

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.526 of 2018
and Crl.M.P.No.1627 of 2019

Kumar @ Uthirakumar
S/o.Muthaiyan

... Appellant /Accused

Vs.

State Rep by
Inspector of Police,
All Women Police, Panruti,
(Crime No.12 of 2016)

...Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to set aside the conviction of rigorous Imprisonment for 14 years for the offence under section 376 (i) of IPC and a fine of Rs.15,000/- (Rupees Fifteen Thousand Only) in default 2 years simple imprisonment to undergo rigorous imprisonment for 2 years for the offence under Section 451 of IPC and fine of Rs.5,000/- (Rupees Five Thousand Only) in default 6 month simple imprisonment and to undergo simple imprisonment for 6 months for the offence under section 506 (ii) of IPC and fine of Rs.3,000/- (Rupees Three Thousand Only) in default 2 months simple imprisonment imposed by its judgment dated 30.07.2018 made in S.C.No.26/2017 made by learned Mahila Court at Cuddalore.

For Appellant : Mr.S.Shankar

For Respondent : Mr.R.Ravichandran

Govt. Advocate (Criminal Side)

JUDGMENT

The respondent police registered the case against the appellant for the offence under Sections 451, 376(i), 506(ii) of IPC in Crime No.12 of 2016. The respondent police after completing the investigation, filed the charge sheet before the learned Sessions Judge, Mahila Court, Cuddalore, which was taken on file in S.C.No.26 of 2017. After completing the legal formalities, framed the charges under Sections 451, 376(i), 506(ii) of IPC against the appellant/accused.

2. In order to prove the case, on the side of the prosecution, the respondent police examined as many as 17 witnesses viz., P.W.1 to P.W.17 and 10 documents were marked viz., Ex.P1 to Ex.P10. After completion of the prosecution evidence, when the incriminating circumstances culled out from the prosecution witnesses put before the accused, he denied the same as false. On the side of the defence neither oral nor documentary evidence was let in. After completing the trial and hearing the arguments of both sides, the learned trial Judge

considering the entire facts came to the conclusion that the appellant committed the offence under Section 376(1), 451 and 506(ii) of IPC and convicted under section 376(1) IPC and sentenced him to undergo rigorous imprisonment for fourteen years and to pay a fine of Rs.15,000/- in default, sentenced to undergo simple imprisonment for two years and convicted for the the offence under Section 451 of IPC and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs.5,000/- in default, sentenced to undergo simple imprisonment for six months and convicted for the offence under Section 506 (ii) IPC and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.3,000/- in default, to undergo simple imprisonment for two months.

3. Challenging the said judgment passed by the learned Sessions Judge, the accused has preferred the present appeal before this Court.

4. The learned counsel for the appellant would submit that the prosecution has not proved its case beyond reasonable doubt and there is no eyewitness in this case. There is a delay in lodging the complaint. The prosecution has not properly explained the delay in filing the complaint and also when the victim was admitted in the hospital, she told that she was attacked by known person. But, she has not stated anything about the sexual assault made by the appellant towards the victim girl. Therefore, the prosecution witnesses have not spoken about the sexual assault made by the appellant. The trial Court failed to consider the medical record which does not support the case of the prosecution and not corroborated with the evidence of P.W.2. Even the Doctor stated that P.W.1 was attacked by known person. She has not stated before the Doctor that she was subjected to sexual assault made by the appellant, it creates a doubt and the benefit of doubt should be extended in favour of the accused. The learned Special Judge failed to consider these aspect and wrongly convicted the appellant which warrants interference of this Court.

5. The learned Government Advocate (Crl. side) would submit that the victim/P.W.1 has clearly narrated the entire facts. When P.W.1 entered into her house on 21.09.2016, the accused was inside her house and assaulted her and also raped her. P.W.2 daughter of the victim witnessed the same. Though, she has not initially informed before the Doctor that she was sexually assaulted. She has stated that one known person has attacked her. Further, she had stated that she immediately went to the police station, they asked her to go to hospital. When she went to the hospital, they asked her to go to the police station first. There was no proper response in hospital and police station. Therefore, she could not give any complaint. Since, her husband was working in out of town, she telephoned her husband and informed the same. He came on the next day and made a complaint before the respondent police. After investigation, the respondent police laid a charge sheet. The contention raised by the learned counsel for the appellant is not acceptable. The trial Court rightly appreciated the entire evidence, which does not warrant any interference.

6. Heard both sides and perused the materials available on record.

7. It is the case of the prosecution that on 21.09.2016, when the victim went to her relatives function, the children of the victim were alone in their house. The children after watching television for sometime slept leaving the door unlocked. At that time, the appellant went inside the house as soon as the victim entered into the house, the appellant misbehaved with her. When she shouted, the elder child got up and went to help her mother. The appellant pushed the child out of the house and locked the door from inside. The child who was pushed out of the house, went and informed her neighbors about the incident. But in the meanwhile, the accused has sexually assaulted the victim. Hence, the accused was arrested by the respondent police, based on the complaint given by the victim. The respondent police filed a charge sheet for the offence under Sections 451, 376(i), 506(ii) of IPC, which was taken on file in S.C.No.26 of 2017 before the learned Mahila Court, Cuddalore. On the side of the prosecution, the victim was examined as P.W.1. She has clearly stated that she was severely attacked by the appellant and she had spoken about the witnesses who helped her to go to hospital, but as per the evidence of P.W.1 the Doctors told her to go to police station first and then to come for treatment. P.W.1 has gone to Kadampuliyur Police Station around 9.30 p.m., and complained orally, but the police officer asked her to go to hospital for taking treatment. Since there was no female police to accompany her and they could not do much. The evidence of the victim shows that they were sent from pillar to post, they had returned home. She informed her husband through phone about the occurrence. On 23.09.2016, P.W.1 went to Kadampuliyur police station with her husband. Even then the police reluctant to register the case and they asked them to go to All Women Police station at Panruti. Therefore, they went to the All women police station on 23.09.2016 and lodged the complaint against the appellant. Though the occurrence alleged to have taken place on 21.09.2016 in the evening, but the F.I.R. was registered only on 23.09.2016. The delay has been properly explained by the victim P.W.1.

8. Though, the P.W.1 has clearly stated in her evidence on 21.09.2016, the victim went nearby village with neighbors, who are relatives, to attend the function leaving both children at home. The children after watching television for sometime, they went for sleeping without locking the door. The victim/complainant, returned home around 9.00 p.m., when she went inside the house. At that time, the appellant was waiting inside the house. As soon as the complainant entered into the house, the appellant misbehaved with her and unexpectedly assaulted her, when the victim shouted for help, the elder daughter of the victim saw this and immediately she has also sought help of the others. At that time, the appellant pushed her out of the house and locked the door from inside. Thereafter, the victim was sexually assaulted by him. When the neighbors came to the house, and questioned the accused, he pushed them aside and escaped from that place. When she was taken to the hospital with the help of her neighbors, the

doctors told her to go to police station first and then to come for treatment. She went to the police station and complained orally, the Police Officer asked her to go to hospital. Hence, she came to her house and next day, she informed her husband, he came on the same day night. On 23.09.2016, she along with her husband went to the police station and lodged the complaint.

9. P.W.2 the daughter of the victim narrated the scene of occurrence and corroborated the evidence of P.W.1/victim. From the evidence of P.W.1 to P.W.3, the prosecution have proved its case beyond reasonable doubt. P.W.7 Doctor stated that the victim told that she was assaulted by a known person and she complained of pain in her breast and back. Further, the Doctor admitted her in the female ward. P.W.10 Doctor who treated the victim deposed that the victim told her that she was raped on 21.09.2016.

10. The learned counsel for the appellant submitted that there is a delay in filing the complaint, it creates a doubt. For which the evidence of P.W.1 victim is clear that when she went to the police station, they asked her to go to hospital. When she go to the hospital, they asked her to go to police station first. There was no proper response in hospital and police station. Therefore, she has not given complaint. Since, her husband was working in out of town, she telephoned her husband and informed the same. He came on the next day and made a complaint before the respondent police. The delay was properly explained by the victim and offences like this, being a lady, if she has given a complaint, the news would spread out all over the village and it would be affected her reputation.

11. 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 raped the victim. That was the statement given by the victim. From the evidence of the prosecution witnesses and documents, the case of the prosecution has been clearly proved, that on the date of occurrence, the appellant entered into her house and raped her.

12. In view of the above discussions, this Court is of the considered view that the respondent/police 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 451, 376(1) and 506(ii) of IPC and this Court does not find any merits in the appeal to interfere with the findings of the Appellate Court.

13. In the result, the criminal Appeal is dismissed and the judgment of conviction and sentence dated 30.07.2018 made in S.C.No.26 of 2017 by the learned Sessions Judge, Cuddalore is hereby confirmed. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

To

1. The Sessions Judge,
Mahila Court, Cuddalore.
2. -Do-Thro' The Principal Sessions Judge,
Cuddalore.
3. The Judicial Magistrate No.II,
Panruti.
4. -Do-Thro' The Chief Judicial Magistrate,
Cuddalore.
- 5.The Inspector of Police,
All Women Police, Panruti,
6. The Superintendent of Poice,
Central Prison, Cuddalore.
- 7.The Public Prosecutor,
High Court of Madras.

Copy to : The Section Officer, Criminal Section,
High Court of Madras.

+1 cc to M/s.S.Shankar, Advocate Sr.No.39174

AKM/ 30.08.19/ 5P-10C /

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