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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2019

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.343 of 2014

and

MP.No.1 of 2014

Gunasekaran

... Appellant

-Vs-

State rep. by
The Inspector of Police,
E4, Abiramapuram Police Station,
Chennai-cum
Inspector of Police,
All Women Police Station,
Kotturpuram, Chennai.

... Respondent

Criminal Appeal filed under Section 374 of Cr.P.C, praying to set aside the judgment dated 24.02.2014 passed in S.C.No.191 of 2009 passed by the learned Sessions Judge, Mahila Court, Chennai.

For Appellant : Mr.R.Ganesh
Legal Aid Counsel

For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate (Crl.Side)

JUDGMENT

This Criminal appeal has been filed to set aside the judgment dated 24.02.2014 passed in S.C.No.191 of 2009 passed by the learned Sessions Judge, Mahila Court, Chennai.

2. The respondent police registered a case against the appellant herein for the offence under Section 376 of IPC and after completing investigation, laid a charge sheet against the accused before the learned XXIII Metropolitan Magistrate, Saidapet, Chennai. The learned Magistrate, after taking the charge sheet on file in PRC.No.73 of 2009, found that the offence was triable by the Court of Sessions and committed to the learned Principal Sessions Judge, Chennai. The learned Sessions Judge after taking the case on file in S.C.No.191 of 2009, found that the offence was against women and transferred the case to the Mahila Court, Chennai. The learned Sessions Judge, Mahila Court, Chennai, after completing the formalities, framed charge against the appellant for the offence under Section 376 of IPC.



3. In order to prove the case of the prosecution, on the side of the prosecution as many as 11 witnesses were examined and marked 18 documents. After completing evidence, incriminating circumstances culled out from the prosecution witnesses was put before the accused, he denied as false. On the side of the defence, 4 witnesses were examined and no documentary evidence was produced. The learned Sessions Judge, after hearing the arguments and considering the entire facts, found that the appellant was guilty for the offence under Section 376 IPC and sentenced him to undergo 10 years Rigorous Imprisonment and fine of Rs.10,000/-, in default, 6 months Simple Imprisonment, by judgment dated 24.02.2014. There against, the present appeal has been preferred by the convict before this Court.

4. When this appeal was posted on 31.07.2019, the learned counsel for the appellant was not ready to argue the matter and therefore, this Court directed the Registry to appoint Legal Aid Counsel. Mr.R.Ganesh, the learned Legal Aid counsel has appeared and argued for the appellant. The learned counsel for the appellant would submit that a false case has been foisted against the appellant since there was a loan transaction between PW-1 and the appellant. PW-1 asked money from the appellant, for which, he refused and therefore, she foisted a false case against him. There was a delay of 1 ½ years in filing the FIR, which shows that a false case is foisted against the appellant. PW-3/brother of the victim has stated that the appellant used to have physical relationship with her, due to which, she sustained injuries. PW-8/Doctor also opined that the victim sustained 16 types of injuries, due to punishment given by her mother. The appellant has no injury in his private part. If he had physical relationship with 13 years old girl, he would have got injury, which shows that the appellant has not committed any offence as alleged by the prosecution. The medical evidences are not tallied with the evidence of PWs-1 and 2. The prosecution has failed to prove its case beyond reasonable doubts. On the side of the defence, 4 witnesses were examined and they have clearly spoken that the character of PW-1 is not good and also she demanded money from the appellant, when he refused to give the same, she foisted a false case against him. The said fact has not been considered by the trial Court, which warrants interference.

5. The learned Government Advocate (Crl.Side) appearing for the respondent would submit that PW-1 is the mother of the victim, who gave the complaint-Ex.P1. She has clearly narrated the events as to how she came to know about the assault made against her daughter. Ex.P2 is the statement recorded under Section 164 Cr.P.C from the victim before the learned Magistrate, in which, she has clearly narrated the involvement



of the appellant. PW-3 is the brother of the victim girl, who has clearly narrated the occurrence and also stated that how his mother came to know about the sexual assault made to his sister. Therefore, the evidence of PW-8/Doctor, who examined the victim girl, shows that the hymen of the victim is not intact and also injuries in her private part and she has also issued medical certificate stating that there is a possibility of sexual assault. PW-9/Doctor, who have examined the appellant, has spoken that he is capable of doing sexual assault. Therefore, the evidence of PWs-1 to 3, 9, Ex.P2-statement recorded under Section 164 of Cr.P.C and the medical records show that the appellant has committed the offence under Section 376 of IPC. Therefore, the prosecution has proved its case beyond reasonable doubts. The Trial Court has also rightly appreciated the evidence of the prosecution and found that the appellant has committed the offence under Section 376 of IPC and convicted and sentenced him as stated above. Hence, there is no merit in this appeal and the same is liable to be dismissed.

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

7. The case of the prosecution is that the appellant is alleged to have committed sexual assault on the victim girl, aged 13 years. PW-1 is the mother of the victim, she has clearly stated that one of her younger son has stated about the behaviour of her daughter/PW-2. When she questioned the same, PW-2 narrated the entire events and the involvement of the appellant. PW-2 is the victim, she has clearly narrated the occurrence and the overtact attributed against the appellant. The appellant used to have sexual intercourse with the victim for 1½ years, when she refused, he forced her and threatened her not to reveal anybody and also given money to her. Afterwards, PW-2/victim used to do the same way to her immediate younger brother, for which, he refused and therefore, she behaved with the other younger brother and he informed to her mother. After enquiry made by her mother, PW-2 revealed the entire events. PW-3 is one of the immediate younger brother of the victim girl and he has narrated the occurrence that how PW-2 behaved with him, while he refused to do the same, she started to behave with another younger brother and he informed the same with his mother. In this way PW-1 knows about the occurrence. After complaint, the victim was brought before the learned Judicial Magistrate and the statement under Section 164 of Cr.P.C was recorded from PW-2/victim girl. The Doctor, who examined the victim stated that she was subjected to sexual assault. Though the learned counsel for the appellant submitted that there was no fresh injuries on her, it is not an one occasion, for the past 1½ years, the appellant/accused used to do several times.



Therefore, non-existence of fresh injury at the time of examination by the Doctor, is not the ground to disbelieve the evidence of prosecution. The Doctor has clearly stated that the hymen of the victim girl is not intact and she was subjected to the sexual assault. The learned counsel for the appellant further submitted that the examination of the appellant would show that there was no injuries and put a suggestion that if a man had sexual relationship with 13 years old girl, there was a possibility of getting injuries. In this case, admittedly at the time of the complaint, the age of the accused is 57 years and the offence was taken place continuously for 1½ years. Therefore, the non-existence of the injury on the date of occurrence is also not the ground for disbelieving the case of the prosecution. In the cases like this, the evidence of the victim itself is sufficient to convict the accused. The Trial Court has rightly appreciated the entire evidence of the prosecution. Though the appellant attempted to take a defence that the mother of the victim asked loan from him and since he refused to give the same, she foisted a false case against the appellant/accused. On the side of the defence 4 witnesses have been examined, out of which, one of the witnesses is wife of the appellant and the witnesses were residing far away from the place and they are also hearsay witnesses. They are not known about the occurrence between PW-1 and the appellant and the appellant miserably failed to prove his defence. Since the age of the appellant is more than 65 years and the learned counsel for the appellant prays for the leniency of the sentence, the cases like this, the age of the appellant is not the criteria to consider the sentence. Though the offence under Section 376 of IPC clearly proved the age of the victim is 13 years, the trial Court was very lenient in awarding the sentence. Unfortunately, the State has not filed any appeal for enhancing the sentence. This Court, does not want to go beyond the scope of the appeal except to confirm the judgment of the Trial Court. There is no merit in this appeal and the same is liable to be dismissed. The prosecution failed to consider the Section 367A of IPC and award compensation to the victim. This Court is inclined to award compensation to the victim.

8. The appellant/accused is directed to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) to the victim. The State is liable to pay the said amount from the scheme of victims' compensation and thereafter, the amount can be recovered from the accused.

9. This Criminal Appeal shall stand disposed of with the above direction. The counsel for the appellant on record, who



was appointed by the Tamil Nadu State Legal Services Authority, Chennai from the Legal Aid Panel is entitled for the fees as per the rule. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

KMI

To

1. The Sessions Judge, Mahila Court, Chennai.
 2. The XVIII Metropolitan Magistrate, Saidapet, Chennai.
 3. The Chief Judicial Magistrate, Chennai.
 4. The Superintendent, Central Prison, Puzhal, Chennai.
 5. The Secretary, Home Department, Fort Saint George, Chennai.
 6. The Joint Secretary, Public (Law and Order), Fort St. George, Chennai.
 7. The Inspector of Police,
E4, Abiramapuram Police Station,
Chennai-cum The Inspector of Police,
All Women Police Station,
Kotturpuram, Chennai.
 8. The Public Prosecutor, High Court, Chennai-104.
 9. The Secretary,
Tamil Nadu State Legal Services Authorities,
Chennai.
- +1cc to Mr.R.Ganesh, Advocate, SR.No.70883.

Cr1.A.No.343 of 2014

(CO)
CSR:22.01.2020