

IN THE HIGH Court OF JUDICATURE AT MADRAS

RESERVED ON : 20.03.2018

DELIVERED ON : 08.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.543 of 2014

Shankar

...Appellant/Accused

Vs

State rep. by Inspector of Police,
Ulundurpet Police Station,
Ulundurpet,
Villupuram District.
(Crime No.309/2005)

...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of the Criminal Procedure Code, to set aside the order of conviction passed against the accused/Appellant in S.C.No.351 of 2010 dated 22.08.2014 on the file of the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court) at Villupuram.

For Appellant : Mr.R.Rajasekaran

For Respondent : Mrs.T.P.Savitha
Government Advocate (Crl.Side)

JUDGMENT

This criminal appeal is preferred by the Appellant/Accused against the judgment and conviction passed in S.C.No.351 of 2010 on the file of the learned Sessions Judge, Mahalir Neethimandaram (Fast Track Mahila Court) at Villupuram, wherein the learned trial Court convicted and sentenced the appellant/accused for the offences under section 328 and 376 of IPC to undergo rigorous imprisonment for ten years and pay a sum of Rs.5000/- towards fine, in default to undergo one year simple imprisonment and rigorous imprisonment for ten years and to pay a sum of Rs.5000/- towards fine in default to undergo one year simple imprisonment for the offence under section 376 of IPC.

2. Brief case of the appellant/accused:

The prosecution case is that the appellant/accused and the father (PW3) of the PW2 victim girl were serving in the special police battalion at Bali, Ulundurpet district and were residing in the police quarters. The appellant/accused was residing with his wife and children in door No.17 and the family of the victim were residing in door No.19 in the same locality. PW2 victim girl aged about 15 years often visited the appellant/accused house and used to play with their children. On 29.6.2005, the appellant/accused administered some intoxicating drug in the cool drinks and gave to the victim. At once, the victim fell unconscious, the appellant/accused ravished her. After few months when the parents of the victim found her lying sick and enquired her, the victim narrated the incident to her parents. Immediately PW1 mother of victim lodged the complaint before the All women police station, Ulundurpet and the police authorities refused to receive the complaint. The complaint was sent to the PW14 Inspector of Police, Ulundurpet by post. On receipt of the Ex.P1 complaint through post on 29.6.2005, PW14 registered the FIR Ex.P10 in Crime No.309 of 2005 for the offences under section 417, 313 and 376 of IPC. PW14 Inspector of Police, took up his investigation and proceeds to the place of occurrence and prepared Ex.P7 observation mahazar and Ex.P11 rough sketch in the presence of witness PW10 and PW11 and examined few more witnesses and recorded their statements. PW2 victim girl was sent for medical examination through Ex P12 requisition letter on 16.7.2005 and recorded the statement of PW3.

3. PW12 Dr. Shanthi who had examined the victim and issued Ex.P8 certificate deposed that at the time examining the victim, she found the hymen of victim torn and on examining through ultrasound diagnosis, the victim was six week pregnant.

4. On 21.10.2005, PW14 Inspector of Police took the accused in custody who had surrendered before the Judicial Magistrate No.I, Ulundurpet on 13.10.2005 and recorded his confessional statement Ex.P13. PW14 Inspector of Police, took him to the police quarters and secured some letters from the appellant/accused through Ex.P2 seizure mahazar marked as Ex P4 in the presence of PW8 and PW9. The signatures of the PW8 and PW9 in the seizure mahazar are marked Exs.P3 and P5. Thereafter the appellant/accused was sent for medical examination.

5. PW13 Dr. Jaganathan conducted physical examination for the appellant/accused and issued the physical fitness certificate Ex.P.9. After completion of investigation, the Inspector of Police laid charge sheet against the appellant/accused under sections 328 and 376 of IPC.

6.The learned trial Court framed the charges against the appellant/accused under sections 328 and 376 of IPC. The appellant /accused denied the charges.

7.During the trial, the prosecution examined PWs1 to 14, marked Exhibits-P1 to 14 and no witness was examined on the side of the appellant/accused.

8.After the completion of trial, on appreciating the material available on record, the learned trial Court convicted the appellant/accused for the offences under sections 328 and 376 of IPC to undergo rigorous imprisonment for ten years and pay a sum of Rs.5,000/- towards fine, in default to undergo one year simple imprisonment and rigorous imprisonment for ten years and to pay a sum of Rs.5,000/- towards fine in default to undergo one year simple imprisonment for the offence under section 376 of IPC. Aggrieved over the same, the appellant/accused preferred this criminal appeal.

9.The learned counsel for the appellant/accused submits that the alleged victim girl herself not stated anything about the incident and she have not supported the prosecution case. She further deposed in chief that she do not remember anything about the incident.

10.The learned counsel for the appellant/accused submits that the Court below failed to see that the PW1 and PW3 is close relative and who is none other than the parents of the victim girl and they are the interested witnesses.

11.The learned counsel for the appellant/accused submits that the learned judge ought to have accepted that the prosecution has miserably failed to bring all the medical evidence to prove the case and that the victim girl was raped by the appellant/accused and thereby she got pregnancy.

12.The learned counsel for the appellant/accused submits that the Court below erred in convicting the appellant/accused based on the evidence of PW1 and PW3. The Court below failed to see that the PW1 and PW3 is not an eye witnesses and they admitted that the victim girl often left the house without informing them.

13.The learned counsel for the appellant/accused submits that the Court below failed to see the evidence of the PW2 who is the victim girl and she herself stated that she did not know anything and she had affairs with one Mani in such a situation the prosecution ought to have taken the DNA test of the victim girl's baby and the appellant/accused.

14.The learned counsel for the appellant/accused submits that the Court below failed to see that the PW1 to PW3 stated that the appellant/accused giving a cool drinks to the PW2 mixed with intoxicating drugs and ravished her but there is no single material available to prove the prosecution case.

15.The learned counsel for the appellant/accused submits that the learned judge failed to note that the FIR is cooked up belatedly for the purpose of fixing the appellant/accused in the above case because the PW 14 himself admitted that he received the complaint on through post and on 29.06.2005 the same day without any basis he registered a case against this appellant/accused.

16.The learned counsel for the appellant/accused submits that the Court below failed to note that there is a compelling necessity to prove the version of PW2 since initially she said nothing and later she said she has affairs with one Mani therefore the prosecution has to prove the case who subjected the victim girl for sexual intercourse and who is responsible for her pregnancy.

17.The learned Government Advocate (Criminal Side) appearing for the respondent opposed the contentions of the petitioner/accused and sought for dismissal of the criminal appeal.

18.I heard Mr.R.Rajasekaran, learned counsel for the appellant and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent and perused the entire materials available on record.

19.PW1 the mother of the victim deposed in her evidence that her daughter PW2 was sexually abused by the appellant/accused hence she was studying 9th standard. Now PW2 married one Mani and living with him. In the cross examination, she admits that she do not knew anything about the complaint and Exhibit P1 was

written by her husband. Further she deposed that she has given a complaint before the police station that PW2 did not return home before this occurrence. Afterwards PW2 returned to her home. PW1 further deposed that both her husband and the appellant/accused were working as Sub Inspector of Police. Earlier a complaint was given to the Kallakurichi Police Station and also to the Ulundurpet Police Station for which no action was taken. Subsequently complaint was preferred to the Superintendent of Police and after that only Exhibit-P1 was registered. PW1 also deposed that PW2 and one Mani loved each other and they performed their marriage independently.

20.PW2 the victim Sumalatha deposed in her evidence that her mother PW1 preferred complaint to the police station in the year 2005 alleging that she was missing. At that time PW2 went to her uncle's house located in Trichy.

21.PW2 specifically deposed that she have not given complaint against the appellant/accused. Further she deposed that nearly 5 times she went away from her parental home and returned without the knowledge of their parents.

22.PW2 further deposed that she could not tell about the drug given by the appellant/accused and she is not aware when the appellant/accused raped her.

23.PW2 further deposed that she married one Mani without the consent of their parents and now living separately and she could not aware for what reason PW1 given the complaint to the police station. Further she deposed that she have not terminated her pregnancy after this occurrence.

24.PW3 father of the victim girl PW2, deposed in his evidence that the earlier complaints preferred by him was not registered by the concern police and after 10 days of postal complaint made by the defacto complainant, the police enquired and registered the FIR. Further he deposed that the occurrence was not happened in their house.

25.The other witnesses PWs-4 to 6, who were also the police witnesses residing nearby did not support the case of the prosecution and they turn hostile.

26.PW 12 Doctor deposed in her evidence that she examined PW2 and issued her report Ex.P8 alleging that the victim was pregnant for six months.

27.On careful analysis of the above said witnesses and also the exhibits, the charges framed by the learned trial Court was not supported through ocular and medical evidences. PW2, the victim girl deposed contra to the prosecution and the medical evidence also contradictory. Further the Exhibit-P4, the letters written by the victim did not support the case of the prosecution.

28.In the case on hand, particularly in a rape case, the victim evidence should be given predominant consideration and no corroboration is needed is the view taken by the Hon'ble Apex Court repeatedly. So there is no quarrel about the proposition that the statement of the victim should not be suspected and cannot be treated par with other witnesses. But the issue before this Court is that whether the statement of PW2 inspires confidence or not?

29.As earlier discussed, PW2 the victim girl made contradictory statement about the involvement of the appellant/accused. Therefore her evidence cannot be taken into consideration since its affect the substratum of the case.

30.Further the age of the victim was also not proved as per the juvenile justice act. There are contradictory versions with the ocular versions regarding the age of the victim.

31.The appellant/accused categorically denied the seizure of Ex.P4 based on his confession statement recorded by the police. Further PWs-8 and 9 had given different and contradictory statements regarding the seizure of Ex.P.4 and the letters were not sent to the handwriting expert. Therefore, I am inclined to interfere in the judgment and conviction passed by the Court below .

32.In the result:

(a) this Criminal Appeal is allowed and the conviction and sentence imposed in S.C.No.351 of 2010 dated 22.08.2014 on the file of the learned Sessions Judge, Mahalir Needhimandram (Fast Track Mahila Court), Villupuram, is set aside;

(b) the appellant/accused viz, Shankar S/o Seenivasan is acquitted from all the charges. The fine amount if any paid by the appellant/accused shall be refunded by the trial Court;

(c) the bail bond if any executed by the appellant/accused is stands cancelled;

(d) the appellant/accused is directed to be released forthwith, if his detention is not required in any other case.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

vs

To

- 1) The Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court) at Villupuram.
- 2) The I Additional District Munsif cum Judicial Magistrate No.I, Villupuram.
- 3) The Inspector of Police, Ulundurpet Police Station, Ulundurpet, Villupuram District.
- 4) The Superintendent of Police, Central Prison, Coimbatore
- 5) The Director General of Police, Mylapore, Chennai - 4.
- 6) The District Collector, Cuddalore.

+1cc to M/s.R.Rajasekaran, Advocate, S.R.No.76244

Judgment made in
Criminal Appeal No.543 of 2014

KJ(CO)
SSM(01/04/2019) .