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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A. No.462 of 2019

Thimmiah @ Karian,  
S/o. Periyannan

... Appellant

-Vs-

Inspector of Police,  
All Women Police Station,  
Denkanikottai.

... Respondent

Prayer : Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, praying to set aside the judgment of conviction and sentence passed by the Hon'ble Sessions Judge, Fast Track Mahila Court, Krishnagiri in S.C.No.227 of 2016 dated 30.10.2018.

For Appellant : Mr.M.D. Thirunavukkarasu

For Respondent : Mr.S.Sugendran,  
Government Advocate (Crl. Side)

O R D E R

(This case has been heard through video conference)

This Criminal Appeal is filed against the Judgment of conviction and sentence passed by the learned Sessions Judge, Fast Tack Mahila Court, Krishnagiri dated 30.10.2018 in S.C.No.227 of 2016.

2. The respondent police registered the case against the appellant in Crime No.29/2015 for the offence under Section 448 and 376(1) of I.P.C. After investigation, police laid the charge sheet before the Judicial Magistrate No.2, Hosur, and the learned Judicial Magistrate has taken the charge sheet on file in P.R.C.No.09 of 2016 and committed the case to the Principal District and Sessions Judge, Krishnagiri and the learned Principal District and Sessions Judge, after completing



formalities, taken the case on file in S.C.No.227 of 2016 and made over the case to the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri for disposal in accordance with law. After completing the formalities, the learned Sessions Judge taken the case on file and framed the charges against the appellant for offence under Sec.448 I.P.C. and another charge for offence under Sec.376(1) I.P.C.

3. After framing charges, during the trial, in order to prove the case of the prosecution, on the side of the prosecution, as many as 18 witnesses were examined as P.Ws.1 to 18, 17 documents were marked as Ex.P.1 to Ex.P.17. But no material object was exhibited. After completion of the prosecution side evidence, the incriminating circumstances culled out from the evidence of prosecution witnesses were put forth against the appellant/accused by questioning under Section 313 of Cr.P.C and he denied all the incriminating circumstances as false and pleaded not guilty. On the side of the defence, no oral and documentary evidence was produced on the side of prosecution.

4. On conclusion of trial and hearing of arguments advanced on either side, and also considering the materials, the learned Trial Judge has found guilt of the appellant for the offence under Sec.448 I.P.C. and also under Sec. 376(1) I.P.C. He was convicted and sentenced to undergo 10 years Rigorous Imprisonment and pay a fine of Rs.500/-, in default, to undergo 2 months Rigorous Imprisonment for the offence under Section 448 I.P.C. and also convicted and sentenced him to undergo 10 years R.I., and pay a fine of Rs.1000/-, in default, to undergo 6 months Rigorous Imprisonment. Challenging the said judgment of conviction and sentence, the accused has filed the present appeal before this Court.

5. The learned counsel for the appellant would submit that there was a delay in filing the complaint and the said delay was not properly explained. The investigating officer did not inspect the place of occurrence, he called all the witnesses to the police station and recorded their statement in the police station itself. It is the bounden duty of the investigating officer to inspect the place of occurrence and obtain the statement and collect documents there itself. Though there is no eye-witness, the prosecution has set up as if there are eye-witnesses for the occurrence, and all the witnesses are relatives of the defacto complainant. The investigating officer has not examined any of independent witnesses and it would affect the case of the prosecution. Even the medical report



would show that one injury was found in a private part and no other injury found in the body of deceased. Therefore, doubt creates that whether the appellant had forced her and made sexual assault. The extra judicial confession alleged to have been made by the appellant is not voluntary and only at the instigation of police, the investigating officer has recorded the statement as if the appellant had voluntarily surrendered and they have confessed that there is previous enmity between the appellant and victim's family. The Trial Court has failed to appreciate that due to enmity, the defacto complainant foisted a false case against the appellant and the investigating agency also failed to conduct fair investigation and filed a charge sheet against the appellant falsely. The Trial Court failed to appreciate the same and convicted the appellant without any materials. There were also material contradictions between the prosecution witnesses, which would go to show the root of the case and the same would affect the case of prosecution. The Trial Court failed to appreciate the contradictions pointed out by the defence and ignored the same and convicted the appellant on the ground of assumption and sympathy. Therefore, the findings of the trial court is liable to be set aside and appeal to be allowed.

6. The learned Government Advocate [Criminal Side] would submit that the appellant is a neighbour of victim. Due to illness, she was not able to walk and she was in immobilised condition. The appellant trespassed into the house and committed the offence of rape. The medical witness also would support the case of prosecution. There are no material contradictions and the prosecution proved its cases beyond all reasonable doubt.

7. The learned Government Advocate (Criminal Side) would further submit that P.W. 4 and 5 have seen the appellant, while coming out from the house, in which the occurrence is said to have taken place. At the time of occurrence, P.W.1 was in the house of P.W.4 and since the victim was ill, she is not in a position to move, she stayed with the victim and helped the victim. However, the parents of victim used to go for their work and when they go for work in the morning, they would come only in the evening. Since the victim was 19 years old and also due to illness, P.W.1 had helped the victim and staying in the house of P.W.4 for her safety. On the date of occurrence, at about 08.00 p.m., P.W.2 took the dinner for her, an hundred years old mother raised noise and on hearing the sound, she entered into victim's house. When she entered the house, the appellant came out of the house and when she tried to hold his shirt, he



escaped from her clutches. Immediately, P.W.4 came there and they saw that the appellant raped the victim and on making sound, mother of P.W.2, who was aged about 100 years, P.W.2 and 4, on hearing noise of old lady, aged about 100 years, entered into the house, wherein the victim was screaming and appellant escaped from the house of P.W.4. P.W.2. and 3 saw the accused while coming out from the house. P.W.3 has stated that victim was due to illness, she was immobilised and she heard the news that appellant committed rape and on hearing the noise hundred years old mother of P.W.2, while taking the dinner to the victim, P.W.3 rushed into the house, at that time, the appellant ran away from the house. When she tried to catch his shirt, he escaped from her clutches and therefore, P.W.4 also followed him. P.W.5 and 6 also stated the stage of victim and heard about the news that the appellant has committed rape. PW.7 Doctor, who examined the victim and gave a opinion that the victim was subjected to sexual assault and while she was in the hospital, they have informed to the doctor that when P.W.3 tried to catch him, he escaped from her clutches. P.W.9 Doctor, who had examined and conducted medical examination on the victim girl and she informed that she was raped by a known person. She had examined her medically and found that private part of the victim was not intact. She was on the opinion that the possibility of penetrative sexual assault cannot be ruled out. Therefore, from the evidence of P.W.2 and 4 also the evidence of Doctors, P.W.7 and 9 and the accident register, which was marked as Ex.P4 and the final report has been marked as Ex.P7. The case of prosecution is that victim was subjected to rape and P.W.2 and 4 are the witnesses, and they have seen the appellant in the house of P.W.2 at the relevant point of time, and he escaped from the scene of occurrence on seeing them. Subsequently, after registering the case before the respondent police, the prosecution reveals that the offence is proved beyond reasonable doubt. Hence, there is no merit in this appeal and the same is liable to be dismissed.

8. I have heard submissions of either side and perused the records carefully.

9. The case of the prosecution is that on 25.10.2015 at about 08.00 p.m., the appellant attempted to make a sexual assault, victim girl screamed and when P.W.2 took the dinner for the victim girl, he heard the screaming of victim girl and raised alarm and on hearing the same, P.W.3 and 4 entered into victim's house. While entering into house, the appellant came out from the house and they tried to hold his shirt, he escaped



from her clutches. Accordingly, the victim girl was admitted in the hospital and a complaint was lodged by them. The appellate court, as a fact finding court, finds that there is no independent witness. The Trial Court framed the charges against the appellant for the offence under Sec.448 and 376(1) I.P.C. In order to substantiate the charge, on the side of prosecution, totally 18 witnesses were examined and 17 documents were marked.

10. P.W.1 mother of victim has stated that victim girl is her daughter and she has studied upto 12<sup>th</sup> std. and thereafter, due to illness, she was paralysed and she was in immobilised condition. Mother-in-law, who is aged about 80 years looking after her daughter and she and her husband used to go outside for their work for their livelihood. At that time, mother-in-law was in the house and three years before, she died. Thereafter, she called her mother P.W.2, who is aged about more than 80 years, to her house and she was there and she is looking after the victim. P.W.3, relative of P.W.1 was also staying near the house of victim at the relevant point of time. On the date of occurrence, while P.W.2 taking the dinner for victim and proceeded to the room, at that time, a hundred years old lady raised noise, on hearing noise of her, she went to the house of victim. At that time, the appellant was trying to escape from the house and when she tried to hold his shirt, he escaped from the clutches and the appellant ran away from there.

11.P.W.4 stated that when she came out from her house and they saw the appellant was running from the place, where the victim was screaming. The said Thimmakka, aged about 80 years, during the trial, she died. Therefore, the prosecution could not examine her and to prove that she has raised noise and on hearing the said noise, P.W.3 and 4 followed. From the evidence of P.W.1 to 4, the prosecution has proved that the appellant has trespassed into the house of P.W.1 in the night hours, wherein the victim was lying in the house, and due to illness, two old ladies were always with the victim for taking care of her. Taking advantage of the old age of P.W. 2 and Thimmakka and the illness of victim, appellant has trespassed into the house and made a sexual assault on her. When the said Thimmakka has raised a noise, on hearing the same, P.W.3 and 4 entered into the victim's house, at that time, the appellant was escaping from the house, and when they tried to hold his shirt, he escaped from their clutches. Subsequently, they have made a complaint and the victim was produced before the Doctor for medical examination. P.W.7, Doctor, who admitted the victim girl in the



hospital on 28.10.2015 and made an entry in the accident register. The copy of accident register was marked as Ex.P4. He was informed that on 25.10.2015 at about 08.30 p.m., a known person tried to make a sexual assault on the victim girl. P.W. 9 Doctor, who conducted medical examination on her on 28.10.2015 and she was informed that on 25.10.2018 at about 08.30 p.m., a known person made a sexual assault on the victim. When she conducted medical examination on her on 28.10.2015, the hymen of the victim was not intact and she was of the opinion that the victim was forced to sexual assault. Though from the evidence of P.W.9, it could be seen that she found that there was an injury on the private part of the victim. Therefore, from the evidence of P.W.1 to 4 and the evidence of Doctors P.W.7 and 9, who have examined the victim, this court finds that the appellant has committed the offence of rape, which is punishable under Sec.376(1) I.P.C. Since he trespassed into the house and he has also committed the offence of rape, the Trial Court has rightly appreciated entire evidence. Though there is no exact eye-witness for committing the rape, however, the case of this nature, no eye-witness can be expected. Admittedly, from the evidence of Doctor, it could be seen that due to illness, the victim was not in a position to move and resist. Therefore, taking advantage of the same, the appellant trespassed into the house and committed rape. Though P.W.1 to 4 are the relatives of the defacto complainant, they are circumstantial witnesses. If the evidence of relative witness is a cogent and consistent and if they inspired the confidence of the court, conviction can be recorded on the evidence of relative witnesses. The evidence of P.W.1 to 4 corroborated with the medical evidence viz., Doctors evidence, P.W.7 and 9 and the medical report was marked as Ex.P7. Therefore, from the evidence of all the witnesses, especially, evidence of P.W.1 to 4, 7 and 9, this Court does not find any perversity in appreciation of evidence by the trial court and this court does not find any merit and the prosecution has proved its case beyond all reasonable doubt. Since the victim is not in a position to move and resist, the prosecution has not examined the victim and Thimmakka, who is said to have raised noise, aged about more than 80 years, was no more at the time of trial. Therefore, the non-examination of either the victim or Thimmakka is not fatal to the case of prosecution. Further, PW.3 and 4 have seen the appellant in the house of P.W.1 after hearing the sound made by Thimmakka, a old lady, mother of P.W.1, P.W.3 and 4 have also followed the same. At that time, they have seen the appellant in the house of victim. Therefore, the prosecution proved the charge for the offence under Section 448 I.P.C. and also they have seen the position of victim and gave a complaint. Based on the police advise, victim



was taken to the hospital and admitted in the hospital. The evidence of P.W.7 and 9 Doctors proved that victim was subjected to sexual assault and she has been raped, which is punishable under Section 376(1) I.P.C. Therefore, the prosecution has proved the charges beyond all reasonable doubt. Hence, considering the facts and circumstances of the case, this court does not find any merit in the appeal and the same is liable to be dismissed. Accordingly, this Criminal Appeal stands dismissed.

SD/-  
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

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To

1. The Sessions Judge,  
Fast Track Mahila Court,  
Krishnagiri.
2. The Judicial Magistrate No.II,  
Hosur.
3. The Superintendent,  
Central Prison, Vellore.
4. The District Collector,  
Krishnagiri District,  
Krishnagiri.
5. The Director General of Police,  
Mylapore, Chennai-4.
6. The Inspector of Police,  
All Women Police Station,  
Denkanikottai.
7. The Public Prosecutor,  
High Court, Madras.



Copy to

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

Crl.A. No.462 of 2019

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