

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.08.2019

Delivered on : 29.08.2019

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Criminal Appeal No.586 of 2018

Rajangam, M/37,
S/o Chandhira Raj,
Middle Street, Thirumalaisamuthiram,
Vallam Taluk, Thanjavur District.
Now at No.1/1357, Velan Nagar,
Palavanchipalayam, Veerapandi,
Tiruppur. ... Appellant/sole Accused

Vs.

The State, represented by
The Assistant Commissioner of Police,
South Range, Tiruppur. (Crime No.2/2015)
(All Women Police Station,
South Tiruppur) .. Respondent/complainant

Criminal Appeal is filed under Section 374(2) of Criminal
Procedure Code seeking to call for records and set aside the
judgment passed in Special S.C.No.24 of 2015 on the file of the
Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court),
Tiruppur, dated 27.08.2018.

For Appellant : Mr.K.M.Balaji
For respondent : Mr.R.Prathap Kumar,
Additional Public Prosecutor

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JUDGMENT

M.M.SUNDRESH, J.

The appellant, who is the sole accused, is convicted and
sentenced to undergo imprisonment for life along with fine of
Rs.10,000/-, in default to undergo further period of one year
R.I. for the offence committed under Section 5(j)(ii) read with
6 of Protection of Children from Sexual Offences Act, 2012 and

to undergo R.I., for five years along with fine of Rs.10,000/-, in default to undergo additional R.I., for one year for the offence committed under Section 3(1)(xii) read with 3(2)(v) of SC/ST (Prevention of Atrocities) Amendment Ordinance, 2014, while he was acquitted under Section 235(1) Cr.P.C. for the offence punishable under Section 5(I) read with 6 of Protection of Children from Sexual Offences Act, 2012. Challenging the conviction and sentence rendered by the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Tiruppur, dated 27.08.2018 in S.C.No.24 of 2015, the present criminal appeal has been filed.

2. Facts in Brief:

2.1. The case of the prosecution is that P.W.1-Gomathi, who was the victim, was employed with the appellant/accused in his Screen printing Workshop. The appellant exhorted influence on the minor victim that he would marry her and thus, compelled her to have physical relationship with him. Resultantly, she became pregnant, leading to the birth of a male child, who died immediately thereafter. The victim belongs to the Scheduled Caste Community.

2.2. P.W.1 is the victim on whose statement given under Ex.P2, Ex.P20-First Information Report was registered in Crime No.2 of 2015 by P.W.19-Inspector of Police, All Women Police Station, South Tiruppur on 15.02.2015, as the provisions of SC/ST (Prevention of Atrocities) Amendment Ordinance 2014 were attracted. The investigation was transferred to the Assistant Commissioner of Police, Tiruppur, viz P.W.20.

2.3. After completion of the investigation, the Investigating Officer filed the charge sheet before the Mahalir Neethimandram, Fast Track Court, Tiruppur. Upon framing charges, the appellant was questioned on them. On his denial, the trial was proceeded with.

2.4. On behalf of the prosecution, 20 witnesses have been examined as P.Ws.1 to 20, while marking Exs.P1 to P23 and one material object was marked, which is the bike allegedly used for the commission of the offence.

2.5. Though no document has been filed on behalf of the defence, the wife of the appellant has been examined as a defence witness.

2.6. The trial Court, while acquitting the accused for the charges framed under Section 5(I) read with 6 of Protection of Children from Sexual Offences Act, 2012, convicted him for the offence under Section 5(j)(ii) read with 6 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the "POCSO Act") and 3(1)(xii)

read with 3(2)(v) of SC/ST (Prevention of Atrocities) Amendment Ordinance, 2014. Challenging the aforesaid conviction and sentence rendered by the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Tiruppur, dated 27.08.2018 in S.C.No.24 of 2015, the appellant has filed the present criminal appeal.

3. Evidence:

3.1. P.W.1 is the victim. She is a minor girl belongs to Scheduled Caste community. P.W.1 has turned hostile. While giving her statement she deposed that she had love affair with another boy by name Ramesh with whom she was studying. P.W.2 is the mother of the victim and P.W.3 is the father. They also turned hostile. P.W.4 is the witness, who signed the confession statement given by the appellant before the police under Ex.P5 along with one Shanmugam. This witness merely states about the statement given by the appellant in the presence of investigating officer. P.W.4 also belongs to the same community as that of P.W.3 apart from being a distant relative. He is also an office bearer of a Dalit Political outfit.

3.2. P.W.5 is the Doctor-Shanmuga Vadivu, who was on duty at the Government Hospital, Tiruppur, and attended the accused for potency test and issued Ex.P6-Medical certificate. P.W.6 is the another Dr.Ramanan, who took the blood samples from the appellant for DNA Test as per the directions of the trial Court. He had stated that he neither received the photograph nor the signature of the appellant at the time of taking the samples. It is his further evidence that he was in receipt of two FTA Cards belonging to the P.W.1 and her child. This was received from the Government Medical College Hospital, Coimbatore.

3.3. P.W.7 is the Tahsildar, who gave the Community Certificates for the victim as well as the appellant. P.W.9 is the Doctor, who attended the delivery of P.W.1 on 16.03.2015 at about 12.42 hours. P.W.10 is the Police Constable, who brought the appellant from the jail to undertake the medical test.

3.4. P.W.11-Venkatesh is the person, who signed the observation mahazar under Exs.P9 and P10. The Observation Mahazar is nothing but the particulars governing the residence of the appellant and P.W.1 along with the Rough Sketch, through whom Exs.P9 and P10 have been marked.

3.5. P.W.12 has turned hostile. P.W.13-Muniappan, who is none other than the son of P.W.3 and thus, the brother of P.W.1 has also turned hostile. P.W.14-Ragupathi is the another witness, who fall in line with P.W.13 by turning hostile.

3.6. P.W.15-Yogarani, who is the woman Police Constable, handed over Ex.P-11 requisition letter for conducting DNA examination at the Forensic Science Laboratory, Chennai, on 25.03.2015 and obtained 3 FTA Cards for collecting the blood samples and took the blood samples of victim and her child in two FTA Cards in a sealed cover along with the letter of the medical officer and handed over the same to the Court on 28.03.2015. Later on 31.05.2015, P.W.15 went along with the above said two FTA cards and the requisition letter to the Coimbatore Government Hospital. It is the evidence of P.W.17 that she was not aware of the Doctor from whom the samples of P.W.1 and the child were taken. Thus, she has deposed that she cannot say with certainty that it is their samples.

3.7. P.W.16-Murugesan is the Photographer, who took the photographs of the 161 statement of P.W.1. P.W.17-Lakshmi Balasubramaniam is the Deputy Director, Forensic Science Laboratory, Chennai. She is the author of the DNA result given under Ex.P17-DNA Report.

3.8. P.W.19-Badhrunnisa Begam, who is the Inspector of Police, All Women Police Station, Tiruppur, has registered Ex.P20 - First

Information Report under the statement of P.W.1 given under Ex.P2. P.W.20-Mani, the Assistant Commissioner of Police, is the Investigating Officer, who conducted the investigation and filed the final report. P.W.20 has deposed that the name of the appellant was not found in statement given under 164 of the Criminal Procedure Code and he has not examined the doctor, who obtained the blood samples from P.W.1 and the child.

3.9. The defence has examined the wife of the appellant viz., Ramla as D.W.1. She had deposed that the blood samples were in fact taken from P.W.1 and her son by the police.

4. Based upon the above materials both oral and documentary, the trial Court proceeded with the trial. After framing charges, the appellant was placed with the incriminating materials and questioned under Section 313-A of the Criminal Procedure Code. There was only mere denial by the appellant. The trial Court though found that most of the witnesses have turned hostile, convicted the appellant placing reliance upon the evidence of the official witnesses coupled with the scientific investigation done.

5. Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor. In tune with the provisions of the SC/ST(Prevention of Atrocities) Amendment Ordinance, 2014, we directed the learned Additional Public

Prosecutor to give intimation to the victim (PW1). She appeared in person before us and stated that she has no inclination to pursue the matter further. She has also stated that she is happily married since. However, we once again explained her rights to prosecute the case either by engaging the counsel of her choice or the one to be appointed by the orders of the Court. We have asked her to intimate her decision to the respondent-police.

6. When the matter is taken up for hearing, the learned Additional Public Prosecutor has produced a letter written by P.W.1, which indicates that she does not want to represent before the Court in any manner. The aforesaid letter is also taken on record and accordingly, the matter was proceeded with upon hearing the arguments of the learned counsel for the appellant and the learned Additional Public Prosecutor.

7. Submission of the appellant:

The learned counsel appearing for the appellant would submit that due safeguard has not been done while taking the sample. In fact samples were also taken from the wife viz., D.W.1 and the son of the appellant. Therefore, it cannot be stated that the comparison has been done with the actual DNA of the appellant. Similarly it is not known as to whether the other two FTA cards contained the samples of P.W.1 and the child(since deceased). The Doctor, who extracted the samples has not been examined for the reasons known to the prosecution. It was also brought to the Court after two days. Neither the photograph nor the signature of the appellant is found in the sample allegedly taken from him. All the witnesses have turned hostile. The trial Court itself acquitted the appellant under Section 5(I) read with 6 of Protection of Children from Sexual Offences Act, 2012. It was also held that the prosecution has failed to prove the Bike (M.O.1) was used for the commission of the offence. It would be unsafe for the trial Court to rely on the evidence of the official witnesses alone coupled with the DNA result. In support of his contention, the learned counsel has made reliance upon the following decisions.

- (i) Rajiv Singh Vs. State of Bihar and another ((2015) 16 Supreme Court Cases 369);
- (ii) Kamalanantha and others Vs. State of Tamil Nadu ((2005) 5 Supreme Court Cases 194); and
- (iii) Selvi and others Vs. State of Karnataka ((2010) 7 Supreme Court Cases 263.

8. Submissions on behalf of the State:

The learned Additional Public Prosecutor appearing for the State would submit that though the witnesses have turned hostile, the trial Court rightly convicted the appellant by

placing reliance upon the evidence adduced by the official witnesses along with DNA result. The appellant has not stated anything before the Court while answering the questions put under Section 313 of the Code of Criminal Procedure. Thus, the appeal has to be dismissed.

9. DISCUSSION:

9.1. As stated, witnesses have turned hostile except the official witnesses. The official witnesses are only a part of the investigation. P.W.1 has stated that she was in relationship with one Ramesh. This aspect has not been gone into by the trial Court. Therefore, the only other question to be considered is the DNA Report given under Ex.P17 series.

9.2. P.W.6 is the Doctor, who received the blood samples of P.W.1 and the child. Thereafter, he took the sample of the appellant and sent all the three back to the Court. He has also stated that he did not get anything in writing from the appellant. He has also deposed that he had done the exercise only for the first time in collecting the blood samples and sending it for DNA test.

9.3. The trial Court has rendered conviction by placing reliance upon the evidence of P.Ws.4 to 6, 9, 15, 18 and 20 along with the evidence of P.W.17. As stated, P.W.4 merely signs Ex.P5. All other witnesses are official witnesses. Therefore, in a case of such nature and in the absence of any supporting evidence coupled with the fact that when the Doctor, who sent the samples of P.W.1 and the child (since deceased), has not been examined and in the absence of any evidence to show that how it was done, we are not in a position to approve the conviction and sentence rendered. There is absolutely no evidence to show that the samples were taken from P.W.1 and her child. We may note that the defence has also examined D.W.1 to show that both her sample and that of her son were also taken. No explanation has been given by the prosecution for not examining the Doctor who allegedly took the samples of P.W.1 and her child. After all a scientific evidence is only meant to help and assist the Court to come to the correct conclusion, in support of the ocular evidence. If conviction is to be rested solely on the scientific evidence, then it must undergo a stricter scrutiny. In such view of the matter, we are inclined to set aside the conviction and sentence rendered by the trial Court.

10. Accordingly, the conviction and sentence imposed on the appellant-Rajangam in S.C.No.24 of 2015 on the file of the Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur, dated 27.08.2018 are set aside and the Criminal Appeal stands allowed. The appellant is acquitted of the

charges under Section 5(j)(ii) read with 6 of Protection of Children from Sexual Offences Act, 2012 and 3(1)(xii) read with 3(2)(v) of SC/ST (Prevention of Atrocities) Amendment Ordinance, 2014 and the fine amount if any paid, shall be refunded to him. The appellant-Rajangam is directed to be released forthwith, unless his custody is required in connection with any other case.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

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To

- 1.The Sessions Judge,
Magalir Neethimandram,
(Fast Track Mahila Court),
Tiruppur.
- 2.The Assistant Commissioner of Police,
South Range, Tiruppur. (Crime No.2/2015)
(All Women Police Station, South Tiruppur)
- 3.The Superintendent,
Central Prison, Coimbatore.
- 4.The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.K.M.Balaji, Advocate, S.R.No.75494

Criminal Appeal No.586 of 2018

NMI (CO)
GN(30/09/2019)

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