



Crl.A.No.31 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on: 20/03/2023

Pronounced on:24/03/2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.No.31 of 2020

Periyasamy

.. Appellant

/versus/

State by
The Inspector of Police,
Marandahalli Police Station,
Marandahalli,
Dharmapuri District.
(Crime No.60 of 2017)

.. Respondent

Prayer: Criminal Appeal has been filed under Section 374 (2) of Criminal Procedure Code, to set aside the conviction and sentence imposed on the appellant herein in S.C.No.89 of 2017, by judgment dated 26.11.2019 passed by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, Dharmapuri District and acquit the appellant herein from all charges.

For Appellant :Mr.M.R.Jothimanian

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



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J U D G M E N T

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The appellant herein is the sole accused in S.C.No.89 of 2017 on the file of Fast Track Mahila Court at Dharmapuri. He was tried for the offence under Sections 341, 323, 354, 376 IPC and Section 4 r/w 3 of Tamilnadu Prohibition of Harassment of Women Act, 1998 and found guilty of the charges and sentenced to undergo one year SI for the offence under Section 341 of IPC; and to undergo one year SI for the offence under Section 323 of IPC; and to undergo two years RI for the offence under Section 354 of IPC; and to undergo 10 years RI and to pay a fine of Rs.25,000/- i/d to undergo one year RI for the offence under Section 376 of IPC; and to undergo three years RI and to pay fine of Rs.25,000/- i/d to undergo Six months RI for the offence under Section 4 r/w 3 of Tamil Nadu Prohibition of Harassment of Women Act, 1998. The sentences was ordered to run concurrently. The period of sentence already undergone by the accused is set of under Section 428 of Cr.P.C. Aggrieved by the same, the present Criminal Appeal has been filed.

2. According to the prosecution, the victim a window, aged 38 years, working as Aaya in a School on 18/03/2017 at about 2.30 pm, while walking along the road near the house of Thurvasan, near Muniappan Koil



Railway line, was restrained by the accused and pulled her saree. He tied her hand behind using the saree and gagged her mouth. He pulled her down caused head injury. The accused thereafter dragged her to nearby bush, torn her blouse and molested her breast and bite. Tried to put his penis into her mouth. He put his fingers on her vagina and manipulated her private part. The victim resisted the sexual violence and pushed the accused away, when the accused attempted to penetrate, he ejaculated and spilled the sperms over the in skirt of the victim. The accused fled from the place in his two wheeler. The victim managed to help herself, with her hands tied behind and semi dressed, she reach her home and informed her relatives and villagers. They untied her hands and took her to the hospital for treatment. The victim was examined by the Doctor at the casualty and admitted her as inpatient. Thereafter, he was examined by a Gynaecologist. She was found to have sustained violent sexual attack like bite mark on our left breast and laceration on the private part.

3. On the intimation received from the hospital, the Sub-Inspector of Police from Marahandi Police Station went to the hospital and recorded the statement of the victim. Based on the victim statement,



case in Crime No: 60/2017 registered and taken up for investigation.

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4. On the next day (19/03/2017), during the vehicle check up, the accused was identified by the police and when they tried to intercept him, to evade the police chasing him, he drove his two wheeler rashly and lost his balance. He fell down and broke his leg. He was rescued by the passer-bys and handed over to the police. After ascertaining his identity and his role in the crime, the accused was arrested. He was first taken to the hospital to treat the injury he sustained and thereafter remanded to judicial custody on 20/03/2017 with a memo. On completion of investigation, final report filed and based on the final report, the trial court framed charges under Sections 341, 323, 354 and 376 IPC. Section 4 r/w 3 of the Tamil Nadu Prohibition of Women Act, 1998.

5. To prove the case, the prosecution has examined 24 witnesses. Relied upon 24 exhibits and eight material objects. The witnesses to the prosecution are the victim, her relatives and neighbours, who took her to the hospital, Doctors at the hospital, who treated her, the Sub Inspector of Police, who recorded the statement of the victim in the



hospital, witnesses to observation mahazar and recovery mahazar, the passer-bys in the two wheelers, who rescued the accused, when he lost balance and fell down while trying to escape from the police. The Expert in the State Forensic Lab, who conducted serology test and biological test on the material objects recovered from the spot and the clothe recovered from the accused and the victim. Finally, the Investigating Officer, who conducted the investigation and filed the final report.

6. The trial Court with the available materials, particularly, the evidence of the victim examined as PW-1 and her complaint Ex.P-1, her statement before the Judicial Magistrate, Pennagaram recorded under Section 164 Cr.P.C, marked as Ex.P-2, the evidence of Dr.Susithra Saravanan (PW-19), her report on examination of the victim (PW-1) marked as Ex.P-14, the testimony of Dr.Kanya (PW-23), who admitted the victim as inpatient, the Accident Register and the wound certificate issued by her marked as Ex.P-21 and Ex.P-22 were taken as a primary direct evidence to hold the accused guilty of offence under Sections 341, 323, 354 and 376 IPC and Section 4 r/w 3 of Prohibition of Harassment to Women Act, 1998.



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7. The trial Court sentenced him to undergo punishment as under:-

Sections	Sentence
341 IPC	To undergo 1 month SI
323 IPC	To undergo 1 year SI
354 IPC	To undergo 2 years RI
376 IPC	To undergo 10 years RI and to pay a fine of Rs.25,000/- in default to undergo one year RI
4 r/w 3 TNPHW Act, 1998	To undergo 3 years RI and to pay a fine of Rs.25,000/- in default to undergo six months RI.

From out of total fine amount of Rs.50,000/-, a sum of Rs.25,000/- was ordered to be paid as compensation to the victim under Section 357(1) of Cr.P.C. The sentence period was ordered to run concurrently and period of imprisonment already undergone was ordered to be set off. The TVS XL 50 two wheeler, which was seized from the accused, but not marked and the cell phone M.O.6 seized from the accused at the time of arrest, were ordered to be returned to the accused, since it was not the object used for the offence committed.

8. The learned Counsel appearing for the Appellant submitted



that the case of the prosecution that on 18/03/2017, the appellant forcibly had sexual intercourse and committed rape of PW-1 has not been proved, since even according to the victim, no penetration committed on her. Further, though the prosecution case is that, in his attempt to rape the victim, the accused ejaculated and spilled his sperms over the petticoat of the victim. Even this allegation found to be false since, the report from the State Forensic Laboratory indicates that no sperms deducted in the clothe, more particularly in the petticoat marked as M.O.3. The learned counsel further submitted that, the only injuries found on the body of PW-1, as per the medical report is a lacerated wound on the left parietal region and it is a simple injury. Evidence indicates that this injury was not caused by the accused, but when the victim fell on the ground.

9. The Learned Counsel further submitted that, while the victim got admitted in the hospital, PW-23(Dr.Kanya), in the AR and wound certificate, which is marked as Ex.P21and Ex.P22 had recorded that the patient was assaulted with the hands. There is no whisper about sexual assault or molestation. Later, the case against the accused has been fabricated, contrary to the evidence. The case of the prosecution bristles



with bundle of contradictions in the statement Ex.P-3 recorded by the Judicial Magistrate under Section 164 Cr.P.C and in her testimony before the Court. PW-2 has made self-contradictory statements and her testimony bristles with embellishment. Her testimony falls under the category of hearsay evidence therefore to be ignored.

10. According to the learned Counsel for the appellant, the trial Court has erroneously held the accused guilty of a grave offence punishable under Section 376 IPC though there is no material to prove the required ingredients to attract punishable under Section 376 IPC. He further submitted that, the offence allegedly occurred on 18/03/2017 i.e. prior to the amendment to Section 376 IPC. While so, the learned trial Judge has applied the amended provisions and convicted the accused to undergo 10 years RI, which is minimum sentence prescribed for the said offence after the amendment.

11. The learned Government Advocate (Crl.Side) appearing for the State submitted that, the charges against the accused has been proved to the core through witnesses and exhibits. The criminal restraint on the



victim been spoken by the victim herself and she being and injured witness her testimony is of high value. Her evidence that she was restrained by the accused and the accused tied her hands behind using her saree and thereafter immobilised her by sitting upon her chest are incidents occurred in seclusion and needs no corroboration. Further, the consequent and subsequent events been spoken by independent witnesses regarding the victim after being physically and sexually assaulted, reached the home in semi nude state and hands tied behind is a fact admissible under Section 6 of Evidence Act.

12. The family members in her house had untied the hands and provided alternate dress. Her torn blouse and the saree with bloodstains were recovered and marked as material objects. The stone and mud recovered from scene of crime correlated with the laceration wound by size 3x2x0.5cm sustained by the victim on her left parietal region as found in the wound certificate Ex.P-22 and the opinion of the Doctor that the said injury is simple in nature attracts punishment under Section 323 IPC.

13. The evidence of PW-1 is consistent with the complaint



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Ex.P1; her statement to the Magistrate marked as Ex.P2. The fact about the injury sustained on the sexual organ been proved through the medical evidence. The torn blouse, bite marks on her left nipple and laceration over the vagina wall of size .1 x .1 x .1 centimetre been noted by the gynaecologist and recorded in her report marked as Ex.P14. Through these evidence, offence of Section 354 IPC gets established beyond doubt. The proven facts against the accused also attracts offence under Section 4 r/w Section 3 of Tamil Nadu Prevention of Harassment of Women Act, 2002.

14. In so far as the rape charge punishable under Section 376 IPC, the Learned Government Advocate (crl.side) submitted that the evidence of the victim that the accused tried to put his penis on her mouth and thereafter, attempted to insert his penis into her private part and ejaculated cannot be ignored for want of corroboration or absence of semens in the in skirt marked as M.O.3. The materials, which were recovered soon after the receipt of the complaint were sent to the Laboratory with the request letter of the Magistrate dated 12/04/2017. The clothes were subjected to Forensic Analysis and the report dated 04/05/2017 was received by the Magistrate on 9/05/2017 and same is



marked as Ex.P13. As per this report, blood strains deducted in the inskirt, blouse and the saree of the victim. Also the stone and the mud mixed with stone recovered from SOC. Absence of semen cannot be a reason to disbelieve the case of the prosecution. Presence of semen in the clothe or in the private part of the victim is not a sine quo non prove offence of rape.

15. Heard both the learned counsel appearing for the appellant and the Government Advocate (Crl.Side) appearing for the State.

16. The alleged occurrence had taken place on 18/03/2017 at about 2:30p.m. while the victim PW-1 was returning home after attending her work as Nutrition Meals Worker in a School and visiting the hospital on her way to home. Near the Muniappan Koil and house of Thurvasar, the accused under the guise of requesting a cell phone to make a call, followed her and when the victim declined to give her cell phone telling him that she had no balance in account, the accused has caught hold of her, pulled her saree, tied her both hands behind and prevented her from proceeding further. When she attempted to save her, he pushed her down



and sat on her chest. She got injury on her head. The accused thereafter had bite her breast and touch her private part. He when tried to put his penis inside her private part, he ejaculated. The victim forcible pushed him. After that accused left the place in his two wheeler, PW-1 went home and with the help for PW-2 and others got admitted in the hospital. The injury, the blood stained clothes and the soil recovered at the SOC prove the fact that she had been subjected to violence and in the said violence she had sustained the injury.

17. According to PW-1, she was dragged to the nearby bush by the accused. He torn her blouse, squeezed her breast and put his mouth on her breast and bite her nipple. The Doctor, who examined her, had noted the bite mark around the left breast nipple. Further, the witness has stated that the accused put his finger on her private part and manipulated it and then, tried to insert his penis into it. This fact has also been corroborated with the medical evidence Ex.P14 wherein the gynaecologist has noted laceration on the virginia.

18. The learned counsel for the appellant reading the testimony



of PW-1 and the medical report Ex.P14 submitted that, there is no evidence for penetration and therefore, the ingredient required for offence under Section 375 IPC not attracted. He further submitted that even if the evidence on the side of the prosecution is accepted as a whole, the accused can be punished only for offence under Section 354 IPC and not for offence under Section 376 IPC

19. In the case of ***Raja Vs. State of Karnataka reported in [(2016) 10 S.C.C 506]; State of U.P. Vs. Chhotey Lal reported in [A.I.R 2011 S.C 697] and Santosh Moolya Vs. State of Karnataka reported in [(2010) 5 S.C.C 445]***, the Hon'ble Supreme Court held that :-

"In a case of rape, testimony of prosecutrix stands at par with that of an injured witness. It is really not necessary to insist of corroboration if the evidence of the prosecutrix inspires confidence and appears to be credible. An accused can be convicted on the basis of sole testimony of the prosecutrix without any further corroboration provided the evidence of the prosecutrix inspires confidence and appears to be natural and truthful. Woman or girl raped is not an accomplice and to insist for corroboration of the testimony amounts to insult to womanhood. On principle the evidence of victim of sexual assault stands at par with evidence of an injured witness just as a witness who has sustained an injury (which is not shown or believed to be self-inflicted) is the best witness in the sense that he is least likely to exculpate the real offender. The evidence of a victim of a sex-offence is entitled to great weight, absence of corroboration notwithstanding. Corroboration in the form of eye-witness



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account of an independent witness may often be forthcoming in physical assault cases but such evidence cannot be expected in sex offences having regard to the every nature of the offence. It would therefore be adding insult to injury to insist on corroboration drawing inspiration from rules devised by the courts in the western world. If the evidence of the victim does not suffer from any basic infirmity and the "probabilities factor" does not render it unworthy of credence as a general rule, there is no reason to insist on corroboration except from the medical evidence where having regard to the circumstances of the case, medical evidence can be expected to be forthcoming subject to this qualification that corroboration can be insisted upon when a woman having attained majority is found in a compromising position and there is a likelihood of her having leveled such an accusation on account of the instinct of self-preservation or when the probability factor is found to be out of tune. "

Here is a case, where the victim a widow aged 38 years had come before the Court with proof of injured on her sexual organ, viz., breast and virginia indicating she was subjected to aggravated sexual assault. According to the learned counsel appearing for the appellant, the injuries found and the testimony of PW-1 not sufficient to attract offence under Section 376 IPC. It is true that the victim not alleged penetration, but the alleged attempt to penetrate. According to the witness, first the accused tried to put his penis into her mouth thereafter tried to put his penis into her Vagina. Since she resistance the attempt, the accused ejaculated and ran away. Even if there is no evidence for penetration, the evidence of the



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victim lady is enough to hold that there was an attempt by the accused to rape the victim lady. Since she resistance violently, he fled.

20. The learned counsel for the appellant also pleaded that the witnesses PW-2 and PW-3 are relatives to the victim and they cannot be a reliable witness. No doubt, these witnesses are not witnesses for the occurrence. But for the events happened subsequent to the offence such as the state of mind and manner the victim reached home and the arrangement for her medical assistance after hearing from the victim are *res justae* evidence admissible in evidence. The victim, who was able to manage herself to recover and reach home with tied hands, had informed the family members and elders in the village about the incident. This is being said soon after the course of the occurrence, their evidence cannot be ignored as hearsay witness. In so far as the subsequent events like untying her hands giving alternate dress to the victim, who came home seminude and reporting pain followed by admitting her in the hospital and the narration of the cause for the injuries found on the body are wholly reliable.



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21. The learned counsel appearing for the appellant also canvassed that the identification of the accused whose name not found in the FIR was later arrested on the next day of the complaint and remanded to the judicial custody a day after. This leads to a grave doubt about the prosecution case. This Court finds no merit in this submission because in the complaint itself the victim has informed about the physical feature of the assailant and the vehicle number of the assailant. The victim being a worker in the Nutrition Meals Scheme in a school, she was able to retain in her memory the vehicle number and inform the police about the colour, make and the registration number of the vehicle used by the accused. The identification parade been conducted before the Judicial Magistrate and in the identification parade, the accused has been rightly identified by the victim. It is contended by the learner counsel for the appellant that when the victim gave statement before the Judicial Magistrate and recorded under Section 164 Cr.P.C. he has said that the police informed her that they have secured the accused, according to the defence counsel, this was pre-to identification parade and therefore, it is to be presumed that the identity of the accused has already been shown to the victim, on perusal of 164 statement of PW-1 recorded by the Learned Judicial Magistrate



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Pennagram on 11/05/2017 and marked as Ex P2, this Court finds that she has stated that she was informed by the police that they have identified the accused and secured the accused.

22. The incident was on 18/03/2017 at about 2.30 pm. The accused was secured on 19/03/2017. The identification parade by the Magistrate was conducted on 03.04.2017. The statement of the victim been recorded under Section 164 Cr.P.C on 11/05/2017. Therefore, there is no reason to suspect that the accused was already shown to victim (PW-1) just because she has mentioned in her statement to the Magistrate record under Section 164 Cr.P.C that the police informed her about securing the accused.

23. On appreciating the evidence both oral and material besides the medical report, this Court finds that the charge against the accused in well proved beyond doubt and the finding of the Court below regarding the proof of the guilt needs no interference. The learned Counsel for the appellant submitted that in case the Court holds the accused guilty, may consider that the accused at the time of occurrence was hardly 19 years



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old and due to bad associates and sexual aberration alleged to have committed the crime and therefore, 10 years RI for the alleged attempt to commit rape is too harsh. Therefore, he may be awarded minimum sentence prescribed under Section 376 IPC as it was at the time of the incident. This Court on taking note of the reason placed by the learned counsel for the appellant for reduction of sentence, finds that the said plea deserves consideration. Therefore, the Appeal is partly allowed with modification of the sentence as below:-

Convicted under Section	Sentence modified by this Court
341 IPC	1 month Simple Imprisonment
323 IPC	1 year Simple Imprisonment
354 IPC	2 years Rigorous Imprisonment
376 IPC	7 years RI and fine of Rs.25,000/- in default to undergo one year Rigorous Imprisonment
4 r/w 3 of TNPWH Act	3 years RI and fine of Rs.25,000/- in default to undergo six month Rigorous Imprisonment

From out of the total fine amount of Rs.50,000/- , the victim to be paid Rs.25,000/- as compensation. The period of sentence shall run concurrently. The period of imprisonment already under gone shall be set off. The trial Court shall secure the accused and committing him to undergo the remaining period of sentence.



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24. With the above modification, this Criminal Appeal is partly allowed.

24.03.2023

Index:yes

Speaking order/non speaking order
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To:

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

Dr.G.JAYACHANDRAN, J.



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