



CRL A No.239 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	17.11.2022
Pronounced on	:	25.11.2022

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Appeal No.239 of 2021

Balraj

... Appellant

Vs.

The State, represented by
The Inspector of Police,
Kunnam Police Station,
Perambalur District.
Crime No.70 of 2016.

... Respondent

Prayer : Criminal Appeal filed under Sections 374(2) of Criminal Procedure Code, praying to set aside the Judgment made in S.C.No.44 of 2018 dated 16.12.2020 on the file of the Sessions Judge, Mahila Court, Perambalur.

For Appellant : Mr.K.V.Muthuvisakan
Legal Aid Counsel

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor



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JUDGMENT

This Criminal Appeal has been filed to set aside the Judgment made in S.C.No.44 of 2018 dated 16.12.2020 on the file of the Sessions Judge, Mahila Court, Perambalur.

2. The respondent registered the case in Crime No.70 of 2016 for the offences under Section 376 of IPC. After completing the investigation, the respondent police have filed the charge sheet before learned Judicial Magistrate, Perambalur. The learned Magistrate, Perambalur taken the charge sheet on the file in PRC No.24 of 2017. After completing the formalities, the learned Magistrate committed the case to learned Principal District and Sessions Judge, Perambalur, since the offences are exclusively triable by the Court of Session. The learned Principal District and Sessions Judge, Perambalur, taken the case on file in SC No.44 of 2018 and madeover to the Learned Sessions Judge, Mahila Court, Perambalur, since the offences are against woman.



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3. The learned Sessions Judge after completing the formalities framed the charges against the appellant for the offences under Section 376 of IPC.

4. After framing the charges, in order to substantiate the charges framed against the appellant, during the trial, on the side of the prosecution as many as 22 witnesses were examined as PW 1 to PW 22 and 13 documents were marked as Ex. P1 to P13. Besides that 3 material objects were exhibited as MO1 to MO3 on the side of the prosecution.

5. After completing the examination of prosecution witnesses, when the incriminating circumstances culled out from the evidence of prosecution witnesses were put to the appellant by questioning under Section 313 of CrPc, wherein he denied the same as false and pleaded not guilty. On the side of the defense, no oral and documentary evidence was produced.



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6. Hearing the arguments advanced on either side and considering the materials, the trial court found guilt of the accused for the offence under Section 376 of IPC and the accused was convicted and sentenced to undergo 10 years of rigorous imprisonment and pay fine of Rs.5000/- in default to undergo further period of 2 years simple imprisonment for the offence.

7. Challenging the said judgment of conviction and sentence passed by the trial court, the accused has filed the present appeal.

8. The specific case of the prosecution is that on 09.02.2016 at about 8.00 a.m, the victim went to a vacant place, situated near the appellant's house to attend nature's call. The villagers used that place for attending nature's call. At that time, on seeing the victim, the appellant took her to a cotton field belonging to one Arumugan, son of Muthu and committed rape on the victim by pressing her breast and made her to lay on the floor and lifted her skirt, inserted his finger in her private part and inserted his private part in her mouth. When she screamed and cried, he closed her mouth with a cloth. He then held her hands forcefully and



committed penetrative sexual assault. Therefore, the respondent police registered a case against the appellant for the offence under Section 376 of IPC. The trial Court found guilt of the accused and convicted him under Section 376 of IPC.

9. The learned counsel for the appellant would submit that the victim is a mentally retarded person with a low IQ level and she was also genetically suffering with Down Syndrome. The IQ level of the victim is only 25%. In support of his submission, medical certificate was produced from the Special medical officer, Thanjavur Medical College. Therefore, she cannot remember or speak, if anything had happened to her in an earlier occasion. Further, she is not even in a position to identify herself. Even the statement recorded from the victim under Section 164 CrPC was recorded only through a Psychiatrist and further, the medical evidence clearly shows that she is suffering from Down Syndrome and her IQ level is only 25%. The medical evidence also proved the same and therefore, it is not possible for the victim to make such a lengthy statement. When she could not identify herself, then she will not be in a position to explain what happened to her. If that be the case, the appellant is wrongly fixed in



this case.

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10. The learned counsel for the appellant would further submit that due to a previous enmity between the father of the victim and appellant, in order to take vengeance, the parents of the victim used their daughter, who is a mentally retarded person as a tool to ventilate their vengeance. Further, he would submit that while examining the victim as PW11, she admitted that her father taught her how to speak in the Court. The victim also mentioned that her father only told the name of the victim. In the statement recorded under Section 164 of CrPC, the victim stated that she was in the house and no one was present in her house. Whereas, during the Chief examination, she stated that while attending nature's call, the appellant took her. The trial Court failed to appreciate this contradiction. The trial Court also failed to consider the material aspect in respect of the injury on the body of the victim over her chest and the above aspect was categorically spoken by PW1/father of the victim, PW2/sister of the victim and PW3/mother of the victim. Whereas the Doctor/PW8 who examined the victim on 10.02.2016 stated that the victim is suffering from Down Syndrome and there is no injury all over her body including



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her private part and the hymen was also intact. Vagina admits only the finger tip alone and there is no evidence of recent sexual intercourse. Further, he would submit that the mother of the victim deposed that she saw injuries over her breast and the same does not corroborate with the medical evidence. The parents of the victim admitted that before giving a complaint they consulted an Advocate and with the help of the Advocate, they filed a complaint.

11. The learned counsel for the appellant would further submit that the age of the appellant is only 19 years and the victim's age is 22 years and she was suffering from Down Syndrome. The victim mentioned the name of the accused as Prakash, whereas the appellant's name is Paulraj. The trial Court failed to consider that the oral and documentary evidence did not corroborate with the evidence of the victim. The medical evidence clearly shows that since the victim is affected from Down Syndrome, she is not in a position to remember, speak if anything happened to her or identify a person. Further, it was submitted that PW10 who himself is not an authenticated person to understand the language of the mentally retarded person, especially the victim in this case. Therefore, based on



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this evidence, the Court cannot convict the appellant. If that be the case, the trial Court failed to appreciate the case and erroneously convicted the appellant only on the basis of the evidence of the victim which is uncorroborative and unbelievable. Therefore, the conviction and sentence passed by the trial Court is liable to be set aside and this appeal to be allowed and appellant to be acquitted.

12. The learned Additional Public Prosecutor would submit that while the victim went to attend nature's call in an open place near appellant's house, the appellant took the victim to a cotton field and committed rape. The previous statement recorded from the victim under exhibit P13 clearly shows that it was recorded through the Doctor who is a Psychiatrist in that field. The learned Magistrate also recorded the statement as spoken by the victim, with the help of the Psychiatrist, who was examined as PW10 by the side of the prosecution. The victim was examined as PW11 and the father of the victim was examined as PW1 and the sister of the victim was examined as PW2 and the mother of the victim was examined as PW3. He would further submit that the age of the victim is only 22 years. The family members used to communicate with



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each other through their own way. Therefore, the evidence of the PW1 to PW3 has clearly stated what the victim told them and they have spoken and deposed that appellant is the one who has committed the offence under Section 376 of IPC. Further, the victim also identified the person. Therefore, the trial Court has rightly appreciated the evidence and convicted the appellant. There is no merits in this appeal and this appeal is liable to be set aside.

13. Heard the learned counsel for both sides. Perused the materials placed on record.

14. The specific charge framed against the appellant is that on 09.02.2016 at about 8.00 a.m, when the victim went to a vacant place situated near the appellant's house to attend nature's call, the accused took her forcefully to a cotton field belonging to one Arumugan, son of Muthu from the same village and committed rape, which is punishable under Section 376 of IPC.

15. In order to substantiate the said charge, on the side of the



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prosecution, totally 22 witnesses were examined and 13 documents were marked. Besides that, 3 material objects were exhibited. Out of the 22 witnesses, the victim was examined as PW11 and the statement under Section 164 of CrPC was also recorded by learned Judicial Magistrate.

16. A careful reading of the evidence of PW11 and PW10 and the previous statement exhibit P13 the language used by the victim was deposed by PW10/Doctor. It is seen that the victim was suffering from Down Syndrome and as per the medical record her IQ level was only 25%. From the oral and documentary evidence, the victim had studied upto 7 std in a Government School and she was residing with her parents. Naturally she has to communicate with her parents for her day-to-day needs and affairs and also with her co-students in the School. It is not the case of the defence and the prosecution that the victim was kept in any mental health centre or mental hospital or she was kept aloof in the secular places. Therefore, it is an undisputed fact that the victim was residing with her parents and she has also studied upto 7 std in a regular school. Therefore, the contention raised by the appellant that due to Down Syndrome, the victim could not speak, remember and identify any



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person are not acceptable. Though the Doctors have given opinion based on the medical report, however from the evidence of the Doctor/PW10 and evidence of PW1 to PW3 and the evidence of the victim cannot be totally ignored and thrown away. Further, the evidence of the victim/PW11 and the previous statement of the victim exhibit P13 coupled with the evidence of PW10 prosecution has proved that the appellant committed alleged offence. Though the victim stated that she sustained injuries in her breast, however the Doctor who examined the victim stated that there was no injury on her body including her breast and private part. The occurrence said to have taken place on 09.02.2016, whereas the victim took medical test on 10.02.2016 shows that there is no injuries. However, since injuries were not found as stated by the PW3 and PW11, the evidence of the victim cannot be totally ignored. The victim who is a mentally retarded person would not have any personal enmity or any personal vengeance against the appellant and she has no necessity to say such an adverse statement against the appellant. Though the main defence taken by the appellant side is that the brother of the appellant had beaten the victim and her mother, and therefore, in order to take vengeance, the parents of the victim foisted a false case against the



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appellant with the help of an Advocate. The defence taken by the appellant is that the victim is a mentally retarded person who is suffering from Down Syndrome and her IQ level is only 25% and therefore, she cannot speak if anything happened to her. A reading of the statement recorded under Section 164 CrPC, the exhibit P13 and deposition of PW11 shows that if the victim have such a incapacity, then she could not have given such a lengthy evidence. Even the defence side also made a cross examination in length and she has given the answer and the same was recorded with the help that PW10. Therefore, the defence taken by the appellant that mentally retarded persons could not speak about the incidents happened to them cannot be accepted.

17. As far as the enmity between the brother of the appellant and victim's father is concerned, the defence counsel has not substantiated the same with materials. If the enmity is only because the brother of the appellant had beaten the wife/PW3 and victim, PW1 would not have gone to that extent to spoil the reputation of her child in the society. If at all, the bother of the appellant had beaten the victim's family members, then instead of giving this type of complaint, the PW1 would have straight



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away made a complaint against the brother of the appellant himself before the respondent police. Therefore, the defence taken by the appellant is not sustainable. It is evident that the prosecution has proved its case beyond reasonable doubt.

18. A combined reading of the evidence of the PW1 to PW3, PW10 and PW11 and exhibits P1 to P6 and exhibit P13, this Court as an appellate Court and as a final court for fact findings, finds that while re-appreciating the entire evidence, finds that the appellant has committed the offence under Section 376 of IPC. There is no merit in this appeal and this appeal is liable to be set aside.

19. Accordingly, this Criminal Appeal is dismissed.

20. Mr.K.V.Muthuvisakan, Legal Aid Counsel, appeared on behalf of the appellant is entitled for the remuneration.

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Index:Yes/No

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To

1. The Sessions Judge, Mahila Court, Perambalur.
2. The Inspector of Police,
Kunnam Police Station,
Perambalur District.
3. The Public Prosecutor Officer, High Court, Madras
4. The Section Officer, Criminal Section, High Court, Madras.



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P.VELMURUGAN, J

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**Pre-Deliver Order in
Criminal Appeal No.239 of 2021**

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