

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2019

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.143 of 2016

Sasi Kumar

... Appellant/Accused

-Vs-

State rep. by
Inspector of Police,
Avinashipalayam Police Station,
Tiruppur District.
(Crime No.75/2014)

... Respondent/Complainant

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, praying to set aside the judgment dated 29.07.2015 passed in Spl.S.C.No.18 of 2014 on the file of the learned Sessions Judge, Mahila Court [FTC], Tiruppur.

For Appellant : Mr.C.D.Johnson

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.Side)

J U D G M E N T

This appeal arises against the judgment 29.07.2015 passed in Spl.S.C.No.18 of 2014 on the file of the learned Sessions Judge, Mahila Court [FTC], Tiruppur, convicted the appellant/accused for the offence under Section 376(2)(i) and 506(ii) IPC and Sections 3 r/w 4 of POCSO Act, 2012 and sentenced him to undergo 10 years Rigorous Imprisonment and fine of Rs.50,000/- in default one year Simple Imprisonment for the offence u/s 376(2)(i) IPC and 10 years R.I and fine of Rs.50,000/- in default one year Simple Imprisonment for offence u/s. 3 r/w 4 of POCSO Act and 2 years Rigorous imprisonment and fine of 1,000/- in default 3 months Simple Imprisonment for the offence under Section 506(ii) IPC and out of the fine amount, a sum of Rs.1,00,000/- is ordered to be compensated to the victim girl (for the pain and suffering and to the damage caused by the accused person to her body, mind and reputation) as compensation under Section 357 Cr.P.C. Trial Court directed the sentences to run concurrently.

2. The case of the prosecution is that the appellant/accused committed rape on the victim girl/PW-1 by promising to marry her. After committing the rape, he refused

to marry her, due to which, the victim girl consumed poison. The respondent police registered a case against the appellant herein for the offences under Sections 376(2)(i), 506(ii) IPC and Section 3 r/w 4 of POCSO Act. After investigation, the respondent police laid charge sheet against the accused before the learned Sessions Judge, Mahila Court [FTC], Tiruppur and the same was taken on file in Spl.S.C.No.18 of 2014.

3. Before trial Court, prosecution examined PWs.1 to 16 and marked Exs.P1 to P12. None were examined on behalf of the defence nor were any exhibits marked. On questioning u/s.313 Cr.P.C., regarding incriminating circumstances culled out from the prosecution witnesses, he denied the same as false. Trial Judge, on appreciation of the oral and documentary evidence, under judgement dated 29.07.2015, convicted the appellant/ accused for offences under Sections 376(2)(i), 506(ii) IPC and Section 3 r/w 4 of POCSO Act, 2012 and sentenced him as stated above. There against, the present appeal has been preferred before this Court.

4. The learned counsel appearing for the appellant would submit that the accused was running CD shop. The mother of the victim girl/PW-1 has not stated the date of offence in the complaint and she has also stated that the accused assassinating the character of her daughter. When she questioned the accused regarding the assassination of the character of her daughter, he again assassinated them. The evidence of PW-2/mother of the victim girl creates doubt as to whether the accused has committed rape on the victim girl, though the victim girl has stated that she had one side love affair with the appellant/accused. Since the appellant refused to marry the victim girl, she foisted a false complaint against him and she acted a drama before her mother that the appellant/accused committed rape on her and consumed poison on 27.02.2014, whereas the complaint was given only on 28.02.2014. There is no reason has been given for the delay in preferring the complaint, which creates doubt. The police was also sent to the hospital next day i.e., after 24 hours from receiving the complaint, which also creates doubt. Though the PW-2/mother of the victim girl stated that her daughter became pregnant, the Doctor, who admitted the victim girl and given treatment to her, has stated that the victim girl has not conceived. This also creates doubts. Ex.P8-Doctor's report reveals that the victim girl's age between 17-19 years. PW-1/the victim girl has also stated that she loved the appellant/accused and he also initially loved her and promised to marry her and later, after completing the sexual thirst, he refused to marry her. Therefore, she informed her mother, which shows that the occurrence made only with the consent of the victim girl. The prosecution, without conducting proper investigation, laid charge sheet based on the statement given by the mother of the victim girl. Therefore, the learned Sessions Judge failed to consider the age of the victim girl i.e., she is more than 18 years and

also she has consented for the offence. Hence, he prays for the leniency of the sentence.

5. The learned Government Advocate (Crl.Side) appearing for the respondent would submit that PW-1/the victim girl has clearly narrated the occurrence and also PW-11-Doctor, who examined the victim girl, informed the possibility of having sexual intercourse. The evidence of the Doctor, the evidence of the victim girl and also the Ex.P10-Transfer certificate of the victim girl clearly show that the victim girl is below 16 years. Under the circumstances, the trial Court, clearly appreciated the evidence produced by the prosecution and since the prosecution proved its case beyond reasonable doubts, rightly convicted and passed the sentence. Therefore, there is no need to interfere with the judgement passed by the Trial Court.

6. Heard the learned counsel appearing for the appellant, the learned Government Advocate (Crl.Side) appearing for the respondent and perused the material on records.

7. The case of the prosecution is that the appellant/accused committed rape on the victim girl/PW-1 on the promise of marrying her and later, he refused to do so. Therefore, she informed her mother. When the mother of the victim girl/PW-2 also questioned the same, he refused to marry the victim girl, due to which, the victim girl/PW-1 consumed poison. The respondent police registered a case and after completing the investigation, laid charge sheet. During the trial, the prosecution proved its case. Since the trial Court is a fact finding Court, it has appreciated the entire evidence and came to the independent conclusion that the prosecution proved its case beyond reasonable doubts. Before the trial Court, PW-1/ the victim girl clearly stated that she has X standard dropped out. After that she was going to one factory. During that time, she developed friendship with the appellant/accused and expressed him that she fell on love with him. Then, the appellant called the victim girl/PW-1 to his CD shop, where he committed rape on her. Before the occurrence, the appellant promised to marry her and after the occurrence, he refused to do so. When the victim girl questioned him, she was assassinated her character and therefore, she informed her mother/PW-2. While PW-2 questioned the same to the appellant, he denied to marry her, due to which, the victim girl/PW-1 consumed poison. Subsequently, she had no option except to file this complaint. PW-2, the mother of the victim girl has clearly stated that the age of her daughter was 15 years and X standard dropped out. She was going to the factory and at that time, she had friendship with the appellant/accused. Subsequently, the victim girl informed the appellant/accused that she loved him and thereafter, he committed rape on the promise of marrying her. PW-13, Doctor, who examined the victim girl, has clearly stated that the victim girl was aged 16 years and also the

medical certificates proved the same. Even though the appellant has defence that the consent of the victim girl, considering the age of the victim, the consent cannot be accepted.

8. This Court is of the view that the prosecution has proved its case beyond reasonable doubts and there is no need to interfere with the judgment passed by the Court below.

9. This Criminal Appeal shall stand dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

- 1.The Sessions Judge,
Mahila Court, FTMC,
Tiruppur.
- 2.The Inspector of Police,
Avinashipalayam Police Station,
Tiruppur District.
- 3.The Public Prosecutor,
High Court, Madras -104.
- 4.The Judicial Magistrate,
Tiruppur.
- 5.The Superintendent,
Central Prison, Coimbatore.

Copy to

The Section Officer,
Criminal Section, High Court, Madras.

+1cc to Mr.C.D.Johnson, Advocate Sr.21743

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mp[col]
srg 26/11/2019

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