



Crl.A(MD) No.449 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 18.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE **P.DHANABAL**

CRIMINAL APPEAL(MD)No.449 of 2016

G.Irulayee

.. Appellant

Vs.

1. The Inspector of Police
Pazhayanoor Police Station,
Sivagangai District

2. C.Ramar

...Respondents

PRAYER : Criminal Appeal is filed under Section 372 of Cr.P.C to set aside the judgment delivered by the learned Sessions Judge, District Fast Track Mahila Court, Sivagangai in Sessions Case No.36 of 2013 and punish the accused considering the nature and circumstances of the case.

For Appellant	: Mr.R.Sevugaraja
For R-1	: Mr.R.M.Anbunithi
	Additional Public Prosecutor
For R-2	: Mr.V.Kanan

JUDGMENT

This Criminal Appeal has been filed by the defacto complainant /P.W.1 as against the acquittal judgment passed by the trial Court in S.C. No.36 of 2013.



2. The prosecution case is that on 21.01.2012 at about 21.00 hours when the victim was in her house, the accused went there and told that his sister asked her to come to his house. When she went to his house, the accused locked the door and made promise to marry her and thereafter had sexual intercourse and committed rape on her. Thereafter, P.W.1 who is the mother of the victim has given complaint before the respondent police and First Information Report has been registered on 31.01.2012 in Crime No.20 of 2012 for the offences under Sections 354, 376 r/w.511 of IPC. During investigation the offence under Section 376 of IPC is made out and thereby the section was altered under Section 376 of IPC. After completion of investigation, the first respondent filed final report and the same was taken on file by the learned Judicial Magistrate, Manamadurai in P.R.C.No.01 of 2013 and thereafter, the case was committed to the Court of learned Principal District Judge, Sivagangai and the case was made over to the file of the learned Sessions Judge, Fast Track Mahila Court, Sivagangai in S.C. No.36 of 2013 and the trial Court after hearing both sides framed charges under Section 354, 376 of IPC and Section 4 of TNPHW Act. The charges were read over and explained to the accused and the accused denied the charges. Thereafter, prosecution had examined witnesses P.W.1 to P.W.13 and marked Exhibits Exs.P.1 to Ex.P.8 and one material object was also



marked. After analysing the evidence adduced on both sides, the trial Court has acquitted the accused .

3. As against the judgment passed by the trial court, the present appeal has been filed by the mother of the victim on the following grounds:

a) the judgment of the trial Court is against law, weight of evidence, arbitrary and also against the principles of natural justice and also all probabilities of the case.

b) the trial Court failed to consider that the prosecution witnesses have been properly examined and categorically deposed about the occurrence. There is no dispute with regard to the age of the victim.

c) P.W.2 /victim has categorically deposed about the manner of occurrence without considering the same, the trial Court has acquitted the accused. The Investigation Officer also clearly deposed about the fair investigation conducted by him. Medical evidence also corroborated the evidence of the victim/P.W.2. Without appreciation of evidence in a proper manner the trial Court, has acquitted the accused.



4. The learned counsel appearing for the appellant would contend that, the appellant herein is the mother of the victim, who is the defacto complainant in this case. The defacto complainant gave a complaint before the respondent police and they registered the First Information Report in Crime No.20 of 2012, thereafter, the section of law was altered into Section 376 of IPC. The date of alleged occurrence is on 21.01.2012. The date of registration of the First Information Report is on 31.01.2012. Since there was panchayat convened between the parties, there is a delay in lodging the complaint and the same has not been considered by the trial Court and the trial Court has also agreed the age of the victim and wrongly came to the conclusion. After marriage of the accused, the complaint was given. There were minor discrepancies in the evidence of prosecution witness. Those minor discrepancies will not affect the case of prosecution. P.W.2 in her evidence had categorically deposed about the occurrence. The evidence of P.W.2, corroborated through doctor evidence i.e., P.W.10, who treated the victim in the hospital and thereby, the prosecution case has been clearly proved as against the appellant and the trial Court failed to consider the same and the accused is liable to be convicted by allowing this appeal.



5. The learned counsel appearing for the second respondent would contend that based on the complaint given by the mother of the victim, the First Information Report was registered for the offence under Section 376 r/w. 511 of IPC. Thereafter, witnesses developed their story and the section was altered. There is a delay of 10 days in lodging the complaint and the same was not properly explained by the prosecution. After marriage of the accused, with ulterior motive, this false complaint has been lodged as against the accused. The evidence of prosecution witnesses are highly doubtful and the doctor also deposed that no injuries found on the body of the victim. P.W.1 in her cross examination stated that, if marriage was not solemnized to the accused, she would not have given complaint as against him. Therefore, the main motive to give complaint is to stop the marriage between the accused and the another girl. Therefore, the trial Court taking into consideration of all these facts and upon the oral and documentary evidence had acquitted the accused, from the charges levelled as against him.

6. The learned Additional Public Prosecutor appearing for the first respondent has argued that the mother of the victim girl had given complaint and based on the complaint the first respondent registered First Information Report and after elaborate investigation



filed final report. In order to prove the case of prosecution they examined P.W.1 to P.W.13 and marked Exs.P.1 to Ex.P.8 and also marked one material object. The P.W.2 is the victim and she deposed about the occurrence and rape committed by the accused. The doctor P.W.10 also corroborated the evidence of P.W.2. The date of occurrence is 21.01.2012 and the complaint was lodged on 30.01.2012 and the delay was due to panchayat conveyed between the parties. Therefore the delay was properly explained by the prosecution. The case of prosecution has been proved beyond reasonable doubts through sufficient evidence. However the trial Court failed to believe the prosecution case and acquitted the accused from the charges levelled against him. The state also not preferred any appeal against the judgment of the trial Court.

7. Upon hearing both sides, perusing the records, grounds and the judgment of the lower Court, the point for determination in this appeal are:

i) Whether the prosecution has proved charges for the offence under Sections 354 and 376 of IPC and Section 4 of TNPHW Act as against the accused beyond reasonable doubts?



ii) Whether the acquittal judgment passed by the trial Court is sustainable in law and facts ?

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8. The prosecution case is that on 21.01.2012, at about 21.00 hrs. when the victim was in her house, the accused went there and had taken her to his house stating that, his sister called her. Immediately, after entering into house he locked inside the house and thereafter had sexual intercourse and committed rape on the victim. Therefore, charges were framed against the accused under Sections 354, 376 of IPC and Section 4 of TNPHW Act by the trial Court. In this case, there is no contravention about the age of the victim and the accused also not disputed the age of the victim. As far as charge under Section 354 and 376 of IPC are concerned, P.W.2, who is the victim in this case has deposed in her evidence that, on the date of occurrence, the accused had taken her to his house stating that his sister called her to his house and when she reached the house nobody was present. Thereafter, the accused stated to her that his parents arranged marriage to him but, he is willing to marry her and then on compulsion, he had sexual intercourse and committed rape on the victim. After the occurrence, when she came to her house at that time her brother Manikandan and her grand mother and one Guru were also present outside the house of accused. After seeing them she



went to her house. Thereafter, she narrated about the occurrence, on the next day at about 8.00 am., to her mother. Thereafter, convened panchayat and in the panchayat, the accused denied the occurrence and thereby, the mother of the victim gave complaint before the respondent police.

9. The complaint/Ex.P.1 reveals that, the accused had taken the victim to his house and thereafter attempted to commit rape and the same was avoided by the victim and she ran away from the house. Therefore, according to the complaint, the accused attempted to commit rape, but the evidence of P.W.2 reveals that, the accused committed rape on the victim. The date of occurrence is 21.01.2012 but the complaint was lodged only on 31.01.2012. The reason for delay in lodging the complaint is that due to the panchayat convened there was a delay. According to the complaint, the petitioner only attempted to commit rape but during investigation the witnesses stated that the accused committed rape, thereby the lodging of complaint itself creates serious doubt over the case of prosecution.

10. Further, P.W.10, the doctor, who examined the victim also stated in her evidence that, when she examined the victim there was no injuries found on the victim and hymen not intact and she gave



certificate Ex.P.5. Further, during cross examination she admitted that, when the victim was subjected to rape, there will be chances for bleeding, but, in this case there is no investigation on those aspects and the dress materials were not seized by the investigation officer.

11. Further P.W.1 also in her cross examination stated that, since the accused committed rape on her, she gave complaint and one day prior to the lodging of the complaint, marriage was solemnized for the accused with another girl. The P.W.3 who is the grand mother of the victim also in her cross examination stated that since the accused got married the complaint was given. Therefore, the intention for lodging of complaint shows that, due to marriage solemnized between the accused and another girl. Further the victim, P.W.2 in her cross examination stated that on 28.01.2012 itself complaint was given and she along with her grandmother and uncle went to police station and before going to police station, complaint was prepared and on the same day, i.e., 28.01.2012 police examined her. But the said complaint dated 28.01.2012 was not brought to the court and the same was suppressed. Hence complaint itself created serious doubt over the prosecution case. Further, there is a delay in lodging the complaint. Therefore the intention in lodging of complaint shows that,



due to marriage solemnized between the accused and another girl the said complaint was given. Since lodging of complaint itself creates serious doubts over the case of the prosecution the theory put forth by the prosecution for the delay in lodging the complaint is unbelievable .

12. The evidence of P.W.2. victim also creates serious doubts over the prosecution case. Further as per the evidence of victim,P.W. 2 after occurrence when she came out from home her grandmother and other were present outside the house of accused. Whileso she could have stated the occurrence to her grandmother, but she has not done so. The above said conduct of victim creates serious doubt over the prosecution case. The P.W.2 in her chief examination stated that after the occurrence when she came out from the house of accused her grand mother, brother and other Guru were present in front of the house of the accused and she crossed them without saying anything, but in the cross examination the same P.W.2 stated that when she came out from the house of accused, her brother,grand mother and Guru were present outside the house of accused and they asked her what happened but she did not say anything. Further the investigation Officer/P.W.13 during his cross examination stated that it is true that in the complaint it is alleged that the accused attempted to commit rape on victim and the victim pushed down the accused and she ran



away and P.W. 1 to P.W.3 also during investigation stated the same version. Therefore the evidence of P.W. 2 is doubtful and does not inspire the confidence to this Court.

13. Further according to prosecution when the victim came out from the house she saw her grandmother and one Guru. The said Grandmother was examined as P.W.5 and she stated before the trial Court that three years ago at about 8.00 p.m., her grandson told that the victim was disappeared, then they made search along with one Alagardamy. At that time the victim was came out from the house of the accused with abnormal condition. Then she had taken the victim to her house. The said Guru was examined as P.W.11 and he deposed before the trial Court that the brother of the victim Manikandan,P.W.3 was searching his sister at that time he along with Alagarsamy searched the victim,but not able to trace out, thereafter when he go to his house he saw the victim near to his house. The brother of the victim Manikandan was examined as P.W. 3 and he deposed that the accused Ramar taken his sister at 8.00 pm.,by saying that his sister called her and he was watching T.V. Thereafter his sister was not returned back to home, hence they made search, at that time, the victim came out from the house of the accused with abnormal condition. Therefore from the evidence of P.W.3 the accused only



called the victim by saying that his sister called her. While so, there is no necessity to search the victim. But evidence of P.W.11 reveals that he along with P.W.3 and P.W.5 made search of victim and not able to trace out and then he saw the victim in front of his house. Had the victim was taken by the accused as alleged by P.W.3 then why they made search in other places instead of seeing the house of accused is also creates serious doubts over the evidence of prosecution. The said Alagarsamy was also not examined as witness in this case. According to the evidence of P.W.3 and P.W.5 the victim was came out from the house of the accused with abnormal condition, if so, the P.W.11 ought to have seen the victim near the house of the accused, but as per the evidence of P.W.11, he saw the victim in front of his house. Moreover as per complaint the victim was disappeared and then came to house only at 11.00 p.m., and no whisper about where she had gone. Therefore the prosecution case is highly doubtful and the prosecution evidences are not cogent and filled with doubts.

14. As far as the charges levelled against the accused are concerned no sufficient evidence adduced as against the accused that he outraged the modesty of victim and he committed rape on the victim and harassed the victim. In this case the main witness is P.W.2 and her evidence is not cogent and not reliable. The P.W.10 who



examined the victim medically had deposed that she examined the victim on 31.01.2012 and no external injuries and hymen intact. The date of alleged occurrence is 21.12.2012 but the victim was examined on 31.01.2012 after 10 days, thereby no any adverse evidence as against the accused. Further doctor/P.W.10 in her evidence stated that if victim was raped first time there may be chances for bleeding. Had the occurrence happened as alleged by the victim then she could got bleeding but no blood strained clothes were recovered by the police. The P.W.2 in this regard specifically stated that there was no bleeding on the date of occurrence. Therefore as discussed above the prosecution has failed to prove the charges levelled against the accused for the offences under Sections 354,379 of IPC and Section 4 of TNPHW Act beyond reasonable doubts.

15. The reason stated by the prosecution for delay in lodging the complaint is also not acceptable and the police have also not seized the blood strains materials of the victim. However, P.W.2 in her cross examination stated that, she also did not show any blood strains in the dress material.



16. The trial Court in the judgment has categorically discussed about the evidence adduced on the side of the prosecution and after analysing the evidence adduced by the prosecution had come to the conclusion that, the prosecution failed to prove charges beyond any reasonable doubts and the available evidence are filled with doubts, thereby acquitted the accused. It is well settled law as far as the acquittal judgment passed by the trial Court is concerned, this Court has to scrutinise the documents and analyse the judgment with cautious and carefully. This Court has perused the judgment of the trial Court and the trial Court had elaborately discussed the case in all aspects and correctly acquitted the accused and no infirmity found in the judgment of the trial Court and no warrant interference by this Court.. Therefore the appeal has no merits and it deserves to be dismissed.

17. Accordingly the appeal is dismissed and the acquittal judgment passed by the trial Court in S.C. No.36 of 2013 on the file of the learned Sessions Judge, Fast Track Mahila Court, Sivagangai is hereby confirmed.

18.08.2023

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

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1. The Sessions Judge, Fast Track Mahila Court, Sivagangai
2. The Inspector of Police
Pazhayanoor Police Station,
Sivagangai District
3. The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.
4. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai



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Crl.A(MD) No.449 of 2016

P.DHANABAL, J.

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CRL.A(MD)No.449 of 2016

18.08.2023