

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.12.2015

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.R.C.No.1523 of 2013

Pitchaikaran
S/o.Murugan

.. Petitioner

vs.

1. The State Rep. By
The Inspector of Police
Kurinjpadi Police Station
Cuddalore
(Crime No.9 of 2006)

2. Silambarasan

.. Respondents

Criminal Revision filed under sections 397 and 401 Cr.P.C. to allow the revision and thereby set aside the judgment made in S.C.No.110 of 2007 dated 25.07.2007 on the file of the Sessions Judge (Mahila Court), Cuddalore.

For Petitioner : Mr.M.C.Swamy

For Respondent : Mr.C.Iyyapparaj
Government Advocate (Crl.side)

Mr.C.Prasana for R2

ORDER

This revision arises against the judgment passed by the learned Sessions Judge (Mahila Court), Cuddalore in S.C.No.110 of 2007 on 25.07.2007.

2. A case was registered in Cr.No.9 of 2006 on the file of the respondent on the complaint of PW1, the father of PW5, an alleged victim girl. The complaint alleged that on 28.12.2005, at about 08.30pm, PW5 went to the house of PW6 to watch television. The accused went over to the house of PW6, covered the mouth of PW5 with his hand and took her to the house of one Suriya Gandhi and committed rape. He further threatened that if

she revealed his actions to anybody, he would murder her. On completion of investigation, a final report informing commission of offences under Sections 376 and 506(ii) IPC was filed. The case was tried in S.C.No.110 of 2007 on the file of Sessions Judge, Mahila Court, Cuddalore.

3. The prosecution examined 12 witnesses and marked 23 exhibits and 6 material objects. None were examined on the side of the defence nor were any exhibits marked.

4. On appreciation of materials before it, the trial Court rendered a finding of acquittal. Against the said order, the defacto complainant has preferred this revision. All the prosecution witnesses, except the Investigation Officer, have turned hostile. In rendering a finding of acquittal, the Court below reasoned as follows:

The evidence of PW3, Doctor, who examined the victim and the medical certificate marked as Ex.P3 reveal that neither was there any bite or nail mark over the girl's vulva and thighs nor any evidence of sexual abuse. The Court below, finding that all the witnesses who were examined on the side of the prosecution had turned hostile, came to the conclusion that the prosecution has not proved its case beyond reasonable doubt.

5. Learned counsel for the petitioner submitted that the prosecution witnesses have been examined in chief on 19.06.2007 and they were cross-examined on 12.07.2007, when they had turned hostile. It is his contention that in the interregnum, the prosecution witnesses have been bought over. Learned counsel referred to the evidence of PW5, the alleged victim girl, who having deposed against the accused in chief, had in cross turned hostile and had been treated hostile. In cross-examination by prosecution she had informed that all she had stated in chief was true and owing to a panchayat conducted in the village wherein it had been agreed that the respondent/accused would marry her upon her attaining marriageable age, she had deposed in cross-examination by defence as instructed.

6. This Court has heard learned Government Advocate (Crl.side) for first respondent and learned counsel for second respondent on the above submissions.

7. Learned counsel for second respondent submitted that given the opposing versions of PW5, the alleged victim and in circumstance where she barely was 8 years of age, not much reliance could be placed on her evidence. Learned counsel also referred to the evidence of PW3, the doctor, who examined the victim girl and who had deposed that she had not been subjected to sexual intercourse. Learned counsel further submitted that PW6, the neighbour in whose house PW5 had allegedly gone to

watch television, had deposed that PW5 was not in the habit of coming to her house and further had informed that there was a television in the house of PW1/defacto complainant, father of the alleged victim. Submitting as above, learned counsel prays for the dismissal of the revision.

8. On consideration of the rival submissions and perusal of the judgment of the Court below, this Court is unable to arrive at a finding that the decision of the Court below totally is unreasonable or this Court is not informed of one acceptable view of the matter. This Court would hold that given the discrepancy in PW5's evidence, it would be unsafe to enter upon a finding of conviction particularly where PW3, the Doctor, specifically has stated that she has not been subjected to sexual intercourse. In the absence thereof, there can be no conviction for offence under Section 376 IPC. Through PW6 and PW7 the prosecution has sought to put forth a most unlikely tale of witnessing the child being taken away by the accused. That such witnesses also have turned hostile, is of no surprise. Importantly, the prosecution has failed to examine Suriya Gandhi, in whose house the occurrence took place, who in the circumstances put forth by the prosecution would be a material witness.

For the aforesaid reasons, the revision shall stand dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Sessions Judge
(Mahila Court), Cuddalore.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.Prasanna Venkatesh, Advocate, S.R.No.68202

Cr1.R.C.No.1523 of 2013

vgi (CO)
srg (04/02/2016)