



Crl.A.No.109 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	03.11.2022
Pronounced on	15.11.2022

CORAM

THE HON'BLE Dr.JUSTICE G.JAYACHANDRAN

Crl.A.No.109 of 2015

Gopi

... Appellant

-Vs.-

State represented by
The Inspector of Police,
Muthupetai Police Station,
Crime No.21 of 2010,
Thiruvarur District.

.. 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.43 of 2013 dated 21.01.2015 on the file of the learned Sessions Judge, Magaleer Neethimandram (Fast Track Court), Tiruvarur.

For Appellant :Mr.R.John Sathyan

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 S.C.No.43 of 2013 dated 21.01.2015 on the file of the learned Sessions Judge, Magaleer Neethimandram (Fast Track Court), Tiruvarur.

2. The case of the prosecution is that on 25.01.2010, the respondent police has registered a complaint given by a minor girl, who is studying X Standard at Kovilur Arulmigu Periyamayagi Girls Higher Secondary School, Muthupettai, alleging that on 24.01.2010 mid night, while she was studying in her house and her mother and sisters were sleeping, she went out to answer the nature's call. At that time, the accused/Gopi and three other unidentifiable persons, who were masked their face, gang raped her and thrown her under the bullock cart, which is parked in between the house of Pakiri and Jayaraman. She lost her conscious and when she regained, she found her dress badly disarranged and wet. Thereafter slowly, she reached her house and fainted before entering the house. The complaint was lodged at 13:00 hours on



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25.01.2010. While lodging the complaint, the victim girl had also handed over her dress, which she was wearing at the time of alleged occurrence. The first respondent police registered a case under Section 376 IPC against the appellant/Gopi and three others. The investigation disclosed that the prosecutrix, who was about 15 years old, was forcibly raped by the first accused/Gopi. The other three accused kidnapped her to have illicit intercourse with first accused. Hence the final report has been filed.

3. The trial Court on perusing the records, framed charge under Section 376 IPC against the first accused and under Section 366A against the accused 2, 3 and 4.

4. To prove these charges, the prosecution has examined the victim as PW1. To show that the victim was minor at the time of occurrence, Ex.P3/Age certificate given by the Doctor based on radiological examination and Ex.P12/the school transfer certificate of the victim girl issued by her school were relied. To corroborate the case of the victim girl, the testimony of PW2/father of victim, PW3/mother of the victim and PW4/sister of the victim were examined, besides, Doctors have given their



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opinion on examining the victim girl as well as accused.

5. Considering the testimony of PW1 to PW15, documents marked as Ex.P1 to Ex.P12 and material objects marked as M.O.1 and M.O.2, the trial Court held that the opinion of the forensic expert/PW8, who has examined the cloth of the victim girl at the time of occurrence, which was marked as M.O.1 (in skirt), found semen and it is of human origin. Therefore the trial Court concluded that A1 alone found guilty of having sexual intercourse with PW1. As far as A2, A3 and A4 are concerned, the charge against them has not been proved since PW1 has not identified them either at the time of occurrence or during her previous statement or no identification parade was conducted in the course of investigation to substantiate the charge against these three accused.

6. The trial Court also finds that the accused and PW1 were in affairs and the intercourse was consensual. However, taking note of her age, the Court below convicted the accused for the offences under Section 376 IPC and sentenced him to undergo three years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo six months rigorous imprisonment. The said judgement is challenged in the present appeal.



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7. The brief facts of the prosecution case, as found from the evidence, is that on 25.01.2010 at about 13:00 hours, when PW12/Sub Inspector of Police attached to Mannargudi Police Station was on duty, PW1 came to the police station and gave complaint/Ex.P1 alleging that the previous night, she was gang raped, while she came out from the house to attend her nature's call. She identified one of the assailants, who is the appellant herein. Based on the complaint/Ex.P1, PW12 has registered the FIR/Ex.P10 and submitted it to the Inspector of Police for further investigation, after forwarding a copy of it to the learned Judicial Magistrate, Thiruthuraipundi. From the endorsement on Ex.P10/FIR, it could be seen that the learned Judicial Magistrate has received the copy on 25.01.2010 at 05:30 pm. Along with the complaint, the *de facto* complainant has produced her dress and the same was forwarded to the Government Forensic Laboratory at Thiruvarur for chemical analysis. The PW8/Assistant Director of State Forensic Laboratory, received the in-skirt and nighty forwarded along with the letter of the learned Judicial Magistrate on 02.02.2010 and subjected the Material Objects for biological examination and submitted the biological report/Ex.P4. As per



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the biological report/Ex.P4 and serological report/Ex.P5, it is submitted that the human semen was found in the in-skirt, which is marked as M.O.1. It is also pertinent to note that the serological test, which is conducted in respect of the semen collected from the accused persons, reported inconclusive. The PW1/victim girl had deposed substantially consonance with her complaint/Ex.P1 but she had implicated only the appellant herein/Gopi for the specific overt act of rape. The PW1 has denied the suggestions put to her that she and the appellant were in love for three years and she knowingly had an illicit relationship with him.

8. On that eventful day, the PW2/father of the victim, gone for fishing and not in the house. He came back on the morning of 25.01.2010 and he saw that the villagers gathered near his house told him that the appellant had raped his daughter/PW1. So he took his daughter to the police station and lodged a complaint. In the course of examination, PW2 has denied the suggestions put to him alleging previous enmity between his family and the accused/appellant family.



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9. Further the witnesses, PW3/mother of the victim and PW4/elder sister of the victim, have spoken about the fact that on 24.01.2010, PW1 was studying till 12:00 mid night and thereafter she was found missing. She came back on the early morning of 24.01.2010 at about 04:00 am. She informed that she was raped.

10. The other evidence relevance for decision is the evidence of PW7/Doctor, who has examined the victim girl and conducted the radiological test to ascertain her age. According to the opinion found in the medical certificate/Ex.P3, the Doctor has opined that the age of the victim girl was between 14 and 15 years. To ascertain the age of the victim, the prosecution has also examined PW15/Head Mistress of Kovilur Arulmigu Periyannayagi Girls Higher Secondary School, Muthupettai, where the victim perused her studies from VI standard to X standard. The school register extract/Ex.P12 has produced by PW15, in which the date of birth of the victim girl is mentioned as 02.02.1995. She has joined VI standard on 14.06.2005 and on completion of X standard, she took transfer certificate on 07.04.2010.



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11. In this appeal, it is contended that the Court below erred in not considering the fact that there was no external injury on the body of the victim as per the evidence of Doctor/PW10, who physically examined PW1. Having held that it was consensual sex between the prosecutrix and the accused, benefit of doubt ought to have been extended regarding the age of the victim girl since the radiological test is not conclusively proof and similarly, the entry made in the transfer certificate, which has been admittedly entered on the information given by the parents at the time of admission, cannot be a conclusive proof for determination of the age. Pointing out the admission of the Investigating Officers/PW13 and PW14, regarding enquiry of age of the victim girl, submitted that no sanctity could be attached to Ex.P12/School transfer certificate since the said certificate is not substantial piece of evidence.

12. The learned Government Advocate (Criminal side) would submit that it is a clear case of rape of a minor girl by an adult, which has been proved through oral evidence of the victim as well as the medical evidence. The Court below, having found that the accused guilty of offences under Section 376 IPC, ought to have sentence him to undergo a



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minimum sentence prescribed under the Act, which is seven years but erred in sentencing him to undergo three years rigorous imprisonment, on the erroneous observation that the victim had sex with the accused with consent. Referring the testimony of witnesses namely, PW1/victim, PW8/Doctor and PW15/Head Mistress and Exhibits namely, Ex.P1/complaint, Ex.P12/transfer certificate, Ex.P4/biological report and Ex.P5/serological report, submitted that this appeal is deserved to be dismissed.

13. The incident alleged to have occurred on 24.01.2010 before the enactment of POCSO Act in the year 2012. The act of rape, being spoken by the victim and duly supported by the medical evidence. As far as the age of the victim has been fixed as 15 years based on the school transfer certificate, the said age has been determined following the dictum of the Hon'ble Supreme Court and in consonance with Section 49 of the Juvenile Justice (Care and Protection of Children) Act, 2000. It is now well settled that for determining the age of the victim child, the date of birth certificate from the school first attended gains predominance over the other mode of proof. Ex.P12/transfer certificate of the victim girl indicates



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that she was born on 02.02.1995. The PW15/Head Mistress of the victim child has identified this transfer certificate/Ex.P12 is the document issued by the School based on the register. From her deposition, this Court could see that she had brought the original register maintained by the School of the victim girl for verification.

14. In the above said circumstances, this Court finds no merits in the appeal. In fact, the trial Court, though found the accused guilty of raping a child, who is 16 years old, had exercised its discretion to impose sentence of term less than seven years. Since no appeal by the State or the victim filed for enhancement of punishment, this Court dismiss the appeal without interfering with the terms of imprisonment.

15.11.2022

Speaking/Non-speaking order
Index: Yes/No
Internet : Yes/No
nsa



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To

- 1.The Sessions Judge,
Magaleer Neethimandram (Fast Track Court),
Tiruvavarur.
- 2.The Inspector of Police,
Muthupetai Police Station,
Crime No.21 of 2010,
Thiruvavarur District.
- 3.The Public Prosecutor,
High Court, Madras.



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Dr.G.JAYACHANDRAN.J.,

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