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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	29.03.2021
DELIVERED ON	05/05/21

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

Crl.RC(MD)No. 448 of 2016
and Crl.M.P(MD) Nos. 5176 & 5177 of 2016

Raj Narayanan

... Revision Petitioner/Appellant/
Sole accused

Vs.

State rep. by the Inspector of Police,
Bodi Taluk Police Station,
Theni District.
[in Crime No.334 of 2010]

...Revision Respondent/Respondent/
Complainant

PRAYER : Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records in Crl.A. No. 25 of 2012 on the file of the learned Additional District and Sessions Judge, Theni at Periyakulam in S.C. No.137 of 2010 on the file of the learned Assistant Sessions Judge Cum Chief Judicial Magistrate Court, Theni and set aside the Judgment dated 29.02.2016 in Crl.A. No. 25 of 2012 on the file of the learned Additional District and Sessions Judge, Theni at Periyakulam by confirming the order of conviction and sentence in S.C. No. 137 of 2010 on the file of the learned Assistant Sessions Judge Cum Chief Judicial Magistrate Court, Theni.

For Petitioner : Mr.R. Mariappan

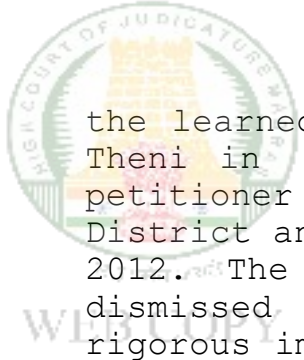
For Respondent : Mrs.M. Anantha Devi
Government Advocate (crl.side)

O R D E R

This Criminal Revision Case has been filed by the revision petitioner to set aside the Judgment dated 29.02.2016 passed by the learned Additional District and Sessions Judge, Theni at Periyakulam in Crl.A. No. 25 of 2012 by confirming order of conviction and sentence, dated 12.06.2012 passed by the learned Assistant Sessions Judge Cum Chief Judicial Magistrate, Theni in S.C. No. 137 of 2010.

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2. As against the judgment of conviction and sentence passed by



the learned Assistant Sessions Judge Cum Chief Judicial Magistrate, Theni in S.C. No. 137 of 2010, dated 12.06.2012, the revision petitioner has preferred an appeal before the learned Additional District and Sessions Judge, Theni at Periyakulam, in Crl.A.No.25 of 2012. The lower appellate Court, by judgment dated 29.02.2016, dismissed the appeal and the conviction and sentence to undergo rigorous imprisonment for a period of Three years and to pay a fine of Rs.5,000/-in default to undergo rigorous imprisonment for One year for the offence under Section 450 of IPC and to pay a fine of Rs.3,000/-in default to undergo rigorous imprisonment for a period of six months for the offence under Section 324 of IPC and to undergo rigorous imprisonment for a period of Five years and to pay a fine of Rs.5,000/-in default to undergo rigorous imprisonment for a period of One year for the offence under Section 376 r/w 511 of IPC, was confirmed. Aggrieved over the same, the petitioner has preferred the instant criminal revision case.

3. The case of the prosecution is that, On 23.05.2010 at 14.30 hrs., when the victim minor girl was alone sleeping in her house, with an intention to commit rape on her, the revision petitioner trespassed into the house of the victim girl and locked the door and bite on her lips, chest and sexually assaulted her and while she shouted, the revision petitioner attempted to murder her by crushing her neck with hands. Based on a complaint given by the mother of the victim girl, a case in Crime No. 334 of 2010 for the offences under Sections 324, 450, 376 r/w 511 and 307 of IPC, was registered by the respondent police.

4. The learned Counsel for the revision petitioner submitted that the Appellate Court failed to consider the suppression of original report. He further submitted that the Appellate Court has failed to consider that there is no corresponding piece of evidence for the proof of allegation for an attempt of committing rape. He further submitted that the Court below has not considered that the suppress of medical treatment of alleged victim girl. He further submitted that the Appellate Court imposed a sentence as against the appellant is grave one. He further submitted that the Courts below have failed to consider the above said facts. Hence, the Criminal Revision case is liable to be allowed .

5. Per contra, the learned Government Advocate (Crl. Side) submitted that the revision petitioner has committed rape on victim girl and the same was proved through oral and documentary evidences on the side of the prosecution. She further submitted that he has been charged and the offences charged against him were clearly proved by the prosecution and therefore, the trial Court came to a correct conclusion and there is no infirmity to interfere with the findings of the trial Court. Hence, therefore, she prays for dismissal.

6. Heard the learned counsel for the petitioner and the learned Government Advocate (crl. Side) for the respondent police and

perused the material documents available on record.

7. The revision petitioner has filed this Criminal Revision Petition to set aside the Judgment, dated 29.02.2016 passed by the learned Additional District and Sessions Judge, Theni at Periyakulam in CrI.A. No. 25 of 2012 by confirming order of conviction and sentence, dated 12.06.2012 passed by the learned Assistant Sessions Judge Cum Chief Judicial Magistrate, Theni in S.C. No. 137 of 2010.

8. The revision petitioner was charged for an offences under Sections 324, 450, 376 r/w 511 and 307 of IPC and he was convicted and sentenced to undergo rigorous imprisonment for a period of Three years and to pay a fine of Rs.5,000/-in default to undergo rigorous imprisonment for One year for the offence under Section 450 of IPC and to pay a fine of Rs.3,000/-in default to undergo rigorous imprisonment for a period of six months for the offence under Section 324 of IPC and to undergo rigorous imprisonment for a period of Five years and to pay a fine of Rs.5,000/-in default to undergo rigorous imprisonment for a period of One year for the offence under Section 376 r/w 511 of IPC and he also acquitted the charge of Section 307 of IPC.

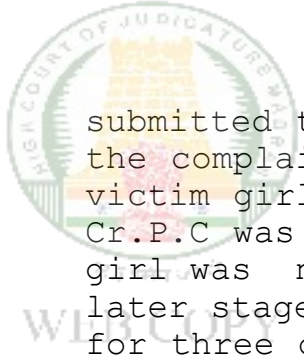
9. It is seen from the records that occurrence took place on 23.05.2010 at 02.30 p.m. FIR was registered on the same day at 05.30 p.m. There was no delay in registering the First Information Report.

10. The complainant/mother of victim girl was examined as P.W.1 on the side of the prosecution. She is only a hear-say witness. She had given a complaint and went to hospital along with the victim girl. One of the eye witnesses was examined as P.W.2. She has clearly deposed in her evidence that, after hearing the shout of the victim girl she went along with one Mariammal and Veerarasu, saw inside the house through back side window, saw the revision petitioner on the victim, broke the door, went inside and saved the victim and Nagajothi who was examined as P.W.3, who also deposed the same thing. Another eye witness, Veerarasu was examined as P.W.4. He corroborated the evidence of P.W.2 & P.W.3. One Nathiya also an eye witness who was examined as P.W.5, who corroborated the evidences of P.W.2 to P.W.4. At the time of occurrence, the victim girl was aged about 12 years who was examined as P.W.6. During her evidence, she has clearly narrated the occurrence. An another eye witness was examined as P.W.10. She also corroborated the evidence of P.W.2 to P.W.4.

11. Doctor was examined as P.W.9. She examined the victim girl only on 25.05.2010 at 11. 45 a.m. The victim girl had abrasions on her lip, nose and she had a nail mark on her right side cheek.

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12. The learned counsel appearing for the revision petitioner



submitted that as per evidence of P.W.1, victim girl also signed in the complaint. So, the police had not filed first complaint. The victim girl was not examined and her statement under Section 161 of Cr.P.C was not available. A person who gave first aid to the victim girl was not examined. Would certificate was also produced only in later stage. As per evidence of the victim girl she was hospitalized for three days. How she could produce before the learned Judicial Magistrate on 25.05.2010. The above contentions are raised by the learned counsel appearing for the revision petitioner and pleaded that the accused may be acquitted.

13. In this case, statement of victim alone sufficient to prove the guilty of the petitioner. P.W.2 to P.W.5 & P.W.10 are eyewitnesses and in their evidences they have clearly narrated the occurrence. Neither enmity nor motive among the witnesses, victim girl and the revision petitioner. Medical evidence also against the petitioner. Defective investigation is not fatal to the prosecution case. It is a serious offence and cannot be brushed aside for the minor contradiction.

14. The Courts below are correctly convicted the revision petitioner. This Court has no valid reason to interfere with the findings of the Courts below.

15. Considering the facts and circumstances of the case and also considering the fact that this is a serious offence in nature, this Criminal Revision Case stands dismissed. The conviction and sentence, dated 29.02.2016 passed by the learned Additional District and Sessions Judge, Theni at Periyakulam in Crl.A. No. 25 of 2012 by confirming order of conviction and sentence, dated 12.06.2012 passed by the learned Assistant Sessions Judge Cum Chief Judicial Magistrate, Theni, in S.C. No. 137 of 2010, are hereby confirmed. The trial Court is directed to secure the petitioner/accused, who was sentenced for imprisonment and confine him to prison so as to undergo the remaining period of imprisonment, if any. Bail bonds, if any executed, shall stand terminated. Consequently, connected miscellaneous petitions are closed.

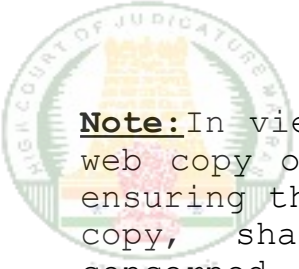
Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

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To

1. The Additional District and Sessions Judge,
Theni at Periyakulam.
2. The Assistant Sessions Judge Cum Chief Judicial Magistrate,
Theni.
3. The Government Advocate (Cr1.Side),
Madurai Bench of Madras High Court,
Madurai.
4. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

**Order made in
Cr1.RC(MD)No.448 of 2016**

05.05.2021

CN(01.06.2021)3P C6