



.CrI.A.No.721 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 23.11.2023

Delivered On : 21.12.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CrI.A.No.721 of 2016

M.Selvamani

... Appellant/Accused

Vs.

State Rep. By
The Inspector of Police,
All Women Police Station,
Vridhachalam,
Cuddalore District.

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence passed against this Appellant/Accused on 21.09.2016 in S.C.No.54/2013 on the file of the learned District and Sessions Judge, Fast Track Mahila Court, Cuddalore District and acquit him from all the charges.

For Appellant : Mr.S.Saravana Kumar

For Respondent : Ms.G.V.Kasthuri
Additional Public Prosecutor

ORDER

This Criminal Appeal has been filed to set aside the conviction and sentence passed by the learned District and Sessions Judge, Fast Track Mahila Court, Cuddalore District in S.C.No.54/2013, dated 21.09.2016.



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2. The learned Counsel appearing for the Appellant submitted that the Appellant is the cousin of the victim. As per the prosecution case, the Accused is alleged to have had forcible sexual intercourse on the victim when the victim was alone at her home continuously for some months from 15.08.2011. Subsequently, she became pregnant. The parents of the victim were employed as daily wage labourers in Nagapattinam. The victim studied upto 8th standard at Nagapattinam. Subsequently, for her high School studies her parents had transferred to their native Village, where their relatives are residing as neighbours. The victim is the eldest daughter of her parents. She was taking care of her younger siblings and she was attending School from her native Village. The Accused is none other than the Paternal Aunt's son who was already married. As per the version of the victim, he is alleged to have come to the house of the victim and cried that he did not have children after five years of marriage. So he wanted to marry her. Since she happens to be his maternal uncle's daughter, had forced sex on her. She was helpless. When she resisted and advised on the ground that he was already married, he is alleged to have informed her that he will get approval from her parents at Nagapattinam. By the time, she became pregnant by eight months, her mother came to know about the pregnancy



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and questioned her, for which she replied that the Accused, her cousin is responsible. The mother of the victim asked her to go to the house of the Accused and inform his parents. The victim is alleged to have gone to the house of the Accused whereupon the Accused and his parents refused the request of the victim to marry her. Also, it is alleged that the wife of the Accused pulled the hair of the victim and kicked her out of the house. Therefore, village Panchayat was convened. Subsequently, after five days after the date of occurrence in the residence of the Accused, the complaint was lodged on 20.03.2012.

3.It is the case of the Appellant that the victim/prosecutrix was not a minor on the alleged date of occurrence. The learned Sessions Judge failed to consider the grounds. Also, it is the second ground of attack by the learned Counsel for the Appellant that after examination of the Investigation Officer, the last witness in the trial, the Prosecution had examined the Head Master of the School as an additional witness. He was not at all cited as a witness. In the final report where the list of witnesses is provided, the Head Master was not cited as witness. After examination of the Investigation Officer and Photo copy of the Transfer Certificate of the



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victim/prosecutrix attested by the Head Master was marked as a document.

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The learned Judge placed reliance heavily on this particular document and arrived at a conclusion that the victim was raped by the Accused and convicted the Accused for the offence under Section 376 of IPC and also under Section 417 of IPC. Aggrieved by the same, the Accused had come before this Court and filed this Appeal.

4.The learned Counsel for the Appellant also placed reliance on the reported ruling of the Hon'ble Supreme Court in **(2010) 3 SCC 757 [Jabar Singh -vs- Dinesh and another]** wherein it is stated that the Court shall not rely upon the copies of Transfer Certificate without reliable document like birth certificate or admission register (original register) to be compared. Here the attested copy of the Transfer Certificate was marked by examining the Head Master of the School where the victim is alleged to have studied. The Accused was taken by surprise by the examination of the additional witness. The Accused is prejudiced by not furnishing the copy of the statement of the witness or the documents under Section 207 of Cr.P.C. Therefore, the valuable defence of the Accused was lost in this case. The learned Sessions Judge, failed to appreciate those facts and arrived at a



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conclusion mainly placing reliance on the evidence of the additional witness cited by the Prosecution after examination of the Investigation Officer. The alleged Transfer Certificate was relied upon by the learned Judge to arrive at a conclusion that the victim was not competent to give consent for consensual sex. Therefore, the valuable defence of the Accused is lost in this case.

5.In the light of the above grounds, the learned Counsel for the Accused seeks to set aside the Judgment of conviction recorded by the learned District and Sessions Judge, Fast Track Mahila Court, Cuddalore.

6.The learned Additional Public Prosecutor by way of reply submitted that the Judgment of the learned trial Judge is a well reasoned Judgment that does not warrant any interference by this Court. The DNA report under Ex.P-9 and Ex.P-2 are sufficient materials to convict the Accused. Ex.P-10- Transfer Certificate is a valid document, as per the ruling of the Hon'ble Supreme Court relied by the learned Additional Public Prosecutor. Further, the learned Additional Public Prosecutor submits that the medical report/Radiologist report under Ex.P-4 states that the victim was aged



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between 17 and 18. She has not crossed the age of 18. She is incompetent to give consent. As per Ex.P-10-Transfer Certificate her age on the alleged date of occurrence is 16 years. Therefore, Judgment of the learned Sessions Judge convicting the Accused for the offence under Sections 376 and 417 of IPC is a well reasoned Judgment which does not warrant any interference by this Court. The Appeal lacks merit and is to be dismissed.

7.Point for Consideration

Whether the Judgment of Conviction recorded by the learned District and Sessions Judge, Fast Track Mahila Court, Cuddalore in S.C.No.54/2013 dated 21.09.2016 is to be set aside?

8.Heard the learned Counsel for the Appellant and the learned Additional Public Prosecutor for the State.

9. Perused the deposition of witnesses viz., P.W-1 to P.W-10 and Ex.P-1 to Ex.P-10 and the Judgment of the learned District and Sessions Judge, Fast Track Mahila Court, Cuddalore in S.C.No.54/2013 dated



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10. The facts of the case are that the victim and the Accused-1 are cousins. The victim is the daughter of maternal uncle of the Accused-1 and the daughter of the brother of Accused-3 before the trial Court. Accused No.1 is the son of Accused Nos.2 and 3. After trial, A-2 and A-3 were acquitted from all the charges. A-1 alone was convicted for the offences under Sections 376, 417 and 354 of IPC and acquitted from the charge under Section 506 (i) of IPC. Aggrieved by the same, this Appeal is preferred by him.

11. The learned Counsel for the Appellant invited the attention of this Court to the evidence of P.W-1-victim. It is the submission that the victim was admitted in School at the age of 8 years as she did not speak as a normal child till the age of 8. Those facts had been adduced through the mother of P.W-1. That is why she was taken to Nagapattinam and admitted in School for special child at Nagappattinam. After gaining normal health, after special School Education, she was shifted to normal School. Subsequent shifting to the native Village where the relatives of the father are available as neighbours, parents left her under their care. Also, the other



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children of the parents of the victim/siblings of victim were left under their care. The victim is the eldest daughter. While so, the neighbours of the victim/relatives of father of the victim were Accused 2 and 3. Accused-1 who is the son of Accused Nos.2 and 3 is supposed to be protecting them. In the course of the conduct, he had developed intimacy with the victim girl. Those facts are available in the cross-examination of the victim as P.W-1 wherein she had stated that till her pregnancy came to be known to the people outside, she did not inform her mother. Also, she admits that she knew the status of the Accused-1 who is already married. She admits on the date of occurrence, she had completed 19 years where the Doctor evidence says that the victim is aged between 17 and 18 years. The cross-examination of the Doctor/P.W-7 admits that there will be a variation in the range of +/- 2 according to the nature of the body, nature of food habits of the individual concerned. From the evidence of P.W-1/victim, it is found that it was a consensual relationship. Therefore, the Judgment of conviction under Sections 376, 354, 417 of IPC are modified in Appeal as offence under Section 417 of IPC. From the records, it is found that the Accused was detained in this case in Cr.No.6/2012 for a period of nine months from 21.09.2016 to 23.05.2017.



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12. The period already undergone in detention is set off. The sentence of one year imprisonment for offence under Section 417 IPC is modified as one of sentence of 9 months imprisonment and compensation of Rs.5,00,000/- to be paid to the victim and minor child of the victim. The Appellant was directed to pay compensation for which the learned Counsel for the Appellant had produced a Demand Draft for Rs.5,00,000/- deposited in the name of Court of the learned Sessions Judge, Fast Track Mahila Court. Apart from the amount deposited by the Accused-1/Appellant, the Legal Services Authority attached to the Cuddalore District shall issue summons through the Inspector of Police, All Women Police Station, Vridhachalam to summon the victim/P.W-1 in S.C.No.54/2013 in Cr.No.6/2012 on the file of the Inspector of Police, All Women Police Station, Vridhachalam to hold enquiry and dispose off the case under the Victim Compensation Scheme by awarding appropriate amount as per Tamil Nadu Victim Compensation Scheme, 2013 vide G.O.Ms.No.1055, Home (Police, XII), 30th November 2013.

13. The point for consideration is answered in favour of the Appellant



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Apart from this, as per the law of this country since the parentage of three year old child had been established the minor child born to the Prosecutrix and the Appellant/Accused No.1 is entitled to claim maintenance from his biological father as per the law of this country.

21.12.2023

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1. The Judicial Magistrate - II,
Vridhachalam.
2. The Sessions Judge,
Fast Track Mahila Court,
Cuddalore.
3. The Inspector of Police,
All Women Police Station,
Vridhachalam,
Cuddalore District.
4. The Public Prosecutor,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

dh

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