

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.03.2020

PRONOUNCED ON : 11.03.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

Crl.A.No.512 of 2013

Arjunan

...

Appellant/Accused

Vs.

State rep.by

Deputy Superintendent of Police,
(Omalur Sub Division)

Theevattippatti Police Station,
Salem District.

(Cr.No.102 of 2010)

...

Respondent /Complainant

Prayer:- This Criminal Appeal has been filed under Section 374 of Cr.P.C to call for the records and set aside the conviction imposed on the appellant in S.C.No.203 of 2012 dated 20.06.2013 by the Learned Principal Sessions Judge, Salem by allowing this appeal.

For Appellant

: Mr.F.Wellington

for Mr.K.Selvakumaraswami

For Respondent

: Mr.R.Ravichandran (Crl.side)

Government Advocate

JUDGMENT

The appeal is directed against the judgment passed by the Principal Sessions Court, Salem, dated 20.06.2013 in S.C.No.203 of 2012 convicting the appellant/accused under Section 376(1) IPC and sentencing him to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.1000/- in default to undergo Rigorous Imprisonment for one month.

2.The accused has been charge sheeted by the respondent police for the offences under Section 376(1) IPC and Section 3(2) (v) SC / ST (Prevention of Atrocities) Act, 1989.

3.Briefly stated, according to the prosecution, the accused on 19.02.2010 at about 11.00 a.m. committed the rape of the complainant's daughter against her will and also, as the accused belongs to Vanniar community and the victim girl belongs to Adi Dravidar community, according to the prosecution, the accused has committed the offences punishable under Sections 376 (1) IPC and Section 3(2) (v) SC / ST (Prevention of Atrocities) Act, 1989.

4.To sustain the prosecution case, PWs 1 to 10 were examined and Exs.P1 to P19 were marked and M.Os 1 to 8 were marked. After the conclusion of the prosecution evidence, the accused was examined under Section 313 Cr.P.C qua the incriminating evidence tendered against him by the prosecution witnesses and he had denied the same. On the side of the accused, no oral and documentary evidence has been adduced and no M.O has been marked.

5. On a consideration of the materials placed on record, both oral and documentary, the trial Court was pleased to convict the accused under Section 376(1) IPC and sentenced him to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.1000/- in default to undergo Rigorous Imprisonment for one month and acquitted him of the offence under Section 3(2) (v) SC / ST (prevention of Atrocities) Act, 1989. Impugning the same, the appeal has been preferred by the accused.

6. From the materials available on record, it is found that the victim girl and the accused were known to each other prior to the occurrence and it is noted that after the commission of offence, PW1 Lakshmi, the mother of the victim girl, on returning home in the evening hours and on seeing the victim girl crying, ascertained the occurrence from the victim girl. According to the prosecution, the complaint has been lodged by the mother of the victim girl, marked as Ex.P1, immediately and thereafter, it is found that the victim girl was subjected to medical examination and according to the complainant, her daughter viz., victim girl was only aged 15 years at the time of the occurrence and based on the complaint Ex.P1, it is found that FIR had been registered by the respondent police marked as Ex.P13 and the same was forwarded to the competent magistrate Court and thereafter, it is found that the I.O in charge of the case had

examined the various witnesses and also arrested the accused and subjected him to medical examination through the Court of magistrate to ascertain his potency as well as the age of the accused and also after obtaining the community certificate belonging to the victim girl and the accused and concluding the investigation, laid the charge sheet against the accused as aforesaid.

7.It is mainly contended by the accused counsel that the offence attributed against the accused would not fall under the definition of rape as contemplated under IPC and according to him, it is only a consensual sex between the victim girl and the accused and therefore, according to him, the trial Court had erred in holding that the accused had committed the rape of the victim. In this connection, he would rely upon the evidence of the victim girl examined as PW5 and by way of the same, according to him, the victim girl had admitted during the course of evidence that she had voluntary sex with the accused and further, according to the counsel for the accused/appellant, the medical officer, who had examined the victim girl, though she had deposed that the hymen had been not remained intact and torn and the vagina admitted one finger, according to him, the medical officer has not noted any external injuries in the body of the victim girl and also admitted that she has not noted the presence of spermatozoa from the liquid recovered

from the body of the victim and on the abovesaid factors, according to the accused counsel, the trial Court should have held that the victim girl and the accused had only consensual sex and the victim girl had not been raped by him against her will and consent and therefore, according to him, the conviction and sentence imposed on the accused by the trial Court is liable to be set aside.

8.In this connection, it is the case of the prosecution that the victim girl was aged only 15 years at the time of the occurrence. The medical Officer, who had examined the victim girl for ascertaining her age, had certified that the victim girl was aged between 15 to 16 years at the time of the occurrence and the age certificate given by him has been marked as Ex.P12, the certificate of age of the accused has been marked as Ex.P11 and potency certificate of the accused has been marked as Ex.P10, the concerned medical officer has been examined as PW6.

9.According to the accused counsel, the age of the victim girl has been ascertained based upon the physical and radiological examination of the medical officer and it is put forth by him that the age of the accused could be determined only based upon the matriculation and equivalent certificate of the victim girl or the birth certificate issued by the Corporation or Municipal authority or Panchayat and only in the absence

of the abovesaid documents, the prosecution would be entitled to go for physical and radiological examination and in this connection, he would rely upon the decision of the apex Court **dated 01.07.2013 rendered in Criminal Appeal No.1209 of 2010 (Jarnail Singh Vs.State of Haryana)**. Further, according to the accused counsel, the victim girl has been cross examined as regards her schooling. However, on a perusal of the evidence adduced by the victim girl during the course of cross examination, it is found that the victim girl has denied that she has studied 6th standard at Danishpet and 7th standard at Thirunelveli. Other than the abovesaid suggestion, there is no other material to hold safely that the victim girl had undergone schooling as sought to be projected by the accused counsel. Further, the victim girl has also not been established to have undergone any schooling course or been issued with the birth certificate by the Corporation and Municipal authority or Panchayat concerned and therefore, when there is no material as such to hold that the prosecution or the victim girl is possessed of the school certificate or the birth certificate given by the Municipal authority pointing to the age of the victim girl, in such view of the matter, to say that the prosecution is not entitled to go for physical and radiological examination to determine the age of the victim girl as contended by the counsel, as such, cannot be countenanced.

10.As above pointed out, immediately after the commission of offence, the complaint had been lodged by the mother of the victim girl PW1 and further, PW2 Ganesan has also noted the accused leaving the residence of the victim girl, while he was returning home at 11.00 am. on 19.02.2010 and therefore, it is seen that the presence of the accused at the relevant point of time at the residence of the victim girl, when she was alone, has been spoken to by PW2 and PW2 is the brother of the husband of PW1.

11.In so far as the proof of the evidence of rape is concerned, as rightly contended by the Government Advocate, the evidence of the victim girl is entitled to great weight and when there exist no situation which caused shadow of doubt over the veracity of her testimony, the trial Court was justified in upholding her testimony and convicting the accused for the offence under Section 376 IPC. In the light of the above proposition of law, when it is seen that the victim girl examined as PW5 had tendered clear evidence that it is only the accused, who had committed the offence of rape on the date of the occurrence and also threatened her with dire consequences if she disclosed the same to any one, the victim girl being aged only 15 years at the relevant point of time, left with no other alternative, is found to have disclosed the same to her mother and as pointed out, the complaint was lodged immediately

against the accused for the commission of offences committed by him. Therefore, when the accused had not pointed out any material during the course of cross examination of the victim girl in support of his defence version and on the other hand, when the evidence of the victim girl is found to be acceptable in all aspects and furthermore, when it is seen that the victim girl and the accused are known to each other even prior to the occurrence and accordingly, the accused had gained access to her residence, when the victim girl was alone on the date of the occurrence, particularly, when her parents had gone out for work, in such view of the matter, the trial Court is found to be justified in relying upon the evidence of the victim girl for sustaining the conviction of the accused under Section 376 IPC.

12.The mere fact that there was no external injuries in the private parts of the victim girl by itself would not be conclusive of the fact that she was not subjected to rape or lead to the conclusion that there has been only consensual sex between the victim girl and the accused. As far as the above aspect of the matter, the medical officer had also deposed that there is possibility of the victim girl not sustaining injuries, when she being subjected to rape against her will and accordingly, merely because, no external injuries are noted in the private parts of the victim girl, it cannot be held that the accused has not committed the offence of rape of

the victim girl against her consent or will. Similarly, the absence of semen in the liquid gathered from the private parts of the victim girl or in the clothes seized from the victim girl by itself would not indicate that the victim girl had not been subjected to rape.

13.As above pointed out, when the victim girl is found to be aged about 15 to 16 years at the time of occurrence and when as per the definition of rape under Section 375 IPC, if the victim girl is under 18 years of age, when the accused has sexual intercourse with her without her consent, the same would also amount to rape and further more, when the penetration of his penis into the vagina would be considered sufficient for the commission of rape, in the light of the abovesaid factors, the mere absence of injuries and semen as sought to be projected by the accused counsel, it cannot be held that the victim girl had not been subjected to forcible sex by the accused and that they had only consensual sex as sought to be projected by the accused counsel.

14.The accused counsel has also made submission that the neighbours of the victim girl had not been examined and if really the accused had committed the offence, the victim girl would have raised alarm and the abovesaid factors had not been noted by the trial Court. However, as rightly determined by the trial Court, inasmuch as the victim

girl and the accused are known to each other prior to the occurrence and when the victim girl has deposed clearly that the accused came to her house, when she was alone and locked the door and had intercourse with her and also threatened her with dire consequences, if she discloses to others and accordingly, the victim girl being aged only 15 years at the relevant point of time, in such view of the matter, considering the abovesaid factors in toto, when the evidence of victim girl solely is sufficient to convict the accused provided her evidence is trustworthy and reliable and in so far as this case is concerned, as above pointed out, when the evidence of victim girl is found to be wholly reliable and acceptable and nothing has been pointed out by the accused to discredit her testimony and as above pointed out, the complaint had been immediately lodged against the accused as having committed the offence and when there is nothing projected on the part of the accused to prove that the victim girl is speaking falsehood, when the presence of the accused at the residence of the accused victim girl had also been noted by PW2, in all, coupled with the evidence of medical officer examined in this case, the trial Court is wholly justified in holding that the accused is guilty of the commission of offence of rape under Section 376 of IPC and rightly, sentenced him to undergo Rigorous Imprisonment for seven years and also pay a fine of Rs.1000/-.

15. In the light of the above discussions, the trial Court has considered the materials placed on record both oral and documentary in the right perspective and also appreciated the principles of law qua the proof of rape in the correct approach as outlined by the various authorities of the apex Court, in all, I do not find any infirmity or error warranting interference with the conviction and sentence imposed on the accused by the trial Court.

16. In conclusion, the criminal appeal is dismissed and the trial Court is directed to secure the presence of the accused/appellant and commit him to the prison to serve the rest of the sentence imposed on him as per law.

Index : Yes / No
Internet : Yes / No
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11.03.2020

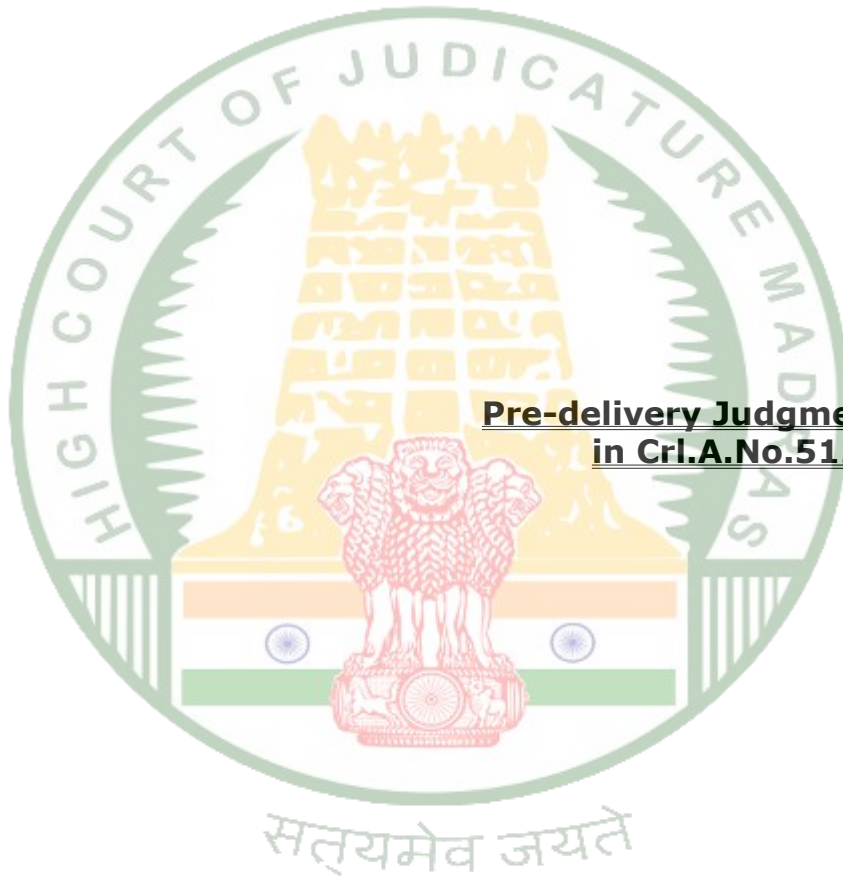
To

State rep.by
The Assistant Commissioner of Police,
All Women Police Station (Centre),
Coimbatore. (Cr.No.38 of 2007)

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Crl.A.No.512 of 2013

T.RAVINDRAN, J.
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Pre-delivery Judgment made
in Crl.A.No.512 of 2013

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