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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2021

CORAM:

THE HON'BLE MS.JUSTICE R.N.MANJULA

CRL.A.NO.191 OF 2016

V.Kasinathan

... Appellant/Accused

Vs.

The State rep.by its Inspector of Police,
All Women Police Station, Jeyankondam,
Ariyalur District.

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the conviction and sentence passed against the appellant in S.C.No.95 of 2013, dated 15.05.2015, on the file of the learned Fast Track Mahila Court at Ariyalur, Ariyalur District and set him at liberty.

For Appellant : M.Palanimuthu

For Respondent : A.Gopinath
Government Advocate (Crl.side)

JUDGMENT

This Criminal Appeal has been preferred against the judgment of the learned Fast Track Mahila Judge, Ariyalur, dated 15.05.2015, made in S.C.No.95 of 2013.

2.According to the case of the prosecution, the victim who was working as a coolie was raped by the accused. On the complaint given by the victim on 16.04.2013, a case was registered in Crime No.4 of 2013 of Jayamkondan Police Station, under Sections 376, 506(1) 341 & 313 IPC. PW11 Senthilkumar, Inspector of Police, took up the case for investigation, went to the place of occurrence, prepared a rough sketch in the presence of witnesses, examined the witnesses and recorded their statements on 16.04.2013 at about 6 P.M. He arrested the accused



and recorded his confession statement in the presence of witnesses. The accused and the victim were sent for medical examination individually. He also examined the Doctor who conducted medical examination of the accused and the victim and got the medical certificates. During the pendency of the investigation, PW12 Deepa, regular Inspector of Police assumed charge and she continued the investigation. After completing the investigation she filed the charge sheet against the accused under Sections 376, 506(1), 341 & 313 IPC, altered to Sections 376 & 506(1) IPC.

3. After the case was taken on file and after observing the legal mandates, it was assigned to the file of the learned Fast Track Mahila Court at Ariyalur, for trial. Since there are prima facie materials available to frame charges against the accused, the trial Court framed charges against the accused under Sections 376 & 506(1) IPC.

4. During the course of trial, on the side of the prosecution, 12 witnesses were examined as PW1 to PW12 and Exs.P1 to P12 were marked. On the side of the defendant no witness was examined and no documents have been marked.

5. At the conclusion of the trial and on considering the materials available on record, the learned Sessions Judge found the accused guilty for the offence under Sections 376 IPC & 506 (i) IPC and sentenced him to undergo seven years imprisonment and imposed a fine of Rs.10,000/- in default to undergo one year rigorous imprisonment under Section 376 IPC and sentenced him to undergo one year imprisonment for the offence under Section 506 (i) IPC. The sentences were directed to run concurrently. Out of the fine amount imposed on the accused, a sum of Rs.5,000/- was directed to be paid to the victim. Aggrieved over that, the accused has preferred this Criminal Appeal.

6. Heard the learned counsel for the appellant and the learned Government Advocate (Crl.side) for the respondent.

7. The learned counsel for the appellant submitted that a false case has been given by the defacto complainant, since her attempt to marry the son of the accused failed; The medical evidence does not corroborate the evidence of witnesses and there are contradictions in the evidence of other witnesses; the complaint has been given belatedly and that would create doubt in the case of the prosecution; the victim did not disclose the occurrence to her mother immediately and such conduct of the victim appears to be unnatural and hence the accused ought to have been given with the benefit of doubt and acquitted.



8. The learned Government (Crl.Side) Mr.A.Gopinath submitted that in these types of cases, the evidence of the victim assumes more significance and it does not even require any corroboration; since the victim who was examined as PW1 has stated clearly in her evidence about both occurrences, the learned Trial Judge is right in accepting the evidence of PW1 and hence the Appeal should be dismissed.

9. Points for consideration:

Whether the finding of the guilt of the accused for the offences under Sections 376 and 506(i) IPC by the trial Judge is fair and proper?

10. The victim is examined as PW1. Her evidence would reveal that the accused and his wife were known to her. On their advice she quit her employment at a Cotton mill at Coimbatore and came to Vangudi village along with them for engaging herself as a coolie during the sugarcane harvesting; one day she was duped by the accused that her mother wanted to see her; believing his words, she went along with him to the village of her mother; on the way at Karuvelangadu of Salupai village, the accused forcibly raped her and threatened her that if she revealed that he would kill her; thereafter, she proceeded to her mother's place and visited her; while returning also the accused misbehaved with her and compelled her to agree for his sexual intentions; because of those occurrences, the victim got conceived; only thereafter she informed about the occurrence to her mother; PW1's mother conveyed this to the wife of the accused, the wife of the accused convinced the victim's family that he would get the victim married to her son and gave her medicines to abort her foetus; but subsequently, she refused to marry her son to the victim.

11. Then the accused volunteered to marry her as his second wife. A Panchayat was convened in the village and it was unsuccessful. Thereafter, the complaint was given. PW3 is the mother of PW1. She has also stated in her evidence that she came to know from her daughter that the accused had ravished her and because of which she became four months pregnant.

12. The doctor who examined the victim has been examined as PW5. She has stated in her evidence that on 19.04.2013 she examined the victim and observed that the victim was pregnant and the age of her foetus was 12 to 14 weeks.

13. As per the report of the Dentist, the age of the victim is assessed as above 18 years. The Doctor who examined the accused had certified that there is nothing to suspect that the accused is impotent.



14. In the cases of sexual offence, the evidence of the victim assumes more significance. It has been held in various decisions of the Supreme Court that the evidence of the victim should be treated like that of the evidence of the injured witnesses and it does not require any corroboration. Even in the recent decision of the Supreme Court in Phool Singh Vs. State of Madhya Pradesh, the Division Bench of the Supreme Court has held that the conviction of the offence of rape can be based on the sole testimony of the victim if it is credible and trust worthy.

15. Neither the victim nor the mother had any motive against the accused to implicate the accused falsely in this case. In fact, the victim was working in a cotton mill. Only on the advice of the accused and his wife, she shifted her occupation as agricultural coolie and started to work with them. In view of the said work, she was staying at Vangudi village. The accused took advantage of her innocence and duped her by stating that her mother wanted to see her. The victim has stated that she was raped on the way to her mother's place, but she could not disclose this to her mother in view of the threat made by the accused. As she had no other go, she needed to return to Vangudi village with the accused himself. Even while returning, the accused subjected her to sexual assault once again.

16. It is true that the complaint was not given immediately after the occurrence. The socio-economic situation of PW1 and her vulnerability due to staying away from her family would have kept her helpless. In such conditions, it cannot be expected that the complaint should have been given in time. There is every possibility for delay due to the situation in which the victim is placed. In sexual offences the delay in lodging the complaint alone will not defeat the case of the prosecution. During the cross examination PW1 has stated that she has not stated the time and date of the occurrence. However, she has stated that the occurrence could have occurred in the month of Tamil month 'Masi' which usually correlate to English month February.

17. PW4 doctor who examined the victim on 19.04.2013 has stated that she diagnosed and found that the victim was 12 to 14 weeks pregnant. The learned counsel for the appellant submitted that the victim should not have been only 12 to 14 weeks pregnant had she been ravished in the month of February. In fact, the scan of the victim showed that she might have had 17-18 weeks foetus. Though this fact is inconsistent with the period of occurrence, its evidentiary value should be considered in the background of the ignorance and lack of sophistication in the life style of PW1. PW1 does not refer the English month



casually as how others would normally do. It should be because of her uncertainty or lack of knowledge about months. In such a situation, even her reference about Tamil month could not have been very accurate, but just rough or approximate.

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18. She has no reason to falsely implicate the accused by stating that she was raped by him. If her motive was to marry the son of the accused, it would have been possible to give the complaint against the son himself. Hence, no falsity can be attributed to the complaint of the victim, when the evidence of other witnesses also corroborate the case of the prosecution.

19. In the evidence of PW3, (mother of the victim), she has stated that when she enquired the accused and his wife about the occurrence, the accused admitted that he was responsible for the pregnancy of the victim and that he would marry her as his second wife.

20. On the information given by PW3, PW4 (an educated youth of the village) enquired the accused. Even before him, the accused admitted that he only impregnated the victim and he offered to marry the victim as his second wife. The evidence of the victim is corroborated by the evidence of PW3 & 4, before whom the accused admitted his involvement in the offence. PW7, the brother of the victim has also stated that when they enquired the accused in the presence of the village panchayat, he admitted his guilt, but the panchayat was not successful.

21. PW8, Janagar had participated in the panchayat and he also asserted in his evidence that the accused admitted his involvement and offered to marry PW1 as his second wife. PW9 Govindharaj was the 'Meistry' for sugarcane coolie workers. He has stated in his evidence that he took the accused, victim and other villagers to Vangudi village for harvest. He has stated that during such time accused took the victim to her mother's place and came to know later that she was ravished by the accused. None of those independent witnesses had any motive against the accused or his family to tell false evidence against the accused. It is submitted by the learned counsel for the appellant that the foetus of the victim was not subjected to DNA test and hence, benefit of doubt should be given to the accused. The statement of PW1 itself is sufficient to prove that the accused had raped and impregnated the victim. The DNA test report is only corroborative in nature. The evidence of PW1, is found to be creditworthy and it is corroborated with the evidence of other witnesses also. The events that followed the occurrence, as stated by the other witnesses also support the evidence of PW1.



22.The learned trial Judge has appreciated the evidence on record in a right perspective. He has rightly observed that the delay in lodging the FIR in such kind of cases will not defeat the case of prosecution. Since the victim is an agricultural coolie she cannot be expected to approach the police station immediately for lodging the complaint. Moreso, she was staying away from her family for the purpose of undertaking Coolie work. Only after she got conceived, she was compelled to reveal the matter to her mother. Previously she was put in threat by the accused also. The trial Judge has fairly appreciated the evidence on record and other attending circumstances of the case and found the accused guilty. Hence, I find no reasons for interference.

23.In the result, this Criminal Appeal is dismissed and the judgment of the Fast Track Mahila Court, Ariyalur, dated 15.05.2015, made in S.C.No.95 of 2013 is confirmed.

Sd/-
Assistant Registrar(CS-VII)

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Sub Assistant Registrar

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To

1. The Fast Track Mahila Court,
Ariyalur.
2. The Chief Judicial Magistrate,
Ariyalur.
3. The Inspector of Police,
All Women Police Station, Jeyankondam,
Ariyalur District.
4. The Superintendent,
Central Prison, Trichy.
5. The Public Prosecutor,
High Court, Madras.

Crl.A.No.191 of 2016

SVI (CO)
RLP(16/03/2022)