

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Criminal Appeal No.423 of 2015

Mohideen ..Appellant / Accused

Vs.

State rep.by
Inspector of Police,
All Women Police Station,
Devalaya, Nilgris District. ... Respondent

Appeal filed under section 374[2] of Code of Criminal Procedure, may be pleased to set aside the conviction and sentence imposed on the appellant/accused by a judgment dated 26.05.2015 in Special C.C.No.4 of 2014 on the file of the Sessions Judge, Mahila Court, Fast Track, Ootacamundalam, at Nilgris.

For Appellant :Mr.S.N.Arun Kumar

For Respondent :Mr.T.P.Savitha
Government Advocate [Crl.Side]

JUDGMENT

The appellant is the sole accused in SC.No.4/2014 on the file of the learned Sessions Judge, Mahila Fast Track Court, Udagamandalam, stood charged and tried for the commission of the offence under section 376(1) and 506(ii) IPC. The Trial Court, vide impugned Judgment dated 26.05.2015, convicted him for the commission of the offence under section 376(1) and 506(ii) IPC and for the offence under Section 376(1) sentenced him to undergo 10 years of rigorous imprisonment for life, and also fine of Rs.1,05,000/- and in default to undergo 2 years of simple imprisonment and for the offence under Section 502(ii) IPC, a fine of Rs.5,000 in default to undergo two months simple imprisonment.

2. Aggrieved by the conviction and sentence awarded by the Trial Court, vide impugned Judgment dated 26.05.2015, the accused/appellant has preferred the present Criminal Appeal.

3. The facts leading to the filing of this Criminal Appeal briefly narrated, as follows:

3.1. P.W.1 is the victim. P.W.2 is the mother of the victim. P.W.3 is the brother of Victim. P.W.4 is witness to the Observation mahazar. P.W.5 is the cousin brother of the victim. P.W.6 is the Secretary to the Mosque. P.W.7 is the Head of Mosque. P.W.8 is a Forensic Officer who had examined the dresses of the victim. P.W.9 is the Government Doctor who had examined the accused and given a Potency Certificate / Ex.P8. P.W.11 / the Doctor who had examined the victim and issued the wound certificate / Ex.P13. P.W.12 is the Radiologist who had examined the victim and issued age Certificate / Ex.P14. P.W.10 / Judicial Magistrate who recorded Section 164 IPC statement of P.W.s 1 and 2, which was marked as Ex.P12. P.W.13 is the Sub Inspector of Police who had registered the complaint. P.W.14, the Inspector of Police who had conducted the investigation.

3.2. The gist of the case is that the P.W.1 the victim was aged about 17 years and was studying in 10th standard. The victim is the daughter of 2nd wife of the accused. She along with her mother were living separately. On 12.11.2012, when she was alone at her house, she was forcibly taken by the accused to his 1st wife's house at about 10.00 a.m, where she was compelled and against her wish, the accused had raped her. Further on 17.11.2012, at about 09.00 a.m, again she was taken by the accused to his 1st wife's house and committed rape on her. On 26.11.2012, at about 08.00 a.m, the appellant had taken the victim to the remote place in sasacks estate to collect firewoods and there he again committed rape on her. Further the victim was threatened not to disclose about this fact to anyone and later she informed the same to her mother. P.w.2 thereafter on 26.12.2012 lodged a complaint / Ex.P1 to P.W.13, Sub Inspector of Police who registered an FIR / Ex.P15. Thereafter, P.W.14 had taken up the investigation and reached the scene of occurrence and prepared observation mahazar in the presence of P.W.4. He had examined all witnesses to the scene of occurrence including victim, sent the seized articles for forensic study. The accused was arrested and produced before the Government Doctor for obtaining Potency certificate and also sent the victim for medical examination. Thereafter made request to P.W.10 for recording statement of P.w.s 1 and 2 and after completion of investigation, filed the charge sheet.

3.3. The Trial Court framed charges and examined P.Ws.1 to 14 and filed Exs.P.1 to 18. On the side of defense, wife of the

appellant/accused and daughter of his 1st wife viz., Pousia were examined as D.W.1 and 2.

3.4. When the appellant/accused was questioned under Section 313 CrPC, he had denied all the questions and further he had given explanation that ''நான் எந்த தப்பும் செய்யவில்லை சொத்துக்காக பொய்யான கேஸ் கொடுத்துள்ளேன்,'' . On completion of Trial, the Trial Court convicted the accused/appellant as stated above.

4. The contention of the appellant is that P.W.1 had relationship with P.W.5 which was objected by the appellant and warned P.W.1 not to continue her relationship with P.W.5. On one occasion, he also saw P.W.5, who had entered the house of P.W.1 through Backdoor. It is also stated that P.W.2 / the mother of P.W.1 normally locks the door from the front side for the safety of P.W.1 and kept her under lock. P.W.2 admits about the fact of keeping her daughter in lock and P.W.5 entering the house through back door. Further, P.W.2 was frequently demanding property to be settled in favour of her. P.W.7, Secretary of Mosque, confirmed about the motive that P.W.2 had asked him to get some property for Rs.2,00,000/- from the appellant and he further admitted that the dispute with regard to the property between the appellant and P.W.2 was their for quite some time. Further, it is submitted that P.W.1 on the date of occurrence i.e., on 12.11.2012 had attained majority, (D.O.B.11.07.1994) and she was aged about 18 years, however, deliberately in order to implicate the appellant in a grave case, suppressed this fact and made a false allegation for the purpose of extracting property and money. P.W.1 being a culpable person in support of her mother made false allegation, as could be seen that the alleged assault as per P.W.1 had taken place on several occasions, she has kept quite by not informing her mother. Further she has given exaggerated and embellished statement before the Magistrate as well as in the Court. The statements of P.W.1 is not in conformity and it is in contra with the statement of other witnesses, which does not inspire confidence and highly doubtful. The statement is clouded with mystery, reliance could not be placed.

5. The appellant further submitted that P.W.11 who is the Government Doctor examined the victim on 29.12.2012 and issued Ex.P13 and from which it is seen that 'hymen appears to be in tact'. Further P.W.1 was not willing for vaginal examination, sensing that her falsity would be exposed. P.W.5/cousin brother of the victim admitted that he had gone to the house of the victim on 03.11.2012 through the backdoor and he had gone for searching the identity card of P.W.3. P.W.5 had physical relationship immorally with the victim which was objected and questioned by the appellant. Further submitted that from the

medical evidence, it also seen that the victim was not subjected to rape. The appellant had specifically denied the allegations, when he was questioned under Section 313 Cr.PC. Hence, the accused/appellant was falsely implicated in this case and prays for appropriate relief.

6. The learned Government Advocate submits that in a case of rape, statement of victim alone will suffice to punish the accused. The medical evidence is taken only to lent assurance. Ex.D1 was not produced by them. The contention of the appellant about the property dispute cannot be countenanced. The appellant had not produced any documents to that effect. No daughter will give false complaint against her father. The statement of P.W.1 alone is sufficient and the Lower Court has rightly convicted the accused and prays for dismissal of appeal.

7. Considering the rival submissions and perusal of records, it is found that P.W.2 the mother of P.W.1 is the estranged wife of the appellant and there was a dispute with regard to the property between them. P.W.7 / the President of the Jamath admitted the same as also P.W.3. P.W.13 Government Doctor, Ooty had examined P.W.1 and issued Ex.P.13 Accident Register wherein it was recorded that P.W.1 was not willing to be examined as in-patient and vaginal examination was also not done, as the patient was not willing and the 'Hymen appears to be intact'. Further swab test are negative. There is no medical evidence. It is seen that P.W.1 and 5 were in liking to each other. Though P.W.1 and P.W.5 would say that they were as brother and sister, on the contrary P.W.2 affirms that as per their culture and tradition, relationship of P.W.1 and P.W.5 are not prohibitory and they can marry. The appellant objected to the relationship of P.W.1 with P.W.5 and while finding P.W.5 entering the house of P.W.1 through the back door, when she was alone, the accused saw it and made complaint to the jamath and others. Further the incident had taken place on 08.11.2012. Thereafter only the allegations against the appellant had been made as though the appellant misbehaved on 12.11.2012, 17.11.2012 and 26.11.2012. One month thereafter on 26.12.2012, the complaint has been lodged. The evidences of witnesses are contradictory to each other. In view of the above, the evidence of P.W.1 does not inspire confidence, coupled with the fact of medical evidence and finding strong motive to implicate the accused/appellant.

8. As such, the conviction and sentence imposed on the appellant in S.C.No.4 of 2014 on the file of the Sessions Judge, Mahila Court, Fast Track, Ootacamundalam, at Nilgris is set aside and this Criminal Appeal is allowed. The appellant is acquitted of the charges under section 376(1) and 506(ii) IPC and the fine amount, if any paid shall be refunded to him. The appellant is directed to be released forthwith, unless his

custody is required in connection with any other case.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

- 1.The Sessions Judge,
Mahila (Fast Track) Court,
Udagamandalam.
- 2.The District Sessions Judge,
Udhagamandalam.
- 3.The Judicial Magistrate,
Koodalur.
- 4.-do-Thro'Chief Judicial Magistrate,
Udhagamandalam.
- 5.The Superintendent, Central Prison,
Coimbatore.
- 6.Inspector of Police,
All Women Police Station,
Devalaya, Nilgris District.
- 7.The Public Prosecutor
High Court, Madras.

+2cc to Mr.S.N.Arun Kumar, Advocate SR.no.64372,64870

CNR(CO)
CB(30/09/2019)

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