

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.111 of 2016

and

Crl.M.P.No.14137 of 2017

Thangavel

...Appellant/Accused

-Vs-

The State Rep. by

The Deputy Superintendent of Police,

Namakkal Sub Division, Namakkal,

Crime No.6 of 2013

of AWPS, Namakkal.

...Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C. praying to allow this appeal by setting aside the judgment in S.C.No.65 of 2014 on the file of the learned Principal Sessions Judge, Namakkal by judgment dated 27.01.2016.

For Appellant : Mr.S.Senthilnathan

For Mr.S.Shanmugasundaram

For Respondent : Mr.R.Ravichandran

Government Advocate (Crl.Side)

JUDGMENT

This criminal appeal has been filed to set aside the judgment in S.C.No.65 of 2014 on the file of the learned Principal Sessions Judge, Namakkal, dated 27.01.2016.

2. It is the case of the prosecution that the victim girl named Ramya, aged about 18 years is a deaf, dumb and mentally disabled person from her birth. On 18.10.2013, when the victim girl Ramya was alone in her house, taking advantage of the loneliness of the victim girl, at about 5.30 P.M., the appellant/accused had entered into the house of the victim girl and decided to exploit her sexually. At the time, the brother of the victim girl came from the school and saw the door was locked from inside. He knocked the door and P.W.3 saw from window, the appellant was standing inside the house without dress. Immediately he informed to his neighbor one Karupayee. When she came to the house, suddenly the appellant went out of the house of the victim. Hence, the mother of the victim girl lodged a complaint against the appellant before the respondent police.

3. The respondent police has registered a case against the appellant/accused, based on the complaint given by P.W.1 Mother of the victim. After investigation, the respondent police have filed a charge sheet before the learned Principal Sessions Judge, Namakkal for offence under Sections 450, 376 read with 311 IPC and 3(2)(V) of SC/ST Act, which was taken on file in S.C.No.65 of 2014. In order to prove the case of the prosecution, before the trial Court, the respondent examined as many as 16 witnesses viz., P.W.1 to P.W.16 and marked Ex.P1 to Ex.P14 and no material object was produced. On the side of the defense, no oral evidence was examined. The appellant marked one document as Ex.D.1. The learned Sessions Judge, after advertng to the materials placed on record and after hearing both the parties, by judgment dated 27.01.2016, convicted the appellant for offence under Section 450 IPC and sentenced him to undergo rigorous imprisonment for a period of 10 years and imposed a fine of Rs.5,000/- in default, to undergo imprisonment for a period of one month and convicted the appellant for the offence under section 376 read with 511 IPC and sentenced him to undergo rigorous imprisonment for a period of 7 years and imposed a fine of Rs.5,000/- in default, to undergo imprisonment for a period of one month and also convicted the appellant for the offence under Section 3(2)(v) SC/ST Act and sentenced to undergo rigorous imprisonment for a period of ten years and imposed a fine of Rs.5000/- in default, sentenced to undergo imprisonment for a period of one month. All the sentences are to run concurrently.

4. Aggrieved against the said judgment of conviction, the appellant has preferred the present criminal appeal before this Court.

5. The learned counsel for the appellant would submit that the appellant has not committed any offence and P.W.1 has foisted a false case against him. At the time of occurrence, the appellant was aged about 65 years. Now he is aged about 70 years. There is a delay of two days in preferring the complaint before the respondent police, which creates a doubt. The delay has not been properly explained by the prosecution. There is a contradiction with regard to the date in the evidence of P.W.1 and P.W.2. No certificate has been produced evidencing the age of the victim. In this case, SC/ST Act would not attracted. As far as other witnesses are concerned, due to the quarrel between one Karupayee and the appellant, she was examined as a witness. Later she turned hostile. The views in favour of the appellant, if taken into consideration, benefit of doubt shall be extended to him. Hence, the learned counsel prays this Court to dismiss the appeal and acquit him from all the charges.

6. The learned Government Advocate (Crl.Side) appearing for the respondent vehemently contended that at the age of 65 years the appellant had committed the sexual assault on the victim girl who is deaf and dumb. In the absence of P.W.1 and P.W.2, when she was alone in her house, taking advantage of the loneliness, the appellant entered into the house of the victim girl and tried to sexually assault her. P.W.3/brother of the victim girl, who is an eyewitness in this case, has come to the house and saw the occurrence through the window. P.W.3 has clearly stated about the illegal activities of the appellant. Immediately, he informed to his neighbour one Karupayee. The said Karupayee came to his house and shouted. Immediately, the appellant left the scene. P.W.1/Mother has clearly established about the health of the victim girl. P.W.2/Father of the victim has clearly explained about the incident. The cases like this, the parents of the victim would think, if they have given a complaint, the news would spread out all over the media and the future of the child would be affected. Therefore, they have kept quite for two days. The parents have explained it in the chief examination itself. P.W.3 is child witness and there is no need to insist him to give false evidence before the Court of law. Hence, the learned Government Advocate prays to dismiss the appeal.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. On reading of the entire evidences, it is seen that the victim is deaf, dumb and mentally retarded person from her birth. When P.W.1 and P.W.2 went to their relatives house, the appellant has entered into the house of the victim with an intention to make a sexual assault on her. P.W.3 Karan, the brother of the victim had identified the appellant in the Court and stated that when he returned home from school, he noticed that the door was locked from inside and he knocked the door. But the door was not opened. Immediately he saw through the window of the house. The appellant was standing without any dress and tried to misbehave with the victim. Immediately, P.W.3 went to the house of Karupayee and informed her about the same. On hearing the same, she came to the place of occurrence and shouted the appellant. Immediately, the appellant came out of the house of the victim.

9. The learned counsel for the appellant submitted that the age of the victim has not been proved. P.W.9 Health Inspector, Namakkal has produced the birth certificate of the victim. P.W.12 Doctor who examined the victim has deposed that there is no external injury and the hymen is intact. P.W.13 Karupayee has

turned hostile and she did not support the prosecution case and further she deposed that she does not know anything about the occurrence.

10. P.W.1 is the mother, P.W.2 is the father and P.W.3 is the brother of the victim. The evidence of the above witnesses are cogent, convincing and reliable. The learned counsel for the appellant submitted that due to previous enmity between the appellant and P.W.13, she has falsely implicated the appellant in this case. There is a delay in preferring the complaint.

11. From the evidences, it is seen that there is a delay of two days in preferring the complaint. In offences like this, the parents of the victims would think about the future of the victim. If they give a complaint, news would spread to all the news papers and Television. It would affect the future and mind of the victim. Normally they would inform the incident to the elders in the village to set right the issue. They may not immediately prefer the complaint to the Police station. Unfortunately, in this Country, many rapes by males against females are unreported because of 'fear of reprisal from the assailant; and because of 'shame and deep seated cultural notions that the woman is somehow to blame.'

12. The prosecution has proved its case beyond reasonable doubt. The evidence of P.W.1, P.W.2 and P.W.3 are clear and cogent. The case of the prosecution itself is that the appellant attempted to rape the victim girl. That was the statement given by P.W.13. The timely intervention by P.W.3, who is the brother of the victim, prevented the appellant from committing the offence. From the evidence of the prosecution witnesses and documents, the case of the prosecution has been clearly proved that on the said date of occurrence, the appellant entered into her house and using her loneliness, attempted to commit rape on her.

13. In view of the above discussions, this Court is of the considered view that the prosecution has proved its case beyond reasonable doubts and the learned Sessions Judge was right in holding that the appellant was guilty of the charges under Sections 450, 376 read with 511 IPC and 3(2)(v) SC/ST Act and this Court does not find any merits in the appeal to interfere with the findings of the Appellate Court.

14. In the result, the criminal Appeal is dismissed and the judgment of conviction and sentence dated 27.01.2016 in

S.C.No.65 of 2014 passed by the learned Sessions Judge, Namakkal are hereby confirmed. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sessions Judge, Namakkal.
2. The Judicial Magistrate No-I,
Namakkal.
3. The Deputy Superintendent of Police,
Namakkal Sub Division, Namakkal.
4. The Superintendent,
Central Prison,
Coimbatore.
5. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.S.Senthilnathan, Advocate sr.22830

CrI.A.No.111 of 2016
and CrI.M.P.No.14137 of 2017

sj(co)
nr 16/12/2019

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