

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

CRL.A.No. 1668 of 2011 ()

(AGAINST THE ORDER/JUDGMENT IN SC 660/2010 of D.C. & SESSIONS COURT, KOLLAM DATED 23-08-2011)

APPELLANT(S) / ACCUSED:

MADHU, S/O.KUNJU PILLAI @ PERUMAL KONNAR,
@KRISHNA PILLAI, CHIRAYIL PUTHEN VEEDU,
VADAKKEMUKKU CHERRIKONAM CHERRI,
THRIKKOVILVATTOM VILLAGE.

BY ADVS.SRI.SHABU SREEDHARAN
SRI.C.K.PRASAD
SRI.T.S.ANURAJ
SRI.B.BALA PRASANNAN

RESPONDENT(S) / COMPLAINANT:

STATE OF KERALA, REPRESENTED BY THE
SUB INSPECTOR OF POLICE, KOTTIYAM THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

R, BY ADV. PUBLIC PROSECUTOR SMT.M.G.LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 15-10-2015,
THE COURT ON 29/10/2015 DELIVERED THE FOLLOWING:

SUNIL THOMAS, JJ.

Crl.Appeal. No.1668 of 2011

Dated this the 29th day of October, 2015

JUDGMENT

The sole accused, who was found guilty by the Sessions Court, Kollam in SC No.660/2010 for offence punishable under Section 376 IPC and Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, challenges the conviction and sentence.

2. The allegation of the prosecution was that the accused was the neighbour of PW1, who was a mentally challenged Hindu Kurava woman, belonging to scheduled caste. The accused belonged to Hindu Nair community and hence a non Scheduled Caste/Tribe. Both were known to each other. On 5/6/2008, while PW1 was alone at her house, the accused came to her house, gagged her mouth, forcefully took her to the adjoining bed room and committed rape on her. After he left, she ran to the nearby house of PW3. The matter was

immediately conveyed to her mother, PW5 and PW2, her sister who also reached the spot. PW2 took her to the nearby police station at 4.30.p.m. and laid the FI Statement. Crime was thereupon registered. The victim was examined by PW8, who issued Ext.P6 wound certificate. The accused was arrested and after completion of the investigation, final report was laid. The accused pleaded not guilty and faced the trial before the court below. On the side of the prosecution, PW1 to PW11 were examined and Ext.P1 to P10 were marked. MOs 1 to 5 were identified. On the side of the accused there was no defence evidence, though the material contradiction portion proved by PW5 in the previous statement was marked as Ext.D1. The court below, on an evaluation of the available materials, concluded that the accused was guilty of both the offences alleged against him and convicted him for R.I. of eight years R.I. for offence punishable under Section 376 IPC and for two years for offence punishable under Section 3(1) (xi) of the SC & ST(Prevention of Atrocities) Act.

3. The conviction and sentence is assailed in this appeal. Heard both sides and examined the records.

4. It is not seriously disputed that PW1 was a 27 year old mentally challenged woman. To prove her mental disability, PW4, a Psychiatrist of the mental Health Centre, Trivandrum, who had issued Ext.P2 medical certificate, was examined. He deposed that while working as a Psychiatrist in the District Hospital, Kollam, he had examined PW1 and issued Ext.P2 certificate. It was deposed that she was mentally retarded. But, her I.Q. assessment was not possible, since that facility was not available in the District Hospital, Kollam. However, he estimated that her mental retardation was not too severe. This is confirmed by Ext.P2 medical report. Even though PW4 certified the victim as a mentally retarded, the trial court, which had the advantage of watching her demeanour and the behavioural pattern, could record her evidence, but with difficulty. She was illiterate also. In spite of the above, the deposition indicate that she was capable of understanding the questions and had replied in a reasonably cogent manner. This is clear from the fact that she deposed that she was employed in a cashew nut factory and stated that she did not go for work on that day, being a hartal day. It cannot be said that she was

totally bereft of her mental faculties. The various essential facts were deposed by her without much contradictions or omissions. Evidently, her mental disability did not stand in the way of facing chief examination and cross examination.

5. The prosecution has a specific allegation that the accused belonged to Hindu Nair community and PW1 belonged to Hindu Kurava community. PW5, the mother of PW1, had deposed that they were following the Hindu Kurava religious customs and practices. To prove the caste of both the persons, the prosecution relied on the evidence of PW6, the then Tahsildar of Kollam Taluk. He had issued Exts.P3 and P4 certificates. Ext.P3 proved that PW1 was born to PW5 in her relationship with one Andruman, a muslim. However, PW6 had certified that PW5 and PW1 were practicing Hindu religious rites and thereby a member of Scheduled Caste. Ext.P4 was a certificate in relation to the accused, which showed that he belonged to Hindu Nair community. These facts were not seriously challenged or demolished in evidence. In reply to Section 313 Cr.P.C. questioning, the accused had set up a case that he was scheduled caste and had married from that caste.

There is absolutely no material to establish that. Hence, it is only to be held that the prosecution had succeeded in proving that PW1 was scheduled caste and the accused was a non-Scheduled Caste person.

6. PW7 had examined the accused and had issued potency certificate. Hence, there was nothing to suggest that the accused was incapable of having sexual relationship.

7. The main allegation against the accused was sought to be proved through the oral testimony of PWs 1,2,4 & PW5 with corroboration from Ext.P6 wound certificate issued by PW8. PW1, the victim herself, deposed that while she was alone at her house, the accused came to her house, along with his dog. He asked for drinking water for himself and food for the dog. While, she went inside the house, the accused suddenly gagged her, threatening not to disclose it to any other person. He carried her to the bed room, laid her on MO 1 carpet, removed her dress and that of himself and raped her. She deposed that in the course of gagging her, her lip got injured. Further, she had clearly deposed that the private part of the accused entered her body, which caused pain and she started bleeding.

Thereafter, the accused left the house. She deposed that she rushed to the house of the neighbour PW3 and the matter was reported to them. Her dress got stained with blood in the meanwhile. On getting information, her mother immediately reached the spot, followed by the elder sister PW2. Thereafter, the matter was reported to the police.

8. This version spoken by PW1 is seen disclosed in Ext.P1 FI statement given by her sister, PW2. PW2 also, in her evidence deposed that while she had reached her house, she saw her mother and few other persons. On enquiry, it was revealed that the accused had committed rape on her sister. Their mother disclosed that when she had reached the spot on getting information, PW1 was in the house of PW3, with blood stained dress and thereafter she was cleaned. PW3 also deposed in tune with the version given by PW1, to the extent of the incidents that transpired after PW1 reached the house of PW3. He also deposed that he had seen PW1 in a disturbed condition, with blood strained dress. PW3 deposed that PW1 told him that the accused had misbehaved. According to him, he went to the house, but did not find the accused there. PW5, the mother,

also deposed that on getting information, she immediately reached the house of PW3 and found PW1 in a disturbed condition, along with PW3 and his wife. In the FI statement, there is a body note attached, which also indicates that the accused had an injury on her lip and had complained of pain on her breast.

9. Even though all the above witnesses were cross examined in detail, nothing was brought out to discredit the substratum of the case, as spoken by all of them. All the witnesses were uniform, consistent in their version and did not commit any material contradiction or omission with that of their previous statement in Ext.P1 and those given to the police. There was no interse-contradiction among the version spoken by the witnesses.

10. The version spoken by PW1 is thoroughly in conformity with the medical evidence. PW8 is the doctor, who examined PW1 on the same day at 11.15 P.M and issued Ext.P6 wound certificate. PW8 in her evidence deposed that she had examined the patient after obtaining her consent. She noted that PW1 had a minor mucosal abrasion on the inner lower lip

and the hymen of PW1 had a fresh tear. The doctor, on the basis of physical examination of the witness had found that there was evidence of sexual intercourse. In Ext.P6 wound certificate also, the cause of the injury was recorded as physical assault by the accused, after gagging her mouth.

11. The medical evidence indicate that there is sufficient corroborative evidence with respect to the essential facts deposed by the victim. Her version that she was gagged and had sustained injury on the inner lower lip is proved by the evidence of PW5, mentioned in Ext.P1 body note and affirmed by PW5 in Ext.P6 wound certificate. Her version that the accused had pressed her breast is also seen corresponding to entries in Ext.P1 as well as confirmed by the physical examination by the doctor. The very substratum of the case that she was raped is confirmed by her own testimony with complete corroboration from the medical record and the oral testimony of PW8, which proved beyond any doubt that there was penetration. Further the medial examination and recording the FIS were immediately after the incident.

12. The defence set up by the accused was that he was

falsely implicated. However, this defence has no basis to stand since there is absolutely no reason suggested as to why the complainant and others should wrongly implicate him in a false case, that too one, affecting the modesty of a mentally challenged woman. The learned counsel for the accused vehemently contended that there was no corroboration from the forensic evidence. It is true that though the material objects were seized and sent for forensic examination, corresponding Forensic reports were not marked before the court below. However, it is pertinent to note that the available materials in the form of oral testimony of PW1,2,3 and 5 get complete corroboration from the medical evidence. Hence, absence of forensic evidence is not material and will not in any manner, affect the substratum of the prosecution case.

13. The learned counsel for accused further contended that PW1 in her evidence had stated that the incident happened at about 3 p.m. The other eye witnesses also stated that they reached the spot around 3 p.m. However, in Ext.P1 there is an indication that the incident occurred at about 1 P.M. It is true that there is a reference of "1 .p.m.", which only refers to the

time when PW5, the mother, had gone to collect the fire wood. According to her, she went to collect fire wood at about 1 P.M. and thereafter son of PW3 reached the spot and asked her to immediately return. This version does not mean that the incident happened at 1 P.M. Hence, there is absolutely no contradiction.

14. The learned counsel for the accused further contended that it is highly unbelievable that the accused went to the house and committed the alleged act, especially when there were several houses nearby and further that most of the occupants had not gone for work on that day, due to harthal. It is true that it was a harthal day, as spoken by PW1, and that she herself had not gone for job. However, PW5, the mother had gone for collecting the fire wood. Even though there were houses nearby, the version of PW1 itself is an answer to the above contention. Further, she had stated that the accused had gagged her mouth and threatened that if she disclosed it to anyone, she would be killed. In the above circumstances, there is no reason to disbelieve the version of the prosecution.

15. An evaluation of the entire evidence, lead to a definite

conclusion that the version spoken by PW1 regarding the commission of heinous act by the accused stands proved. Her version is devoid of any doubtful circumstance and it gets full corroboration from the version of PW2, PW3 and PW5. It is fully in tune with the medical evidence and there is absolutely no reason as to why the court shall not rely on the materials available on record. Hence, the finding of the Court below, that the accused being a non scheduled caste, had committed rape on a scheduled caste woman, is proved beyond any shadow of doubt. Hence, the conviction imposed by the court below is only to be sustained.

16. The court below has imposed substantive sentence of eight years for offence punishable under Section 376 IPC and two years for offence under Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act, 1989. The victim is a mentally retarded person. The act was committed during day time after trespassing into the house, fully knowing that the accused was alone in that house. This shows that accused had taken advantage of her mental disability and freedom that he enjoyed in the house. Further, it was a case of

violent act. The accused does not deserve any leniency. In the above circumstances, the punishment to be imposed on him should have an element of deterrence also. Considering these facts, I am not inclined to hold that the sentence imposed by the court below is excessive, in any manner.

In the result, the appeal is dismissed, confirming the conviction and sentence.

Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge.

