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CRLA.No.623 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.08.2024

CORAM :

MR. JUSTICE N.SESHASAYEE

CrI.A.No.623 of 2017
and CrI.M.P.No.12492 of 2017

G.Selvam

... Petitioner

Vs.

The State,
Rep. by Inspector of Police
All Women Police Station
Sethiyathope
(Crime No.4 of 2014)

... Respondent

Prayer: Criminal Appeal is filed under Section 374 (2) Cr.P.C. to set aside the judgment of conviction and sentence imposed on the appellant by an order dated 29.06.2017 passed in S.C.No.172 of 2015, passed by the District Mahila Sessions Court, Cuddalore and allow the above criminal appeal.

For Petitioner : Mr.R.Ragavendran

For Respondent : Dr.C.E.Pratap
Government Advocate (CrI. Side)



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JUDGMENT

This appeal is preferred challenging the judgment of the District Mahila Sessions Court, Cuddalore in S.C.No.172 of 2015, under which the learned Sessions Judge has convicted and sentenced the appellant for the offences U/s.376(2) (n), 450 and 506(i) I.P.C.

2.The case of the prosecution commences with Ex.P1, complaint, preferred by the prosecutrix was later examined as PW1 receiving which PW6 registered Ex.P5, F.I.R. The quintessence as disclosed in the F.I.R. is that the appellant / accused is a distant relative of the prosecutrix, that he is living in the neighbourhood, that the prosecutrix has lost her father and was living with her maternal grand mother and on 20.05.2012 the appellant entered the house of the prosecutrix and forced himself upon her and committed rape under intimidation. The prosecutrix was duly sent for medical examination and she was examined by PW4. Besides PW5, the Radiologist, took certain x-rays to ascertain the approximate age of the prosecutrix and has given in Ex.P3, age certificate, as per which the prosecutrix at the relevant time was anywhere between 20 and 22 years. It may have to be stated here that the F.I.R. was registered after the



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prosecutrix has begotten a child. Hence, PW7, the investigating officer has obtained a D.N.A. test report of the child. The said report was marked during trial as Ex.P8, which confirms that the child born to the prosecutrix was born to her through the appellant. Concluding her investigation, PW7 laid a final report based on which the trial Court framed necessary charges as outlined above.

3.Post trial, on appreciating the evidence before it, the trial Court found the appellant guilty of all the charges laid against him and sentenced as below:

<i>Accused</i>	<i>Offence</i>	<i>Sentence imposed</i>
Accused	U/s.450 I.P.C.	R.I. for 5 years and a fine of Rs.1,000/- in default to undergo R.I. for 6 months.
	U/s.376(2) (n) I.P.C.	R.I. for 10 years and a fine of Rs.5,000/- in default R.I. for 1 year.
	U/s.506(i) I.P.C.	R.I. for 1 year.

This judgment is now under challenge. Heard both sides.

4.The learned counsel for the appellant made the following submissions:



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a) PW1 in her cross examination has disclosed that she has been having physical relationship with the appellant multiple times over a period of time, but she has never raised any objection at any time. Indeed, she did not level any accusation against the appellant till she begotten child. Significantly, the prosecutrix was an adult and she knew or atleast ought to know that what she was engaging in. The trial Court, however, overlooked this part of the cross examination of PW1.

b) When the appeal was preferred, this Court tried to find what best could be done to the child born to the prosecutrix through the appellant, for which purpose it referred the matter to mediation. The result of the mediation was not a solution for the child that was already born, but on the contrary ended up with them having a second child.

5. With considerable amusement, this Court tried to ascertain the last mentioned fact, the learned Government Advocate (Crl. Side) on instruction by the investigating agency reported that the said statement is



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true. Indeed, the learned counsel for the appellant even circulated the birth certificate of the 2nd child born to the appellant.

6. There are no rules in love and war and so say the same and this case perhaps stands as a testimony to this statement. Neither prosecution nor conviction separated the prosecutrix and the appellant. At the end of the day, parties are adults and the constitution of the country does not make a moralistic statement, wherein grant citizens their life to live and if the prosecutrix and the appellant choose their way to live on their free will. There is no precious thing the legal system can do except recording its finding that in this instant case, prosecution has not been able to establish that there indeed was a crime. In fact, there is an abuse of judicial process when the prosecutrix set a criminal law in motion, perhaps with a false F.I.R. But then, that is a story of the past and this Court does not intent to revisit the issue.

7. In the result, the above criminal appeal stands allowed and the impugned judgment of conviction and sentence imposed on the appellant



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/ accused by the District Mahila Sessions Court, Cuddalore in S.C.No.172 of 2015, vide Judgment dated 29.06.2017 are hereby set aside. The appellant / accused is acquitted from all charges levelled against him. Fine amount, if any paid, shall be refunded to him. Consequently, the connected miscellaneous petition is closed.

07.08.2024

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Index : yes / no

Neutral Citation

To

1. The District Mahila Sessions Court
Cuddalore

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