



Crl.A.No.267 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 27.07.2022

Pronounced on : 04.08.2022

Coram::

THE HONOURABLE Dr. JUSTICE G. JAYACHANDRAN

Criminal Appeal No.267 of 2013

1. Palani.
2. S.Jayakumar.
3. S.Manibarathi @ Varadharajan.
4. P.Gopinath.

... Appellants/Accused

/versus/

State rep. by,
The Inspector of Police,
Anti Vice Squad,
Chindadripet, Chennai – 2.
(Crime No.60 of 2007)

... Respondent/Complainant

Prayer:- Criminal Appeal is filed under Section 374(2) of Cr.P.C., to set aside the judgment and sentence passed by the Hon'ble Mahalir Nethimandram, Chennai, in S.C.No.286 of 2009 dated 25.03.2013.

For Appellants : Mr.K.Kannan

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

J U D G M E N T



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The appellants are the accused in S.C.No.286 of 2009. The trial Court found them guilty of offence under Section 376 of I.P.C and sentenced them to undergo 10 years R.I and fine of Rs.15,000/- each in default, to undergo 6 months S.I.

2. The case of the prosecution:-

P.W.1, at the time of occurrence, was 16 years old. Being interested in acting movies, during the month of October 2006 she went to the office of one of the Film Production Company at Chennai. She got few chances to act as side actress in movies and T.V serials. While so, she got acquaintance with one Saravanan who posed himself as a facilitator to get loan from banks like HSCB and ICICI. Saravanan proposed his love to her and promised to marry her. She believed him and introduced him to her family members. During the 1st week of December 2006, on his request, she went to T.Nagar bus stop and met Saravanan. Saravanan took her to a Bungalow in Mohan Gardens at Kolathur, in that Bungalow, Saravanan introduced two persons by name Palani (A1) and Jayakumar (A2). They offered her cool drinks. On consuming the same, she become semi-conscious. All the three persons namely Saravanan, Palani and Jayakumar had



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sexual intercourse with her. When she regained full conscious and questioned Saravanan, he promised to marry her and requested her not to blow out the incident. Fearing her reputation will get spoiled, she did not disclose it to anyone. Next week, again Saravanan called her and told her to come to T.Nagar bus stand. When she refused, fearing recurrence of the incident. Then Saravanan threatened her that, he has recorded her obscene photos took at Mohan Gardens and if she does not come to T.Nagar bus stand, he will upload those videos and Photos in Internet. Being shocked, to get back the videos and photographs, she again went to T.Nagar bus stand and met Saravanan. There Saravanan introduced one Manibarathi (3rd appellant), a tailor shop owner. The said Manibharathi, took her in an auto to his house where he was forcibly raped by Manibharathi. He brought her back to T.Nagar bus stand and left her. She contacted Saravanan and pleaded him to return the video and photos, which he has alleged to have taken at Mohan Gardens. But, Saravanan could not be contacted till 3rd week of December 2006. Then, he called her back, he asked her to again come to T.Nagar bus stand where his friend Gopinath (4th appellant) will come. If, she satisfies Gopinath, then he will return the videos and Photo's. With no other alternate, she went to T.Nagar bus stand. At about 11.00 a.m, Gopinath and his friend Ramu came there and took



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her to a lodge at Puzhal. They both had intercourse with her and then, brought her back to T.Nagar bus stop and dropped her. Gopinath (A4), gave a cover to be handed over to Saravanan. Soon thereafter, Saravanan came there and collected the cover. He counted the money and said Gopinath has not paid the full amount agreed and left scolding Gopinath. After few days, Saravanan called her and told her to meet him at T.Nagar bus stand to discuss about their marriage plan. When she went there, Saravanan took her ½ sovereign ear studs and went. He did not turned up again. When missing of Studs from her ears was noticed by P.W.1 sister, she informed about the affair with Saravanan and told the studs are presently with Saravanan. Therefore, on 12.07.2007, when P.W.1 and her sister P.W.5 contacted Saravanan over phone, he started threatening her that will be upload the obscene video and photos of the minor girl, if she insist for return of stud. One Jeevarathanam also joined Saravanan and started threatening her. In view of the criminal intimidation, the family of the defacto complainant had thought fit to report the matter to the Police, Therefore, went to the Office of Deputy Commissioner of Police and gave the complaint Ex.P.1. This complaint was referred to Anti Vice Squad, Chindatripet Police Station, Chennai and taken up for investigation.



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3. To prove the charges, the prosecution has examined 12 witnesses marked 39 exhibits. Five cell phones were recovered from these accused persons, which are marked as M.O.1 to M.O.5.

4. The Trial Court, on appreciating the evidence held that, the prosecution has proved that the victim girl was a minor at the time of occurrence. She has been taken to a private Bungalow, seduced by making her to take cool drinks suspected to have laced with sedative. Thereafter, she had been gang raped at Mohan Gardens by A1, A2 and Saravanan. Thereafter, under threat that her obscene photos and video recorded will be uploaded in Internet. Saravanan the split up accused, has under threat forced her to satisfy the carnal pleasure of other accused persons. The said Saravanan alleged to have been induced and seduced the minor girl by promising her he will marry her. But, in fact, he had exploited her sexually not only for his own pleasure but to satisfy the pleasure of others and made money out of it.

5. The appellants, who along with Saravanan were held that they have



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committed offence of gang rape hence convicted for offence under Section 376 of I.P.C and sentenced to undergo 10 years R.I and to pay fine of Rs.15,000/- in default, six months S.I.

6. The Learned Counsel appearing for the appellants submitted that the case of the prosecution is that P.W.1 a minor girl was subjected to sexual intercourse by several persons on several occasions between December 2006 to July 2007. The offence occurred on three occasions at three different places, on three different dates and with different persons. However, the complaint was given belated to the Deputy Commissioner of Police, Chennai and same has been taken up for investigation by Anti Vice Squad, Chindratripet Police Station, Chennai, this itself expose that the case of the prosecution is not true but a fabricated one.

7. According to the Learned Counsel for the appellants, the First occurrence alleged to have been taken place during the 1st week of December 2006 wherein, Mr.Saravanan, Mr.Palani and Mr.Jayakumar were implicated for committing gang rape. The Second occurrence a week after, alleged to have occurred at T.Nagar, wherein the 3rd appellant Manibarathi (A3) was implicated.



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The Third occurrence alleged to have been happened at Periyapalayam involving Gopinath (A4) and his friend Ramu. Except P.W.1, the other witnesses P.W.2 (Dr.Parimala), who examined P.W.1. P.W.3 (Santhi), the mother of the victim and P.W.4 (Mohan) the father of the victim, P.W.5 (Mohanavalli) elder sister of the victim. P.W.6 (Balaji) the maternal uncle of the P.W.1 are all hearsay witnesses and they do not have direct knowledge about the alleged rape. The confession of the accused persons and recovery of cell phones (M.O.1 to M.O.5) from them does not led any credence to the case of the prosecution since nothing incriminating collected on seizure of these Material Objects (M.O.1 to M.O.5).

8. The statement of the minor girl recorded under Section 164 of Cr.P.C before the Judicial Magistrate and her deposition before the Court suffers with material contradictions. The Learned Counsel appearing for the appellants comparing the previous statement and the depositions submitted that before the Magistrate, P.W.1 the victim girl has stated that, she came to know about Saravanan when she was doing a minor role in the movie 'Gemini'. Whereas, before the Court, she has deposed that, she met Saravanan in a shooting at Institute of Public Health, Poonamallee and there, he proposed her. Whereas before the



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Judicial Magistrate, she has said that during shooting Saravanan got introduced to her, as one of the actress in the movie. Whereas, the during trial she has deposed that, Mr.Saravanan introduced himself as facilitatory for arranging personal loan in ICICI bank. Before the Judicial Magistrate, she has stated that, Saravanan threatened her that, he has recorded her obscene photos taken in the Mohan Gardens and he will release the video and photos through Internet and threatened her. Whereas, the criminal intimidation from Saravanan, intimated only after one week, not immediately. He also submitted that, there is exaggeration of new facts in the cross examination of P.W.1, which was not whispered in the complaint under Section 164 of Cr.P.C statement.

9. The Learned Counsel for the appellants, pointing the contradictions regarding location of Mohan Gardens and the new facts about Manibarathi (A3) in P.W.1 deposition, which is not found place in her previous statement recorded under Section 164(5) of Cr.P.C submitted that, the accused persons are innocents and the trial Court has erroneously convicted them.

10. Alleging malice, the Learned Counsel for appellants submitted



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that, the complaint given belatedly not to the jurisdiction police but to the Assistant Commissioner, who in turn has directed Anti Vice Squad, Chindadripet Police Station, Chennai, to investigate. The contradictions regarding the place of occurrence and failure of the prosecution to collect evidence from the residence of the locality where the occurrence took place in addition, the failure to recover the alleged photographs and video which according to P.W.1 was the cause for fearing Saravanan and not disclosing the crime at the earliest all cumulatively show that the complaint is an afterthought with embellished and imaginary facts.

11. Per Contra, the Learned Government Advocate (Crl.Side) appearing for the Respondent submitted that it is a case of inducing a minor girl to involve in illegal sexual act on promise to get chance in film. Also made her to believe that Saravanan will marry her. She has been exploited sexually by the split up accused Saravanan and his friends, who are appellants herein. The victim girl, who innocently believed the words of Saravanan and went to Mohan Gardens along with him. There she was seduced and sexually exploited by the appellants 1 & 2 along with Saravanan. She was not in a position to reveal it to the family members or to the Police fearing repercussions. This has been spoken by P.W.1 in



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her deposition. Taking advantage of her hesitancy to report the matter to the authorities, Saravanan started exploiting her more and also offered her to others collecting money. The act of sexual violence by each of these appellants spoken by the victim girl, both before the Judicial Magistrate during recording of 164 Cr.P.C statement and before the trial Court. The minor contradictions in these two statements recorded at two different point of time and at different atmosphere is bound to happen and it is natural. They are not fatal to the case of the prosecution.

12. Further, the Learned Government Advocate (Crl.Side) for the Respondent submitted that, in case of this nature, non-examination of neighbours is of no significance, since the offence committed in a closed place. Unless the offender or the affected victim reveals, the crime will not come to light.

13. The Learned Counsel for the Respondent further submitted that the date of birth of the victim girl (P.W.1) is ascertained as 09.06.1992. Her school certificate and transfer certificate are marked as Ex.P.2 & Ex.P.3. The medical examination of the victim girl indicates that she is accustomed to sexual intercourse. As per her written complaint marked as Ex.P.1, dated 20.07.2007



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addressed to Assistant Commissioner, Metropolitan Police, Chennai, which runs to four papers not only reveals the name of the accused persons who exploited her sexually but also the manner in which she was exploited. On receipt of this complaint, in the course of investigation, the statement of the victim been recorded by the Judicial Magistrate under Section 164(5) of Cr.P.C. Again, she has narrated the trauma she faced at the hands of Saravanan and others. Without realizing she has been sexually exploited by these accused persons believing that Saravanan will marry her. She gave her wearing ear studs to Saravanan which was pledged with pawn broker and later redeemed. The missing of the said studs was the starting point of the investigation in this crime. On P.W.5 (Mohanavalli), the sister of the victim girl noticed the ear studs missing, she enquired her sister (P.W.1) and thereafter, the crime has come to light. The victim girl P.W.1 fearing disrespect to her family, her reputation had been silently swallowing the ignominy and violence against her. When the family members started questioning her about the missing of studs and called Saravanan to enquire about it, he threatened them that he will make public the obscene photos and videos of P.W.1 and shown his true fact. Then, the members of the family decided to report it to the police. Thus, the delay in reporting.



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14. The course of events which has led to registering the complaint has been well proved by the prosecution. The accused, who has sexually exploited the minor girl and put her under threat that, her reputation and family reputation will be spoiled is the cause for the delay in giving complaint and the said delay in lodging complaint cannot be taken advantage by the accused persons.

15. The Learned Government Advocate (Crl.Side) for the Respondent submit the offence of rape not committed on three occasions in a private Bungalow, in the residence of one of the accused and in a lodge. The victim girl P.W.1 was able to identify the place for the police to probe and to ascertain the truth. There is no inconsistency or embellishment regarding the location of occurrence. Examination of neighbours as witnesses is of no relevancy in this case since the crime has taken place in a closed room. P.W.14, the Investigating Officer, in the cross examination had spoken about his attempts to verify the places whether the alleged occurrence took place and recorded statement of witnesses. One of the attesting witness for search, seizure and confession statement is Mr.Jabaraj (P.W.9). His evidence is impeached by the Learned



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Counsel for the appellants that, he is a stock witness to the Police, who under the guise of social worker and NGO, used to give false evidence to support the prosecution. Pointing out the admission of P.W.9, in the cross examination that, he had been witnessed to the few other Anti Vice Squad and CBCID cases, pleaded his evidence has to be eschewed.

16. The Court cannot be oblivious of the fact that, most of the public in India do not come forward to stand as witness to any investigation. Only few public-spirited persons, who have concern for public safety and order, come forward to stand as witness. More so, in a case of Anti human trafficking, the Police rarely get witnesses. Even assuming P.W.9 had been witnessed for the prosecution, in few other cases earlier for that reasons his evidence cannot be rejected but has to be tested with more caution.

17. On complete reading of P.W.9 deposition it speaks about arrest and recovery of cellphones from these accused persons and preparation of mahazar for the said recovery. Not a single suggestion put in the cross examination that he has come forward to stand as witness for recovery due to personal enmity with the



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accused persons or he has deposed in favour of the prosecution for any extraneous consideration or commitment. From the evidence of P.W.9 [Mr.Jabaraj], the prosecution has attempted to prove the arrest of the accused persons in manner found in the arrest memo and the recovery of M.O.1 to Mo.5 based on the confession statement of these accused persons. The fact which is called to be proved whether the appellants had sexual intercourse with the minor girl in the manner in which spoken by the prosecution. While P.W.1, the victim girl herself has deposed about it and her testimony could not be impeached in the cross examination, the voice of the victim cannot be ignored.

18. For the said reasons, the submission made by the Learned Counsel appearing for the appellants that, P.W.9 [Jabaraj] evidence has to be eschewed and the evidences of P.W.3 to P.W.6 has to be disbelieved since they are all relatives to the victim girl (P.W.1) and hearsay, does not carry any merit to interfere the finding of the trial Court.

Section 376 of I.P.C prior to amendment (Act 13 of 2013):-



“376. Punishment for rape.—

(1) *Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:*

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) *Whoever,—*

(a).

(b).

(c).

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.

.

(g). *commits gang rape,*

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the court may, for adequate and special



reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years. (Emphasis added)

19. From the evidence, the overt act of the appellants 1 & 2 along with absconding accused Saravanan involving in gang rape of the victim girl at Mohan Gardens during the 1st week of December 2006 proved beyond doubt. Therefore, the accused persons are liable to be punished under Section 376(2)(g) of I.P.C., where the minimum sentence is prescribed as 10 years. For adequate and special reasons, to be mentioned in the judgment, Court can impose a sentence of imprisonment of either description for a term of less than 10 years.

20. As far as Mr.Manibharathi, (A3) is concerned, the act of sexual violation on P.W.1 the victim girl was done individually at his home and does not fall within the meaning of Gang Rape to be punished under Section 376(2)(g) of I.P.C. Likewise, Mr.P.Gopinath (A4) who alleged to have committed rape along with Ramu (A6 in the F.I.R), at lodge near Puzhal. The said Ramu is not an accused in this case and case against Ramu (A6) has been split up.



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21. Through the witnesses, prosecution has proved the commission of crime by these appellants with help of the absconding accused Saravanan, who in a sense acted as a pimp and exploited P.W.1 the victim girl for his material benefit. These appellants had fallen prey and had satisfied their carnal pleasure by forcible intercourse with P.W.1 a minor girl. Attributing knowledge of presumption is through inference, since the accused in Section 313 of Cr.P.C proceedings have not pleaded ignorance of the victim age but had only denied incriminating evidence as false.

22. Considering the said fact and the reasons stated above, this Court while exercising the power conferred under proviso to Section 376 of I.P.C, the sentence of 10 years R.I is modified as 3 years R.I, with fine of Rs.15,000/-, in default, six months S.I.

<i>Accused</i>	<i>Offence</i>	<i>Conviction and Sentence passed by the Trial Court in S.C.No.286 of 2009</i>	<i>Conviction and Sentence passed by this Court</i>
A1 to A4	Section 376 of I.P.C	Sentence to undergo 10 years R.I and to pay fine of	Sentence to undergo 3 years R.I and to pay fine of



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<i>Accused</i>	<i>Offence</i>	<i>Conviction and Sentence passed by the Trial Court in S.C.No.286 of 2009</i>	<i>Conviction and Sentence passed by this Court</i>
		Rs.15,000/-, in default, to undergo 6 months S.I	Rs.15,000/-, in default, to undergo 6 months S.I

23. With the above modification, this ***Criminal Appeal is Partly Allowed.*** The appellants/accused shall surrender before the trial Court, within a period of 30 days, from today. Failing which, the appellants/accused shall be secured by the Respondent police and commit them to prison, to undergo the remaining period of sentence. The period of imprisonment if any already undergone, same shall be set off under Section 428 of Cr.P.C.

04.08.2022

Index :Yes.

Internet :Yes.

Speaking order/Non-speaking order
bsm

Copy to:-

1. The Hon'ble Mahalir Nethimandram, Chennai.
2. The Inspector of Police, Anti Vice Squad, Chindadripet, Chennai – 2.
3. The Public Prosecutor, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

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Pre-delivery judgment made in
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