



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.07.2019

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CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL A (MD)No.419 of 2010

V.Muruganandam

... Appellant / Accused

Vs.

State, rep.by through
The Inspector of Police,
All Women Police Station,
Thiruverambur,
Trichy District.

... Respondent / Complainant

Prayer : This Criminal Appeal is filled under Section 374 of Criminal Procedure Code, to set aside the conviction and sentence imposed by the Sessions Court (Mahila Court), Trichirappalli in S.C No.182 of 2007 on 13.10.2010 and may acquit the appellant.

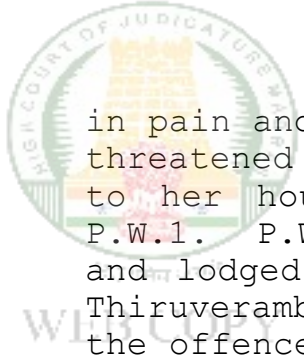
For Appellant : Mr.V.Ilanchezhian

For Respondent : Mrs.S.Bharathi,
Government Advocate (crl.side)

JUDGMENT

The appellant was convicted for the offence under Section 354 of IPC and sentenced to undergo two years rigorous imprisonment and levied with fine of Rs.2,000/- vide judgment dated 13.10.2010 in S.C No.182 of 2007 on the file of the learned Sessions Judge, Mahila Court, Tiruchirappalli. Questioning the same, this appeal has been filed.

2.According to the prosecution, the residence of the victim is opposite to the house of the accused. On 25.03.2007, at about 09.00 A.M, the accused called the victim girl to his house. The victim girl was said to have been studying in II Standard and aged about 7 years. The accused locked the door from behind and made the victim girl lie on the cot and removed her panties. He thereafter attempted to commit rape on her. The victim is said to have cried

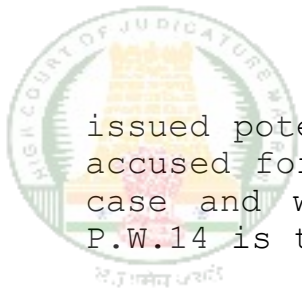


in pain and wanted to go to her mother. The accused is said to have threatened the victim from disclosing what happened. The victim ran to her house crying and told everything to her mother, namely, P.W.1. P.W.1 took up the matter with the local panchayat president and lodged Ex.P.1 complaint before the Inspector of Police, AWPS, Thiruverambur. The same was registered as Crime No.9 of 2007 for the offence under Section 376 IPC/Ex.P.8. The victim girl was sent for medical examination. The doctor who examined the victim girl stated that there were no external injuries and that the hymen was intact and that semen not found in the dresses. Ex.P5 is the accident register which contains these endorsements.

3.The investigation officer after recording the statements of the witnesses filed final report before the Judicial Magistrate No.6, Trichirappalli for the offence under Section 376 r/w 511 IPC. Cognizance of the offence was taken and the case was committed to the Sessions Court in PRC No.17 of 2007. Then, the case was made over to the Mahila Court/Sessions Judge, Trichirappalli. The accused denied the charge and claimed to be tried. The prosecution examined 14 witnesses and marked Exs.P1 to P12. On the side of the accused, no evidence was adduced. The learned trial court put all the incriminating circumstances to the accused and examined him under Section 313 of Cr.Pc. Finally by the impugned judgment, the accused was found guilty of the offence under Section 354 IPC. It is this conviction and sentence that is under challenge in this criminal appeal.

4.The learned counsel appearing for the appellant reiterated all the grounds set out in the memorandum of appeal and wanted this Court to set aside the impugned judgment. Per contra, the learned Government Advocate (crl.side) wanted this Court to sustain the impugned judgments of conviction and dismiss this appeal.

5.After carefully considering the rival contentions and perusing the evidence on record, I am of the view that the impugned judgment does not warrant any interference. P.W.1 is the mother of the victim girl. P.W.2 is the father. The parents have clearly deposed in support of the prosecution case. Though P.W.3 turned hostile, he did depose that one year back, there was a hullabaloo in the house of P.W.1 and that when he enquired it was stated that the daughter of P.W1 was raped. P.W.4 is the grandfather of the victim girl but he turned hostile. But, he stated that he had advised P.W 1 and 2 not to blow up the matter and he also stated that the panchayat was convened but then he was not aware of what happened thereafter. P.W.5 is the panchayat board president and he turned hostile. P.W.6 was the vice president and he also turned hostile. P.W.7 also turned hostile. P.W.8 also turned hostile. P.W.9 was the doctor who examined the victim girl. She had issued Ex.P5 accident register extract. P.W.10 was working as a Constable during the relevant time and it was she who produced the victim girl and her mother before the learned Judicial Magistrate No.6, Trichy and took the victim to Trichy Government Hospital. P.W.11 had



issued potential certificate for the accused. P.W.12 had taken the accused for medical examination. P.W.13 registered the FIR in this case and who conducted the investigation and filed final report. P.W.14 is the victim girl.

6. This Court went through the deposition of the victim girl given in the court. The victim girl had clearly deposed as to what happened. She had clearly stated that after making her lie on the cot and removing her panties, the accused/appellant had placed his private part on hers. In fact, her testimony was also recorded. Her testimony could not be shaken in the cross examination. It is true that even though the occurrence had taken place on 25.03.2007, FIR was lodged only a few days later. But, in this case, the delay has been adequately explained. The matter was taken to the local panchayat. In fact, in the local panchayat, the accused had fallen at the feet of P.W.1 and P.W.2. When he was questioned under section 313 of Cr.PC, the accused admitted that it is true that he fell at the feet of P.W.1 and P.W.2 but claimed that the other allegations are false. It is unfortunate that even the panchayat president and the vice president namely, Sivaji Ganesan and Arulraj denied that there was a panchayat. When the accused himself stated that there was a panchayat, it is strange that the panchayat president and vice president deposed that no such panchayat was conducted. The defence of the accused is that the father of P.W.2 namely, Sappani had developed great affection for the father of the accused and that he had also settled half acre of the land in favour of the father of the accused. According to the accused, this was the motive for P.W.1 and 2 to falsely implicate him.

7. I am not impressed with this contention. Even if it is true that there was enmity between the family of the victim girl and the family of the accused, still, no one will go to the extent of staking the honour of their girl child. In this case, the girl child in question had clearly spoken about the crime committed by the appellant. The testimony of the child is certainly believable and credible. The court below was right in coming to the conclusion that the prosecution has proved its case beyond reasonable doubt. I find that the judgment of the court below does not warrant any interference. There is no merit in this appeal.

8. At this stage, learned counsel for the appellant prays for showing some leniency in the matter of punishment. I am of the view that considering the sheer lapse of time and the fact that the victim girl did not suffer any external injury and the fact that the accused had not come under any adverse notice thereafter, the sentence of imprisonment imposed on the appellant can be reduced and it is accordingly reduced from two years rigorous imprisonment to one year rigorous imprisonment. The fine and conviction imposed on the appellant is confirmed. The trial court shall take steps to enforce this judgment and commit the accused/appellant in prison to undergo one year rigorous imprisonment.



9.The appeal is partly allowed.

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Sd/-

Assistant Registrar (CS-II)

Sub Assistant Registrar(CS)

To

- 1.The Sessions Judge (Mahila Court), Trichirappalli.
- 2.The The Inspector of Police,
All Women Police Station,
Thiruverambur, Trichy District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Section Officer, (2 Copies)
Criminal Section (Records),
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.V.ILLANCHEZIAN, Advocate (SR-74955[F] dated 12/07/2019

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