

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.10.2019

PRONOUNCED ON : 05.11.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.A.No.669 of 2013

K.Purushothaman .. Appellant/Accused

Vs.

State represented by
The Inspector of Police,
All Women Police Station,
Villupuram District.

Respondent/Complainant

Criminal Appeal filed under Section 374 (2) Cr.P.C.
against the judgment and order dated 20.08.2013 passed in
S.C.No.117 of 2013 on the file of the I Additional District
and Sessions Court, Tindivanam.

For Appellant : Mr.K.Selvakumaraswami

For Respondent : Mrs.P.Kritika Kamal
Government Advocate (Crl. Side)

JUDGMENT

Challenge in this criminal appeal is to the judgment and
order dated 20.08.2013 passed in S.C.No.117 of 2013 on the
file of the I Additional District and Sessions Court,
Tindivanam.

2. The facts in brief leading to the filing of this case
are as under:

2.1 It is the case of the prosecution that the accused,
aged about twenty five years, deflowered the victim girl "X"
(PW1) (name not disclosed for the sake of anonymity), aged
about twenty years, on the promise of marrying her and
continued to have physical relationship with her on such
promise, due to which, she ("X") got conceived; when "X" (PW1)
wanted the accused to marry her, he reneged and got married to
another girl at Tirupati.

2.2 On the complaint (Ex-P1) dated 04.02.2012, lodged by
"X" (PW1), the respondent/police registered a case in Crime
No.11 of 2012 for the offences under Sections 376 and 417 IPC,
against the accused.

2.3 "X" (PW1) was sent to the Government Hospital, Tindivanam, where, she was medically examined by Dr.Muralishri (PW2), who, in her evidence as well in the medical report (Ex-P2), has stated that "X" (PW1) was pregnant, the gestational age of the foetus being 13-14 months and the amenorrhea (pregnancy) period was four months.

2.4 The accused was medically examined by Dr.Ravichandran (PW9) on 13.12.2012, who, in his evidence as well in the medical report (Ex-P4), has stated that the accused is capable of having coitus. Dr.Anbumalar (PW10), who, examined the accused on 14.12.2012, in her evidence as well in the medical report (Ex-P5), has stated that the accused has completed twenty five years.

2.5 After completing the investigation, the police filed a final report in P.R.C.No.8 of 2013 before the Judicial Magistrate Court No.II, Tindivanam, for the offences under Sections 376 and 417 IPC, against the accused.

2.6 On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.117 of 2013 and was made over to the I Additional District and Sessions Court, Tindivanam, for trial.

2.7 The trial Court framed charges for the offences under Sections 376 and 417 IPC and when questioned, the accused pleaded "not guilty".

2.8 To prove the case, the prosecution examined fifteen witnesses and marked eight exhibits.

2.9 When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. On behalf of the accused, one Kodhandapani, an officer of Tamil Nadu Electricity Board, where, the accused was working, was examined as DW1 and the Attendance Register was marked as Ex-D1, in order to show that on 29.10.2011, the accused had attended the office.

2.10 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 20.08.2013 in S.C.No.117 of 2013, acquitted the accused of the offence under Section 376 IPC, but, convicted him of the offence under Section 417 IPC and sentenced him to pay a fine of Rs.50,000/-, in default to undergo three months rigorous imprisonment. The fine amount was directed to be paid as compensation to "X" (PW1) after the appeal period.

2.11 Challenging the above conviction and sentence, the accused is before this Court.

3. Heard Mr.K.Selvakumaraswami, learned counsel for the accused and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) for the respondent/State.

4. The learned counsel for the accused submitted that "X" (PW1) has told Dr.Muralishri (PW2) that she ("X") had her last menses on 03.11.2011, which means that she ("X") would not have got conceived on 29.10.2011.

5. Per contra, the learned Government Advocate (Crl.Side) refuted the submission made by the learned counsel for the accused.

6. This Court gave its anxious consideration to the rival submissions.

7. The prosecution has proved the following facts beyond cavil:

- (i) "X" (PW1) was aged about twenty years;
- (ii) The accused was aged about twenty five years;
- (iii) Both "X" (PW1) and the accused hail from the same village viz., Aalagramam, Villupuram District; and
- (iv) The accused was working in Tamil Nadu Electricity Board.

8. "X" (PW1), in her evidence, has stated that she was working in a STD booth at Perumal Koil Street; at that time, the accused came there to recharge his mobile number; since then, she got acquainted with him and they both exchanged their mobile numbers; the accused proposed her ("X"), but, she was initially reticent; the accused was living opposite to her ("X's") house; three months later, she ("X") returned his (accused) love; they used to talk intimately over phone; while so, the accused called her ("X") to his house when none was there and seduced her ("X") despite her protest, by saying that he is after all going to marry her ("X"); thereafter, he continued to have amoral relationship with her in his house; on 26.01.2012, she ("X") told him (accused) that she has got conceived, the accused took her to Dr.Prabhavathy Nursing Home and gave pseudo names for himself and her, claiming themselves as husband and wife and asked the doctor to abort the foetus; Dr.Prabhavathy insisted for the appearance of the parents and refused to abort; a few days later, she ("X") learnt that the accused had gone to Tirupati and got married to some other girl and so, she ("X") went to lodge a complaint (Ex-P1); two months later, while she was going to her aunt's house in Seesamangalam along with her uncle Vasu (PW5) in a two wheeler, the vehicle hit the speed breaker and upturned; that incident resulted in her miscarriage.

9. In the cross-examination, "X" (PW1) has admitted that her love affair with the accused was for about two years;

though she protested when the accused seduced her ("X"), she did not make any hue and cry. Ultimately, it was suggested to her that since the accused was affluent, she ("X") wanted to marry him, for which, she has contrived a story, which suggestion, she denied.

10. In order to prove that "X" (PW1) and the accused were moving close, the prosecution examined Vasu (PW5) and Sivashankar (PW11), who have stated that they have seen the duo ("X" and the accused) behaving like lovers at various places.

11. The evidence of Dr.Muralishri (PW2) that "X" was pregnant when she ("X") was medically examined by her on 08.02.2012, has not been challenged at all by the defence in the cross-examination, but, the defence theory is that the accused was not responsible for the pregnancy. The accused has also not denied the fact that he lives opposite to the house of "X" (PW1).

12. The evidence of Vasu (PW5), uncle of "X" (PW1), is to the effect that he has seen his niece talking with the accused frequently and "X" (PW1) has told him (PW5) about her love affair with the accused; when the accused was asked as to when he is going to marry "X", he sought time to convince his parents. This is a very serious conduct which is relevant under Section 8 of the Evidence Act. Vasu (PW5) has further deposed that when the family members of the accused made arrangements for his marriage at Tirupati, he (PW5) also went along with "X" (PW1) to lodge the complaint (Ex-P1) to the police.

13. Coming to the submission of the learned counsel for the accused with regard to the statement of "X" (PW1) to Dr.Muralishri (PW2) that she ("X") had her last menses on 03.11.2011 and as such, she would not have got conceived on 29.10.2011, it may be relevant to discuss the evidence of "X" (PW1) in the background of the complaint (Ex-P1) given by her.

14. A reading of the complaint (Ex-P1) given by "X" (PW1) shows that she was first seduced on 29.10.2011 and subsequently also, the accused had promiscuous relationship with her in his house, on the promise of marrying her, after which, she became pregnant and requested him to marry her on 26.01.2011 (sic) 26.01.2012, whereas, in her testimony which was recorded two years later, there is a little incoherence. It appears from the evidence that the accused had seduced her prior to 29.10.2011.

15. Be that as it may, the statement that was given by "X" (PW1) to Dr.Muralishri (PW2) that she had her last menses on 03.11.2011 is only a previous statement and is not a substantive piece of evidence. If it is to be treated as an admission relevant under Section 21 of the Evidence Act, then,

the same should be established by confronting it with "X" (PW1) in the cross-examination and depending upon the answer, contradict or corroborate her under Section 145 or 157, *ibid*, as the case may be, in the cross-examination of Dr.Muralishri (PW2). This has not been done by the defence. In fact, Dr.Muralishri (PW2), in her evidence as well in the medical report (Ex-P2), has clearly stated that the gestational age of the foetus was 13-14 weeks and after seeing the Ultrasonogram report, the amenorrhea (pregnancy) period was four months.

16. It is common knowledge that the age of the foetus will not always tally with the period of amenorrhea. In some cases, the foetus will be malnourished and will show lesser age when compared to the pregnancy period. Dr.Muralishri (PW2) has stated that as on 09.02.2012, the pregnancy period is four months. The defence should have confronted Dr.Muralishri (PW2) with the statement of "X" (PW1) that she had her last menses on 03.11.2011 qua the amenorrhea period so that Dr.Muralishri (PW2) would have explained whether the two facts are compatible or irreconcilable because she is an expert. Medical literature shows that even after conception, there may be blood discharge which is called 'spotting' and the patient can misconstrue that as menses. Hence, the reference to the LMP date as 03.11.2011 in the medical report (Ex-P2) does not mean that it has been conclusively proved that "X" (PW1) had menses on 03.11.2011.

17. Unfortunately for "X" (PW1) and fortunately for the accused, on account of an untoward incident, there was miscarriage. Had the baby been born, the DNA profiling would have clinched the issue and would have added to the woes of the accused.

18. This Court does not find any infirmity in the trial Court's verdict, warranting interference. In fact, the trial Court was very indulgent in not awarding a sentence of imprisonment for the accused and has let him off with the fine amount of Rs.50,000/-. The State has not filed any appeal challenging the sentence.

In view of the foregoing discussion, this criminal appeal is dismissed. The Registry is directed to return the records to the trial Court.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The I Additional District
and Sessions Judge,
Tindivanam.

2. Do thro the Prinicpal District and sessions Judge,
Villupuram

3.The Judicial Magistrate,No.II,Tindivanam.

4. Do thro the Chief Judicial Magistrate,Villupuram

5.The Inspector of Police,
All Women Police Station,
Villupuram District.

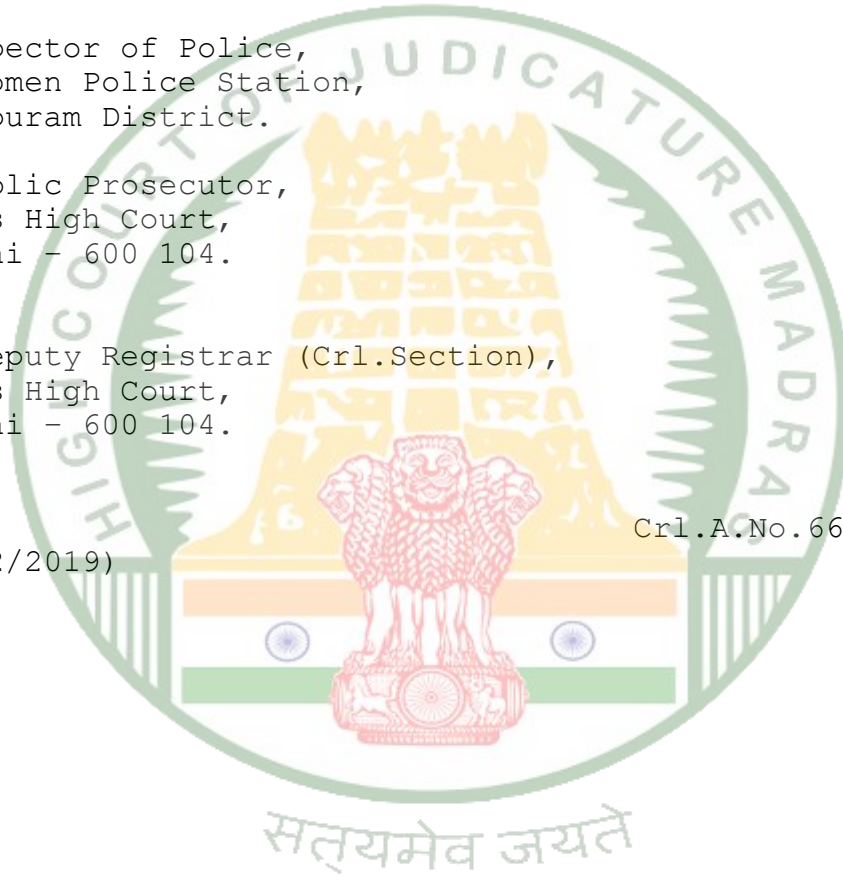
6. The Public Prosecutor,
Madras High Court,
Chennai - 600 104.

Copy to :

The Deputy Registrar (Crl.Section),
Madras High Court,
Chennai - 600 104.

A.SK(06/12/2019)

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