

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 08.12.2020

Delivered on : 21.12.2020

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

Criminal Appeal No.129 of 2018

Ramesh ..Appellant/Accused

Vs.

State represented by
The Inspector of Police,
Ooty Rural Circle Police Station,
Udhagamandalam, The Nilgiris District.
(Crime No.144 of 2011) ..Respondent/complainant

Criminal Appeal is filed under Section 374 of Criminal Procedure Code to set aside the judgment passed in S.C.No.7/2012 dated 29.01.2014 on the file of Fast Track Mahila Court, Udagamandalam District at Ooty.

For Appellant : Mr.T.Muruganantham

For respondent : Mr.K.Prabhakar,
Additional Public Prosecutor

JUDGMENT

M.M.SUNDRESH, J.

The appellant, who was the sole accused, stood charged and convicted for the offence under Section 376 (2) IPC and sentenced to undergo life imprisonment and pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for a period of six months in S.C.No.7/2012 dated 29.01.2014 on the file of Fast Track Mahila Court, Udagamandalam District at Ooty. To set aside the aforesaid judgment and conviction rendered by the trial Court, the appellant has come before us.

2.Prosecution's version:

2.1.The appellant was working as a wage worker in Chamraj Estate and so also P.W.-Javani, who is the mother of the victim girl-Pooja along with her husband -Sanjay. P.W.1 along with her

family consisting of her husband and the victim girl-Pooja, aged about four years and the appellant were residing at the estate quarters.

2.2.On 10.10.2011 at about 8.00p.m., having found that the victim girl was missing, P.W.1 the mother started searching. She, heard her cry from the common toilet situated opposite to her house. She saw the appellant running away the said place. Upon reaching that place, P.W.1 found injuries on the back of the head and the private part of the victim girl. The other witnesses viz., P.W.2-Chitharaj and P.W.17-Rajappa also saw the appellant running away from that place. The witnesses also saw the victim girl with injuries.

2.3.The victim girl was taken to the Estate Hospital by P.W.6 - Ravi through the estate Ambulance. Thereafter, she was taken to the Government Hospital, Ooty, and from there to the Government Hospital, Coimbatore.

2.4.On the next day i.e., on 11.10.2011, the victim girl was examined by P.W.15-Dr.Buvana, Casualty Medical Doctor. She then referred the victim girl to the Trauma Ward. Ex.P17 is the Accident Register issued by P.W.15.

2.5.P.W.16-Thiru P.G.Raju, the Sub Inspector of Police received the information from the Government Hospital and received the complaint from P.W.1 and in the presence of P.W.9-Parimalraj, who was working as Driver in the estate. P.W.9 translated the version of P.W.1 as he was conversant with the Hindi and since P.W.1 did not know Tamil. P.W.16 registered a case in Crime No.144 of 2011 for the offence under Section 376 of IPC against the appellant. The complaint given under Ex.P18-First Information Report reached the Court at about 10.30p.m., on 11.10.2011.

2.6.P.W.19 -Velusamy, who is the Investigating Officer, took up the investigation and arrested the appellant on the same day at about 6.30 p.m. Thereafter, he recorded the confession statement of the Appellant and recovered the Material Objects in the presence of witnesses P.W.5 Muniyandi and another. P.W.13-Dr.Vathsaladevi, who is an Assistant Professor in Gynecology Department, Coimbatore Medical College and Hospital, took the swab and issued Ex.P13-Accident Register. A clean copy of Ex.P13 has been marked as Ex.P14- typed copy of the Accident Register with opinion. After completing the investigation, P.W.19 filed the Final Report.

3.Before the trial Court, the prosecution has examined 19 witnesses while the appellant examined his wife as the defence witness to show that on the date of incident, he was at his home

with her. The prosecution has marked Exs.P1 to P33 and M.Os.1 to 11 while on behalf of the appellant, Ex.D1 has been marked, which is the letter sent by the wife of the appellant to the Court seeking his release as he was languishing for about 21 months.

4.The trial Court framed a charge for the offence punishable under Section 376 of Indian Penal Code(IPC). The incriminating materials were examined and placed before the appellant. The appellant denied the charge as well as materials produced. The trial Court convicted and sentenced the appellant for the offence punishable under Section 376(2) IPC. Challenging the same, the present criminal appeal by the appellant.

5.WITNESSES, DOCUMENTS AND MATERIAL OBJECTS:-

5.1.P.W.1 is the mother of the victim and also the author of the complaint Ex.P1 and which is reduced in writing under Ex.P18-First Information Report. She has stated the entire episode. She was an illiterate person not knowing the local language. She has also spoken in the presence of the other witnesses about the condition of the victim girl. It is her further evidence that in the bathroom she only saw the victim girl crying while the appellant was running away.

5.2.P.W.2 is the neighbour, who was also working in the estate apart from residing in the quarters. He also deposed that he saw the appellant running from the bathroom.

5.3.P.W.3 is the witness, who signed the Observation Mahazar. P.W.5 speaks about the arrest and recovery. The recovery would involve the material objects, such as the dress of the appellant and that of the victim girl.

5.4.P.W.6 is the Ambulance Driver, who took P.W1 and the victim girl to the hospital.

5.5.P.W.7-Dr.Naveen Senthilkumar is the Doctor at Government Hospital, Ooty, who referred the victim to the Government hospital at Coimbatore.

5.6.P.w.8-Ajeeth Mathew is the Estate Manager and P.W.9-Parimalraj-Estate Driver who has deposed in his evidence that while he was in the hospital, he translated the oral complaint of P.W.1, who does not know the Tamil language.

5.7.P.W.11- Dr.Balasubramaniam is the Doctor, who took the blood samples under Ex.P9 on the basis of Ex.P8-letter given by the judicial Magistrate, Udhagamandalam.

5.8.P.W.12-Dr Karthikeyan is another Doctor, who examined the appellant and took the samples from him on the basis of the

letter-Ex.P10 sent by the Judicial Magistrate, Udhagamandalam to conduct Medical test and to preserve the material evidence and issued Exs.P11 and P12-certificates evidencing the fact that the appellant was capable of committing the offence.

5.9.P.W.13-Dr.Vathsaladevi, is the Doctor, who examined the Victim girl and found the rupture in her private part apart from the blood clot. She is the author of Exs.P13 and P14 indicating that the victim girl was sexually assaulted.

5.10.P.W.15-Dr.Buvana is another Doctor working in the Coimbatore Medical College Hospital and treated the victim girl. This witness speaks about the statement made by P.W.1 to her.

5.11.P.W.16 is the Police Officer, who registered the First Information Report under Ex.P18 upon taking note of the translation made by P.W.9 from P.W.1.

5.12.P.W.17 is another independent witness, who was also an employee of the estate residing there, has deposed about having seen the appellant running away and thereafter the condition of the victim girl.

5.13.P.W.18-Mariaselvi Rosaline is the Assistant Director, working in the Forensic Science Department. It is she, who issued Exs.P.20-Chemical Analysis Report and P21-Serological Report.

5.14.P.W.19-Velusamy is the Investigating Officer, who speaks about Ex.P19 to P26 and the nature of Serology Report of the victim girl, appellant and their biological reports.

5.15.M.Os 1 to 11 consist of Blood stained Dresses of the appellant and the victim girl. Obviously, the bloodstains tallied with the scientific evidence. The trial Court, by accepting the evidence of P.Ws.12 and 17, accordingly convicted the appellant for the maximum punishment of life imprisonment. Reliance has been made on the evidence of P.Ws.8 and 13 along with the recoveries made while rejecting the evidence adduced by D.W.1 along with Ex.D.1. Challenging the same, the present appeal has been filed.

6.SUBMISSIONS :-

6.1.The learned counsel appearing for the appellant would submit that there is a delay in the complaint being given. There are material contradiction in the evidence adduced by the prosecution. P.W.1 did not know the local language and therefore, it could be possible that the translation would have been done by P.W.16-Sub Inspector of Police. P.W.1 merely

states that there was no one in the bathroom with the victim girl and therefore, in the absence of the appellant in the place of occurrence found present, the trial Court has committed an error and rendered conviction. For the reasons known, the victim girl has not been examined by the prosecution. The non examination of the victim followed by the treatment given to her private parts by the Doctors on the earlier occasion would create serious doubt on the version of the prosecution. It could have been possible that the victim girl must have got injured while playing around as it was a forest area. In any case, the conviction rendered by the trial Court sentencing the appellant for a maximum period of life imprisonment is too harsh and therefore, doctrine of proportionality and mitigating circumstances ought to have been considered.

6.2. The learned Additional Public Prosecutor appearing for the State submitted that there are witnesses, who speak about the appellant running away from the place. The Doctors have clearly deposed in tune with the documents marked on the assault committed on the victim girl. There is no need to examine her as she was too young to depose while even P.W.1 was not able to speak in local language, the victim girl cannot be expected to do so. P.W.9 has translated the version of the P.W.1. There was no enmity between P.W.1 and the appellant and so also the other witnesses, who were the co-workers. Even the Assistant Director, Regional Forensic Science Laboratory, Coimbatore has been deposed as P.W.18. The delay has been properly explained. The victim girl has been taken to the estate hospital and thereafter, Government Hospital, Ooty and later, Coimbatore Medical College Hospital in view of the nature of the injuries suffered by her. The evidence of D.W.1 was rightly eschewed by the trial Court and she did not specifically say at the time of occurrence the appellant was with her. As all the witnesses have clearly spoken about the complicity of the appellant and considering the nature of the offence committed, no indulgence is shown by this Court.

7.DISCUSSION:-

7.1. Admittedly, the appellant and the family of P.W.1 were residing in the quarters provided by the Estate Management. So also P.Ws.2 and 17. We do not find any contradiction between the evidence of P.W.1 and others. P.W.1 has clearly state that she heard the crying of the victim girl and saw the appellant running. It is the specific case that the victim girl was found in the bathroom while the appellant was running. It is nobody's case that the appellant was found inside the bathroom. As rightly submitted by the learned Additional Public Prosecutor, there is no motive in the evidence adduced by all the witnesses against the appellant. The witnesses would include not only the workmen residing there but also the

Manager and the Ambulance Driver. After the occurrence, the victim girl was taken to the different hospitals. This was precisely for the reason that she was suffering from injuries from her internal parts and that is the reason why there is a delay in giving complaint and no treatment was given at the earliest point of time except the external injuries suffered. There is nothing to discredit the evidence adduced by PW5 with respect to the arrest and recovery. The mere non examination of the victim girl cannot be termed as fatal.

7.2.The prosecution witnesses are in consonance with the exhibits marked including the reports furnished. The Doctors also spoke about the fact that P.W.1 has narrated the entire occurrence. The evidence of the Doctor is also to the effect that there is a rupture in the private part of the victim girl and blood clot was found. Merely because the report did not indicate the presence of sperm one cannot exonerate the accused from the offence charged. The accident registers under Exs.P13 and P17 also would exemplify the occurrence.

7.3.Insofar as the evidence adduced by the D.W.1 is concerned, it actually goes against the appellant. She has deposed that there was no prior enmity and motive behind the complaint. She has given Ex.D1 letter two years after the alleged occurrence. Thus, the defence of alibi set up was rightly rejected by the trial Court.

7.4.Having come to the conclusion that the appellant has committed the offence, the incidental question to be considered by us is the quantum of punishment. The appellant is an illiterate person. He was having a tender aged child at the relevant point of time. It has been informed by the

learned Additional Public Prosecutor that the conduct of the appellant in prison is good. The appellant was so poor and hence, he could not make an attempt to come out of the custody during trial. Even during the pendency of the appeal, he has been in incarceration through out.

7.5.The learned Additional Public Prosecutor further stated that the appellant's wife has also left him, having chosen a new partner. The victim girl and her family also left the estate as they hail from another State. Section 376(2) IPC as it stood prior to the amendment made through Act 13 of 2013 with effect from 03.02.2013 provides for the punishment with rigorous imprisonment for the term which is not less than 10 years and which may extend upto life and also liable to pay fine when an offence is committed on a woman under twelve years of age. Thus considering the abovesaid provision, which provides for a punishment above the minimum punishment, giving

discretion to the Court and in the light of our discussion made, we are inclined to modify the quantum of punishment of life imprisonment to that of twelve years rigorous imprisonment.

8. CONCLUSION:-

Accordingly, the conviction and sentence rendered by the trial Court in S.C.No.7/2012 dated 29.01.2014 on the file of Fast Track Mahila Court, Udagamandalam District at Ooty, stands modified and the appellant shall undergo twelve years of rigorous imprisonment. The criminal appeal is allowed in part.

Sd/-

Assistant Registrar

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To

Sub Assistant Registrar

1. The Sessions Judge, Full Additional Charge(FTC)
Mahila Court, Udhagamandalam District, Ooty.
2. The Inspector of Police,
Ooty Rural Circle Police Station,
Udhagamandalam, The Nilgiris District.
3. The Superintendent,
Central Prison, Coimbatore.
4. The Public Prosecutor,
High Court, Chennai.

+1cc to M/s.T.Muruganantham, Advocate, S.R.No.42721

Pre-delivery Judgment in
Criminal Appeal No.129 of 2018

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rv(07/01/2021)

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