



Crl.A(MD)No.261 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	29/10/2024
Date of Pronounced	02/12/2024

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.A(MD)No.261 of 2019

Selvam : Appellant/Accused
Vs.
State through
The Inspector of Police,
All Women Police Station,
Cantonment Circle,
Trichy City. : Respondent/Complainant

Prayer:- This Criminal Appeal is filed under Section 374 of the Criminal Procedure Code, to call for the records connected to the judgment in SC No.13 of 2016 on the file of the Sessions Judge, Mahila Court, Trichy, dated 30/09/2019 and set aside the same.

For Appellant : Mr.R.Alagumani
For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

J U D G M E N T

This Criminal Appeal is filed against the judgment of conviction and sentence passed in SC No.13 of 2016 on the file of the Sessions Judge, Mahila Court, Trichy, dated 30/09/2019.



2.The case of the prosecution in brief:-

The victim Jamuna who is the sister-in-law of the accused living with her parents. On 25/04/2015, the accused who came to his mother-in-law's house in a drunken mood, where the victim Jamuna was also residing and used the absence of other family members, embraced the victim Jamuna, pushed her down and raped her and also threatened her not to disclose to anybody or otherwise he will spoil her sister's life. Upon the above said occurrence, a case in Crime No.25 of 2015 was registered by the respondent police for the offences under sections 376 and 506(i) IPC. After completing the investigation, filed a final report and it was taken cognizance in Sessions Case No.13 of 2015 by the Principal District and Sessions Judge, Trichy. After completing 207 Cr.P.C proceedings, framed the charges for the offences punishable under sections 376 and 506(i) IPC.

3.The following charges were framed against the accused:-

(i)On 25/04/2015, the accused who came to his mother-in-law's house in a drunken mood, where the victim Jamuna was also residing and utilized the absence of other family members, embraced the victim



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Cr1.A(MD)No.261 of 2019



Jamuna and pushed her down and raped her and thereby the accused the offence punishable under section 376 IPC: and

(ii) In pursuance of the above said occurrence, the accused threatened the victim girl not to disclose to anybody or otherwise he will spoil her sister's life and thereby the accused committed the offence punishable under section 506(i) IPC.

4.To that, the accused pleaded not guilty and claimed to be tried.

5.During trial, on the side of the prosecution, 15 witnesses were examined and 24 documents marked. Apart from that, M01 to M03 were marked. On the side of the accused, no oral and documentary evidence was adduced.

6.**PW1**-victim girl is the sister-in-law of the accused. She married to one Masilamani, separated from him and living with her parents. The 3rd sister Radha was married to the accused and got two childrens. Because of the matrimonial issue between them, she lodged a complaint



against the accused before Fort Police Station, Trichy. But in spite of the matrimonial issue, they were living together. Since the accused is the brother-in-law, PW1 is talking with him. On 24/04/2015, her other sister Anitha was admitted in the Government Hospital for delivery and the accused was helping them. At about 12.00 noon, on that day, the accused came in a drunken mood for taking lunch. At that time, he misbehaved with her, forcibly raped her and she was criminally intimidated not to disclose the same to anyone. After a month, she went to the hospital and at that time, she was told that she was pregnant. That was enquired as to the reason for the pregnancy, at that time only, she disclosed the same to her mother and sister. When they enquired the accused, they were also criminally intimidated by him. The other sister namely Radha, the wife of the accused, was driven out of the house because of this issue. On 30/04/2015, PW1 lodged a complaint with the help of an Advocate. When she was staying in her Uncle's house, she fell down from stairs and aborted. At that time, she was three months pregnant.

7.The complaint given by PW1 was received by **PW12** who was working as Sub Inspector of Police in AWPS, on 30/05/2015. Registered a case in Crime No.25 of 2015 for the offences under sections 376 and 506(i) IPC. She submitted the original records to the Court and copies to



the higher officials.

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8.**PW15** was the Inspector of Police, took up further investigation, visited the place of occurrence, on 30/05/2015 at about 07.00 pm; Prepared the rough sketch and observation mahazar in the presence of the witnesses, recorded the statement of the victim and others. On 31/05/2015, he arrested the accused and remanded to custody. From him, his dress materials were seized at about 01.30 pm, as per the confession statement and she made request for recording the statement of witnesses under section 164 Cr.P.C, made a request, subjected the accused and the victim girl for medical examination. Later, recorded the statement of the other witnesses. On 12/08/2015, after completing the investigation, filed a final report for the offences under sections 376 and 506(i) IPC @ 376(1) and 506(i) IPC.

9.**PW2** is the mother of PW1. She corroborated PW1 with regard to the material particulars, occurrence, pregnancy, etc.,

10.**PW4** is the wife of the accused. She has stated about the matrimonial issue between them. She corroborated



PW1 with regard to the assault made by the accused and etc., facts.

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11.**PW5** is the sister of PW1 and she also corroborated PW1.

12.**PW6** is the Medical Officer, who examined the accused. As per his opinion, the accused is capable of performing sexual activities.

13.**PW7** is another Medical Officer, who subjected PW1 to medical examination. On opinion, he found that PW1 was pregnant of three months; her hymen was found torn and found no external injuries.

14.**PW9** is the father of PW1. He also corroborated PW1.

15.**PW10** was present when the Investigating Officer arrested the accused, recovery of dress materials; he signed in the recovery mahazar, etc.

16.**PW11** was witness to the observation mahazar prepared by the Investigating Officer.



17.**PW13** was working as Judicial Magistrate No.3, Trichy during the relevant time, recorded the statement of the victim girl under section 164 Cr.P.C.

18.Other witnesses are not material witnesses to the occurrence. With that, the prosecution side evidence was closed.

19.The accused was questioned under section 313(1) (b) of the Code of Criminal Procedure Code about the incriminating circumstances against him. He denied the evidence of the witnesses as false and stated that a false case has been foisted. No witness was examined on the defence side.

20.At the conclusion of the trial process, the trial court found the accused guilty for the offence under section 376 IPC and sentenced him to undergo **10 years Rigorous Imprisonment** and to pay a fine of Rs.5,000/-, in default to undergo six months simple imprisonment; and for the offence under section 506(i) IPC, sentenced him to undergo **6 months rigorous imprisonment** and directed the sentences to run concurrently.

21.Against the conviction and sentence, this criminal appeal is preferred by the accused.



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22.Heard both sides.

23.At the time of argument, the learned counsel appearing for the appellant has submitted that the accused was not properly defended by the previous Advocate; except PW15, no other witness was cross examined on the side of defence side; Even PW15 was cross examined by himself. According to him, the trial court ought to have appointed an Advocate to defend the case in a proper and legal manner. But without conducting proper trial, it went on to discuss the guilt of the accused in the absence of the proper evidence. This, according to him, is not legal and proper.

24.Per contra, the learned Additional Public Prosecutor would submit that the accused engaged an Advocate and he was defended, in spite of that, he failed to cross examine the material witnesses; At one point of time, opportunity was given to the accused to cross examine the witness and that was not utilized by the appellant, now no complaint can be made against the trial court stating that no proper procedure was followed.



25.No doubt that perusal of the judgment of the trial court shows he was defended by one A.Swaminathan, Advocate through Legal Aid. But except filing vakalat, it appears that the concerned Legal Aid Advocate has done anything. When the matter was called for cross examination of PW1, PW2, PW4 and PW6, he has simply stated that there was no cross examination on the side of the accused. PW6 was examined as if it was submitted by the appellant that nothing for him to cross examine PW6 Medical officer. Similarly, PW7 was not cross examined by the accused, so also PW9 and PW10. PW15 was cross examined by the accused himself in a cryptic manner. PW12 was not cross examined. PW13 and PW14 were not cross examined.

26.Perusal of the deposition copies of the witnesses and the record of proceedings made by the trial court does indicate that no proper defence was taken by the accused. The trial court ought to have mentioned all those things at the time of pronouncement of judgement. But it has simply stated that accused was defended by Mr.A.Swaminathan, but it has not brought on record the above said facts.

27.It appears that on the basis of the vakalat filed, the trial court went on even in the absence of the concerned Advocate, but permitted the accused to cross



examine some of the witnesses. At least the trial court ought to have enquired the appellant herein, whether he required some other Legal Aid Counsel or not. Nothing has been done like that. No doubt that the accused has not utilized the opportunity properly.

28.So, the question which arises for consideration is whether the conviction and sentence imposed upon the appellant requires reconsideration?

29.Now with these things in mind, we will go to the judgment of the trial court. It has simply stated in para 25 of the judgment that except few witnesses, no other witnesses were cross examined by the defence counsel. Except making this observation, the trial court has not even care to appoint a new Legal Counsel, when the earlier counsel failed.

30.As mentioned above, even worse that the accused himself was permitted to cross examine the witnesses in the absence of his Advocate. Even worse is the observation made by the trial court in para 36. It has been stated that as if the case was defended by the accused stating that PW1 victim and himself were in understanding and had physical contact. Where from the above said defence version was taken by the trial court, a reference can be made to the



cross examination of PW15 by the accused himself, wherein it has been stated that as if the PW1 and himself were in consensual relationship. As mentioned above, that fact was not elicited from PW1 by way of cross examination. At this stage, learned counsel appearing for the appellant would submit that opportunity may be given to the appellant to cross examine the material witnesses, so that he can successfully defend the matter.

31.No doubt that this is the attempt made by the appellant at the time of argument and this was objected by the learned Additional Public Prosecutor that such sort of attitude should not be encouraged and the matter should not be remitted back.

32.The facts narrated above indicates that the accused was not properly defended. The trial court has not taken proper care to see that the case was properly defended by the accused and it has imposed the capital punishment of 10 years. So, I am of the considered view that considering the nature of the offence and the punishment imposed upon the appellant, the matter may be remitted back to the trial court with a direction and liberty to the appellant herein to file proper petition under section 311 Cr.P.C to cross examine the material witnesses. If such an application is filed, the trial court



Cr1.A(MD)No.261 of 2019

is at liberty to impose cost upon the appellant for each of the witnesses and may dispose of the same on its own merits without being influenced any of the observations made either in the appeal or by the trial court.

33.With the above said, this criminal appeal is **allowed** and the conviction and sentence imposed upon the appellant is set aside. The matter is remitted back to the trial court.

02/12/2024

Index : Yes/No
Internet : Yes/No
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To,

- 1.The Sessions Judge,
Mahila Court,
Trichy.
- 2.The Inspector of Police,
All Women Police Station,
Cantonment Circle,
Trichy City.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Cr1.A(MD)No.261 of 2019

G. ILANGO VAN, J

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Cr1.A(MD)No.261 of 2019

02/12/2024