



Crl. Appeal No. 377 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 17.07.2023

Coram

The Honourable Mr.Justice Sathi Kumar Sukumara Kurup

Crl. Appeal No. 377 of 2018

Mohan

.. Appellant/Accused

Vs

State rep. By
The Inspector of Police,
Gingee Police Station,
Villupuram District.
(Crime No.651 of 2008)

.. Respondent

Criminal Appeal filed under Section 374 Cr.P.C to set aside the judgment in S.C.No.117 of 2011, dated 28.11.2017 on the file of the learned Assistant Sessions Judge, Gingee, Villupuram District and acquit him for the said charges.

For Appellant

..

Mr.G.Mohan Krishnan

For Respondent

..

Mrs.G.V.Kashthuri
Addl. Public Prosecutor



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JUDGMENT

The Appellant/Accused has preferred the instant Criminal Appeal as against the judgment dated 28.11.2017 in S.C.No.117 of 2011 passed by the learned Assistant Sessions Judge, Gingee, Villupuram District.

2. The brief facts which are relevant for consideration of the case are as follows:-

2.1. As per the case of the Prosecution that on 18.11.2008, night at 8.00.P.M., when the daughter of the Complainant/victim aged about 16 years old, went to purchase provision. When the victim was at Gingee Mariamman Koil Street near Theniammal Firewood Shop, the Accused Mohan abducted victim by obstructing her gagged her mouth with cloth, took her to Terrace Room situated above the wine shop opposite to Gingee Bus stand on Gingee-Singavaram Road and kept her in secret room with an intention to have sex illegally. The Accused closed the room, brandished a knife and beaten her on the back, lip, Right leg and caused injury on the victim. When she tried to escape, the Accused had raped three times and later when she escaped, the Accused went to the House of the victim at 4.30 AM on 19.11.2008 and he threatened her and her parents and one Mary, a neighbour of the victim and



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threatened to murder them if they disclose the offence. Hence, the case was registered in Cr.No. 651 of 2008 under section 376 IPC.

2.2. On completion of investigation, the Inspector of Police, Gingee Police Station had laid the final report of investigation before the learned Judicial Magistrate, Gingee. The learned Judicial Magistrate, Gingee had taken cognizance of the offences under Sections 341, 366, 365, 323, 376, and 506 (ii) IPC and taken the final report as P.R.C No.12 of 2011 on the file of the learned Judicial Magistrate, Gingee.

2.3. This case was taken on file in P.R.C.No. 12 of 2011 on 05.05.2017 for the offence under Sections 341, 366, 365, 323, 376 and 506 (ii) IPC., and on summons, the Accused appeared. On appearance of Accused, he was served with copies under Section 207 of the Criminal Procedure Code. Since the offence of Sections 365, 366, 376 of IPC are triable by the Court of Sessions, the learned Judicial Magistrate, Gingee had committed the case to the learned Principal District and Sessions Judge, Villupuram and bound over the Accused to the Court of the learned Principal District and Sessions Judge, Villupuram.



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2.4. The learned Principal District and Sessions Judge, Villupuram, had on receipt of case records in P.R.C.No.12 of 2011 and on appearance of Accused, taken the case on file and numbered the PRC case as S.C.No.117 of 2011. On point of jurisdiction, the case was made over to the Court of the learned Assistant Sessions Judge, Gingee and directed the Accused to appear before the learned Assistant Sessions Judge, Gingee.

2.5. On appreciation of evidence and on perusal of records, the learned Assistant Sessions Judge, Gingee found the Accused not guilty under Sections 341, 365, 366 and 506(ii) of IPC and acquitted him from the above charges and found him guilty under Sections 323 and 376 of IPC. The Accused was sentenced to undergo 12 months/year of Rigorous Imprisonment with fine of Rs.1000/-, for the offence under Section 323 of IPC and in default to pay fine, one month Simple Imprisonment and sentenced to undergo Rigorous Imprisonment for 7 years with fine of Rs.10,000/- for the offence under Section 376 of IPC, in default to pay fine, the Accused shall undergo Simple Imprisonment for one year.



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2.6. Aggrieved by the judgment of conviction and sentence of imprisonment, the Accused had filed this Criminal Appeal.

3. The learned Counsel for the Appellant/Accused submitted his arguments that FIR (Ex.P.6) was registered on 19.11.2008 it reached the Court of the learned Judicial Magistrate, Gingee, only on 24.11.2008. The Prosecution had not explained the delay. The learned Counsel appearing for the Appellant submitted that P.W-1 is the mother of the victim who gave the complaint; P.W-2 is the victim; P.W-3 is the father of the victim; P.W-4 is the maternal aunt of the victim; P.W-5 and P.W-6 are Mahazar witnesses; P.W-7 is the Police Constable who had accompanied the Accused to the hospital for medical examination; P.W-8 is Dr. Shanthi who had examined the victim; P.W-9 is Dr. Veeramuthu who had examined the victim and issued the age certificate of the victim under Ex.P.4; P.W-10 is the Special Sub-Inspector of Police who had registered the FIR; P.W-11 is Tamizhvanan, the Inspector of Police who had conducted the investigation. P.W-13 Singaravelu, the Inspector of Police, had completed the investigation and laid the final report before the Court of the learned Judicial Magistrate, Gingee.



4. It is the case of the Appellant/Accused that the Appellant who has been foisted with this case is not the Accused who alleged or committed a crime. It is the further case of the Appellant/Accused that the victim herein had consensual sex with one Paranthaman two days prior to the alleged date of occurrence. The Appellant/Accused is alleged to have seen the victim with Paranthaman in a compromising position, and she has raised a hue and cry. Therefore, neighbours rushed to the house of P.W-4, where the victim and Paranthaman were found. At that time, P.W-4 was not at home. Using this, as a slur on the family, P.W-1 and the parents of P.W-2 had foisted this case on the Accused. He had not committed the alleged crime. Further, it is the case of the learned Counsel for the Appellant/Accused that the Appellant's age had not been mentioned anywhere in the charge sheet, and no witnesses from the School have been examined regarding the age. As per the evidence of P.W-2, the victim was studying XII standard on the date of occurrence. A School Certificate has been furnished regarding proof of age. The Doctor who had examined the victim and issued an age certificate based on the radiological report had opined that she was aged between 16 and 18. It is the contention of the learned Counsel for the Appellant that it was a consensual affair and that the Accused was not at fault. The Prosecution miserably failed to prove the



charges framed against the Appellant/Accused. The learned Counsel for the Appellant/Accused invited the attention of this Court to cross examination of the victim P.W-2, her parents P.W-1 and P.W-3, and her maternal Aunt P.W-4. It is the submission of the learned Counsel for the Appellant/Accused that P.W-1 and P.W-3, the parents of P.W-2, had not supported the Prosecution, inspite of the fact that the learned Judge had convicted the Accused for the offence under Sections 376 and 323 of IPC. He had acquitted the Accused for the offence under Sections 341, 365, 366 and 506(ii) of IPC and convicted the Accused only for the offence under Sections 323 & 376 of IPC, based on the evidence of the victim and the Doctors' opinion. The learned Counsel for the Appellant/Accused invited the attention of this Court to the cross-examination of P.W-8 and P.W-9, wherein P.W-9 had clearly stated and as per the radiological test, the victim would be aged between 16 and 18. The Investigation Officer had not conducted a fair investigation. The age proof from the School should have been obtained. He had not done so, only to make the case against the Accused, as though the victim was minor. The Court has to draw adverse inference for lack of producing an age certificate from the School where the victim studied. There is evidence by the Prosecutrix that she was studying in School at the relevant point of time. Further, he invited the



attention of this Court to the cross examination of the Doctors, wherein they had stated that the vaginal swab was taken from the victim and sent to the Forensic Department and report had not been obtained. The learned Counsel for the Appellant/Accused also invited the attention of this Court to the cross-examination and evidence of the Police Officials, viz., P.W-10, P.W-11, P.W-12 & P.W-13 as well as the evidence of D.W-1, the owner of the building where the Prosecution case had taken place. It is the evidence of the victim that she was taken forcibly by the Appellant/Accused from the market place in Gingee. When she had gone to purchase provisions on her mother's request, on her way she was taken forcibly by the Appellant/Accused to the place opposite to the Gingee bus stand, which is a crowded place. The opposite place to the Gingee bus stand is the building where the victim claims that the Accused had taken her to the III floor of the building and she had never raised any hue and cry when she was forcibly taken by the Appellant/Accused. The learned Counsel for the Appellant invited the attention of this Court to the evidence of the Prosecutrix/victim (P.W-2) in her chief examination as well as in cross examination. On going through the deposition of P.W-2 in chief examination, it is unbelievable that the girl aged between 16 and 18, having been forcibly taken by the Accused by around 8.30 p.m in a crowded place to the III floor.



She did not protest; she did not raise a hue and cry and nobody rescued her. It is unbelievable. Further, in the deposition, she had stated that from the III floor she ran away to the II floor, where she was spotted by the Accused and in front of a tailor shop closed by around 10 or 10.30 p.m, he had intercourse with her and removed her dresses, which is unbelievable. It is important to note that the place where the alleged occurrence took place is a crowded place. There is evidence from the other witnesses that upto 11 O'clock, the market place is crowded. Further, the learned Counsel for the Appellant/Accused invited the attention of this Court to the fact that the victim left her house by around 8 p.m and did not return home. P.W-1 mother and P.W-3 father of the victim girl had not searched her and had not given a complaint to the police which is contrary to normal human conduct. As per the evidence of the Prosecutrix/victim, P.W-2, she returned to her house in the morning by 4.30 a.m the next day. She straight went to her aunty's house (the house of P.W-4) with her and she protested with the Accused. At that time, the Accused came in the morning wearing Sabarimalai Maalai she protested with him saying he ought not to have done such a thing. This theory is not true. It is unbelievable. Further, in the cross examination of the victim as well as P.W-1 and P.W-3, they admitted the fact that one Lucy, Advocate, Villupuram, had drafted the



complaint under Ex.P-1 and she was with the victim throughout. Therefore, based on the instigation of Lucy only this case has been foisted against the Accused. The report of the Forensic Examination did not reveal any incriminating evidence against the Accused. The address given by the victim at the time of the alleged occurrence was also not verified. There are many loopholes in the Prosecution case. The learned Assistant Sessions Judge, Gingee, did not take into consideration many loopholes raised by the defence in Prosecution testimony. The learned trial Judge had convicted the Accused of the charges under Sections 376 and 323 IPC. It is the contention of the learned Counsel for the Appellant/Accused that the offence alleged against the Accused had not been proved and that her parents themselves had not supported her case. Therefore, the Accused is entitled to acquittal. The judgment of conviction recorded by the learned trial Judge has to be set aside.

5. The learned Additional Public Prosecutor vehemently objected to the submission of the learned Counsel for the Appellant/Accused stating that there is enough evidence through the evidence of the victim herself. The fact remains that the parents had not supported the case. Subsequent to the occurrence, when the Prosecutrix/victim had narrated the incident to P.W-4, P.W-4 had



protested with the Appellant/Accused when he had stated to P.W-4 and the victim that he will finish them off when the matter was disclosed to anyone.

Further, in the evidence of the victim, it is stated that after the occurrence, there was talk of an amicable settlement, wherein the Accused herein is alleged to have offered to settle the debt of the father of the Prosecutrix/victim where the father of the Prosecutrix was working in a hotel as a server and the Accused is alleged to have offered to clear his debt, he had approached P.W-3 father of the Prosecutrix along with the owner of the hotel where P.W-2 was employee and also he offered to bear the expenses of the Prosecutrix to complete her education. Since she was not amenable and stated that she will not marry the Accused, her parents P.W-1 and P.W-3 had not supported the case of the victim. The learned Additional Public Prosecutor invited the attention of this Court to the defence raised by the Accused before the trial Court and the learned Judge had adverted to the defence of the Accused in the judgment in Page No.118 and 119. Also the learned Additional Public Prosecutor drew the attention of this Court to the evidence of P.W-9 and the radiological report regarding the age at Ex.P-5 at Pg.No.85. She also invited the attention of this Court to the evidence of P.W-8-Dr.Santhi at Pg.No.35.

The learned trial Judge had relied on rulings regarding appreciation of



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evidence by victims of crime and had stated clearly that the victim was not familiar with that place and therefore, the occurrence cannot be rejected and had accepted the evidence of the Prosecutrix which is supported by the medical evidence. Therefore, the learned trial Judge had convicted the Accused for the offence under Sections 376 and 323 of IPC alone. It is the submission of the learned Additional Public Prosecutor, the judgment of the learned Assistant Sessions Judge, Gingee recording the conviction of the Accused under Section 376 of IPC is well reasoned judgment based on rulings of the Hon'ble Supreme Court and this Court need not interfere. Therefore, learned Additional Public Prosecutor seeks to dismiss this appeal.

Point for consideration:

Whether the judgment of conviction recorded by the learned Assistant Sessions Judge, Gingee, convicting the Accused for the offence under Sections 376 and 323 IPC is perverse warranting interference?

6. Heard the learned Counsel for the Appellant/Accused and the learned Additional Public Prosecutor. Perused the evidence of the Prosecution witnesses P.W-1 to P.W-13. Defence witness D.W-1 and the documents under



Ex.P-1 to Ex.P-11 on behalf of the Prosecution witness and Ex.D-1 on behalf of the defence.

7. The Judgment of the learned Judge runs from Page No.91 to 120 of the typed set of papers. On appreciation of evidence, the learned Judge acquitted the Accused of the charges under Sections 341, 365, 366 and 506 (ii) of IPC. On appreciation of evidence, the learned Judge accepted the evidence of the Prosecutrix alone and not the parents. The learned Judge had adverted to the fact that P.W-1 mother and P.W-3 Father had in their cross examination admitted all the suggestions put to them by the Accused and had stated clearly that Prosecutrix evidence that after the occurrence, the Accused approached the parents offering to settle the loan of P.W-3 father of the Prosecutrix/victim and to bear the educational expenses of the Prosecutrix. The Prosecutrix was not amenable and she did not want to marry the Accused. Therefore, her parents had not supported the case. Also the defence of the Accused that there are loopholes in the Prosecution case was also adverted by the learned Assistant Sessions Judge, Gingee, who stated that in many criminal cases there may be contradictions or minor deviations in the Prosecution case for which the evidence of the victim of crime need not be



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rejected. Based on the decisions of the Hon'ble Supreme Court in the case of :

1. *Kuldip Kumar and another vs state of Himachal Pradesh* reported in 1995 (Cri) LJ 2458 : 1994 SCC OnLine HP 49,

2. *State of Kerala vs Babu and others* reported in 1999 SC (Cri) 611: (1999)4 SCC 621,

3. *Rao Harnarain Singh vs The state* reported in AIR 1958 Pun 123,

4. *Vijayan Pillai vs State of Kerala* reported in (1990) 1 Crimes 261,

5. *Sudhansu Sekhar Sahoo vs State of Orissa* reported in 2003 SCC (Cri) 1484 : (2002)10 SCC 743,

6. *Vijayee Singh and others vs State of U.P* reported in AIR 1990 SC 1459 : 1990 SCC (Cri) 378

and other High Courts stating that the Court has to go by the evidence of the victim and the Court has to differentiate between the grain and chaff, and accordingly, on proper appreciation of evidence as per the provisions of the Indian Evidence Act, the Court arrived at the conclusion that the alleged occurrence narrated by the Prosecutrix/victim is true. Therefore, the learned Judge had convicted the Accused for the offences under Sections 376 & 323 of IPC on the basis of the evidence of the Prosecutrix and P.W-8 Dr. Shanthi



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who had examined the victim girl and issued the certificate under Ex.P-4 regarding sexual assault. The learned Assistant Sessions Judge, Gingee had discussed the lapses on the part of the investigation by observing that the statement of the victim of crimes was recorded by the Investigation Officer on 18.11.2008 but had delayed to file the final report only in the year 2011.

8. Also the learned Trial Judge had discussed the defence of the Accused regarding the evidence of D.W-1 who claims to be the owner of the building where TASMAC outlet is situated and had rejected the defence of Accused and evidence of building owner D.W-1.

9. A perusal of the judgment of the learned Assistant Sessions Judge, Gingee, nothing is found perverse. Therefore, as rightly pointed out by the learned Additional Public Prosecutor, finding of guilt recorded by the learned Assistant Sessions Judge, Gingee, based on proper appreciation of evidence has to be gone into by the Appellate Court.

10.As per the reported decisions of the Hon'ble Supreme Court



regarding appreciation of evidence by the Appellate Court guidelines were issued by which on the same set of evidence, if the Appellate Court arrive at just the opposite view, still the Appellate Court shall not disturb the finding of the trial Court.

11. It is because, the trial Court has the advantage of observing the demeanour of the witnesses, the victim and the Accused which advantage is not available to the Appellate Court. Therefore, on that ground also the submission of the learned Additional Public Prosecutor is accepted. The argument of the learned Counsel for the Appellant/Accused that the parents of the victim did not support the Prosecution case fails. The evidence of the Prosecution itself is unbelievable. Considering the fact that the occurrence took place some time between 8.30 p.m and 4.30 a.m on the next day opposite to the Gingee bus stand in a building where the Prosecutrix claim is a III floor whereas building owner said there is no II floor and III floor. The said submission of the learned Counsel for the Appellant/Accused is rejected, in the light of the fact that the learned Assistant Sessions Judge, Gingee had discussed those points in the judgment and rejected the defence of the Accused.



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12. In the light of the above discussion, the Point for consideration is answered in favour of the Prosecution and against the Appellant. The judgment of conviction recorded by the learned Assistant Sessions Judge, Gingee, convicting the Accused for the offence under Sections 376 and 323 IPC is to be confirmed.

17. In the result, **the Criminal Appeal fails and stands dismissed.** The judgment of conviction recorded by the learned Assistant Sessions Judge, Gingee, convicting the Accused for the offence under Sections 376 and 323 IPC in S.C.No.117 of 2011, dated 28.11.2017 is confirmed.

17.07.2023

vsn

Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

Note: Registry is directed to communicate this Judgment to the Superintendent, Central Prison, Cuddalore by e-mail.



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To

1. The Assistant Sessions Judge,
Gingee.
2. The Inspector of Police,
Gingee Police Station,
Villupuram District.
3. The Additional Public Prosecutor,
Madras High Court,
Chennai – 600 104.



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SATHI KUMAR SUKUMARA

KURUP,J.

Vsn

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