



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.03.2021
PRONOUNCED ON : 06.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.93 of 2021

Elumalai

...Appellant

Vs.

The Inspector of Police,
Varanjaram Police Station,
Villupuram District.
(Crime No.86 of 2005)

...Respondent

This Criminal Appeal is filed under Section 374 of Cr.P.C. against the judgment of conviction and consequential sentence passed by the learned Sessions Judge, Magalir Needhi Mandram (Fast Track Court), Villupuram in S.C.No.147 of 2009, dated 09.10.2020.

For Appellant : Mr.A.G.Rajan

For Respondent : Mrs.T.P.Savitha
Government Advocate (Crl.Side)

JUDGMENT

The criminal appeal has been filed against the judgment of conviction and consequential sentence passed by the learned Sessions Judge, Magalir Needhi Mandram (Fast Track Court), Villupuram in S.C.No.147 of 2009, dated 09.10.2020.

2 The respondent police registered a case in Cr.No.86 of 2005 against the appellant for the offence punishable under Sections 354, 511 r/w 376 of IPC and Section 4 of Tamilnadu Prohibition of Harassment of Woman Act against the appellant. After investigation, the respondent police laid a charge sheet before the learned Judicial Magistrate, Kallakurichi, which was taken on file in PRC No.26 of 2006. Since the offence charged against the appellant was triable only by the Court of Session,



the case was committed to the learned Principal District and Sessions Judge, Villupuram, which was taken on file in S.C.No.147 of 2005 and transferred to Additional District and Sessions Court, where charges were framed against the appellant for the offence under Sections 354 and 376 r/w 511 IPC. During pendency of the above case, the learned Principal District and Sessions Judge, Villupuram, since Special Court was established at Villupuram District, transferred the case to the learned Sessions Judge, (Fast Track Mahila Court), Villupuram.

3 Before the trial Court, in order to prove the case of the prosecution, P.Ws.1 to 6 were examined and Exs.P1 to 6 were marked and no material object was exhibited. After completing examination of prosecution witnesses, when incriminating circumstances culled out from the prosecution witnesses and put before the accused by questioning under Section 313 Cr.P.C., he denied the same as false and pleaded not guilty. On the side of the defence, no one was examined and no document was marked.

4 The learned Sessions Judge, Mahila Court, Villupuram, after trial and hearing arguments advanced on either side, by judgment dated 09.10.2020, convicted the accused and sentenced him to undergo rigorous imprisonment for a period of five years with fine of Rs.50,000/-, in default, to undergo simple imprisonment for a period of six months for the offence punishable under Section 376 r/w 511 of IPC and no punishment was awarded for the offence under Section 354 of IPC. Aggrieved against the said judgment of conviction and sentence, the accused has preferred this criminal appeal.

5 The learned counsel appearing for the appellant/accused would submit that there is no substantial material to convict the appellant for the offence under Section 376 r/w 511 IPC. Originally case was registered for the offence under Section 354 and 323 IPC and thereafter altered into Section 354 and 376 r/w 511 IPC without even any material. According to victim girl, she lodged complaint on the following day of occurrence at about 3.00 p.m. and went to Hospital for treatment accompanying by a women police. After four days of the occurrence, she again went to the Hospital accompanying her parent for treatment for her injuries, but, no record was produced regarding the treatments. P.W.4, the Doctor, one who examined the victim girl, has deposed that the victim girl was brought to the Hospital after the lapse of 17 days from the date of occurrence. But, prosecution has not offered any reason for the above delay, which creates doubt in the case of the prosecution. P.W.6, the Investigating Officer, in his evidence has clearly stated that the victim girl did not say that the appellant committed rape on her and further he did not examine the police, who registered the FIR. The person, who wrote the complaint was not examined by the prosecution and same



is fatal to the case of the prosecution. The prosecution has failed to prove its case beyond reasonable doubt. The trial Court has convicted the appellant without any material, which warrants interference of this Court.

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6 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that victim girl is an illiterate and on 29.04.2005 at about 3.00 p.m. when she went to give water to Goats, which were near the appellant's land, the appellant forcibly took her by beating and committed rape on her. On hearing the alarm of the victim girl, P.W.2 went to the place of occurrence and at the time the appellant showered water on the face of the victim girl and P.W.2 secured the victim girl. Thereafter P.W.1, victim girl lodged complaint and went to the Hospital. P.W.4, the Doctor, one who examined the victim girl has stated that the victim sustained injuries and hymen not intact and her vagina admitted two fingers, which corroborated evidence of the victim girl. The trial Court convicted the appellant only for the offence under Section 354 and 376 r/w 511 IPC and sentenced for the offence under Section 376 r/w 511 and no separate sentence was awarded for the offence under Section 354 of IPC. Hence trial Court awarded only a lesser punishment, which does not call for any interference of this Court.

7 Heard the learned counsel for the appellant and the learned Government Advocate (Crl.Side) appearing for respondent police and perused the materials available on record.

8 Case of the prosecution is that on the date of occurrence, when P.W.1, the victim girl went to provide water to Goats, which were near the appellant's land, the appellant forcibly took her by beating on cheek and committed rape on her. Hence the complaint.

9 This Court, being an Appellate Court, is a final Court of fact finding, which has to necessarily re-appreciate the entire evidence and give an independent finding. Accordingly, this Court has re-appreciated the entire oral and documentary evidence produced before this Court.

10 P.W.1, in her complaint has stated that when she went to give water to the Goats, which were near the land of the appellant, the appellant followed her and took her by beating on cheek and forcibly committed rape on her. She also deposed that she has injuries on the leg and hand. Further, the victim girl, while examination in chief before the Court and also in cross examination has reiterated the same that the appellant committed rape on her forcibly and caused injuries. Even though, as contended by the learned counsel for the appellant that the



victim was taken to Hospital for examination after the lapse of 17 days, P.W.4, the Doctor has stated that while examining the victim she told that she attained puberty only two years back and appellant raped her forcibly. P.W.4 further stated that the victim sustained following injuries.

Two scratchers on the left breast measuring 0.5 x 0.5 c.m.
Scratch on the right side buttock measuring 0.5 x 0.5 c.m.
Two injuries on the right side buttock measuring 0.5 c.m.
Scratch on the right side knee measuring 1 x 1 c.m.

Further, hymen not intact and her vagina admitted two fingers. The Doctor further stated that the victim was subjected for radiology test to ascertain the age and the result showed that her age would be 16 or 17 years. Therefore, the delay in producing the victim girl before the Doctor is not fatal to the case of the prosecution.

11 The victim girl, being an illiterate, has made complaint against the appellant, narrating the incident in her own language. Normally in the Village, no girl would reveal that she was raped, thinking about her future. We cannot expect every victim girl will immediately soon after the occurrence rush to the Police Station and lodge complaint and they will reveal everything before the Court. They only speak in their own language. In this case, neither the Investigating Officer, nor the trial Court took the matter in a right manner. But, unfortunately, neither the state nor the victim has filed any appeal and hence this Court cannot go beyond the scope of appeal.

12 On a combined reading of evidences of P.W.1 the victim girl and P.W.4 the Doctor and Ex.P1 complaint and Ex.P4, medical report of the victim, this Court does not find any reason to discord the evidence of the victim girl. The evidence of the victim girl and Doctor corroborates with the medical records. Ever though, there is defect in investigation and the same is not a sole ground to acquit the appellant. Mere laps on the part of the prosecution should not lead to unmerited acquittal, subject to rider that in such a situation evidence on record should be clinching. In this case, the victim has clearly narrated the entire incidents cogently, which corroborated with the medical evidence. If the evidence of sole witness is cogent, credible and trustworthy, conviction is permissible. In this case, there is no reason to discord the evidence of the victim.



13 In fine, this Court come to the conclusion that there is no merit in the appeal and there is no sound reason to interfere with the judgment of conviction and sentence. Accordingly, this criminal appeal is dismissed. The trial Court is directed to secure the appellant/accused to serve remaining period of imprisonment, if any.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sessions Judge, Magalir Needhi Mandram
(Fast Track Court), Villupuram.
- 2.-Do- Thro The Principal Sessions Judge,
Villupuram.
- 3.The Assistant Sessions Judge,
Villupuram.
- 4.The Judicial Magistrate,
Kallakurichi.
- 5.The Inspector of Police, Varanjaram Police Station,
Villupuram District.
- 6.The Superintendent,
Central Prison,
Cuddalore.
- 7.The Public Prosecutor,
High Court of Madras.

Copy to

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.A.G.Rajan, Advocate Sr.31651

CrI.A.No.93 of 2021

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srg 09/08/2021