

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.02.2020

Coram

THE HON'BLE MR. JUSTICE G.R.SWAMINATHAN

Crl.A.No. 618 of 2018

Rayappan

... Petitioner

Versus

The State Rep by
Inspector of Police,
A.W.P.S, Kuniyamuthur
Coimbatore

... Respondent

PRAYER: This Criminal appeal is filed against the conviction and sentence passed on him by the IV Additional District and Sessions Judge, Magalir Needhi Mandram (Mahila Court) Coimbatore in S.C.No.233 of 2016 dated 07.06.2018.

For Petitioners:Mr.B.Ramamoorthy

For Respondent :Mr.R.Annesan

Government Advocate (Crl side)

JUDGMENT

This appeal is directed against the Judgment and Decree dated 07.06.2018 passed by the learned Principal Sessions Judge, Additional Mahila Court, Coimbatore in S.C.No.233 of 2016, holding that the appellant is charged for the offences U/s 376 (1) r/w 511 of I.P.C and sentenced him to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.20,000/- .

2.Heard the learned counsel on either side.

3.The case of the prosecution is that the victim is mentally retarded; she is the daughter of P.W.1/ Vijaya Lakshmi. Vijaya Lakshmi is a widow; her husband and the appellant were close friends. The appellant used to visit the house of P.W.1. P.W.1 and the appellant was working in a Package Company. Her

case is that on 24.03.2015 at around 1.00 p.m when P.W.1 returned home, she saw the appellant committing rape on her mentally retarded daughter.

4. Upon seeing P.W.1, the appellant ran out of the house. PW.1 called her friend as well as her brother-in-law. They took the victim to Coimbatore General Hospital. Upon advice from the Doctors, P.W.1 lodged Ex.P.1 on 25.03.2015 i.e on the next day before Kuniamuthur Police Station. It was registered as Crime No. 200 of 2015 for the offence U/s 376 of I.P.C and the same was taken on file and after completing the usual formalities, final report was filed before the Judicial Magistrate/ Additional Mahila Court, Coimbatore. It was taken on file as P.R.C.No.12 of 2016. It was committed to the Sessions Court and made over to the file of Sessions Judge/Magalir Neethimandram as S.C.No.233 of 2016.

5. Charge was framed against the appellant under Section 376 of I.P.C. The appellant denied the charge and claimed to be tried. The prosecution examined as many as 13 witnesses and marked Ex.P.1 to P.15. On the side of the accused two witnesses were examined EX.D1 was marked. The learned trial Judge after a detailed consideration of the evidence on record come to the conclusion that the charges was established and the accused is liable to be found guilty U/s 376 r/w 511 of I.P.C. and he was sentenced as mentioned above.

6. Challenging the same, this appeal was filed.

7. The learned counsel for the appellant re-iterated all the contentions set out in the memo. The learned counsel would further contend that the accused could not have been found guilty U/s 376 of I.P.C r/w 511 of I.P.C. In this regard the learned counsel placed reliance on the decision reported in CDJ 1996 Orissa HC 064 and the decision reported in (2008) 14 Supreme Court Cases 768. His pointed contention is that the essential ingredients required to sustain the charge are not found in this case.

8. He would also point out that the appellant was engaged in milk vending business and that he had monetary transaction with P.W.1 and since he demanded that she must clear the liabilities arising out of the transaction, the case on hand came to be filed. He also would contend that the appellant was none other than the friend of the father of the victim. The relationship between the parties was more than a decade old. That being so, it is improbable that the appellant could have commit the offence in question.

9.I am not persuaded by the submission of the learned counsel for the appellant. PW.1 had out of malafide intention falsely implicated the appellant. Even in the examination under Section 313 of Cr.P.C, the appellant has not come out with any convincing defence version. In the case on hand, there is a delay in registering the F.I.R. The occurrence is said to have taken place on 24.03.2015. But then, the complaint was registered only on the next day. But, it has been convincingly established that the victim was taken to Hospital and treated on the same day of occurrence ie., on 24.03.2015. If the mother of the victim had any malafide intention, she would not have taken the victim to the hospital on 24.03.2015 and then come to the police station on the next day. More than anything else, the evidence of P.W.1 is corroborated by the evidence of P.W.4/Saroja. P.W.4/ Saroja is a neighbour and she categorically stated that on the occurrence day, on hearing the shouts of P.W.1/Vijaya Lakshmi, she came out and saw the appellant running out from the house of P.W.1. When P.W.2 asked the PW.1 as to what happened, PW.1 had stated that the appellant had committed rape on her daughter. When P.W.4 visited the house of P.W.4, she found that the dress of Ponni was not in order. Thus, the evidence of P.W-1 stands fully corroborated. It is not the case of prosecution that P.W.4 had inimical motive against the appellant. As already pointed out, the appellant has not pleaded any material before this Court, to come to the conclusion that there was no financial transaction between the appellant and PW.1.

10.As regards the contention of the appellant's counsel that the ingredients of attempt to commit the offence of rape are absent in this case, I must concur with the reasons assigned by the learned Trial Judge in this regard. The appellant had no business to enter the house of the PW.1 when the victim was alone. If PW.1 had not returned at that time, it is quite possible that the offence of rape itself would have been committed. Therefore, the trial court was justified in coming to the conclusion that the appellant attempted to commit the offence of rape had been established. I find no ground to interfere.

11.The appellant is now aged about more than 60 years. The learned counsel for the appellant pleaded certain mitigating factors. Taking note of the same, even while confirming the conviction imposed on the appellant for the offence under Section 376(I) r/w 511 of IPC, the sentence imposed by the learned trial Judge is reduced from five years to three years rigorous imprisonment. The fine amount had already been paid by

the appellant herein. The fine imposed remains unaltered. The impugned judgment is modified only as regards the sentence. In all other respects, the judgment of the trial Judge is confirmed. This appeal is allowed in part.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

smn

To

- 1.The IV Additional District and Sessions Judge,
Magalir Needhi Mandram(Mahila Court) Coimbatore.
- 2.The Sessions Judge, Mgalir Neethi Mandram
(Mahila Court) Coimbatore.
- 3.The Inspector of Police AWPS
Kuniamuthur, Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Superintendent of Central Prison,
Coimbatore.

Copy to:
The Section Officer,
Criminal Section, High Court,
Madras-104.

+1cc to Mr.B.Ramamoorthy, Advocate SR.16331

Cr1.A.No.618 of 2018

JP(CO)
CB(11/03/2020)

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