

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.02.2021

PRONOUNCED ON : 16.04.2021

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Appeal No.753 of 2019

Rani

..Appellant
/Accused

Vs

The State by
Inspector of Police
Mettur Police Station
Salem District
Crime No.367/2009

..Respondent
/Complainant.

PRAYER : Criminal Appeal filed u/s.374(2) of Cr.P.C., praying to set aside the conviction and sentence imposed on the appellant by judgment dated 29.08.2019 passed in S.C.No.327/2014 on the file of Magalir Neethi Mandram, Salem.

For Appellant : Mr.S.R.Prabaharan

For Respondent : Mr.R.Surya Prakash
Government Advocate [Crl.Side]

JUDGMENT

This Criminal Appeal is filed against the conviction and sentence imposed on the appellant by judgment dated 29.08.2019 passed in S.C.No.327/2014 on the file of Magalir Neethi Mandram, Salem.

2. The respondent police registered the case against the appellant and one unknown person in Crime No.367/2009 for the offence u/s.366, 376 IPC and Section 4(1)5(1)(c) of the Immoral Traffic (Prevention) Act, 1956. After investigation, respondent police laid the charge sheet before the Judicial Magistrate No.I, Mettur, who taken the case on file in P.R.C.No.31/2012 and committed the case to the Sessions Judge, Salem. The learned Sessions Judge, Salem, taken the case on file in S.C.No.327/2014 and made over the case to the Mahila Court, Court, Salem, since offence is against women. The learned Special Judge, after completing the formalities framed the charge against the appellant for the offence under Sections 366(A) 376 r/w.109 IPC and Section 5(1) r/w.(i) of the Immoral Traffic (Prevention) Act, 1956.

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 15 witnesses were examined as P.Ws.1 to 15 and 12 documents were marked as Ex.P.1 to Ex.P.12

and no material object was exhibited.

4. After completing the examination of the prosecution witnesses, incriminating circumstances culled out from the prosecution witnesses put before the appellant and she denied it as false. No oral or documentary evidence was examined and produced on the side of the defence.

5. After completing the trial and hearing the arguments on either side, the Designated Court convicted the appellant for the offence u/s.366(A) and 376 IPC r/w.109 and also under Section 5(1) r/w.Proviso(i) of Immoral Traffic (Prevention) Act, 1956. The appellant was sentenced to undergo 10 years Rigorous Imprisonment and fine of Rs.25,000/- in default to undergo 3 months simple imprisonment for the offence u/s.366(A) IPC; sentenced to undergo 10 years Rigorous imprisonment and fine of Rs.50,000/- in default to undergo 6 months simple imprisonment for the offence u/s.376 r/w.109 IPC; sentenced to undergo 3 years Rigorous imprisonment and fine of Rs.2000/- in default to undergo one month simple imprisonment for the offence under Section 5(1) r/w.Proviso (i) of Immoral Traffic (Prevention) Act, 1956. Challenging the said conviction and sentence passed by the learned Special Judge, the accused filed the present appeal before this Court.

6. The learned counsel for the appellant would submit that the prosecution failed to prove the alleged kidnapping by the appellant and the alleged rape committed on the victim as alleged by the prosecution. Motive was not proved by the prosecution. No independent witness was examined and the prosecution has not proved the case beyond reasonable doubt and the evidence of P.W.1 victim has not been corroborated by any of the independent witnesses. There was a delay in filing the complaint and the delay was not explained and the unexplained inordinate delay is fatal to the case of the prosecution. The prosecution did not take any steps to identify the alleged accused person and the alleged rape on the victim. The case of the appellant is that another accused could not be identified, therefore, no incriminating materials is available against the appellant. The parents of the victim did not make any complaint about her missing especially when the victim was alleged to be taken away by the appellant by making false promise and the victim came out from her house. The place of occurrence was not established. There is no independent witness in this case. All the witnesses examined by the prosecution are all interested witnesses and official witnesses. Therefore, the prosecution failed to establish its case beyond reasonable doubt. The trial court failed to consider the fact that the prosecution miserably failed to substantiate

the charge against the appellant and convicted only based on presumption and conjectures on the ground of sympathy. Therefore, judgment of the Special Court is liable to be set aside.

7. The learned Government Advocate (Crl.Side) would submit that the appellant is the relative of the victim and she made a false promise to the mother of the victim that she will get job for the victim and taken away the victim from her home. At the time of occurrence, the victim was aged 14 years, took her to Chennai, aided one of the unknown person who committed rape on the victim. Therefore, the appellant has committed offence under Section 366A, 376 r/w.109 and 5(1) read with proviso (i) of the Immoral Traffic Prevention Act. In this case, when the victim girl was examined as P.W.1, she has clearly narrated the events. Mother of the victim was examined as P.W.2. She has clearly deposed that the appellant made false promise to her and took her daughter and stayed in Chennai, thereafter, left the victim in her house, her daughter (victim) informed her about the occurrence. Immediately, she informed to P.W.3 President of the Village. He also deposed that P.W.2/mother of the victim girl made the complaint against the appellant. Subsequently they advised the appellant but she did not hear the advise of the Village Panchayat, so mother of the victim girl lodged the complaint. Subsequently, the victim girl

was produced before the Judicial Magistrate. P.W.10 examined the victim girl. She has stated that there is no external injury, but she has opined that the hymen of the victim girl was not intact. Doctor one who examined the abdomen of the victim girl was examined as P.W.12. Doctor who examined the victim girl and determined the age of the victim girl was examined as P.W.9. The appellant was arrested before the Village Administrative Officer, who was examined as P.W.7. Subsequently, he has also deposed that the appellant made a confession statement. The prosecution has proved the case beyond reasonable doubt by producing oral and documentary evidence. The trial court convicted the appellant but there is no merit in the case and is liable to be dismissed.

8. Heard and perused the records.

9. The case of the prosecution is that the appellant induced the victim who is aged about 14 years to go from her house by falsely telling that she had informed to her mother and took her to Chennai by Bus and took her to a house to Chennai and induced to have sex with an unidentified person. On 10.05.2009 during night hours, the appellant forced the victim to go into a room with an unidentified person and locked from outside and he committed rape and thereby used the child for prostitution. Thereafter, the appellant took the victim girl to

her house and dropped her and she was staying with victim with her for one week in order that victim not disclosing the facts to her mother. Thereafter, she left her. After the appellant left their home, the victim girl informed to her mother, who in turn informed to the Panchayat President. Thereafter, they filed complaint before the Police. The Police registered the case for the offence u/s.366, 376 IPC and Section 4(1)5(1)(c) of the Immoral Traffic (Prevention) Act, 1956. After investigation, laid the charge sheet. After trial, the trial court convicted the appellant as narrated above.

10. The appellate court, as a fact finding court, has to reappraise the entire evidence and come to the independent finding, as to whether, the appellant has committed the charged offences and whether the prosecution has proved its case beyond reasonable doubt.

11. The Special Court framed the charges against the appellant. In order to prove the above said charge, on the side of prosecution, totally 15 witnesses were examined and 12 documents were marked. On the side of the defence, no witness was examined and no document was marked. On the side of prosecution, victim girl was examined as P.W.1. She narrated the events that on 09.05.2009 the appellant took the victim girl to Chennai by giving false

promise to victim's mother that she will get job to her daughter. On 10.05.2009, at night hours, the appellant forced the victim girl to go into a room in which one unidentified person was there and she locked the door from outside. Therefore, the unidentified person forcibly raped her without her consent. Thereafter, the appellant took her and left her in her house. She stayed in the victim house for one week because if she leave the house immediately, the victim will inform the occurrence to her mother. The appellant threatened the victim girl not to disclose the incident to anybody. If she disclose to her mother or anybody else, she would kill her and therefore, she did not inform immediately. Soon after appellant left the house, the victim child informed the incident to her mother. Victim's mother informed the occurrence to Panchayat President. The mother of the victim girl was examined as P.W.2. She has narrated that the appellant made false promise that she will arrange job for her daughter in medical shop. She took her to Chennai and after 3 to 4 days, she left her daughter in their house, stayed for one week. Thereafter, her daughter told the incident to her and in turn she informed it to Panchayat President. The Panchayat President was examined as P.W.3. P.W.3 stated about the information given to him by the mother of the victim girl about the incident. Therefore, the evidence of P.W.1 victim child was corroborated by the evidence of her mother P.W.2 and also Panchayat President P.W.3. The appellant was subsequently

arrested in the presence of Village Administrative Officer P.W.7, who has also stated that the appellant made a confession statement. Though the confession statement made by the accused before the Police Officer is not admissible in evidence, in cases like this, no independent witness can be expected and the victim girl has categorically stated that the appellant took her to Chennai. Mother of the victim girl also corroborated it. The appellant made a false promise that she will provide job to her daughter and took her daughter. The victim girl was subjected to medical examination. P.W.10 Doctor who conducted medical examination on the victim child deposed that hymen was not intact. There was no external injury. The occurrence taken place on 10.05.2009, whereas, doctor examined on 29.07.2009. Therefore, it is not possible to find out any external injuries. P.W.9 doctor who determined the age of the victim girl by taking X-ray ascertained the age of the victim as above 15 years and below 17 years. Therefore, from the evidence of P.W.1 to 3 and doctor evidence P.W.9, 10 and 12 and also the evidence of Village Administrative Officer, the prosecution has proved its case.

12. Though the learned counsel for the appellant would submit that non-tracing of the person who committed rape is fatal to the case of the prosecution, since the name of the person was not mentioned and victim has also not given

any identification, mere non-tracing of the second accused may not be fatal to the case of the prosecution against the appellant herein. The appellant induced for prostitution. Therefore, the evidence of P.W.1, victim girl itself clearly shows that the appellant has committed the above said offence.

13. Therefore, on a perusal of the entire materials, oral and documentary evidence, this court finds that the appellant has committed the offence under Sections 366(A) and 376 r/w.109 IPC and also under Section 5(1) r/w.Proviso(i) of Immoral Traffic (Prevention) Act, 1956. The judgment of conviction and sentence dated 29.08.2019 made in S.C.No.327 of 2014 by the learned Sessions Judge, Magalir Needhi Mandram, Salem, is hereby confirmed. There is no merit in the appeal and the Criminal Appeal is dismissed.

16.04.2021

Index : Yes/No
Internet : Yes/No

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To

- 1.The Inspector of Police, Mettur Police Station
Salem District
2. The Judge, Magalir Neethi Mandram, Salem.
3. The Superintendent of Jail, Central Jail, Coimbatore.
- 4.The Public Prosecutor Officer, High Court, Madras
- 5.The Section Officer, High Court, Madras.

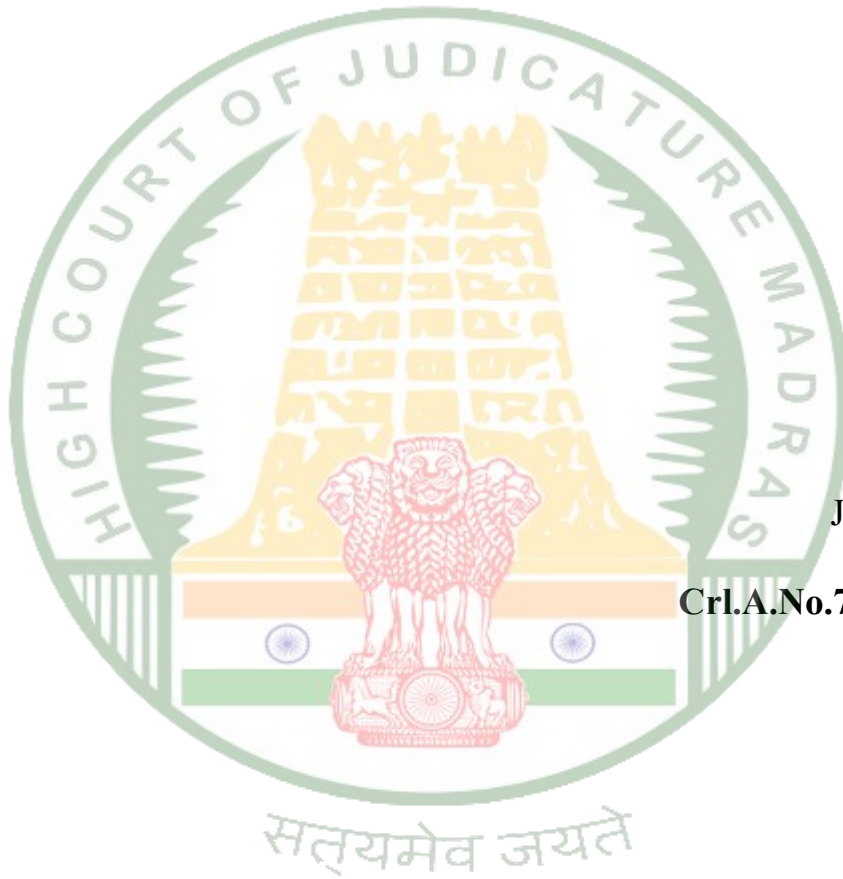


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P. VELMURUGAN, J.

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Judgment in
CrI.A.No.753 of 2019

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