

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.08.2019

Pronounced on : 25.10.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.15 of 2017 and  
CrI.M.P.No.448 of 2017

Selvakumar

... Appellant/Accused

Vs.

State rep. By,  
Inspector of Police,  
Dharapuram All Women Police Station,  
Tirupur District,  
Crime No.2/2014.

... Respondent/Respondent

PRAYER: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, to set aside the conviction and sentence imposed on the appellant by Judgment dated 17.10.2014 made in Spl.C.C.No.1 of 2014 on the file of the Sessions Judge, Mahila Court (Fast Track Mahila Court), Tiruppur District.

For Appellant : Mr.C.S.Saravanan

For Respondent : M/s.P.Kritika Kamal  
Government Advocate [CrI.Side]

JUDGMENT

This appeal arises out of the conviction and sentence imposed by the learned Sessions Judge, Mahila Court (Fast Track Mahila Court), Tiruppur in Special C.C.No.1 of 2014 dated 17.10.2014, wherein the appellant was tried for the offence punishable under Sections 450, 376 of IPC and Section 3 r/w 4 of Protection of Children from Sexual Offence Act, 2012. The learned trial Judge convicted the appellant for offence under Section 450 of IPC and sentenced him to undergo seven years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo 6 months simple imprisonment and for the offence under Section 376(1) of IPC, the appellant was sentenced to undergo seven years of rigorous imprisonment and to pay a fine of Rs.10,000/- in default, sentenced to undergo six months of rigorous imprisonment and under Section 3 r/w 4 of the Protection of Children from Sexual Offence Act, 2012, the appellant was sentenced to undergo ten years of rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo six months rigorous imprisonment. The

sentences were ordered to run concurrently.

2.The background facts, as projected by the prosecution are as follows:

2.1.PW2 the defacto complainant was residing with her family members in Harijan Colony, Kungumapalayam, Nandhavanapalayam, Kundadam, Tirupur. PW1/victim is a minor daughter of PW2 and PW3, aged about 14 years. She discontinued her studies on 26.04.2014, the victim/PW1 was alone in her house and was watching TV. At that time, the appellant trespassed into the house, locked the door, closed her mouth, removed her clothes and forcibly had sexual intercourse with her. Therefore, PW2/the mother of the victim lodged a complaint [Ex.P1] against the appellant before PW10. On completion of investigation and filing of charge sheet, the case was tried against the appellant in Special S.C.No.1 of 2014 by the file of the Sessions Judge, Mahila Court (Fast Track Mahila Court), Tiruppur.

3.Before trial Court, prosecution examined 10 witnesses and marked 11 exhibits. None were examined, nor any exhibits marked on the side of the defence.

3.1.PW1, the victim aged about 14 years, residing with her parents. She discontinued her studies from 9<sup>th</sup> std in Government Higher Secondary School, Peramiyam. On 26.02.2014 at about 02.00 p.m, when she was alone at her house, the appellant trespassed into the house, locked the door and had forcible penetrative sexual assault with her for two hours. Further, the appellant had threatened the victim that if she discloses the same she would be done away. On the next day, the victim/PW2 had informed her parents/PW2 and PW3, who went to the police station and lodged the complaint [Ex.P1].

3.2.PW2 and PW3, the mother and father of PW1/victim stated that at the time of occurrence, PW1 attained puberty and was alone at the house and watching TV. On 26.02.2014, the appellant trespassed into the house had penetrative sexual assault on her. Further, PW2 and PW3 are agricultural coolies and used to go to their work at 09.00 a.m and return at 06.00 p.m. At the time of occurrence, PW1 was alone at home, nobody was present. The appellant was residing at the same area. When PW2 and PW3 returned house after work at 06.00 p.m, the victim/PW1 was moving here and there. Thereafter, she cried and disclosed about the appellant's act. Then, they went to the police station and lodged the complaint [Ex.P1] and PW2 accompanied her daughter/PW1 for medical examination.

3.3.PW4, the neighbour of PW1 to PW3 stated that on 04.03.2014 at about 04.00 p.m, the Inspector of Police, All Women Police Station, Dharapuram visited the scene of occurrence, prepared observation mahazar [Ex.P2]. PW4 signed in the observation mahazar [Ex.P2].

3.4.PW5, Doctor attached to the Government Hospital,

Dharapuram on 05.03.2014 at about 03.30 p.m, examined the victim, issued medical report [Ex.P3] and Accident Register [Ex.P4]. On examination, she found that the hymen is not intact and the vagina easily admits one finger.

3.5.PW6, Doctor attached to Government Hospital, Dharapuram on 05.03.2014 examined the appellant, issued Accident Register [Ex.P5] and his opinion [Ex.P6]. From Ex.P6, PW6 opined that the appellant was a potent person.

3.6.PW7, Headmaster of Government Higher Secondary School issued school certificate [Ex.P7] of the victim. As per Ex.P7, the date of birth of the victim is 18.07.2000.

3.7.PW8 and PW9 are the witnesses for the arrest and confession [Ex.P8] of the appellant on 04.02.2014 at about 06.00 p.m.

3.8.PW10, Inspector of Police, All Women Police Station, Dharapuram received the complaint from PW2 and PW3, registered a case in Crime No.2 of 2014 for the offence under Sections 450, 346(1) of IPC and Section 3 r/w 4 of the Protection of Children from Sexual Offences Act, 2012, examined the witnesses, prepared observation mahazar [PW2], rough sketch [PW11], arrested the appellant, recorded his confession [Ex.P8] and forwarded the appellant and the victim for medical examination. On receipt of the medical reports and other report, PW10 filed the charge sheet before the trial Court.

4.The learned counsel for the appellant submitted that the occurrence is said to have taken place on 26.02.2014 and the complaint [Ex.P1] came to be lodged on 04.03.2014. The delay for lodging the complaint [Ex.P1] is not explained by the prosecution. Further, it is not proved that the victim was a minor. Further, no material object such as blood stained cloth and other articles seized in this case. No independent witness examined in this case. There is no evidence to show that the appellant entered the house of the victim on the fateful day. The victim's discontinuing her studies and staying alone at her home have not been properly stated.

5.The learned counsel for the petitioner would further submit that PW1 stated that she studied 9<sup>th</sup> standard and stopped going to school for the past two years. PW1 admitted that there is no door to the house and she has not made cry seeking help. Further she admitted that iron smith was present next to her house and persons would be present there. Further, she stated that she was taken to the hospital on next day of the occurrence and the complaint [Ex.P1] has been lodged only seven days after the occurrence.

6.PW2 stated that only eight days after the occurrence PW1 informed about the appellant's act to her and after two or

three days, the respondent had come to the scene of occurrence, enquired and prepared mahazars. PW2 admitted that PW9 had affixed his signature only in the police station and PW4 was residing in the same area.

7.PW1 stated that two months prior to the occurrence she attained puberty. But PW2 stated that 15 days prior to the occurrence PW1 attained puberty and categorically denied that it was not two months prior to the occurrence. PW3 admitted that PW4, PW8 and PW9 are all relatives who had accompanied him to the police station, signed all the documents in the police station.

8.The learned counsel would further submit that PW7, the Headmaster admitted there is no birth certificate available for the victim in the school. PW8 and PW9 witnessed the arrest and confession and they admitted that they affixed their signature in police station and there is no disclosure statement leading to any recover, the confession is of no consequence. The evidence of PW1 to PW3 are contrary to the each other which has been admitted by PW10. The specific case of the appellant is that the parents of victim borrowed a loan of Rs.10,000/- which was demanded by the appellant for which the appellant had been falsely implicated in this case. Further, the appellant was compelled to marry the victim's sister which he refused. Hence, PW1 to PW3 foisted a false case against the appellant. Further, the medical evidence revealed that there is no external injuries or any marks on the victim. Hence, he prayed for acquittal of the appellant from the case.

9.The learned Government Advocate [Crl. Side] appearing on behalf of the respondent would submit that the poor victim girl was subjected to Penetrative Sexual Assault by the appellant by taking advantage of the victim being alone at her house. Further, the appellant threatened the victim not to disclose about his sexual assault. Hence, delay only latter she informed her parents/PW2 and PW3, who are uneducated rustic villagers and agricultural coolies. PW2 and PW4 approached PW10, lodged the complaint [Ex.P1], who on receipt of the same registered an F.I.R in Crime No.2 of 2014 for the offence under Sections 450, 376 (1) of IPC and Section 3 r/w 4 of the Protection of Children from Sexual Offences Act, 2012, visited the scene of occurrence, prepared observation mahazar [Ex.P2], arrest the appellant, produced the appellant and the victim for medical examination before the Government Hospital, Dharapuram. PW5 and PW6 are the doctors examined the appellant and the victim and gave the examination report, confirming that the victim was sexually assaulted and the appellant a potent person.

10.The learned Government Advocate would further submit that the specific case of the appellant is that the victim's family had borrowed a loan for a sum of Rs.10,000/- and the

demand for repayment by the appellant is the motive, was denied by PW1 to PW3. All the witnesses supported the case of the prosecution. As per Ex.P7 and the evidence of PW7, the victim is a minor aged about 14 years on the date of occurrence. Hence, the lower Court on proper analysis of materials produced had rightly convicted the appellant and needs no interference.

11.This Court considered the rival submission and perused the materials available on record.

12.The victim is a minor girl aged about 14 years as per the evidence of PW1 to PW3 as well as Ex.P7 and PW7. Likewise, the victim had been sexually assaulted as per the evidence of PW5, who had examined her and issued Ex.P3. The finding of the Doctor/PW5 and Ex.P3 is that the "Hymen is not intact and vagina admits one finger". Hence, it is proved that the victim is a minor, who is subjected to Penetrative Sexual Assault. The identity of the appellant is not disputed, since the appellant also resides in the same street besides the house of the victim as could be seen from the rough sketch [Ex.P11]. The appellant has been identified by PW1 and PW2 and PW3 corroborated the evidence of PW1, which is conformity to the medical evidence. The other witnesses in this case are also in conformity to the case of the prosecution and there is nothing to suggest that the victim was enimically disposed against the appellant to implicate him. Further, the minor contradictions will not affect the prosecution case. The contradictions are natural when the witnesses are rustic villagers. The evidence of PW1 is untainted and inspires confidence to rely on.

13.In view of the above, this Court finds that the conviction of the appellant is sustainable. As regard the sentence, the lower Court convicted the appellant for offence under Section 450 of IPC and sentenced him to undergo seven years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo 6 months simple imprisonment and for the offence under Section 376(1) of IPC to undergo seven years of rigorous imprisonment and to pay a fine of Rs.10,000/- in default, sentenced to undergo six months of rigorous imprisonment and Section 3 r/w 4 of the Protection of Children from Sexual Offence Act, 2012, the appellant was sentenced to undergo ten years of rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo six months rigorous imprisonment.

14.As per Section 42 of the Protection of Children from Sexual Offences Act, 2012, no separate sentence for the offence under Section 376(1) is need to be imposed. Section 42 of the Act is extracted here under:-

"42.Alternate punishment

Where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A,

375, 376, [376A, 376AB. 376B, 376C, 376D, 376DA, 376DB], 376E or Section 509 of the Indian Penal Code, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment under this Act or under the Indian Penal Code as provides for punishment which is greater in degree."

15. In the result, the appeal is dismissed by confirming the conviction and sentence of the lower Court for the offence under Section 450 and Section 3 r/w 4 of the Protection of Children from Sexual Offence Act, 2012. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge, Mahila Court (Fast Track Mahila Court),  
Tiruppur District.
2. The Inspector of Police,  
Dharapuram All Women Police Station,  
Tiruppur District.
3. The Public Prosecutor,  
High Court, Madras.
4. The District Collector, Tiruppur.
5. The Prisoner,  
Central Prison, Coimbatore.
6. The Director General of Police,  
Mylapore, Chennai.
7. The Judicial Magistrate,  
Dharapuram.
8. The Section Officer,  
Criminal Section,  
High Court, Madras.

Cr1.A.No.15 of 2017

SVI (CO)  
GN (21/11/2019)