

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 12-02-2020

Judgment Pronounced on : 21-08-2020

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Criminal Appeal No. 316 of 2019
and
Crl.M.P. No. 6929 of 2019

Eric Muline Nthuli .. Appellant/Accused

Versus

State by the Inspector of Police
All Women Police Station
Ammamet, Salem .. Respondent/Complainant
(Crime No. 12/2016)

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure against the Judgment, dated 02.04.2019 passed in Sessions Case No. 138 of 2017 on the file of the Sessions Judge, Mahila Court, Salem.

For Appellant : Mr. S. Swamidass Manokaran
For Respondent : Ms. M. Prabhavathi
Additional Public Prosecutor

JUDGMENT

R.SUBBIAH, J

The appellant herein is the sole accused in S.C. No. 138 of 2017 on the file of the learned Sessions Judge, Mahila Court, Salem. After conclusion of trial in the Sessions Case, by Judgment dated 02.04.2019, the learned Sessions Judge found the appellant/accused guilty of the offences punishable under Section 342, 506 (i), 352, 376 (1) of Indian Penal Code (in short IPC) and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998 and sentenced him to undergo imprisonment as detailed below:-

Offence punishable under Section	Sentence imposed by the trial Court
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Section 342 of IPC	Sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of three months
Section 506 (i) of IPC	Sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of R.1,000/-, in default to undergo simple imprisonment for a period of six months
Section 352 of IPC	Sentenced to undergo simple imprisonment for three months with fine of Rs.500/-, in default to undergo simple imprisonment for a period of one week
Section 376 (1) of IPC	Sentenced to undergo life imprisonment and to pay a fine amount of Rs.5,000/-, in default, to undergo simple imprisonment for a period of six months
Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998	Sentenced to undergo rigorous imprisonment for three years with fine of Rs.10,000/-, in default to undergo simple imprisonment for a period of six months.

2. Assailing the validity and/or correctness of the Judgment of conviction dated 02.04.2019, as aforesaid, the appellant/accused has come forward with this Criminal Appeal.

3. The case of the prosecution, as could be culled out from the complaint, Ex.P1 dated 02.12.2016 given by the prosecutrix and through her deposition as PW1 before the trial Court, is as follows:-

4. The appellant/accused is a Kenyan National. He came to Maharashtra, India for his higher studies. Similarly, the prosecutrix/victim is also a Kenyan National and she came to Maharashtra, India during July 2012 for pursuing Bio-technology Course. At that time, the appellant/accused and the victim girl became friends. Subsequently, the appellant/accused came to Salem, Tamil Nadu during September 2014 for pursuing his post graduation course - Master of Business Administration in A.V.S.

College of Arts and Science, Salem. The victim girl also got admitted in the same college for pursuing her Post graduation course - M.Sc., Bio-Technology, a two year course. Thus, both the appellant/accused and the victim girl knew each other even before they came to Salem, Tamil Nadu to pursue their higher studies. At the relevant point of time, the victim girl was pursuing her final year in the said college and was residing at Door No.17/104, near Mariamman Temple, Udayapatti, Athikaraipatti, Salem. The appellant/accused was also staying in the same vicinity where the victim girl resided.

5. The prosecution case reveals that the victim girl moved with the appellant/accused only as a friend, however, taking advantage of the friendship, he wanted to have sexual intercourse with her. When he expressed the same to the victim girl, she refused. However, the appellant continued his friendship and was waiting for an opportunity to exploit her sexually. According to the prosecution, on 01.12.2016, evening, at about 4.00 pm the appellant/accused came to the house of the victim girl on her invitation for a dinner. At that time, the victim girl was proceeding to the Church, hence she asked the appellant/accused to come later, but the appellant/accused replied that after she returned from Church, she can prepare dinner for him. However, the appellant/accused stayed in her house waiting for her to come back. When the victim girl returned at 8.00 pm to her house from the Church, she found that the door was locked and therefore, she called the appellant/accused through phone and asked him to hand over the key. In about 5 minutes, the appellant/accused came to the house of the victim girl with the key, opened the door and they entered into the house. Thereafter, the victim girl prepared dinner and served it to the appellant/accused. After serving dinner to the appellant/accused, the victim girl requested the appellant/accused to leave her house. However, the appellant/accused wanted to hear music in the speaker set which the victim was having, as he does not have a speaker in his house. The victim girl replied that she has to go for sleep early, since she has to go to Bangalore the next day and asked him to leave the house as early as possible. By saying so, the victim girl went to her room, locked the door and slept. Thereafter at about 2.00 am in the morning of 02.12.2016, the appellant/accused repeatedly banged the door and asked the victim girl to open it purportedly to use the wash room, but the victim girl refused to open the door. Ultimately, at about 9.00 am in the morning of 02.12.2016, the victim girl opened the door to go to kitchen to prepare tea. Immediately, the appellant/accused stormed into the room and pounced on her by pushing her to the bed. The appellant/accused thereafter tied the neck of the victim girl with a shawl, with the result, the victim girl struggled to breathe. The appellant/accused also closed the mouth of the victim girl with the shawl to prevent

her from screaming. Further, the appellant/accused tied the hands and legs of the victim girl tightly with a sports shoe lace, which he was having in his pocket. At this stage, the appellant/accused made the victim girl to be in a sitting position, showed her an alcohol bottle and asked her as to whether she wants to drink. When the victim girl refused, the appellant/accused forced her to drink alcohol by closing her nose, and poured alcohol into her mouth. The appellant/accused also wrapped 'ganja' in a paper, rolled it, lighted it and put it in the mouth of the victim girl. The appellant/accused also brought the speaker to her room and played music very loudly. He also closed the door and window of the bed room, so as to prevent others from hearing her scream. The appellant/accused also made the victim girl undressed by loosening the lace tied to her legs so as to make her legs spread. It is stated that the appellant/accused asked the victim girl as to whether she is suffering from AIDS and she replied that she is not. Thereafter, by using condoms, the appellant/accused had forcible sexual intercourse with the victim girl for four times in about an hour. Thereafter the appellant/accused went to the hall by opening the door. The victim girl pleaded with the appellant/accused to provide her some water or tea by limping and stumbling, as her hands and legs were tied with the shoe lace. Accordingly, the appellant/accused provided her tea. Even though the victim girl intended to pour the tea on the face of the appellant/accused and escape, when she lifted the glass, it fell down with the tea. The appellant/accused thereafter took the victim girl to the sofa and made her kneel down. When the victim girl asked him as to whether he is going to kill her today, he replied that he will not leave her out of the house alive and that he came to take her soul. The victim girl pleaded with the appellant/accused to remove the lace in the leg to facilitate her to attend nature's call. Even though the appellant/accused obliged by removing the lace tied on her legs, he did not remove the lace tied on her hands. When the victim girl asked the appellant/accused to provide her tissue papers and while he was searching for it, the victim girl took a razor and kept it in her thighs, cut the lace in her hand and opened the door. On seeing this, the appellant/accused attempted to pull her inside the room, however, the victim girl managed to get out of the house. On seeing the victim girl coming out of the house with her hands tied, some persons sitting near her house stood up and came to her rescue. According to the victim girl, even though she could cut the lace in her hands, she could not remove two knots in her hands and at her request, the rescuers removed it. Even though the victim girl informed them that there is a boy inside her house, they could not understand what she said. At this stage, the appellant/accused came out from the house fully dressed and fled away from the scene of occurrence. The victim girl thereafter called one Dickson Shehi,

a fellow Christian Student leader and asked him to come and meet her. Accordingly, the Christian Student leader along with one Purity (girl student from Kenya), met her and the victim girl narrated the events to them. They accompanied the victim girl to SPMM Hospital near Ammapet where the victim girl informed the Doctor that she had been raped. The hospital authorities asked her to go to Government Hospital for treatment. But the victim girl along with her friends, went to Ammapet Police Station and gave the complaint.

6. On receipt of the complaint from the victim girl at about 8.00 pm on 02.12.2016, PW8, the Sub-Inspector of Police registered a case in Crime No. 12 of 2016 for the offences punishable under Sections 376 and 506 (ii) of IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act. Ex.P14 is the First Information Report (FIR), copies of which were sent by PW8 to the higher police officials as well as to the Court.

7. On receipt of a copy of Ex.P14, at 8.30 pm, PW10, Inspector of Police had taken up the investigation in this case. At about 09.15 pm on 02.12.2016, PW10 had recovered the material objects produced by the victim girl along with the complaint, such as (i) shawl (ii) nighty worn by the prosecutrix at the time of occurrence (iii) two condoms used by the appellant/accused (iv) empty bottle of top star special brandy with cap and a bottle without cap and (v) two violet colour shoe lace and they were forwarded under Form 91. Thereafter, she made arrangements to send the victim girl to the Government Hospital, Salem for medical examination by issuing a requisition. At about 9.30 pm on 02.12.2016, PW10 inspected the scene of occurrence in the presence of witnesses Sakthivel (PW3) and Ganesan, where she prepared rough sketches under Ex.P16 and Ex.P17. Thereafter, she recorded the statement of Saroja (PW2), Sakthivel (PW3) and Ganesan. On the next day viz., 03.12.2016 at about 2.00 am, she arrested the appellant/accused in his house. After arrest, a confession statement given by the appellant/accused was recorded by PW10 in the presence of witnesses. She also recovered the attire of the appellant/accused namely black pant and underwear under Form 91. As the appellant/accused is a Kenyan National, intimation was given about his arrest to the Kenyan Embassy and thereafter he was sent to remand through Court. Thereafter, PW10 recorded the statement of one Veeramurali on 04.12.2016. On 05.12.2016, PW10 had given a requisition to the Court under Ex.P18 to send the appellant/accused for medical examination. On 09.12.2016, PW10 recorded the statement of Saravanan, Head Constable and Woman Head Constable No. 1739. On 09.01.2017, PW10 recorded the statement of Shanmugavalli, Head Constable. She also recorded the statement of Dr.Nirmala (PW4) attached to Salem Medical

College Hospital, who examined the prosecutrix. On 27.01.2017, PW10 recorded the statement of Dr. Guhan (PW5), who had medically examined the appellant/accused. On 16.02.2017, PW10 recorded the statement of Dr.K.Nalina (PW6), Scientific Officer, Mr.Manickam (PW9), Scientific Officer. On the same day, PW10 had also given a requisition letter to the Principal of the college to produce the documentary proof to ascertain the age of the appellant/accused. On 22.02.2017, appellant/accused had given a requisition letter to the Administrative Officer of the college to furnish certain testimonials of the prosecutrix as a proof of age. After completion of the investigation, on 28.02.2017, PW10 had filed the charge sheet under Ex.P22 against the appellant/accused for the offences punishable under Sections 342, 352, 376, 506 (ii) of IPC and Section 4 of the Tamil Nadu Prohibition of Woman Harassment Act.

8. During trial, in order to prove the guilt of the appellant/accused, the prosecution has examined as many as 10 witnesses as PW1 to 10, marked Exs. P1 to P22 and projected 7 material objects as Mos 1 to 7. The appellant/accused did not examine any witness on his side or marked any document. When the appellant/accused was questioned under Section 313 of the Code of Criminal Procedure with respect to the incriminating material evidence made available against him by the prosecution, he denied the same. The trial court, on appreciation of oral and documentary evidence, held that the appellant/accused is guilty of the charges framed against him and therefore, convicted and sentenced him to undergo rigorous imprisonment, as aforesaid.

9. Assailing the judgment of conviction passed by the trial court, the learned counsel for the appellant/accused contended that there are several inconsistencies in the case projected by the prosecution and therefore, it will be unsafe to record a judgment of conviction against the appellant/accused on the basis of such weak testimony of the prosecution witnesses. The learned counsel for the appellant/accused also contended that the deposition of PW1 is unnatural, improbable and not cogent and there are material inconsistencies in her deposition, which render her deposition untrustworthy. According to the learned counsel for the appellant/accused, PW1, prosecutrix in this case, admitted that she invited the appellant/accused to her house for dinner. She also admitted that after having dinner, the appellant/accused wanted to listen to music through speaker and stayed in her house, inspite of her request to leave her house and therefore, she went to her room and slept. She further stated that the appellant/accused, who was staying in the hall, listened to music till 2.00 am in the night. When the appellant/accused banged the doors of the room where PW1 was sleeping, for using the wash room within that room, she refused to open the door. Even according to PW1, on the next day i.e.,

02.12.2016 at about 9.00 am, when she opened the door, the appellant/accused forcibly entered into her room, pounced on her, tied her hands and legs with a shoe lace and forcibly committed rape on her. According to the learned counsel for the appellant/accused, such testimony of the prosecutrix contains several inconsistencies. It is his contention that, PW1, in the complaint, had stated that the appellant/accused entered into her house at 9.50 pm on 01.12.2016, however, in her deposition before the trial Court, she has stated that he came to her house at 4.00 pm. Contrarily, when PW1 was examined by the Doctor, PW4, she has informed that on 02.12.2016 morning at 10 O'clock, when she was alone, the appellant/accused knocked the door and when it was opened, he forcibly entered into her room and committed the act of rape. Thus, there are three different timings mentioned by the PW1 and this render her testimony untrustworthy and unnatural.

10. Inviting our attention to the deposition of PW1, the learned counsel for the appellant/accused contended that it was stated in the complaint that inspite of her request, the appellant/accused refused to leave her house after taking dinner and therefore, she went to her room, locked it and slept. But during her deposition as PW1, she has stated that the appellant/accused not only refused to leave her house, but he locked the sitting room forcibly and therefore, she went to her room and slept. This according to the counsel for the appellant/accused is one of the inconsistencies in the complaint and the deposition of PW1 before the trial Court is required to be considered.

11. Continuing his tirade against the deposition of PW1, the learned counsel for the appellant/accused states that PW1 in her deposition has stated that the appellant/accused wrapped Ganja in a paper, lighted it and put it in her mouth when he sexually assaulted her. Such an accusation is conspicuously absent in the complaint given by her with respect to usage of Ganja. Similarly, PW1 in her deposition before the trial Court had stated that the appellant/accused asked her as to whether she has AIDS before commencing his onslaught against her, but it was not reflected in the complaint given by her. Similarly, PW1 in her deposition has stated that the appellant/accused used four condoms and had sexual intercourse with her for four times, but, here again, this statement is absent in her complaint given to the respondent police. Similarly, even though it was alleged by PW1 in her deposition that the appellant/accused also assaulted her aggressively while committing rape on her, PW4, Doctor in her report under Ex.P4 did not indicate any external injury said to have been suffered by PW1 either due to slapping hard or by assaulting her. In fact, PW4, Doctor has given his opinion that there is a possibility of sexual intercourse. PW4 has not

mentioned anything about rape or injury, or the consequences of aggressive rape. This only shows that medical evidence does not support the case of PW1. Therefore, it is his contention that the deposition of PW1 is exaggerated, unnatural and made as an after-thought before the trial Court to harass the appellant/accused for reasons best known to her. In such circumstances, the judgment of conviction recorded by the trial Court deserves to be set aside.

12. The learned counsel for the appellant/accused also would submit that in the complaint, Ex.P1, PW1 has stated that she is handing over the shoe lace, alcohol bottle, condoms, shawl, night dress etc., to the respondent police as they were alleged to have been used by the appellant/accused during the commission of offence. However, during her deposition as PW1, she has stated that those material objects were seized from her house by the Investigating Officer, even before proceeding to the house of the appellant/accused, pursuant to the complaint lodged by her before the investigation officer. On the other hand, the Investigating Officer, PW10 had deposed that all the articles were seized under Form-91 in the Police Station from PW1, except the paper in which the Ganja was wrapped and they were sent to the Court under Form 91. This contradiction in the deposition of PW1 and PW10 shows that the seizure of Mos 1 to 5, as projected by the prosecution is highly doubtful. Even though these materials were sent for Forensic Examination, PW9, Director of Forensic lab has stated in his report, Ex.P15 that except on MO7/underwear, there was no presence of semen in the other material objects, namely shawl, nighty worn by the prosecutrix at the time of occurrence, two condoms and the black trouser of the appellant/accused. Therefore, the report of PW9 under Ex.P15 proves that the testimony of PW1 with regard to commission of rape, is unbelievable.

13. It is further contended by the learned counsel for the appellant/accused that there is enormous delay in registering the FIR in this case and it goes to the root of the case of the prosecution and weakened it's case. According to PW1, she escaped from the clutches of the appellant/accused at about 10.00 am in the morning of 02.12.2016, however, the complaint was given by her at about 20.00 hours with a delay of 10 hours. It was deposed by PW1 that she called upon her friends for assistance and thereafter gave the complaint, which led to the delay. The fact remains that the alleged occurrence took place within 3 kilometers vicinity of the police station and therefore, the delay of 10 hours in giving the complaint speaks volume about the falsity of the case projected by PW1 against the appellant/accused. Further, the complaint was registered at about 20.00 hours on 02.12.2016, but it reached the Court on the next day - 03.12.2016 at 12.45 pm with a delay of 16 hours. Such

delay in registering the First Information Report and the time at which it reached the Court, had not been properly explained by the prosecution and it vitiates the entire case projected by the prosecution. Therefore, having regard to the above inconsistencies in the prosecution witnesses, the learned counsel for the appellant/accused prayed for allowing this appeal.

14. However, the learned counsel for the appellant/accused submitted that if this Court intends to confirm the conviction and sentence slapped on the appellant/accused by the trial Court, for any reason, leniency can be shown in the matter of reduction of sentence. It is his contention that the appellant/accused was very young in age at the time of alleged commission of offence. He was pursuing his Post-Graduation Course in a college at the time of the alleged occurrence. He is not a person to be condemned for his alleged acts. There are chances for his reformation in future and therefore, he prayed for reduction of sentence appropriately.

15. Per contra, the learned Additional Public Prosecutor appearing for the respondent-Police vociferously contended that the prosecution has not let any loose ends to be tied in proving the case against the appellant/accused. The prosecution has meticulously conducted the investigation from the time when the First Information Report was registered. By examining the prosecution witnesses and through the documentary evidence coupled with material objects, the prosecution had undoubtedly proved the guilt of the appellant/accused beyond any iota of doubt. It is her contention that the testimony of the prosecutrix, if scrutinized closely, would reveal that her deposition is natural and trustworthy and there is no reason for her to implicate the appellant/accused in this case with such a charge of rape against her. In this context, the learned Additional Public Prosecutor relied on the decision of the Supreme Court in the case of State of Maharashtra vs. Chandraprakash Kewalchand Jain, reported in AIR 1990 Supreme Court 658, in which it was held that a woman, who is the victim of sexual assault, is not an accomplice to the crime, but a victim of another person's lust and therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. It was also held that a prosecutrix of a sex-offence cannot be put on par with that of an accomplice. The Indian Evidence Act no-where says that her evidence cannot be accepted, unless it is corroborated by material particulars.

16. The learned Additional Public Prosecutor appearing for the respondent/State/Police would further contend that the testimony of PW1 does not contain different timings, as alleged by the counsel for the appellant/accused. It is her contention

that PW1 has clearly stated that on 01.12.2016 at about 9.50 pm, the appellant/accused came to her house and inspite of her refusal, after dinner, he stayed in her house much to her chagrin. On the next day i.e., 02.12.2016 at about 9.30 am, when she opened the door assuming that the appellant/accused might have left her house, the appellant/accused stormed into her room, pounced on her, tied her hands and legs and committed the offence of rape. After escaping from the clutches of the appellant/accused, the complaint was given by indicating the time of occurrence as 9.30 am on 02.12.2016. Reiterating the occurrence during the course of trial, PW1 had stated that on the evening of 01.12.2016, the appellant/accused came to her house for dinner, but she requested him to allow her to go to the Church and come back. Therefore, PW1 has only informed that on the evening of 01.12.2016, the appellant/accused came to her house and it was not the time at which the offence was committed. Furthermore, when PW1 was examined by the Doctor, she has narrated the event succinctly and not briefly by indicating the time of the entry of the appellant/accused into her room as 9.50 am on 02.12.2016, the previous day. It cannot be construed as the time of the entry of the appellant/accused into her house for dinner. Therefore, clarifying as above, the learned Additional Public Prosecutor contended that the prosecutrix has clearly narrated the incident as it is without any exaggeration. Above all, these contradictions alleged by the appellant/accused have not been put to PW1 during the course of her deposition, while so, it is not open to the appellant/accused to use such non-existing contradictions against the appellant/accused. In this context, the learned Additional Public Prosecutor placed reliance on the decision of the Supreme Court in the case of different timings furnished by V.K. Misra and another vs. State of Uttarkhand and another, reported in AIR 2015 Supreme Court 3043, to drive home the point that when a witness has not been confronted with his statement recorded by the Police under Section 161 Cr.P.C. to prove the contradiction, nor his statement marked for the purpose of contradiction, was read out to the Investigating Officer, such contradiction cannot be looked into for any purpose much less to discredit his or her testimony. By placing reliance on this decision, it is contended by the learned Additional Public Prosecutor that even assuming that there are certain instances deposed during her deposition as PW1, but those instances were not indicated in the complaint or in her statement, it cannot be put against the prosecutrix to discredit her version, when she was not confronted with all the contradictions and omissions. When the complaint was given, PW1 had narrated the instances in brief and upto the point especially when it was written under trauma and stress soon after she being subjected to rape. However, while deposing before the Court, after a considerable length of time, it was narrated by her at length to give a complete picture

about the incident. Therefore, the comparison made between the contents of the complaint and the deposition of PW1 before the trial Court will not help the appellant/accused to discredit the version of the prosecutrix.

17. Countering the submission of the learned counsel for the appellant/accused that there is no proof to show that the victim girl/prosecutrix sustained external injuries, even though she had stated that the appellant/accused physically assaulted and slapped her at the time of commission of offence, the learned Additional Public Prosecutor appearing for the respondent-Police invited our attention to Ex.P-3, wherein it was noted that the prosecutrix sustained abrasion, neumical and curvilinear abrasion. According to her, neumical abrasion is referable to abrasion in the inner side of the lips, which are probable to have been sustained at the time of commencement of the offence by the appellant/accused by using enormous force. The curvilinear abrasion mentioned under Ex.P3 is referable to the injuries sustained by the prosecutrix in her hand due to tying of her hand tightly with shoe lace. The learned Additional Public Prosecutor has also invited our attention to the deposition of PW4, Dr. Nirmala, who has stated that there is every possibility that the prosecutrix was subjected to forcible sexual intercourse, meaning thereby, the appellant/accused had forcibly had sexual intercourse with the prosecutrix, which resulted in such external injuries. Therefore, the learned Additional Public Prosecutor contended that the medical evidence clearly indicates the nature of injuries sustained by the prosecutrix, which corresponds to the nature of act of the appellant/accused when he subjected the prosecutrix to rape. To strengthen her submission, the learned Additional Public Prosecutor relied on the decision of the Apex Court in the case of B.C. Deva @ Dyava vs. State of Karnataka reported in (2007) 12 Supreme Court Cases 122, wherein it is held that the absence of injuries either on the appellant/accused or on the prosecutrix, does not lead to any inference that the appellant/accused did not commit the offence of forcible sexual intercourse on the prosecutrix.

18. With regard to the delay in filing the complaint, the learned Additional Public Prosecutor appearing for the respondent-Police submitted that the First Information Report was registered after the prosecutrix mobilized assistance from her friends and sympathizers to decide the further course of action to be resorted to her. Further, soon after registration, the First Information Report was sent to the competent Court having jurisdiction over the matter, on the next day itself and therefore, it cannot be said that there is an inordinate delay in either registering the First Information Report or forwarding it to the competent Court. Even otherwise, the delay in

registering the First Information Report will not always vitiate the case of the prosecution and the explanation offered by the prosecution has to be scrutinized with circumspection.

19. The learned Additional Public Prosecutor appearing for the respondent-Police also contended that the appellant/accused committed sexual intercourse multiple number of times by using a condom and therefore, there was no traces of semen in the vaginal swab. According to the learned Additional Public Prosecutor, first of all, the absence of semen in the vaginal swab, does not dislodge the theory of rape. In support of such contention, she placed reliance on the decision in the case of Parminder vs. State (NCT of Delhi) reported in 2014 (2) Supreme Court Cases 592. However, in this case, PW9, Director of Forensic Lab has deposed that he had received 5 items and in Mo7, underwear, it is clear that semen was detected. Therefore, the submission of the learned counsel for the appellant/accused that there was no traces of semen in any of the material objects to infer commission of rape, is only liable to be rejected. The trauma and mental disturbance that would have been undergone by the prosecutrix on being subjected to the offence of rape by the appellant/accused, is enormous and in such event, even the minor discrepancy, if any, in the deposition of the prosecutrix, has to be discarded as insignificant.

20. In any event, according to the learned Additional Public Prosecutor, such minor discrepancy will not go to the root of the case projected by the prosecution or disturb its case in any manner. The sole testimony of the prosecutrix itself is sufficient to base a judgment of conviction against the appellant/accused, especially when there is nothing to suspect the manner in which the entire case has been narrated by her in the complaint, Ex.P1 as well as in her deposition as PW1. The trial Court, on appreciation of such clear and crystal evidence, has rightly convicted the appellant/accused and it calls for no interference by this Court. The learned Additional Public Prosecutor therefore prayed for dismissal of the appeal.

21. We have heard the learned counsel for the appellant/accused as well as the learned Additional Public Prosecutor appearing for the respondent-State. We have carefully gone through the evidence available on record.

22. It is well settled that in a criminal proceeding, the Court will always ponder over the quality of the deposition of the witnesses and not the quantity of and/or number of witnesses examined by the prosecution. The prosecution is expected to prove the guilt of an appellant/accused, beyond reasonable doubt, in a criminal trial, only on the basis of the testimony of the witnesses examined on behalf of the prosecution. If the

testimony of the prosecution witness is free from any suspicion, genuine, natural, cogent and trustworthy, it will be relied on to base a conviction. The same yardstick will equally apply to the present case, where the appellant/accused was found guilty of offence of rape. However, in a case falling under Section 376 IPC, normally, there may not be any independent witness to prove the offence against the appellant/accused. The Court cannot expect that the testimony of the prosecutrix in such a case must be corroborated by independent witness unlike in other criminal offences. The Court has to only go by the deposition of the victim girl. However, the Court need not always rely upon the deposition of the prosecutrix as a gospel truth to base a conviction against the appellant/accused. Here again, if the testimony of the prosecutrix is free from any suspicion and probable, it inspires the confidence of the Court, the sole testimony of the prosecutrix can be treated as of sterling quality to base a conviction without being corroborated by any other prosecution witnesses.

23. In *Ranjit Hazarika vs. State of Assam*, reported in (1998) 8 SCC 635 as well as in *State of Punjab vs. Gurmeet Singh and others*, reported in AIR 1996 SC 1393 = 1996 (2) SCC 384, it was held by the Apex Court that the Court must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman will come forward to a Court just to make a humiliating statement against her honour such as one that is involved in the commission of rape on her.

24. In *Raju and others vs. State of Madhya Pradesh*, reported in LNIND 2008 SC 2358, it was held that ordinarily the evidence of a prosecutrix should not be suspected and should be believed and if the evidence is reliable, no corroboration is necessary.

25. Dealing with the credibility of the sole prosecutrix as a sterling witness, the Honourable Supreme Court in a recent decision rendered in *Santosh Prasad @ Santosh Kumar vs. State of Bihar* reported in (2020) 1 MLJ (Cr1) 617 SC held that unless the evidence of the prosecutrix inspires the confidence of the Court and appears to be absolutely trustworthy, unblemished and is of sterling quality, it is unsafe to base a conviction solely on the basis of the testimony of the prosecutrix.

26. Keeping the above test in mind, we proceed to consider the grounds raised by the appellant/accused in this case while assailing the judgment of conviction passed by the trial Court. The appellant/accused and the prosecutrix studied together in the year 2012 at Maharashtra, India where they become friends. Subsequently, both of them pursued their Post-Graduation Course at Salem, Tamil Nadu, where they continued their friendship. According to the prosecutrix/PW1, on her invitation, the

appellant/accused came to her house on 01.12.2016 in the evening at about 4 O' Clock. However, as the prosecutrix was proceeding to the Church to offer prayer, by then, she requested the appellant/accused to come back later for dinner. But the appellant/accused wished to stay in her house till she comes back. The prosecutrix has also graciously permitted him to stay in her house, in view of the proximity of her relationship with him. When the appellant/accused came back home after a few hours, she noticed that the house was locked. Therefore, she called upon the appellant/accused to handover the keys and he came back within a few minutes and handed over the key. The prosecutrix thereafter prepared dinner for the appellant/accused and served him. After having the dinner, when the victim-prosecutrix requested him to leave the house, the appellant/accused refused to budge, instead, he demanded her to hear music and he stayed firm. Therefore, the prosecutrix went inside her room, locked it and slept. On the next day i.e., 02.12.2016, at about 9.00 am., when the prosecutrix woke up and opened her room, the appellant/accused stormed into her room and pounced on her. He tied the neck of the appellant/accused with a shawl and used a portion of the very same shawl to choke her mouth so as to prevent her from screaming. With the shoe laces kept ready-made in his pocket, the appellant/accused tied the legs and hands tightly preventing the movement of the prosecutrix. The appellant/accused also made the prosecutrix to drink liquor by force and also had sexual intercourse with her four times. This is the sum and substance of the complaint given by the prosecutrix to the respondent police based on which criminal law was set in motion against the appellant/accused.

27. It is vehemently contended by the learned counsel for the appellant/accused that there were three different timings mentioned by the prosecutrix as regards the entry of the appellant/accused into her home and this made her deposition untrustworthy. We have carefully gone through the complaint, Ex.P1 as also the deposition of PW1 in chief as well as cross-examination. We see no difference in the timings mentioned by the prosecutrix, as contended by the learned counsel for the appellant/accused. By referring to the complaint, Ex.P1, the learned counsel for the appellant/accused would submit that it was stated therein that the appellant/accused entered her house at 9.50 pm, whereas in her deposition, as PW1, she has stated that at 4.00 pm itself, the appellant/accused had entered her house. As narrated hereinabove, the appellant/accused, at first, came to the house of the prosecutrix at 4.00 pm, by which time, the prosecutrix was proceeding to the church to offer prayer. Subsequently, the appellant/accused came back home at 9.50 pm. Precisely, this was indicated by the prosecutrix in the complaint and the non-mentioning of the appellant/accused reaching her house at 4 O'clock in the evening, has not much

significance to be attached. Further, during her examination by the Doctor, PW4, the prosecutrix, in nut-shell narrated to him that the appellant/accused committed the act of rape at 10 O'Clock in the morning. She cannot be expected to narrate to the Doctor, PW4, the origin and genesis of the appellant/accused coming to her home for dinner the previous day and his stay in her house throughout the night much to her chagrin. Succinctly and briefly, the appellant/accused informed the time at which the occurrence had taken place and we see nothing unnatural in such statement given by the prosecutrix to the Doctor. Therefore, we are of the view that a futile attempt had been made by the learned counsel for the appellant/accused to compare the contents of complaint, Ex.P1 and the deposition of PW1 during trial and contend that the version of the prosecutrix is exaggerated. The prosecutrix cannot be expected to make a parrot-like repetition of the contents of the complaint during her deposition before the trial Court. The complaint was written soon after the prosecutrix was subjected to a sexual assault and therefore, there is every possibility that out of trauma and mental disturbance, she could not narrate every minuscule particulars in the complaint. However, during her deposition as PW1, she had clearly narrated the events and provided each and every minute particulars to strengthen her case. While so, it cannot be said that the prosecutrix had made a departure from the contents contained in the complaint and to exaggerate during her deposition before the trial Court. The fact remains that when a comparison is made to the contents of the complaint and the testimony of the prosecutrix before the trial Court as PW1, by and large, the important sequence of events which unfolded during the time of occurrence, have been precisely narrated by the prosecutrix. This inspires the confidence of this Court to hold that the testimony of the prosecutrix is natural, probable and it is free from any exaggeration. As we have held that the testimony of the prosecutrix is reliable, there is no other evidence required to corroborate such evidence of the prosecutrix. With the testimony of the appellant/accused, the trial Court is right in passing a judgment of conviction against the appellant/accused.

28. Above all, we find from the complaint, Ex.P1 and the deposition of the prosecutrix as PW1, the presence of the appellant/accused at the time of occurrence is clearly proved. In the complaint as well as in her deposition, the prosecutrix has clearly stated that, at the time when she managed to escape from the clutches of the appellant/accused and came out of her house, there were some persons standing, to whom she had orally complained about the presence of the appellant/accused in her house. Soon thereafter, the appellant/accused came out of her house fully dressed. To a suggestion made as to whether the appellant/accused is falsely roped in this case, the prosecutrix

has refused it and reiterated the presence of the appellant/accused as well as the specific overt act against him. Therefore, we are of the view that the prosecution succeeds in establishing the presence of the appellant/accused at the time of occurrence without giving rise to any doubt.

29. Furthermore, we find from the deposition of the witnesses that PW2 was the house owner where the prosecutrix was residing at the time of occurrence. PW2 in her deposition had clearly stated that she saw the victim girl coming out of her house with rope tied in her hands and she struggled to un-tie the knot. She further deposed that at that time, the appellant/accused came out of the house and sped away from the spot. This deposition of PW2 not only supports the version of PW1, but also the presence of the appellant/accused in the scene of occurrence at the time of occurrence. We also find that PW2 has no motive to adduce evidence against the appellant/accused and therefore the deposition of PW2 assumes much significance in this case.

30. The learned counsel for the appellant/accused would contend that even though the prosecutrix alleged that she was physically assaulted by the appellant/accused, there was no external injuries noticed by the Doctor during her examination. It was also stated that there is no sperm noticed in the vaginal swab suggesting that the prosecutrix has not been subjected to rape. This submission of the learned counsel for the appellant/accused has to be rejected, in view of the deposition of PW4, Doctor and the certificate issued by her under Ex.P3. In her deposition, PW4 has clearly stated that when she examined the prosecutrix between 10.30 pm and 11.30 pm on 02.12.2016, she had noticed injuries in her lips. She has also noticed injuries in her hands, which are attributable to the tying with shoe lace. Above all, she has clearly stated that her hymen was not intact suggesting that the prosecutrix was subjected to sexual intercourse. Even in the cross examination, when PW4 Doctor was confronted as to the absence of sperm in the vaginal swab, she has stated that the prosecutrix had informed that the appellant/accused used condoms during penetration and that may be the reason for the absence of sperm. Therefore, it cannot be said that there was no injury noticed during the examination of the appellant/accused. The deposition of PW4 and the certificate, Ex.P3 issued by her tumbles the submission of the learned counsel for the appellant/accused. Consequently, we hold that the prosecutrix was subjected to sexual assault by the appellant/accused. In such circumstances, the trial Court is wholly justified in holding that the offences, for which the appellant/accused was tried, have been proved by the prosecution beyond any reasonable doubt. Therefore, we see no reason to interfere with the conviction imposed by the trial Court against the appellant/accused.

31. The learned counsel for the appellant/accused pointed out certain inconsistencies in the case projected by the prosecution such as non-recovery of ganja wrapped paper, delay in giving the complaint and forwarding it to the Court etc., Such minor inconsistencies, in our opinion, will not discredit the case projected by the prosecution in any manner. As regards the delay in giving the complaint, the prosecutrix herself explained that soon after the occurrence, she muscled assistance from her friends who have suggested her to go to the hospital. The victim also went to SPMM Hospital near Ammapet where they refused to extend any medical treatment and directed the victim to go to the Government Hospital. Thereafter, the victim was advised to give a complaint to the respondent police, which led to the delay. This explanation of the prosecutrix is acceptable, given the nature and magnitude of the assault to which she was subjected to. In such circumstances, we are of the view that the minor inconsistencies pointed out by the learned counsel for the appellant/accused will not eclipse the otherwise acceptable testimony of the witnesses examined on behalf of the prosecution.

32. As regards sentence, the learned counsel for the appellant/accused contended that the appellant/accused was a young student pursuing Post Graduation-Course in a college at the time of occurrence, and he has no bad antecedent and there are chances for his reformation. This according to the learned counsel for the appellant/accused is a mitigating factor for consideration of reduction of sentence. We have given our anxious consideration to such submission of the counsel for the appellant/accused. Taking note of the age of the appellant/accused at the time of occurrence, the purpose of the appellant/accused coming to India was to pursue his higher studies and considering the over all facts and circumstances of the case, we are inclined to show leniency in the matter of imposition of sentence. Having regard to the nature of the offence committed by the appellant/accused, we are of the view that imposing rigorous imprisonment of ten years for the offence under Section 376 (1) IPC would meet the ends of justice.

33. In the result, the Judgment dated 02.04.2019 passed in Sessions Case No. 138 of 2017 on the file of the Sessions Judge, Mahila Court, Salem stands confirmed. However, while confirming the conviction under Section 376(1) IPC, we only modify the sentence of life imprisonment imposed by the trial Court against the appellant/accused for the offence under Section 376 (1) of IPC into ten years (10) of rigorous imprisonment.

34. As far as the conviction and sentence imposed on the appellant/accused in respect of the offences under Section 342, 506(i) and 352 IPC and under Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, are concerned, the same are hereby confirmed.

35. Thus, the Criminal Appeal is partly allowed. Since the appellant/accused is in jail, the appellant/accused shall undergo the remaining period of sentence, if any and the sentence already undergone by him shall be set off under Section 428 Cr.P.C. The sentences imposed on the appellant/accused shall run concurrently.

Consequently, Crl.M.P.No.6929 of 2016 is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

rsh/cs

To

1. The Sessions Judge
Mahila Court, Salem.
2. The Judge, Additional Mahila Court, Salem
3. The Inspector of Police
All Women Police Station
Ammamet, Salem
4. The Superintendent, Central Prison, Puzhal
Chennai 66.
5. The Public Prosecutor
High Court, Madras.
6. The Section Officer,
Criminal Section,
High Court, Madras.

Crl.A No. 316 of 2019

RJI (CO)
SP(31/08/2020)