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IN THE HIGH COURT OF JUDICATURE AT MADRAS

[JUDGMENT RESERVED ON : 21.09.2021]

[JUDGMENT DELIVERED ON : 08.12.2021]

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.61 of 2015

Kannan

...Appellant / Sole Accused

..Vs..

State of Tamilnadu,
Rep. by
The Inspector of Police,
F-5, Choolaimedu Police Station,
Choolaimedu,
Chennai - 600 094.
[Crime No.3010 of 2011]

...Respondent / Complainant

PRAYER : Criminal Appeal filed under Section 374 of the Criminal Procedure Code, as against the conviction and sentence of 10 years rigorous imprisonment each for the offence under Sections 366(A) IPC and 376 IPC; a sentence of 3 years rigorous imprisonment imposed for the offence under Section 506 (ii) IPC; and a sentence of 1 year rigorous imprisonment imposed for the offence under Section 342 IPC as against the appellant/accused by the learned Sessions Judge of the Mahila Court at Chennai, in S.C.No.43 of 2013, dated 15.12.2014 and to set aside the same.

For Appellant : Mr.C.Samivel
Legal Aid Counsel

For Respondent : Mr.S.Vinoth Kumar
Government Advocate (Crl.Side)

JUDGMENT

The convicted sole accused is the appellant herein and he has preferred this criminal appeal as against the judgment dated 15.12.2014 passed by the learned Sessions Judge, Mahila Court, Chennai, in S.C.No.43 of 2013, wherein, he was convicted by the learned Sessions Judge for the offences under Sections 366(A), 506(ii), 342 and 376 of IPC and sentenced to undergo 10 years rigorous imprisonment for the offence under Section 366 (A) IPC;



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sentenced to undergo 3 years rigorous imprisonment for the offence under Section 506(ii) IPC; sentenced to undergo 1 year rigorous imprisonment for the offence under Section 342 IPC; and sentenced to undergo 10 years rigorous imprisonment for the offence under Section 376 IPC. The above sentences of imprisonment were ordered to run concurrently.

2. The respondent police has filed a final report in Crime No.3010/2011 alleging that the accused has committed the offences under Sections 506(ii), 336, 366(A), 342 and 376 of IPC. The case has been taken on file by the learned Judicial Magistrate No.XVII, Egmore, as P.R.C.No.128 of 2012 and the case was committed to the Sessions Mahila Court, Chennai as S.C.No.43 of 2013.

3. Before the learned Sessions Judge, similar set of charges were framed.

4. To prove the charges, the prosecution has examined P.Ws.1 to 19; marked documents Exs.P.1 to P.30 and produced M.Os.1 to 6. The accused was questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances and he denied his complicity. On behalf of the accused, no witness was examined and no document was marked.

5. On consideration of both oral and documentary evidence, the learned Sessions Judge, Mahila Court, Chennai, had acquitted the appellant/accused under Section 336 IPC and convicted and sentenced him as stated supra. Hence, this criminal appeal has been preferred by the accused.

6. Mr.P.Samivel, learned Legal Aid Counsel for the appellant/accused contended that P.Ws.1 to 5 are only interested witnesses and the learned Sessions Judge has failed to consider the same and committed an error in believing the version of those witnesses. The learned Legal Aid Counsel further contended that the room under Ex.P.7 and Ex.P.8 were not booked in the name of the appellant/accused and not signed by the accused and the prosecution has not proved that the signatures found in Ex.P.7-Register Report of M.R.Lodge and Ex.P.8-Room rent receipt for staying at Madurai Ezhur Saviar Samudhaya Maaligai, are that of the accused. The Doctor has tested the accused and has given an opinion under Ex.P.13-Certificate of potential test of the accused, which reveals that there is no external injury with penis of the accused and there was no opinion given to the effect that the accused had sexual intercourse with P.W.2 and hence, the learned Legal Aid Counsel prayed for setting aside the conviction and sentence passed by the learned Sessions Judge by allowing this criminal appeal.



7. Mr.S.Vinoth Kumar, learned Government Advocate (Crl.Side) made submissions in support of the judgment of the learned Sessions Judge and prayed for dismissal of this criminal appeal.

8. This Court has considered the submissions made by the learned counsel on either side and perused the records.

9. Points for consideration:

1) Whether the order of conviction and sentence passed by the learned Sessions Judge, Mahila Court, Chennai, is sustainable in law? and

2) Whether the sentence awarded is excessive?

10. The case of the prosecution, in brief, is that the appellant/accused has made a false promise that he will arrange for Government funds for the higher education of the victim girl/P.W.2 and kidnapped her from the lawful custody of her parents and had sexual intercourse with her without her consent. P.W.1/Baskaran, father of the victim girl has made a complaint under Ex.P.1, on 19.12.2011 and on the basis of the said complaint, a case in Crime No.3010/2011 has been registered by the respondent police for the offences as stated supra.

11. At the time of registration of Ex.P.26-FIR, dated 19.12.2011, single charge was framed under Section 361 of IPC and after the investigation, Ex.P.28-alteration report was filed altering the case from Section 361 of IPC to Sections 361, 366 (A) and 376 of IPC. Based upon the materials placed before the Court, the learned Sessions Judge, Mahila Court, Chennai, has framed charges under Sections 506(ii), 336, 366(A), 342 and 376 of IPC.

12. As stated supra, P.W.2-Yamuna Devi is the victim girl. P.Ws.1 and 3 are the parents while P.W.4 is the mother's sister of the victim girl. P.W.5-Gopinath is the brother of the victim girl. P.W.6-Sekar, who is a person residing in the neighbor village of the victim and who has also travelled from Namakkal to Chennai in XYLO Car accompanied by P.Ws.1 to 3 and P.W.4. P.W.10-Subash is the driver of the Xylo Car and P.W.11-Seenivasan is the driver of the Tata Indica Car. P.W.12-Parthiban is the attestor of the observation mahazar-Ex.P.11.

13. P.W.13-Dr.Suganthi, who is the Assistant Professor of Kilpauk Medical College Hospital, had examined the victim girl whether any injuries found in the private part of the victim girl. P.W.14-Dr.Harishantha Seelan through whom potential test report of the accused was marked under Ex.P.13, which shows that the accused is a man of potent. Ex.P.19 is the requisition letter given by the learned XVII Metropolitan Magistrate,



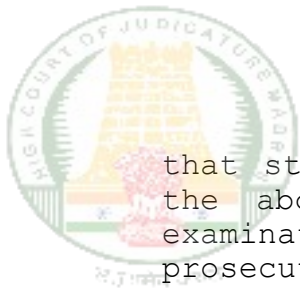
Saidapet, Chennai, to the Government Kilpauk Medical College Hospital for examination of the victim girl; Ex.P.20 is the Accident Register of the victim girl; Ex.P.21 is the medical report of the victim girl (physical examination) and Ex.P.22 is the another medical report of the victim girl stating whether any injury is found in the private part of the victim girl. P.W.16-Radhika Balachandran was the Assistant Director of Forensic Science Department, Chennai and he has tested whether semen found on M.O.1-Yellow colour nighty with black & light brown design and M.O.5-Black colour Lungi with green & white design.

14. P.W.17-Dr.Vikram, Professor of Kilpauk Medical College has issued age certificate of the victim girl under Ex.P.24 stating that the age of the victim girl is 16 years at the time of the occurrence. P.W.18-Nalina, Junior Scientific Officer, Forensic Science Department, deposed that he has tested M.O.1-Nighty of the victim girl and issued Ex.P.25-Report stating that the semen is human origin. The necessary requisition letter to the hospital for examining the victim and the accused and the requisition letter to the Forensic Department for analysing the clothes were marked as Exs.P.29 and 30.

15. The trial Court has acquitted the appellant/accused of the charge under Section 336 of IPC. The contention raised by the learned counsel for the appellant/accused is considered. After considering the evidence of the victim girl-P.W.2 and her parents P.W.1 and P.W.3 coupled with the evidence of P.W.11-Srinivasan, driver of the Tata Indica Car, the learned Sessions Judge has rightly come to the conclusion that on 18.12.2011 at around 12.30 a.m., the accused along with the parents of the victim girl and one Saravanan were travelled from Salem in a Tata Indica Car bearing Registration No.TN-38-F-1221 to Chennai and the said vehicle was driven by P.W.11 and in another car viz., Xylo car, nearly 10 persons were travelled towards Chennai, and the said vehicle was driven by P.W.2-Subash.

16. On a combined reading of the version of P.Ws.1, 2, 3, 4 and 5 coupled with the independent witnesses P.Ws.10 and 11, it is clear that the accused along with the family of the victim girl were travelled from Thiruchengode to Chennai.

17. It remains to be stated that it is the specific evidence of P.Ws.2, 3 and 6 that the accused along with another person came to the house of victim girl along with a photograph showing that the brother of the victim girl has been drawn an award from the Hon'ble Chief Minister of Tamil Nadu and the accused with another person have promised to get educational loan for higher studies of the victim girl and accordingly, the accused promised to arrange for a meeting with the Chief Minister and believing



that story, the family members of the victim have travelled in the above stated manner. There is nothing in the cross-examination to discredit as to this first limb of the prosecution theory.

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18. From the evidence of P.Ws.1 and 3 father and mother respectively of the victim girl coupled with the evidence of P.W.2 and P.W.4, mother's sister of the victim girl (Sister of P.W.3), it is clear that on 19.12.2011 at about 09.00 a.m., both the cars reached at Maduravoyal, Chennai. P.W.4-Kalavathi, who is residing at Maduravoyal, boarded the Tata Indica Car and to accommodate the said Kalavathi in the Tata Indica car, the victim's father (P.W.1) was shifted to Xylo car. The said Xylo car reached Secretariat, while the Tata Indica car on reaching 100 feet road, the accused directed the driver to drove to the room for refreshing. When the car reached at 100 feet road at No.138, Sign Store, Choolaimedu, the car was stopped and the accused instructed P.W.4-Kalavathi to get Xerox of the documents and informed (P.W.3) victim's mother that they will get the signature of Education Minister and asked them to wait until they come. The accused took P.W.2-victim girl and boarded an Auto to CMBT (Chennai Mofusil Bus Terminus).

19. At this juncture, it remains to be stated that P.Ws.7 and 9, who are the independent witnesses, have clearly deposed that the accused took P.W.2-victim girl and boarded in an Auto to CMBT (Chennai Mofusil Bus Terminus) and at that time, they (P.Ws.7 and 9) have chased the accused and the victim girl assumes significance. The evidence of P.Ws.7 and 9 duly corroborates the prosecution theory as well as the private prosecution witnesses and thus, I find that the second limb of the prosecution theory has also been clearly proved to the extent as indicated above.

20. From the evidence of P.W.2 coupled with Ex.P.7-Register report maintained by M.R.Lodge and Ex.P.8-Room rent issued by Madurai Ezhur Saviar Samudhaya Maaligai and Ex.P.9-Receipt issued by Aravind Eye Hospital, dated 22.12.2011 and Ex.P.10-Register copy of Ezhur Saliya Samudhaya Maaligai, goes to show that from CMBT (Chennai Mofusil Bus Terminus), the accused and the victim girl boarded a bus to Trichy. On 19.12.2011, they reached Samayapuram, Trichy and the accused booked a room in M.R.Lodge in the name of Kumar and they stayed there till 20.12.2011. From there, they boarded a bus to Madurai on 21.12.2011, and the accused booked a room and stayed in Ezhur Saviar Samudhaya Maaligai at Thiruparankundram. From 21.12.2011 to 22.12.2011, both the accused and the victim girl stayed there and on 22.12.2011 in the morning, the accused took the victim girl to Aravind Eye Hospital, Madurai.



21. In the cross-examination, though the documentary evidence filed by the prosecution has been challenged, it remains to be stated that the accused took the victim girl to Trichy and he has changed his name and booked a room in a different name at M.R.Lodge. Subsequently, the accused took her to Madurai and stayed at Tirupparankundram Ezhur Saviar Samudhaya Maaligai. Subsequently, the accused took the victim girl to Aravind Eye Hospital, Madurai, to make it believe that as if she was taken for medical treatment. Though the name of the accused was not mentioned in the registers maintained by the M.R.Lodge and Ezhur Saviar Samudhaya Maaligai, the cell number of the accused was clearly mentioned, as discussed by the learned Sessions Judge which lends support to the prosecution theory that the accused, who had booked the room in M.R.Lodge at Samayapuram, Trichy and another room in Thiruparankundram, and he took the victim girl to Aravind Eye Hospital, Madurai. Ex.P.4, which is the bus ticket for traveling P.W.2 and the accused from Chennai to Trichy, produced by P.W.2 remains unchallenged in the cross-examination. In all the three places mentioned viz., M.R.Lodge at Samayapuram, Trichy and Ezhur Saviar Samudhaya Maaligai, Thiruparankundram and also Aravind Eye Hospital, Madurai, in the registers, the cell phone number of the accused was mentioned.

22. At this juncture, pursuant to Ex.P.15-confession statement of the accused, Exs.P.16 to P.18 were seized. Ex.P.16 is the seizure mahazar of Ezhur Saviar Samudhaya Maaligai receipt; Ex.P.17 is the seizure mahazar of M.R.Lodge receipt and Ex.P.18 is the seizure mahazar in respect of receipt, cloths, cell phone and sim card. Hence, the cell phone number possessed by the accused was duly reflected in the above said documentary evidence viz., Exs.P.16 to P.18 and hence, I find that the third limb of the prosecution theory has also been proved beyond reasonable doubt. Further, the version of P.W.2-victim girl was that she was kidnapped by the accused at knife point and was taken to Trichy, Tiruparankundram and Madurai and hence, their stay in the respective room is also duly corroborated.

23. It is the specific evidence of P.W.2 that while she and the accused were waiting at Madurai Maattuthavani bus stand on 23.12.2011 to get a bus to Rajapalayam, for visiting the house of the accused sister, the police team came to the spot along with one Saravanan, who was neighbour of the victim's house and who identified the victim girl and after that, the Investigating Officer has arrested the accused. With regard to the manner of the arrest and the place of the arrest, nothing was challenged during the cross-examination except formal suggestion and hence, this Court finds that the fourth limb of the prosecution theory regarding the rescue of the victim girl from the clutches of the



accused at Madurai Maattuthavani bus stand has been proved in the manner known to law.

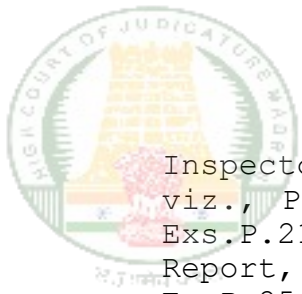
24. It appears that on 23.12.2011, while the accused and the victim girl were waiting at Madurai Mattuthavani bus stand to go to Rajapalayam, the Police Team reached the spot and arrested the accused and also seized some articles from him.

25. Further, on 24.12.2011, the police party along with the accused and the victim reached to Chennai Choolaimedu police station and in the morning, the victim was handed over to her parents and thus, this Court finds that the charge under Section 366(A) of IPC was duly proved by the prosecution beyond reasonable doubt so also Sections 342 and 506(ii) of IPC.

26. On consideration of oral evidence of P.Ws.1, 2, 3, 4 and 5 though they are relative witnesses, their witnesses cannot be brush aside as if, they are falsely implicating the accused in a criminal case. P.Ws.6 and 7 are the independent witnesses and their version is duly corroborated by the version of P.Ws.1 to 5 and hence, I find that though P.Ws.1 to 5 are the family members of the victim girl, their version cannot be brush aside, in view of the clear and cogent evidence, which remains unchallenged in the cross-examination and their version is also duly corroborated by the evidence of independent witnesses P.Ws.6, 7, 9, 10 and 11 and hence, the contention raised by the learned counsel for the appellant/accused that the version of P.W.2 has to be discarded stands to be negatived.

27. Whether the evidence of P.W.2 inspires the confidence of this Court to the test of reliability. Her evidence is to the effect that when she and the accused reached to Chennai at around 9.00 a.m. on 19.12.2011, under the guise of taking a xerox copy, the accused boarded in an Auto to CMBT (Chennai Mofusi Bus Terminus) and thereafter, he purchased Ex.P.4-ticket for himself and to P.W.2 to travel to Trichy and stayed in the M.R.Lodge, where, the accused had physical relationship with P.W.2 against her will and consent and again on 21.12.2011, the accused booked a room at Tirupparankundram in Ezhur Saviyar Samudhaya Maaligai.

28. At this juncture, it remains to be stated that P.W.8-Natarajan, who is the Manager of the said Ezhur Saviyar Samuthaya Maaligai Mandapam at Tirupparankundram, has also identified that the accused found to be in the company of P.W.2 on that date. This Court has already found that in all the Registers viz., Exs.P.7 and 10 relating to M.R. Lodge in Trichy and Ezhur Saviyar Samuthaya Maaligai, Tirupparamkundram as well as in Madurai, the cell phone number of the accused was duly written by him and that cell phone was also seized by P.W.19-



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Inspector under Ex.P.18. As stated supra, the medical evidence viz., P.Ws.13, 16 and 18 have issued Ex.P.20-Accident Register, Exs.P.21 and P.22-Medical Reports and Ex.P.23 Chemical Analysis Report, and in Ex.P.23, they have deducted semen on M.O.1 and Ex.P.25 chemical analysis report was also given stating that the semen is human origin.

29. It is the specific evidence of P.W.13-Dr.Suganthi that the victim girl was subjected to sexual assault and thus, this Court finds that the oral evidence of P.W.2-victim girl coupled with the medical evidence of P.Ws.13 to 18 and documentary evidence of Exs.P.13, 15, 20, 21, 22, 23, 24 and 25, duly corroborates the prosecution case that the accused had physical relationship with P.W.2 without her consent.

30. As stated supra, on the date of the occurrence, the age of the accused was 32 years and the age of the victim girl was 16 years. Taking into consideration the documents, Ex.P.5-10th Mark Sheet and Ex.P.6-School Transfer Certificate of P.W.2 coupled with the Age Certificate issued by P.W.17 under Ex.P.24, the learned Sessions Judge has rightly come to the conclusion that the age of the victim girl, on the date of the occurrence, was 16 years and therefore, consent is immaterial. Though no point has been raised challenging the alleged consent, the learned Sessions Judge has clearly held that the age of the victim, on the date of the occurrence, was only 16 years.

31. In view of the specific finding cited above, I find that the charge under Section 376 of IPC is clearly proved by the prosecution beyond reasonable doubt and hence, the learned Sessions Judge, on proper appreciation of evidence, has come to the conclusion that the charge under Section 376 of IPC is proved by the prosecution. The findings rendered by the learned Sessions Judge do not warrant any interference by this Court at this appellate stage. Accordingly, this criminal appeal is devoid of merits and the same is liable to be dismissed.

32. In the result,

[i] this Criminal Appeal is dismissed.

[ii] The conviction and sentence passed by the learned Sessions Judge, Mahila Court, Chennai, in S.C.No.43 of 2013, dated 15.12.2014 are confirmed.

[iii] The appellant/accused was arrested on 23.12.2011 and remanded as an under trial prisoner and during the entire trial, he was not granted any bail.



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[iv] The learned trial Judge is directed to take steps to secure the appellant/accused and send him to prison in order to undergo the remaining period of sentence.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

Jr1

To

- 1.The Sessions Judge,
Mahila Court, Chennai.
- 2.The XVIII Metropolitan Magistrate,
Egmore, Chennai.
- 3.(do through) The Chief Judicial Magistrate,
Egmore, Chennai.
- 4.The Superintendent of Police,
Central Prison,
Puzhal, Chennai.
- 5.The Inspector of Police,
F-5, Choolaimedu Police Station,
Choolaimedu,
Chennai - 600 094.
- 6.The Public Prosecutor,
High Court, Madras.

Copy To

- 1.The Secretary,
Tamil Nadu State Legal Service Authority,
High Court, Madras.
- 2.The Section Officer,
Criminal Side Record,
High Court, Madras.

Crl.A.No.61 of 2015

NR(CO)
RVM(16/12/2021)