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Crl.Appeal No.477 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2022

CORAM

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

Crl.Appeal No.477 of 2015

R.Raja

... Appellant/ Accused

Vs.

The State Rep. by
Inspector of Police,
Poraiyar Police Station,
Poraiyar, Nagapattinam District.
(Crime No.49/2013)

... Respondent/ Complainant

PRAYER: Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code against the judgment of the learned Sessions Judge, (Fast Track Mahila Court), Nagapattinam, made in S.C.No.61/2013 dated 30.06.2015.

For Appellant : Mr.B.Gopalakrishnan

For Respondent : Mr.R.Kishore Kumar
Government Advocate (Crl. Side)



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JUDGMENT

The appeal is preferred by the accused who was tried for offences under Sections 451 and 354 of IPC but found guilty of offences under Sections 451 and 354 of IPC. Convicted the accused to undergo one year Rigorous Imprisonment (RI) and to pay a fine of Rs.1,000/- in default to undergo one month Simple Imprisonment (SI) for offence under Section 451 of IPC. Convicted the accused to undergo RI for four years and to pay a fine of Rs.5,000/- in default to undergo SI for a further period of six months for the offence under Section 354 of IPC.

2. According to the prosecution, on 01.03.2013, at about 04.30 p.m., when P.W.1 returned to her home after being engaged in hundred (100) days work scheme, she saw the accused lying over her elder daughter who is mentally retarded lady aged about 21 years. Immediately, she pulled the accused and called the neighbours. Ganesan and Raja who came to her house on hearing the scream allowed the accused to run away. After complaining to the village elders the next day i.e., on 02.03.2012, P.W.1 gave complaint to the respondent Police which was registered in Crime No.49 of 2013 at 15.00



hours and taken up for investigation.

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3. Twelve (12) witnesses were examined on behalf of the prosecution and seven (7) exhibits were marked. P.W.1, the mother of the victim girl had narrated what she saw on the date of occurrence which has also found place in the complaint given by P.W.1. P.W.2 Manimaran and P.W.3 Ganesan are the neighbours who were supposed to speak about the incident but turned hostile. P.W.4 is the witness to observation Mahazer Ex.P2 and P.W.5 is the Head Constable who took the accused to the hospital for potency test. P.W.6 is the Grade-I Police Constable who took the victim girl to the hospital for medical examination. P.W.7, the Doctor who conducted physical examination of the victim girl and gave the Accident Register Ex.P.3, who has opined that there is no evidence to infer that the victim girl has been subjected to intercourse. P.W.8, the Doctor who had conducted Radiology test, has opined that the victim girl has completed the age of 21 years. P.W.9, the Doctor who has conducted potency test of the accused has given Accident Register of accused marked as Ex.P.5 stating that the accused is potent and fit for physical intercourse. P.W.10 and P.W.11 are the son and daughter-in-law of



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P.W.1. Both these witnesses are hearsay witnesses and have spoken what they heard from P.W.1.

4. In the light of these evidences, the Trial Court has concluded that prosecution has proved that the accused has trespassed into the house of P.W.1. The fact that P.W.3 had deposed that on 01.03.2013, at 3.00 p.m. the victim girl and the accused were quarrelling and on hearing the noise, he went to the house of P.W.1 and pacified the victim girl. Taking note of the opinion given by the Doctors and other witnesses about the mental status of the victim girl and the medical record, the Trial Court though tried the victim for offence of rape punishable under Section 376 of IPC found that there is no evidence for offence of rape. It also held that there is ample evidence to show that the victim girl's modesty was molested by the accused. Holding that the accused had trespassed into the house of the victim girl and tried to misbehave with her which has been resisted by the victim girl and there was quarrel between them which has been witnessed by P.W.3 and one Manivannan (not examined). This was reported to police by P.W.1, who returned home. The Trial Court held the accused guilty for offence under Section 354 of IPC



instead of 376 of IPC.

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5. This Court on perusing the depositions of the witnesses hold that the Trial Court has rightly held that the accused was present in the house of the victim and there is no possible explanation given by him for his presence in the house of the victim. The evidence of P.W.3 though treated as hostile proves the fact that the victim girl was quarrelling with the accused and hearing the commotion he had rushed to the house of P.W.1 and pacified the victim girl. It is the consistent case of the prosecution that the victim girl was aged about 21 years but mentally retarded and not capable of speech, therefore, she was not examined. P.W.1 has seen the accused misbehaving with the victim girl. P.W.3 has seen the victim girl quarrelling with the accused. Since the victim girl is a mentally retarded person, the Police were not able to examine her and place the evidence before this Court. It is obvious that the incident had happened in the village but, the relatives, persons interested in the accused have not supported the case of the prosecution, there is nothing to doubt the version of P.W.1 to the extent corroborated by the other witnesses. Therefore, this Court finds no error in the finding of the Trial



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Court that the accused had trespassed into the house of P.W.1 and thereby committed offence under Section 451 of IPC and also evidence of P.W.1 inspires the confidence of this Court to the extent that the accused misbehaved with the mentally deranged girl which has made her to resist and fight with the accused, and same has been witnessed by P.W.3. The said evidence of P.W.1 read along with evidence of P.W.3 makes out a positive case against the appellant for offence under Section 354 of IPC.

6. Insofar as sentence, the learned counsel appearing for the appellant would submit that the accused is now married and living with his daughters peacefully and therefore requested the sentence to be modified.

7.1. Taking into consideration the above submission, this Court modifies the sentence as below:

i) For the offence under Section 451 of IPC, the accused is convicted and sentenced to undergo six months RI and to pay a fine of Rs.25,000/-.

ii) For the offence under Section 354 of IPC, the accused is convicted and sentenced to undergo one year RI and to pay a fine of Rs.25,000/-.



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7.2. The above period of sentence should run concurrently. The period of detention already undergone by the accused is ordered to be set off under Section 428 of Cr.P.C. Out of the total fine amount of Rs.50,000/-, the victim through her mother P.W.1 to be paid a compensation of Rs.47,500/- and the remaining sum of Rs.2,500/- to be paid to the State. The learned counsel for the appellant states that already a fine amount of Rs.6,000/- has been paid in compliance of the Trial Court judgment. If so, the balance amount of Rs.44,000/- to be deposited within a period of two months from the date of receipt of a copy of this order, in default, the accused to undergo three months of SI.

8. As a result, this Criminal Appeal is partly allowed.

14.11.2022

Index:Yes/No

Speaking Order : Yes / No

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DR.G. JAYACHANDRAN, J.

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To:

- 1.The Sessions Judge,
Fast Track Mahila Court, Nagapattinam,
- 2.The Inspector of Police,
Poraiyar Police Station,
Poraiyar, Nagapattinam District.
- 3.The Public Prosecutor,
High Court, Madras.

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