



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.08.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.(MD)No.102 of 2017

and

Crl.M.P.(MD) No.3828 of 2018

Kalimuthu

.. Appellant/ Sole Accused

Versus

The State of Tamil Nadu
Represented by its
Inspector of Police,
All Women Police Station,
Rajapalayam,
(Crime No.03 of 2010)

.. Respondent / Complainant

Prayer: Criminal Appeal filed under Section 374 of Criminal Procedure Code to call for the records in S.C.No.125 of 2010 on the file of the Chief Judicial Magistrate, Virudhunagar District at Srivilliputtur dated 10.10.2013 and set aside the same and acquit the Appellant.

For Appellant : Mr.R.Venkatesan

For Respondent : Mr.A.Robinson,
Government Advocate.
(Crl., side)

JUDGMENT

This Criminal Appeal is arising out of the findings of the trial Court, which has held the appellant herein, guilty of offenses under Section 376 and 506(ii) of I.P.C. The trial Court has imposed sentence of seven years Rigorous Imprisonment, with fine of Rs.3,000/- in default of payment of fine to undergo six months simple imprisonment for offence under Section 376 IPC and seven years Rigorous Imprisonment for offence under Section 506(ii) of IPC. The trial Court has ordered the period of sentence to run consecutively. Aggrieved by the conviction and sentence imposed by the trial Court, the appellant herein, has preferred the present Appeal.

2. The brief facts of the case is that, the appellant, who is the father of the victim girl, has sexually abused her and the same came to light after two months, when the victim girl taken to her relative's house at Chennai, refused to come back to her native village, fearing repeat of sexual assault on her. When the matter



was disclosed by the victim girl, the mother of the victim girl has taken her to the police station and she herself has given a complaint on 06.06.2010 and the matter has been taken up for investigation and the final report was filed by the Investigating Officer. Based on the final report, the trial Court has framed charges under Sections 376 and 506(ii) IPC.

3. The prosecution, to prove the charges, has examined 15 witnesses, marking eight documents and there is no defense witness. The trial Court, considering the evidence let in by the victim girl examined as P.W.1, her mother as P.W.2, her maternal aunt as P.W.3 and evidence of the doctor and medical report marked as Exhibit P.6 and the statement of the victim girl recorded by the Magistrate under Section 164 Cr.P.C, marked as Exhibit P.7, has found that the guilt of the appellant is proved beyond reasonable doubt and imposed sentence, as pointed above.

4. The learned counsel appearing for the appellant, though canvassed that the trial Court has erred in holding the appellant guilty, but later submitted that, if the period of sentence ordered to run 'consecutively', is modified as to run 'concurrently', it is sufficient, since the appellant herein is inflicted with (Human Immuno Deficiency Virus) HIV and is counting his days.

5. The learned Government Advocate appearing for the State pointed out the gravity of the crime committed by the appellant upon his own daughter, who was hardly 13 years old at that point of time, submitted that the sentence imposed by the trial Court cannot be considered as inadequate.

6. Heard the rival submissions and perused the materials placed before this Court.

7. It is a clear case of sexual assault committed by the father upon his own daughter. P.W.6 Sathyabama, maternal aunt of the victim girl has deposed that the victim girl along with her mother/P.W.2, came to her house during the month of April 2010 to spend the vacation. After 20 days, when they were supposed to leave to their native, the victim girl refused to go back to her native. When the elders enquired her of why she is afraid of going back to her native, she has disclosed the brutal act committed by her father. Thereafter, the mother of the victim girl and her sister decided to lodge a complaint and took the victim girl/P.W.1 to the Police Station to lodge the complaint.

8. In the case of this nature, the deposition of the victim girl is very relevant. Her previous statement made before the Magistrate recorded under Section 164 of Cr.P.C., was marked as Exhibit P.7. Her previous statement as well as the deposition were quite natural and she had narrated how the appellant had brutally and forcibly had intercourse with her, despite her protest and plea. Before the court on oath also, she has deposed substantially the same version. There is no reason to disbelieve her testimony.



9. Therefore, this Court has no hesitation to confirm the findings of the Court below. As far as the sentence is concerned, the trial Court has imposed seven years Rigorous Imprisonment for Sections 376 and 506(ii) IPC each and ordered that both the sentences should run 'consecutively'. Considering the medical issue of the appellant, the sentence is modified to the effect that, "the period shall run concurrently."

10. From the records, it appears that, the appellant has not paid the fine amount. In case, if the fine amount is not paid, the default sentence shall remain the same. With the above observations, this Criminal Appeal is partly allowed. Consequently, CrI.M.P.(MD) No.3828 of 2018 is closed.

Sd/-
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The Chief Judicial Magistrate,
Virudhunagar District,
Srivilliputtur
2. The Judicial Magistrate No.II,
Srivilliputtur.
3. The Superintendent of Police,
Central Prison, Madurai.
4. The Inspector of Police,
All Women Police Station,
Rajapalayam.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court.

Copy To:

The Section Officer, Criminal Record,
Madurai Bench of Madras High Court, Madurai. **(2 Copies)**

+1CC to Mr.R.Venkatesan, Advocate, SR.No.78680

Judgment in
CrI.A.(MD) No.102 of 2017
14.08.2018