SUPREME COURT OF INDIA

Sri Ganesh

Vs.

State of Tamil Nadu & Anr.

Crl.A.No.39 of 2017

(Pinki C.Ghose and Uday Umesh Lalit,JJ.,)

06.01.2016

JUDGMENT

Uday Umesh Lalit,J.,

SLP(Crl.)No.9073 of 2015

1. Leave granted.

2. This appeal by special leave challenges the Judgment and Order dated 13.10.2015 passed by the High Court of Madras in Criminal Revision Case No.383 of 2015. In order to avoid any identification of the victim, we have transposed the original respondent No.1 namely, the Complainant as respondent No.2 and the State is now shown as respondent No.1 in the matter.

3. Pursuant to complaint by the complainant, FIR vide Crime No.5/2010 was initially registered under Sections 417 and 506(ii) IPC on 26.03.2010 with Old Washermenpet Police Station, Chennai against the appellant, his father, mother and uncle. After carrying out necessary investigation, charge-sheet dated 18.11.2010 was filed against the appellant under Section 376 IPC and against his parents and uncle under Sections 417 read with 109 IPC and 506(ii) IPC. It was alleged that the appellant had become friendly with the victim while they had reached 10+2 standard; that this fact was known to the family of the appellant who treated the victim as their daughter-in-law; that the appellant had committed sexual intercourse with the victim on 5 to 6 occasions; and that the behavior of the family of appellant later changed and they refused to perform the marriage. It was alleged that the appellant thus committed offence under Section 376 IPC while his family members were guilty of offence under Sections 417 read with 109 IPC and 506(ii) IPC.

4. Appropriate charges under the aforesaid Sections having been framed, Criminal O.P. No.9823 of 2011 was filed in the High Court seeking quashing of those charges. The High Court by its Order dated 20.06.2012 quashed the charges as against the parents and uncle of the appellant but dismissed the challenge raised by the appellant. Consequently the trial

proceeded only against the appellant for the offence punishable under Section 376 IPC. On 18.09.2012, the victim deposed before the trial court as PW-1. In her examination-in-Chief she deposed:

> " I firmly believed that the accused and his family will not leave me and our marriage would definitely solemnize. After this the accused forced me and had intercourse with me 5 to 6 times."

The victim however in her examination in chief did not give any probable period or time when the intercourse had last taken place. In her cross-examination conducted on 06.10.2012, to a pointed query she answered, "We had intercourse finally in August, 2009".

5. At that juncture, the cross-examination of the victim was stopped and a plea of juvenility of the appellant was raised. It was submitted that going by the assertions of the victim, the appellant was definitely a juvenile on the alleged dates of occurrence. Criminal M.P. No.10872 of 2012 under Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to "the Act") was also filed praying that the age of the appellant be determined in terms of the provisions of the Act and the Rules framed thereunder. The complainant was also allowed to make her submissions. After hearing the parties, the Court posted the application for pronouncement of Orders on 04.12.2012. However, on 28.11.2012 an application under Section 216 of Cr.P.C. was filed by the prosecution for adding charge under Section 417 against the appellant. The request for addition of the charge was dismissed by the trial court which order was affirmed by the High Court by its Order dated 15.02.2013. The complainant challenged the order of the High Court by filing SLP(Crl.) No. 1899 of 2013 which was dismissed by this Court on 12.08.2014.

6. The trial court thereafter postponed the issue of juvenility to be considered at the stage of final determination of the matter, which order was challenged by the appellant by filing petition under Section 482 of Cr.P.C. The challenge was accepted by the High Court and by Order dated 8.12.2014 it directed:

> "The learned III Additional Sessions Judge shall first decide the claim of juvenility raised by the petitioner herein and then to proceed with further in accordance with law. At any rate, appropriate decision on the claim of juvenility shall be made within a period of 30 days as provided in Rule 8B of the Tamil Nadu Juvenile Justice (Care and Protection of Children) Rules, 2001 from the date of receipt of the records from the trial court."

7. The matter was then heard by the trial court which after considering the relevant material on record declared the appellant to be juvenile in conflict with law under Section 7A of the Act. The trial court found the date of birth of the appellant to be 19.10.1991. Going by the assertions made by the victim that the sexual intercourse between them lastly occurred in the month of August, 2009, the trial court found that on the date of occurrence, the appellant was a juvenile. Concluding thus, the trial court directed:

> "29. Finally, this court allows the above Petition Crl.O.P.No.10872/2012 and decides that the offender was a Juvenile on the date of commission of offence.
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> 30. As the offender on the date of occurrence of offence was a juvenile, the present case can be decided only by the Juvenile Board and this court orders transfer of the S.C.130/2011 to the Juvenile Board."

8. The complainant being aggrieved, challenged the aforesaid determination by filing Criminal Revision Case No.383 of 2015 in the High Court of Madras. The High Court by its Judgment and Order dated 13.10.2015 allowed said criminal revision and remitted the matter back to the trial court for fresh consideration. It was observed:

> "It is evident that the trial court has not determined the correct age of the second respondent/accused or the date of occurrence in the facts and circumstances of the case. The trial court also did not take note of the fact that the offence alleged to have been committed was a continuing offence. The trial court also did not consider the expert opinion obtained from a Medical Officer to determine the age of the second respondent/accused. The trial court has also not ascertained correctly the date on which the first occurrence took place and the last occurrence committed by the accused/second respondent herein. The trial court was carried away by an admission made by the complainant during the course of cross-examination."

9. Appearing for the appellant in support of the appeal, Mr. A. Ramesh, learned Senior Advocate submitted that the determination of age of a juvenile has to be principally on the basis of documentary evidence and only in the absence of such documentary evidence, medical opinion could be pressed into service. In his submission the High Court was completely in error in setting aside the view taken by the trial court and in remitting the matter for fresh consideration. Reliance was placed on the judgment of this Court in *Ashwani Kumar Saxena v. State of Madhya Pradesh*[1]. On the other hand, Mr. Aditya Kumar Choudhary, learned Advocate appearing for the complainant relied on decision of this Court in *Karthi alias Karthick v. State of Tamil Nadu*[2] and submitted that the High Court was justified in remitting the matter for fresh consideration.

10. The law on the point is well settled and succinctly stated in Ashwani Kumar's case (supra) where this Court after taking into consideration relevant statutory provisions observed in paragraphs 32 to 34 as under:-

> "32. "Age determination inquiry" contemplated under Section 7-A of the Act read with Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court needs to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court needs to obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but

certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the abovementioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

33. Once the court, following the abovementioned procedures, passes an order, that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in sub-rule (5) of Rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-rule (3) of Rule 12. Further, Section 49 of the JJ Act also draws a presumption of the age of the juvenility on its determination.

34. Age determination inquiry contemplated under the JJ Act and the 2007 Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion, etc. There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a corporation or a municipal authority or a panchayat may not be correct. But court, Juvenile Justice Board or a committee functioning under the JJ Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the court, the Juvenile Justice Board or the committee need to go for medical report for age determination."

11. In the present case the trial court took into account the documentary evidence as contemplated in the statutory provisions and returned a finding that the date of birth of the appellant was 19.10.1991. During the course of its judgment the High Court could not find such conclusion to be vitiated on any ground. In the face of the relevant documentary evidence, there could be no medical examination to ascertain the age of the appellant and as such the consequential directions passed by the High Court were completely unwarranted. Further, if the allegations of the prosecution are that the offence under Section 376 IPC was committed on more than one occasion, in order to see whether the appellant was juvenile or not, it is enough to see if he was juvenile on the date when the last of such incidents had occurred. The trial court was therefore justified in going by the assertions made by the victim in her cross examination and then considering whether the appellant was juvenile on that date or not.

12. The learned counsel for the respondent however relies on the decision of this Court in Karthi (supra). In that case the accused had repeatedly engaged in consensual sexual intercourse with prosecutrix on different dates on promises of marriage. After having found that the promises were false, the prosecutrix had lodged a complaint asserting her exploitation on certain previous dates. While considering the delay in reporting the matter to the Police, this Court found that it was only after the accused had declined to marry the

prosecutrix that a different dimension came to be attached to their relationship and thus there was no delay in registration of FIR. The decision in Karthi (supra) stands on a completely different point and cannot be pressed into service to say that because the appellant had refused to marry the victim, the date of the offence under Section 376 would consequently change. The date of the incident remaining constant, the principle in Karthi (supra) will be of assistance only in getting over the aspect of delay in lodging the FIR.

13. We thus find that the approach of the High Court in the present case was incorrect and completely misdirected. Even if we were to remand the matter back to the High Court for fresh consideration, in our view it would be an empty formality in the face of finding of fact rendered by the trial court. We, therefore, allow this appeal and set aside the Judgment and Order under appeal. The view taken by the trial court is restored and the matter stands disposed of in terms of the directions issued by the trial court as stated above.

14. The appeal is allowed in aforesaid terms.

Judgment Referred

[1]*(2012) 9 SCC 0750*
[2]*(2013) 7 SCALE 0777*