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Crl.R.C(MD)No.77 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.77 of 2018

Gopalakrishnan

... Petitioner/
Appellant/Sole Accused

Vs.

The Inspector of Police,
Vellianai Police Station,
Vellianai,
Karur District.
In Crime No.94 of 2012.

... Respondent/
Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397 of the Code of Criminal Procedure, to set aside the Judgment made in Crl.A.No.6 of 2013 on the file of the Mahila Court, Karur, dated 15.07.2014, confirming the Judgment in S.C.No.73 of 2012 on the file of the Assistant Sessions Judge, Karur, dated 02.02.2013 convicting the petitioner for an offence under Sections 417 and 376 of I.P.C and sentenced to undergo 7 years Rigorous Imprisonment and fine sum of Rs.5,000/- and in default six months Rigorous Imprisonment and allow this Criminal Revision Petition.

For Petitioner : Mr.S.Gokul Raj

For Respondent : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)



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ORDER

The revision has been filed to set aside the Judgment made in Crl.A.No.6 of 2013 on the file of the Mahila Court, Karur, dated 15.07.2014, confirming the Judgment made in S.C.No.73 of 2012 on the file of the Assistant Sessions Judge, Karur, dated 02.02.2013.

2.The case of the prosecution is that the accused used to interact with the victim aged about 14 years under the pretext of a love affair. The accused was working in the chilli chicken shop and he was residing at Jothivadam. On 08.05.2012 at about 5.00 p.m., when the victim called him through phone, the accused invited her to his house. When the victim entered into his house, he immediately locked the door and on the pretext of marriage compelled her to have a sexual relationship. When the victim refused to do so, he committed rape on her. Hence the complaint.

3.On receipt of the said complaint, the respondent registered the F.I.R in Crime No.26 of 2012 for the offences under Sections 417 and 376 of I.P.C. After completion of the investigation, the respondent filed a final report and the same has been taken



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cognizance in S.C.No.73 of 2012 on the file of the Assistant Sessions Judge, Karur.

4.In order to bring the charges to home, the prosecution had examined P.W.1 to P.W.12 and marked Ex.P.1 to Ex.P.12 and also marked M.O.1 and M.O.2 and on the side of the petitioner, no one was examined and no documents were marked.

5.On perusal of the oral and documentary evidence, the trial Court found the accused guilty for the offence punishable under Section 376 of I.P.C and sentenced him to undergo seven years Rigorous Imprisonment and also imposed a fine of Rs.5,000/- and in default, he shall undergo six months Rigorous Imprisonment and acquitted him for the offence under Section 417 of I.P.C. Aggrieved by the same, the petitioner preferred an appeal in Crl.A.No.6 of 2013 on the file of the Mahila Court, Karur and the Appellate Court dismissed the appeal thereby confirming the conviction imposed by the trial Court. Hence, the present Revision.

6.The learned counsel appearing for the petitioner would submit that the prosecution had examined P.W.1 to P.W.12 and not at all supported the case of the prosecution to convict the petitioner



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for the offence punishable under Section 376 of I.P.C. Admittedly, the petitioner had a love affair with the victim. In fact the victim herself had called the petitioner and they had a physical relationship. Therefore, no offence is made out under Section 376 of I.P.C. Further, there was a delay in lodgment of the complaint before the respondent and there was a delay in sending the F.I.R to the Court. The said delay was not properly explained by the prosecution. Though the trial Court acquitted the petitioner for the offence punishable under Section 417 of I.P.C since it was not proved by the prosecution, the petitioner also ought to have been acquitted for the offence under Section 376 of I.P.C. Therefore, the petitioner never intended to commit rape on the victim when the victim herself came to his house and had a physical relationship. Though the prosecution produced M.O.1 and M.O.2, it was not subjected to any analysis from the laboratory in order to prove the discharge of rape. The victim was not at all subjected to the medical examination to prove the charge under Section 376 of I.P.C. Therefore, the report submitted by the Doctor cannot be taken into account. As per the evidence of the Doctor who treated the victim deposed that there is no external injury found in the medical checkup of P.W.1. Therefore the petitioner prayed for acquittal from the charge under Section 376 of I.P.C.



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7.Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent would submit that in order to prove the charge for the offence punishable under Section 376 of I.P.C, the prosecution had examined P.W.1 to P.W.12 and marked Ex.P.1 to Ex.P.12 and the prosecution also produced material objects M.O.1 and M.O.2. The victim was examined as P.W. 1. She categorically deposed that she called the petitioner through phone, and she was invited by him. When the victim went there, she was compelled to come inside his house. Immediately, the petitioner locked the door and committed rape on her. Thereafter, the victim managed to reach her house with blood bleeding and informed her paternal uncle who was examined as P.W.4. Immediately, the same was informed to her parents, who were examined as P.W.2 and P.W.3. The evidence of P.W.1 was corroborated by P.W.2 to P.W.4. Immediately she was taken to the hospital and the Doctor who treated her was examined as P.W.7. The Doctor also opined that the victim was subjected to rape and as such, she sustained injuries on her private part. Therefore, there was fresh blood bleeding and the said blood bleeding was not due to her monthly periods. Therefore, the prosecution proved its case beyond any doubt and both the Courts below rightly convicted the



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petitioner for the offence punishable under Section 376 of I.P.C and the same does not require any interference by this Court and prayed for dismissal of the revision.

8.Heard the learned counsel appearing on either side and perused the materials available on record.

9.The victim was aged only 14 years at the time of occurrence. Under the pretext of a love affair and marriage, the petitioner called her inside the house and locked the door. When the victim tried to get out of the house, the petitioner restrained her inside the house and also closed her mouth with a cloth. Thereafter he committed rape on her. Immediately it was informed to the respondent and the complaint was lodged by the defacto complainant.

10.P.W.1/Victim categorically deposed that when the victim called the petitioner through phone, he invited her into his house. He compelled her to come inside the house and immediately locked the door. He raped her by closing her mouth with a cloth. Therefore, her inskirt had blood stained since while committing rape she sustained injury. The petitioner also threatened her not to



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disclose to anybody about the rape committed by him. Immediately after reaching her house, the victim informed to her uncle. Thereafter, informed to her parents and she was taken to the hospital for treatment. While she was under treatment informed to the respondent and after recording her statement, F.I.R was registered.

11.The blood-stained inskirts were produced as M.O.1 and M.O.2. She further deposed that after the rape she had bleeding. It was also corroborated by her parents, who were examined as P.W.2 and P.W.3. On the next day, they informed the same to the respondent and thereafter recorded the statement of the victim and registered the F.I.R. Further, the Doctor who treated the victim was examined as P.W.7. The Doctor deposed that she found fresh blood bleeding on the victim in both legs. She also found injuries on the victim's vagina. At the time of examination, there was bleeding from her vagina and as such, she opined that she was subjected to rape. She recorded the same in the accident register, which was marked as Ex.P.5. It clearly corroborated the evidence of P.W.1. Though the Doctor was not able to subject her to a medical examination in order to verify the hymen since she had pain and fear after the rape committed by the petitioner, it is not



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fatal to the case of the prosecution since there is no need to prove that the hymen ruptured, or it is not intact to prove the charge of rape. There was fresh blood bleeding from her private parts, and the blood-stained inskirts were produced as M.O.1 and M.O.2. That apart, P.W.7 deposed that she was subjected to rape and as such she sustained injuries on her vagina and due to which there was blood bleeding. Therefore, the prosecution categorically proved its case beyond any doubt and both the Courts below rightly convicted the petitioner for the offence punishable under Section 376 of I.P.C. This Court finds no infirmity or illegality in the order of conviction and sentence imposed by the Courts below and the Civil Revision Case is liable to be dismissed.

12. Accordingly, this Criminal Revision Case is dismissed. The trial Court is directed to take appropriate steps to secure the petitioner in order to serve the remaining period of sentence. Consequently, connected Miscellaneous Petitions are closed.

28.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To

- 1.The Mahila Court,
Karur.
- 2.The Assistant Sessions Judge,
Karur.
- 3.The Inspector of Police,
Vellianai Police Station,
Vellianai,
Karur District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN, J.

ps

Order made in
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