



Crl.A.No.466 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order 23.06.2023	Date of Pronouncing Order 04.07.2023
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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

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1.Govindhan, M/age 52
Son of Jaganathan

2.Rajarathinam, M/56
Son of Jaganathan

3.Jayaraman, M/40
Son of Jaganathan

4.Kanagaraj, M/28
Son of Govindhan

All are residing at C.N.Palayam
Valapadi Taluk
Salem District.

... Appellants

Vs.

State by:
Inspector of Police,
Valappady Police Station,
Salem District
(Crime No.407 of 2015)

... Respondent

Prayer: Appeal filed under Section 374 (2) Criminal Procedure Code against the Judgment passed by the Sessions Judge, Mahila Court, Salem in S.C.No.309 of 2015 dated 23.07.2018.



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For Appellants : Mr.B.Vasudevan
For Respondent : Mr.L.Baskaran
Government Advocate (Crl. Side)

J U D G M E N T

The Appeal has been filed against the Judgment passed by the learned Sessions Judge, Mahila Court, Salem in S.C.No.309 of 2015 dated 23.07.2018.

2.The convicted Accused A-1 to A-4 are the Appellants herein. The Respondent police filed charge in Cr.No.407/2015 and the same was taken on file as TRC.No.22 of 2015, subsequently, renumbered as S.C.No.309 of 2015 and made over to Mahila Court, Salem. After trial, the Accused were convicted and sentenced as under:

<i>Accused Rank</i>	<i>Charge convicted</i>	<i>Imprisonment Details</i>
A-1, A-3 & A-4	U/s.376 IPC	Sentenced to undergo rigorous imprisonment for 7 years each and to pay a fine of Rs.25,000/- each i/d to undergo 6 months S.I.
A-1 to A-4	U/s.352 IPC	Sentenced to undergo simple imprisonment for 3 months each and to pay a fine of Rs.500/- i/d 2 weeks S.I.
A-1 to A-4	Section 4 of Women Harassment Act	Sentenced to undergo rigorous imprisonment for 3 years each and to pay a fine of Rs.10,000/- each, i/d to undergo 3 months S.I.



<i>Accused Rank</i>	<i>Charge convicted</i>	<i>Imprisonment Details</i>
A-2	U/s.376 r/w.511 IPC	Sentenced to undergo rigorous imprisonment for 5 years each and to pay a fine of Rs.10,000/- each i/d to undergo 6 months S.I.
A-4	U/s.506(ii) IPC	Sentenced to undergo rigorous imprisonment for 7 years each and to pay a fine of Rs.10,000/- each i/d to undergo 6 months S.I.

3.PW1 is the Defacto Complainant and PW2/Vasudevan is her son. The criminal law was set in motion by filing of Ex.P.1/complaint dated 20.05.2015 alleging, commission of offence u/s.372 & 352 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and u/s.506 (ii) IPC.

4.Based on the complaint of PW1, a case was registered in Valappady Police Station in Cr.No.407 of 2015 u/s.376, 323, 506 (ii) IPC and Section 4 of TNWH Act on 20.05.2015 at 19.00 hrs by the Special Sub Inspector of Police and the then Inspector of Police conducted the investigation. During the course of investigation, he examined the witnesses including PW1 and recorded their statement, arrested A-1 and A-3 on 20.05.2015 and remanded them into judicial custody. Later sent the Accused for medical examination and obtained medical report and also sent PW1 for medical examination and obtained the report. After completion of elaborate and detailed investigation, the then Investigating



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Officer filed charge sheet against the Accused before the learned Sessions Judge, Mahila Court, Salem and assigned S.C.No.309 of 2015 on 23.07.2015.

To prove the case of the prosecution, 16 witnesses were examined and 31 exhibits were marked and one material object was marked. On the defence side, no witness was examined and no exhibit was marked and no material object was marked.

5.Based upon the oral and documentary evidences, the learned Sessions Judge, Mahila Court, Salem, came to the conclusion that the charges are proved against all the accused and laid down conviction and sentences as stated supra. Hence the Appeal.

6.Pending Appeal, by order dated 12.09.2018 in Crl.MP.No.10367 of 2018, all the Accused were released on bail.

7.When the matter was listed before this Court for final disposal on 23.06.2023, learned counsel for the Appellants filed a compromise memo entered between the Defacto Complainant/PW1 and all Accused viz., A1 to A4 and a separate affidavit filed by the Defacto Complainant and Defacto Complainant/PW1/victim was also present in the Court. Thereby, sought



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permission of this Court to compromise the above matter. Since the offence is u/s.376 IPC, the request of the Defacto Complainant and Accused are hereby rejected.

8.Heard the learned counsel for the Appellants and the learned Government Advocate (Crl. Side) for the Respondent and perused the available records.

9.All the Accused were convicted and sentenced as stated supra and PW1 is the victim. PW2 is the son of PW1, PW3 & PW4 are attestor of the observation mahazar, with regard to the confession statement of A1 and A3. PW5 & PW6 are attestor of the observation mahazar. PW7/Perumal turned hostile. PW8/Dr.Gokularamanan had tested A1 & A3 and issued Ex.P.9 and Ex.P.10 regarding the potency of A-1 & A-3. Independent witness PW10/Mahalingam, turned hostile. PW9/Dr.Sangeetha, had determined the age of the victim girl and issued age certificate of the Defacto Complainant/PW1 under Ex.P.16. Dr.Lavanya was examined as PW11, who had treated PW1 and issued Ex.P.17, Ex.P.18 & Ex.P.19 viz., certificate of examination in sexual offences, investigation of sexual offences format & chemical report. PW12/Dr.Karthik had given age certificate for A-4 under Ex.P.21.



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PW13/Dr.Rajkumar had conducted potency test for A-4. PW14/Chitra (Grade I PC) had produced the victim girl for medical examination. PW16 to PW18 are the police officials, who had deposed about the discharge of their official duty regarding the receipt of Ex.P1/complaint, registration of Ex.P.23/FIR, preparation of rough sketch and observation mahazar, seizure mahazar, production of accused for determination of age and for potency test and production of final report.

10.Learned counsel for the Appellants could contend that Ex.P.18 does not support the case of the prosecution. To go by Ex.P.18, the alleged incident was taken place on 15.05.2015 and 16.05.2015 not 20.05.2015 as projected by the prosecution. The prosecution has burked the issuance of AR copy dated 17.05.2015.

11.PW1 is the wife of one Perumal. Perumal has died. PW2 is the son of PW1. Accused A-1 to A-3 are brothers of the said Perumal. A-4 is the son of A-1. These are all the relationship between the parties.

12.There is a land dispute between the parties. PW1 alleged that initially after the death of Perumal, PW1 & PW2 lived along with Accused A-1 to A-4 in



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a joint family. It is further alleged that without the knowledge of each other, the accused person A-1 to A-4 committed rape on her, by causing intimidation and forcibly having sexual intercourse, against her will and without her consent on several times. On 16.05.2015, there was criminal intimidation by A3 & A4, who forcibly wanted to have sex with the Defacto Complainant, resultant in wordy quarrel and exchange of beating by hand and stick, followed thereby on 20.05.2015, Ex.P.1/complaint was said to have been given by PW1. With regard to charge u/s.376 IPC, PW1 deposed as stated in the complaint. PW1 is the Mother of PW2. A-1 & A-2 are the elder brothers of Perumal (deceased), while A-3 is younger brother, A-4 is the son of A-1. According to PW1 all the four persons have criminally intimidated and had sexual intercourse with her.

13. Whether the evidence of PW1 is reliable and trustworthy, in this regard, the suggestive case of defense assumes significance. Due to the land dispute, PW1 has given a false complaint and all the four accused, except A-2 are in good terms with her. They have arranged for the marriage of the daughter of PW1. They have also attended the marriage. In order to grab more extend of land in the family partition, there was a dispute and panchayat and two days thereafter, a false case has been foisted by PW1, as projected by the prosecution. In the cross examination, PW1/victim girl has admitted as follows:



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“எனக்கும், எதிரிகளுக்கும் நிலம் பாகப்பிரிவினை செய்வது சம்மந்தமாக பிரச்சனை இருந்து கொண்டு இருந்தது என்றால் சரி இன்று வரை அந்த பாகப்பிரிவினை பிரச்சனை முடியவில்லை என்றால் சரி நான் எனக்கு பாகம் கேட்டு நீதிமன்றத்தில் எந்த வழக்கும் தாக்கல் செய்யவில்லை என்றால் சரி நான் பாகப்பிரிவினை வழக்கு போட்டால் அதில் முடிவு தெரிய காலதாமதம் ஆகும் என்பதால் உண்மையை மறைத்து எதிரிகள் மீது இந்த பொய் வழக்கு போட்டுள்ளேன் என்றால் சரியல்ல.

...

மகளுக்கு திருமணம் ஆகிவிட்டது. என் மகளை என் தம்பிக்கு திருமணம் செய்து கொடுத்திருக்கிறேன். அவர்கள் 2,3 காடு தள்ளி குடியிருக்கிறார்கள். அவர்கள் வீடு என் வீட்டில் இருந்து அரைபாறாங் தூரத்தில் இருக்கும். இந்த புகார் கொடுப்பதற்கு ஒரு வருடத்திற்கு முன்பு என் மகளுக்கு திருமணம் ஆனது என்றால் சரி. என் மகளின் திருமணத்திற்கு எதிரிகள் உடன் இருந்து உதவி செய்து திருமணத்திற்கு வந்தார்கள் என்றால் இராஜரத்தினம் என்பவர் மட்டும் வரவில்லை.

...

எதிரிகள் அனைவரும் தங்கள் குடும்பத்துடன் குடியிருக்கிறார்கள் என்றால் சரி அருகே அருகே குடியிருப்பதால் சத்தம் போட்டால் அருகில் வசிப்பவர்களுக்கு கேட்கும் என்றால் சரி கூலி வேலை செய்பவர்கள் என்னுடைய நிலத்திற்கும் எதிரிகள் நிலத்திற்கும் வந்து போவார்கள் என்றால் சரி.

...

ஏற்கனவே நிலத்து பிரச்சனை இருப்பதால் இராஜரத்தினம் என் மகள்



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திரும்பணத்திற்கு வரவில்லை என்றால் சரி நிலத்து பிரச்சினை இருப்பதால்
இராஜ இரத்தினமும், அவரது குடும்பத்தினரும் என்னுடன் பேசமாட்டார்கள்
என்றால் சரி

...

எதிரி கனகராஜ் எனக்கு மகன் முறை என்றால் சரி என்னை சித்தி,
சின்னம்மா என்று கூப்பிடுவார் என்றால் சரி நான் சொன்ன தேதியில்
சொன்ன விதத்தில் சம்பவமே நடைபெறவில்லை என்றால் சரியல்ல.”

14.My attention was drew to the medical evidence of Dr.Lavanya, who had initially treated PW1 and issued Ex.P.17 & Ex.P.18 viz., certificate of examination for sexual offence and investigation of sexual offences format. On close perusal of Ex.P.18/investigation for sexual offence certificate issued by Dr.Lavanya/PW11, I find that it is mentioned there, as per the requestion from the Judicial Magistrate dated 15.05.2015. At column 10, the time and place of examination is stated as 15.05.2015 at 1 pm, so also at column 15, it is stated that the alleged assault was taken on 16.05.2015. However, “16” was altered as “17” and recorded as follows:

“Alleged assault on 17.05.2015 at 3 pm. Attempted sexual assault by 2 persons on 16.05.2015 at night”

It remains to be stated that the complaint was given in Ex.P.1 and FIR was registered as Ex.P.23 on 20.05.2015. In other words, as submitted by the



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learned counsel for the Appellants that even before complaint, PW1 appears to have been examined by PW11/Doctor and issued certificate as extracted supra.

In this connection, during the cross examination PW11 has admitted as follows:

“நான் அ.சா.ஆ.17 முதல் 19 வரையான ஆவணங்களில் நடந்த நிகழ்வுகள் மற்றும் பரிசோதிக்கும் போது அறிந்த உண்மைகள் ஆகியவற்றை மேற்படி ஆவணங்களில் குறிப்பிட்டிருக்கிறேன் என்றால் சரி அ.சா.ஆ.18ல் நான் எனக்கு நீதிமன்றத்தில் இருந்து கொடுக்கப்பட்ட வேண்டுகோளின் தேதி 15.05.2015 அன்று குறிப்பிட்டுயிருக்கிறேன் என்றால் சரி மேற்படி தேதி தவறாக குறிப்பிடப்பட்டுள்ளது. மேற்படி நபரை பரிசோதித்த தேதி 15.05.2015 என்று அ.சா.ஆ.18ல் குறிப்பிட்டுயிருக்கிறேன் என்றால் சரி அந்த தேதி தவறாக குறிப்பிடப்பட்டுள்ளது. அ.சா.ஆ.18 ஆவணத்தில் காலம் நெ-16ல் 17.04.2015 என்று எழுதப்பட்டு அது அடிக்கப்பட்டு 20.05.2015 என்று குறிப்பிடப்பட்டுள்ளது என்றால் சரி மேற்படி ஆவணத்தில் காலம் நெ.15-ல் 16.05.2015 இரவு இரண்டு நபர்கள் தன்னை பாலியல் பலாத்காரம் செய்ய முயற்சித்ததாக குறிப்பிடப்பட்டுள்ளது என்றால் சரி ”

15.On a combined reading of the above documents and evidence, Ex.P.17 & Ex.P.18 coupled with oral evidence of PW11, I find that the said Doctor is trying to save the police or deposing as dictated by the police. While she admitted in the cross examination, Ex.P.18 was issued on the correct date as stated 15.05.2015, she would further *suo motu* deposed that the date was wrongly mentioned, so also she admitted that the date of examination as mentioned in Ex.P.18 is 15.05.2015 and subsequently, *suo motu* she says that



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date was wrongly mentioned and hence I find that documentary evidence of Ex.P.17 & Ex.P.18 clearly and categorically stated that PW1 was examined on 15.05.2015 and necessary treatment has been given, but the complaint was dated 20.05.2015 and FIR was also on 20.05.2015, as could be seen from Ex.P.1 and Ex.P.23.

16.At this juncture, the answer elicited by the learned counsel for the Appellants before the trial Court, touching upon the treatment given assumes significance. In Ex.P.1/complaint, PW1 has categorically mentioned that there was an incident on 15.05.2015 and for that incident, she went to Government Hospital and taken treatment. To go by Ex.P.17 & Ex.P.18, it was for that incident, she was taken treatment on 15.05.2015 and as per Ex.P.1/complaint she was also treated at the Government Hospital on 17.05.2015. However, AR copy has been burked by the prosecution and hence I find that there are lot of infirmity in the prosecution witnesses.

17.The theory of prosecution is suffered with infirmity and further more, it remains to be stated that the Doctor has categorically mentioned the date under Ex.P.17 & Ex.P.18, as stated supra and however, to safeguard her skin and to support the prosecution, she could bold enough to depose before the



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Court that she had wrongly noted the dates. The trial Court appears to have been misled by the so called explanation of the Doctor, to convict the accused.

After going through the evidence of PW1 & PW2 and documentary evidences as discussed supra and the medical evidence, I find that the version of the PW1 is totally unreliable and untrustworthy to rely upon and to convict the accused.

18.The answer elicited from the cross examination of PW1 appears to be more probable, than prosecution case and all the accused have made arrangement for the marriage of the daughter of PW1 and in view of the civil dispute, it appears that she has foisted a complaint and it has been blown out of proportion and prosecution has been conducted and final report has been made ready, without proper investigation.

19.In view of the infirmity as stated supra and also taking note of the suggestive case, which has been clearly admitted by PW1 & PW2, this Court is of the considered view that the case of the prosecution has been blown out of proportion and the evidence of PW1 & PW2 is totally unsafe and totally unreliable and not trustworthy, no reliance can be placed on it and medical evidence of the Doctor has to be rejected and answer elicited in the cross examination clearly demonstrates that the defense case is more probable.



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20. Accordingly, I have no hesitation to hold that the prosecution has failed to prove the case beyond reasonable doubt, giving benefit of doubt to all the accused, who are all convicted, the conviction and sentence granted to all the Accused by the learned Sessions Judge, Mahila Court, Salem in S.C.No.309 of 2015 dated 23.07.2018 is set aside.

21. In fine, Appeal stands allowed. The Appellants were enlarged on bail during the pendency of the Criminal Appeal. Since they are acquitted from all charges, the bail bonds executed by the Appellants shall stand cancelled. If the Appellants have paid the fine amount, the same shall be refunded.

04.07.2023

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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To

1.The Sessions Judge,
Mahila Court,
Salem

2.The Public Prosecutor,
High Court,
Chennai.



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RMT.TEEKAA RAMAN.J,

sai

Pre-delivery Judgment made in

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Dated: 04.07.2023