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Crl.A.No.1327 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.02.2024

Pronounced on : 29.02.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.1327 of 2022
and Crl.M.P.No.7144 of 2023

Pandarinathan ... Appellant/Sole Accused

vs.

The Inspector of Police Circle,
Vanapuram Police Station,
Tiruvannamalai District. ... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, to call for the entire records in connection with the Spl.S.C.No.38 of 2016 on the file of the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai, and set aside the Judgment dated 11.05.2017.

For Appellant : Mr.R.Diwakaran

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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JUDGMENT

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(Order of the Court was delivered by SUNDER MOHAN,J.)

This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him vide judgment dated 11.05.2017 in Spl.S.C.No.38 of 2016 on the file of the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai.

2. For the sake of convenience, the accused is hereinafter referred to as 'appellant'.

3(i) It is the case of the prosecution that the deceased is the minor daughter of PW1; that on 02.06.2016 deceased along with PW1 came to their native village for making arrangements for the marriage of PW1's son one Balaji; that the appellant taking advantage of the age of the deceased decided to commit rape on her; that at about 4.00 p.m., on the same day, the appellant deceived the deceased and induced her to come to a covered place surrounded by sugarcane crop on the pretext of fetching green chillies; that the appellant removed the dress of the deceased and had forcible sexual



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intercourse; and that in order to conceal the said offence, caused the death of the deceased by strangulating her neck, as a result of which, the deceased died due to asphyxia.

(ii) It is the further case of the prosecution that PW1 on hearing the cry for help of the deceased, went to the scene of the occurrence; that she saw the appellant and deceased and at that time the appellant attempted to commit rape on her and strangulated the neck of the deceased; that when she shouted for help, the appellant ran away; that at 12.30 p.m., PW1 gave a complaint [Ex.P1] to PW12, the Special Sub Inspector of Police, who registered the FIR [Ex.P13] in Cr.No.140 of 2016 for the offences under Sections 4 and 8 of the POCSO Act and 376(2), 376(1), 511 and 302 of the IPC.

(iii) PW13, the investigating officer went to the scene of the occurrence at about 1.15 a.m. on 03.06.2016 and since it was dark, he could not conduct the inquest and sent the dead body of the deceased to Tiruvannamalai Government Hospital for a postmortem. He examined the



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witnesses and thereafter went to the scene of the occurrence at 6.00 a.m., and in the presence of witnesses prepared the Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P4). He seized a blue coloured jeans pant [M.O.1] worn by the deceased under Seizure Mahazar [Ex.P3]. He went to the hospital at 9.00 a.m., and conducted inquest and prepared inquest report (Ex.P14) in the presence of the panchayatars.

(iv) On the same day at about 2.30 p.m., PW13 arrested the appellant and on his confession, the admissible portion of which is marked as Ex.P5, seized the underwear [M.O.2] and lungi [M.O.3] of the appellant under Seizure Mahazar [Ex.P6]. He thereafter sent the seized material objects under Form-95 to the Court.

(v) After examination of the other witnesses, he sent the seized articles to the Forensic Science Laboratory and after obtaining the reports and statements, filed the final report against the appellant for the offences under Sections 366, 376, 302 r/w Section 6 and 10 Act and Sections 4 and 4(A) of the Prohibition of Women Harassment Act, before the learned Sessions



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Judge, Fast Track Mahila Court, Tiruvannamalai.

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(vi) The case was numbered as Special S.C.No.38 of 2016 on the file of the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai. On the appearance of the appellant, the provisions of Section 207 Cr.P.C., were complied with. The trial Court framed charges under Sections 366(A) and 302 of the IPC and Section 4 of the POCSO Act, against the appellant and when questioned, the appellant pleaded 'not guilty'.

(vii) To prove the case, the prosecution examined 13 witnesses as P.W.1 to P.W.13, marked 14 exhibits as Exs.P1 to P14, and marked 3 Material Objects as M.O.1 to M.O.3. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The appellant/accused neither examined any witnesses, nor marked any documents.

(viii) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt and held the appellant guilty of the offences charged against him. The



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appellant was convicted and sentenced as follows:.

<i>Offence under Section</i>	<i>Sentence imposed</i>
366(A) IPC	To undergo rigorous imprisonment for seven years.
302 IPC	To undergo life imprisonment.
4 POCSO Act	To undergo rigorous imprisonment for seven years.

The above sentences were ordered to run concurrently. Hence, the accused/appellant has preferred the appeal challenging the said conviction and sentence.

4. Heard, Mr.R.Diwakaran, learned counsel appearing for the appellant/accused, and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/State.

5. Mr.R.Diwakaran, learned counsel for the appellant submitted that the evidence of PW1 who was examined as an eyewitness cannot be believed; that the evidence of chance witnesses PW2 and PW3, who were examined by the prosecution to show that the appellant was seen running from the place of the occurrence, also cannot be accepted, in view of the



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inherent contradictions; that the complaint was lodged nearly eight hours after the occurrence and the presence of police much before the lodging of the complaint, was admitted by the witnesses; and that the earliest version has been suppressed by the prosecution. Hence, the learned counsel prayed for acquittal of the appellant.

6(i). Learned Additional Public Prosecutor *per contra* submitted that there was no necessity for PW1 to falsely implicate the appellant; that both PW2 and PW3 are independent witnesses and they had seen the appellant fleeing from the scene of the occurrence; and that the appellant made an attempt to attack them by throwing stones, which conclusively established that the appellant had committed the offence.

(ii) The learned Additional Public Prosecutor also pointed out to the evidence of the postmortem doctor, which revealed injuries in the private parts of the deceased and that the deceased was subjected to sexual intercourse. Hence, he prayed for dismissal of the appeal.



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7. We have carefully considered the rival submissions and perused all the relevant materials available on record.

8. PW1, as stated earlier is the mother of the deceased and an eyewitness to the occurrence; PW2 is known to both the appellant and the deceased and is an employer of the appellant, who speaks about the appellant running from the scene of the occurrence and throwing a stone at him, to prevent him from apprehending the appellant; PW3 had also seen the appellant running away from the sugarcane field, where the occurrence is said to have taken place; PW4 is the witness to the Observation Mahazar [Ex.P2] and for the seizure of the jeans pant [M.O.1] under seizure Mahazar [Ex.P3]; PW5 is the witness to the confession and recovery of the dress materials of the appellant [M.O.2 and M.O.3] under Seizure Mahazar [Ex.P6]; PW6 is the hearsay witness, who turned hostile; PW7 is another witness, who turned hostile; PW8 is the Village Administrative Officer, of the village where PW2's land is situated and issued Ex.P8-Patta to PW2; PW9 is the doctor who conducted the postmortem and issued a postmortem



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certificate (Ex.P9) ; PW10 is the Primary Constable, who assisted the investigation; PW11 is the scientific officer in the Forensic science laboratory, who had issued the reports [Ex.P11 and Ex.P12] stating that no semen was detected in the vaginal swab of the deceased; PW12 is the Sub Inspector of Police, who registered the FIR; and PW13 is the investigating officer, who conducted the investigation and filed the final report.

9. PW9 the postmortem doctor has noted the following external injuries on the deceased:

1. Irregular dark red abrasions:
 - a) 0.5 x 0.4 cm on the inner aspect of left elbow;
 - b) multiple scratch abrasions of varying dimensions on the front and sides of neck;
 - c) 3.5 x 0.2 cm on the upper part of external genitalia;
 - d) 0.4 x 0.3 cm on the outer aspect of lower 1/3rd of left side of back.
2. Dark red diffuse contusion on the tip of tongue.
3. Dark red contusion 2.5 x 1.8 x 1.5 cm on the upper 1/3rd of right side of neck.
4. Dark red diffuse contusion on the left side of neck.
5. Dark red circumferential abraded contusion on the vaginal introitus around the hymen.



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10. PW9 had opined that the deceased would appear to have died of asphyxia due to compression of the neck. In his deposition, PW9 had also stated that the deceased could have been subjected to sexual intercourse. Apart from the general suggestions made in the cross examination, nothing has been elicited to discredit the evidence of the doctor relating to the cause of death. Though the doctor had not stated that the deceased was subject to sexual intercourse in his opinion, he had stated so in his deposition. This aspect has also not been cross examined by the defence.

11. We find from the external injuries noted by the doctor that there were injuries to the private parts of the deceased. The doctor's opinion cannot be said to be an afterthought. Therefore, we are of the view that the prosecution has established the fact that the deceased had suffered homicidal violence.

12. As regards the involvement of the appellant, the prosecution relies upon the ocular evidence of PW1 and the evidence of PW2 and PW3, who are said to have seen the appellant running away from the scene of



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occurrence. The other witnesses are either mahazar witnesses or witnesses, who had assisted in the investigation.

13. PW1, the mother of the deceased claims that she heard the cry of the deceased and thereafter went to the sugarcane field and saw the appellant there. She would also state that initially she asked her husband who was blind as to where the deceased went and the husband is said to have told her that she went along with the appellant to fetch green chillies. During cross examination, PW1 had stated that she followed both the appellant and the deceased; that when she heard the sound, she went inside the sugarcane field; and that she did not see the appellant. She would further add that she shouted for nearly 5 minutes stating that someone had caused the death of her daughter. The relevant portion in the cross examination of PW1 reads as follows:

“நான் யாரோ என் மகளைக் கொலை செய்து விட்டார்கள் என்று கத்தினேன். நான் அவ்வாறு 5 நிமிடம் கத்தினேன். அதன்பிறகு ஆட்கள் வந்தனர். யார் யார் வந்தனர் என்று எனக்குத் தெரியவில்லை.”



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14. PW1 would also state that she gave the complaint immediately to the police and thereafter called the ambulance. It is her case that the complaint was recorded at the sugarcane field itself, which is contrary to the prosecution case that PW1 went to the police station and lodged the complaint at the midnight i.e., 00.30 hours. She would also add that she did not know what was stated in the complaint because she was an illiterate.

15. PW1 is a rustic villager and the fact that some people helped her in writing the complaint, is natural. However, certain other admissions of facts elicited from her, during cross examination make her an unreliable witness. As stated earlier, PW1 had admitted at one place that she did not see the appellant, when she first saw the deceased and thereafter she shouted for help and cried, stating that someone had caused the death of her daughter. That apart, the other aspect which makes PW1 unreliable is the fact that the complaint was registered at 00.30 hours on 03.06.2016, when the occurrence took place 4.00 p.m., on 02.06.2016. The presence of police at the scene of the occurrence at 4.45 p.m., is admitted by PW2 and PW3. In fact PW2 would state that the complaint was given at 6.30 p.m., on



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16. It is further found in the evidence of PW3 that the deceased was taken in an ambulance at about 10 p.m., to the hospital. The prosecution has suppressed the entries made in the hospital at the earliest point of time, which would reveal the time of admission of the deceased in the hospital. This version of PW3 is contrary to the prosecution case that the body of the deceased was sent to the hospital the next morning after the registration of the FIR. The relevant portion of the evidence of PW2 and PW3 admitting the presence of police much before the lodging of the complaint reads as follows:

PW2:

“நான் போலீசுக்கு போன் மூலம் தகவல் சொன்னேன் 4.45, 5.00 மணி அளவில் வாணாபுரம் போலீசார் அங்கு வந்தனர். முதலில் ஒரு போலீஸ் அரை மணி நேரம் கழித்து மற்றொரு போலீசாரும் வந்தனர்....

.... புகாரை நாங்களே ஒரு மணி நேரம் கழித்து காவல் நிலையம் சென்று கொடுத்தோம். புகார் கொடுக்கும் போது நேரம் மாலை 6.30 மணி இருக்கும். காவல் நிலையத்திற்கு முருகாயி, அவர் கணவர் ரேணு, பாலாஜி, நானும் சென்றோம். ராமஜெயம் வரவில்லை. எங்களோடு 10 பேர் கூட வந்தனர். காவல்



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நிலையத்தில் உதவி ஆய்வாளரிடம் புகாரை கும்பலாக சென்று கொடுத்தோம். புகார் கொடுக்கும் போது நேரம் மாலை 6.00, 6.30 மணி இருக்கும். முருகாயி புகார் கொடுத்ததை நான் பார்த்தேன்....”

PW3:

“போலீசுக்கு யார் தகவல் சொன்னார்கள் என்று தெரியாது. போலீசார் வந்து விட்டனர். வாணாபுரம் போலீசார் 5 பேர் வந்தனர். சாட்சி மீண்டும் போலீசார் 6.00, 6.15 மணிக்கு வந்தனர் என்கிறார்....”

17. Thus, the above extracts from the evidence of PW2 and PW3 would confirm the presence of the police and the fact that an earlier complaint was lodged at 6.30 p.m., on 02.06.2016. The delay in the FIR and the possibility of fabrication cannot be ruled out especially in the light of PW1's evidence which we have discussed above. It is well settled that if the FIR is held to be fabricated, the entire fabric of the prosecution case would collapse. This Court is reminded of the observations of the Hon'ble Supreme Court in this regard in *Marudanal Augusti vs. State of Kerala* reported in (1980) 4 SCC 425 wherein, the Hon'ble Supreme Court had observed as follows:



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“The High Court seems to have overlooked the fact that the entire fabric of the prosecution case would collapse if the FIR is held to be fabricated or brought into existence long after the occurrence and any number of witness could be added without there being anything to check the authenticity of their evidence.”

18. In such a view of the matter, we are of the opinion that though a suspicion arises against the appellant, it is a well settled position of law that suspicion, however grave, cannot take the place of proof. Therefore, we are of the view that it is not safe to convict the appellant on the basis of the evidence of PW1 to PW.3 and thus, the conviction and sentence imposed on the appellant, are liable to be set aside.

19. Accordingly, the Criminal Appeal is allowed. The conviction and sentence imposed upon the appellant in Spl.S.C. No.38 of 2016 dated 11.05.2017, on the file of the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai, are set aside. The appellant is acquitted of all charges and is directed to be released forthwith, unless his presence is required in connection with any other case. Consequently, the connected



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Criminal Miscellaneous Petition is closed.

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(M.S.R.,J.) (S.M.,J.)
29.02.2024

Index : yes/no
Neutral citation : yes/no
Speaking/Non-speaking order
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M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

ars

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- 1.The Sessions Judge,
Fast Track Mahila Court,
Tiruvannamalai.
- 2.The Inspector of Police Circle,
Vanapuram Police Station,
Tiruvannamalai District.
3. The Superintendent of Prisons,
Central Prison, Vellore.
- 4.The Public Prosecutor
High Court of Madras,
Chennai – 600 101.

Pre-delivery Judgment in
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