

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 16.08.2018

Orders Pronounced on: 26.11.2018

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Criminal Appeal No.618 of 2014

Sankar @ Harikrishnan

... Appellant

Versus

State by

Inspector of Police,
Padalur Police Station,
Perambalur District.
(Crime No.65 of 2010)

... Respondent

Appeal filed under Section 374 of the Criminal Procedure Code, to call for the records and set aside the conviction and sentence imposed against the appellant herein in the order dated 13.02.2013 in S.C.No.128 of 2011 on the file of the learned Sessions Judge, Mahila Court, Perambalur District.

For Appellant : Mr.P.Pugalenth

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

JUDGMENT

The convicted sole accused is the appellant herein. The appellant herein has challenged the correctness of the Judgment dated 13.02.2013 in S.C.No.128 of 2011 passed by the learned Sessions Judge, Mahila Court, Perambalur District, convicting him under Section 376 of IPC and sentencing to undergo 10 years rigorous imprisonment and to pay a sum of Rs.25,000/- in default to undergo one year simple imprisonment and convicting him under Section 506(i) of IPC and sentencing to undergo one year rigorous imprisonment. Both the sentences were ordered to run concurrently and the period already undergone was ordered to be set off under Section 428 of Cr.P.C.

2. The respondent-Police has filed a final report for alleged offence that the victim girl is handicapped by polio attack and both the accused and the victim girl were residing in the same vicinity. On 27.01.2010 at 9.00 p.m, the victim's mother was cooking inside the house and the victim girl was sitting in front of the pial of her house. The accused came to the house of victim girl and told her that his wife/Pushba wanted to speak to her and took her to his house and afterwards, with an intention to have forcible

sexual intercourse, he had removed her skirt and blouse and made her to lie down and squeezed her breast and raped her against her will. Thereafter, he had threatened her with dire consequences. Hence, the accused is liable to be punished for the commission of offence under Sections 376 and 506(i) of IPC.

3. After observing the formalities, the case was taken as PRC.No.39 of 2011 and numbered as S.C.No.128 of 2011, then in order to prove the charges by the prosecution witnesses PW's.1 to 15 were marked and Ex's.P1 to 13 documents were marked and Mo.1 to 5 were recovered.

4. On consideration of both the oral and documentary evidence, the learned Sessions Judge has come to the conclusion that the version of the prosecutrix- PW.2 inspires the confidence of the Court and dealt with the support of evidence of PW.1 4 and also supported by the medical evidence of PW.9. Thus, the learned Sessions Judge has held that the prosecution proved the case beyond reasonable doubt. Accordingly, the trial Court had convicted the appellant/accused under Section 376 of IPC and Section 506(i) of IPC and sentenced to undergo as stated supra. Hence, the present appeal.

5. The learned counsel for the appellant would contend that there is a considerable delay remain unexplained in preferring the First Information Report and the victim girl / PW2 has deposed nothing against by him. Further, the brother of the victim girl has stated nothing against the prosecution. PW.4 is the sister of PW.2/victim girl has deposed contrary to the First Information Report. Thus, the learned counsel seeks to set aside the conviction and sentence imposed on the appellant.

6. The learned Government Advocate, appearing for the State, has made his submissions in support of the case of the prosecution.

7. Points for determination:

Whether the conviction of the appellant/accused under Sections 376 & 506(i) IPC is sustainable in law and the sentence awarded by the trial Court is excessive?

8. The case of the prosecution is that on 27.01.2010 at about 9.00 p.m, the victim girl, aged 29 in the year 2010, was sitting in the pial of her home and at that time, the accused/appellant herein went to her house and told her that his wife/Pushba wanted to speak to her and took her to his house and he committed the alleged rape against her will. On

04.02.2010, the mother of the victim girl lodged a complaint and thereafter, case in Crime No.65 of 2010, under Section 376 of IPC was registered.

9. PW.2-the victim girl could deposed that on 02.02.2012, she was called for chief-examination by the Sessions Court and she was examined in chief. However, the defence counsel had taken a plea that PW.2-victim girl is an insane; therefore, defence counsel did not prefer to cross-examination her at the first instance. Hence, the learned Sessions Judge has taken efforts to test the mental status and competency of PW.2, to give any evidence and also recorded the questions and answers, that was put to PW.2. Further, with regard to her mental condition, PW.9-Doctor, who had clinically examined the victim, has deposed that she is conscious oriented. Furthermore, PW.9-Doctor had categorically denied the suggestion put by the defence counsel that the victim is insane. Thus, the Trial Court after taking into consideration of the Chief-examination initially recorded on 02.02.2012 and subsequently, recalled P.W.2 on 13.09.2012 for further examination. The learned Sessions Judge ascertained the mental status/condition of PW.2 to give the evidence, in accordance with law, and also taking note of the evidence of the Doctor / PW.9 in the Chief examination as well as cross-examination, the Sessions Judge has categorically held that PW.2 is not an insane and she is competent person to speak about what the accused had done on her body and his act of having physical relationship on the fateful day. Hence, the objection raised by the learned appellant counsel in this regard that PW.2/victim is incompetent to give evidence has no legs to stand and the same is hereby rejected. and the findings in this regard rendered by the learned Sessions Judge is hereby confirmed.

10. PW.9/Doctor had examined PW.2 on 08.02.2010 and the Doctor deposed that a piece of cloth found in her private parts with fowl smell. The Investigating Officer recovered the cloth under Form-95 and sent the same to the Court for chemical analysis. As per Ex.P4, no semen detected on the cloths sent for chemical analysis, but blood stain was detected as group 'B'. From the above evidence, it is seen that PW.9/Doctor, during the physical examination of PW.2/victim girl, has noticed in a piece of cloth found in her private part. PW.10- Arul Selvam is the Doctor, who had conducted the medical examination of the accused and issued EX.P7-medical certificate in respect of the accused-Sankar @ Harikrishnan that there is nothing to suggest the accused is impotent.

11. It is seen that the victim is a handicapped by Polio attacked in her childhood. The accused is also a resident of the same vicinity. On the date of incident, on the pretext that his wife called the victim, the accused took the victim

to his house and afterwards, the accused forcibly raped her against her will and threatened her that if she reveals the same to anyone, he will do away with her.

12. P.W.4 - Radhamani is the sister of PW.2-victim girl, who deposed that the victim girl disclosed with her about the act done by the accused on her body. In this regard, PW.4 has informed about the incident to her mother-PW.1. Thereafter, P.W.1 enquired with PW.2-victim girl, who is said to have described the incident to P.W.1. Though PW.4 and 5, who are sister and brother of the victim girl respectively, have stated nothing in support of the prosecution, as they are only hearsay witnesses. Thus, it is seen from that the evidence of PW.2 coupled with the evidence of PW.1-mother of PW.4-sister, which inspired the confidence of the Court to come to the conclusion that the accused has committed the offence as alleged by the prosecution. The delay in disclosure of the offence is only due to the criminal intimidation given by the accused to the victim.

13. It is not in dispute that there is an nine days delay in lodging complaint. On proper the explanation given by PW.1, PW.2 and PW.3, with regard to the reason for the delay, the trial Court has precisely appreciated the evidence of PW.1-mother and also come to the conclusion that due to fear expressed by the victim girl and also due to the fact that she has been affected by the Polio on both hand and leg had caused the delay in lodging complaint has occurred. After the incident, the behaviour of the victim girl is clearly indicated in his fearsome face, which is explained by the mother of the victim girl-PW.2.

14. Thus, this Court finds that the prosecution has clearly explained the reason for the delay in preferring Ex.P1/ complaint. Due to the realities of life, it is apparent that the victim girl who hails from a poor social strata, would find it difficult to disclose the traumatic experience she had undergone. In this regard, a useful reference could be placed in the decision rendered by the Hon'ble Supreme Court in the case of Dildar Singh vs. State of Punjab reported (2006) 2 MLJ (crl) 1030, wherein it has been held as follows:-

"In normal course of human conduct an unmarried girl, who is a victim of sexual offence would not like to give publicity to the traumatic experience, she had undergone and would feel terribly embarrassed in relation to the incident to narrate such incident. Overpowered, as she may be, by a feeling of shame her natural inclination would be to avoid talking to anyone, lest the family name and honour is brought into controversy. Thus, delay in lodging the first information report cannot be used as a ritualistic formula for doubting the

prosecution case and discarding the same on the ground of delay in lodging the first information report...."

15. Another decision rendered by the Hon'ble Supreme Court in the case of State of Punjab vs. Ramdev Singh reported in 2004 (1) SCC 421, it has been held as follows:-

"Delay in lodging the first information report cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay and if offered, whether, it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in prosecution version on account of such delay, the same would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the Court, same cannot by itself be a ground for disbelieving and discarding the entire prosecution version, as done by the High Court in the present case."

16. In the light of the above decision, this Court is of the opinion that the plea of the learned appellant counsel that the delay of nine days is fatal to the prosecution case, cannot be accepted since there was proper explanation for the delay and also in view of the social strata of the victim family. As such, the findings of the trial Court in this regard is hereby confirmed.

17. PW.9 / Doctor had categorically stated in his evidence that she has noticed yield scratch marks on the right breast of the victim. P.W.9/Doctor has stated that she found symptom of rape on the victim girl and she opined that her hymen was not intact and also opined that rape might have been committed on the victim.

18. The suggestive examination is that the accused has not committed any sexual relationship with her. Though the defence has projected the suggestive case that there is prior enmity between the accused and the maternal uncle of PW.2, the defence has miserably failed to probablize the suggestive case that due to the previous enmity between the maternal uncle of PW.2 and the accused, the false case has been foisted against him. Taking into consideration the evidence of PW.2 corroborating the version of PW.1 and PW.3, which stands duly corroborated with medical evidence of PW.9 /Doctor, who issued the medical certificate Ex.P.6, this Court is of the opinion that the conviction imposed by the Court is well founded and well merited, which does not warrant any interference from this Court at this appellate stage. Thus, the conviction under Section 376 IPC is hereby

confirmed.

19. The trial Court has convicted the accused / appellant herein under Section 506(i) of IPC and sentenced to undergo one year rigorous imprisonment, while for the offence under Section 376 of IPC he was convicted to undergo ten years rigorous imprisonment with fine of Rs.25,000/-, it was ordered that the said amount shall be paid to the victim as compensation. The learned counsel for the appellant would contend that the ten years imprisonment awarded by the trial Court is excessive and it may be considered for reduction.

20. On perusing the evidence of prosecution witnesses viz., PW1, PW.2 and PW.3, it is seen that the family belongs to a poor Village and PW.2, who is a physically handicapped by Polio, was sexually assaulted by the accused. It is also seen that by use of threat that he has ravished PW.2 and due to her physical infirmity, she was not in a position to defend and save herself. Hence, it is found to be significant to impose punishment commensurate to such a grievous offence.

21. While awarding sentence in respect of sexual offence to the physically handicapped the person, who was attacked by Polio, the Court has to consider the socio- economic status, religion, race, caste and creed of the victim and it is relevant to consider the sentencing policy, protection of society and deterring the criminal, with an avowed object of justice that is required to be achieved by imposing an appropriate sentence. The sentencing Courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence.

22. In the absence of any other extenuating or mitigating circumstances available on record, which may justify imposition of any sentence less than the prescribed minimum on the accused, showing mercy in the case of such a heinous crime would be a travesty of justice and the plea for leniency is wholly misplaced.

23. For the foregoing reasons, the appeal fails and the same is dismissed. The Judgement dated 13.02.2013 in S.C.No.128 of 2011 passed by the file of the learned Sessions Judge, Mahila Court, Perambalur District is confirmed.

Sd/-

Assistant Registrar(CS viii)

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To,

1.The Additional District and Sessions Judge,
Ariyalur.

2.The Sessions Judge, Mahila Court, Perambalur .

3.Do thro the Principal SessionsJudge,
Perambalur.

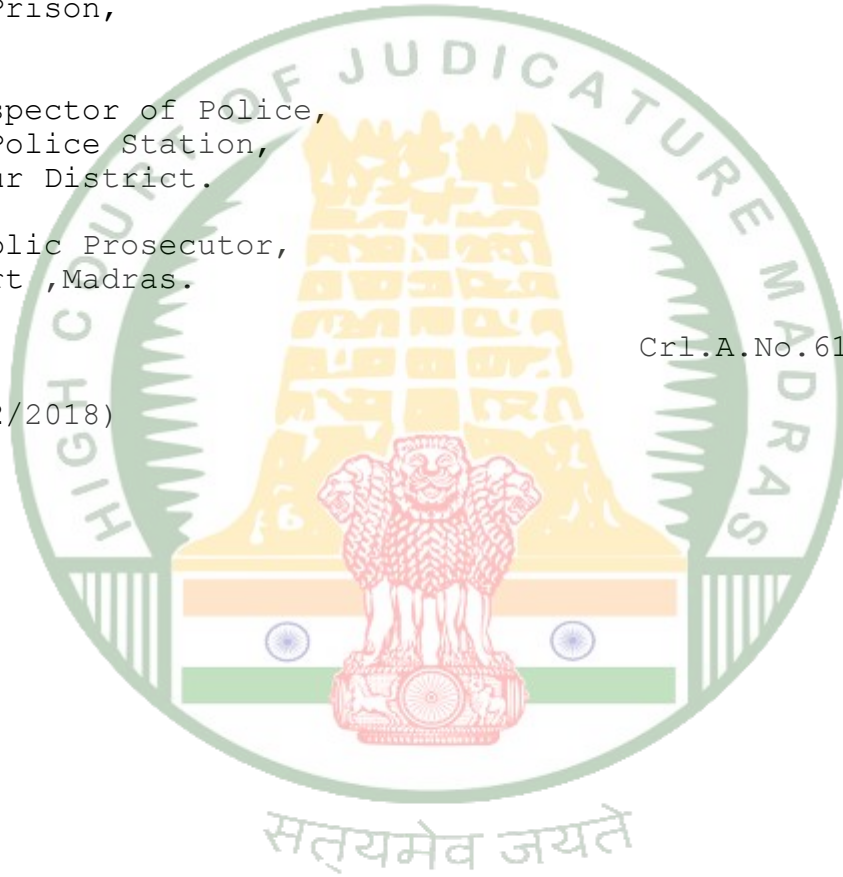
4.The Superintendent,
Central Prison,
Trichy.

5.The Inspector of Police,
Padalur Police Station,
Perambalur District.

6.The Public Prosecutor,
High Court ,Madras.

Crl.A.No.618 of 2014

ASK (21/12/2018)



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