most of the prosecution witnesses have turned hostile, the medical evidence in the form of DNA report, Ex.P6 clearly indicated that it was the appellant who is the biological father of the male child, born to the victim girl. Further, the learned Government Advocate has also drawn my attention about the evidence of the PW12 Doctor, who had given treatment at the time of delivery and she has deposed that at the time of admission of the victim girl for delivery she has stated about the act of the accused on her body and the physical relationship he had with her also lends support to the prosecutions case.

12. This Court on going through the cross examination of PW.4, PW.5 and PW.10 and the medical evidence of PW.12, PW.13 through whom the Ex.P6 / DNA report was marked is of the view

that the victim girl is the biological mother and the accused is the biological father. Therefore, the trial Court has come to the conclusion that the accused has committed the offence of rape the minor victim /PW.1 (aged about 14 years). The evidence of PW.16 /Uvarani, Scientific Officer has given the DNA report and in her evidence she stated that the accused / Selvam is the biological father and the biological mother of the child is PW1. Thus the medical evidence lends support to the independent witnesses of PW.4, PW.5, who had first noticed the enlarging of the stomach and has intimated it to PW10, who in turn inquired the victim girl/PW1, resulting in filing of Ex.P1/complaint and Ex.P10/FIR.

13. The trial Court has taken note of Ex.P6 and statement of the victim girl given before the Court under Section 164 of Evidence Act, with regard to the identity of the accused who has committed the alleged offence. PW.12 / Dr. Hariram, who had given treatment at the time of admission in the hospital has stated that as per the statement of victim girl at the time of admission, she has clearly implicated the accused and also stated that she had physical relationship with the accused, which resulted in her pregnancy. So, at the earlier point of time, the victim had given a statement which lends credence to the prosecution case and thus this Court is of the considered view that the prosecution has proved it's case against the accused beyond reasonable doubt by examining PW.4 and PW.5, who first identified the pregnancy and with the assistance of PW.10, the President of the Parent Teacher Association of the School set the criminal law on motion by giving the complaint under Ex.P1. The prosecution has thus proved that the accused had physical intercourse with the minor victim girl and made her pregnant, which has led to the birth of the baby boy, as reflected in Ex.P3 /Birth Certificate (the child of the victim girl). Hence, the conviction laid by the trial Court under Section 376 of IPC is well founded and well considered and it does not warrant any interference by this Court.

14. Further, this Court is of the view that even there is material contradiction in the deposition of PW.1 to 3, because, they are very poor people. PW2 is working as a coolie and PW1 to 3 have turned hostile and not supported the case of the prosecution, however, the medical evidence supported the case of the prosecution fully and therefore, the deposition of PWs 1 to 3 is immaterial.

15. In view of the overwhelming deposition rendered by independent private prosecution witnesses, coupled with the medical witnesses of the Doctor / PW.12, PW.14 and PW.16 and the medical certificates Exs.P4, P5 and P8. I am of the considered view that the conviction and sentence passed by the trial Court, does not warrant interference and the conviction is hereby confirmed.

16. In the result, the Judgment dated 07.08.2015 passed in S.C.No.69 of 2015 by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri is confirmed. The Criminal Appeal stands dismissed.

Sd/-
Assistant Registrar(CS V)

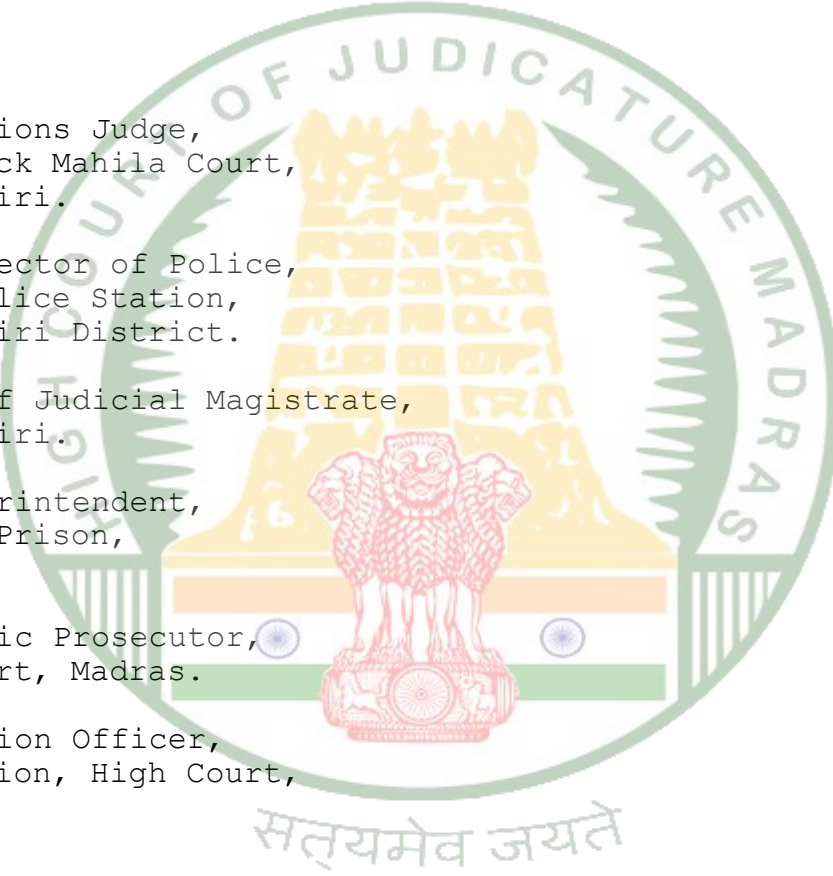
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Sub Assistant Registrar

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To

- 1.The Sessions Judge,
East Track Mahila Court,
Krishnagiri.
- 2.The Inspector of Police,
Barur Police Station,
Krishnagiri District.
- 3.The Chief Judicial Magistrate,
Krishnagiri.
- 4.The Superintendent,
Central Prison,
Salem.
- 5.The Public Prosecutor,
High Court, Madras.
- 6.The Section Officer,
V.R.Section, High Court,
Madras.



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NRL(CO)

rrs 04/12/2018

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