

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :: 01.12.2016

PRONOUNCED ON :: 21.08.2018

CORAM

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

CRL.A.No.578 of 2013  
and MP.No.1 of 2013

K. Kamaraj .. Appellant/Accused

Vs

State, rep. By Inspector of Police,  
All Women Police Station,  
Ariyalur District,  
Crime No.3 of 2010

..Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C against the judgment of conviction and sentence passed by the learned Principal and District Sessions Judge, Ariyalur in S.C.No.93 of 2012 dated 26.07.2012.

For Appellant : Mr. R. Subramanian.

For Respondent : Mr. P.Govindarajan

Addl. Public Prosecutor

J U D G M E N T

This Criminal Appeal has been arising out of the judgment of conviction and sentence of the learned trial Judge convicting the accused u/s.354 of IPC in S.C.No.93 of 2012 and sentencing him to undergo Rigorous Imprisonment for a period of two years. The period of detention already undergone is ordered to be set off under section 428 of Cr.P.C.

2. Originally a charge was framed against the appellant/accused under section 376 r/w.511 and 506(i) IPC, subsequently, it was altered to Section 354 IPC.

3. The case of the prosecution on the basis of the evidence let in by prosecution witnesses is as follows:

(i) On 11.5.2010, one Sneha, aged about 7 years was playing with one Agasthiya in Street, at that time Agasthiya called PW4 Buvaneswari, who is the sister of Sneha and informed her that her father had carried Sneha to his house and doing some thing with her. When Buvaneswari rushed to the accused's house, she found the accused had ran away and hide

himself. Thereafter she took Sneka to her mother PW1 Latha, who removed the undergarment of Sneka and found that semen was leaking over the undergarment and also on her thigh. The incident was informed by said Latha to her neighbours and also to her husband Desingh, who was at that time at Chennai. After arrival of said Desingh on the next day, both of them questioned the accused about the incident, he threatened them with dire consequences.

(ii) Thereafter a complaint was lodged against the accused in All Women Police Station, Ariyalur, subsequently, an FIR-Ex.P.1 was registered under sections 376 and 506(i) IPC on 12.5.2010 by PW-9 P.Vani-Sub Inspector of Police, All Women Police Station, Ariyalur in Crime No.3 of 2010. She sent the original documents to Magistrate Court and sent the case for Investigation to PW10-Solaimuthu, Inspector of Police, Koovagam Police Station, who, on receipt of FIR, went to the scene of occurrence on 12.5.2010 and prepared rough sketch -Ex.P.6 and observation mahazar in the presence of witnesses Marimuthu and Anuradha. He examined witnesses Latha, victim girl Sneka, Desingh, Buvaneswari, Agashtya, Vennila, Rajeswari, Kavitha, Jothi, Ranjitham, Marimuthu individually and recorded their statements and sent to Court and on that day itself, he sent the victim girl for medical examination. He also sent the under garment of victim girl viz., MO.1 for chemical analysis.

(iii) On 13.5.2010, he arrested the accused at the Bus Stop of Ponparappi Village and remanded him under judicial custody on the day itself he sent the victim girl for medical examination. Thereafter he recorded the statements of Dr. Sudha, who examined the victim girl and Dr. Nirnajana Devi, who examined the accused respectively. He also obtained Ex.P.7 certificate issued by Doctor determining the age of the victim girl and also Ex.P.8-Serology report and Ex.P.9 Biological report. After conclusion of his investigation, he filed charge sheet against the accused under Section 376 r/w.511 and 506(i) IPC.

(iv) The case was committed from the Magistrate Court to the Principal Sessions Judge, Ariyalur. There, when the accused was questioned, he denied the allegations in toto. The learned Sessions Judge framed charges against the accused under section 376 r/w.511 IPC. Since the accused denied the charges, the trial Judge put him on trial.

(v) The prosecution, in order to prove their case, examined witnesses PW1 to PW10 and marked Ex.P1 to P9 and exhibited one material object MO.1. The defence has not chosen to examine any witness and also marked any documents.

(vi) After the completion of the prosecution evidence, incriminating circumstances were put before the appellant/accused. The accused denied the same as false evidence.

(vii) Considering the oral and documentary evidence, the trial court has found the accused not guilty under section 376 r/w.511 IPC, but under section 354 IPC and sentenced him as stated above.

4. Being aggrieved with the conviction and sentence passed by the learned trial Judge, the accused has preferred the present appeal on the ground that there is no ocular evidence for supporting the case and there is no piece of medical evidence to indicate the incident, as alleged, had happened. It is further contended by the appellant that the trial court has come to such a wrong conclusion based on the oral testimony of the witnesses, when no direct eye witness is available to the incident.

5. Heard R.Subramanian, learned counsel appearing for the appellant and Mr.P.Govindarajan, learned Addl. Public Prosecutor appearing for the respondent and perused the entire materials available on record.

6. The First appellate Court is a fact finding Court. The facts and evidence of the prosecution has got to be re-appreciated.

7. The appellant is the accused before the Sessions Court. The allegation against the appellant is that on 11.5.2010, when the daughter of the Appellant Agasthiya and Sneka, daughter of PW1 Latha were playing in the street, at that time, the appellant called Sneka inside his house promising her to give some eatables. When she went inside the house, he made some bad things. Immediately the daughter of the appellant went to PW4-Bhuvaneshwari, sister of the victim girl and informed her that her father had carried Sneka and doing some thing with her. On hearing it, PW4 Bhuvaneshwari rushed to the scene of occurrence and on seeing her, the accused ran away from that place and hidden himself. PW4 found semen leaking from the under garment of Sneka and thigh. When she enquired Sneka, she told that the appellant had done bad thing. PW4 immediately informed about the said incident to her Mother Latha, who, inturn, informed the incident to her neighbours and also to her husband PW3 Desingu, who was out of station at that time. After arrival of her husband from Chennai the next day morning, both of them went to the accused and questioned about the incident, he denied the incident and also threatened them with dire consequences. Thereafter, PW1 lodged a complaint with PW9-Sub Inspector of

Police, All Women Police Station, Ariyalur, who, in turn, registered a case against the accused in Crime No.3 of 2010.

8. PW4, after registering the FIR gone to the scene of occurrence and also prepared rough sketch and mahazar and examined the witnesses and also they produced the victim girl before the Government Hospital, Ariyalur for medical examination. Thereafter, PW10- Investigation Officer procured the under garment of Sneka and sent the same for Chemical examination. PW8-Dr.Sudha examined the victim girl and issued Ex.P.4-Accident Register. PW6-Dr. Niranjana Devi, on receipt of requisition letter for semen analysis. As per the requisition, Dr. Anbarasan, conducted semen analysis of the accused and gave report. Again another semen analysis was carried out and report with regard to the said semen analysis was entrusted to police constable Ilanjiyam. The report is marked as Ex.P.2 through PW6. After completing the investigation, PW10-Inspector of Police filed the charge sheet.

9. PW1 the mother of the victim girl had deposed about the occurrence heard from Bhuvaneswari and also made a complaint. PW2 is the victim girl. She had deposed before the Court that the appellant had done some bad things on her. When the Court asked about what is meant by bad thing, she kept silent and did not say anything.

10. PW3 is the father of the victim. During the occurrence, he was out of station and in his evidence, he spoke about the information that he received from his wife, questioning of the accused and giving of complaint to police station.

11. PW4 Bhuvaneswari, the sister of victim girl only spoke about the information she received from the daughter of appellant that her father took Sneka into the house and was doing some thing and also about her rushing to the spot and her noticing of the appellant ran away from the place and leaking of semen under the undergarment and also thigh of said Sneka and informing about the incident to PW1 -Latha, who in turn, immediately informed about the incident to her neighbours and showed Sneka to PW5 one Kavitha. She also spoke about that when the parents of the victim girl questioned the appellant, he denied the incident and also threatened them with dire consequences and thereafter they lodged a complaint with All Women Police Station.

12. PW8 Dr. Niranjana Devi spoke about the medical examination done on the victim girl and semen report prepared by one Dr. Anbarasu.

13. PW9 Sub Inspector Police spoke about the receipt of complaint and registration of the FIR and forwarded the case file to PW10 for investigation. PW10 spoken about the investigation and also his examination of the witnesses and also collection of the material objects.

14. The case of the prosecution is that when the daughter of appellant and the victim girl were playing in the street, i.e., in front of the house of the appellant, the appellant took the victim girl into his house and made an attempt to rape her. On receipt of complaint, the Police registered the case and after conclusion of investigation, they filed charge sheet against the accused under section 376 r/w.511 and 506(i) IPC.

15. From a perusal of the deposition of the witnesses , it is seen that there is no direct eye witness in this case and only, PW2-victim alone has spoken about the incident. When she spoke about the incident before the Court, she has stated that the appellant was doing some bad thing on her. When the Court asked what was bad thing, she was not able to say anything and simply she had kept quite. Also the evidence of PW8-Dr.Sudha, who conducted medical examination of the victim girl, was to the effect that hymen of victim girl was intact and there was no external injuries found over the body of the victim girl and also on her private part. Further the semen report shows that though there is no correlation between the semen found in the under garment of Sneka and that of the appellant, but the evidence of PW4 Bhuvaneswari is clear that the daughter of appellant Agasthiya informed her that her father was doing some thing with the victim girl Sneka and immediately she rushed to the occurrence spot and after seeing Sneka, he ran away. Though PW4 deposes nothing about the commission of offence by the accused, it is seen that PW4, after enquiring about the incident with Sneka, immediately rushed to the occurrence spot, where she saw the semen in the under garment of Sneka and thigh of Sneka. That itself shows that the appellant has done some thing with Sneka . From the Doctor's evidence, it is seen that there is no symptoms of rape or attempt to rape . From the evidence of PW2 victim and PW4 sister of Sneka and PW8 Dr Sudha, the trial court has come to the conclusion that the appellant has not committed any offence under section 376 r/w.511 IPC by opining that there is no evidence to prove that the appellant threatened them, only from the above said evidence, the trial court has come to the conclusion that the accused has committed the offence of outraging the modesty of a woman. Therefore the trial court convicted the accused under section 354 IPC and sentenced him to undergo rigorous imprisonment for two years and the accused was held not guilty under section 506(i) IPC and thereby acquitted him under that charge.

16. The victim girl did not say anything about commission of either rape or attempt to rape and also PW4 has not spoken about that she has seen that the appellant either raped the victim or attempted to commit rape. PW6-Doctor's evidence also shows that there is no symptoms of rape and there is no internal or external injuries over the body or the private parts of the victim girl. But the evidence of PW1, PW4 are to the effect that they saw the semen in the undergarment of the victim girl and also thigh and when she informed PW5, she had also seen the very same thing. Sneka also told that the appellant did some thing bad on her, but she has not stated specifically what was done by the appellant. Therefore, the trial Court after considering all the materials and documentary evidence in a proper perspective, has given a finding that the accused was found guilty under section 354 IPC and not under section 376 r/w.511 IPC.

17. Therefore there is no reason to interfere with the decision of the trial Court. Hence this appeal is dismissed and the conviction and sentence passed by the trial Court is confirmed.

18. In the result, the criminal appeal is dismissed by confirming the conviction and sentence imposed on the appellant/accused for the offence under Section 354 IPC. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal and District Sessions Judge, Ariyalur.
  2. The Public Prosecutor, High Court, Madras.
  3. The Judicial Magistrate, Ariyalur
  4. The Inspector of Police  
All Women Police Station,  
Ariyalur District.
  5. The Section Officer, Criminal Section,  
High Court, Madras
- +1cc to M/s.R.Subramanian, Advocate SR.NO.57010

RK(co)

sm:11.9.2018

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