

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-04-2015

Coram :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 487 of 2007

Balamurugan

.. Petitioner

Versus

The State represented by
Inspector of Police
Arumbavur Police Station
Arumbavur
Perambalur District

... Respondent

Petition filed under Section 397 and 401 of Criminal Procedure Code against the Judgment dated 21.10.2005 made in Crl.Appeal No.5 of 2004 on the file of Sessions Judge, Perambalur confirming the conviction and sentence imposed on 27.01.2004 in S.C. No. 50 of 2003 on the file of Chief Judicial Magistrate, Perambalur.

For Petitioner : Mr. T.M. Naveen
Amicus Curiae

For Respondent : Mr. R. Prathap Kumar
Government Advocate (Crl.side)

ORDER

The petitioner is the sole accused in S.C. No. 50 of 2003 on the file of the learned Chief Judicial Magistrate, Perambalur. After conclusion of trial, the learned Chief Judicial Magistrate, Perambalur found the petitioner guilty of the offences punishable under Section 376 of Indian Penal Code and convicted and sentenced him to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for a period of three months. The appeal filed by the petitioner thereagainst was dismissed by a Judgment dated 21.10.2005 made in Crl.Appeal No.5 of 2004 on the file of Sessions Judge, Perambalur. The present Criminal Revision Case is filed challenging the concurrent judgment of the courts below.

2. The case of the prosecution is that the victim, PW1, is the daughter of PWs 2 and 3. At the time of occurrence, PW1 was studying in VI Standard. PWs 2 and 3 are having their own agricultural land in which they have raised corn crops. The accused is related to PWs 1 to 3. The accused is also residing in the same Village. On 04.11.2002, at about 4.00 p.m. as per the instructions given by PWs 2 and 3, PW1 went to the agricultural

field and she was followed by the accused. PW1 alleged to have instructed the accused not to follow her. In spite of the same, the accused bodily lifted PW1 and taken her to an isolated field in the corn crop where he committed rape on her. As PW1 did not return home even after sunset, PWs 2 and 3 went to the corn field by holding a torch light and on noticing the same, the accused ran away from the scene of occurrence. Before leaving the scene of occurrence, the accused alleged to have threatened PW1 not to disclose the incident to any one. Therefore, PW1 did not disclose it to her parents, PWs 2 and 3. However, the next day, PW1 alleged to have informed the commission of rape by the accused on her. Immediately, PWs 2 and 3 have informed the same to PW5, PW6, PW7, one Arulmozhi @ Manisekar and Ramar of the same Village. On such complaint, a Panchayat was convened, as per the prevailing custom in the Village. However, the accused did not participate in the panchayat and it was informed that the accused was absconding. Thereafter, on 20.11.2002, the complaint, Ex.P1 was given to the respondent police and it was received by PW-13, Sub-Inspector of Police. On the basis of such complaint, first information report was registered on 20.11.2002, under Ex.P10. On the next day, PW14, Inspector of Police commenced investigation and prepared a observation mahazar. On 21.11.2002, the accused was arrested and he was subjected to medical test and a report thereof was obtained on 25.11.2002 under Ex.P8. PW1 was also subjected to medical test and a report thereof was obtained on 30.11.2002 under Ex.P6. PW14, the investigation officer also obtained a certificate from the School where PW1 studied to certify her age and it was marked as Ex.P9. PW14 also recorded the statement of the witnesses and laid the charge sheet before the trial court.

3. During the course of trial, on behalf of the prosecution, PWs 1 to 15 were examined and Exs. P1 to P14 were marked. The trial court, on conclusion of trial, convicted the petitioner/accused for the offence punishable under Section 376 of IPC and sentenced him to undergo rigorous imprisonment for a period of 7 years with fine. Such conviction and sentence imposed on the petitioner was confirmed by the appellate Court on appeal filed by the petitioner.

4. It is seen from the records that originally, the above Criminal Revision Case was filed by the petitioner through his counsel. Subsequently, the counsel for the petitioner withdrew their appearance for the petitioner and it was recorded by this Court on 20.06.2013. On the same day, this Court directed the Registry to issue notice to the petitioner returnable on 12.07.2013. In spite of notice, the petitioner did not appear before this Court. Therefore, on 28.04.2014, this Court appointed Mr. T.M. Naveen, learned counsel as an Amicus Curiae in this matter.

5. The learned Amicus Curiae appointed by this Court would assail the judgment passed by the courts below on three grounds. The first ground raised is that there is an inordinate delay in giving the complaint as regards the alleged offence. According to

the learned amicus curiae, the incident alleged to have taken place on 04.11.2002, however, the complaint, Ex.P1 was given only on 20.11.2002. Even though it was alleged that there was a panchayat convened in the Village and to substantiate the same PWs 4 and 8 have been examined, they have turned hostile and their evidence cannot be taken into account to prove that there was a panchayat during their examination. Thus, it was not established by the prosecution beyond reasonable doubt that there was a panchayat convened which led to the delay in filing the complaint. Therefore, according to the learned amicus curiae, by reason of the delay, the entire prosecution case is vitiated. The next ground of attack is that the petitioner/accused and the victim, PW1 are related to each other. According to the learned amicus curiae, PWs 2 and 3 were interested to give PW1 in marriage to the petitioner, however, he refused and therefore, a false complaint was given against the petitioner and the alleged commission of offence did not take place. Even in the evidence of the prosecution witness, it was made clear that there was an attempt to solemnise the marriage between PW1 and the petitioner, but it did not fructify. Therefore, it can be concluded that the complaint given by the petitioner is false and motivated. The last limb of argument advanced on behalf of the petitioner is that PW1 has earlier given a similar complaint against one Jayapaul, based on which a Panchayat was held. During the course of such Panchayat, it was found that the complaint given by PW1 is false and therefore, PWs 1 to 3 were penalised by the Panchayatars. Therefore, the learned Amicus Curiae would contend that the courts below failed to take note of such conduct of PW1 while convicting and sentencing the petitioner.

6. On the contrary, the learned Government Advocate (Crl.side) would contend that it was proved beyond reasonable doubt that PW1 was minor at the time of occurrence. She was 16 years old and this was established by producing a certificate issued by the School authorities and marked as Ex.P9. As regards the delay in preferring the complaint, it is contended that merely because there is a delay it will not vitiate the case of the prosecution. This is more so that the prosecution has examined PWs 2, 3, 5 and 6 who have deposed as to the convening of a Panchayat as per the custom prevailing in the Village. Even though PWs 4 and 8 have turned hostile, that does not mean that the prosecution failed to prove that there was a panchayat convened before giving the complaint. When it is proved that there was a Panchayat convened, much significance cannot be attached to the delay in filing the complaint. As regards the contention that petitioner refused to marry PW1 which led to giving a false complaint, that will not vitiate the case put forward by the prosecution. The prosecution came to be launched on the basis of the complaint, Ex.P1 and the contents of the complaint have been proved by the prosecution by adequate and cogent evidence. Similarly, the past conduct of the petitioner with regard to giving an alleged false complaint will not in any way vitiate the case put forward by the prosecution. The witnesses examined by the prosecution have given clear and cogent evidence which led to the conviction and sentencing of the

petitioner by both the courts below and it need not be interfered with by this Court.

7. I heard the learned amicus curiae appearing for the petitioner and the learned Government Advocate appearing for the respondent. As regards the delay in filing the complaint, it has to be mentioned that in a case of this nature, the victim cannot be expected to immediately give a complaint to the police. This is more so that on being informed about the occurrence, PWs 2 and 3, parents of PW1, have informed the same to their neighbours and they in turn convened a panchayat as per the custom prevailing in the Village. In such circumstances, whether there was a convening of panchayat and it led to delay in preferring the complaint has to be examined in the light of the evidence let in by the witnesses examined by the prosecution.

8. PW2, father of the victim, PW1, in categorical term deposed that he informed the occurrence to his neighbours Clothungan, Sellathurai, Arulmozhi, Saravanan and Raman and they convened a panchayat in which parents of the petitioner/accused participated. However, the petitioner/accused did not present and he absconded from the Village. Since the family of the accused refused to accept the decision taken by the panchayat to solemnise the marriage between the petitioner and PW1, the complaint, Ex.P1 was given to the police. It is also seen from the records that the accused subsequently appeared before the police station but refused to marry PW1. Such evidence of PW2 was corroborated by his wife PW3.

9. PW4, Sivamani was examined by the prosecution to corroborate the evidence of PWs 2 and 3 but he turned hostile. Similarly, PW8, who is the owner of a neighbouring land, also turned hostile.

10. PW5 is the Village Dharkamakarthha who deposed that when PWs 2 and 3 complained to him with regard to the occurrence, he called upon the parents of the petitioner/accused for a panchayat. PW5 further deposed that since the parents of the accused left to Andhra Pradesh, he gave three days time to bring the petitioner/accused to the panchayat but he was not brought to the panchayat. Thereafter, PW5 informed PW2 to take action through the police.

11. PW6, Saravanan deposed about the convening of the panchayat in the presence of elders of the Village. He also deposed that the petitioner/accused did not present in the panchayat. PW6 also deposed that an ultimatum was given to the petitioner/accused and his family to be present before the panchayatars within three days, but the petitioner did not participate in the panchayat. Thereafter, according to PW6, PW2 was instructed to proceed further by giving complaint to the police officials. Such evidence of PW6 was also duly corroborated by PW7, Chelladurai. Therefore, from the deposition of the prosecution witness, it is clear that there was an attempt made by PWs 2 and 3 to resolve the dispute through a Panchayat, as per the

custom prevailing in their village. However, as the decision of the Panchayat to solemnise the marriage between the petitioner and PW1 did not fructify, PW2 gave the complaint. Thus, the prosecution had adequately and substantially proved that before giving the complaint, there was a panchayat convened and it led to the delay in preferring the complaint. Even though PWs 4 and 8 have turned hostile, it will not weaken the case of the prosecution in any manner to suggest that there was no panchayat convened or an attempt made to reconcile the dispute. In such circumstances, I have no hesitation to hold that the delay in preferring the complaint will not be a ground to reject the case put forth by the prosecution.

12. The next limb of argument advanced by the learned amicus curiae is that both the petitioner and PW2 are related to each other and PWs 2 and 3 were interested to solemnise the marriage of PW1 with the petitioner. When the petitioner refused to marry PW1, a false complaint was given as though petitioner committed the offence of rape on the PW1.

13. It is not in dispute that petitioner and PW1 are related to each other. At the first blush, merely because they are related to each other, it will not absolve the crime committed by the petitioner. PW1, victim girl, in her deposition categorically deposed that she was forcibly taken by the petitioner into the corn crop where she was subjected to rape. Such evidence of PW1 is corroborated by PW10, Dr. Parimaladevi. PW10 would depose that she examined PW1 and found that she was subjected to rape. The certificate issued by PW10 was marked as Ex.P5. It is also seen from the records that at the time of occurrence, PW1 was a minor, aged about 16 years. This is evident from the deposition of PW12, Dr. Karthikeyan, who deposed that on the basis of the growth of the bone and other medical examination, he certified that PW1 would have completed 15 years and below 16 years. Thus, the prosecution not only let in ocular evidence but also medical evidence to prove the guilt of the petitioner/accused. In such circumstances, the contention of the learned amicus curiae that a false complaint was given and there was no such offence at all taken place cannot be accepted.

14. The last limb of argument advanced on behalf of the petitioner is that earlier, similar complaint was given by PW1 against one Jayapaul and it was found to be false. Therefore, the learned amicus curiae would contend that the instant complaint given by PW2 is also false and it should not form the basis for convicting the petitioner. This contention cannot be accepted. The prosecution is expected to prove the offence only on the basis of the complaint, Ex.P1. In order to prove the validity or otherwise of Ex.P1, the prosecution had examined witnesses and also marked documents. As discussed above, the oral and documentary evidence let in by the prosecution clearly proved the offence committed by the petitioner beyond any doubt. While so, the case of the prosecution cannot be discarded by reason of the past conduct of the victim girl. Even otherwise, it was merely stated that previously a false complaint was given by the PW1, but

it was not substantiated by the defence by any oral or documentary evidence. Therefore, I hold that the prosecution has established the case beyond reasonable doubt and consequently, the conviction and sentence imposed by the courts below needs no interference.

15. In the result, the Criminal Revision case fails and it is dismissed. The trial court is directed to take steps to secure the presence of the petitioner/accused to undergo the remaining period of sentence. This Court also hereby records the service rendered by Mr.T.M. Naveen, learned Amicus Curiae.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

rsh

To

1. The Sessions Judge
Perambalur
2. The Chief Judicial Magistrate
Perambalur.
3. The Inspector of Police
Arumbavur Police Station
Arumbavur
Perambalur District
4. The Public Prosecutor
High Court, Madras

1 cc to Mr.T.M. Naveen (Amicus Curiae) Advocate, sR. 22157

CrI.R.C No. 487 of 2007

PA (CO)
kk 21/5