

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.01.2021
PRONOUNCED ON: 16.02.2021

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Cr1.A.No.764 of 2019

Kanagaraj

.. Appellant

Vs.

State rep. by
The Inspector of Police,
Karumathapatti Police Station,
Coimbatore District,
Crime No.376 of 2012

.. Respondent

Criminal Appeal filed under Section 374 (2) Cr.P.C. to set aside the judgement dated 21.10.2013 made in Special C.C.No.12 of 2014 on the file of the Sessions Court (Mahila Court) Mahalir Nithimandram, Coimbatore by allowing the present Criminal Appeal.

For Appellant : Mr.B.Kumarasamy

For Respondent : Mr.K.Prabhakar
Additional Public Prosecutor

JUDGMENT

V.SIVAGNANAM, J.

Challenge in this criminal appeal is to the judgment and order dated 21.10.2013 passed in C.C.No.12 of 2014 on the file of the Sessions Court (Mahila Court) Mahalir Nithimandram, Coimbatore.

2.The appellant, who was an accused in Special C.C.No.12 of 2014 before the Sessions Court (Mahila Court) Mahalir Nithimandram, Coimbatore, was convicted and sentenced as under:

Provision under which convicted	Sentence
Section 450 IPC	Ten years rigorous imprisonment and fine of Rs.2,500/-, in default to undergo one year rigorous imprisonment.

Provision under which convicted	Sentence
Section 376(1) IPC	Life imprisonment and fine of Rs.2,500/-, in default to undergo one year rigorous imprisonment.

The aforesaid sentences were ordered to run concurrently. A compensation of Rs.1,00,000/- was awarded to the victim girl to be paid by the Government.

3. The facts leading to the filing of this case are as under:

3.1. The case of the prosecution is that the victim (prosecutrix) is a 13 year old minor girl who was paralysed by polio and could not stand or walk without support. The victim girl is residing at Harijana Colony, Kittampalayam Panchayat, Karumathampatty, along with her father Viz., Rangan and mother viz., Valliammal. On 20.08.2012, her mother's paternal uncle died who was residing in the same street, just ten houses beside the victim's house. All the three persons attended the death ceremony. At that time, the victim was hungry and wanted to take some food and so, she went to her house alone. About 4.00 p.m., while she was watching TV the accused known to the victim and her family persons came into the house and asked the TVS 50 key to go to Karumathampatty and so the victim went into the room to take the TVS 50 key. The accused followed her and locked the door and thereafter, raped her. The victim attempted to shout but the accused placed a cloth and closed her mouth with one hand and she was not able to make any sound. Further, she being a polio attacked paralysis person, was unable to resist the accused from committing the crime. Shortly, the victim's mother viz., Valliammal entered into the house, and found that her daughter was raped by the accused. The accused immediately prostrated at her feet pleaded to excuse him. Then, he ran away from the house. Then the victim's mother informed her husband. After the completion of death ceremony of victim's grandfather, on the next day, her father viz., Rangan (P.W.1) gave the complaint before the Karumathampatti police (Ex.P.1).

3.2 .Tmt.Sarojini, (P.W.17) Sub Inspector of Police, Karumathampatti Police Station received the complaint (Ex.P.1) from (P.W.1) Rangan on 21.08.2012 about 11.30 a.m., and registered case in Crime No.376 of 2012 under Section 376 IPC and registered an FIR (Ex.P.16).

3.3. Thiru. Anandh Arokiaraj (P.W.18) incharge Inspector of Police , Karumathampatti Police Station, at that time received the FIR and took up investigation. He went to the place of occurrence and prepared the Observation Mahazar (Ex.P5) and rough sketch (Ex.P17) in the presence of witnesses Rangasamy

(P.W.8) and Nagaraj (P.W.12). Further (P.W.18) recovered black colour faded middy, white colour half hand shirt and hand kerchief (M.O.1, M.O.2 & M.O.3) under Form 91 and Mahazar (Ex.P.18) and also examined witnesses and forwarded the victim girl for medical examination. Thereafter, he arrested the accused on 21.08.2012 at about 17 hours before Valaipalayam bus stop and examined him and sent him for medical examination. Thereafter, he was remanded to judicial custody.

3.4. Dr.Senthilkumar(P.W.11) examined the accused viz., Kanagaraj with regard to his age. Based on the radiological examination, he opined that his age may be above 25 years and issued certificate (Ex.P.4).

3.5. Dr.Lakshmi (P.W.13) examined the accused on 01.09.2012 with regard to his potency, Based upon the medical examination, she gave certificate (Ex.P.7) and opined that he is not impotent.

3.6. Dr.Jayanthi (P.W.12) examined the victim girl (P.W.12) on 23.08.2012 and found no injuries on her chest and private parts and gave the ceritificate (Ex.P.9).

3.7. Tmt.Meri Malarvizhi (Head Master), Government Middle School, Kittampalayam gave the copy of the record sheet containing the date of birth of victim (P.W.2) in the certificate (Ex.P.12) wherein the date of birth was mentioned as 22.06.1999.

3.8. Dr. Seeman, Government Medical College, Coimbatore, has clinically examined the victim girl (P.W.2) with regard to her age based upon the radiological examination. He opined that her age may be above 15 years and below 18 years certificate is (Ex.P.15).

3.9. Thiru.Kaliannan, Inspector of Police, Karumathapatti police station, (P.W.19) continued the investigation from P.W.18 and after completing the investigation and filed a final report before the Mahila Court, Coimbatore which was taken on the file of the Special Court in C.C.No.12 of 2014.

3.10. In the trial Court charges under Sections 450 and 376 (1) of IPC were framed and the appellant/accused pleaded not guilty.

3.11. In the trial Court, the prosecution examined 19 witnesses (P.W.1 to P.W.19) marked 18 documents (Exs.P.1 to P.18) and 3 material objects (M.O.1 to M.O.3).

3.12. When questioned under Section 313 Cr.P.C the accused

denied all incriminating evidence. On the accused side, no witness was examined and no documents were marked.

3.13. After considering the evidence on record and after hearing the counsel for the parties, the trial Court found that the charges were proved beyond reasonable doubt. The trial Court found that the age of the victim was 13 less than 16 years in which case the question of consent did not arise and the accused having committed rape on a minor girl of less than 16 years of age, the offence clearly fell within the parameters of rape under Section 376 IPC. Consequently, the accused was convicted for the charges and was sentenced as above by judgement and order dated 21.10.2013.

3.14. Being aggrieved by the judgement and order, the appellant/accused has preferred preferred this appeal.

4. The learned counsel for the appellant/Accused contended that the prosecution failed to prove the case and it cannot be accepted. The trial Court failed to consider the witnesses properly for the following reasons:

4.1. The delay in lodging the FIR is fatal to the prosecution.

4.2. The evidence of the victim girl (P.W.2) is not acceptable one, as it is not corroborated with other prosecution witnesses especially her evidence with regard to injury on her chest and private parts is not corroborated by the evidence of Dr. Jayanthi (P.W.14) as she did not find any injuries as stated by the victim girl in this regard.

4.3. The arrest of the accused on 20.08.2012 at 17 hours before the Valaiyapalayam bus stop is falsified by the evidence of P.W.2, she had seen the accused along with her mother in the police station on the date of complaint.

4.4. The age of P.W.2 as stated by the prosecution is not true, as the alleged father and mother (P.W.1 and P.W.3) are not biological father and mother of the victim girl. They have adopted the victim girl in hospital at her tender age and they did not have personal knowledge of her birth date. There is no evidence as to who gave the date of birth in the school. Under these circumstances, the date of birth cannot be accepted. As per the evidence of Dr. Seeman (P.W.16), the victim's age is above 15 years and below 18 years. The victim girl cannot be placed below 16 years. If it is so, the accused cannot be convicted of the offence under Section 376(1) for rape of minor girl. To support his argument, learned counsel relied upon the Judgments in Mirthagai Ali vs State in [2007 CRLJ 1247] and State of M.P. Vs Munna @ Shambhoo Nath and thus learned counsel

for the appellant has prayed to allow the above said appeal.

5.The learned counsel appearing for the State contended that there is no reason to disturb the evidence recorded by the trial Court. He further submitted that in a case of this nature it is difficult to get any eye witness, and that the evidence of (P.W.2) victim girl can be accepted safely even without any corroboration. He further submitted with regard to age of the victim, P.W.16 Dr.Seeman opined that the victim was aged above 15 and below 18 years and gave the report Ex.P.15. In the record sheet Ex.P.12 the date of birth is mentioned as 22.06.1999 so the age can be safely determined below 16 years. He further submitted with regard to delay in lodging the FIR the circumstances has to be considered. At the time of the occurrence, the victim's grandfather died all and were attending the death ceremony. After completion of the death ceremony, on the next day, they went to police station and gave a complaint. The delay is properly explained by the prosecution witnesses (P.W.1 to P.W.3). Under these circumstances, the delay in lodging the FIR is not fatal to the case of the prosecution. Therefore, delay is not fatal to the prosecution case and pleaded to dismiss the appeal.

6.Heard Mr.B.Kumarasamy learned counsel for the appellant and Mr.K.Prabhakar, learned Additional Public Prosecutor and perused the materials on record.

7. In this case, the appellant/ accused is alleged to have raped a polio affected physically paralysed 13 year old minor girl. We have three crucial witnesses in this case. The first and foremost is the evidence of victim girl (P.W.2) and then the evidence of her father and mother (P.W.1 and P.W.3). We have gone through their evidence carefully. (P.W.2) victim girl clearly narrated the incident. She deposed her date of birth is 22.06.1999. She studied at Kittampalayam Government School up to VIII standard. Thereafter, she joined Government School, continued her IX standard. Due to her physical problem, she could not continue her studies, her parents are daily labourers and the accused is known to them. On 20.08.2012, her grandfather (mother's paternal uncle) died and all of them were attending death ceremony at about 4.00 p.m. Since she felt hungry, she went to the house alone. After taking some food she was watching TV. At that time, the accused entered into the house asking her to give TVS 50 key and she went into the room to take the key. The accused followed her, closed the door and raped her. She being handicapped was unable to resist the accused. The accused closed her mouth with a cotton cloth. Therefore, she was unable to shout and unable to resist. Shortly, her mother (P.W.3) Valliammal came into house and found the victim. Immediately the accused prostrated at her mother's

feet and pleaded to excuse him. Thereafter, he ran away from the house. P.W.3 immediately met her husband (P.W.1) and informed the incident. After completion of death ceremony, next day, they went to police station and (P.W.1) Rangan, father, gave the complaint to Ex.P1. Therefore, the evidence of the victim girl clearly indicates that the accused was having acquaintance with the family of P.W.1 to P.W.3 and he was not a stranger and the incident took place on the date of death of victim girl's grandfather. The incident is alleged to have taken place about 4.30 p.m., on 20.08.2012 when all had assembled at death house for cremation which is little away from house of the victim girl. In such situation one cannot be expected to go to police station and give complaint immediately. Therefore, on the next day P.W.1, P.W.2 and P.W.3 went to police station and gave complaint. Having regard to the facts and circumstances of the case coupled with the evidence of P.W.1 to P.W.3, there was no delay in lodging the FIR. Further, it has no bearing on the truthfulness of the prosecution case. The principle stated by the Supreme Court in *Jugendra Singh vs Uttar Pradesh* [2012 6 SCC 297] that delay has no bearing on the case of the prosecution inasmuch as rustic and uneducated villagers could not have been precise on the time concept has to be applied to this case. It is a settled principle of law that delay per se in lodging the FIR cannot be held fatal to the prosecution. The entire idea behind lodging the prompt FIR is that spontaneous and earliest version without influence and without any extraneous factors must reach the police and the Area Magistrate, otherwise the chances of false witnesses and tainted evidence can be there. Delay /non-delay in lodging the FIR is a relative term and it depends upon facts of each case. There cannot be any generalisation that whenever there is a delay in lodging the FIR, the prosecution case becomes suspect. Whether delay is so long as to throw a cloud of suspicion on the prosecution case, would depend upon the facts of each case. Even a long delay can be condoned if the witnesses have no motive of implicating the accused and have given a plausible reason as to why the report was lodged belatedly. In the instant case, this has been done.

8.The victim girl P.W.2 had truthfully narrated the entire episode and there was no reason to foist a false case against the accused. It has to be noted that P.W.2 was examined on 16.06.2016 but she was cross examined on 27.03.2019 after a long gap of three years it is against the principle laid down by the Supreme Court in *Vinod Kumar Vs State of Punjab* 2015 (3) SCC 220.

9.Section 134 of the Evidence Act makes it abundantly clear that no particular number of witnesses is required to prove a particular fact. It therefore, follows that evidence of even a single witness may suffice to prove a fact. Elaborating the

point further, the Supreme Court in V.Thevar Vs. State of Madras, [AIR 1975 SC 614] inter alia, observed:-

" Administration of justice may be hampered if particular number of witnesses were to be insisted upon. It is not seldom that a crime is committed in the presence of only one witness, leaving aside the cases which are not uncommon occurrence where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available, in the proof of crime, would go unpunished. It is here that the discretion of the Presiding Judge comes into play. The matter thus must depend upon the circumstances of each case and quality of evidence of single witness whose testimony has either to be accepted or rejected. If such a testimony is found to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though considerable number of witnesses may be forthcoming to testify the truth of the case for the prosecution. Hence, in the opinion of this Court, it is a sound and well established principle of law that the Court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact.'

10.The arrest of the accused on 21.08.2012 at 17 hours by the Inspector of Police (P.W.18) Anand Arokiaraj is evidenced by the materials on record. Though victim girl (P.W.2), in her cross examination, stated that on the date of complaint, the accused and her mother were inside the police station and she was standing outside the police station, it is not helpful for exonerating acquittal the accused from the charge.

11.With regard to the age of the victim, according to the prosecution as per the school leaving certificate (Ex.P.13) her date of birth is 22.06.1999. The transfer certificate had been issued by the Government School and had been duly signed by the Head Master. Under normal circumstances, we would have accepted

the date of birth given in the school leaving certificate. But, in this case, the victim girl is not the biological daughter of P.W.1 and P.W.3. They adopted the child in a hospital and they did not know the actual date of birth of the victim girl. With regard to the radiological report of the doctor (P.W.16) who examined the victim medically, and opined that the victim may be aged above 15 years and below 18 years and gave certificate Ex.P.15 to this effect, considering the medical report, the trial Court took the age of the victim as below 16 years and treated the victim as minor. Therefore, we are not inclined to accept the prosecution case that the victim girl was 13 years old at the time of the occurrence. However, there is absolutely no material to infer that the appellant had consensual sex with the victim girl as contended by the learned counsel for the appellant. Even in the statement under Section 313 Cr.P.C, the appellant had not stated so.

12. We find no reason to reject the evidence of P.W.2 victim girl and conviction cannot be vitiated. Further, the accused and the victim girl and their family are living in the same village and the accused was known to the victim and her family. It is evidenced from the records that the occurrence took place when the accused came to the victim's house to get TVS 50 key to go to Karumathampatty. This fact exposed that the crime was committed not out of lust but as the result of irresistible impulse on seeing the victim girl alone in the house.

13. The learned counsel for the appellant pleaded to reduce the sentence imposed by the trial court. Considering the submission of the learned counsel for the appellant and going through the records in the case, it would be just and reasonable to reduce the sentence from life sentence to 10 years R.I.

14. Accordingly, the conviction of the appellant/accused under Sections 450 and 376(1) IPC as ordered by the trial court is confirmed. However, the sentence of life imprisonment imposed on the appellant for the offence under Section 376(1) IPC is reduced to 10 years Rigorous imprisonment. Fine amount imposed by the trial Court is confirmed.

In the result, with the above modification in sentence this criminal appeal stands dismissed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

vsn

To

1.The Sessions Judge,
Mahila Court,
Mahalir Nithimandram,
Coimbatore.

2.The Superintendent of Police,
Central Prison,
Coimbatore.

3.The Inspector of Police,
Karumathapatti Police Station,
Coimbatore District,

4.The Public Prosecutor,
High Court, Madras.

Crl.A.No.764 of 2019

AJS (CO)
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