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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2021

C O R A M

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

Criminal Appeal No.638 of 2018
and
Crl.MP.No.14013 of 2018

Mohan

... Appellant/Accused

-Vs-

State rep. by
Inspector of Police,
All Women Police Station,
Gudiyatham, Vellore District.
(Crime No.15 of 2013)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure against the Judgment passed in S.C.No.114 of 2016 on the file of the Fast Track Mahila Court (Sessions Court), Vellore, Vellore District dated 03.10.2018.

For Appellant : Mr.S.Doraisamy

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

J U D G M E N T

This appeal has been preferred challenging the judgment of the learned Fast Track Mahila Court (Sessions Judge), Vellore dated 03.10.2018 passed in SC.No.114 of 2016.

2. The victim is mentally retarded at a moderate level. The case of the prosecution is that approximately six months prior to 28.08.2013 one day at about 6.00.p.m when the victim girl was walking through the jungle of her village, the accused forcibly took her to a nearby bush and raped her. Thereafter, he repeatedly raped her by giving false assurance to her that he would marry her. In view of that, the victim girl got conceived. The accused threatened the victim that if she dared to tell his acts to anyone, he would kill her. However, on 28.08.2013 the victim girl (PW1) gave a complaint (Ex.P1). On the basis of her complaint, PW8 registered a case in Crime



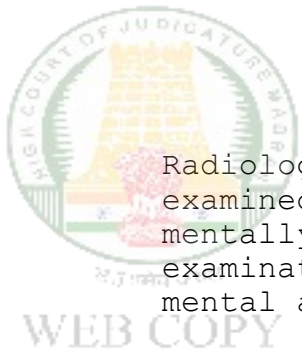
No.195 of 2013 of Bharatharami Police Station under Sections 376 and 506(i) IPC and the FIR was prepared by the Inspector of Police (PW8).

3. The case was taken up for investigation by PW9-Shri.V.Rani, Inspector of Police, All Women Police Station, Polur by assigning a new Crime No.15 of 2013. She visited the place of occurrence, prepared the Observation Mahazar (Ex.P4) along with the Rough Sketch (Ex.P16) and enquired the witnesses. At about 5.00.p.m on 29.08.2013, she arrested the accused near Gudiyatham new bus stand and recorded his confession statement and then sent him to judicial custody. She also subjected the victim and the accused for medical examination. The statement under Section 164 Cr.P.C of the victim girl (Ex.P2) was also recorded by the learned Magistrate. After getting necessary medical documents from the Doctor, she examined the accused and the victim. Subsequently she got transferred and the Inspector K.Shanthi (PW10) succeeded her and continued the investigation. PW 10 completed the investigation by examining the rest of the witnesses and filed the charge sheet against the accused for the offences under Sections 376(2)(k), 376(2)(m), 417 and 506(ii) IPC.

4. After taking the case on file and after observing the legal mandates and on being satisfied with the materials placed on record, the learned trial judge framed charges against the accused under Sections 376(2)(k), 376(2)(m), 417 and 506(ii) IPC. The accused pleaded not guilty and claimed to be tried. During the course of trial, on the side of the prosecution, 10 witnesses were examined as PW1 to PW10 and Exs.P1 to P16 were marked. On the side of the defence, no witness was examined and no document was marked.

5. The complainant was examined as PW1 and she had stated in her evidence about the occurrence. PW2/Brother of PW1 has stated that he came to know from the doctor that PW1 was pregnant. After enquiring the victim, he came to know that the accused is the reason for the pregnancy. PW3 is the witness for Observation Mahazar (Ex.P4). PW4/K.Dhanasekaran is the Village Assistant, in whose presence the confession statement of the accused was recorded. PW5 is the Doctor, who examined the accused with regard to his potency and he gave his opinion that there is nothing to suspect that the accused is impotent. When the victim was produced before PW6/Doctor, she recommended the victim to be examined by a psychologist, Gynaecologist, Radiologist and Dentist.

6. According to the Dental examination, the age of the victim is found to be above 14. Since the victim was pregnant,



Radiological examination could not be done. PW7/Doctor, who examined the victim girl had observed that the victim girl is mentally retarded and she recommended for psychiatric examination. Her psychiatric examination revealed that her mental age was 7 years.

7. After concluding the Trial and on considering the materials on record, the learned Trial Judge found the accused guilty and convicted and sentenced him as under:

Rank of the Accused/Appellant	Charge	Punishment
Sole Accused	376(2) (f) & 376(2) (n) IPC	10 years Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default to undergo three months Rigorous Imprisonment
	417 IPC	One year Rigorous Imprisonment
	506(ii) IPC	One year Rigorous Imprisonment

8. Aggrieved over the same, the appellant/ accused has preferred this appeal.

9. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent and perused the entire materials on record.

10. The learned counsel for the appellant submitted that the Doctor, who conducted the medical examination on the victim and gave opinion that the victim was pregnant was not examined; and the woman by name Valliammal, who accompanied the victim when the victim was examined by the Doctor was also not examined; there are contradictions in the evidence of the victim and it requires corroboration; the complaint was given after six months and the delay in registering the FIR creates doubt in the case of the prosecution. PW1 has stated in her evidence that she used to go with the accused to several places and that would show that she is a consenting party and the accused cannot be convicted for the offence of rape; the Doctor, who had attended the delivery of the victim has not been examined to show that she had given birth to a still born child; mere assurance to marry will not attract the provisions of Section 417 IPC and hence, it is wrong to convict the accused for the offence under Sections 376 and 417 IPC; mere reference of words will not



constitute an offence under Section 506(ii) and hence, the judgment of the Sessions Court should be set aside and the accused should be acquitted. He relied the following judgments in support of his contentions:-

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(i) Raju and others Vs. State of Madhya Pradesh reported in (2008) 15 SCC 133;

(ii) Rai Sandeep Alias Deepu Vs. State (NCT OF DELHI) reported in (2012) 8 SCC 21;

11. So the accused is not entitled to any benefit of doubt on the ground that the identity of the accused itself is not proper.

12. The learned Government Advocate (Crl. Side), appearing for the State submitted that in the offences of this nature, the evidence of the victim plays a prominent role and it does not require any corroboration; the evidence of the victim would show that she was put under compulsion and force by the accused and he raped her on compulsion; though the victim was mentally retarded at moderate level, she deposed evidence clearly and hence her evidence cannot be rejected; the learned Trial Judge has appreciated the evidence in a correct perspective and hence the judgement of the lower court does not require any interference.

13. Point for consideration:

Whether the conviction and sentence of the accused for the offence under Sections 376(2) (f) & 376(2)(n), 417 and 506(ii) IPC by the learned Sessions Judge based on the materials available on record is fair and proper?

14. According to the evidence of the Doctor, who conducted dental examination, the age of the victim was found to be above 14 years. In fact, the age of the victim was claimed to be 19 years at the time of the occurrence. Since she was mentally retarded at moderate level, her psychological (mental) age is found to be just 7 years. That means, the victim girl had the maturity of 7 years old though her actual age is above 18. The defence did not dispute the fact that the victim girl was mentally retarded at moderate level. The only contention of the appellant is that since PW 1 is mentally retarded, no credence can be given to her evidence.

15. Before recording the evidence of PW1, the learned Trial Judge had assessed her fitness to depose evidence by putting some preliminary questions and satisfied about the understanding ability of the victim. Since the victim was found fit enough to



depose evidence she was examined further. PW1 has stated in her evidence that, one day when she was walking on the dry lands of her village, the accused lifted her, held her tight and then forcibly raped her. Subsequent to that occurrence also, the accused repeated the same acts on many occasions within a period of five months. In view of that, the victim became five months pregnant. Only after that the matter was made known to her family members. PW2, who is the brother of PW1 came to know about this. He has stated in his evidence that the victim girl used to accompany a nearby pregnant woman by name Valliammal to hospital for medical check up. On one such occasion on the way to hospital the victim got fainted. So she was examined by the doctor and later found to be pregnant. On enquiry PW2 came to know that the accused is the reason for her pregnancy.

16. When PW2 came to know about the occurrence, he went to the house of the accused and demanded him to marry the victim and for which the accused refused. Thereafter, the complaint was given. His evidence would also reveal that the victim delivered a pre-matured still born male baby. The Death Certificate of the baby of the victim has been marked as Ex.P13 and that would show that the victim had delivered a male baby and it was still born. Ex.P7 is the medical certificate issued by PW6 doctor, who examined the victim. In the said certificate dated 03.09.2013, the pregnancy of the victim is recorded. PW6/Doctor Malathi has stated about the same in her evidence as well. Hence, the opinion of the doctor would confirm that the victim was pregnant.

17. The evidence of the victim about the occurrence as it appears from her evidence is cogent and consistent. And the medical evidence also corroborates the same. In the offences of this nature, the evidence of the victim assumes more significance. Even in the judgments cited by the learned counsel for the defence, it is held that the evidence of the victim girl should be treated like that of an injured witness. Neither the victim nor her family members had any motive against the accused in order to implicate him falsely in the case. Since the accused had committed repeated rapes on the victim, on the assurance of marriage, the victim could easily identify him and hence there is no need to conduct an identification parade.

18. The accused took advantage of the moderate mental retardation of the victim and raped her repeatedly and made her pregnant. As per sec. 114-A of the Evidence Act, in sexual offences it has to be presumed that there was no consent. Section 114-A of the Evidence Act reads as below:

"114-A. In a prosecution for rape under clause



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(a), clause(b), clause(c), 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."

19. The victim girl has given clear account of how she was abused by the accused. Though the victim might be immature and could not understand the motive of the accused, the accused knew very well what he was doing. He knew very well that he did not have the intention of marrying the victim girl, who is mentally retarded. Had he ever intended to marry her he would not have raped her. So it is not wrong on the part of the Sessions Court to come to the conclusion that the accused had cheated her on the assurance of marriage and raped her repeatedly. Section 415 IPC defines 'cheating' as under:-

"415.Cheating. - Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or ham to that person in body, mind, reputation or property, is said to 'cheat'."

20. In this case, the victim was made to believe that the accused would marry her and by believing his false words, she gave her person to him and delivered a child. The damage that had caused on the mental and physical integrity of the victim is evident from the evidence of the prosecution. Since I find no reason to reject the evidence of the victim and it is cogent, consistent and clear with regard to the occurrence, it does not require any corroboration. Due to the above reasons, the judgments cited by the learned counsel for the petitioner in support of his contention is not applicable to the facts and circumstances of this case. The learned judge has rightly found the accused guilty. Hence I do not find any illegality or infirmity on the judgment of the trial Court and finding that the accused is guilty for the offence under Sections 376(2) (f) & (n) and 417 IPC.



21. However, with regard to the offence under Section 506 (ii) IPC, there is nothing much available on record. The mere words of the accused that he would kill the victim would not attract the conviction of the accused under Section 506(ii) IPC. Hence the findings of the trial court that the accused is guilty under Section 506(ii) IPC alone is liable to be set aside.

22. In the result, this Criminal Appeal is partly allowed and the judgment of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Vellore, passed in S.C.No.114 of 2016 is modified to the extent that the accused is found guilty for the offences under Sections 376(2)(f) & (n) and 417 IPC. Rest of the conditions and punishment imposed on the accused shall remain unaltered and will run concurrently. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

kmi

To

1. The Sessions Judge,
Magalir Neethimandram,
Fast Track Mahila Court,
Vellore.
2. The Inspector of Police,
All Women Police Station,
Gudiyatham, Vellore District.
(Crime No.15 of 2013)
3. The superintendent
Central Jail, Vellore
4. The Judicial Magistrate,
Gudiyatham.
5. The Chief Judicial Magistrate,
Gudiyatham. (for information)
6. The Public Prosecutor,
High Court,
Madras -104.



Copy to :-

The Section Officer,
Criminal Section,
High Court, Madras.

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+1cc to Mr.S.Doraisamy, Advocate, S.R.No.61284

Criminal Appeal No.638 of 2018
and Crl.MP.No.14013 of 2018

GJ(CO)
CT(02/03/2022)