

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.11.2015

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Cr1.R.C.No.955 of 2009

H.Farook Maricar
S/o.Hajamaricar

.. Petitioner/De facto complainant

vs.

1. State represented by
Inspector of Police,
Nagore Police Station. .. Ist Respondent/complainant
2. M.H.Sheik Alavudheen
S/o.Mohammed Ibrahim .. 2nd Respondent/accused

Criminal Revision filed under section 397 and 401 Cr.P.C. against the judgment of learned Assistant Sessions Judge (Chief Judicial Magistrate), Nagapattinam, passed in S.C.No.238 of 2008 on 10.07.2009.

For Petitioner : Mr.R.Thiagarajan

For Respondents: Mr.C.Iyyapparaj,
Government Advocate
[Cr1.side][R1]

ORDER

Challenging the judgment of acquittal passed by learned Assistant Sessions Judge (Chief Judicial Magistrate), Nagapattinam, in S.C.No.238 of 2008 on 10.07.2009, the present revision has been filed.

2. The case of the prosecution is that the accused , with an intention to commit rape upon a minor girl, took her 'kuran' and kept the same in his house. On 17.07.2006 at about 05.30 p.m., when the girl was searching the 'kuran', the accused, under the pretext of returning the same to her, took her to his house and attempted to rape her. On the complaint of PW-1, maternal uncle of the victim girl, a case was registered in Crime No.630 of 2006 on the file of first respondent for offences u/s.341, 354 and 506(i) IPC. Upon completion of investigation and filing of charge sheet informing commission of offences u/s.376 r/w 511 and 506(ii) IPC and 4 of Tamil Nadu Prohibition of Women Harassment Act, 2002, the case was tried in S.C.No.238 of 2008 on the file of learned Assistant Sessions Judge, Chief Judicial Magistrate, Nagapattinam.

3. Before the trial Court, the prosecution examined six witnesses and marked four exhibits. One witness was examined on behalf of the defence and two exhibits were marked. On appreciation of materials before it, the trial Court, under judgment dated 10.07.2009, rendered a finding of acquittal. Hence, this revision.

4. Heard learned counsel for petitioner and learned Government Advocate [Crl.side] for first respondent.

5. In rendering a finding of acquittal, the trial Court has reasoned thus:

- (i) PW-2/victim girl, deposed to her having been taken by the accused to his house and of having been molested by him. When it was the admitted case that there were 40 to 50 students in the school, where the accused worked as a teacher and where PW-2 studied, the prosecution ought to have examined at least one of the students to corroborate the evidence of PW-2. This, the prosecution has failed to do.
- (ii) While PW-1 deposed to having preferred a complaint before Jamath prior to preferring Ex.P1, complaint, to the police, the complaint preferred before Jamath has not been produced before Court. When PW-1 himself has admitted that he did not know English Calendar month and year, he had deposed that the occurrence had taken place on 17.07.2006.
- (iii) PW-3, mother of PW-2, deposed to having accompanied PW-1 to Jamath to give a complaint and of having preferred a complaint before police 10 days thereafter. However, the First Information Report in the case was registered only on 04.10.2006. The delay of two months and 17 days in preferring the complaint has not been explained by the prosecution. Further, the delay in the First Information Report reaching the Magistrate has also not been explained.
- (iv) Though it was the prosecution version that PWs.2 and 3 were examined by PWs.5 and 6, Sub-Inspector and Inspector, the evidence of PWs.2 and 3 was to the contra.
- (v) The prosecution has failed to establish the allegation that the accused threatened PW-1 that he would publish the obscene photos of PW-2, if he complained to the police.

For the above and for some other reasons, trial Court has held that the prosecution has failed to prove its case beyond all reasonable doubt and accordingly, acquitted the accused of all charges. This Court finds that the judgment of acquittal rendered by trial Court is just and reasonable.

This Criminal Revision stands dismissed.

Gm

Sd/-

Assistant Registrar (Cs-III)

/True Copy/

Sub-Assistant Registrar

To

1. The Judicial Magistrate No.II,
Nagapattinam
2. The Assistant Sessions Judge
(Chief Judicial Magistrate),
Nagapattinam.
3. The Inspector of Police,
Nagore Police Station.
4. The Public Prosecutor,
High Court, Madras.

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CTK(CO)

sd : 05/02/2016

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