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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.528 of 2019
and Crl.M.P.No.7595 of 2020

Ashokan

.. Appellant

.Vs.

State rep by
Inspector of Police,
All Women Police Station,
Udumalai Pettai,
Tiruppur District,
Crime No.7 of 2012.

.. Respondent

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure to set aside the judgment passed in S.C.No.127 of 2014 dated 30.03.2016 on the file of the Magalir Neethimandram (Fast Track Mahila Court), Tiruppur.

For Appellant	:	Mr.T.Muruganantham
For Respondent	:	Ms.T.P.Savitha Government Advocate (Crl.Side)

J U D G M E N T

This Criminal Appeal has been filed against the Judgment dated 30.03.2016 passed in S.C.No.127 of 2014 by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur.

2.The case of the prosecution is that the victim girl, who is aged about 14 years at the time of occurrence was studying 9th standard. On 17.10.2011 at about 11.00 a.m., when the victim girl was alone at home, the accused/appellant, who is a neighbour of the victim girl, asked her to get tea for him. When the victim girl brought tea, the appellant asked her to come inside the house. Thereafter, the appellant threatened the victim girl with knife and compelled her to drink fruit juice and thereafter, she became unconscious and had committed penetrative sexual assault on her. Subsequently, he committed the same offence for more than five occasions and also threatened her not to disclose the incident to anybody. Hence, the victim girl (P.W.1) lodged a complaint against the



appellant.

3.The respondent-Police registered a case in Crime No.7 of 2012 for the offences punishable under Sections 376 and 506(ii) IPC r/w 176 Cr.P.C. After completing the investigation, the respondent police filed a charge sheet before the learned Judicial Magistrate No.I, Udumalaipet and the same was taken on file in P.R.C.No.9 of 2014. Since the offence is against a minor girl, the learned Sessions Judge, Mahila Court (Fast Track Court) Tiruppur has taken the case on file in S.C.No.127 of 2014. After completing the formalities, the trial Court framed charges against the appellant for the offences under Section 376 (i) and 506(ii) IPC.

4.In order to prove the case of the prosecution before the trial Court, on the side of the prosecution as many as 17 witnesses were examined as P.W.1 to P.W.17 and also marked Exs.P1 to P22 besides two material objects were marked as M.O.1 and M.O.2. After examining the prosecution witnesses, the incriminating circumstances culled out from the evidence were put before the appellant/accused and examined under [Section 313](#) of Cr.P.C., wherein he denied all the incriminating evidence as false. On the side of the defence, no oral and no documentary evidence was marked.

5. The Court below, after hearing the arguments advanced on either side and also considering the materials available on record, found that the accused/appellant is guilty for the following offences :

(i) For the offence under Section 376 (i) IPC, the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.50,000/-, in default, to undergo rigorous imprisonment for a period of two years ;

(ii) For the offence under Section 506(ii) IPC, the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for a period of one year. Challenging the said conviction and sentences, the appellant is before this Court with this Criminal Appeal.

6.1 The learned counsel for the appellant would submit that the age of the victim girl was not proved by the prosecution. In the complaint, the victim girl (P.W.1) has stated that she was studying 9th standard, whereas, a copy of the record sheet produced by the prosecution shows that she studied up to 8th standard only. Further, the name of the school mentioned in the record sheet differs from the evidence of the victim girl. There



are material contradictions in the evidence of the victim girl (P.W.1), which clearly show that the complainant has not come with true version. The writing and signatures found in the complaint also differs. The learned counsel for the appellant would further submit that before registering the complaint of the victim girl, the father of the victim girl gave a complaint and the same was not registered, which has been suppressed by the prosecution. During the cross examination, the victim girl has stated that the Police officials obtained her signature in blank papers and the same was filled up by the respondent Police to set up a case against the appellant. Therefore, the appellant is an innocent person and he has not committed any offence.

6.2 The learned counsel for the appellant would further submit that as per the version of the victim girl, she used to call the appellant as 'Appa', who is the neighbour of the victim girl family. Therefore, the relationship between the appellant and the victim girl is father and daughter. He would further submit that there are material contradictions regarding giving birth to an immatured baby by the victim girl and there was no eye witness to the said occurrence. Even, the femur bone of the infant was sent to forensic lab for D.N.A test and the prosecution has not obtained any positive report. The Doctor (P.W.10) who examined the victim girl has stated that there was no injury on the body of the victim girl. Therefore, the medical evidence also not supported the case of the prosecution. Due to enmity between the appellant and the victim girl's family, in order to wreak vengeance they have foisted a false case against the appellant. He would further submit that the victim girl (P.W.1) fall in love with some other person and in order to suppress the said fact they have filed a false case against the appellant.

6.3 The learned counsel would further submit that the victim girl in her deposition has deposed that after drinking some fruit juice, she became unconscious and the appellant committed the said offence and however, there was no materials available to establish the case of the prosecution. Further, it is alleged that the appellant by using his cell phone, took photographs of the victim girl in various postures and threatened her, however, the said cell phone was not produced before the Court. He would further submit that the Doctor, who gave treatment to the victim girl questioned about her pregnancy, but, she did not mention the name of the appellant, till her delivery. There was an inordinate delay in giving the complaint, which was not properly explained. Earlier complaint given by the father of the victim girl was also suppressed by the prosecution. However, the prosecution has stated that the appellant threatened the victim girl and committed sexual assault for more than five occasions, but, the victim girl did not choose to inform the same to her



parents and no complaint was registered after the said occurrence. There are material contradictions in the evidence of the prosecution witnesses. He would further submit that the victim girl did not mention the date and time of occurrence in the complaint or in the First Information Report or even in her deposition. Therefore, the trial Court has failed to appreciate the evidence and wrongly convicted the appellant.

6.4 The learned counsel for the appellant would further submit that the victim girl has deposed that the appellant kept knife on her neck and had committed sexual assault with her and also threatened her not to disclose the said incident to her parents. Therefore, the ingredients of Section 376 IPC only made out, therefore, there was no separate conviction is required under Section 506(ii) IPC. Therefore, the judgment of conviction and sentences passed by the trial Court against the appellant are liable to be set aside.

7.1 The learned Government Advocate (Crl.Side) would submit that at the time of occurrence, the victim girl was only aged about 14 years and in order to prove the same, the record sheet of the victim girl was marked as Ex.P22. As per Ex.P22, the date of birth of the victim girl is 19.01.1998, whereas the date of occurrence is of the year 2011 and hence, the victim girl was below 16 years. Further, the victim girl was studied up to 8th standard and thereafter, she did not continue her studies. She was alone in her house, since her parents are working as sweepers, they went for their work. On the date of occurrence, the appellant asked her to come inside the house and thereafter, latched the door and threatened her with knife and insisted her to drink fruit juice. Then, she became unconscious and the appellant had committed sexual intercourse on her. Thereafter, whenever, the victim girl was alone in her house, the appellant threatened her by showing the photographs in various postures and had committed the said offence on several occasions. When the victim girl got some stomach pain, the mother of the victim girl took her to the hospital, where the Doctor (P.W.8) found that the victim girl got pregnancy by five months and the baby died in her stomach and thereafter, the same was removed from her stomach. Initially, the Doctor refused to give treatment to the victim girl, however, their relative one Nagammal (P.W.3) requested her and then only she gave treatment to the victim girl. Thereafter, they informed the same to the respondent police. After enquiry, the respondent police registered the complaint against the appellant.

7.2 The learned Government Advocate (Crl.Side) would further submit that in order to prove the case of the prosecution as many as 17 witnesses were examined as P.W.1 to P.W.17 and out of which, the victim girl was examined as P.W.1. The victim girl in



her evidence has clearly deposed that the appellant had committed penetrative sexual assault on her by threat and hence, she did not reveal the said incident to anybody. Subsequently, she got pregnant and got stomach pain and thereafter, her mother took her to hospital and the Doctor (P.W.8), who examined the victim girl, has stated that infant was died. Thereafter, she removed the baby and informed the said incident to the respondent police.

7.3 After registering the complaint, the victim girl (P.W.1) was produced before the Doctor (P.W.10), for clinical examination. The Doctor has opined that the hymen of the victim girl was not intact. Further, the inquest report also proved that the victim girl gave birth to an immatured baby. Thus, the medical evidence supported the case of the prosecution. Further, the prosecution witnesses have clearly spoken that the appellant had illegal intimacy with the victim girl and she got pregnant and subsequently, gave birth to an immatured baby. The learned Government Advocate (Crl.Side) would further submit that by knife which was used by the appellant for threatening the victim girl was marked as M.O.1 and also the polythene cover, which was used for putting the dead infant was marked as M.O.2. The prosecution has proved its case beyond all reasonable doubts by examining oral and documentary evidences, the trial Court has rightly convicted the appellant. Hence, there is no merit in this Criminal Appeal and the same is liable to be dismissed.

8. Heard the learned counsel for the appellant and the learned Government Advocate (Crl.Side) for the respondent and also perused the material available on record.

9. This Court, being an Appellate Court, is a fact finding Court, which has to necessarily re-appreciate the entire evidence and give an independent finding.

10. On a careful reading of the deposition of P.W.1, it reveals that the appellant is the neighbour of the victim girl and both the parents are working as sweepers and taking advantage of the loneliness of the victim girl, the appellant has committed penetrative sexual assault by threat. At the time of occurrence, the age of the victim girl is 14 years and in order to prove the age, the prosecution has exhibited Ex.P22 and that the age of the appellant is 52 years. Even assuming that the victim girl gave her consent for sexual intercourse, she is only 14 years and hence, the consent obtained by the appellant is not a valid one. Therefore, the offence committed by the appellant falls under Section 376 IPC.

11. In order to substantiate the charges under Section 376 IPC, the complaint of the victim girl was marked as Ex.P1. The



signatures of the victim girl (P.W.1) and P.W.3 found in the complaint was marked as Ex.P2. Thus, the prosecution has proved its case that the victim girl has given the complaint and the report filed by the Revenue Divisional Officer was marked as Ex.P.3. The Doctor (P.W.10), who examined the victim girl gave opinion in the Accident Register was marked as Ex.P.13. The discharge summary was marked as Ex.P12; Postmortem report of the infant was marked as Ex.P15 and the final report given by the Doctor was marked as Ex.P16. D.N.A report was marked as Ex.P19. The record sheet of the victim girl was marked as Ex.P22. From the evidence of the Doctors (P.Ws.8 & 10) and the Record Sheet of the victim girl (Ex.P22), the prosecution has proved its case that the victim girl was below 16 years.

12. The learned counsel for the appellant would submit that there was no eye witness to the said occurrence. In cases like this, the Court cannot expect any direct eye witness and the trust worthy of evidence of the victim girl has to be taken into consideration. In the present case, the victim girl has clearly spoken about the said incident committed by the appellant/accused and the same was corroborated by the evidence of the other prosecution witnesses. Further, the parents of the victim girl has clearly stated that the victim girl got stomach pain and hence, the father of the victim girl admitted her in the hospital. The Doctor found that she got pregnant and the infant died in her uterus and hence, the Doctor removed the baby. The parents of the victim girl enquired about who is cause for her pregnancy. Initially, the victim girl refused to disclose the truth, but, after delivery, she informed the same to her parents in the nursing home.

13. The Revenue Divisional Officer made an enquiry under Section 174 Cr.P.C and filed the report, which was marked as Ex.P.10. The Doctor (P.W.8) who examined the victim girl has deposed that the victim girl was admitted in Gokul Poly Clinic for stomach pain. On examination, she found that infant died in her uterus and hence, she removed the baby. Further, the Doctor (P.W.9), who is the owner of Gokul Poly Clinic has deposed that the victim girl was admitted in his hospital and the immatured baby was removed from her uterus. Further, P.W.10, the Doctor who examined the victim girl after lodging the complaint has deposed that she was subjected to sexual assault and she did not give any opinion about her pregnancy. Therefore, from the combined reading of the evidence of the victim girl (P.W.1), the Doctors (P.W.8 to P.W.10) and documents Ex.P10 to Ex.P16 and Ex.P22, the prosecution has proved its case beyond all reasonable doubts that the appellant has committed rape by threat. Therefore, the trial Court has rightly appreciated the entire evidence and convicted the appellant for the charged offence.



14. The learned counsel for the appellant pointed out the contradictions and discrepancies regarding the age of the victim girl. From Ex.P22, the date of birth of the victim girl is 19.01.1998 and the age of the victim girl at the time of occurrence i.e on 17.10.2011 was 14 years. Further, (P.W.8) Doctor, who examined the victim girl on her clinical examination found that the victim girl was only 15 years and has opined that since the victim girl not attained the proper age to carry baby and there was no sufficient space to carry the baby in her uterus and hence, she got stomach pain and the baby died. Therefore, the medical evidence also supports the case of the prosecution that the victim girl is below 16 years. However, the appellant has not proved that the victim girl was above 16 years. Therefore, from the evidence of victim girl, this Court finds that the appellant had committed the said offence by threat. Therefore, the contradictions pointed out by the learned counsel for the appellant are only minor contradictions, and which are not material contradictions that would affect the case of the prosecution.

15. At this juncture, the learned counsel for the appellant would submit that the Investigating Officer has not properly investigated the matter. Mere defect in investigation is not a sole ground to disallow the evidence of the prosecution witnesses.

16. Under these circumstances, this Court can safely come to the conclusion that the appellant has committed rape on the victim girl by threat, and the prosecution has established its case beyond reasonable doubt. In the light of the above discussion, this Court does not find any merit in this appeal and the appeal is liable to be dismissed.

17. Accordingly, this Criminal Appeal is dismissed and the conviction and sentences passed in S.C.No. 127 of 2014 by the Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur. is confirmed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.The Sessions Judge,
Magalir Neethimandram
(Fast Track Mahila Court),
Tiruppur.

2.The Inspector of Police,
All Women Police Station,
Udumalai Pettai,
Tiruppur District.

3.The Superintendent,
Central Prison,
Coimbatore.

4.The Public Prosecutor,
High Court, Madras.

5.The Deputy Registrar		with a direction to send back the
(Criminal Section),		original records, if any, to the
High Court, Madras.		trial Court

+1cc to Mr.T.Muruganantham, Advocate, S.R.No.17608

CRL.A.No.528 of 2019
and Crl.M.P.No.7595 of 2020

BP(CO)
CB(23/07/2021)