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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2021

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

Crl.A.No.561 of 2017

Suresh

... Appellant

Vs

The State Rep.by its
Inspector of Police,
Thakkolam Police Station,
Vellore District.
Crime No.34 of 2008.

... Respondent

PRAYER: This Criminal Appeal is filed under Section 374 of Cr.P.C., against the judgment and conviction on Sessions Judge Magalir Neethi Mandram (Fast Track Magalir Court), Vellore in S.C.No.155/2013 dated 18.8.2017 for the period of 10 years Rigorous Imprisonment and R.5,000/- fine an in default of fine another one month of Simple Imprisonment.

For Appellant : Mr.T.Arul

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.Side)

JUDGMENT

This Revision Case has been preferred challenging the judgment of conviction and sentence passed by the learned Sessions Judge Magalir Neethi Mandram (Fast Track Magalir Court) Vellore in S.C.No.155/2013 dated 18.8.2017, in and by which the appellant/accused was convicted and sentenced as under:

Sl.No.	Offence under Sections	Punishment imposed on the accused
1	376 IPC	To undergo Rigorous Imprisonment for ten years and to pay a fine of Rs.5,000/- in default to undergo one month Simple Imprisonment.



2. According to the case of the prosecution, on 16.02.2008 at about 7 p.m., when the victim went to attend her nature's call near a river bed of a village, the accused, with an intention to commit rape on her, came there and striped her dress and forcibly hugged her, pushed her down, gagged her mouth and ravished her. On the complaint given by PW1, the father of the victim, a case was registered by PW9 Mr.Karunanidhi, the then Inspector of Police, Thakkolam Police Station, in Crime No.34 of 2008 for the offence under Section 376 IPC and prepared First Information Report. He conducted investigation in the case and went to the place of occurrence and prepared the Observation Mahazar and Sketch and examined the witnesses. Since the victim woman was deaf and dumb, he examined her with the help of an interpreter and then sent her to medical examination. He arrested the accused at about 8 p.m., on 24.02.2008 near Nagarikuppam bus stand and got his confession recorded in presence of the witnesses. He went to the house of the victim and recovered the dress worn by the victim at the time of occurrence and sent the recovered Material Objects to the Court through Form-95. The accused was also subjected to medical examination by getting proper order from the Court; he sought the help of the interpreter to record the statement of the victim and thereafter, he went on transfer; PW11-Mr.Saravanan, Inspector of Police succeeded PW9. After completing the investigation, PW11 filed charge sheet against the accused for the offence under Section 376 IPC. Since the charge sheet was filed without the statement of the victim woman under Section 161 Cr.P.C., PW12 Duraipandiyan, then Inspector of Thakkolam Police Station examined the victim with the help of interpreter and filed the revised charge sheet along with relevant documents.

3. After the case was taken on file and after observing due legal mandates, the learned Trial Judge, on being satisfied with the materials placed before him framed the charge against the accused for the offence under Section 376 IPC. When the accused was questioned, he denied his participation in the offence and claimed to be tried.

4. During the course of trial, on the side of the prosecution, 12 witnesses have been examined as PW1 to PW12 and 10 documents were marked as Exs.P1 to P10 and 3 Material Objects were marked as M.Os.1 to 3. On the side of the defence, no witness was examined and no document was marked.

5. After concluding the trial and after considering the evidence on record, the learned Trial Judge found the accused guilty for the offence under Section 376 IPC and convicted and sentenced him to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.5,000/-, in default to undergo one month



Simple Imprisonment. Aggrieved by that, the accused has preferred this appeal before this Court.

6. Heard the learned counsel for the appellant/accused and the learned Government Advocate(Crl.Side) appearing for the respondent.

7. The learned counsel for the appellant/accused submitted that, even at the time of filing charge sheet, statement under Section 161 Cr.P.C., of the victim, was not obtained; there is a delay in registering the F.I.R., and the learned Trial Judge has failed to note the same; the evidence of PW5 has lot of contradictions and she has even stated about the previous motive with the accused; the medial evidence did not corroborate the evidence of PW5 (victim woman) and hence, this Criminal Appeal should be allowed by setting aside the judgment of the trial Court.

8. The learned Government Advocate(Crl.Side) appearing for the State submitted that the delay in registering FIR will not be fatal to the case of the prosecution. In the offences of this nature, the evidence of victim alone is sufficient to convict the accused if it is reliable. The learned Trial Judge has analysed the evidence in a correct perspective and therefore there is no reason to interfere with the judgment of the Sessions Court.

9. Point for consideration:

'Whether the conviction and sentence of the accused for the offence under Section 376 of IPC by the learned Sessions Judge, is fair and proper?'

10. The de-facto complainant who is the father of the victim woman, has given the complaint Ex.P1, wherein, he has stated that he came to know about the occurrence when his deaf and dumb daughter communicated to his daughter-in-law (PW2-Jansi) about the occurrence through signs. In the evidence of PW2, he has stated that the victim woman narrated the occurrence by showing signs that the accused tied her hands, gagged her mouth and ravished her.

11. The learned counsel for the appellant/accused submitted that the complaint has been given only on 24.02.2008, despite the offence had occurred on 16.02.2008 and that is fatal to the case of the prosecution. It has been held in various judgments of the Hon'ble Supreme Court that in the sexual offences the delay in giving the complaint to the Police will not be fatal to the case of the prosecution.

12. There would be number of reasons for not opting to give



a complaint immediately after the occurrence. Only after a long inhibition and detailed discussion, the family members of the victim would have come forward to register a case. Hence, the mere delay in registering the FIR, cannot be considered to be fatal to the case of the prosecution. On this point also it is relevant to cite the decision of the Hon'ble Supreme Court held in Karnel Singh v. The State of Madhya Pradesh, [(1995) 5 SCC 518] reads as under:

'Merely because the complaint was lodged less than promptly does not raise the inference that the complaint was false. The reluctance to go to the police is because of society's attitude towards such women; it casts doubt and shame upon her rather than comfort and sympathise with her. Therefore, delay in lodging complaints in such cases does not necessarily indicate that her version is false.'

The said point has been re-asserted in subsequent judgments of various High Courts.

13. Since there cannot any eye-witness to the offence like rape, the evidence of the victim assumes more significance. The paramount importance given to evidence of the victim, is based on the fact that no woman would come forward to point out a man and say that she was ravished by him, unless such an incident had actually occurred and the man was the one who had committed the offence. The victim woman was examined as PW5. As stated already, she is deaf and dumb. In view of the same, she was examined in the Court with the help of an interpreter. The victim had narrated the occurrence by showing signs and the interpreter interpreted its meaning to the Court. PW5 has stated in her evidence about the manner in which the accused caught hold of her when she was going alone near the river for the practical purpose. The accused followed her, hugged her, striped her dress, gagged her mouth and then ravished her. The victim alone is the best witness who can speak about the events that preceded and followed the occurrence of rape.

14. These kinds of offences would occur in some lonely place where the accused would not be noticed by anyone. That has been made clear in the evidence of PW5 also. She has stated that when she was going alone near the river for the practical purpose, the accused took advantage of the situation and committed the offence on her. Even the cross-examination of PW5, could not demolish her statement in chief.

15. The learned counsel for the appellant/accused submitted that the doctor has not noted any injury or abrasion on the body of the victim and that should find in favour of the defence. It



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has to be noted that it was not the statement of the victim before any one that she had sustained injuries due to the occurrence. Further, the absence of injury on the private parts of the victim alone will not falsify the case of the prosecution.

16. It is relevant to point out that the doctor who examined the victim as a witness and found that the hymen of the victim was not in-tact. The role of the medical evidence is corroborative in nature. When the evidence of the victim itself is found to be trust-worthy and reliable, the absence of injuries on her body will not assume any significance. The clear evidence of the victim is that she was ravished by the accused with all pains, she could convey the same to her sister-in-law/PW2, by showing appropriate signs. The accused had taken advantage of the vulnerability of the victim and committed the offence of rape on her.

17. There is no material available to show that the occurrence is case of consensual sex. According to section 114-A of the Evidence Act, whenever a person is charged for the offence under Section 376 IPC, the initial presumption has to be made that there was no consent. The contrary proof has to be originated from the side of the accused and it is his burden to prove that the occurrence was a consensual sex. It will be appropriate to extract Section 114A of the Indian Evidence Act for ready reference.

'114A. Presumption as to absence of consent in certain prosecutions for rape.

In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m), or clause (n) of sub-section (2) of section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.'

18. In this case, the circumstances that had proceeded and followed the occurrence would show that there could no consent given by the victim. Whether the accused claimed that there was a consent. The only defence that was taken by the accused is that this is a false and motivated case. I find no materials produced to substantiate the same. With regard to motive, it is



substantiated by the petitioner that PW5 has spoken about the motive in her evidence. PW5 has stated in her evidence that the bullock of the accused hit on the bullock of the victim's family. Bullocks might hit anywhere and it would have resulted in some quarrel between the owners of bullocks. But, it cannot be stretched to the level of motive parked in the mind of the father of the victim to implicate the accused falsely in this case and that too by alleging that the accused had ravished his daughter. Being a father, he knows very well what impact it would cause on the modesty of his own daughter.

19. In fact, the delay in giving a complaint itself is due to lot of inhibition and repeated revision of the decision to take legal action. So in any every angle, the case of the prosecution does not appear to be false or motivated.

20. If the evidence of the prosecution is read in entirety, it would only prove that the case of the prosecution is true. The learned Sessions Judge has appreciated the evidence on record in a right perspective and found the accused guilty for the offence under Section 376 IPC and hence, I find no reason to interfere with the well reasoned judgment of the trial Court.

21. In the result, this Criminal Appeal is dismissed and the judgment of the learned Sessions Judge Magalir Neethi Mandram (Fast Track Magalir Court) Vellore in S.C.No.155/2013, dated 18.8.2017, is confirmed. Since the appellant/accused is in jail, he shall undergo the remaining period of sentence, if any. The sentence of imprisonment shall be set-off under Section 428 Cr.P.C.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

ssn

To

1. The Sessions Judge,
Magalir Neethi Mandram
(Fast Track Magalir Court),
Vellore.



2. The Inspector of Police,
Thakkolam Police Station,
Vellore District.

3. The Superintendent,
Central Prison,
Vellore.

4. The Public Prosecutor,
High Court of Madras,
Chennai.

Copy to:
The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.T.Arul, Advocate, S.R.No.64257

Cr1.A.No.561 of 2017

MT(CO)
SU(28/02/2022)