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CrI.A.No.417 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2023

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CrI.A.No.417 of 2016

S.Ramesh

... Appellant

Versus

State by
The Inspector of Police,
Rasipuram Police Station,
Namakkal District.

... Respondent

Prayer : Criminal Appeal filed under Section 374 Cr.P.C, praying to set aside the judgment of the Mahalir Court, Namakkal dated 27.11.2014 passed in S.C.No.37 of 2013 in erroneously convicting the appellant herein under Section 376 IPC and Section 328 IPC sentencing him to 7 years (2 Counts) and fine Rs.10,000/- (2 counts).

For Appellant : Mr.M.Saravanakumar

For Respondent : Mr.R.Subbiah
Government Advocate (CrI. Side)



CrI.A.No.417 of 2016

JUDGMENT

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This appeal is filed by the sole accused aggrieved by the conviction and sentence imposed vide judgment dated 27.11.2014 in S.C.No.37 of 2013 by the Mahila Fast Track Court, Namakkal, thereby convicting the accused for the offence punishable under Section 376(1) IPC and sentencing him for seven years rigorous imprisonment and imposing a fine of Rs.1,000/- and default of payment of fine to undergo one year simple imprisonment and convicting him for an offence under Section 328 IPC and imposing the same sentence of seven years rigorous imprisonment and fine of Rs.1,000/- in respect of the said offences.

2.The charge against the appellant is that on 31.05.2012, in the afternoon around 1.00 p.m., when the minor victim who was his next door neighbour was crossing his house, he made her to come inside the house in the guise of giving juice to her and made her to drink the juice mixed with sedatives. When the minor victim became unconscious, the accused had physical intercourse with her and hence, the complaint.

3.The case in Cr.No.459 of 2012 was registered on 02.06.2012 by P.W.12, the Inspector of Police, Rasipuram Police Station. After completion of investigation, he laid a charge sheet proposing the accused guilty of the



CrI.A.No.417 of 2016

WEB CO aforementioned offences. The case was taken on file as P.R.C.No.30 of 2012 by the Judicial Magistrate, Rasipuram and upon the appearance of the accused and furnishing of copies, the case was committed to the Principal Sessions Judge, Namakkal upon which the case was taken on file as S.C.No.37 of 2013, and thereafter was made over to the trial Court. The trial Court framed the charges on 09.01.2014, and upon questioning the accused denied the same and stood trial.

4. So as to bring home the charges, the prosecution examined the minor victim as P.W.1, her mother as P.W.2, her father as P.W.3, one Ramasamy who was the witness to the observation mahazar was examined as P.W.4, the school teacher through whom the age certificate was marked bringing home the date of birth of the victim as 13.09.1997 was examined as P.W.5, one Kanagaraj, who was the Village Administrative Officer and the witness to the confession statement leading to the recovery of the Pedicloryl bottle which the accused mixed in the juice given to the victim child was examined as P.W.6, Dr. Gokulakshmi who examined the accused and issued potency certificate was examined as P.W.7, the forensic expert who analyzed M.O.1 and gave a report was examined as P.W.8, the neighbouring resident by name Agalya who was examined for the purpose of seeing the victim child together with the accused was examined as P.W.9, but she turned hostile, the doctor who examined the victim child was

<https://www.mhc.tn.gov.in/judis>

examined as P.W.10. Similarly, one Azhagesan who is the Assistant Director of



Crl.A.No.417 of 2016

the forensic lab who examined the Pedicloryl bottle and gave a report was examined as P.W.11.

5.This apart, the complaint lodged by P.W.1 was marked as Ex.P1, the observation Mahazar as Ex.P2, the transfer certificate of the victim child was marked as Ex.P3, the signature of the accused in the confession statement was marked as Ex.P4 and admissible portion was marked as Ex.P5, the Seizure Mahazar was marked as Ex.P6, the order authorizing to examine the accused for his potency was marked as Ex.P7, the potency certificate issued to the accused was marked as Ex.P8, the age certificate of the victim child was marked as Ex.P9, the order passed by the learned Judicial Magistrate sending M.Os for forensic examination was marked as Ex.P10, the Forensic report was marked as Ex.P11, the requisition letter for medical examination of the victim child was marked as Ex.P12, the medical examination report of the victim child is marked as Ex.P13, the final opinion of the forensic expert is marked as Ex.P14, the semen report was marked as Ex.P15, the printed F.I.R was marked as Ex.P16, the signature of P.W.3 in the complaint was marked as Ex.P17, the rough sketch was marked as Ex.P18, the Form 95 was marked as Ex.P19, the letter of request placed before the learned Judicial Magistrate for examination of the child was marked as Ex.P20, the letter which was placed before the learned Magistrate in respect of the potency of the accused was marked as Ex.P21. Similarly, the letter of request



Crl.A.No.417 of 2016

for sending the M.Os for forensic examination was marked as Ex.P22, the stainless steel tumbler in which the juice was alleged to be given was produced as M.O.1 and the Pedicloryl bottle containing a solution named Triclofos was produced as M.O.2.

6. Upon being questioned about the material evidence and incriminating circumstances on record under Section 313 of the Criminal Procedure Code, the accused denied the same as false. Thereafter, no evidence was let in on behalf of the defence. The trial Court therefore, proceeded to hear the learned Public Prosecutor on behalf of the prosecution and the learned counsel for the accused and vide judgment dated 27.11.2014, found that the victim child has categorically spoken about the incident and the sedative which was used by the accused is also proved by seizure of M.O.1 and M.O.2 and the forensic examination report and held that the offences under Section 328 IPC and Section 376 (1) IPC as proved and sentenced the accused as above. Aggrieved by the same, the present appeal is laid before this Court.

7. Heard Mr.M.Saravanakumar, the learned counsel for the appellant and Mr.R.Subbiah, the learned Government Advocate (Crl. Side) appearing on behalf of the prosecution.



Crl.A.No.417 of 2016

8.Mr.M.Saravanakumar, the learned counsel appearing on behalf of the appellant by taking this Court through the evidence on record, made submissions both on merits as well as on the quantum of sentence. On merits, the learned counsel argued that the cross examination of the victim child and the evidence of the other corroborating witness would clearly prove that there was consent of the victim and having voluntarily indulged in the act, belatedly as an after thought, the complaint was lodged. He would also submit that the prosecution had alleged that the victim was aged about 13 years, however the transfer certificate shows that she was aged more than 15 years, and that the doctor had answered in the cross examination that it was only his guess that the age of the child would be between 14 to 16 years. Therefore, it can be seen that the age of the child can also be more than 16 years. In that event, the offence is not made out since the alleged physical intimacy is due to the consent of the victim herself. Alternatively, the learned counsel for the appellant argued that in this case, the accused had already undergone a sentence of about 3 ½ years and the law as it stood in the year 2012, a sentence lesser than the minimum sentence can also be imposed for special and adequate reasons. In this case, the victim had gone back to her native state and she is living with her family and the accused got married and has a male child and he is eking out his livelihood in a lawful manner and is involved in any other the offence what so ever. Therefore, the same can be taken as a special and adequate



Crl.A.No.417 of 2016

WEB COPY

9. Per contra, the learned Government Advocate (Crl. Side) appearing on behalf of the prosecution submitted that it is the specific cross examination and the case of the defence that the intercourse happened with the consent of the victim. Admittedly, the victim was less than 16 years of age as on date of the incident. Therefore, from the very defence itself the offence stood proved. He would further submit that in this case, the prosecution has not left any stone unturned as the stainless steel tumbler in which the juice was served and the original bottle in which the sedative was purchased were seized and sent for forensic examination and a report has been obtained. Therefore, the prosecution has categorically proved that by mixing sedatives in the juice, the accused had intercourse with the victim child. Therefore, he would submit that the trial Court has rightly found the accused guilty of the offence. He would submit that this is a serious crime against women, especially a minor child less than 16 years of age. Therefore, no lenency can be shown in the matter of punishment.

10. I considered the rival submissions made on the either side and perused the material records of the case.



Crl.A.No.417 of 2016

can be seen from the case of the prosecution that the victim is less than 16 years

of age. As a matter of fact, the school teacher of the victim child was examined as P.W.5 and through him the school records were marked, which made it clear that the date of birth of the victim child is 13.09.1997. The victim had deposed that during the time of the incident, she was about 13 years and the doctor who examined the victim also deposed that the child would be aged between 14 to 16 years. Thus, from any view of the matter, it cannot be said that the child was of less than 16 years of age or more. Once the age of the child was less than 16 years, as the law stood as on date of the offence in the year 2012, even as per the defence case if there has been consent or co-operation, still the same would amount to an offence under Section 376 (1) IPC. This apart, except to cross examine that the victim child did not relieve herself when the accused held her hand and took her inside the house and that she did not run away from the house and that there does not seem to be any violent resistance, in no other manner, the defence had established that the girl was even co-operating.

12. On the other hand, the prosecution has categorically proved that the intercourse had happened by making the child to consume the juice mixed with a solution named Triclofos which is sedative in nature. Therefore, no exception can be taken for the trial Court for finding the appellant guilty of the offence under



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13. Now coming to the question of sentence, the trial Court has only imposed the minimum sentence of seven years as far as the offence under Section 376 (1) IPC. When this Court enquired about the present position of the parties, it was ascertained and reported that the accused was originally married to one Sangeetha at the time of the occurrence. Thereafter, he was separated from the said Sangeetha and married another person named xxxx and that he has got one son and he is living with his family. As far as the victim child is concerned, she has gone back to Nepal which is her native and no further information could be traced out. However, it is seen that the accused was married at the time of the alleged incident and that there is no other special circumstance to impose a sentence lesser than the minimum punishment as the offence was committed on a child who is less than 16 years of age.

14. Therefore, I am of the view that even though the accused has already undergone about 3 ½ years of sentence, this is not a fit case where this Court can impose a sentence lesser than the minimum sentence. Accordingly, I am unable to accept the alternative submission of the learned counsel for the appellant.



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Crl.A.No.417 of 2016

D.BHARATHA CHAKRAVARTHY, J.

Anu

15. In the result, finding no merits, this Criminal Appeal stands dismissed and the convictional sentence imposed by the trial Court stands confirmed.

25.04.2023

Index : yes/no

Speaking order/Non-speaking order

Anu

To

1.The Inspector of Police,
Rasipuram Police Station,
Namakkal District.

2.The Mahalir Court, Namakkal

3.The Public Prosecutor,
Madras High Court.

Crl.A.No.417 of 2016