



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order
28.09.2021

Date of Pronouncing Order
06.10.2021

WEB COPY

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.380 of 2017
and
Crl.M.P.No.8243 of 2017

Illyas ... Appellant/Accused

Vs.

The State rep.by
The Inspector of Police,
All Women Police Station,
Vaniyambadi. (Crime No.8/2010) ... Respondent/Complainant

PRAYER : Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to call for the records relating to the judgment of the Sessions Case in S.C.No.199 of 2011 on the file of the Mahalir Needhimandram, (Fast Track Mahila Court), Vellore, dated 10.05.2017 and set aside the conviction and sentence.

For Appellant : Mr. Durai Kannan,
Legal Aid Counsel

For Respondent : Mr. S. Vinoth Kumar,
Government Advocate

J U D G M E N T

The matter is heard through "Video Conference".

2. Convicted sole accused is the appellant herein. The appellant is in custody. It is a jail appeal.

3. The criminal appeal is filed against the judgment in S.C.No.199 of 2011 dated 10.05.2017 passed by the learned Sessions Judge, Mahalir Neethimandram, (Fast Track Mahila Court) Vellore, convicting the appellant for offence under (1) Section



365 IPC sentencing him to undergo rigorous imprisonment for one year with a fine of Rs.1,000/- in default to undergo further one month simple imprisonment; (ii) Section 366 IPC and sentencing him to undergo rigorous imprisonment for one year with fine of Rs.1,000/- in default to undergo further one month simple imprisonment; (iii) Section 376(2) (f) IPC (as then existing provision) and sentencing him to undergo rigorous imprisonment for ten years with fine of Rs.2,000/- in default to undergo three months simple imprisonment; and (iv) Section 506(ii) IPC and sentencing him to undergo rigorous imprisonment for one year with fine of Rs.1,000/- in default to undergo one month simple imprisonment.

4. The case of the prosecution is that

4(i) the date of occurrence is 11.09.2010 (prior to POCSO Act). The respondent filed charge sheet alleging that on 11.09.2010, at about 05.30 p.m., at Nethaji Nagar North, while the victim child Jansi (a) Arippa was playing in the play ground, the accused with intention of committing rape, kidnapped the above said victim child and took her to Jamit-e-islam, an Islamic school building under the pretext that her father was calling her. and under the same pretext, the accused secretly and wrongfully confined her in the said dilapidated building where he removed her dresses and used criminal force, beaten up her and in furtherance, he committed rape upon her and subsequently with the intention to prevent the disclosure of the crime, he criminally intimidated the victim child that if she reveals the incident to anybody, he would do away with her. Therefore, the accused committed offences punishable under Section 352, 327, 365, 366, 376(f) of IPC.

5. Before the trial Court, the charges under Section 365, 366-A, 376(2) (f), 506(ii) of IPC were framed against the accused. On the side of the prosecution, P.W.1 to P.W.10 witnesses were examined and Exs.P1 to P9 were marked. Further, examined C.W.1 and marked Ex.C1.

6. On consideration of both oral and documentary evidence, the trial Court convicted the accused as stated supra. Hence, the appeal.

7. Heard both sided and perused the records.

8. The learned legal aid counsel for the convicted accused would state that the trial Court relied upon the uncorroborated evidence of P.W.6/victim child and the same is not permissible on facts and circumstances of the case and the mother/P.W.1,



mother of the victim girl/P.W.6 has turned hostile. Therefore, coming into existence of Ex.P1/complaint is doubtful. There is a delay in lodging the police complaint. The appellant is not well verse in Tamil and he is illiterate and hence questioning under Section 313 of Cr.P.C was only on empty formalities in this case.

9. The learned Government Advocate for the respondent police would contend that the evidence of prosecutrix (P.W.6/victim girl) is clear and natural, inspires the confidence of the Court and the evidence of P.W.7/father is immediately after the occurrence. The medical evidence of P.W.9/Dr.Seemakumari, duly corroborates the version of victim P.W.6 and further contented that during cross examination of private prosecution witnesses are not confronted with any false implication by the accused and the accused has not offered any explanation while questioned under Section 313 Cr.P.C., and made submission in support of judgment of the Session Court.

9(a) Age of the victim girl: The prosecution, in order to substantiate the plea of minority of P.W.6 has marked Ex.P9/Bonafide Certificate of victim girl. The learned Sessions Judge, after going through the evidence, has issued a witness summons to Silvia Santhakumari, Headmistress of the school, were P.W.6/victim girl had studied and through her, marked Ex.C1. As per Ex.P9/certificate for P.W.1, the date of birth of the victim girl is 27.06.2011, Admission number is 2025 in the admission register of the victim, is marked through C.W.1 as Ex.C1. The alleged date of occurrence is 11.09.2010 and hence, the trial Court has rightly come to the conclusion that in view of Ex.C1, the date of birth of the victim girl was 27.06.2001, and the same was categorically admitted by C.W.1, as correct one. Besides, the date of birth found in Ex.P9 and Ex.C1, the age of P.W.6/victim girl was indicated between 9 to 10 years old at the relevant point of time.

9(b). By placing reliance upon of Section 35 of Indian Evidence Act, date of birth recorded in school register by the authority in discharge of public duty is admissible in evidence. Accordingly, taking into consideration, the documentary evidence of Ex.P9 and Ex.C1 and evidence of parents and P.W.6/victim girl, the trial Court has rightly come to the conclusion that the victim girl/P.W.6 is aged between 9 to 10 years, at the relevant point of time and hence, the charge under Section 376 (ii) (f) has framed is proper and thus, P.W.6 was a minor on the date of the occurrence.



10. Crime: The case of the prosecution is that on 11.09.2010, at about 05.30 p.m., at Nethaji Nagar North, while the minor victim child Jansi (a) Arippa was playing in the play ground, the accused with intention of committing rape, abducted the above said victim child and took her to Jamit-e-islam, an Islamic school building under the pretext that her father was called her. and under the same pretext, the accused secretly and wrongfully confined her in the said dilapidated building where he removed her dresses and used criminal force, beaten up her and in furtherance, he committed rape upon her and subsequently with the intention to prevent the disclosure of the crime, he criminally intimidated the victim child if she reveals the incident to anybody, he would do away with her.

11. In order to substantiate the factum of penetrative sexual assault committed on P.W.6 victim, as many as 10 witnesses were examined on the side of prosecution. Out of them the P.W.6, P.W.7 and P.W.9 were specifically examined to establish veracity of alleged factum of sexual assault committed on P.W.6 victim at the relevant point of time.

12(a). PW6 reiterated her version in her chief examination that the accused took her to the said place of occurrence and where the accused slapped on her cheek and since she refused to wear out her dress, the accused forcibly removed her dresses and wear out his dresses also, then laid down on her on the floor and he gave kiss to her and penetrated his penis into the private part of victim. While she was crying, the accused threatened with dire consequence that "eP ahhplkhtJ brhd;dhy; bfhiy bra;JtpLntd;" and he fled away from the place of occurrence.

12(b). In pursuance of such occurrence, the victim found some white lubricants on the feet of her legs. The she left from the place with crying and narrated those facts to her mother, who according to her evidence washed those white lubricants by water.

12(c). In order to corroborate the evidence of P.W.6 victim, P.W.9 Dr.Seemakumari was examined on the side of prosecution Doctor who medico-legally examined the victim and recorded the A.R. and issued her opinion as mentioned in Ex.P6 that

- The hymen of victim was ruptured

12(d). The P.W.8/Dr.Karthick Prabhu who medically examined the accused has specifically opined that the accused was fit for



having sexual intercourse. The P.W.9 would state in chief that vagina admits two fingers easily.

12(e). Thus, this Court finds that the oral evidence of P.W.6/victim girl inspires the confidence of this Court as the same is found to be natural, on perusal of the evidence recorded by the learned Sessions Judge and further, even during the cross examination, she has clearly spoken about the act of the accused on her private part of the body and the manner how she was called by the accused to the secured place. Thereafter, after tying up, taken her to isolated place and committed sexual assault and furthermore, such evidence of P.W.6 was duly corroborated by the evidence of P.W.9 Doctor and hence, as I find that the evidence of P.W.6/victim girl is natural and it is also corroborated by her father/P.W.7. The action of the accused on the private part of the body of the victim girl was clearly spoken to in natural way by her as could be seen from lower court records and hence, corroboration from independent evidence is not required.

12(f). The corroboration from independent witness is not sin-quo-non while the evidence of prosecutrix is consistent and credible in respect of the sexual abuse. Besides, mere absence of any injury over the sexual organ of the accused itself would not throw the entire evidence of victim child in respect of the sexual abuse committed by the accused. The absence of semen over the materials recovered from the accused, that itself cannot be sufficient to conclude that no rape sexual assault committed by the accused, as it was not the requirement of law that the sexual intercourse has to be completed by the accused because, mere penetration was sufficient to arrive such conclusion.

13. Therefore, I find that the evidence of P.W.6 is held to be reliable and trustworthy. The non examination of independent witnesses is not fatal to the prosecution. The absence of examining any independent witnesses residing in and around the playing ground and the place of occurrence, it could not be deemed to be a fatal to the prosecution case, according to well settled proposition, victim of sexual assault is not treated as accomplice and as such her evidence does not require any corroboration from the independent witnesses, therefore, non examination of witness residing the neighborhood of victim does not whittle down the value of the evidence of prosecutrix at any angle and it is needless to say that if the evidence of prosecutrix inspire the confidence, it must be relied upon without seeking any corroboration of her statement in material



particulars therefore, corroboration is not sin-quo-non while the evidence of prosecutrix is consistent and credible in respect of sexual abuse cases and uncorroboration of evidence of P.W.6 appears to be inspired and duly corroborated by medical evidence and hence, the above plea of non examination of independent evidence is stands rejected.

14. Furthermore, it remains to be stated that after the incident, the manner of act of sexual assault by the accused on the private part of the victim girl has been duly spoken to by the father found to be duly corroborated.

15. The learned legal aid advocate would contend that there is a delay in preferring the FIR. P.W.6 and P.W.7 that though the occurrence was occurred on 11.09.2010, the P.W.7 took the matter to the Muthavalli of Muslim Jamad where the Muthavalli had given an assurance to take necessary action against the accused and since the accused was not co-operated and Muthavalli not given any proper reply in this regard, they lodged the complaint on very next day i.e., 13.09.2010.

15(b). In view of the above reasoning, the plea of delay in filing the FIR having been duly explained, I have no hesitation to reject the said plea for delay in FIR. Since the delay was properly explained under the reasoning as recorded supra.

16. The next contention raised by the legal aid counsel is that in respect of charge for the offence for abduction under Sections 365, 366 IPC, the evidence of P.W.6 is inconsistent. After going through the evidence of P.W.6 and answer elicited in the cross examination with that of P.W.8/Investigation Officer, I find that her evidence is clear to the extent that initially, the accused has called the victim girl while she was playing, after she reaches to the secured place, he carried the victim girl and committed sexual assault upon her and with regard to alleged kidnapping by tying the victim girl's hands and legs with rope, her evidence is clear, till she reaches the secret place and she had taken after offering a big chocolate, thereafter, he has taken her by tying her legs and hence, by taking her to the secret place and thereafter, she was wrongfully confined for sexual assault and thereafter, the accused committed sexual assault. The version of P.W.6 and P.W.7 doctor, completely project the prosecution case of sexual assault. The plea of inconsistency in the evidence of P.W.1, regarding charge under Section 363 and 364 stands negatived.



17. On perusal of the lower Court records, I find that the accused has understood the questions put to him and signed in English and therefore, the contention of the legal aid counsel that the appellant is illiterate by itself stands negatived and it is found that the accused has understood the incriminating circumstances that was put to the accused under Section 313 of Cr.P.C., and stands negatived.

18. Thus, I find that version of P.W.6/victim girl is natural and reliable and duly corroborated by the medical evidence of P.W.9/Doctor, who had issued Ex.P6 and as per the evidence of P.W.6 victim girl is minor on the date of the occurrence and the victim girl was subjected to sexual assault by accused and the accused is potent to have sexual intercourse as per Ex.P5 medical certificate issued by P.W.8/Doctor and the accused has taken the victim girl who was playing in the playing ground under the pretext that her father of the victim is calling and thereafter, ravished her.

19. After the incident, the manner of the act of sexual assault, conducted by him is on the private part of the victim girl has been clearly spoken by her and found to be duly stands corroborated and hence, all the charge framed against the accused is held to be proved. The finding rendered by the lower appellate Court does not suffer from any irregularity or illegality warranting interference of this Court.

20. In view of the analysis of the oral and documentary evidence coupled with the finding thereon, this Court has found that P.W.6/victim girl is a minor on the date of the occurrence and on the basis of the oral evidence of P.W.8 and documentary evidence of Ex.P.5, the accused is potent to have sexual intercourse and the version of the victim girl/P.W.6 is found to be natural, reliable and duly corroborated by the medical evidence of P.W.9 Doctor. As per Ex.P.6 and her version regarding the factum of accused taken the victim girl, who was playing in the play ground on the pretext that her father is calling and thereafter offered her a chocolate and took her to the Jamit-e-islam, an Islamic school building and tied her legs and hands and her evidence is found to be natural, reliable and duly corroborated by the medical evidence of lady Doctor P.W.9, who had issued Ex.P.6 to the effect that there had been a penetrative sexual assault on her private part and thus, I find that the charge under Sections 365, 366 and 376 (2) (f) [as then existing provision] and also criminal intimidation for the charge under Section 506(ii) IPC was proved by the prosecution beyond reasonable doubt. Hence, all the charges against the



accused are held to be proved by the learned Special Sessions Judge. Such a finding rendered by the learned Special Sessions Judge, does not call for interference by this Court.

21. In the result, the criminal appeal is dismissed and the order of conviction and sentence passed by the learned Session Judge, Magalir Neethimandram, (Fast Track Mahila Court), Vellore, in S.C.No.199/2017, dated 10.05.2017, is hereby confirmed. Consequently, connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

AT
To

1. The Sessions Judge,
Mahalir Needhimandram,
(Fast Track Mahila Court), Vellore.
2. The District Munsif -Cum-
Judicial Magistrate,
Vaniyambadi.
3. The Chief Judicial Magistrate,
Vellore.
4. The Judicial Magistrate No.I,
Vellore.
5. The Superintendent,
Central Prison,
Vellore.
6. The Inspector of Police,
All Women Police Station,
Vaniyambadi.
7. The Public Prosecutor,
High Court of Madras.



8.The Section Officer,
Criminal Section,
High Court, Madras-600 104.

WEB COPY

Crl.A.No.380 of 2017 and
Crl.M.P.No.8243 of 2017

ev[co]
srg 03/12/2021