



Crl.A.No.91 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	21.11.2022
Pronounced on	06.12.2022

CORAM

THE HON'BLE Dr.JUSTICE G.JAYACHANDRAN

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Peter @ Peter Arokiasamy

... Appellant

-Vs.-

State represented by
The Inspector of Police,
R-7, K.K.Nagar Police Station,
(Crime No.2265 of 2007)

.. Respondent

Criminal Appeal has been filed under Section 374(2) of Cr.P.C., to set aside the judgment and order in Sessions Case No.79 of 2008 dated 03.12.2011 on the file of the Magalir Neethimandram, Chennai 600 104.

For Appellant

:Mrs.S.Sridevi

For Respondent

:Mr.R.Kishore Kumar

Government Advocate (Criminal side)



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JUDGMENT

This Criminal Appeal has been filed to set aside the judgement and order in Sessions Case No.79 of 2008 dated 03.12.2011 on the file of the Magalir Neethimandram, Chennai 600 104.

2. At the time of occurrence, the appellant herein was about 25 years and the victim girl was minor around 17 years old, pursuing her XII standard. The accused is the husband of the victim's cousin sister. The trial Court found the accused guilty of kidnapping the minor girl, rape and criminal intimidation and hence sentenced him as below:

(i) for the offences under Section 366A IPC, to undergo 5 years rigorous imprisonment and a fine of Rs.10,000/-, in default to undergo three months simple imprisonment.

(ii) for the offences under Section 376(1) IPC, to undergo 7 years rigorous imprisonment and a fine of Rs.10,000/-, in default to undergo three months simple imprisonment.



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(iii) for the offence under Section 506(ii) of IPC, to undergo one year rigorous imprisonment and a fine of Rs.5,000/-, in default to undergo one month simple imprisonment.

Being aggrieved by the said conviction and the sentence of the trial Court, this Criminal Appeal has been filed by the accused.

3. The gist of the prosecution is:

3.1. The complainant is the maternal aunty of the victim girl. The accused is the son-in-law of the complainant. According to the complaint, the accused married her daughter/Saritha in the year 2006. Since her daughter Saritha was not well, she was staying with the complainant. The victim girl is the complainant's deceased sister's daughter. Since the death of their mother, the victim girl and her sister were living with the complainant.

3.2. The accused, taking advantage of his wife staying at her mother's home along with her cousin sisters, approached the victim girl, who is aged 17 years old studying XII Standard on 15.08.2007, on her



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way to the school to celebrate the Independence Day. He restrained her near the Sivan Park, Roundtana and took her in his two wheeler under the pretext of dropping her in the school. Instead he took her to a lodge at Vallakottai, booked a room in the name of David and had sexual intercourse with the victim minor girl in that room. Then, brought her back to K.K. Nagar Roundtana and dropped her. Again on 07.09.2007, the accused forcibly took the victim in his two wheeler to Vandalur Zoo and threatened her if she disclose the incident happened on 15.08.2007 to anyone, he will kidnap her to Bombay and sell her. The accused then dropped her at Roundtana at about 04:30 p.m. On that day, the victim girl came late to home and when the complainant enquired her why she is late, the victim girl started weeping and disclosed what happened to her on 15.08.2007 and 07.09.2007. Hence the complaint.

3.3. The complaint dated 10.07.2007 was taken for investigation in Crime No.2265 of 2007 by the respondent police. The statement of the victim girl, de facto complainant and her daughter, who is the wife of the accused were recorded by the learned Magistrate under Section 164 CrPC. The school transfer certificate of the victim girl and the opinion of



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the Doctor, who conducted radiology test on the victim, were collected and the final report was filed. Based on the materials and evidence relied by the prosecution, the Mahila Court at Chennai, framed charges against the accused under Sections 366A, 376(1), 465 and 506(ii) IPC.

4. To prove the charges the prosecution had examined 17 Witnesses and marked 31 Exhibits and 6 Material Objects. The accused to prove his marriage with Saritha/PW3, who is the cousin of the victim, had marked the Marriage Registration Certificate during the cross-examination of PW1.

5. The trial Court, on appreciation of the evidence, held the accused guilty of offences under Sections 366A, 376(1) and 506(ii) IPC and acquitted him from the charge under Section 465 IPC.

6. The learned counsel for the appellant submitted that the prosecution had failed to prove that the PW2 was below 18 years old on the date of alleged occurrence. The school transfer certificate, which is marked as Ex.P2 is a photocopy and the same has not been marked



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through the school authority, which issued it. PW1/maternal aunty of PW2, who has spoken about the transfer certificate, is not competent to speak about the content of the documents. Further, the opinion of the doctor, who has conducted radiology test for the victim girl, has opined in Ex.P22 that she has completed 18 years and below 20 years old. There is a doubt about the age of PW2. The prosecution had failed to prove the age of the victim girl through competent person, therefore the trial Court ought not to have convicted the appellant either for the offences under Section 366A IPC or for the offences under Section 376(1) IPC.

7. In support of her arguments the learned counsel relied upon the judgement in *Alamelu and another vs State* rendered by the Hon'ble Supreme Court in *Criminal Appeal No.1053 of 2009 (Indian Kanoon - <http://indiankanoon.org/doc.623267>)* wherein the Hon'ble Supreme Court, referring its earlier judgement rendered in *Birad Mal Singhvi vs. Anand Purohit*, held that the date of birth mentioned in the school register has no evidenciary value unless a person, who made the entry, or a person, who gave the date of birth, is examined.



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8. The learned counsel for the appellant, referring Section 3(ii) of the Indian Majority Act and the illustrations thereunder, submitted that the PW2 had crossed 16 years at the time of occurrence and the evidence of her clearly shows that it was a consensual sex, where she has gone along with the accused voluntarily to Vallakottai on 15.08.2007 and to Vandalur Zoo on 07.09.2007. Therefore neither Section 366A IPC nor Section 376 IPC gets attracted.

9. The learned Government Advocate (Criminal side) submitted that the PW2, who is the victim girl, had spoken about the unfortunate event she experienced at the hands of the accused on the fateful day. The previous statement recorded under Section 164 of the Code of Criminal Procedure [hereinafter “CrPC”] by the learned Magistrate is used to corroborated PW2 testimony before this Court. The transfer certificate of PW2, which is marked as Ex.P2, indicates that her date of birth is 08.02.1992. The transfer certificate has been received by her maternal aunty/Manimekalai and she has been examined as PW1 and the transfer certificate was marked through her. The law is now well settled that the



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school certificate of minor will prevail over any other documents for age proof. Even according to the judgment of the Hon'ble Supreme Court, cited by the learned counsel for the accused, the school certificates marked will lose its evidenciary value only if it is not marked through the person who made the entry or the person who gave the date of birth to the school authority. In this case, Ex.P2/transfer certificate issued by the school authorities contains the date of birth of the victim girl/PW2. This has been spoken by PW1/maternal aunty of PW2, who has given information to the school authorities about the date of birth of PW2.

10. The learned Government Advocate (Criminal side) would further submit that Ex.P6 to Ex.P12 are the registers and documents relating to Sabari Lodge at vallakottai. In the register, the accused has signed and the same is marked as Ex.P7. He has been identified by one Radhakrishnan/PW5, who is the bellboy in the lodge. Though the trial Court has acquitted the accused for the offences under Section 465 IPC, through the evidence of PW4 and PW5 and through the documentary evidence marked as Ex.P6 to Ex.P12, the fact that the accused has taken victim girl/PW2 to the lodge at Vallakottai on 15.08.2007 for having illicit



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intercourse with her has been clearly proved and the same corroborated by the evidence of PW2/victim.

11. In addition, the learned Government Advocate (Criminal side) for the State would submit that the delay in filing the complaint has been properly explained by PW1, who is the maternal aunty/guardian of the victim girl. PW1 has been taking care of the minor girl, who is her deceased sister's daughter. When the minor girl came late on 07.09.2007 she was inquired by PW1. At that time, the minor girl has disclosed the sexual violence committed by the accused, who is none other than the husband of the PW3/victim girl's cousin sister and also son-in-law of the PW1.

12. For the defence taken by the accused that there was a matrimonial dispute between him and his wife/PW3, which has led to lodging the frivolous complaint belatedly after 3 weeks of the incident, the learned Government Advocate (Criminal side) submitted that PW2 has clearly explained why she has not disclosed the incident to her maternal aunty immediately after occurrence. The accused has threatened



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her with dire consequences and put her under fear that if she discloses his acts of sexual violence to her maternal aunty, he will kill them and take her to Bombay and sell her. Being a minor girl, who has lost her mother at the age of 7, she had her own fear of insecurity and threat, which has emanated from a known person, who is close to her family, which is taking care of the victim and her sister both minors. Therefore, submitted that the trial Court has rightly convicted the accused for the offences under Section 366A, 376(1) and 506(ii) IPC.

13. Heard the learned counsel for the appellant and the learned Government Advocate (Criminal side) for the State and perused the material available on the records.

14. Age of the victim girl:

As per Ex.P2/transfer certificate of PW2, the victim girl was born on 08.02.1992. The transfer certificate was issued by the Government of Tamilnadu, Department of School Education and signed by the Headmistress of Dr.K.K.Nirmala Girls' Higher Secondary School, Ashok Nagar, Chennai 600 083. The transfer certificate indicates that it was



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issued to PW2, on 14.06.2007, on her completing the X standard. This document is issued much prior to the incident and on behalf of her parents, PW1 has signed and got this transfer certificate. As pointed out above, the PW1 is none other than the maternal aunty of PW2/victim girl and it is the case of the prosecution that PW1 has been taking care of PW2 and her sister for the past ten years, after the demise of their mother, who is none other than the sister of PW1. Therefore, there can be no doubt about the entry made in the birth certificate and the admissibility of the document, which is spoken by the person, who had furnished the informations found in the documents. Thus, the age of PW2 is ascertained as per the school certificate which gains predominance over the certificate given by the doctor after conducting radiology test, which is only an opinion, suggestive in nature and the age mentioned is only an approximate estimation of the age, which may have a error of (+) or (-) two years as per the experts opinion.

15. Offences under section 366A IPC

PW2/victim girl had deposed about the incident, which has occurred on 15.08.2007. According to her evidence, it was Independence



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Day and to celebrate Independence Day in her school, she was proceeding to her school. At that time, the accused came in his two wheeler and offered her to drop her in her school. Believing his words she has accompanied him. Instead of dropping her in the school, the accused had taken her to Vallakottai, despite her pretext. From the evidence of PW4 and PW5, who are the partner and bellboy of the lodge respectively, coupled with the documentary evidence Ex.P6 to Ex.P12, which are registered in the regular course of business, it is proved undoubtedly that in the name of David, the accused along with PW2 came in the two wheeler had stayed in the room. On comparison with naked eye, the signature found in Ex.P7 tally with the signature of the accused. PW5, who saw the accused signing the register, has deposed in favour of the prosecution. Thus, the prosecution has proved that PW2 minor girl had been taken by the accused to Vallakottai without consent of her parents/guardian and kept her in illegal confinement in the room of the lodge at Vallakottai.

16. Offences under section 376 IPC

Inside the room what transpire is within the exclusive knowledge of



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the accused and PW2. PW2 had consistently deposed that she was forcibly subjected to intercourse by the accused. There is no reason to disbelieve her testimony.

17. The learned counsel for the appellant relying upon the forensic report and the medical report of the victim girl argued that there is no incriminating trace in the dress material or the body of the victim girl/PW2 to indicate that PW2 was subjected to rape.

18. It is to be noted that the incident has taken place on 15.08.2007. The minor girl, out of fear and insecurity, had not disclosed the incident to anyone till 07.09.2007. Only on that day, when she came to the home late, she was inquired by PW1 and then she wept and told about the incident occurred on 15.08.2007 and 07.09.2007. What has been told by PW2 to PW1 is corroborated by PW3, who is none other than the wife of the accused. If medical examination of a rape victim done after 22 days of the occurrence, naturally the trace of violence would have erased.



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19. Further, the learned counsel for the appellant submitted that PW3 is separated from her husband and she was living with her parents. Therefore, to wreck vengeance against him, PW1 and PW3 has instigated PW2 to lodge a complaint.

20. This said defence is highly preposterous. According to PW3, she got separated from her husband, due to the dowry harassment. For that reason, no person will come forward to file a complaint alleging rape through her cousin sister, an unwed minor girl. PW2 has consistently spoken about the sexual violence committed by the accused against her will. She was forced to bear the violence fearing that the accused may harm her and her family members. To add credence to the case of the prosecution, two known persons have seen the accused taking PW2 in his bike. Those witnesses have been examined by the prosecution. PW6 had deposed that on 15.08.2007, he saw the accused and PW2 going in a bike near Udayam theatre. His evidence has been corroborated by PW7.



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21. Therefore from the evidence adduced by the prosecution, the factum of minority of PW2 has been proved through Ex.P2, kidnapping without consent of guardian is proved through the evidence of PW2 corroborated by PW6 and PW7. The crime of committing rape of PW2 is spoken by the victim herself and the circumstantial evidence, spoken by PW4 and PW5 which is supported by the Ex.P6 to Ex.P12, prove that the accused had taken the minor girl to a lodge in Vallakottai and in the room had raped the victim girl against her consent. Regarding the offence of criminal intimidation the fact of disclosing the incident after 22 days when PW1 enquired the victim girl, indicates that PW2 was put to fear of death and dire consequences by this accused. The reason for delay in filing the complaint has also been only due to that fear. The accused cannot take advantage of delay in filing FIR. In this case, the relationship between the accused and the victim and also the extend of fear he had instilled in the mind of PW2 is taken note of and the explanation given by PW2 for not reporting the incident immediately to the elders in the family is plausible.



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22. For the said reasons, this Court finds the reasoning given by the trial Court is in accordance with law and the facts were well supported by the evidence. Hence, there is no merit in this appeal. Accordingly, this Criminal Appeal is dismissed.

06.12.2022

Speaking/Non-speaking order

Index: Yes/No

Internet : Yes/No

nsa

To

1.The Magalir Neethimandram,
Chennai 600 104.

2.The Inspector of Police,
R-7, K.K.Nagar Police Station,
(Crime No.2265 of 2007)

3.The Public Prosecutor,
High Court, Madras.



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Dr.G.JAYACHANDRAN.J.,

nsa

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