



Crl.A.No.343 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.10.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.A.No.343 of 2018

Bairappa

... Appellant/Single Accused

Vs.

State Rep by

The Inspector of Police,
Mathigiri Police Station,
Krishnagiri District.

(Crime No.367/2011)

(Crime Number is amended as per Order in
Crl.M.P.No.10263/2019 in C.A.No.343/2018
dated 01.08.2019)

... Respondent/Complainant

PRAYER: Criminal Appeals filed under Section 374 (2) of Cr.P.C., to call for the entire records in connection with S.C.No.52/2017 on the file of the learned Sessions Judge, (Fast Track Mahila Court), Krishnagiri District and set aside the Judgment dated 23.05.2018.

For Appellant : Mr.S.Suresh
for Mr.M.P.Saravanan
For Respondent : Ms.G.V.Kasthuri
Additional Public Prosecutor



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ORDER

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This Criminal Appeal has been filed to set aside the Judgment passed by the learned Sessions Judge, (Fast Track Mahila Court), Krishnagiri, dated 23.05.2018.

2. The learned Counsel for the Appellant submitted that the Appellant was convicted by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri in S.C.No.52/2017. The Accused was convicted for the offences under Sections 376 and 506(i) of IPC and Section 4 of the Tamil Nadu Prohibition of Women Harassment Act.

3. For the offence under Sections 376 of IPC, the Appellant was sentenced to undergo Rigorous Imprisonment for seven years and fine of Rs.1000/-, in default, to undergo Simple Imprisonment for three months. For the offence under Section 506 (i) of IPC., he was sentenced to undergo Rigorous Imprisonment for three months and fine of Rs.500/-, in default, to undergo Rigorous Imprisonment for 15 days. For the offence under Section 4 of Tamil Nadu Prohibition of Women Harassment Act, he was sentenced to undergo Rigorous Imprisonment for one year and fine of Rs.10,000/-, in default, to undergo Rigorous Imprisonment for three



months. The period of detention already undergone by the Accused was set off under Section 428 Cr.P.C.,

4. The brief facts which are relevant for consideration as per the Prosecution are as follows:

4.1.The Accused is the father-in-law of the victim/Prosecutrix/P.W-

1. The Accused has only one son. As per the case of the Prosecution, the son of the Accused was away from the home. The children and the Prosecutrix was at home. The Accused used to misbehave with her and wanted her to have sexual intercourse with him. In due course of such behaviour, he is alleged to have continuously indulged in sexual intercourse, over a period of time, finally on a particular day, when she visited her parents house, she was confronted by her parents and brothers. Based on which, her elder brother viz., Nagaraj accompanied her to Mathigiri Police Station and lodged a Complaint under Ex.P-1. Based on which, FIR was registered by P.W-11 under Ex.P-7. The Inspector of Police had conducted investigation and visited the place of occurrence, prepared the rough sketch under Ex.P-8 and Observation Mahazar under Ex.P-2 in the presence of Witnesses. He had arrested the Accused and forwarded him for medical examination with a requisition letter to the



Doctor. He had also forwarded the victim/Prosecutrix to undergo medical examination. P.W-9 is the Doctor who had examined the Prosecutrix and issued Ex.P-6. P.W-13 is the Doctor who had examined the Accused and issued Ex.P-5 and Ex.P-13. After completion of investigation, he had laid the final report before the Court of the learned Judicial Magistrate. The learned Judicial Magistrate had taken cognizance of the offences. Since the case was exclusively triable by Court of Sessions, the learned Judicial Magistrate had taken the case on file as PRC and issued summons to the Accused. On appearance of the Accused copies were furnished to the Accused under Section 207 of Cr.P.C. and the Accused was committed to the Court of the learned Sessions Judge, Fast Track Mahila Court. Accused was bind over to Court of Sessions, Fast Track Mahila Court and forwarded the case records to the learned Sessions Judge, Fast Track Mahila Court and committed the case to the Court of Sessions. On appearance of the Accused, charges were framed by the learned Sessions Judge, Fast Track Mahila Court after hearing the Prosecution and defence. Since the Accused denied the charges, the trial was ordered. During trial, the Prosecution had examined the Witnesses viz., P.W-1 to P.W-13 and marked documents Ex.P-1 to Ex.P-13. On appreciation of evidence, the learned Sessions Judge, Fast Track Mahila Court had convicted the



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Accused for the offences under Sections 376, 506 (i) of IPC and Section 4 of Tamil Nadu Prohibition of Woman Harassment Act.

5. Aggrieved by the same, the Accused had preferred this Appeal, seeking to set aside the judgment of the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri.

6. It is the contention of the learned Counsel for the Appellant that the Prosecutrix is none other than daughter-in-law of the Accused. The Accused has only one son. The Prosecutrix demanded partition of the property through her husband who is none other than P.W-2. He had also insisted for partition of the properties for which the Accused denied it, claiming that he is the only son. After the lifetime of the Accused, the entire property devolve on the son of the Accused. Therefore, the partition is not required. Only to settle scores, the daughter-in-law had preferred a Complaint. It is the defence of the Accused that for not heeding to the request of the son, the daughter-in-laws, and her brothers joined together and assaulted the Accused. Based on which, the complaint was also given.

7. The learned Counsel for the Appellant submitted that the



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Complainant/Prosecutrix claims she confided to her elder brother Nagaraj

who accompanied her to the Mathigiri Police Station. It is surprising to note that the said Nagaraj was not at all examined by the Investigation Officer and not cited as Witness in the list of Witnesses. The Prosecution had not produced the said Nagaraj before the Court. P.W-4 is the elder brother of P.W-1 by name Bairappa, the same name as that of Accused. He had married the younger sister of the Accused. He turned hostile. P.W-2, the husband of Prosecutrix also turned hostile. The learned Counsel for the Appellant placed reliance on the evidence of hostile witnesses. In support of his contention that this is a cooked up story to settle scores with the father-in-law. It is the case of the Appellant that what is alleged in the Complaint was not proved. Wife of the Appellant is always present in home, she is paralyzed and blind also. Therefore, the claim of the Prosecutrix that she had reported the incidents to her mother-in-law over a period of time, she is only inside the house is unbelievable.

8. If what had been stated by Prosecutrix in the Complaint under Ex.P-1 had been true, she could have reported the same to her mother or her elder sister or her elder brothers or their wives. She had not reported it, till the date of filing of the Complaint. From the evidence available before



the Court, it is found that the Complaint under Ex.P-1 and the FIR under Ex.P-7 had been registered after the discussion in the family, only to settle scores. There is evidence in the cross-examination that the relatives of the Prosecutrix attacked the Accused. Still he did not consent for partition. Therefore, the case was foisted.

9. The submission of the learned Counsel for the Appellant is that P.W-9-Dr.Aruna Priyadharshini, who had examined the Prosecutrix and issued Ex.P-6 clearly states that she had not found any symptoms of rape on the Prosecutrix. Therefore, the conviction of the Appellant by the learned Sessions Judge, Fast Track Mahila Court is perverse and is to be set aside.

10. The learned Additional Public Prosecutor by way of reply vehemently objected to the line of the arguments of the learned Counsel for the Appellant stating that the Prosecutrix was subjected to medical examination after much delay. Therefore, what had been stated by Ex.P-6 need not be given due importance. There is evidence through the Prosecution Witnesses that the wife of the Accused, the mother-in-law of the Prosecutrix was always not at all at home. She visited Saneeswaran



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Temple where the Accused is alleged to be priest. Therefore, in her evidence, when she was alone at home, the Accused misbehaved with her has to be given due advantage as mother-in-law is not at home. The Judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court is on appreciation of evidence. Therefore, this Court cannot exercise discretionary power to disturb the finding of the learned Sessions Judge.

11. The learned Additional Public Prosecutor submitted that the Appeal lacks merits and is to be dismissed and the finding of the learned Sessions Judge is to be confirmed.

12. By way of rejoinder, the learned Counsel for the Appellant submits that after the alleged occurrence, P.W-2 is staying with the Wife/P.W-1 and begotten child and what had been stated by the Prosecutrix being true, she could have cohabited with her husband. Therefore, the Judgment of the learned Sessions Judge, Fast Track Mahila Court is to be set aside and the Accused is to be acquitted from all the charges.

Point for Consideration:

Whether the Judgment of conviction recorded by



***the learned Sessions Judge, Fast Track Mahila Court
is to be set aside as perverse?***

13. Heard the learned Counsel for the Appellant, the learned Additional Public Prosecutor. Perused the evidence of the Prosecution Witnesses viz., P.W-1 to P.W-13 and documents under Ex.P-1 to Ex.P-13. From the materials available before the trial Court during the cross-examination of Witnesses, it is found that P.W-2 is the husband of P.W-1, P.W-4 is the elder brother of P.W-1, who is alleged to have married the younger sister of the Accused had turned hostile. Mahazar witness also turned hostile. During the arguments of the learned Counsel for the Appellant, he submitted that there is no independent Witness. In cases of this nature, particularly sexual offence case there will not be any independent witnesses which cannot be expected also. Therefore, that part of the argument is rejected. Considering the fact that P.W-2, in course of his evidence, he was treated as hostile stated that his wife wanted to separate home. He declined since he is the only son of his parents. She had lodged a Complaint against his father. The submission of the learned Counsel for the Appellant that what had been stated in the evidence of P.W-1 cannot be believed since she had not discussed it with any of her



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relatives, which has given a benefit of doubt in favour of the Accused.

Further, the evidence of P.W-9-Dr.Aruna Priyadharshini is not favourable to the Prosecution. Under those circumstances, the conviction recorded by the learned Sessions Judge, Fast Track Mahila Court is found to be perverse as it is based on surmises and conjectures.

14. On perusal of the deposition of the Witnesses viz., P.W-1 to P.W-13, this Court is unable to arrive at a conclusion that the Accused had indulged in sexual offence forcing her to lodge a Complaint. Further, there is evidence available in the cross-examination of Witnesses that it had been discussed in the family of P.W-1, to lodge a Complaint against the Accused. In the light of the said circumstances, the Judgment of the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri in S.C.No. dated 23.05.2018 is found perverse and the same is set aside.

15. The point for Consideration is answered in favour of the Appellant/Accused and against the Respondent.

In the result, this **Criminal Appeal is allowed**. The Judgment of conviction and sentence of imprisonment imposed on the



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Appellant/Accused in S.C.No.52/2017 dated 23.05.2018 is set aside and

Accused is acquitted. The bail bond executed by the Appellant/Accused before the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri is ordered to be cancelled.

The fine amount already deposited before the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri is also ordered to be refunded to the Appellant.

04.10.2023

dh

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1. The Sessions Judge,
Fast Track Mahila Court,
Krishnagiri.
2. The Public Prosecutor,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

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