

J.Kanagaraj Vs. State Represented By

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Court : Chennai

Decided On : Aug-05-2015

Judge : S.Nagamuthu

Appellant : J.Kanagaraj

Respondent : State Represented By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

05. 08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
CRIMINAL APPEAL (MD).No.187 of 2013 J.Kanagaraj : Appellant Vs. State
represented by The Inspector of Police, All Women Police Station, Srirangam,
Trichy. : Respondent PRAYER: Appeal is filed under Section 374 of the Code of
Criminal Procedure to call for the records and set aside the Judgment passed in
S.C.No.91 of 2012, on the file of the Sessions Judge, Mahila Court, Trichirappalli,
dated 31.07.2012 and allow the Criminal Appeal. [Date of reserving the Judgment
- 21.07.2015]. [Date of pronouncing the Judgment - 05.08.2015]. !For Appellant :
Mr.K.Rajeswaran Legal Aid Counsel ^For Respondent : Mr.C.Mayil Vahana
Rajendran Additional Public Prosecutor :

JUDGMENT

The appellant is the sole accused in S.C.No.91 of 2012, on the file of the learned
Sessions Judge, Mahila Court, Trichirappalli. He stood charged for the offences

punishable under Sections 376 and 506(i) of the Indian Penal Code. By Judgment dated 31.07.2012, he has been convicted under Sections 376 r/w Section 511 and 506(i) of the Indian Penal Code. For the offence under Section 376 r/w Section 511 of the Indian Penal Code, the learned Sessions Judge has sentenced him to undergo rigorous imprisonment for ten years and to pay a fine of Rs.85,000/-, in default to undergo simple imprisonment for six months and for the offence under Section 506(i) of the Indian Penal Code, has sentenced him to undergo imprisonment for one year and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for six months. The sentences have been ordered to run concurrently. As against the said conviction and sentence, the appellant has come up with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:- PW-3 and PW-2 are husband and wife. They were residing at Alagarpuram, Toll Gate, Trichirappalli. PW-1 is their daughter. During the year 2011, she was hardly aged six years. The accused also belongs to the same village. On 22.05.2011, PW-1 was playing on the street. It is alleged that the accused took PW-1 into his house, removed her dress and inserted his male organ into the female organ of PW-1. Due to pain, PW-1 cried. PW-2 started searching for PW-1, as she was not seen on the street, where she was originally playing. When she went near the house of the accused, she heard PW-1 sobbing from inside the house of the accused. The door was bolted from inside. PW-2 tapped at the door. It was not immediately opened. After sometime, the accused opened the door. PW-2 found PW-1 inside the house of the accused by the side of a wall and she was weeping. PW-2 asked the accused as to why PW-1 was weeping. The accused told her that she had hit against the wall. Believing the same, PW-2 took her to her house. 2.1. Even thereafter, PW-1 did not stop weeping. Therefore, PW-2 further enquired PW-1 as to what had happened to her. By the time, PW-3 had also returned home. In the presence of PW-2 and PW-3, PW-1 told that the accused had inserted his male organ into her female genitalia and he intimidated her not to disclose about the occurrence to anybody. Thereafter, PW-2 went in search of Mrs.Nalini, the sister-in-law of the accused to complain. PW-2 told her about the occurrence. When Mrs.Nalini enquired the accused in the presence of PW-4, the accused apologized for his action. Thereafter, PW-2 took PW-1 and made a complaint to the police. PW-11

was the then Sub-Inspector of Police at Srirengam All Women Police Station. On 22.05.2011, at 11.00 PM, PW-2 made a complaint, [vide EX-P1]., upon which PW-11 registered a case in Crime No.26 of 2011, under Sections 376 and 506(i) of the Indian Penal Code. Then, she forwarded EX-P1, the complaint and EX-P10, the First Information Report, to the Court and handed over the case diary to the Inspector of Police. 2.2. Taking up the case for investigation, PW-13 went to the place of occurrence, examined PW-1 to PW-5 and recorded their statements. Then, she prepared an Observation Mahazer and a Rough Sketch in the presence of PW-6 and another witness. Then, she forwarded PW-1 to the doctor for medical examination. PW-8, Dr.Sumathi, examined her and found a small abrasion on the outer part of the female genitalia of PW-1. There were no other injuries found anywhere including the thighs. The hymen was found intact. She took smears from the vagina of PW-1 and forwarded the same for chemical examination. PW-9 examined the same and found that there was no semen or spermatozoa found. Based on the same, PW-8 gave opinion that there was no sign of sexual intercourse. 2.3. Continuing the investigation, PW-13 arrested the accused on 23.05.2011, at 11.30 AM. On such arrest, he gave a voluntary confession in the presence of the witnesses. Out of the said confession, he produced a cement colour half sleeve shirt, a lungi and a jatti. PW-13 recovered all the said materials under a mahazer. She had also recovered the dress materials of PW-1, worn by her at the time of occurrence. PW-13 forwarded all these materials through Court to PW-9 for chemical examination. PW-9, on examination, found that there was no semen or spermatozoa found on the dress materials. 2.4. During the course of the investigation, PW-13 forwarded the accused for medical examination. PW-12, Dr.Nehru examined him on 25.05.2011. He found that the accused was fully grown up and he was capable of performing sexual intercourse with a woman. PW-13, thereafter, handed over the case diary to her successor, viz., PW-14. On completing the investigation, PW-14 laid charge sheet against the accused. 2.5. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused was questioned in respect of the charges, he pleaded innocence. In order to prove the charges, the prosecution examined as many as 14 witnesses and exhibited 22 documents, besides six Material Objects. 2.6. Of the said 14 witnesses, PW-1 has

stated about the occurrence. She has stated that the accused touched her private part, through which she used to urinate with that of the private part of the accused, through which he used to pass urine. She has further stated that the accused intimidated her not to disclose about the same to anybody. 2.7. PW-2 is the mother of PW-1. She has stated that when she went in search of PW-1, she found PW-1 from inside the house of the accused. The door was bolted from inside. PW-2 tapped at the door. It was not immediately opened. After sometime, the accused opened the door. PW-2 found PW-1 inside the house of the accused weeping. PW-2 and PW-3 have stated that PW-1 told them that the accused touched her female part with that of his male part. 2.8. PW-4 is a neighbour. He has stated that when the accused was questioned about his action, he apologized. PW-5 has turned hostile and he has not supported the case of the prosecution in any manner. PW-6 has spoken about the Observation Mahazer prepared. PW-8 - Dr.Sumathi has spoken about the medical examination conducted on PW-1. PW-12 has spoken about the medical examination conducted on the accused. PW-9, the Scientific Assistant, who has spoken about the chemical analysis report, wherein she has stated that there was neither semen nor spermatozoa found on the dress materials. PW-13 and PW- 14 have spoken about the investigation done by them. 2.9. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against him, he denied the same as false. On his side, one Mr.G.Murugesan was examined as DW-1. He is a neighbour of the accused. He has stated that there was ill-feeling between the family of the accused and that of PW-2 and PW-3, on account of some money transaction. Because of this motive, the accused has been falsely implicated in this case. However, the appellant did not choose to exhibit any document in support of his defence. Having considered all the above materials, the Trial Court convicted the appellant, as detailed in the first paragraph of this Judgment and punished him accordingly. That is how, the appellant is now before this Court with this Criminal Appeal.

3. I have heard the learned counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

4. The learned counsel for the appellant would submit that the evidence of PW-1 deserves to be rejected, because, there are materials to show that PW-1 had been tutored to depose falsely against the accused. The learned counsel would further submit that PW-2 and PW-3 have got enough motive against the accused on account of some money transaction, as spoken to by DW- 1 and because of the said motive, only to wreak vengeance, they have made such false complaint against the accused and that is how, the accused has been implicated. The learned counsel would further submit that the medical evidence does not corroborate the eye - witness account of PW-1. He would further submit that there is an inordinate delay in preferring the complaint. For these reasons, according to the learned counsel, the appellant is entitled for acquittal.

5. The learned Additional Public Prosecutor would vehemently oppose this Criminal Appeal. According to him, of course, it is true that PW-1 is a child, but there are no materials to show that she had been tutored. He would further submit that the motive alleged against PW-2 and PW-3 is not true and there is no evidence to prove the same. He would further submit that the evidence of DW-1 deserves to be rejected, as he has been planted as a witness only in an attempt to escape from the clutches of law. Assuming that there was motive, for that, no ordinary man would go to the police with such a false complaint, risking the future of his daughter. The learned Additional Public Prosecutor would further submit that the medical evidence duly corroborates the evidence of PW-1 and thus, according to him, the prosecution has proved the case beyond reasonable doubts and therefore, the conviction and sentence imposed on the appellant does not require any interference at the hands of this Court.

6. I have considered the above submissions.

7. Admittedly, PW-1 is a child witness. Of course, it is true that the child witnesses are prone to tutoring. But, at the same, the evidence of a child cannot be outright rejected in all cases on that score. Prudence requires that since the child is prone to tutoring, the evidence of the child requires only close scrutiny. In this case, PW-1 has stated that the accused touched the private part of her body through which she uses to pass urine with that of the private part of the body, through which he

uses to pass urine. This is the language known to the child. One cannot expect the child to know the name of the particular organ of a human body, more particularly, the private parts of the body, in a literal sense. The perception of the child about the name of a particular organ in the human body may be different from that of the perception of an adult. Considering the age of the child and her capacity to understand things, the Court has to derive the message that the child has conveyed by giving meaning to the words spoken to by the child.

8. In this case, PW-1 has stated that the accused touched her body through which she uses to pass urine with that of the part of his body, through which he uses to pass urine. From these words, it can be easily understood, without any doubt, that she has meant her vagina and penis of the accused. She has, thus, conveyed that the accused touched her vagina with the penis of the accused. Whether there was penetration or not has not been stated by her. But, there was injury found on the outer part of the vagina, as spoken to by PW-8. This corroborates the evidence of PW-1. From this evidence, the Trial Court has come to the conclusion that though there was no evidence for penetration either in full or in part, there is evidence to show that an attempt has been made to rape PW-1. I do not find any reason to take a different view from that of the view taken by the Trial Court. The evidence of PW-1 would clearly go to show that the accused had attempted to rape her and subsequently, he intimidated her not to disclose the same to anybody.

9. Next, the learned counsel contended that for want of corroboration, the evidence of PW-1 should be rejected. In this regard, I have to say that it is not the rule that the evidence of a child requires always corroboration from other sources. It all depends upon the quality of the evidence of the child. If the evidence of the child inspires the confidence of the Court, there is no need to look for any corroboration from any other sources. But, if there are circumstances creating doubts in the evidence of the child, in order to obviate those doubts, as a rule of prudence, corroboration can be looked for from other source. In this case, I do not find any doubt in the evidence of PW-1 and thus, this Court need not look for corroboration from any other sources. But, fortunately, in this case, there is due corroboration from other sources also to the evidence of PW-1. The evidence of PW-2 is very vital. PW-2 has stated that she was in search of PW-1, as she was

not seen on the street, where she was originally playing. When she went near the house of the accused, she found PW-1 from inside the house of the accused. The door was bolted from inside. PW-2 tapped at the door. It was not immediately opened. This conduct of the accused in not opening the door immediately would also reflect his guilty mind. After sometime, the accused opened the door. PW-2 found PW-1 inside the house of the accused by the side of the wall and she was weeping and standing near the wall. The accused gave false explanation to PW-2 that PW-1 hit against the wall. PW-2 believed the words and took her to her house. This part of the evidence of PW-2 would go to corroborate the evidence of PW-1 that the occurrence had taken place inside the house of the accused.

10. Further, when she was taken to the house of PW-2, PW-1 narrated about the entire occurrence to PW-2 and PW-3. The learned counsel for the appellant would submit that this part of the evidence of PW-2 and PW-3 are hit by hearsay rule. But, I do not hold so, the reason being, such disclosure statement made by PW-1 is in the course of the same transaction. The disclosure statement made by PW-1 to PW-2 and PW-3 would, therefore, quite naturally, fall within the ambit of Section 6 of the Indian Evidence Act, 1872 and thus, admissible in evidence. Thus, the disclosure statement made by PW-1, as spoken to by PW-2 and PW-3, would clearly corroborate the evidence of PW-1.

11. Then, comes the medical evidence of PW-8. She had found an abrasion on the outer part of the vagina of the victim girl. Though it has been suggested by the accused that PW-1, while playing, had hit against the wall and sustained injuries, PW-1 has denied the same. Though PW-8 opined that there was no sign of intercourse, the injury found on PW-1 by PW-8 would duly corroborate the version of PW-1.

12. The learned counsel for the appellant would submit that there was a delay in preferring the complaint. But, I find that there was no delay. The occurrence was at 07.00 PM, whereas the complaint was made at 11.00 PM, on the same day. This cannot be stated to be a delay. Thus, I do not find any ground in favour of the accused.

13. Now, turning to the quantum of punishment, the Trial Court has made the following observation:- "This Court considering the nature of the offence and considering the plea of the accused for lesser punishment and considering that there is no mitigating circumstances in favour of the accused and considering the gravity of the offence committed on a young girl, this Court intends to impose life imprisonment on the accused. But, according to Section 511 IPC, half the term of the punishment has to be imposed. There cannot be a definite period stipulated for half of the time of life imprisonment. Hence, considering the age of the accused and the nature of the offence, this Court sentences the accused in accordance with the provision of Section 376 r/w 511 IPC and 506(i) IPC". [Emphasis Supplied]..

14. This observation of the learned Judge as though there is no definite term of punishment prescribed for attempt to rape is incorrect. Probably, the learned Judge was not apprised of Section 57 of the Indian Penal Code, which reads as follows:- "In calculating fractions of terms of punishment, [imprisonment]. for life shall be reckoned as equivalent to [imprisonment]. for twenty years".

15. In view of the said provision, the maximum substantive sentence of imprisonment, which could be imposed for the offence under Section 376 r/w Section 511 of the Indian Penal Code, is ten years with fine. In this case, the accused, at the time of occurrence, was hardly aged about 27 years. He is a bachelor. He had no bad antecedents. After the above occurrence, he had not committed any crime. It appears that he has reformed. There is likelihood of reformation. Having regard to the gravity of the offence and the mitigating circumstances, I am of the view that reducing the substantive sentence of imprisonment from ten years to three years and six months with fine of Rs.25,000/- would meet the ends of justice. The conviction imposed on the appellant for the offence under Section 506(i) of the Indian Penal Code deserves to be confirmed. However, the substantive sentence of imprisonment is liable to be reduced to six months.

16. In the result, the Criminal Appeal is partly allowed in the following terms:- The conviction of the appellant under Section 376 r/w Section 511 of the Indian Penal

Code is confirmed, but the substantive sentence of imprisonment imposed by the Trial Court is reduced to three years and six months of rigorous imprisonment with fine of Rs.25,000/- in default, it is directed that he shall undergo rigorous imprisonment for one month. The conviction imposed on the appellant for the offence under Section 506(i) of the Indian Penal Code is confirmed, but the substantive sentence of imprisonment is reduced to six months rigorous imprisonment and the fine amount and the default sentence are confirmed. The sentences shall run concurrently. The period of sentence already undergone by the appellant shall be set off under Section 428 of the Code of Criminal Procedure Code. The entire fine amount of Rs.26,000/- shall be paid to PW-1. The father and mother of PW-1 shall jointly receive the said amount from the Trial Court on behalf of PW-1. To 1.The Sessions Judge, Mahila Court, Trichirappalli. 2.The Inspector of Police, All Women Police Station, Srirangam, Trichy. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. .

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