

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.07.2019

Pronounced on : 25.10.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.781 of 2015

V.Krishnan

... Appellant/Accused

Vs.

The State, Rep by
Deputy Superintendent of Police,
Nelakottai Police Station,
Udhagamandalam District.
(Crime No.31 of 2013)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, to set-aside the Judgment in Spl.C.C.No.2 of 2014 on the file of Mahila Sessions (Fast Track) Court, Udhagamandalam, dated 14.10.2015, thereby convicting the appellant for the offence under Sections 342, 366 of IPC and under Section 6 of Protection of Children from Sexual Offences under Section 342 IPC and 5 years R.I and fine amount of Rs.1,000/- i/d to undergo 2 year S.I for the offences under Section 366 IPC, and 10 years R.I for the offence under Section 6 of Protection of Children from Sexual Offences Act 2012 and acquit the appellant.

For Appellant : Mr.D.J.Venkatesan

For Respondent : M/s.T.P.Savitha

Government Advocate [Crl.Side]

JUDGMENT

This appeal arises out of the conviction and sentence imposed by the learned Mahila Sessions (Fast Track) Court, Udhagamandalam in Special C.C.No.2 of 2014 dated 14.10.2015, wherein the appellant was tried for the offence punishable under Sections 342, 366 of IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012. The learned trial Judge has convicted the appellant for offence under Section 342 of IPC and sentenced him to undergo six months rigorous imprisonment, for the offence under Section 366 of IPC, the appellant was

sentenced to undergo five years of rigorous imprisonment and to pay a fine of Rs.1,000/- in default, sentenced to undergo two years of simple imprisonment and for Section 6 of Protection of Children from Sexual Offence Act, 2012, the appellant was sentenced to undergo ten years of rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo two years simple imprisonment. The appellant was acquitted from the charges under Sections 3(1)(10) of SC and ST (Prevention of Atrocities] Act, 1989 and 506(ii) of IPC. The sentences were ordered to run concurrently.

2.The background facts, as projected by the prosecution are as follows:

2.1.The victim/PW1 aged about 14 years belonging to Katunayakan community (Scheduled Tribe) was residing in Pattavayal Vilangur along with her parents/PW2 and PW3. The accused was also residing in the same locality. On 01.04.2013, when the victim/PW1 was alone in her house, the appellant with an intention to have sexual relationship, kidnapped the victim into an isolated place in Kanoor, Kerala, had physical relationship with her. Thereafter on 02.04.2013, the appellant took the victim/PW2 to his house, kept her in custody, had physical relationship for two to three days. Prior to it on one occasion, the accused had forcibly taken the victim and she escaped from his custody. When the same was questioned by PW1/father of the victim, the accused used abusive and provocative words calling his community (Scheduled Tribe). Earlier the victim along with her friends went to Muthappan Temple. The accused called her to his house offered tea and forcibly confined her in his room. The friends of the victim/PW1 informed to PW2/mother of the victim, who went to the house of accused and rescued her. The accused is a married man, having three grown up children, constantly stacking the victim, made advances towards her and promised to marry, took her away, had forcible physical relationship. Hence, PW2 lodged the complaint [Ex.P1] to PW18, who registered F.I.R in Crime No.31 of 2013 for the offence under Sections 366(A), 506(i) of IPC and 3(1)(10) of SC and ST (Prevention of Atrocities] Act, 1989. On completion of investigation and filing of charge sheet, the case, on committal was tried against the appellant in Special C.C.No.2 of 2014 by the file of the Mahila Sessions (Fast Track) Court, Udthagamandalam.

3.Before trial Court, prosecution examined 21 witnesses, marked 32 exhibits. On the side of the defense, one witness examined and two exhibits marked.

3.1.PW1, the victim aged about 17 years has stated that she studied only 2nd standard and belonged to Katunayakan community (Scheduled Tribe). The appellant used to work together in Coffee Plantation. When the victim/PW1 along with her friends went to Muthappan Temple, the accused called her to his house offered tea and forcibly confined her in his room. The friends of the victim/PW1 informed PW2/mother of the victim, who went to the house of accused and rescued her. Thereafter, appellant called the victim over phone and asked her to come to main road. From there he had taken PW1 to Muthappan Temple and stayed there for two days. Thereafter, the victim was taken to the house of the appellant, where the accused sexually assaulted her. Hence, the parents/PW2 and PW3 lodged the complaint [Ex.P1] to PW18.

3.2.PW2, the father of the victim stated that his daughter/PW1 and the appellant were working in the same plantation and about the earlier incident of the appellant confining his daughter in his house. The victim/PW1 was missing and PW2 made desperate search in and around. After four days, the victim/PW1 came back stating she is unable to stand with unbearable pain and the appellant is the cause. Thereafter, he went to the police station and lodged the complaint [Ex.P1] to PW18.

3.3.PW3, the mother of the victim stated that her daughter/PW1 was being kept in confinement by the appellant earlier. Further, PW3 stated that her daughter/PW1 was missing for four days and during those days she was sexually assaulted by the appellant. Hence, PW3 along with PW2 went to police station and lodged the complaint [Ex.P1].

3.4.PW4, attested signature in the Observation Mahazar [Ex.P2] along with PW5. PW5, PW6 and PW17 have not supported the case of the prosecution and was treated hostile.

3.5.PW7, the Headmaster of the Government School, Vilangur produced Ex.P3. As per Ex.P3, the date of birth of the victim/PW2 is 20.02.2000.

3.6.PW8, the Head Constable submitted Ex.P5 and Ex.P6 to the Judicial Magistrate, Udagamandalam seeking permission to determine the age of the victim/PW1 and to examine the victim medically. Ex.P7 and Ex.P8 are the letters of the Judicial Magistrate, Udagamandalam to the Government Hospital, Udagamandalam for determination of the age of the victim and medical examination.

3.7.PW9, the Judicial Magistrate, Coonor recorded 164 Cr.P.C statement of PW1 and child witness Krishnan. Ex.P9 to

Ex.P12 have been marked through PW9.

3.8.PW10, the Doctor examined the appellant, issued potency certificate [Ex.P13] forwarded the collected articles for forensic study through Ex.P14. The medical reports of the appellant [Ex.P15 to Ex.P16] were marked through PW10. PW11, Scientific Officer attached to the Forensic Department through whom Ex.P18 to Ex.P20 were marked.

3.9.PW12, the District Revenue Officer issued the community certificate of the appellant [Ex.P21] and victim [Ex.P22]. PW13 and PW14 the social activists informed about the appellant taking away PW1. PW15, Doctor examined the victim/PW1, issued the accident register [Ex.P23], serology report [Ex.P24] and found no hymen was present on the victim leading to sexual assault of the appellant.

3.10.PW16, the Head Constable escorted the appellant for potency test. PW18, Sub Inspector of Police received complaint [Ex.P1] from the victim's parents/PW2 & PW3. On receipt of the same, he registered a case in Crime No.31 of 2013 [Ex.P24] for the offence under Sections 366(A), 506(i) and Section 3(1)(10) of SC and ST (Prevention of Atrocities) Act, 1989 and forwarded the same to the higher officials.

3.11.PW19 is the witness for the observation Mahazar [Ex.P2] and has not supported the case of the prosecution and treated as hostile.

3.12.PW20, the Deputy Superintendent of Police on receiving F.I.R in Crime No.31 of 2013 [Ex.P24], visited the scene of occurrence, examined witnesses/PW1, PW2, PW3, child witness krishnan, prepared observation Mahazar [Ex.P2], rough sketches [Ex.P27 and Ex.P28]. Thereafter, on 05.04.2013 arrested the appellant, recorded his confession, sent him for medical examination through Ex.P29. On investigation found the victim belonging to Katunayakan community (Scheduled Tribe) has been abused and sexually assaulted by the appellant. Further, made arrangements for recording 164 Cr.P.C statement of the victim/PW1 and child witness Krishnan. The victim/PW1 refused for examination under Radiologist for age verification and she produced the letter [Ex.P32] to the learned Judicial Magistrate, Gudalur. Thereafter, PW20 examined the other witnesses, obtained the medical reports, carried out investigation. In the meanwhile, he was transferred.

3.13.PW21, the Subsequent Investigation Officer has taken up the investigation on 28.06.2016. He visited scene of occurrence, again recorded the statement, filed the charge sheet

before the learned Mahila Sessions (Fast Track) Court, Udhagamandalam for the offence under Sections 366(A), 506(i) of IPC and 3(1)(10) of SC and ST (Prevention of Atrocities] Act, 1989.

3.14.The wife of the appellant examined herself as DW1. DW1 and appellant had three grown up children. They were leading a happy married life for twenty years and residing at Vilangoor village. DW1 further stated she did not know PW1 to PW3. From 01.04.2013 to 05.04.2013 she was along with her husband/appellant and the appellant was very much present in the house. On 04.04.2013, the police took the appellant for enquiry and thereafter, he was sent back. On the next day, at about 10.00 a.m, arrested him and forcibly implicated as an accused in this case. Ex.D1 is the letter written by the brother of the accused addressing to PW18 that he is taking back his brother from police station on 04.04.2013 and would produce him on the next day i.e., on 05.04.2013. Ex.D2 is the letter of PW2 that he would appear before the police on 05.04.2013.

4.The learned counsel for the appellant would submit that the appellant was very much available in his village and has not forcibly confined the victim/PW2 in his house, had any physical relationship with her. DW1 wife of the appellant has categorically stated that from 01.04.2013 to 04.04.2013, the appellant was very much available with his family members and he has not gone out of station and PW1 had not been kept in their house for physical relationship. From the complaint [Ex.P1], it is seen that PW2 has given the complaint [Ex.P1] that his daughter was missing and PW1's relative minor child Krishnan has informed about appellant taking away his daughter/PW1. This cannot be acted for the reason that the minor child Krishnan has not been examined as witness, despite his statement was recorded under Section 164 Cr.P.C recorded. The lower Court heavily placed reliance on 164 Cr.P.C statement of the child Krishnan [Ex.P12] and convicted the appellant in this case. In the absence of non examination of the child witness, Ex.P12 is of no relevance and it cannot be looked into. The 164 Cr.P.C statement is used for the purpose of corroboration and contradiction and it is not a substantial piece of evidence. The lower Court has given undue place reliance on Ex.P12.

5.The learned counsel for the appellant would further submit that PW1 admitted in her evidence that she had been living with her relative Kootan for one week two years prior to the occurrence and thereafter her mother/PW3 had taken her back. During that time she would have been exposed to physical

relationship, which is now being utilized in implicating the appellant. The absence of hymen could have been during this one week stay and the appellant is not the cause for it. Further other than the evidence of PW1, there is no other witnesses against the appellant. PW2 and PW3 stated they were informed about the incident only by PW1. PW1 admitted of living with one kootan for a week and her mother/PW3 taken her back to their house from there. PW1 has stayed with Kootan against the wish of her parents. Further, PW2 and PW3 admitted that they don't know to read or write Tamil and only affixed their thumb impression in the complaint [Ex.P1] and it was written by one Pugalenthil Advocate, who is the member of Katunayakan community (Scheduled Tribe) association. The parents of the victim/PW1 demanded money, which was not accepted by the appellant, hence they have implicated the appellant in this case. As could be seen from Ex.D1 on 04.04.2013, the appellant's brother had given a letter that the appellant to go along with him and would be present on 05.04.2013 and the arrest of the appellant is shown as 05.04.2013. Thus non-yielding to the bargain, the appellant has been falsely implicated in this case.

6. PW15 Doctor examined the victim through whom Ex.P23 the accident register marked. From Ex.P23, it is seen there is no external injuries on the body of the victim and it is not proved that the victim was sexually assaulted by the accused. It is a concerted group of persons belonging to a particular community, who had joined together in implicating the appellant in this case. The lower Court on considering the merits found that the appellant had not used any abusive words hence acquitted the appellant for offence under Sections under Section 3(1)(10) of SC and ST (Prevention of Atrocities) Act, 1989 and 506(ii) of IPC. Hence, he prayed for acquittal.

7. The learned Government Advocate [Crl. Side] for the respondent submit that PW1 is the victim who had clearly spoken about the sexual assault made on her by the appellant. PW2 and PW3 are the parents of the victim who had stated about the missing of their daughter from 01.04.2013 to 04.04.2013 and making search in various places. The information given by one minor child Krishnan, it revealed that the victim was taken by the appellant forcibly. Thereafter, PW2 the mother of the victim had gone in search of her daughter and rescued her from the appellant's house. PW2 and PW3 have spoken about the missing of their daughter for four days. Thereafter on 04.04.2013, she had come and informed them about the sexual assault made by the appellant and her confinement at his residence and she suffered pains. Thereafter on 05.04.2013 the complaint [Ex.P1] was lodged and PW1 was referred to medical

examination, materials were sent for forensic study reports were collected. It is proved by the evidence of PW1 to PW3 that PW1 was kept in confinement by appellant and was sexually assaulted, coupled with the evidence of PW15, the doctor and Ex.P23. PW7, the Headmaster has submitted the school records [Ex.P3], it is found that the victim's date of birth is 20.02.2000 and she was a minor on the date of occurrence. PW12 the District Revenue Officer through whom the community certificate of PW1/victim had been marked and proved that victim belong to Katunayakan community (Scheduled Tribe).

8.The learned Government Advocate [Crl. Side] would further submit that PW13 and PW14 are the social activists, who have stated that they saw the victim being taken away by the appellant. PW18, the Sub Inspector of Police received the complaint registered F.I.R in Crime No.31 of 2013. PW20 and PW21 conducted the investigation in this case. The evidence of PW12 proved victim belongs to Katunayakan community (Scheduled Tribe). The evidence of PW1, PW2 & PW3 and the medical evidence and documents have clearly proved that the victim/PW2 was subjected to penetrative sexual assault. Hence, the lower Court on analysis of materials had rightly convicted the appellant.

9.On considering the rival submissions and on perusal of the materials this Court finds that the specific case is that the appellant is a married man having three grown up children living in the same village of the victim/PW1 along with his family members, as per the evidence of DW1 his wife. The evidence of PW1 would establish that she was taken from the temple forcibly, confined in the house of the appellant and thereafter her friends informed PW2, who rescued her. Further, the appellant constantly forced the victim to marry him and called her over phone. On his call, the victim had gone to the main road and the appellant took her to various places on 01.04.2013 to 04.04.2013 and the victim was under the custody of the appellant on those days.

10.Further, the appellant forced the victim to stay with him in his house. During that period the appellant had penetrative sexual assault with her and thereafter she had come out and informed her parents. The evidence of PW2 and PW3 are in conformity to the evidence of PW1. It is to be seen that PW1 to PW3 are all rustic villagers, who belong to Katunayakan community (Scheduled Tribe) with very less education. It is admitted by PW2 and PW3 that they dont know to read or write Tamil. Hence, one Pugalenth, who is an advocate and a member of community association has written the complaint. The medical

evidence Ex.P15 and Ex.P23 confirms about the victim being sexually assaulted by the appellant. The victim community of the victim was proved by examination of PW15 and through Ex.P21. There might be some minor contradictions, which is natural in considering the background of the social status of the victim and the witnesses.

11.Hence, the trial Court on proper analysis of the evidence and materials giving cogent reason has convicted the appellant.

12.In view of the above, this Court finds that there is no reason to interfere with the Judgment passed by the learned Mahila Sessions (Fast Track) Court, Udhagamandalam in Special C.C.No.2 of 2014 dated 14.10.2015.

13.Hence, the finding of the Court below is confirmed. In the result, this Criminal Appeal stands dismissed. Consequently, the connected miscellaneous petition if any is closed. No costs.

-s/d-
Assistant Registrar (CSIV)

True Copy

Sub-Assistant Registrar

To

- 1.The Mahila Sessions Judge, (Fast Track) Court,
Udhagamandalam.
- 2.The Deputy Superintendent of Police,
Nelakottai Police Station,
Udhagamandalam District.
- 3.The Public Prosecutor,
High Court, Madras.

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