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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.378 of 2019

M.Chandran

..Appellant

Vs

The State, rep.by
Inspector of Police
Ammapettai All Women Police Station,
Salem District.

..Respondent

PRAYER: This Criminal Appeal is filed under Section 374(1) of Cr.P.C. to allow the Criminal Appeal by setting aside the judgment dated 23.01.2019 in S.C.No.137 of 2013 passed by the Sessions Judge, (Mahila Court) Salem.

For Appellant : Mr.K.Murugesan,
Legal Aid Counsel

For Respondent : Mr.R.Surya Prakash
Government Advocate (Crl.Side)

JUDGMENT

This Criminal Appeal is filed against the judgment dated 23.01.2019 S.C.No.137 of 2013 passed by the Sessions Judge, (Mahila Court) Salem.

2. The respondent Police registered the case against the appellant/A-1 in Crime No.11 of 2012 for the offences under Sections 376 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998. After the investigation, the respondent Police laid a charge sheet before the learned Judicial Magistrate, [Additional Mahila Court], Salem. The learned Judicial Magistrate, Additional Mahila Court, Salem had taken the same on his file in P.R.C.No.10 of 2013. After completing the formalities, the case was committed to learned Principal Sessions Court, Salem. Since the offence is against women, the learned Principal Sessions Judge taken the case on file in S.C.No.137 of 2013 and made over to Sessions Judge Mahila Court, Salem. After completing the formalities, the Special Judge framed charges against the appellant-A-1 and other



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Accused-A2. Since the second accused absconded and not secured, the case has been split up and taken in S.C.No.126 of 2016 and the same is pending against the second accused. As far as appellant/A-1 is concerned, in order to prove the case of the prosecution, on the side of the prosecution, as many as 11 witnesses were examined as PW1 to P.W.11 and 21 exhibits were marked as Ex.P.1 to 21. No material objects were marked on the side of the prosecution. After completion of the prosecution side evidence, incriminating circumstances culled out from the evidence of prosecution witnesses, were put against the appellant/A-1 and he was questioned u/s.313 Cr.P.C., wherein, he denied all the incriminating circumstances as false and pleaded not guilty. On the side of defence, D.W.1 to D.W.3 were examined, but no documentary evidence was produced.

3. After completing the trial and hearing the arguments advanced on either side, the Sessions Court convicted the appellant for the offence under Sections 450 IPC and offence punishable under Section 376(1) of I.P.C. For offence under Section 450 IPC, he is convicted and sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo 6 months imprisonment. For the offence punishable under Section 376(1) IPC, the appellant is sentenced to undergo 10 years rigorous imprisonment and fine of Rs.25,000/-, in default to undergo six months simple imprisonment. The fine amount of Rs.35,000/- is directed to be paid to the victim girl. Challenging the judgement of conviction and sentence, Appellant/A1 has filed the present appeal.

4. Today when the matter is taken up, both Legal Aid counsel and counsel on record appeared and argued the case. The learned counsel appearing for the appellant and the Legal Aid counsel would submit that the prosecution has not conducted fair investigation. The prosecution has not proved the case beyond all reasonable doubt. The case of the prosecution is that the victim while staying with her grand mother, the appellant trespassed into the house and committed rape. The father of the victim was not examined. Even though the second wife of father of P.W.1/victim girl stated that victim's pregnancy was terminated, the said Selvi was not examined. The doctor who terminated the pregnancy was also not examined. Though PW6 has stated that statement has been recorded by the Police in the Home and even in the enquiry statement, the name of the appellant has not been mentioned by the victim girl and only the name of the second accused is mentioned in the pre-enquiry report. The Officer who conducted the said pre-enquiry was also not examined. Even though the occurrences is said to have taken place at the time when she was studying 5th standard at the age of 10, the complaint has been given only in the year 2012, at which time, the victim girl underwent sexual assault from the 2nd



accused. Only after the complaint was registered, the earlier occurrence was reported. However the grand mother of the victim girl in whose house she was staying during the first occurrence, has turned hostile. The victim girl did not mention in the complaint that she was sexually assaulted by several persons. She has not named the persons. P.W,8 doctor who examined the victim girl stated that there is possibility of sexual intercourse on the victim and the age of the victim girl was proved that she is below 18 years. Even as per the evidence of victim girl, she has not stayed in one place. She wanted to stay with her mother and the second husband but the second father not accepted her stay. Further the father of the victim girl left her in the house of the second accused. Therefore, the victim girl was not in the custody of her parents. Therefore, the evidence of the victim girl and P.W.2 victim girl's sister is doubtful and the prosecution has not established its case. In this case, the date of occurrence has not been proved. Inordinate delay occurred in filing the complaint and the delay has not been properly explained. There are material contradictions and discrepancies in the prosecution case and therefore, benefit of doubt has to be extended to the appellant. Even though it is stated that the appellant is very close relative to the victim family and the relationship is stated to be as brother of victim's father, no witness mentioned the name of the appellant. It also creates doubt. The learned Sessions Judge, without considering the entire facts and circumstances of the case, convicted the appellant, which warrants interference and the judgment of conviction and sentence is liable to be set aside.

5. Mr.Surya Prakash, learned Government Advocate (Criminal Side) submitted that at the time of occurrence, the victim girl was minor and the victim girl was examined as PW1 and her sister was examined as PW2. They have clearly stated that their father married another woman. Therefore, when the victim became major, she left to her mother's house, however, again she was taken by her father and left to A-2's house. Therefore, since the victim girl was not with her father or the mother and she was left initially in the house of her grandmother, the appellant has committed the offence which was clearly narrated by the victim in her complaint. There is no identification of the appellant as there is no dispute regarding the appellant's identification. PW6 and PW7 also stated that the victim was enquired, when she was in Home. The victim girl stated about occurrence during the enquiry. She was medically examined. It is clearly stated by the victim girl that time and again, she has been subjected to physical sexual assault and therefore, at the time of occurrence i.e., prior to 2012, she was minor and she was subjected to sexual assault by the appellant and the second accused. Therefore, the victim girl has narrated the entire events and



the prosecution has proved the case. The evidence of the victim girl PW1, her sister PW2 and the evidence of PW6 would clearly show that the victim girl was subjected to sexual assault by the appellant. Admittedly, the victim girl stated that she was staying in her grand mother's house and during that time, victim girl was sexually assaulted by the appellant. Medical evidence also proves that the victim was subjected to sexual intercourse. Even though, the prosecution failed to examine the other witnesses on their side and failed to conduct the investigation properly and that there are some discrepancies, in the interest of justice, the trial court has rightly appreciated the case of the prosecution and passed judgment of conviction and sentence, which warrants no interference.

6. The Appellate Court is a final court of fact finding court. It has to re-appreciate the entire evidence in order to give an independent finding. Accordingly, this Court gone through the entire evidence and perused the records carefully.

7. The trial Court framed charges against the appellant-A1 and other accused for offence under Sections 450 IPC and for offence punishable under Section 376(1) of IPC. In order to prove the case of the prosecution, the prosecution examined totally 11 witnesses, out of which PW1 is the victim girl; PW2 is the sister of the victim girl. A reading of the evidence of PW1 would go to show that she has clearly narrated the entire events. She also deposed about her mother, father and the dispute in their family and that her second mother sent her to her grandmother's house.

8. The grandmother of victim was examined as DW1. The grandmother also admitted that appellant is the person living opposite to her house. As per the evidence of P.W.1 victim girl, she was subjected to sexual intercourse by the appellant while staying in her grandmother's house. Thereafter, she gone to her father but her father wanted her to work. In the workplace, victim's sister along with a person from Mariya Home came to see her and they taken the victim girl to Home. Thereafter, the victim and her sister went to see their mother. But she was driven to Road in starvation and then victim was put in the Home. In the Home, again victim's father came and took her and left her in the 2nd accused house. There again the victim was suffering and she was subjected to sexual harassment. The entire evidence of PW1 shows the pathetic situation sustained by her and she was to driven to father, mother, grandmother, Home for her stay and she spent many days in starvation. In such a pathetic condition of living, on the day of occurrence, at night time, while she was staying in her grandmother's house/DW1 house, the appellant sexually assaulted her. Thereafter again she went to her father's house, job, mother's house, wandering



in the Road, then Home, then again father's house and from there, she was taken and left in the 2nd accused house. The second accused also committed rape on the victim and when the victim told him not to do this and she will complain it to his father, he threatened to do the same to PW2. That time, she assaulted the 2nd accused. At that time, PW1 informed PW2, A2 has committed sexual assault on the victim.

9. Therefore, from one place to another place, the pathetic situation of the victim continued. Thereafter, she was taken to Life Line Trust Home and given complaint to Police. The appellant went to the house of DW1 and committed sexual assault on the victim, which was confirmed by P.W.8 doctor evidence and it is opined that she was sexually assaulted. Eventhough PW2 has stated that PW1 was sexually assaulted by several persons and the name has not been adduced, it has been clearly stated that during the year 2006, the appellant committed sexual assault. At that time, she was staying in her grand mother's house. Subsequently, in the year 2012, she was sexually assaulted by the second accused. The contention of the learned legal aid counsel for the petitioner is that there is no corroboration for the evidence of P.W.1 and even though it is stated that some people know about the incident, those persons were not produced before the court and the prosecution has not examined them. In cases like this, one cannot expect eye witness, since the culprits will take a chance only on the loneliness of the minor children and make use of their innocence and exploit them sexually and also threaten them to take away their life and life of their kith and kin. Therefore, the victim girl has not made any complaint. She only informed his father.

10. The other contention raised by the learned Legal Aid counsel is that the Investigating Officer has not examined the Doctor who gave tablets for abortion and therefore, there is discrepancy and the prosecution has not proved the case beyond reasonable doubt. Even though there are material contradictions and discrepancies arise in the prosecution case, this court does not find any reason to discard the evidence of the victim girl. Admittedly, in this case, the victim girl was sleeping in her grandmother's house and at that time, the appellant entered into the house and committed the said offence and the same was confirmed by the doctor evidence who opined that victim was subjected to sexual assault. In cases of this nature, presence of eye witnesses are mostly improbable. If the evidence of the sole witness is cogent, credible and trustworthy, conviction is permissible.

11. In cases involving sexual harassment, molestation, etc, the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies



in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The Court may look for some assurances of her statement to satisfy judicial conscience. Admittedly, in this case, the victim girl has clearly narrated the incident before the trial court.

12. It is also pointed out by the learned counsel for the appellant that there are some discrepancies and contradictions in the case of the prosecution. But on a careful reading of the evidence of the victim girl would make it clear that the contradictions and discrepancies pointed out by the learned counsel for the appellant are only immaterial, which are not material contradictions and it will not go to the root of the case of the prosecution. Further, mere delay in filing the complaint may not be fatal to the case of the prosecution. At the time of the occurrence, the victim girl was also only aged about 10 to 15 years. Therefore, there may be so many reasons for not filing the complaint immediately. The victim girl was repeatedly put to sexual harassment and after such incident, she was shifted to other place. Even though the victim girl narrated that several persons were said to have given sexual harassment to her, it is clearly mentioned by her that the appellant has committed sexually assault on her. P.W.6 evidence also corroborate the same.

13. Under these circumstances, the appellant trespassed into the house of victim girl's grandmother and committed offence under Sections 450 IPC and also offence punishable under Section 376(1) of IPC on the victim girl and at that time, she was aged 10 to 13 years is clearly proved. Therefore, the conviction and sentence awarded by the Sessions Court, does not require any interference. This court does not find any mitigating circumstances to reduce the sentence. Therefore, the appeal deserves to be dismissed. Accordingly, the criminal appeal is dismissed. The judgment dated 23.01.2019 in S.C.No.137 of 2013 passed by the the Sessions Judge, (Mahila Court) Salem, is confirmed.

14. The Legal Aid counsel appointed by this Court is entitled to legal fees as per Rules.

s/d-
Assistant Registrar (CS-III)

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Sub-Assistant Registrar



To

- 1.The Inspector of Police
Ammapettai All Women Police Station,
Salem District.
 - 2.The Sessions Judge,
Mahila Court,
Salem.
 - 3.The Public Prosecutor Officer,
High Court, Madras.
 4. The Section Officer,
Criminal Section,
High Court, Madras.
 - 5.The Secretary
Tamil Nadu Legal Services Authority
High Court, Madras 104.
- +1 CC to Mr.B. Vasu Devan, Advocate sr 15901.
+1 CC to Mr.K.Murugesan, Advocate sr 16745.

Cr1.A.No.378 of 2019

SR II (CO)
SP(15/07/2021)