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Crl A.No.847 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Criminal Appeal No.847 of 2013

Murugesan @ Prakash

..Appellant / Accused

Vs.

State Rep. By
Deputy Superintendent of Police,
Bhavani Sub Division, Bhavani
Chithode Police Station,
Erode District,
Crime No.132 of 2012

..

Respondent/Complainant

Appeal filed under section 374(2) of Code of Criminal Procedure,
against the judgement and conviction dated 13.12.2013 made in Spl.SC
No.67 of 2013 on the file of the Principal Sessions and Special Judge of
Erode District at Erode) and prays to set aside the same and to acquit the
appellant.

For Appellant	:	Mr.M.Vignesh
For Respondent	:	Mr.L.Baskar
		Government Advocate (Crl. Side)



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JUDGMENT

This criminal appeal has been filed against the judgement and order passed by the Principal Sessions and Special Judge, Erode District at Erode in Spl SC No.67 of 2013, dated 13.12.2013, convicting and sentencing the appellant in the following manner :-

Sl.No.	Offence	Sentence
1.	366 of IPC	<i>Five years Rigorous Imprisonment and to pay a fine of Rs.5,000/- and in default, to undergo one year simple imprisonment.</i>
2.	376 IPC	<i>Seven years Rigorous Imprisonment and also imposed a fine of Rs.5,000/- and in default, to undergo one year simple imprisonment.</i>

2. The case of the prosecution is that the appellant and the victim girl (PW1) were having a love affair. At the relevant point of time, the appellant was aged about 26 years and the victim girl was aged about 15 years and 2 months. On 04.03.2012 at about 7 p.m.,

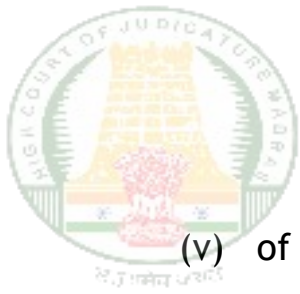


the appellant is said to have come in a two wheeler (MO.6) and asked the victim girl who was alone in her house, to accompany him.

The victim girl also accompanied the appellant and the appellant took her to a secluded place surrounding by bushes. Thereafter, the appellant is said to have had sexual intercourse with the victim girl on the pretext of marrying her. After the incident, the appellant dropped the victim girl near her house and left away.

3. The mother of the victim girl (PW8) found that her daughter was missing from the house and hence, she enquired the neighbour (PW9) and she was informed by PW9 that the appellant and the victim girl left in a two wheeler. Ultimately, after the victim girl reached home at about 10.00 p.m., she informed her mother about the entire incident.

4. The next day i.e on 05.03.2012, at about 18.00 hours, a compliant (Ex.P1) was lodged by the victim girl before PW12. The Sub-Inspector of Police (PW12) registered an FIR (Ex.P15) in Crime No.132 of 2012 for offence under Section 376 of IPC and Section 3(2)



(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act) 1989, (hereinafter called as the “SC and ST Act”).

5. The investigation was taken up by PW13 and he seized the dresses (MO1 to MO4) from the victim girl and forwarded the same under Form 95. PW13 thereafter went to the place of occurrence and prepared the observation Mahazar (Ex.P12) in the presence of PW10 and another person. The rough sketch (EX.P16) was prepared. PW13 thereafter forwarded the victim girl with a requisition to the hospital for medical examination.

6. The appellant was arrested on 06.03.2012 and based on his confession, the two wheeler (MO6) was seized in the presence of PW11 under Ex.P11 Seizure Mahazar. The dresses belonging to the appellant (MO.7 & MO8.) were also seized and was sent under form 95 to the Court under Ex.P14. The appellant was sent for medical examination to PW4 through whom the accident register Ex.P6, chemical examination report Ex.P7 and the final opinion Ex.P8 were marked. The community certificate of the appellant was also



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7. The investigation officer thereafter recorded the statement of the witnesses under Section 161 (3) of Cr.PC and collected the biological report (Ex.P19) and serological report (Ex.P20) series. The investigation was taken over by PW14, who subsequently examined the Tahsildar and Medical Officer and recorded their statements. Ultimately, a charge sheet was laid before the Court below.

8. The Trial Court after serving the copies to the appellant under Section 207 of Cr.PC, framed charges against the appellant for offence under Section 366 IPC, 376 IPC and Section 3 (2) (v) of the SC and ST Act. The prosecution examined PW1 to PW14 and marked Ex.P1 to Ex.P22. MO1 to MO9 were also identified and marked on the side of the prosecution. Two Court witnesses were examined as CW1 and CW2 and through them Exhibit Ex.C1 and C.2 were marked.



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9. The incriminating materials that were collected during the course of trial was put to the appellant while he was questioned under Section 313 (1) (b) of Cr.PC and he denied the same as false.

10. The Trial Court on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a conclusion that the prosecution has made out a case against the appellant for offence under Section 366 and 376 of IPC and accordingly, convicted and sentenced the appellant in the manner stated supra. The appellant was acquitted from the charge under Section 3 (2) (v) of SC and ST Act. Aggrieved by the same, the present Criminal Appeal has been filed before this Court.

11. Heard Mr.M.Vignesh, learned counsel for the appellant and Mr.L.Baskar, Government Advocate (Crl Side), learned counsel



for respondent.

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12. PW1 is the victim girl, who was aged about 15 years (Date of Birth 07.01.1997), at the time of the incident. The age of the victim girl has been substantially proved through Ex.C1 and C2. She was having a love affair with the appellant and the same is evident from her deposition. The victim girl has stated that on 04.03.2012, she was alone in her house and at about 7.00 p.m, the appellant had come in a two wheeler and asked her to accompany him. It is clear from the evidence of PW1 that she went on her own with the appellant, since there was a relationship between both of them. Thereafter, the appellant took the victim girl to a secluded place and committed the act of sexual intercourse with the victim girl. It is quite evident from the deposition of PW1 that the appellant kept on promising the victim girl that he will marry her. The victim girl was dropped near her house at about 9.30 pm and she reached her house at about 10.00 p.m.



13. The victim girl was questioned by her mother PW8 and she disclosed to her mother as to what happened on that day.

Considering the fact that there was some relationship between the victim girl and the appellant, the family members of the victim girl decided to wait and go over to the house of the appellant next day and question him about the incident. The next day, they went to the house of the appellant and there was some deliberation between the parties and ultimately, the complaint came to be lodged at about 6.00 p.m.

14. On a careful reading the evidence of PW1, there is absolutely no doubt that the appellant and the victim girl had physical intercourse and the evidence of PW1 has not been discredited in the cross-examination.

15. The evidence of PW2, who is the doctor makes it clear that the victim girl was brought for medical examination and the doctor on examination, gave a final opinion to the effect that the hymen was not intact, but however, she did not find any



spermatozoa in the smear. Ex.P2 Accident register, Ex.P3 Chemical Examiner Report and Ex.P4 final opinion were marked through PW2.

The evidence of PW2 corroborated the version given by the victim girl.

16. PW3 is the Radiologist in the Government Hospital, who conducted the ossification test and issued Ex.P5 with regard to the age of the victim girl. It is not necessary to delve deep into the evidence of PW3, since the age of the victim girl has otherwise been sufficiently established through Ex.C1 and C2.

17. PW4, was the medical officer attached to the Government hospital at Erode and this doctor examined the appellant to find out the potentiality and issued Ex.P6 and P7 and opined that there is nothing to suggest that the appellant is impotent.

18. PW5 and PW6 were examined in order to establish the community of the appellant and the victim girl. Through them,



Ex.P9 and Ex.P10 were marked.

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19. PW9, who is an important witness in this case. She is the neighbour of the victim girl and she speaks about seeing the victim girl and the appellant going in a two wheeler at about 7.00 p.m. on 04.03.2012. She was the one who also informed the mother of the victim girl, when she was searching for the victim girl. The evidence of this witness has also not been discredited.

20. PW8, is the mother of the victim girl and she speaks about what the victim girl had informed her and how the family members went and questioned the appellant and his family, the next day after the incident.

21. The learned counsel for the appellant submitted that there was enormous delay in lodging the complaint and the complaint itself was given only to force the appellant to marry the victim girl. It was further contended that there was nothing to suggest that there was physical intercourse between the appellant



and the victim girl and the same is evident from the deposition of the Doctor. The learned counsel further submitted that no offence has been made out under Section 366 of IPC, since the victim girl on her own accompanied the appellant and there was no compulsion on the side of the appellant to marry the victim girl. The learned counsel further submitted that there was no evidence to convict the appellant under Section 376 of IPC and hence, the appellant is entitled for acquittal from this case.

22. Per contra, the learned Government Advocate appearing on behalf of the respondent submitted that the evidence of PW1 has been corroborated by the evidence of PW2, PW8 and PW9 and there is absolutely no ground to discredit the evidence of the victim girl to the effect that the appellant had committed the offence of rape against her. The learned Government Advocate further submitted that even if the victim girl had consented for the physical intercourse, that does not really help the case of the appellant, since this case falls within Section 375 sixthly. The learned Government Advocate concluded his argument by submitting



that there is no scope for reducing the punishment also since the minimum punishment for the offence of rape is for a term not less than 7 years and the Court below has rightly sentenced the appellant and the same does not warrant the interference of this Court.

23. This Court has carefully considered the submissions made on either side and the materials available on record.

24. In the considered view of this Court the age of the victim girl has been established beyond cavil. She was hardly 15 years and two months at the time of incident. Her evidence makes it very clear that she was subjected to physical intercourse by the appellant. The evidence of PW1 is corroborated by the evidence of PW2, PW8 and PW9. It is true that there was a love affair between the appellant and the victim girl. However, even if the victim girl had given consent for physical intercourse, that does not take away the offence of rape under Section 375 of IPC since sixthly under Section 375 makes it very clear that it will constitute an offence



where the girl is under 18 years of age and it is irrespective of whether there is consent or no consent.

25. The Trial Court has considered the evidence of the above witnesses in detail and has come to the correct conclusion that there was physical intercourse between the appellant and the victim girl and this Court does not find any ground to interfere with the said findings.

26. The next issue pertains to the delay in lodging the complaint. The incident is said to have taken place on 04.03.2012 at about 7.00 p.m. The victim girl got back to home at about 10.00 p.m. After lot of persuasion, she revealed about the incident to her mother PW8. The family members sat together and decided to question the appellant and the family members the next day. They went over to the place of the appellant and there was some discussion among the family members. It looks like there was hesitation on the side of the appellant to marry the victim girl. Hence, ultimately the complaint came to be lodged on 05.03.2012 at



about 6.00 p.m. The delay is well explained and this delay by itself does not in any way vitiate the case of the prosecution.

27. The appellant was convicted for offence under Section 366 of IPC. To constitute an offence under Section 366 of IPC, there must be kidnap or abduction of any woman with an intent to compel her, to marry any person against her will or in order to force her or seduce her to illicit intercourse. There is nothing to suggest from the evidence of PW1 that she was forced or enticed to go along with the appellant. Considering the love affair between the appellant and the victim girl for more than two years, the victim girl on her own went along with the appellant. Hence, this Court does not find that the ingredients of Section 366 of IPC are satisfied in this case. Hence, this Court is inclined to interfere with the conviction and sentence of the appellant insofar as the offence under Section 366 of IPC.

28. The Court below has rightly acquitted the appellant for offence under Section 3 (2) (v) of SC and ST Act.



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29. The only other offence which remains as against the appellant is under Section 376 of IPC. This Court has already held that the prosecution has proved beyond reasonable doubt that the appellant had physical intercourse with the victim girl. The consent or otherwise of the victim girl becomes irrespective, since she was below 18 years at the time of the incident. Hence, this Court does not find any ground to interfere with the findings of the Trial Court while convicting and sentencing the appellant for offence under Section 376 of IPC. Accordingly, the same is upheld.

30. In the result, this Criminal appeal is partly allowed and the conviction and sentence against the appellant under Section 366 of IPC is hereby set-aside. The conviction and sentence against the appellant by the Court below for offence under Section 376 of IPC is upheld. The period already undergone by the appellant is ordered to be set off under Section 428 of CPC. During the pendency of this appeal, the sentence imposed against the appellant was set-aside by this Court by an order dated 30.12.2013. Since the conviction and



sentence of the appellant for offence under Section 376 of IPC is upheld, there shall be a direction to the appellant to surrender before the Trial Court within a period of four weeks from today in order to undergo the remaining period of sentence. If the appellant does not surrender before the Trial Court, non-bailable warrant shall be issued and the appellant shall be secured and he shall be made to undergo the remaining period of sentence.

31. In the result, this Criminal Appeal is partly allowed.

22.02.2023

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To

1. The Principal Sessions and Special Judge of Erode District at Erode
2. The Public Prosecutor
High Court, Madras.



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Crl A.No.847 of 2013

N.ANAND VENKATESH.,J

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