

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.209 of 2016

K.Ramesh ... Appellant/Accused
Vs.

State Rep by.,
The Inspector of Police,
G 2, Periyamet Police Station,
Chennai-600 003.
(Crime No.393 of 2013)

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, to set aside the conviction and sentence passed against the appellant/accused in S.C.No.26 of 2014 dated 10.03.2015 on the file of the Mahila Sessions Judge, City Civil Court, Chennai.

For Appellant : Mr.R.Ganesh
For Respondent : M/s.T.P.Savitha
Government Advocate [Crl. Side]

JUDGMENT

This Criminal Appeal filed to set aside the Judgment dated 10.03.2015, made in S.C.No.26 of 2014 on the file of the Mahila Sessions Judge, City Civil Court, Chennai.

2.The appellant is the sole accused in S.C.No.26 of 2014 and he was charged for offence under Sections 366(A) and 376 of IPC and Section 4 of the Protection of Children from Sexual Offence Act, 2012. The trial Court found the appellant was guilty of the offence punishable under Section 366(A) of IPC and sentenced him to undergo rigorous imprisonment for a period 7 years and to pay fine Rs.5,000/- in default to undergo simple imprisonment for a period of three months. Further found guilty of offence punishable under Section 4 of the Protection of Children from Sexual Offence Act, 2012 and sentenced him

to undergo rigorous imprisonment for a period of 7 years and to pay fine Rs.5,000/- in default of fine to undergo simple imprisonment for a period of three months. The appellant was directed to undergo the sentences concurrently and there is no separate punishment under Section 376 of IPC.

3.The case of the prosecution is that PW1 father of the victim/PW3 lodged a complaint [Ex.P1] on 21.05.2013 that his minor daughter PW3 went to Grocery Shop at about 08.30 a.m on 20.05.2013 and thereafter she did not return back to home and found missing. On receipt of the complaint [Ex.P1], PW9 registered a case in Crime No.393 of 2013 for 'Girl Missing' and conducted the investigation. On 05.06.2013, PW9 got information that PW3 and the appellant were near Moore Market, Allikulam Complex. PW9 rushed to the said place, secured the victim/PW3 and arrested the appellant and altered the case from 'Girl Missing' into Section 366(A) and 376 of IPC. Thereafter, recorded the statements of PW1, PW2, PW4 and PW5 and subjected the victim/PW3 and the appellant for medical examination. Since, the victim/PW3 was a minor girl, offence under Section 7 of the POCSO Act was included. On completion of investigation in Crime No.393 of 2013, charge sheet was filed and taken on file by the learned Judicial Magistrate No.II, Egmore in P.R.C.No.147 of 2013 and the learned Magistrate committed the case for trial before the Mahila Sessions Judge, City Civil Court, Chennai in S.C.No.26 of 2014 and charges were framed against accused under Sections 366(A) and 376 of IPC and Section 4 of the Protection of Children from Sexual Offence Act, 2012.

4.The prosecution in this case had examined PW1 to PW9 and marked exhibits Ex.P1 to P13. None were examined and no exhibits were marked on the side of the defence.

5.The available evidence of the prosecution witnesses are as follows:

5.1.PW1 & PW2 are the father and mother of the victim/PW3. PW4 and PW5 are the neighbours of PW1. PW6 is the witness for arrest of the accused. PW7 & PW8 are the Doctors, who examined the victim/PW3 and the appellant respectively. PW9 is the investigating officer.

6.Heard learned counsel for appellants and learned Additional Public Prosecutor for the State. Perused the materials on record.

7.The learned counsel for the appellant would submit that the appellant and PW3 fell in love with each other for the past two years prior to the date of occurrence. Due to which, the parents of PW3 was contemplating marriage to her with another person, hence PW3 forced the appellant to take her away and marry her. On 20.05.2013 both of them had left to Trichy and got married and were living as Husband and Wife in Thozhudhur. They returned back to Chennai on a belief that their parents would have resolved and their marriage.

8.The learned counsel for the appellant would further submit that PW1 and PW2 the parents of the victim/PW3 had falsely implicated the appellant as an accused in this case. The independent witness PW4 has turned hostile. The other independent witness PW5 admits the love affair between the appellant and the victim. PW6 is the witness for arrest of the accused and about the marriage between the accused and PW3. PW8/Doctor examined the victim did not find any scratches and injuries on the private parts of the victim and cannot be certainly said that there was rape and forcible sex in this case. PW8 has not given any categorical finding on the rupture in Hymen that had occurred due to appellant having physical relationship with PW3. Further, PW8 recorded that the appellant and the victim were in love affair with each other. The same is evident in [Ex.P8] as follows "The girl is in love with a known person for two years. Ran away from home on 20.05.2013 and got married in a temple. Had sexual intercourse four times. Last contact 30.05.2013."

9.The case of love affair has been projected as though, it is a case of rape and penetrative sexual assault. Hence no offence is made out as against appellant as alleged by the prosecution. The lower Court had sentenced him to undergo seven years rigorous imprisonment, in which he is in incarceration for the past four years and pleaded for clemency. Therefore, he prayed for acquittal of all charges him.

10.Per contra, the learned Government Advocate [Crl. Side] appearing on behalf of the respondent Police would

submit that it is a case of penetrative sexual assault. The victim's date of birth is 29.03.1999. On the date of occurrence i.e., 20.05.2013, she was a minor aged about 15 years, studying 9th std. Due to the appellant kidnapping the victim and having forceful sexual intercourse, her studies has been discontinued and her future has been shattered and she is traumatized. PW3 in her evidence has categorically stated that the appellant was a neighbour and he has proposed several times to marry him. PW3 refused to marry him, hence she was forcibly taken by the appellant to Trichy and where he had forcible physical relationship with her and was kept in confinement for several days.

11.The learned Government Advocate would further submit that PW1 and PW2, who are the father and mother of the victim had produced the birth certificate [Ex.P2] and the transfer certificate [Ex.P3] of PW3, wherein the date of birth of PW3 is 29.03.1999. On perusal of Ex.P8 (Certificate of Examination for Sexual Offences) recorded by PW8, it is seen that there is "Hymeneal tear with smooth margin at 5'o clock-9'o clock position", which is in conformity with the evidence of PW3. Hence, the prosecution has proved the case beyond all reasonable doubt and the trial Court on proper analysis of evidence of documents have rightly convicted the appellant.

12.Considering the rival submissions and on perusal of the materials this Court finds that PW3 was forcibly taken by the appellant to Trichy and was kept in confinement. During the period of confinement, PW3 has been subjected to penetrative sexual assault. Further, her date of birth in birth certificate [Ex.P2] and transfer certificate [Ex.P3] reveals that she was a minor at the time of occurrence. The appellant had physical assault with PW3 which was clearly spoken by PW8 the Doctor who examined her and issued Ex.P8. The trial Court had given a well reasoned finding and rendered the Judgment in S.C.No.26 of 2014.

13.In view of the same, this Court finds that there is no reason to interfere with the Judgment passed by the learned Mahila Sessions Judge, City Civil Court, Chennai in S.C.No.26 of 2014.

14.Hence, the finding of the Court below is confirmed. In the result, this Criminal Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Mahila Sessions Judge,
City Civil Court,
Chennai.
- 2.The Inspector of Police,
G 2, Periyamet Police Station,
Chennai-600 003.
- 3.The Public Prosecutor,
High Court, Madras.

Cr1.A.No.209 of 2016

RR (CO)A.SK(06/09/2019)