

(2015) 10 MAD CK 0173

In the Madras High Court

Case No : Criminal Appeal No. 403 of 2014 and M.P. No. 2 of 2015

Elumalai

APPELLANT

Vs

The Inspector of Police

RESPONDENT

Date of Decision : 27-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Penal Code, 1860 (IPC) — Section 376

Protection of Children from Sexual Offences Act, 2012 — Section 8

Citation : (2015) 10 MAD CK 0173

Hon'ble Judges : A. Selvam, J.

Bench : Single Bench

Advocate : R. Margabandhu, for the Appellant; P. Govindarajan, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

A. Selvam, J.—Challenge in this Criminal Appeal is to the conviction and sentence dated 8.7.2014 passed in Special Sessions Case No. 2 of 2013 by the Fast Track Mahalir Court, Vellore.

2. The case of the prosecution is that prior to 5 months from 17.5.2013, the accused has had sexual intercourse with the prosecutrix, who has not attained majority and after occurrence, brother of the prosecutrix by name Margabandu has given a complaint and the same has been registered in Crime No. 10 of 2013. The complaint has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigating Officer (P.W.11) has taken up investigation and made arrangements for conducting medical examination to prosecutrix and accordingly Dr.Harini (P.W.8) has examined her and marked Ex.P.5. Likewise, Potential Test has been conducted to the accused by Dr.Selvaraj (P.W.9) and he marked Ex.P.7. After completing investigation, a final report has been filed on the file of Judicial Magistrate No. 1, Vellore and the same has been taken on file in Special Sessions Case No. 2 of 2013.

4. The Judicial Magistrate No. 1, Vellore, after considering the facts that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the trial court.

5. The trial court, after hearing arguments of both sides and upon perusing relevant records, has framed the first charge against the accused under section 8 of Protection of Children from Sexual Offences Act, 2012 and second charge against him under section 376 of Indian Penal Code and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 11 have been examined and Exhibits 1 to 13 have been marked.

7. When the accused has been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

8. The trial court, after hearing arguments of both sides and upon analyzing the available evidence on record, has found the accused guilty under Section 376 of IPC and sentenced him to undergo 10 years Rigorous Imprisonment and also imposed a fine of Rs. 25,000/- with usual default clause and further directed that the same should be given as compensation to the victim girl. Against the conviction and sentence passed by the trial court, the present Criminal Appeal has been filed at the instance of the accused as appellant.

9. The consistent case put forth on the side of the prosecution is that five months prior to 17.5.2013, the accused has had carnal copulation with prosecutrix, who has not attained majority and thereby committed an offence of rape.

10. The de facto complainant has been examined as P.W.1. The prosecutrix has been examined as P.W.2. The Mother of the prosecutrix and Mahazar witnesses have been examined as P.Ws.3 to 5. The Doctor, who medically examined the prosecutrix has been examined as P.W.8 and the Doctor, who conducted potential test to the accused has been examined as P.W.9. The prosecution witnesses, namely P.Ws.1 and 3 to 5 have become hostile witnesses.

11. The trial court, after considering the evidence adduced by the prosecutrix coupled with medical evidence, has found the accused guilty under section 376 of IPC.

12. The learned counsel appearing for the appellant/accused has raised the following points so as to set aside the conviction and sentence passed by the trial court.

(i) During the course of cross-examination, the prosecutrix (P.W.2) has clearly admitted to the effect that she has intended to marry the accused and the same has not been considered by the trial court

(ii) Even in Ex.P.1, Complaint, and in the charges, specific dates of occurrence have not been mentioned.

(iii) Birth Certificate of the prosecutrix has not been filed on the side of the prosecution except Ex.P.13, School Transfer Certificate and the same cannot be given effect to.

13. In order to sustain the conviction and sentence passed by the trial court, the learned Additional Public Prosecutor has contended that in a case like this, victim girl alone is a competent witness to speak about the factum of offence and in the instant case, the prosecutrix has been examined as P.W.2 and she has given clear evidence to the effect that the accused has had a carnal copulation with her on so many occasions and due to his overt acts, she has become pregnant and her evidence has been clearly corroborated by medical evidence by way of examining P.W.8 and the trial court, after considering the evidence given by the prosecutrix coupled with medical evidence, has rightly found the accused guilty under section 376 of IPC and therefore, the conviction and sentence passed by the trial court are not liable to be set aside.

14. The prosecution has set the law in motion only on the basis of Ex.P.1, Complaint, wherein it has been clearly stated about the sexual intercourse alleged to have been committed by the accused. It is true that in the instant case, the de facto complainant, mother of the victim and Mahazar witnesses have become hostile witnesses. Considering the nature of the offences alleged to have been committed by the accused, the role of P.Ws.1 and 3 to 5 does not occupy any importance. As rightly pointed out on the side of the prosecution, the Court has to meticulously analyze the evidence given by the prosecutrix.

15. The prosecutrix has been examined as P.W.2 and her specific evidence is that the accused has had a coition with her on so many occasions and due to that, she has become pregnant. In fact, the evidence given by P.W.2 has been clearly corroborated by the evidence given by P.W.8 and her specific evidence is that at the time of examination, P.W.2 has had pregnancy. Therefore, it is quite clear that the prosecution has established the guilt of the accused punishable under section 376 of IPC by way of examining the prosecutrix as P.W.2 and other medical witness, viz., P.W.8.

16. The first and foremost contention put forth on the side of the appellant/accused is that during the course of cross-examination, the prosecutrix has clearly admitted to the effect that she has intended to marry the accused. Of course, it is true that the prosecutrix has given such kind of evidence. In the instant case, specific contention put forth on the side of the prosecution is that during occurrence, the prosecutrix has not attained even age of 16 years. Considering the age of prosecutrix, the admission made by her would not impinge the case of the prosecution. Therefore, the first and foremost contention urged on the side of the appellant/accused is sans merit.

17. The second contention put forth on the side of the appellant/accused is that

the even in Ex.P.1, Complaint or in the charges, dates of occurrence have not been specifically mentioned.

18. The consistent case put forth on the side of prosecution is that five months prior to 17.5.2013, the accused has had intercourse with the prosecutrix. Of course, it is true that some flimsy variations are found with regard to period of occurrence and that itself would not militate the case of the prosecution, since the prosecutrix has given picturesque evidence with regard to factum of occurrence. Therefore, non-mentioning of dates of occurrence in Ex.P.1 or in the charges has not affected the case of the prosecution. Under the said circumstances, the second contention put forth on the side of the appellant/accused cannot be accepted.

19. The third contention put forth on the side of the appellant/accused is that except Ex.P.13, on the side of the prosecution, birth certificate of the prosecutrix has not been marked and therefore, the contents of Ex.P.13 cannot be believed in. It is an archaic principle of law that when both Birth Certificate as well as School Transfer Certificate are available, the Court can give importance only to Birth Certificate. In the instant case, Ex.P.13 filed on the side of the prosecution is nothing but a School Transfer Certificate, wherein it has been clearly stated that the prosecutrix has got birth on 20.4.1997 and the entire occurrence has taken place in the year 2013 and therefore, on the dates of occurrence, the prosecutrix has not even attained age of 16 years. Therefore, viewing from any angle, the third contention put forth on the side of the appellant/accused also goes out without merit.

20. As stated earlier, in the instant case, the prosecutrix has given clear evidence to the effect that the accused has had a sexual intercourse with her on many occasions and due to that, she has become pregnant and further the motive put forth on the side of the appellant/accused has not changed the version of the prosecution. Further, the evidence given by the prosecutrix has been clearly corroborated by medical evidence. Under such circumstances, the Court can very well come to a conclusion that the accused has committed the offence punishable under section 376 of IPC.

21. The trial court, after considering the evidence available on record, has rightly found the accused guilty under the said section and in view of the foregoing enunciation of both factual and legal aspects, this Court has not found force in the contentions put forth on the side of the appellant/accused. Altogether, the present Criminal Appeal deserves to be dismissed.

22. The learned counsel appearing for the appellant/accused has sparingly contended that some modification may be given in sentence.

23. Considering the gravity of the offence and also its heinous nature, this Court is of the view that no modification can be given in the sentence imposed by the trial court.

In fine, this Criminal Appeal is dismissed. The conviction and sentenced passed against the appellant/accused in Special S.C. No. 2 of 2013 by the trial court is confirmed. Consequently, connected Miscellaneous Petition is Closed.