

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2015

CORAM:

THE HON'BLE MR.JUSTICE P.DEVADASS

Crl.A.No.786 of 2012 & M.P.1 of 2012

1. Kovilan

2. Devadoss

.. Appellants/Accused No.1 & 2

Vs.

The state rep. By
The Inspector of Police,
Padalam Police Station,
Kancheepuram District.
Cr. No.267/08

... Respondent

Petition filed under Section 374 (2) of the Code of Criminal Procedure, to set aside the judgment passed against the appellants on 21.08.2012 in S.C.No.164/2009 on the file of the learned Mahalir Court, Chengalpattu, Kancheepuram District and acquit them from all the charges.

For Petitioner : G.Mageshkumar

For Respondent : P.Govindarajan,
Addl. Public Prosecutor

JUDGEMENT

A1 and A2 are the appellants herein.

2. In the Sessions Case in S.C.No.164 of 2009 A1 and A2, before the learned Additional Sessions Judge, Mahila Court, Chengalpattu, they faced their trial. Ultimately, they were convicted and punished as under:

SL. No.	Accused	Conviction	Sentence
1	Kovilan - A-1	376 IPC	10 years R.I and fine Rs.5000/- i/d. One year R.I.

SL. No.	Accused	Conviction	Sentence
2	Devadoss - A2	376 r/w.109 IPC	10 years R.I and fine Rs.5000/- i/d. One year R.I.

3. The case of the prosecution is that Miss x, a deaf and dumb, who is 14 years old is the daughter of PWs 1 and 2. PW3 is PW1's brother. PW.1 lodged Ex.P1 complaint to P.W.9, Sub-Inspector of Police, Padalam that A1 and A2 have raped his daughter. PW9 registered this case(See Ex.P10 FIR). PW12, Inspector took up his investigation. He visited the scene place. In the presence of PWs.4 and 5, PW12 prepared Ex.P.14 observation mahazar. He drew Ex.P15 rough sketch of the scene place. He examined the witnesses and recorded their statement. With the assistance of PW.11 the I.O interrogated the victim girl and recorded her statement. He send the victim girl for medical examination. On 25.05.2008, on the banks of Palaru, near Ellanpuram, PW12 arrested A1 and A2. He produced them before the court. Accused were medically examined. Ex.P.11 and Ex.P12 are their potentiality test reports. PW10, the Doctor examined the victim girl. He issued Ex.P6 Medical Certificate. Ex.P7 is her age certificate. Completing his investigation, PW12 filed the Final Report for an offence under Section 376 IPC as against A1 and under Section 376 r/w. 109 IPC as against A2 in the committal court.

4. Upon hearing both and on consideration of the Final Report and the documents attached thereto, the trial court framed charges under Section 376 IPC as against A1 and under Section 376 r/w.109 IPC as against A2. Both pleaded not guilty to the charges.

5. To substantiate the charges, prosecution examined Pws 1 to 12, marked Ex.P1 to Ex.P18 and exhibited MOs.1 and 2.

6. On the incriminating aspects in the prosecution evidence, the Trial Court examined A1 and A2.

7. They have denied the offence. They did not examine any witness nor mark any document on their side.

8. After hearing both sides and appreciating the evidence adduced, the trial court convicted and sentenced the appellants as stated in para 2, supra.

9. The learned counsel for the appellants would contend that the trial court was carried away by the fact that the alleged victim is a deaf and dumb and recorded the conviction without incriminating evidence. There is material contradiction as to the version contained in the FIR lodged by PW.1 and in his evidence. Even PWs 1 and 2 are not consistent. PW.3 has deposed as though he has witnessed the entire occurrence, however, his presence has not been mentioned in

the FIR. PW1 also did not say so. PW11 stated that the victim girl did not say anything.

10. On the other hand, the learned Additional Public Prosecutor would contend that PWS 1 and 2 are none other than the parents of the victim girl, who is a deaf and dumb. They have spoken about the sexual violence committed on their daughter by the accused. PW3 corroborated them.

11. The learned Additional Public Prosecutor would also submit that Pws 1 and 2 have deposed in chief examination. Only, after a lapse of a considerable time they have not supported the prosecution version and have resiled from their earlier evidence. They were gained over.

12. I have given my anxious consideration to the rival submissions, perused the impugned Judgment and also the evidence on record.

13. Now, the question is whether prosecution has established the charge levelled against A1 under Section 376 IPC and under Section 376 r/w.109 IPC as against A2 beyond all reasonable doubts.

14. Although , F.I.R is not a substantial piece of evidence it is an important document in a criminal case. It is the foundation of a criminal case, like the foundation of a building. If the basic is not strong, the building will collapse, likewise if the FIR has many holes, the entire prosecution version may collapse.

15. Pws1 and 2 are parents of the alleged victim girl, who is about 14 years old. PW1 lodged Ex.P1 complaint with PW9 Kalaiselvi, S.I. of police.

16. In his FIR, PW1 stated that at about 4 am., on the fateful day, at the scene place, he had seen the accused running away from the place. In the FIR, he did not mention that he has witnessed A1 and A2 committing sexual violence on his daughter. However, in the trial court, he had stated that he had witnessed the sexual violence act being committed by A1, assisted by A2. In his cross examination, he had given up that. The evidence of PW2 is also same. PW.3, a close relative of PW1 deposed in his chief examination that he had gone to the scene of crime and witnessed that one accused caught hold of the hand of the victim girl while another accused raped her. PW3 would also say that along with PW1 he had searched for the missing girl. These aspects were not at all mentioned in the FIR. In their cross examination, PWS 1 and 2 did not say that they have witnessed the sexual violence perpetrated on their daughter. PW11 the translator of the victim girl stated that the victim girl did not say anything as to the alleged violence caused to her. There is nil evidence from the girl as to the serious allegations made against the appellants. The victim girl has been examined by the Doctor,

PW8. There is nil incriminating medical evidence showing that the victim girl has been subjected to sexual violence.

17. Suspicion, however, strong may not take the place of legal proof. A conviction of a criminal court must exhibit its fairness. It should be the product of judicial application of mind and it should be the result of proper evaluation of evidence adduced before the court applying legal principles. 'Otherwise, it will be conviction sans evidence.' It will be a conviction for the conviction (doctrine) of the convicting judge'. 'Moral conviction is absurd'. It is totally 'against all canons of justice'. 'It is guided not by the law of land, but by the law of the jungle. These are facts of 'principles of fair trial and fair justice'.

18. There is no acceptable incriminating evidence to substantiate the charges framed against the appellants. Thus, prosecution has not established the charges framed as against the accused beyond all reasonable doubts.

19. In the result,

- i) This Criminal Appeal is allowed.
- ii) Conviction of 1st appellant under Section 376 IPC and of 2nd appellant under Section 376 r/w.109 IPC are set-aside.
- iii) Fine amount shall be refunded.
- iv) They are directed to be set at liberty, if they are no longer required in connection with any other case.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

mrp

To

- 1 The Principal Sessions Judge,
Chengalpet.
2. The Additional Sessions Judge,
Mahalir Court,
Chengalpattu.

3.The Judicial Magistrate No.1, Chengalpet.

4.-Do- Thro The Chief Judicial Magistrate, Chengalpet.

5. The Inspector of Police,
Padalam Police Station.
Kancheepuram District.

6.The Superintendent, Central Prison, Puzhal, Chennai-66.

7.The District Collector,Kancheepuram

8.The Director General of Police, Mylapore, Chennai-4.

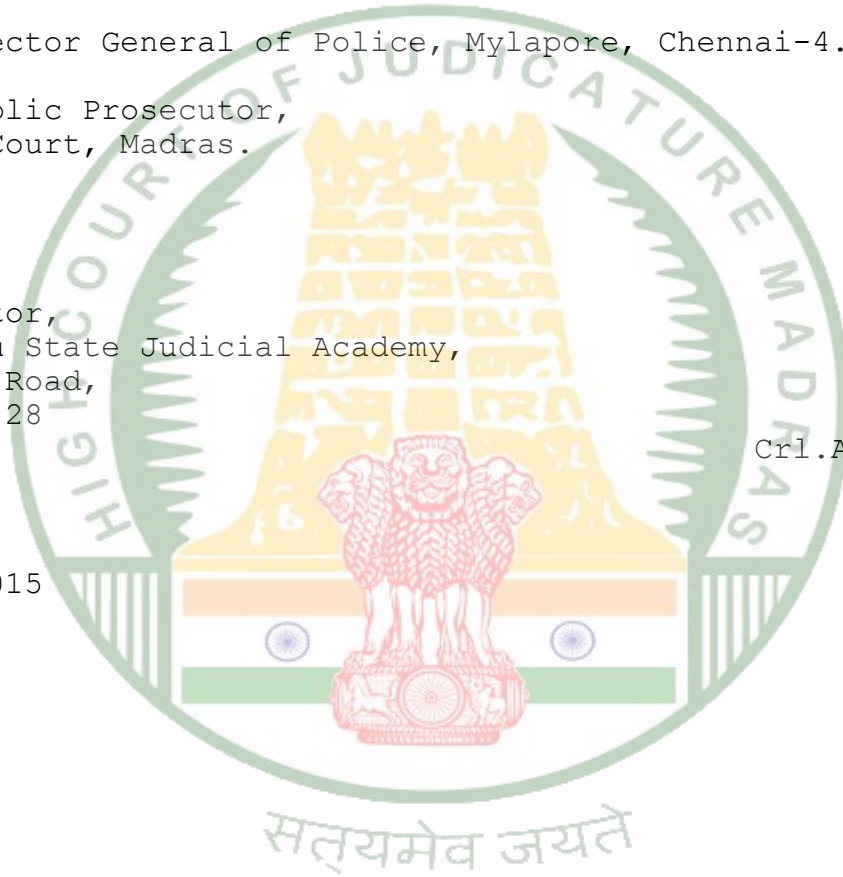
9. The Public Prosecutor,
High Court, Madras.

Copy to

The Director,
Tamil Nadu State Judicial Academy,
Greenways Road,
Chennai - 28

CrI.A. No.786 of 2012

ry(co)
pmk.1.7.2015



WEB COPY