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IN THE HIGH COURT OF JUDICATURE AT MADRAS

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| Reserved on   | : | 01.04.2021 |
| Pronounced on | : | 08.07.2021 |

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Appeal No.609 of 2019 and  
Crl.M.P.No.1977 of 2020

ELUMALAI @ RANGON  
S/o.Kali Gounder

... Appellant

Vs.

The Inspector of Police  
All Women Police Station  
Polur  
Thiruvannamalai District.  
(Crime No.15 of 2013)

... Respondent

Prayer : Criminal Appeal filed under Sections 374(2) of Criminal Procedure Code, to call for records in connection with the S.C.No.71 of 2014 on the file of the learned Fast Track Mahila Judge, Thiruvannamalai, Thiruvannamalai District and set aside the Judgment dated 30.08.2019.

For Petitioner : Mr.E.Kannadasan

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 30.08.2019 in S.C.No.71 of 2014 on the file of the Fast Track Mahila Judge, Thiruvannamalai.

2. The respondent police registered the case against the appellant in Crime No.15 of 2013 for the offence punishable under Sections 452, 376, 354 IPC read with Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act. After completing investigation, the respondent police laid the charge sheet before the learned Judicial Magistrate, Polur, for offence under Sections 452, 376, 354 IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act 2002. The learned Magistrate after completing formalities, committed the case to the Principal Sessions Judge, Tiruvannamalai since the



offences were exclusively triable by the Court of Session and the learned Principal District Judge, Thiruvannamalai had taken the case on file in SC No.71 of 2014 and made over the case to the Sessions Judge, Fast Track Mahila Court, Tiruvannamalai since, the offence is against a woman. The learned Special Judge after completing the formalities, framed charge against the appellant for offence under Section 376 IPC.

3. On the side of the prosecution during trial, in order to prove the charges, as many as 18 witnesses were examined as P.W.1 to P.W.18 and 17 documents were marked as Ex.P.1 to Ex.P.17. No material object was exhibited.

4. After completing the examination of the prosecution witnesses, incriminating circumstances culled out from the evidence of prosecution witnesses, were put before the appellant by questioning under section 313 Cr.P.C. However, the appellant denied the same as false and pleaded not guilty. On the side of the defence, no oral or documentary evidence was produced.

5. The learned Special Judge after completing trial and hearing the arguments advanced on either side and also considering the materials, found the appellant guilty of offence punishable under section 376 IPC and convicted and sentenced to undergo 7 years simple imprisonment and pay fine of Rs.10,000/- in default, to undergo a further period of six months simple imprisonment. Challenging the above said Judgment of conviction and sentence, the accused has filed the present appeal before this Court.

6. The learned counsel for the appellant submitted that the trial Judge convicted the appellant based on inconsistent and uncorroborated testimony of prosecution evidence in respect of place of occurrence, manner of occurrence. The case of the prosecution is totally contradictory to each other and the allegations found in Ex.P.1 Complaint are not corroborating with the case of the prosecution. Further, the evidence of P.W.11, the Doctor who examined P.W.2, issued a certificate which is marked as Ex.P8, is totally contradictory to the evidence of P.W.1 to P.W.8 and P.W.17 and 18. The Doctor totally denied the pregnancy, termination and delivery of still born baby by P.W.2 and further opined that there was no symptoms seen by her during her examination pregnancy and termination. In the evidence of P.W.11, the doctor has categorically stated that she had seen the symptoms of sexual intercourse 7 days prior to the date of examination on P.W.2, however, there was no explanation from the prosecution about the recent sexual intercourse of P.W.2 and with whom. The learned counsel would submit that since, there was a dispute between the prosecution witnesses P.W.1 to P.W.8 and the appellant as early as February 2012 onwards, there was



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no relationship between them after the dispute. Further, there are material contradiction between the evidence of prosecution witnesses P.W.1 to P.W.8 and Ex.P1, the complaint. All of them suppressed about the material facts that the appellant had already approached them and offered to marry P.W.2 and that was refused by them. But all of them conveniently failed to depose about the same in their evidence before the Court. Further, there are material contradiction between Ex.P1, the complaint and the charge sheet filed by the Investigating Officer. According to P.W.1,2 and 6 to 8, the appellant committed rape on P.W.2 at the residence of P.W.6 and 7, whereas the Investigating Officer namely P.W.18 filed final report against the appellant stating that the appellant had committed rape on P.W.2 repeatedly at various places including Teakwood Tree grove belongs to one Raja and on 01.02.2012 at the victim's house. Further, the prosecution failed to establish as to whether the victim delivered a still born baby or got abortion or child born and dead by examining the Doctor and producing medical records to prove their allegations. None of them had neither produced any documents nor marked the same before the Court. There is a delay in filing the complaint and there was no explanation from the prosecution for the said delay. The unexplained delay is fatal to the case of the prosecution. Evidence of P.W.1 to P.W.8 are not believable and they contradict themselves each other regarding place of occurrence and the manner of occurrence. During examination, the Investigating Officer has stated that prior to the registration of the case, they had received a complaint from P.W.1 and conducted enquiry and closed the same. But no documentary evidence was produced and marked as Exhibit and no explanation for non production of the said closure report on the earlier complaint of P.W.1. There are material contradictions between the prosecution witnesses and the prosecution has failed to prove its case beyond reasonable doubt. Unfortunately, the trial court wrongly found the appellant guilty of offence under Section 376 IPC. Therefore the Judgment of the trial Court is liable to be set aside.

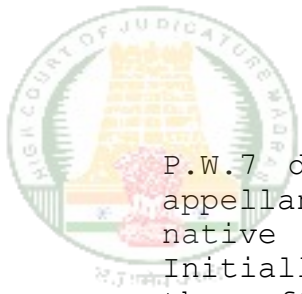
7. The learned Government Advocate would submit that P.W.1 is the mother of the victim. The victim is P.W.2. P.W.1, the mother of the victim, had left the victim P.W.2 under the care and custody of P.W.6 and P.W.7 who are the son and daughter-in-law of P.W.1 and had gone for work at Chennai. At that time, the appellant on the promise of marrying the victim P.W.2, had sexual intercourse with her and thereafter, refused to marry her. On coming to know about the same, P.W.7, the daughter-in-law of P.W.1, called P.W.2 and informed her that her daughter P.W.2 was raped by the appellant. Immediately, P.W.1 returned to native and also approached the appellant to pacify the matter. Initially, the appellant accepted to marry the victim and subsequently, absconded. By the time the victim became pregnant



and delivered a still born baby. Thereafter, when the appellant came back, again the mother of the victim approached him and requested him to marry the victim. But the appellant refused her request stating that he has not committed rape on P.W.2. Therefore, she lodged the complaint before the respondent. The Investigating Officer investigated the matter and laid the charge sheet for offence under Sections 452, 376 and 354 IPC and also for the offence under Tamil Nadu Prohibition of Harassment of Woman Act, 2002. The Special Court after considering the entire materials framed charge against the appellant only for offence under Section 376 IPC. After the trial, the trial Judge found guilt of the accused for offence under Section 376 IPC and convicted him. In order to prove the case of the prosecution, totally 18 witnesses were examined out of which the victim was examined as P.W.2, the mother of the victim who gave the complaint to the respondent police was examined as P.W.1, P.Ws.6 and 7 are the son and daughter-in-law of P.W.1. The Doctor P.W.11 who conducted medical examination on P.W.2 victim, has given her opinion which clearly shows that the victim was subjected to penetrative sexual intercourse and her hymen was not intact. P.W.1 to P.W.8 have categorically stated that the appellant had made a promise to marry the victim and subsequently had sexual intercourse with her and thereafter failed to marry her. Therefore, the intention of the appellant during intimacy was not to marry the victim. However, he has made false promise to the victim girl and had sexual intercourse with her and subsequently refused to marry her. Though the defence counsel taken a main defence that it was a consensual sexual relationship, the victim has clearly stated that the appellant had promised to marry her and only thereafter, she had allowed the appellant for sexual relationship since she believed his words that he would marry her and he would be her husband. Subsequently, the appellant refused to marry her. All the prosecution witnesses have clearly spoken about the involvement of the appellant and the medical evidence also corroborates with the evidence of prosecution. Further, the delay in filing FIR has been properly explained. Therefore the trial Court has rightly found the appellant guilty and convicted him. Therefore, there is no merit in this case and the appeal is liable to be dismissed.

8. Heard the learned counsel appearing for the appellant and the learned Government Advocate appearing for the State and perused the materials available on record.

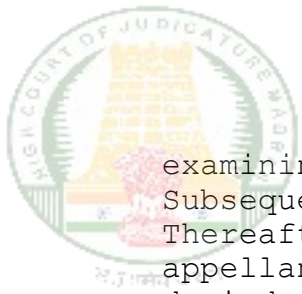
9. The case of the prosecution is that the victim is a blind. Her parents P.W.1 and P.W.3 had gone to Chennai for coolie work and they had left the victim P.W.2 under the care and custody of P.Ws.6 and 7 who are the son and daughter-in-law of P.Ws.1 and 3. While so, P.W.1 received a phone call from



P.W.7 daughter-in-law that the victim P.W.2 was raped by the appellant. On receipt of the information, P.W.1 returned to native and also approached the appellant to pacify the matter. Initially, the appellant accepted to marry the victim and thereafter, absconded. By the time the victim became pregnant and she was taken to Adukkamparai Government Hospital, Vellore, and subsequently, she delivered a still born baby. Thereafter, when the appellant came back, the mother of the victim again approached him and requested him to marry the victim. But the appellant refused her request stating that he has not committed rape on P.W.2. Later on, she preferred a complaint before the respondent police. On receipt of the complaint, the respondent police registered the case in Crime No.15 of 2013 for offence under Section 452, 376 and 354 IPC read with Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 2002 and after investigation, laid charge sheet before the learned Judicial Magistrate, Polur. The learned Magistrate committed the case to the learned Principal Sessions Judge, Tiruvannamalai, since the offences are exclusively triable by the Court of Session and the Principal Sessions Judge had taken up the case on file in S.C.No.71 of 2014 and made over the same to the Sessions Judge, Fast Track Mahila Court, Tiruvannamalai, since the offence is against woman. The learned Mahila Judge, after considering the materials, framed charge for offence under Section 376 IPC and after completing trial, found the appellant guilty and convicted and sentenced as stated above. Challenging the same, the appellant has filed the present appeal.

10. Since the appellate Court is the final Court of fact finding, it has to re-appreciate the evidence independently and to give its findings. Accordingly, this Court pursued the entire materials and Judgment of the trial Court.

11. In order to substantiate the charge framed against the appellant, on the side of the prosecution, totally 18 witnesses were examined before the trial Court. P.W.1 is the mother of the victim. She is the one who gave the complaint. She has categorically stated that P.W.2 is her daughter, P.W.3 is her husband. P.W.1 and P.W.3 had gone to Chennai for work and since P.W.2 the victim was blind, they left the victim at the house of P.Ws.6 and 7 who are their son and daughter-in-law. Since, the victim was partially blind, taking advantage of the same, the appellant who is a neighbor, had approached the victim and made false promises that he would marry her and had sexual intercourse with her. When P.W.7, the daughter-in-law of P.W.1 came to know about the same, she had informed to the mother of the victim P.W.2. Immediately, P.W.1 rushed to the village and approached the appellant's family. Initially, the appellant accepted to marry the victim and thereafter absconded. By the time, the victim was taken to hospital where the doctor after



examining her clinically, informed that she is pregnant. Subsequently, she gave birth to a stillborn male baby. Thereafter, when the appellant came back, P.W.1 approached the appellant and tried to pacify the matter. Since, the appellant denied to marry the victim stating that he has not committed any offence, P.W.1 the mother had left with no other option except to lodge a complaint. After registration of complaint, the victim was examined as P.W.2 and she has clearly narrated that her parents P.Ws.1 and 3 had gone for work at Chennai and she was staying at the house of her brother and sister-in-law/P.Ws.6 and 7. At that time, the appellant approached the victim and made a promise to marry her and had intimacy with her. On coming to know about the same, P.W.7 sister-in-law of the victim, informed the same to her mother. Thereafter, the mother of the victim came to native and tried to pacify the matter. By the time, the victim became pregnant and subsequently, she delivered a still born baby. Thereafter, since the appellant refused to marry her, P.W.1 informed the same to her husband P.W.3. The evidence of P.W.3 corroborated the evidence of P.W.1 and P.W.2. P.W.4 and P.W.5 are mahazar witnesses. P.W.6 and P.W.7 are the brother and sister-in-law of the victim. The evidence of P.W.6 and P.W.7 corroborated the evidence of P.W.2. P.W.8 is another daughter of P.W.1 and P.W.3 and her evidence also corroborates the evidence of P.W.6 and P.W.7. Though, they are relative witnesses, their evidence corroborates with the evidence of P.W.2 and also corroborates with the medical evidence.

12. The learned counsel for the appellant submitted that P.W.1 has stated that P.W.7 had informed her that the appellant had raped the victim P.W.2 and after coming to know about the same, she took her to hospital and found that the victim was pregnant. Subsequently, she gave birth to a stillborn baby. Whereas, P.W.11 the Doctor, has not stated anything about the pregnancy and also delivering of a stillborn baby and she has stated that 7 days prior to the examination of the victim, she was subjected to sexual intercourse which creates doubt. A reading of the evidence of P.W.11 Doctor would go to show that she has stated that the victim was brought by a lady Constable with a request letter of the Inspector of All Women Police Station. While examining the victim girl, she has stated that one known person three months prior to that day, had committed sexual intercourse with her and she opined that her hymen was not intact and vagina admits two fingers and she is not virgin. Though, P.W.1 has stated that her daughter P.W.2 was pregnant, the Doctor has stated that there was no symptoms of pregnancy or delivery of a stillborn baby. Though the medical evidence has not stated anything about the pregnancy and termination, P.W.2 has clearly stated that the appellant has committed sexual intercourse with her by making false promise that he would marry



her. Therefore, she was under the impression that the appellant would marry her and thereby, she allowed him to have relationship. The Doctor has also opined that 7 days prior to the examination, there was a possibility of sexual intercourse. Therefore, the evidence clearly shows that the victim was subjected to penetrative sexual intercourse and the appellant is the one who committed the offence.

13. Though the defence counsel had taken a main defence that the victim has completed 18 years and it was a consensual sexual relationship, the fact remains that the victim had not given any consent to the appellant. The victim has clearly stated that the appellant had promised to marry her and only thereafter, she had allowed the appellant for sexual relationship since she believed his words that he would marry her and he would be her husband. All the prosecution witnesses have clearly spoken about the involvement of the appellant, and the medical evidence also corroborates with the evidence of prosecution. Since, the appellant had made a false promise to marry the victim, she had permitted him to have such a relationship. The evidence of P.W.1 to P.W.8 clearly shows that there was no consensual relationship.

14. The further contention of the appellant Counsel is that there is a contradiction in the place of occurrence and in the manner of occurrence. Though, P.W.1 had deposed that the appellant had entered into her house under the pretext of getting water from her daughter and committed rape inside the house, the victim P.W.2 has clearly stated that the appellant had sexual intercourse with her repeatedly in the house of P.Ws.6 and 7 and also at various other places on the promise of marrying her.

15. It is well settled preposition of law that the evidence of interested witnesses are found to have credit worthiness, conviction would be based on an uncorroborated testimony. Therefore, in this case, though P.W.1 to P.W.8 are relatives, their evidence is cogent and consistent and corroborated each other. Further the medical evidence also corroborates the same.

16. The yet another contention of the counsel for the appellant is that there is delay in filing FIR. It is settled proposition of law, when the delay is inordinate and the version of the victim's mother is honest and straightforward, the delay will not be fatal. P.W.1 has clearly stated that at the time of occurrence, she was not in the native and she had gone to Chennai for work along with her husband and the victim was staying with her elder son and daughter-in-law. At that time, her daughter-in-law informed her about the incident and thereafter, she returned to her native and approached the appellant. Since, the appellant refused to marry the victim,



the mother of the victim lodged the complaint. Therefore, though the delay is inordinate, the delay is properly explained. Merely, the FIR is belatedly sent to the court is not a fatal to the case of the prosecution unless it is established by the defense that after deliberation and discussion, the case is foisted. But in this case there is no deliberation and discussion for filing the complaint.

17. The learned counsel for the appellant further pointed out that earlier complaint was closed by the respondent police after enquiry and there is lapse on the part of the prosecution. However, mere lapse on the part of prosecution should not lead unmerited acquittal, subject to rider that in such a situation, evidence on record should be clinching, so that lapses of prosecution can be condoned.

18. The evidence of other prosecution witnesses clearly corroborated the evidence of P.W.1 and P.W.2 and therefore, in a case of this nature, eyewitness cannot be expected and if the evidence of sole witness is cogent, credible, trustworthy, conviction is permissible.

19. The prosecution has proved that the appellant has committed penetrative sexual assault and has proved its case beyond all reasonable doubts. The prosecution also proved that the appellant had promised to marry the victim and had sexual intercourse with her, but subsequently failed to marry her and there is no consensual relationship. Therefore, the appellant has committed offence under Section 375 IPC, which is punishable under Section 376 IPC. Though, there are some discrepancy and contradiction between the evidence of prosecution witnesses, they are minor contradictions, and it will not go to the root of the case of the prosecution.

20. On a careful perusal of records, this Court independently come to the conclusion that the appellant has committed an offence under Section 375 IPC which is punishable under Section 376 IPC. Therefore, this Court finds no merit in the appeal and the appeal is liable to be dismissed. Accordingly, this Criminal Appeal is dismissed. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(L.A)

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Sub Assistant Registrar

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To

1. The Fast Track Mahila Court, Thiruvannamalai
2. The Inspector of Police, All Women Police Station  
Polur, Thiruvannamalai District.
3. The Public Prosecutor Officer, High Court, Madras
4. The Section Officer, Criminal Section, High Court, Madras.
5. The Superintendent, Central Prison, Vellore.

+1cc to Mr.E.Kannadasan, Advocate, S.R.No.32289

Criminal Appeal No.609 of 2019 and  
Crl.M.P.No.1977 of 2020

SSV(CO)  
RLP(30/07/2021)