

Vignesh Vs. The State, Rep. by the Inspector of Police, Chennai

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Court : Chennai

Decided On : Dec-16-2015

Judge : A. Selvam

Appeal No. : Criminal Appeal No. 9 of 2013 & M.P.No. 1 of 2015

Appellant : Vignesh

Respondent : The State, Rep. by the Inspector of Police, Chennai

Judgement :

(Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the judgment and sentence passed by the Sessions Judge (Mahalir Needhimandram), Chennai, in S.C.No.360 of 2011, dated 6.12.2012.)

1. Challenge in this criminal appeal is to the convictions and sentences, dated 6.12.2012, passed in Sessions Case No.360 of 2011, by the Mahalir Needhimandram, Chennai.

2. The case of the prosecution is that the prosecutrix, by name, Stella, is a minor daughter of the defacto complainant, viz., Maheswari. On 17.1.2011, at about 7.00 p.m., with an intention to rape the prosecutrix, the accused has taken her to a lane, which situates near her house and put his hand into her private part and subsequently, put his private part into the mouth of the prosecutrix and due to the overt acts of the accused, the prosecutrix has sustained injuries. After occurrence, the defacto complainant has given a complaint against the accused and the same

has been registered in Crime No.59 of 2011.

3. On receipt of complaint, the investigating officer, viz., P.W.12, has conducted investigation, examined connected witnesses and also made arrangements to conduct medical examination both to the victim as well as accused and accordingly, Dr.Anand (P.W.5) has physically examined the accused and Dr.Lavanya (P.W.6) has examined the victim and issued concerned certificate (Ex.P4). The investigating officer, after completing investigation has laid a final report on the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai, and the same has been taken on file in P.R.C.No.93 of 2011.

4. The XXIII Metropolitan Magistrate, Saidapet, Chennai, 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 Court of Sessions, Chennai Division and the same has been taken on file in Sessions Case No.360 of 2011 and subsequently made over to the trial Court.

5. The trial Court, after hearing arguments of both sides and upon perusing the relevant records, has framed a combined charge against the accused under Sections 376, 377 r/w.511 of the Indian Penal Code and the same has been read over and explained to him. The accused has denied the charge and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 12 have been examined and Exs.P1 to P15 and M.O.1 have been marked.

7. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. On the side of the accused, D.Ws.1 and 2 have been examined.

8. The trial Court, after hearing arguments of both sides and also upon perusing the relevant evidence available on record, has found the accused guilty under Section 376 of the Indian Penal Code and sentenced him to undergo 10 years rigorous imprisonment and also imposed a fine of Rs.5000/- with usual default

clause. He has also been found guilty under Section 377 r/w.511 of the Indian Penal Code and sentenced to undergo 10 years rigorous imprisonment and also imposed a fine of Rs.5000/- with usual default clause. Against the convictions and sentences passed by the trial Court, the present criminal appeal has been preferred, at the instance of the accused, as appellant.

9. The sum and substance of the case of the prosecution is that the defacto complainant is the mother of the prosecutrix by name Stella. On 17.1.2011, at about 7.00 p.m., the accused has taken her to a nearby lane with an intention to rape her and subsequently put his hand into the private part of the prosecutrix and thereafter, put his private part into the mouth of the prosecutrix and due to overt acts of the accused, the prosecutrix has sustained injuries.

10. On the side of the prosecution, the defacto complainant has been examined as P.W.1, her sister, by name, Durga, has been examined as P.W.2 and some of the relatives have been examined as P.Ws.3 and 4. The prosecutrix has been examined as P.W.10. The Doctor, who examined the prosecutrix, has adduced evidence as P.W.6 and marked Ex.P4.

11. The trial Court, after considering the evidence adduced by the witnesses mentioned supra, coupled with the documents, has found the accused guilty under Sections 376, 377 r/w.511 of the Indian Penal Code.

12. The learned counsel appearing for the appellant/accused has raised the following points to set aside the convictions and sentences passed against the appellant/accused:

(a) The accused and P.W.2, by name, Durga, have loved each other and subsequently separated due to disparity in their age. Under the said circumstances, a strong motive has been in existence in between families of the defacto complainant and accused.

(b) The specific evidence given by the defacto complainant during the course of cross-examination is that on the date of occurrence, a festival has occurred and due to some other reason, a tussle has arisen in between the accused and P.W.1

and on that score also, Ex.P1, complaint has been given.

13. Per contra, the learned Additional Public Prosecutor has contended that in the instant case, no strong motive has been in existence in between the families of the defacto complainant and accused prior to occurrence and further, the defacto complainant has been initially examined on 8.11.2011 and after a lapse of 10 months, she has been recalled and cross-examined on 16.9.2012 and only on 16.9.2012, she has given some piece of evidence in favour of the accused and the trial Court has rightly rejected the same and further, in the instant case, the prosecutrix has been examined as P.W.10 and her specific evidence is that in the place of occurrence, the accused has done whatever allegations mentioned in the charge. The evidence of P.W.10 has been corroborated by medical evidence by way of examining P.W.6, coupled with Ex.P4 and the trial Court, after considering the replete evidence available on record, has rightly invited convictions and sentences against the appellant/accused and therefore, the convictions and sentences passed against the appellant/accused do not warrant interference.

14. On the basis of divergent submissions made on either side, the Court has to look into as to whether the prosecution has clearly established the alleged guilt of the accused punishable under Sections 376, 377 r/w.511 of the Indian Penal Code, even without a speck of doubt?

15. The prosecutrix has been examined as P.W.10 and in fact, she has given believable/trustworthy evidence to the effect that in the place of occurrence, the accused has done all the acts mentioned in the charge. It is seen from the records that immediately after occurrence, P.W.10 has been examined by P.W.6 and she issued Ex.P4.

16. It has already been pointed out that the prosecutrix viz., P.W.10 has given clear evidence to the effect that in the place of occurrence, the accused has placed his hand into her private part and also placed his private part into her mouth. Considering the fact that P.W.10 has given trustworthy/believable evidence to the effect mentioned supra, the Court can very well come to a conclusion that the accused has committed offences mentioned in the charge.

17. The first and foremost point put forth on the side of the appellant/accused is that the sister of the defacto complainant, who has been examined as P.W.2 and the accused have loved each other and due to disparity in their age, a motive has been in existence in between the families of P.W.1 and accused.

18. In fact, this Court has analysed the entire evidence given by P.Ws.1 and 2 and nothing has been elicited to the effect that both P.W.2 and accused have loved each other prior to occurrence and due to that a dispute has arisen and therefore, the first contention put forth on the side of the appellant/accused is sans merit.

19. The second contention put forth on the side of the appellant/accused is that on the date of occurrence, a festival has occurred and due to some other reason, a tussle has arisen in between the accused and P.W.1 and due to that P.W.1 has given a false complaint.

20. As rightly pointed out on the side of the prosecution, P.W.1 has been initially examined on 8.11.2011 and even on that date, she has been cross-examined. But subsequently, on 16.09.2012, she has been recalled and cross-examined, wherein, she has given some evidence in favour of the accused. Only on that basis, the second contention has been put forth on the side of the appellant/accused and the same cannot be accepted.

21. It has already been pointed out that even though P.W.10 is a minor girl, she has given clear evidence with regard to the overt acts alleged to have been committed by the accused. Since P.W.10 has given clear evidence to that effect, the Court can easily come to a conclusion that the accused has committed the offences mentioned in the charge.

22. The trial Court, after considering the available evidence on record, has rightly found the accused guilty under the Sections mentioned supra. In view of the discussion made earlier, this Court has not found any acceptable force in the contentions put forth on the side of the appellant/accused.

23. The learned counsel appearing for the appellant/accused has contended that at the time of committing alleged offences, the accused has attained only 21 years

of age and he is a bachelor and also first offender and under the said circumstances, some leniency may be shown in awarding sentence.

24. Considering the age of the appellant/accused and also the nature as well as extent of act done by him, this Court is of the view to modify the quantum of sentences as mentioned infra and to that extent, this criminal appeal is liable to be allowed in part.

In fine, this criminal appeal is allowed in part. The convictions passed under Sections 376, 377 r/w.511 of the Indian Penal Code, by the trial Court, against the appellant/accused are confirmed. However, sentences imposed against him under the said Sections are modified as follows:

The appellant/accused is sentenced to undergo seven years rigorous imprisonment under Section 376 and also under Sections 377 r/w.511 of the Indian Penal Code, separately. No modification is made with regard to fine amount.

Connected miscellaneous petition is closed.

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