



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.12.2021

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

Crl.A.No.119 of 2016

and

Crl.M.P.No.1698 of 2016

V.Arumugam

.. Appellant

Vs.

State rep by
The Inspector of Police,
Pollachi Town East Police Station,
Pollachi,
Coimbatore District.
(Crime No.1058/2010)

.. Respondent

PRAYER : Criminal Appeal has been filed under sections 374(2) of Criminal Procedure Code to set aside the judgment of conviction imposed in S.C.No.199 of 2012 on the file of the Mahila Court, Coimbatore dated 25.02.2015.

For appellant : Mr.K.Murugesan
Legal Aid counsel

For Respondent : Mr.A.Gopinath
Govt. Advocate (Crl.Side)

JUDGMENT

This Criminal Appeal has been preferred challenging the judgment of the learned Mahila Court, Coimbatore, made in S.C.No.199 of 2012 dated 25.02.2015.

2. The short facts which led to the case of the prosecution is as under:-

On 17.11.2010, at about 1.30 p.m., the victim girl, who was 13 years old, was ravished by the accused at his newly constructed building. On the complaint given by PW.1 at about 3.00 p.m., on the same day, a case was registered in Crime No.1058 of 2010 of Pollachi East police station for the offence under Section 376 r/w 511 IPC and the First Information Report has also been filed (Ex.P5). PW.7- Inspector of police took up the case for investigation, went to the place of occurrence,



prepared a rough sketch (Ex.P6) and the Observation Mahazar (Ex.P4). Victim's medical examination (Ex.P2). After the accused was identified by the victim, he arrested the accused and sent him to the hospital for undergoing medical examination. After completing the investigation, the Investigating Officer prepared a charge memo, altering the charges under Section 376 r/w. 511 IPC to 376 IPC and filed it along with the charge sheet.

3. On perusal of the records and on being satisfied with the materials, the learned trial Judge framed the charges against the accused for an offence under Section 376 IPC and questioned him. The accused pleaded innocence and claimed to be tried.

4. During the course of trial, on the side of prosecution, seven (7) witnesses were examined as PWs.1 to 7 and seven (7) documents were marked as Exs.P1 to P7. On the side of the defence, no witness has been examined and no document was marked.

5. After the conclusion of the trial and on considering the materials available on record, the learned trial Judge found the accused guilty for the offence under Section 376 IPC and convicted and sentenced him to undergo 7 years Rigorous Imprisonment and imposed a fine of Rs.50,000/-; in default, it has been ordered that the said amount of fine should be paid as compensation to the victim girl as per the Revenue Recovery Act, 1890. Aggrieved over that, the accused has filed the present Criminal Appeal.

6. Heard the learned counsel for the Appellant and the learned Government Advocate (Crl.Side) for the State.

7. The learned counsel for the appellant submitted that the complaint was not given by the victim but by a stranger; the parents of the victim child were not examined as witnesses; the victim girl was examined only on 19.11.2010; despite the occurrence is said to have been taken place on 17.11.2010, 161 statement of the victim was not recorded; the learned trial Judge had dealt the case under the POCSO Act, though the Act was not in force at the time of the occurrence.

8. The learned Government Advocate (Crl.Side) submitted that the evidence of the victim alone is sufficient to convict the accused, even without any corroboration; however her evidence is corroborated by the medical evidence also; the learned trial Judge had only made a passing reference about POCSO Act; the accused has been convicted only under Section 376(1) IPC; since the learned trial Judge has properly



appreciated the evidence and convicted the accused, which requires no interference.

9. Points for consideration:

Whether the finding and judgement of the trial court suffer from any factual or legal infirmity so as to warrant my interference?

10. The occurrence is said to have taken place on 17.11.2010, at about 1.30 p.m. The victim girl, who was just 13 years old, seemed to be crying while coming out of the house of the accused. She was noticed by PW.1. When PW.1 enquired her, she told him that the accused called her inside the house and raped her. On hearing the occurrence from the victim girl PW.1 went and gave a complaint. PW.2 is the victim and she was studying in 8th standard at the particular point of time when she was examined as a witness before the Court. In her evidence, she has stated how she had happened to go to the house of the accused and how the occurrence had taken place. She narrated that on 17.11.2010, which was a holiday, when she was playing outside her house, the accused, who is her neighbour called her and asked her to buy a tea for him. When she brought tea, the accused pulled her inside, pushed her down and ravished her and threatened her that if she opens her mouth about the occurrence to any, he would kill her. Despite the victim was raped by the accused, she was hesitant to tell that. Out of fear, ignorance and inhibition she made the offence less serious and told PW1 that the accused attempted to rape her.

11. However, in her evidence she had stated clearly about the occurrence and told how she was ravished by the accused. The act of rape was also narrated by the victim in clear terms. The doctor, who had examined the victim has noticed that her vaginal membrane was not intact.

12. In a case of sexual offences, the evidence of the witness assumes greater significance and time and again it has been held by the Hon'ble Supreme Court that the evidence of the victim should be treated like that of the evidence of the injured witness and it does not require any corroboration. Immediately after the occurrence, the victim was crying and she was noticed by PW.1. Only when he enquired the victim, she told him about the occurrence. The above events that followed the occurrence also appear to be very natural and it can not be imaginary. There is no delay in giving the First Information Report. It is true that the prosecution has omitted to examine the parents of the victim. But their non-examination would in no way weaken the case of the prosecution. Because the parents of the victim can only be hearsay witnesses, since they were not in the place of occurrence. The clear evidence of PW.2



corroborated by the medical evidence and other facts and circumstances proved before the Court would prove that the occurrence and the involvement of the accused.

13. Even the recent decision of the Hon'ble Supreme Court rendered in Phool Singh Vs. The State of Madhya Pradesh reported in LL 2021 SC 696, the evidentiary value of the victim of the sexual offence is reiterated as below:

"5.2 In the case of Ganesan (supra), this Court has observed and held that there can be a conviction on the sole testimony of the victim/prosecutrix when the deposition of the prosecutrix is found to be trustworthy, unblemished, credible and her evidence is of sterling quality. In the aforesaid case, this Court had an occasion to consider the series of judgments of this Court on conviction on the sole evidence of the prosecutrix. It is observed and held as under:

10.1. Whether, in the case involving sexual harassment, molestation, etc., can there be conviction on the sole evidence of the prosecutrix, in Vijay [Vijay v. State of M.P., (2010) 8 SCC 191], it is observed in paras 9 to 14 as under: (SCC pp. 195-98)

"9. In State of Maharashtra v. Chandraprakash Kewalchand Jain [State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550] this Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is 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. The Court observed as under: (SCC p. 559, para 16)

'16. A prosecutrix of a sex offence cannot be put on a 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



WEB COPY

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.'

.....

7. It is also by now well settled that the courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an



otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook."

WEB COPY

14. The family members or PW.1 have no motive against the accused for implicating him falsely in this case. Even during 313 proceedings, the accused did not attribute any motive against PW.2 or PW.1.

15. The learned trial Judge has made a passing reference about the importance of Section 29 of POCSO Act, just to high light how seriously the sexual offences against the children should be considered. It is within the knowledge of the Court that POCSO Act was not in force at the time of the occurrence. Though the burden of proof after the enforcement of POCSO had shifted on the accused, so far as this case is concerned the guilt of the accused has been proved beyond reasonable doubt. The principles of burden of proof and standard of proof have been applied in this case only in accordance with the usual Criminal Jurisprudence. So I am not able to countenance the arguments of the learned counsel for the defence that the learned trial Judge had dealt the case in accordance with POCSO Act. The accused has been convicted under Section 376 IPC and not for any of the offence under POCSO Act. Since the learned trial Judge had appreciated the evidence in a proper perspective, it needs no interference.

16. In the result, this Criminal Appeal stands dismissed. The judgment of the Mahila Court, Coimbatore dated 25.02.2015, made in S.C.No.199 of 2012 is confirmed. Consequently, the connected Criminal Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

rpl

To

1.The Mahila Court, Coimbatore .

2.The Inspector of Police,
Pollachi Town East Police Station,
Pollachi, Coimbatore District.



3.The Public Prosecutor,
High Court, Madras.

4.The Secretary,
Tamil Nadu Legal Services Authority,
High Court, Madras-104.

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

+1cc to Mr.K.Murugesan, Advocate, S.R.No.65182

Crl.A.No.119 of 2016
and Crl.M.P.No.1698 of 2016

PMK(CO)
CB(04/02/2022)