

C.A.No.1328/02

The Accused/Appellant was directed to be released on bail by the order of this Court dated 30.04.2003 made in CrI.Mp.No.3802/03.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 29.06.2007

Coram:-

The Hon'ble Mr. Justice R.REGUPATHI

Criminal Appeal No.1328 of 2002

Narasimhan

... Appellant/Accused-1

vs.

The State,
rep. by the Inspector of Police,
D3, Ice House Police Station,
Chennai-5.

... Respondent

Criminal Appeal against the order of conviction and sentence dated 26.08.2002 made in S.C. No.555 of 1999 on the file of the Sessions Judge, Magalir Neethimandram, Chennai.

For Appellant : Mr.Shanmughavelayutham, Senior
Counsel for M/s.Nithyanandam & S.P.Karthick.

For Respondent : Mr.Hasan Mohamed Jinnah,
Government Advocate (CrI. Side).

J U D G M E N T

The appellant is A-1 among three accused. He was tried for offences punishable under Sections-376 and 450 IPC. while A-2 and A-3 under Sections 376 read with 109 IPC and Section 450 IPC. by the learned Sessions Judge, Magalir Neethimandram at Chennai, in Sessions Case No.555 of 1999. A-2 died during the course of trial and, on conclusion of trial, A-3 was acquitted and the appellant herein-A-1 was found guilty under Sections 376 (1) and 450 IPC. and sentenced to undergo rigorous imprisonment for 7 years and 2 years respectively and fine of Rs.5,000/-

and Rs.2,000/- was imposed and, in default to pay the fine amount, to undergo imprisonment for six months and two months respectively. Fine amount, if paid, was ordered to be paid to PW-1/victim as compensation.

2. Aggrieved against the order of conviction and sentence passed by the trial court, the present appeal has been filed before this Court.

3. The case of the prosecution is that PW-1, an unmarried girl, aged about 19, was sleeping on the terrace of her house during the night of 12.09.1999, and at that time, the appellant along with two other accused reached the terrace and called her for sex and when she refused and tried to run away, the appellant, along with two other accused, is alleged to have caught hold of her hands, stripped off her cloths and had forcible sexual intercourse. The victim got fainted and on regaining consciousness, at 1 A.M. she informed her sister and mother/PWs-2 and 3 respectively about the occurrence, whereupon, a complaint was given to PW-7 Inspector of Police at 3 P.M. on 13.05.1999. A case in Crime No.325 of 1999 was taken on file for offences punishable under Sections 354 and 376 IPC as per Ex.P8. The Investigating Officer prepared observation mahazar and rough sketch Exs.P9 and P10 respectively. After examination of the witnesses, the victim was sent for medical examination. PW-1 was examined by PW-5, the Medical Officer, on 14.05.1999 at 3.15 P.M. The accused was arrested and subjected to examination by the Medical Officer PW-6. On conclusion of the investigation, the Investigating Officer filed final report on 09.10.1999 for offences under Sections 354 and 376 IPC.

4. During the course of trial, the victim has been examined as PW-1 and she has narrated that during the night of 12.05.1999, while she was sleeping on the terrace of her residence, the appellant along with two other accused reached the place she was sleeping and called her to have sex with him and when she refused and attempted to run away, he pushed her down with the assistance of two other accused, gagged her, stripped off the garments and committed forcible rape on her. After committing the offence, the appellant along with the other two accused ran away from the scene of occurrence. The victim became unconscious and when regained consciousness, she informed the incident to her sister and mother who took her to the police station to give complaint.

PW-2 is the sister of PW-1 who corroborates the testimony of PW-1. She has stated that the appellant is her neighbour. PW-3, the mother of PW-1, has stated that she reached the residence after completing her work and when PW-1 informed her of the occurrence, she went to the police Station accompanied by PWs-1 and 2. PW-4 has been examined as an attesting witness for the mahazar prepared by the Investigating Officer, however, he has been treated as hostile.

PW5 is the Medical Officer, who examined the victim/PW-1 on 14.05.1999. On examination of private parts, she noticed a tear in the hymen at 5 and 7 O' clock positions and bleeding from vagina. She also noticed the following injuries:-

" INJURIES:-

- 1) Multiple teeth bite mark on the medial side of right breast and lateral side of left breast;
- 2) Round shaped abrasion on left nipple;
- 3) Linear multiple scratches on the dorsum of right hand;
- 4) Linear abrasion on the middle of left cheek.

OPINION:

I am of the opinion that the said victim girl Ennamma D/o. Erriah would have had sexual intercourse.

I issued the Certificate. I was examined by the Police. (Certificate Ex.P.3).

I also examined the girl for fixing her Age, from physical and Radiological Examination. I am of the opinion that the individual is aged about 18 years and below 20 years. I issued the Age Certificate (Age Certificate Ex.P.4.)"

PW-6 is the Medical Officer, who examined the appellant on 14.05.1999. He issued Ex.P-6 Certificate of examination for sexual offences and Ex.P.7 Age Certificate, wherein, the age of the accused has been opined to be between 23 and 25. PW-7, the Investigating Officer speaks about receipt of the complaint, the investigation conducted and filing of the final report.

On conclusion of the prosecution evidence, the appellant/A1 was questioned under Section 313 Cr.P.C. regarding the incriminating materials available against him and he denied his complicity in the crime and pleaded innocence. To substantiate his plea, he examined two witnesses as DWs-1 and 2.

DW-1, who is the employer of the appellant, has stated that during the night of 12.05.1999, the appellant was directed to work in a Marriage Hall and when he visited the Hall at 6 A.M. on the next day, he found the appellant and other accused present there.

An Advocate Clerk, who has been examined as DW-2, has stated that PW-3 approached him on 13.04.1999 at 8 P.M., for writing complaint, stating that some unknown assailants have committed rape on PW-1, for which, it has been advised by DW-2 that unless the names of the assailants are mentioned in the complaint, the same could not be lodged before police. Subsequently, three names were given and thereafter, he wrote the complaint, whereupon, investigation has been conducted and final report filed as mentioned earlier.

5. Learned trial Judge, after hearing the accused as well as the prosecution, passed an order of conviction and sentence as stated supra.

6. The point that arises for consideration in this Appeal is as to whether the order of conviction and sentence passed by the trial court is sustainable or not?

7. Learned Senior Counsel for the appellant, by pointing out that the occurrence took place during night time while PW-1 was sleeping on the terrace, would submit that some unknown assailants would have reached there and committed the offence, for which, the appellant has been falsely implicated in the case. He also pointed out that the appellant was working under DW-1 and during the relevant time, he was engaged to work in a Marriage Hall at Egmore. Relying on the evidence of PW-2, he states that the name of the appellant has been introduced as he happens to be a neighbour of the victim. It is contended by him that the 3rd accused is also said to have participated in the crime by facilitating the appellant to commit the offence; however, on flimsy grounds, the trial court has acquitted him, disbelieving the evidence of PW-1. That being so, similar benefit must have been extended to the appellant also. Adverting to the evidence of PW-1 to the effect that the complaint has been written by DW-2, it is submitted that the testimony of DW-2 should be taken into consideration with all seriousness. He pointed out that the witness for the observation mahazar has turned hostile and submitted further that the appellant has pleaded 'alibi' and examined DW-1 to substantiate the same; therefore, such plea must be accepted.

8. Per contra, learned Government Advocate (Crl. Side) submits that the testimony of PW-1 victim girl corroborated by medical evidence is sufficient to substantiate the offence. The occurrence took place during the night of 12.05.1999 and complaint has been given without any delay. The victim has been examined on the very next day by the Medical Officer whose opinion clinchingly substantiates the commission of crime. The testimony and opinion given by the Medical Officer, who examined the accused, can also be taken as a corroborative piece of evidence to come to a conclusion that it is only the appellant, who has committed the offence.

9. I have perused the materials and carefully considered the contentions put forth on either side.

10. The evidence of PW-1 appears to be quite natural. The victim girl, who was sleeping on the terrace of her house, was forcibly raped by the appellant, a neighbour. There is no question of identity involved inasmuch as the appellant is well known to PW-1. Because of the gruesome act of rape committed after gagging the victim, she became unconscious and immediately after regaining consciousness, she informed the incident to her sister and mother. The poor victim girl struggled hard to escape from the appellant and two of his friends, however, she was overpowered, pushed down and, with the assistance of the other two accused, violently subjected to rape by the appellant. The external injuries sustained by PW-1 had been graphically described by the Medical Officer, which speak of the brutal attack and rape on the victim. The opinion given by PW-6 on examination of the accused also corroborates the prosecution version. The

reasonings assigned by the trial court for convicting and sentencing the accused under Sections 376(1) and 450 IPC. are well founded. Therefore, I do not find any valid ground to disturb the conclusion arrived at by the trial court.

11. In the result, the appeal is dismissed. The conviction and sentence imposed by the trial court are confirmed.

JI.

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Sessions Judge,
Magalir Neethimandram at Chennai.
2. The Inspector of Police,
D3, Ice House Police Station,
Chennai-5
3. The Superintendent,
Central Prison, Chennai.
4. The Public Prosecutor,
Madras.
5. The District Collector, Chennai.
6. The Director General of Police, Chennai.

RL(CO)
dcp/18.7.07

सत्यमेव जयते C.A. No.1328/2002.

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