

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31-07-2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No.221 of 2006

K.Sivasankar

..Appellant

-vs-

State by
Inspector of Police
All Women Police Station(West)
Coimbatore
(Cr.No.18/2005)

... Respondent

This appeal is filed against the Judgment made in S.C.No.234/2005 dated 21.12.2005 on the file of the Sessions Judge, Magalir Neethimandram, Coimbatore.

For appellant : Mr.E.J.Ayyappan
For respondent : Mr.V.R.Balasubramaniam,
Additional Public Prosecutor

JUDGMENT

This appeal has been preferred by the accused in S.C.No.234 of 2005 on the file of the Sessions Judge, Magalir Neethimandram, Coimbatore. The accused has been charged under Sections 366(A) and 376(2)(f) r/w 511 of IPC.

2. The case was taken on file by the learned Sessions Judge, Magalir Neethimandram, and on appearance of the accused, had furnished the copies under Section 207 of Cr.P.C., when the charges were framed under Sections 366(A), 376(2)(f) r/w 511 of IPC and when questioned the accused pleaded not guilty.

3. Before the trial Court P.Ws 1 to 10 were examined and Exs P1 to P8 were exhibited and M.O.1 to M.O.3 were marked.

4. P.W.1 is the mother of the victim girl Anusuya, aged 5. According to her, the victim girl used to play near her grand mother's house which is situated nearby her house and that she also knows the accused. On 29.3.2005 her daughter Anusuya did not return home, after she was in search of her daughter at about 1.00p.m., in the street, the accused came

before her, followed by her daughter Anusuya, crying. When she enquired her daughter, she informed that the accused had gave a chocolate and took her to his house and made an attempt to rape her and afraid of her husband, she did not reveal the incident to her husband . The next day, her daughter Anusuya had developed fever, only at that time, she informed her husband what Anusuya had narrated to her. Thereafter, she had preferred a complaint against the accused on 29.3.2005 under Ex P1.

4a. P.W.2 is the victim girl Anusuya who would depose that on the date of the occurrence, the accused had given a chocolate and then took her to his house and made an attempt to commit rape.

4b. P.W.3 is the father of the victim girl. According to him, on 29.3.2005 at about 7.00p.m., he had returned from his office, by the time Anusuya ,P.W.2 had slept. On the next day, Anusuya did not get up from the bed. When he enquired about this with his wife P.W.1, she informed that their daughter P.W2 is not feeling well and so he left for his workspot. When he returned in the night, he found that his daughter P.W.2 had developed temperature. Only at that time, P.W.1 has informed him that the accused had made an attempt to rape the child. Immediately, he took P.W.1 and P.W.2 to the police station and P.W.1 had preferred ExP1 complaint.

4c. P.W.4 Lakshmi, who is the neighbour, would depose that on the date of the occurrence at about 1.00p.m., she saw P.W.1 quarrelling with the accused in the street and that P.W.1 had informed her that the accused had made an attempt to rape the child.

4d. P.W.10 is the Investigating Officer, who had registered the case under All Women Police Station Crime No.18/2005 under Section 376 r/w 511 of IPC. Ex P6 is the first information report. On 31.3.2005, at 8.00 a.m., after registering the case, she proceeded to the place of occurrence and prepared ExP2 Observation Mahazar in the presence of P.W.5 and another witness Murugesan. He had drawn a rough sketch Ex P7 in the presence of the same witnesses. He had arrested the accused at 14.00hours and produced before the Judicial Magistrate, after recovering the wearing apparels of the accused viz., full hand shirt M.O.2, Jeans Pant M.O.3 under Form 95 Ex P8. He has given a requisition to the Court to send both the victim and the accused for medical examination.

4e. P.w.6 is the grand mother of the victim girl . She has also narrated what P.W.2 had informed to her, after the occurrence. P.W.7 is the doctor, who had examined the accused and issued Ex P3 potency certificate. P.W.8 is the radiologist, who had examined the victim girl and issued Ex P4 age certificate. M.O.1 series are the X-rays. P.W.9 is the lady doctor, who had examined the victim girl and issued Ex P5 copy of the accident register. According to P.W.9, the hymen of the victim girl was found in tact. But the doctor had found that a minor abrasion on the genitalia of the victim girl. After completing the formalities, P.W.10 has filed the charge sheet against the accused.

5. When incriminating circumstances under Section 313 Cr.P.C. were put to the accused, he would deny his complicity with the crime. He has examined himself as D.W.1 . According to the accused as D.W.1 , the victim girl had removed video camera from his house and when he received the said video camera after giving a chocolate to the child, he had assaulted with hands on her head which made her to cry and that while he was sleeping in the house of his uncle, the police had arrested him.

6. The learned trial Judge, after meticulously going through the evidence both oral and documentary has come to a conclusion that the offence under Sections 366(A) and 376(2)(f) r/w 511 of IPC has been made out against the accused and accordingly convicted under Section 366(A) of IPC and sentenced the accused to undergo ten years rigorous imprisonment and a fine of Rs.10,000/- with default sentence and convicted the accused under Section 376(2)(f) r/w 511 of IPC and sentenced the accused to undergo ten years rigorous imprisonment and a fine of Rs.15,000/- with default sentence, which necessitated the accused to prefer this appeal before this Court.

7. Now the point for consideration in this appeal is whether the conviction and sentence against the accused under Sections 366(A) and 376(2)(f) r/w 511 of IPC is sustainable for the reasons stated in the memorandum of appeal?

8. Heard Mr.E.J.Ayyappan, learned counsel appearing for the appellant and Mr.V.R.Balasubramaniam, learned Additional Public Prosecutor for the State and carefully considered their rival submissions.

9. The Point:
For warranting conviction under Section 366(A) of IPC, it is to be proved that the minor girl was forced or seduced to go from one place to another place for the purpose of committing illicit intercourse with another person. There is no eye witness to the occurrence. According to P.W.1, while she was in search of her daughter at 1.00p.m., on the date of the occurrence ie., on 29.3.2005, she saw her daughter crying behind the accused and that her daughter on enquiry, had revealed that she has been subjected to sexual assault, in the house of the accused. But there is absolutely no evidence let in by the prosecution to show that the victim girl was found inside the house of the accused. So the offence under Section 366(A) of IPC is not made out against the accused.

10. The doctor, who had examined the victim girl P.W.2, was examined on the side of the prosecution as P.W.9. P.W.9 on examination of the victim girl has found lacerated injuries on the genitalia of the victim girl. But according to the doctor, the hymen of the victim girl was found in tact and there was no injury found on the person of the victim girl. Ex P5 is the copy of the accident register. Under such circumstances,

considering the evidence of P.W.2 corroborated by the evidence of P.W.9, it cannot be said that the offence under Section 376(2)(f) r/w 511 of IPC has not been made out against the accused.

11. The learned counsel appearing for the appellant would contend that even there is a delay of two days in preferring the first information report, the delay has been properly explained by P.W.1 and P.W.3 in their evidence. The learned counsel appearing for the accused would submit that the accused was 21 years of age at the time of the occurrence and that he is in jail for the past two years and four months after conviction and on that score, he pleads some leniency may be shown on the sentence of the accused. Taking into consideration, the age of the accused and also the superficial minor simple injury on the person of the victim girl, I am of the view that some leniency may be shown on the sentence of the accused.

12. In fine, the appeal is partly allowed and the conviction and sentence under Section 366(A) of IPC by the learned trial Judge in S.C.No.234 of 2005 on the file of the Sessions Judge, Magalir Neethimandram, Coimbatore is set aside but the conviction of the learned trial Judge under Section 376(2)(f) r/w 511 of IPC is confirmed but the sentence alone is modified to that of the period already undergone and a fine of Rs.25,000/- in default to undergo one year rigorous imprisonment. The fine paid by the accused under Section 366(A) i.e., Rs.10,000/- shall be treated as the fine paid under Section 376(2)(f) r/w 511 of IPC apart from the fine of Rs.15000/- already paid by him under the above provision of law. The entire fine amount of Rs.25,000/- is to be paid to the victim girl as compensation under Section 357(1) of Cr.P.C.

sg

Sd/-
Asst.Registrar

/true copy/

सत्यमेव जयते Sub Asst.Registrar

- To
1. The Sessions Judge, Magalir Neethimandram, Coimbatore.
 2. -do- Thro' The Prl.Sessions Judge, Coimbatore
 3. The Public Prosecutor, High Court, Madras
 4. The Superintendent of Central Prison, Coimbatore
 5. The Inspector of Police, All Women Police Station (West) Coimbatore.
 6. The Judicial Magistrate No.I, Coimbatore.
 7. -do- Thro' The Chief Judicial Magistrate, Coimbatore.

SSV(CO)
dcp/8.8

Cr1.A.No.221/2006