

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.12.2020

Pronounced on : 30.12.2020

CORAM

THE HON'BLE JUSTICE MR.G.CHANDRASEKHARAN

CRL.A.No.36 of 2018

Saroja

..Appellant

.Vs.

State through the
Inspector of Police,
All Women Police Station,
Tirupattur.
(Crime No.12 of 2011)

..Respondent

Prayer: This Criminal Appeal is filed Under Section 374(2) of Cr.Pc.to call for the records and set aside the Judgment and conviction imposed by the Hon'ble Assistant Sessions Judge, Tirupattur, Vellore District in S.C.No.140 of 2012 dated 07.02.2013 against the appellant/accused.

For appellant : Mr.S. Mohamed Ansar

For Respondents : Mr.K.Madhan
Government Advocate

JUDGMENT

1. This Criminal Appeal is filed against the Judgment of conviction recorded and sentence imposed against the appellant by the Assistant Sessions Judge, Tirupattur, Vellore District in S.C.No.140 of 2012 dated 07.02.2013.

2. The respondent police has laid a final report against the first accused u/s 366(A) 376, 323 and 506(ii) IPC and u/s 4,5, 7 of Immoral Traffic Prevention Act 1956 and against the second accused who is the appellant, herein u/s 366(A) 376 r/w 109, 323 and 506(ii) and u/s 4,5, 7 of Immoral Traffic Prevention Act 1956.

3. After the accused entered appearance, they were furnished with the copies of the records filed along with the final report free of cost u/s 207 Cr.P.C and the accused were questioned about the offences alleged against them. Since, there were materials to frame charges u/s 366(A), 323, 376, 506(ii) of I.P.C and u/s 4,5 and 7 of Immoral Traffic Prevention Act, 1976 against the first accused and u/s u/s 366(A), 323, 376 r/w 109 , 506(ii) of I.P.C and u/s 4,5 and 7 of Immoral Traffic Prevention Act, 1976 against the second accused, the charges were framed against them as above. When the accused were questioned about the charges framed against them, they denied the charges and claimed to be tried. During trial, the prosecution examined P.W.1 to PW 11 witnesses and marked Exs.P.1 to 12 documents. There was no evidence on the side of the defence.

4. The case of the prosecution as seen from the evidence of the prosecution witnesses, in brief, is as follows:

P.W.1 minor girl Priya is the defacto complainant in this case. She was living with his father and her siblings in Coimbatore. The accused persons were living opposite to defacto complainant's house. Her father was working as a mason, used to go to work in the morning and return only in the evening. Therefore, he would leave P.W.1 and her siblings in the house of the accused. They would come back to the house after her father return from the work. Her mother is not living with her. The accused persons promised her to look after well and induced her to come along with them. Believing the words of the accused, she came to Jalorpettai along with them in train. Accused took her to Thenali, where the first wife of the first accused was living. Accused compelled and threatened her to have sexual intercourse with many persons. When she refused, they threatened her with knife. With no other option and afraid of their threat, P.W.1 had to yield to their dictates. Then she was brought to Chennai and she was married to one person to live with him for one day for a cash consideration of Rs.1000/-.

5. The accused got money from the persons who had sex with the PW1 and used to keep the money with them for their living. P.W.1 was taken to many places and compelled to have sexual intercourse with many persons for cash consideration. Whenever she refuses, they threatened her with knife. One day she was taken to Elagiri hills and the accused tried to sell her. First accused tried to rape her and when she resisted him, second accused caught her hands and facilitated the first accused to rape her. On 03.09.2011, when the first accused tried to commit rape on her she escaped and gave Ex.P.1 complaint with a help of P.W.2. She suffered injury in her left hand caused by the 2nd accused. She was admitted to hospital and given treatment and she identified the accused. P.W.2 was living in JBM Nagar,

Tirupattur. On 03.09.2011 at about 7.00 a.m, he saw P.W.1 was coming running and when he enquired her along with some other persons, she told her that an old man was trying to rape her. When A1 was questioned, he told that P.W.1 was living with him for the past 3 years. P.W.1 told them that A1 had sexual intercourse with her against her wish and compelled her to have sexual relationship with many others.

6. P.W.9 was working as Sub Inspector of Police in Tirupattur police station. On 03.09.2011 P.W.1 Priya came to police station and gave oral complaint and that was recorded. The complaint is Ex.P.1. On the basis of this complaint, she registered a case in Crime No. 12 of 2011 u/s 366(A), 376, 376 r/w 109 323, 506(ii) and u/s 4,5, 7 of Immoral Traffic Prevention Act 1956 against the accused and placed the case records to the Inspector. F.I.R is Ex.P.11

7. P.W.10 was the Inspector of Police, Thirupattur, All women Police Station. She took up the further investigation in this case. Visited the place of occurrence and prepared observation Magazar in the presence of P.W.3 Govindaraj. He also prepared Ex.P.12 Rough sketch. On being identified by P.W.1, she arrested the accused at 17:30 hours at Jolarpettai Railway Station. The accused gave voluntary confessional statement and she recorded their confessional statement. She sent P.W.1 to Government Hospital for medical examination. P.W.1 was examined by P.W.5 Dr. Parameshwari. She found that P.W.1 attained puberty and she had well nourished body. Her hymen was not intact. Vaginal swab was taken for analysis. Her vagina allowed two fingers. She sent her radiological examination for determining her Age. Ex.P.3 is her report for medical examination. P.W.7 Dr.S.K.P. Kumaran conducted Radiological examination for P.W.1 on 04.01.2011 at Vellore Government Hospital. On examination he found that P.W.1's age would be above 17 years and below 18 years and he issued EX.P.6 certificate.

8. P.W.10 had also sent the first accused Lakshmanan to Medical Examination. P.W.6 examined the first accused at 9:30 a.m on 03.09.2011. He was asked to conduct potency test on the first accused. On his examination, PW6 found that the first accused was matured and a well nourished male. He had hair in armpit and other places. His reproductive organ was found in good condition. On medical examination he found that the first accused has potency and he is fit to have sexual relationship. His certificate is Ex.P.4. In continuation of her investigation, PW10 requested the learned Judicial Magistrate to arrange for recording the statement of P.W.1. As per the direction of the learned Judicial Magistrate P.W.8 examined P.W.1 and recorded her statement u/s 164 of Cr.P.c on 21.03.2011 at 4:30 p.m. The statement is Ex.P.9. On completing the investigation, P.W.10

filed final report against the accused persons u/s 366(A), 323, 506(ii), 377,376 read with 109 and u/s 4,5 of Immoral Traffic Prevention Act.

9.The accused were questioned with regard to the incriminating evidence found in the evidence of prosecution witness u/s 313 of Cr.P.C. The accused denied the evidences as false and did not examine any witnesses or produced any documents in support of their case.

10. On considering the oral and documentary evidence, the learned trial Judge found the first accused guilty u/s 366 A, 376, 323 and 506(ii) of I.P.C and u/s 4,5 and 7 of Immoral Traffic prevention Act and sentenced the accused was found guilty u/s 366(A).376 r/w 109,323, 506(ii) and Section 4,5, and 7 of Immoral Traffic Prevention Act 1956 and sentenced the accused persons to undergo 3 years Rigorous imprisonment u/s 366 A of I.P.C and 3 months simple imprisonment u/s 323 of I.P.C and one year Rigorous imprisonment u/s 506(ii) of I.P.C and sentenced to undergo 7 years rigorous imprisonment under sections 4,5 and 7 of immoral traffic Act and a fine of Rs.1,000/- u/s 7 of Immoral Traffic Prevention Act in addition to the Rigorous imprisonment in default to pay fine to undergo simple imprisonment for 3 months. In addition the first accused was also sentenced to undergo 10 years Rigorous imprisonment u/s 376 of I.P.C and to pay a fine of Rs.2,000/-. In default to pay fine to undergo simple imprisonment for 3 months and the second accused was sentenced to undergo 10 years Rigorous imprisonment u/s 376 r/w 109 of I.P.C and to pay a fine of Rs.2,000/-. In default to pay fine to undergo simple imprisonment for 3 months. Against the conviction recorded and sentence imposed the Judgment of Trial Court and the second accused has filed this Criminal appeal.

11. The learned counsel for the petitioner submitted that except the interested witness P.W.1, there is no independent witness examined to corroborate the evidence of P.W.1. When the Doctor had not found any injury on the person of P.W.1 either with regard to the sexual abuse or other kind of physical abuse or torture,the non-examination of independent witness is fatal to the case of prosecution. It is seen from the evidence of PW1 that the accused induced her to have sexual intercourse with many persons. In the absence of any injuries or other medical evidence to show the forced sexual intercourse, it cannot be decided with certainty that the first accused had committed rape on her and she was compelled by the accused to have sexual intercourse with other persons. The age of the victim is not conclusively proved. Radiological examination will not correctly establish the age of P.W.1. Therefore, convicting the accused under the presumption that P.W.1 was aged only 15 years

at the time of the incident is not correct. So saying, the learned counsel for the appellant prayed for setting aside the Judgment of the Learned Sessions Judge and for acquittal of the accused.

12. The learned additional public prosecutor countered the argument of the learned counsel for the appellant on the grounds that taking advantage of the age of the victim girl, the accused induced her by giving false promise of taking care of her future, forcibly took her from the lawful guardianship of her father and compelled her to have sexual intercourse with many persons under the threat of physical violence for monetary consideration and used that money for their living. In a case like this, we cannot except independent witnesses. The evidence prosecutrix, in a case like this, requires consideration on a higher pedestal and on a equal footing with that of an injured witness. It is seen from the cross examination of P.W.1 that suggestions were made to her that she left with the accused on her own will and volition. Destructive to the case of the accused, suggestions were made to P.W.1 during the course of her cross examination that P.W.1 had sexual intercourse with many persons at the instance of the accused to satisfy her physical needs like cash, food and dress, thereby meaning that the accused admitted that P.W.1 was with them and they directed P.W.1 to have sexual intercourse with many persons. This suggestion strengthens the case of the prosecution that the accused made P.W.1 to have sexual intercourse with many persons under threat and compulsion for money and used that money for their living. One more suggestion was made to P.W.1 that she voluntarily lived with the accused for the reason that her parents have not taken care of her. When she questioned as to why she had not informed any one living nearby and informed the police about the threat and compulsions made by the accused, she explained with convincing answers that she was afraid of accused. The first accused was always having knife in her hand and she was always accompanying her whenever she went to answer the call of nature in the morning. Another destructive suggestion made to P.W.1 was that she would get share in the money earned and she would also get the food and that was the reason why she had not raised any voice against the accused. This suggestion was flatly refused by P.W.1. However, this suggestion along with some other suggestion put to PW1 and discussed above, proved the case of prosecution that PW1 was involved in prostitution by the accused under threat and compulsion.

13. It has been held in a case reported in a case State of Maharashtra V. Chandraprakash Kewal Chand Jain reported in AIR1990 SC 658 that,

" A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence. We have, therefore, no doubt in our minds that ordinarily the evidence of a prosecutrix who does not lack understanding must be accepted. The degree of proof required must not be higher than is expected of an injured witness"

14. It is seen from the evidence of P.W.2 that on 03.09.2011 at about 7.00 a.m when they enquired the first accused in the presence of P.W.1 that he informed him that P.W.1 was living with him for 3 years. It again establishes that the accused had physical custody of P.W.1 until she was rescued on 03.09.2011. Though a suggestion was made to P.W.1 that the first accused was aged 65 years and he cannot indulge in sexual activities, it is

seen from the evidence of P.W.6 that the accused is capable of having sex. True it is that there was no injury found on the person of the P.W.1, especially in her private part. It is not as though P.W.1 was not sexually harassed. P.W.1 was not medically examined immediately after having forced intercourse for the first time. She was forced to have sexual intercourse for multiple times with multiple persons at the behest of the accused. Therefore, it is not possible to have any kind of injuries while she was examined on 03.09.2011. The absence of any injury on her private part or any other part of her body will not in any way create doubt in the case of the prosecution. As seen from the judgment referred above, the evidence of prosecutrix has to be treated like that of an injured witness. P.W1 has cogently, clearly and convincingly give evidence with regard to the rape committed on her by the first accused at the abetment of second accused, indulging her in prostitution under compulsion and threat by both the accused and the injury and criminal intimidation committed against her by the accused. Even in the absence of any corroboration in the form of oral evidence, PW.1's evidence remains unshattered and inspires the confidence of this court. In the considered view of this court, her sole testimony can be believed to record conviction in this case.

15. With regard to the age of P.W.1 it is seen from the evidence of P.W.7 Doctor and his radiological examination report Ex.P.6 that the age of the victim girl was above 17 years and below 18 years at the time of radiological examination. We have to bear in mind that the Radiological test was conducted only on 14.09.2011, but she was taken from the custody of her lawful guardian at least six months prior to the date of complaint on 03.09.2011. Therefore, there is nothing to suggest the age of P.W.1 must have been above 18 years at the time of occurrence. Though the doctor stated that there is a possibility of the age being fixed at plus or minus 2 years, in the light of the evidence of P.W 5 and PW 7 with regard to her age, this Court finds that the age of P.W.1 was less than 18 years during the period when she was with the accused and subjected to sexual abuse.

16. The careful and anxious consideration of the evidence available in this case shows that the charges against the accused, especially the 2nd accused, who is a appellant before this Court, had been proved by the prosecution beyond all reasonable doubt. The learned Trial Judge has elaborately and meticulously appreciated the evidence and came to the right conclusion and convicted the appellant under the relevant provisions of law and imposed suitable and proper punishment for the offences proved. This Court finds no reason to interfere with the Judgment of the Learned Assistant Sessions Judge,

Tirupattur, Vellore District in S.C.No.140 of 2012 dated 07.02.2013 in convicting and sentencing the appellant u/s 366(A) 376 r/w 109, 323 and 506(ii) and u/s 4,5, 7 of Immoral Traffic Prevention Act 1956 and in this view of the matter, the Judgment of the Learned Assistant Sessions Judge, Thirupattur, Vellore District in S.C.No.140 of 2012 is confirmed and this criminal appeal is dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Sessions Judge,
Tirupattur, Vellore District
2. The Inspector of Police,
All Women Police Station, Tirupattur.
3. The Public Prosecutor, High Court, Madras-104

Copy to the Section Officer, Criminal Section,
High Court, Madras-104

CRL.A.No.36 of 2018

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