



IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 27.04.2022
PRONOUNCED ON : 10.06.2022

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CORAM :

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

Crl.A.No.244 of 2019

Mani @ Manikandan

Appellant/Accused

Vs

State by the Inspector of Police
J.J. Nagar Police Station, Mogappair East
Chennai.

Respondent/Complainant

Prayer:- This Criminal Appeal has been filed, under Section 374(2) of Cr.PC, against the judgement of conviction and sentence, dated 29.05.2018, made in SC.No.11 of 2014, by the Sessions Judge, Magalir Neethimandram, Tiruvallur.

For Appellant : Mr.S.Panneerselvam

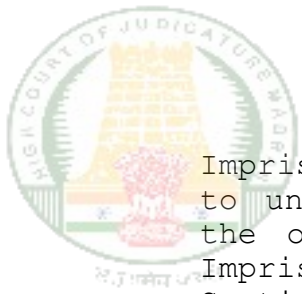
For Respondent : Mr.M.Babu Muthu Meeran, APP

JUDGMENT

(Judgement of the Court was made by A.A.NAKKIRAN, J.)

1.This Criminal Appeal has been filed, against the judgement of conviction and sentence, dated 29.05.2018, made in SC.No.11 of 2014, by the Sessions Judge, Magalir Neethimandram, Tiruvallur.

2.In and by the impugned judgement of conviction and sentence, the Appellant/Accused was convicted and sentenced (a) for the offence under Section 365 of IPC to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.2,000/-, in default to undergo six months Simple Imprisonment, (b) for the offence under Section 367 of IPC to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.2,000/-, in default to undergo six months Simple Imprisonment, (c) for the offence under Section 376(c)(f) of IPC to undergo life imprisonment and to pay a fine of Rs.2,000/-, in default to undergo six months Simple Imprisonment, (d) for the offence under Section 377 of IPC to undergo ten years Rigorous Imprisonment and to pay a fine of Rs.2,000/-, in default to undergo six months Simple



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Imprisonment, (e) for the offence under Section 323 of IPC to undergo Rigorous Imprisonment for six months, (f) for the offence under Section 336 of IPC to undergo Rigorous Imprisonment for three months and (g) for the offence under Section 506(ii) of IPC to undergo Rigorous Imprisonment for two years and and the sentences were ordered to run concurrently.

3. The case of the prosecution is that PW4 Kanthan and PW3 Santhiya are parents of the victim child PW1 and both of them are working. PW2 Valarmathi was the aunt of the victim child. PW2 used to bring the victim child from the school and kept her in a home till her parents return home. On 27.01.2012 at about 16.30 hours, the victim child was with her aunt PW2 Valarmathi. The victim child asked pencil from her aunt. PW2 Valarmathi has given money for the purchase of pencil. The victim child went to the shop to purchase the pencil and the shop was closed and she was standing in front of the shop. The accused came there and stated that he will give her more pencils and chocolates and took the victim child to the nearby old dilapidated condition building near Muthumariamman Temple. The accused threatened the victim and committed sexual intercourse and also committed unnatural intercourse anus of the victim child. The accused caused abrasion on the chest and back side of the victim child and also caused nail injuries on the body of the victim child.
4. Since the victim has not returned home within a reasonable time, PW2 Valarmathi and neighbours started searching for the missing child. PW2 has given intimation to the parents of the victim child and both PW3 and PW4 parents of the victim child reached the home at 6 to 6:30 p.m and they have also joined together and keep on searching for the victim child. Thereafter, PW3 mother of the victim child gave a written complaint Ex.P1 and the same was received by the Sub Inspector of Police PW16 in JJ Nagar Police Station and registered the case Crime No.100 of 2012 under the caption on child missing.
5. The Investigation Officer PW19 took up the investigation and visited the scene of occurrence on 27.01.2012 at about 01.30 a.m and prepared the rough sketch Ex.P3 and observation mahazar Ex.P2 in the presence of witness PW8. The Sub-Inspector of Police was asked to examine the witnesses PW2 Valarmathi, PW3 Santhiya, PW4 Kanthan, PW5 Priya, PW6 Sumathi, PW7 Parthasarathy, PW9 Vijaya, the villagers and police officials have searched the missing child throughout the night. In the morning hours, one Mani working in the tea stall caught hold of the accused and the victim child was secured from the accused and there were injuries present on all over her body and there were also bitten marks in her mouth and her private parts were swollen. The accused was arrested by the investigation officer at 6.00 a.m and his confession statement was



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recorded in the presence of witnesses Sagaya Edwin and Shanmugaraj. The Investigation Officer also prepared seizure mahazar Ex.P4 on 28.01.2012 at 6.45 a.m near the old children's centre in the presence of witnesses Sagaya Edwin PW10 and Shanmugaraj PW15 and seized MO.3 and 4 and also prepared seizure mahazar Ex.P5 and seized Mo.1 and 2 dress materials belonging to the victim child in the presence of the same witnesses.

6. The victim child was produced before the Doctor PW11, who gave first aid. Ex.P6 is an accident register. On the same day at about 5.00 p.m the victim child was produced before the institute of gynaecology at Egmore. PW2 doctor Indumathi has noted down the following external injuries "scratch marks over the left side of neck, chest wall and buttock and back of the chest concision of 2x2 cm over Infra Scapular region present, Vulva-small Excoriation noticed over right Labia Minora present, Vagina-Hiatus opening easily admits one finger" and two swabs were taken.
7. After a thorough examination of the victim child, the Doctor has given an opinion that there is a possibility of sexual molestation. Ex.P7 is the certificate issued by the Doctor. On the same day, the accused was produced before Doctor Selvakumar PW17, who examined the accused and issued the potency certificate Ex.P11. Wherein, the doctor has obtained that there is nothing to suggest that he is impotent. The Sub-Inspector of Police examined the Doctors and recorded their statements, after investigation, the Investigation Officer altered the case from one under child missing to Sections 365, 367, 376, 377 IPC and Section 4 of Tamil Nadu Prohibition of Women Harassment Act Ex.P12. He filed a final report against the accused for offence under Section 365, 367, 376, 377 and 323, 506(ii) IPC r/w 4 of Tamil Nadu Prohibition of Women Harassment Act and Section 75 of IPC against the appellant.
8. The learned Judicial Magistrate, Ambattur took cognizance of the case and on appearance of the appellant, the provision of Section 207 of CrPC had been complied with and the case was committed to the Court of Sessions Mahalir Needhi Mandram, Tiruvallur and the same was taken on file in SC.No11 of 2014 and necessary charges were framed. When questioned the accused pleaded not guilty. In order to prove the case, the prosecution examined PW1 to 19 and marked Ex.P1 to 12 and Mo.1 to 4. When the appellant was questioned u/s 313 Cr.PC on the incriminating circumstances appearing against him, he denied the same and none was examined from the side of the accused and no exhibit was marked.
9. After considering the evidence on record and hearing either side, the Trial Court, by its judgement, dated 29.05.2018 in SC.No.11 of 2014, convicted and sentenced the appellant as referred to above. Challenging the aforesaid conviction and



sentences, the appellant/accused has filed the present appeal.

10. This Court heard Thiru.S.Panneerselvam, the learned counsel for the appellant and Thiru.M.Babu Muthu Meeran, the learned Additional Public Prosecutor for the respondent.

11. The learned counsel for the appellant submitted that the learned judge has convicted the accused without properly appreciating the evidence and also raised serious doubt as to inordinate delay in lodging the police complaint. The medical examination of the victim girl did not reveal any injury on her private part.

12. Per contra, the learned Additional Public Prosecutor submits that in offence of this nature the evidence of the victim plays a vital role and her evidence was cogent and clear and the same may be taken in the present case and even in the cross examination, the victim has clearly stated the events and the appellant caught red handed and no interference is required at the hands of this Court and the appeal is to be dismissed.

13. The point for consideration is whether the conviction and sentence of the accused for the offence U/s 365, 367, 376 (ii) (f), 377, 323, 336, 506(ii) of IPC by the learned Session Judge on the basis of the materials available on record is fair and proper.

14. In the present case, the victim was examined as PW1 the minor child. The victim was examined and narrated the heinous act of the accused. Her cross examination also did not demolish the facts spoken by her in her chief examination. The trial Court puts some preliminary questions to the minor victim child and recorded her answers. From the answer given by the victim, the trial court is of the considered opinion that the victim is capable of understanding things and she is a competent witness to give evidence. Further, the victim child has clearly identified the accused before the trial Court. In her evidence, she deposed that she went to the next shop for the purchase of pencil and she found the accused there. The accused under the pretext of giving pencil and chocolate has taken the victim child to the nearby child centre in a dilapidated condition in an auto. It was very dark at night and there was no light at the place of occurrence and PW1 the victim child cried. In the said night the accused pushed her down and there were injuries on the face and body of the victim child and the victim child dashed her head by brick and the accused inserted his penis in the mouth of the child whenever she cried out of fear and pain. The accused poured alcohol in her mouth. Whenever she shouted the accused beaten throughout the night. The accused has also pinched her cheeks and has beaten all over the body of the victim child. PW1 further deposed that, in the morning, he took her



to the street corner. At that time, one Mani caught hold of the accused and in presence of the public, he was beaten and handed over to the police.

15. In the evidence of PW1, she has clearly deposed that the accused has pierced his penis into the mouth of the victim child. It is categorically established that the accused has committed carnal intercourse against the order of nature with the victim child.

16. The evidence of PW1 is corroborated by the evidence of PW11 Doctor Srinivasan and the evidence of PW12 Doctor Indumathi and she clearly deposed that she has examined the parts of the victim and there were so many abrasions found on her private parts. In sexual offences, the evidence of the victim alone is sufficient to convict the accused. Since the offence will not happen in the public view, the evidence of the victim deserves the best weightage. The evidence of the victim is like that and hence the Court cannot reject the victim's testimony unless it is motivated or exaggerated.

17. Once, the Court is convinced, that the evidence of the victim is acceptable, it is not always necessary to look for corroborative evidence. Time and again, it has been held in various judgements of the Hon'ble Supreme Court that the victim stands on her higher pedestal and her evidence cannot be taken so lightly. It is worthwhile to reiterate the judgement of the Hon'ble Supreme Court reported in 2017 2 SCC 51 (State of Himachal Pradesh Vs Sanjay Kumar), wherein the Hon'ble Supreme Court has held as under:-

"31. After thorough analysis of all relevant and attendant factors, we are of the opinion that none of the grounds, on which the High Court has cleared the respondent, has any merit. By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If the court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version. To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that



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her claim of rape will not be believed unless it is corroborated in material particulars, as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance (See Bhupinder Sharma v. State of H.P. [Bhupinder Sharma v. State of H.P., (2003) 8 SCC 551 : 2004 SCC (Cri) 31]). Notwithstanding this legal position, in the instant case, we even find enough corroborative material as well, which is discussed herein above."

18. Thus, the evidence of PW1 victim child on the point of sexual offence is corroborated by the evidence of PW3 Santhiya, mother of the victim and PW5 Priya. The evidence of PW12 doctor Indumathi is very vital to decide the material issued. The victim girl was produced before the lady doctor PW12 at Maternity Hospital at Egmore on 28.01.2012 at 5.00 p.m. The doctor has physically examined the victim and has found her lot of abrasions on her cheek and buttocks, private parts and all over the body. The doctor after careful examination of the body of the victim girl has given an opinion that there is a possibility of sexual molestation and the evidence of the prosecutrix is corroborated in material particulars by the expert doctors evidence Ex.P7.

19. The learned counsel for the appellant claimed that the non examination of one Mani who caught hold of the accused and handed over him to the police is fatal and that would earn the benefit of doubt in favour of the accused. The evidence of prosecution witnesses is very cogent and clear that when the public and relatives of the victim child went near to him to rescue the victim child the accused has turned furious and threatened them by pelting stones and the accused was arrested by police and his confession statement was recorded in the presence of PW10 and 15. Hence, the non examination of Mani is not fatal to the prosecution.

20. PW9 Vijaya has deposed that she has seen PW1 speaking to the accused on 27.01.2012 at about 4.30 p.m. At that time she thought the accused may be a relative of the victim. Only on 28.01.2012 the accused was arrested and his confession statement was recorded and they stood witnesses for the recording of his confession statement and for the preparation of the seizure mahazar and there is no delay in registering the FIR. The Investigating Officer PW19 has taken all efforts to complete the investigation and except for some minor discrepancies, there is no other lacuna in the prosecution case.

21. When the accused was questioned U/s 313 Crpc, he merely denied everything and did not give an explanation as to what



motive of the prosecution witnesses against him. Similarly, in the cross examination also no suggestion was put to the witnesses in this regard.

22. In view of the above discussions, we do not find any reason to interfere with the judgement of conviction and sentence dated 29.05.2018 passed in SC.No.11 of 2014 on the file of the learned Sessions Judge Mahalir Needhi Mandram (Fast Track Mahila Court) Tiruvallur and the same is confirmed.

23. In the result, the criminal appeal stands dismissed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Srcm/-

To

1. The Sessions Judge,
Magalir Neethimandram, Tiruvallur.

2. Do through the Principal Sessions Judge, Tiruvallur.

3. The Judicial Magistrate, Ambathur.

4. Do through the Chief Judicial Magistrate, Tiruvallur.

5. The Inspector of Police,
J.J. Nagar Police Station,
Mogappair East, Chennai.

6. The Superintendent,
Central Prison I (Convict),
Puzhal, Chennai.

7. The Public Prosecutor, High Court, Madras.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras

CrI.A.No.244 of 2019

PMK (CO)

A.SK (27/06/2022)