



CRL A No.667 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	31.10.2022
Pronounced on	:	24.11.2022

Coram:

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

Criminal Appeal No.667 of 2022

Jeyachandra Kumar

... Appellant

Vs.

The State, represented by
The Inspector of Police,
All Women Police Station,
Villupuram.

... Respondent

Prayer : Criminal Appeal filed under Sections 374(2) of Criminal Procedure Code, praying to set aside the conviction and sentence passed by the Trial Court in S.C.No.111 of 2017 dated 27.09.2021, on the file of the District Mahila Court (Mahila Fast Track Court), Villupuram.

For Appellant : Mr.PA.Kadirvel

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor



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JUDGMENT

This Criminal Appeal has been filed to set aside the conviction and sentence passed in S.C.No.111 of 2017, dated 27.09.2021, by the learned Sessions Judge, District Mahila Court (Mahila Fast Track Court), Villupuram.

2. The respondent police registered the case in Crime No.5 of 2016 for the offences under Sections 342, 376 and 506 of IPC. After completing the investigation, respondent police have filed charge sheet before learned Judicial Magistrate, No.2, Villupuram. The learned Magistrate, Villupuram taken the charge sheet on the file in PRC No.39 of 2016. After completing the formalities, the learned Magistrate committed the case to learned Principal District and Sessions Judge, Villupuram, since the offences are exclusively triable by the Court of Session. The learned Principal District and Sessions Judge, Villupuram, taken the case on file in SC No.111 of 2017 and madeover the same to the Mahila Fast Track Court, Villupuram, 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 Sections 448 and 376 of IPC.

4. After framing the charges, in order to substantiate the charges framed against the appellant, during trial, on the side of the prosecution as many as 12 witnesses were examined as PW 1 to PW 12 and 12 documents were marked as Ex. P1 to P12. Besides that 7 material objects were exhibited as MO1 to MO7 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 Cr.P.C, 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 Sections 448 and 376 of IPC and the accused was convicted and sentenced to undergo 1 year of rigorous imprisonment for the offence punishable under Section 448 of IPC and sentenced to undergo 9 years of rigorous imprisonment and pay fine of Rs.2,00,000/- for the offence under Section 376 of IPC and ordered to pay the fine amount of Rs.20,000/- to the victim as compensation in addition to the amount of Rs.1,00,000/- already paid to the victim as compensation.

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 25.02.2016 at about 12.00 pm, when the victim was washing clothes in her house, the appellant came into her house and locked the door inside and tied her hand on the back side with a cloth and committed rape. At that time, the mother of the victim came back from work and saw the door was closed inside and knocked it. Since there was no response from her daughter,



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she grabbed a stick and opened the door. When she entered into her house, she saw the appellant lying on the victim. On seeing the same, the mother of the victim raised her voice for help, immediately her neighbours came there and assaulted the appellant. Subsequently, they decided to file a complaint against the appellant. Thereafter, the victim was taken to the hospital and from there the respondent police was informed about the same. The respondent police came to the hospital and recorded the statement from the victim and registered the case.

9. The learned counsel for the appellant would submit that PW1 lodged a complaint through statement on 25.02.2016 after 22 to 30 hours of the alleged occurrence and then a case was registered against the appellant for the offences under Sections 342 and 376 of IPC in Crime No.5 of 2016 on the file of the respondent police. On the same day, the defacto complainant/victim was sent to the Government Hospital, Mundiambakkam with lady Constable No.523. After that, this case was handed over to PW12 on 26.02.2016 by PW10. PW12 prepared observation magazar on 26.02.2016 at about 3.00 pm and went to the Government Hospital, Mundiambakkam and took the statement from



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PW1 and the clothes of PW1 was recovered by seizure magazar.

Thereafter, PW1, PW2, PW3, PW6, PW7 and PW8 were enquired and statement was recorded under Section 161 of Cr.P.C. On 26.02.2016 at about 6.30 p.m, the appellant was arrested and on 29.02.2016, PW12 gave a requisition letter for a Medical check-up to the appellant. On 27.02.2016, the clothes of the appellant was recovered by PW12 through seizure magazar. On 08.03.2016, the learned Judicial Magistrate, Villupuram recorded the statement under Section 164 of Cr.P.C. On 16.07.2017 enquiry was completed and a final report was filed for the offences under Section 342 and 376 of IPC against the appellant. Though the trial Court framed charges for the offences under Sections 448 and 376 of IPC, the main defence taken by the appellant was that, from the age of 14 years, PW1 was mentally ill.

10. On 16.10.2010, PW1 made a similar complaint against one Ashok Kumar, Ravi Chandran and Panner Selvam. However, they were acquitted in the previous case. He would further submit that due to the previous enmity, another false complaint has been given for the purpose of taking revenge against the appellant. He would further submit that



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there was a delay in lodging the complaint and the reason for the same has not been properly explained by the prosecution. There is no eye witness except the victim for recording evidence. Further, there is no corroboration in the evidence of the prosecution witnesses. The trial Court, without considering the defence taken by the appellant and recorded conviction against the appellant mechanically. Further, the defence of the appellant is that the victim was mentally ill, which was not at all considered by the trial Court. Since she is a mentally ill person, her statement cannot be a sole ground for recording the conviction. Though the prosecution cited some of the persons as eye witness, the so called eye witnesses had categorically made a statement that they had not seen the alleged occurrence as stated by the victim and her mother.

11. The mother of the victim was examined as PW2 and she has also admitted that her daughter was mentally ill. Therefore, the statement of the victim cannot be considered and the same cannot be a basis for recording any conviction against the appellant. The antecedent of the victim has not been considered in this case. Admittedly she made a similar complaint on 16.10.2010, before the Vikravaandi Police Station



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against one Ashok Kumar, who is the brother of the appellant herein, Ravichandran and Panner Selvam, as if she was raped by them. And in that case, after trial, they were acquitted. Since his brother was acquitted in that case, the victim had foisted this false case against the appellant in order to take vengeance. Though PW2, mother of the victim clearly stated that she returned from the work at 12.00 p.m and the occurrence said to have been taken place at 12.00 p.m, if PW2 had returned from the work at 12.00 p.m, then the occurrence could not have taken place as projected by the prosecution. Even though, PW2 stated that the occurrence took place at about 12.00 p.m, the victim was taken to the hospital only at 8.30 p.m. There is no proper explanation for the delay in filing the complaint and the delay in sending the victim to the hospital. If at all, the occurrence had taken place at 12 p.m, they could not have reached the hospital at 12 p.m. At one place, PW2 states that they reached the hospital at 8.30 p.m and in another place she states that they reached the hospital at 12 p.m. The contrary in the statement of PW2 with regard to the occurrence and reaching the hospital is fatal to the case of the prosecution and the trial Court failed to appreciate this contradiction which is a material one and failed to consider the status of the victim and



also the previous motive. Though witnesses PW3 to PW7 have been stated as eye witnesses, as per their statement, they have not supported the case of the prosecution, in this case, except the evidence of the victim, no other corroborative evidence is produced for proving the case of the prosecution. Based on the un-corroborative evidence, the trial Court erroneously convicted the appellant. Once the defence has established the motive and elicited the contradiction, which created a doubt in the case of prosecution, then the benefit of doubt has to be extended to the appellant and conviction cannot be recorded based on the sole evidence of the victim. Therefore, in this case, under a doubtful circumstances, conviction cannot be recorded only on the basis of the evidence of prosecutrix.

12. The learned counsel for the appellant has placed reliance on the Judgment of Hon'ble Supreme Court of India in the case of ***Vimal Suresh Kamble Vs. Chaluverapinake Apal S.P. and another*** reported in [2003 3 SCC 175]. The relevant portion of the Judgment reads as follows,

“On an overall appreciation of the evidence of the prosecutrix and her conduct we have come to the conclusion that PW.1 is not a reliable witness. We, therefore, concur with the view of the High Court that a



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conviction cannot be safely based upon the evidence of the prosecutrix alone. It is no doubt true that in law the conviction of an accused on the basis of the testimony of the prosecutrix alone is permissible, but that is in a case where the evidence of the prosecutrix inspires confidence and appears to be natural and truthful. The evidence of the prosecutrix in this case is not of such quality, and there is no other evidence on record which may even lend some assurance, short of corroboration that she is making a truthful statement. We, therefore, find no reason to disagree with the finding of the High Court in an appeal against acquittal. The view taken by the High Court is a possible, reasonable view of the evidence on record and, therefore, warrants no interference. This appeal is dismissed. ”

He submitted that the conviction cannot be solely based upon the evidence of the prosecutrix alone. The testimony of the prosecutrix has to be considered, only if the evidence of the prosecutrix inspires confidence of the Court and it is natural and truthful. However, the evidence of the prosecutrix in this case is not of such quality. Therefore, this case is squarely applicable to the above referred to Judgment of



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conviction and sentence. Therefore, the Judgment passed by the trial Court is liable to be set aside by allowing this appeal.

13. The learned Additional Public Prosecutor would submit that in this case, PW1 and PW2 are the eye witnesses. PW1, who is the prosecutrix has clearly narrated the incident and the complaint was given in this case on the same day and subsequently, she was also admitted in the hospital. The medical evidence also clearly corroborated with the statement of the prosecutrix. The Doctor, one who conducted medical examination on the victim was examined as PW9, who in her statement has clearly stated that the prosecutrix was subjected to rape and medical certificate exhibited as P6, P7 and P8 also corroborated that the victim girl sustained injury on several parts of the body, including her private part which shows that she was vigorously raped. Though the appellant has taken the defence that earlier occasion the prosecutrix filed similar case against three other persons and subsequently they were acquitted, but, it does not mean that citing this, the appellant after making an offence can escape from the prosecution and conviction. The evidence of the victim is very clear and the same has been corroborated with the



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evidence of PW2 who is the mother of the victim girl.

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14. PW2 has clearly stated that when she returned from her work, the door was locked. After managing to open it, she entered into the house and saw the appellant lying on her daughter. PW9 evidence also corroborated with the evidence of PW1 and PW2. The appellant with sexual intention had trespassed into her house and lifted the victim and forcefully committed rape. Therefore, the prosecution has proved its case beyond reasonable doubt. Therefore, the trial Court has rightly appreciated the evidence and convicted the appellant. Though the learned counsel for the respondent has pointed out certain contradictions and discrepancies regarding filing the complaint before the respondent police and admitting the victim girl in the hospital and collecting the material and recording the evidence, these contradiction and some discrepancies are not material contradictions. The victim has clearly made a statement that the appellant is the one who lifted her, while she was washing clothes in her house and he tied her hand on the back side with cloth and committed a forceful sexual intercourse and the same has been corroborated with the medical evidence. Though the other witnesses are



not eye witness of the incident, but when the mother of the victim girl raised her voice seeking help, her neighbours came and saw the appellant. The neighbours have not seen the occurrence and supported the case of the prosecution, but that may not be a sole ground to discard the evidence of the prosecutrix. Therefore, the trial Court rightly appreciated the entire evidence and convicted the appellant. He further submitted that the Judgment relied on by the learned counsel for the appellant is not applicable to the present case on hand. Therefore, there is no merit in this appeal and the same is liable to be dismissed.

15. Heard the learned counsel for both sides. Perused the materials placed on records.

16. Admittedly, the trial Court framed charges against the appellant for the offences under Section 342 and 376 of IPC. In order to substantiate the above said charges, on the side of the prosecution, as many as 12 witnesses were examined as PW1 to PW12 and 12 documents were marked as P1 to P12. Besides, 7 material objects were exhibited. Out of the 12 witnesses, the prime witness is PW1, who is the



prosecutrix and the victim in this case.

17. A careful reading of the evidence of PW1 clearly shows that the appellant is a known person. Even though, the appellant has taken a main defence that the victim is a mentally ill person and therefore, her evidence cannot be taken as a sole ground to convict the appellant, it is not the case that due to mental illness, the victim is not in a position to identify herself. The defence side did not take any steps to produce a report from the medical board that the IQ level of the victim girl is very low i.e., she cannot even identify a person. The victim girl has stated the name of the appellant one who committed forceful sexual intercourse against her will. The evidence of PW9/Doctor, who conducted medical examination on the victim and exhibits P6 to P9 clearly corroborated with the evidence of the victim. The history of case as mentioned in exhibit P6 also clearly reveals that she sustained injury. In exhibit P7 the investigating officer made a request to the Doctor to give answers to three queries.

a) What is the age of the victim?

b) Whether the victim was subjected to rape ? If yes,



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whether any injuries found in her private part?

c) Whether the victim recently had sexual intercourse?

As far as Query No.1 is concerned, the victim had completed 22 years. Query No.2 is concerned, the victim was subjected to sexual assault on 25.02.2016 and the medical examination was conducted on 26.02.2016 and the opinion of the Doctor mentioned about all the injuries sustained by the prosecutrix and also shows evidence of fresh genital injury and forced external intercourse. Query No.3 is concerned, on examination of the above said victim, evidence of bodily injuries, genital injuries and forced sexual intercourse is seen. Therefore, the evidence of victim is corroborated with the medical evidence of the Doctor. Further, while examining PW2, who is the mother of the victim, while examined before the Court deposed that on 25.02.2016, when she returned home from cooli work, she saw the door was locked inside. Thereafter, she searched for her daughter in and around the house but she couldn't find her. Thereafter, she grabbed a stick and removed the bolt from the outside and managed to open the door. When she entered into her house, she saw the appellant was lying on her daughter and her daughter's mouth was



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closed with the shawl and her hands were tied behind her. PW2 immediately went outside and raised her voice calling for help. At that time, her neighbours came to the place and assaulted the appellant and pushed him outside. Once the appellant left the place, the victim was given water. The villagers advised them to give a complaint. Thereafter, the victim was taken to the hospital and subsequently, a complaint was made before the respondent police.

18. The respondent police after registering the case, came to victim's house and examined them and then collected the dress of the victim. Even though, the chemical analysis report shows that the dresses of the victim did not show any semen stain and chemical analysis report had not found any foreign body, but the evidence of the victim, and her mother and evidence of the Doctor shows that appellant has committed a rape on the victim. From the evidence of PW2, it is seen that the appellant was lying on the victim. The injuries of the victim shows that the appellant committed a forceful sexual assault. In the offence punishable under Section 376 of IPC, the length of the penetration and escalation of semen are not necessary. On a careful reading of the



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evidence of PW1 and PW2, at the time of the occurrence, when the mother of the victim managed to open door and raised her voice for help and then the neighbours came into the house and pushed the appellant outside. Therefore, mere not showing of semen stain in the clothes and any foreign body in the private part of the victim cannot be a ground to state that the occurrence had not taken place.

A careful reading of the explanation to the Section 375 of IPC reads as follows,

“Explanation: - Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.”

The above explanation shows that mere penetration alone is sufficient. The length of the penetration or escalation of semen are not necessary. The evidence of PW2 clearly shows that the victim was subjected to rape and the same has been corroborated with the evidence of the Doctor and exhibits P6 and P7. Therefore, whatever the contradiction or discrepancies pointed out by the learned counsel for the appellant, the same are not material contradiction. Though the citation referred to by the learned counsel for the appellant shows that if the evidence of the prosecutrix does not inspire the confidence of the Court and if her evidence is not natural or truthful, then the conviction cannot



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be recorded solely based on the evidence of the prosecutrix, whereas, in this case, a combined reading of the evidence of PW1/victim and evidence of PW2/mother of the victim and evidence of Doctor/PW9 and exhibits P6 to P9 and evidence of Doctor/PW10 who conducted potency test on the appellant and exhibit P11, the report of the Doctor corroborates with the evidence of the victim. Once the Court finds that evidence of the victim inspires the confidence of the Court and there is no reason to disbelieve the evidence of the prosecutrix, then conviction can be recorded solely on the basis of the evidence of prosecutrix alone and corroborative evidence is not necessary. In this case, this Court finds that evidence of the victim is corroborated with evidence of PW2 mother and PW9 doctor and medical records. Therefore, there is no reason to discard the evidence of he prosecutrix which inspires the confidence of the Court.

19. This Court as an appellate Court, which is the final Court of fact findings, while re-appreciating the entire evidence, finds that the evidence of the prosecutrix and the evidence of the mother of the victim and medical evidence corroborated with each other and the same inspires the confidence of the Court and therefore, the citation referred to by the



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learned counsel for the appellant is not applicable to this present case.

The facts and circumstance of the case referred to by the appellant is distinguished from the facts and circumstance of the present case on hand. Further, there may not be any precedent in the criminal case, since every case has got its own facts and merits. Therefore, in this case, considering the facts and circumstances and especially the evidence of PW1, PW2, PW9 and PW10 and the exhibits P6 to 10, this court finds that the trial Court has rightly appreciated the evidences and recorded the conviction and this Court does not find any merit in the appeal.

20. Therefore, this Court does not find any perversity in the Judgment of conviction and sentence passed by the District Mahila Court (Mahila Fast Track Court), Villupuram and there is no merit in the appeal and therefore, the appeal is liable to be dismissed. Accordingly, this Criminal Appeal is dismissed.

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Index:Yes/No

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To

1. The District Mahila Court (Mahila Fast Track Court),
Villupuram.
2. The Inspector of Police,
All Women Police Station,
Villupuram.
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.667 of 2022**

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