



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:01.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

CRIMINAL APPEAL (MD).No.58 of 2014

S.Murugan

: Appellant/Sole Accused

Vs.

State rep by
The Deputy Superintendent of Police,
Tenkasi, Tenkasi Police Station,
Crime No.287 of 2008,
Tirunelveli District.

: Respondent/Complainant

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure to call for the records relating to the Judgment dated 09.07.2013 made in S.C.No.36 of 2009, passed by the learned Second Additional District and Sessions Judge, Tirunelveli, Tirunelveli District and set aside the same.

For Appellant : Mr.P.T.Ramesh Raja
For Respondent : Mr.C.Mayil Vahana Rajendran
Additional Public Prosecutor

JUDGMENT

The appellant is the sole accused in S.C.No.36 of 2009, on the file of the learned Second Additional District and Sessions Judge, Tirunelveli. He stood charged for the offences punishable under Sections 342, 324, 376 of the Indian Penal Code and Section 3(2)(v) of the Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, 1989. By Judgment dated 29.07.2013, the Trial Court has convicted him under Sections 342, 324 and 376 of the Indian Penal Code. However, the Trial Court acquitted the appellant from the charge under Section 3(2)(v) of the Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Trial Court sentenced him to undergo simple imprisonment for three months for the offence under Section 342 of the Indian Penal Code, to undergo simple imprisonment for six months for the offence under Section 324 of the Indian Penal Code and to undergo rigorous imprisonment for seven years for the offence under Section 376 of the Indian Penal Code and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months. As against the said conviction and sentence, the appellant has come up with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:-

The prosecutrix, in this case, was a resident of Aazath Nagar, Tenkasi. She was a coolie by profession. She belongs to Hindu Pallar Community, which is a Scheduled Caste. Her husband was engaged by a Contractor to clean the public toilet belonging to the Tenkasi Municipality and to collect toll from the users. PW-1/Prosecutrix used to do the said job, as and when her husband was not available. On 16.03.2008, since her husband was not available, she was engaged in the



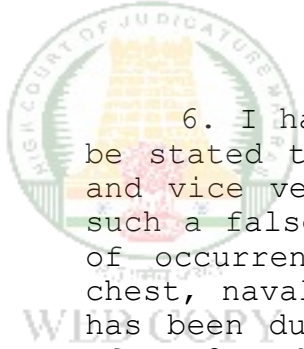
said job in the public toilet. At that time, it was raining. The accused, who was not known previously, had come near the said public toilet. It was around 04.00 PM. The accused stood behind PW-1 and he was waving his shirt by his hands. PW-1 asked him as to whether he wanted to use the toilet. Suddenly, the accused pushed PW-1 into the toilet and bolted the door from inside. Then, he attempted to hug her. PW-1 warned him by telling that she was like his mother and he could not behave in such a way towards her. But, the accused did not stop. He bit PW-1 on her mouth, hip, chest, thighs and also on the female genitalia. PW-1 cried for help. But, the accused warned her not to raise alarm or otherwise, he would kill her. He also removed the Thali from the neck of PW-1. In the course of the same transaction, it is the further case that the accused committed rape on PW-1. On hearing the alarm raised by her, PW-2 and PW-3 came to the spot. But, when they wanted the inmates to open the door, they did not do so. Immediately, PW-3 informed the Police Station, which is hardly at a distance of about two and half kilometres. PW-9, the then Sub Inspector of Police, attached to the Tenkasi Police Station, with a team of police, immediately, rushed to the place of occurrence. She, along with PW-2 and PW-3, violently tapped on the door of the toilet and shouted directing the inmates to open the door. Suddenly, the accused opened the door and rushed out of the toilet and he tried to escape. But, he was caught hold by the police. When the Sub Inspector of Police entered into the toilet, she found PW-1 half naked. There were bleeding injuries on her body including her vagina. PW-9 gave a saree to PW-1 to cover her body. Then, PW-9 took the accused as well as PW-1 to the Police Station with the help of PW-2 and PW-3.

2.1. On reaching the Police Station, PW-9 obtained a statement from PW-1, under EX-P1. She registered a case in Crime No.287 of 2008, under Sections 342, 324, 376 of the Indian Penal Code and Section 3(2)(v) of the Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Then, she forwarded the First Information Report and the complaint to the Court and handed over the case diary to the Deputy Superintendent of Police for investigation. PW-9 also sent PW-1 for medical examination. On 16.03.2008, PW-8, Dr.S.R.Sugam examined her. She noticed that there were injuries with marks of bite both on her chest, navel and vagina. There was a laceration in the vagina, through which there was bleeding. PW-8 took smears from the female genitalia and sent the same for examination. The report revealed that there was no spermatozoa found. Therefore, she opined that there was no sign of recent rape. EX-P3 is the certificate issued by PW-8. During investigation, PW-12 prepared an Observation Mahazer and a Rough Sketch, in the presence of the same witnesses regarding the place of occurrence. From the accused, he recovered a lungi, [MO-1] and Jatti [MO-8]. Then, he forwarded the accused to the Court for judicial remand.

2.2. On 17.03.2008, PW-12 examined PW-1 and recovered the cloth materials worn by her at the time of occurrence through Court. On 18.03.2008, PW-11, Dr.C.Babu, examined the accused and gave opinion that the accused was not an impotent. In other words, according to the doctor, he was capable of performing penile sex with a woman. On completing the investigation, he laid charge sheet against the accused. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused was questioned on the charges, he pleaded innocence. In order to prove the charges, the prosecution examined as many as 12 witnesses and 14 documents were exhibited, besides eight Material Objects.

Contractor,

hands of this Court.

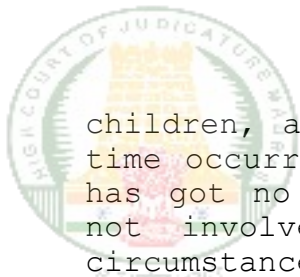


6. I have considered the above submissions. At the outset, it should be stated that admittedly, the accused was not previously known to PW-1 and vice versa. Thus, there would have been no motive for PW-1 to make such a false case. PW-1 is a old woman, aged about 50 years, at the time of occurrence. According to her evidence, the accused bit her mouth, chest, naval, thighs and vagina. This resulted in injuries. This evidence has been duly corroborated by PW-8. Apart from the above, the evidences of PW-2 and PW-3 would duly corroborate the same. The evidence of PW-9, the Sub Inspector of Police, plays a vital role. According to her, she rushed to the place of occurrence on receiving phone message and with the help of PW-2, PW-3 and others broke open the door of the toilet. When she tapped the door, the accused opened the door from inside, rushed out of the toilet and attempted to escape. This conduct of the accused is an incriminating evidence against him. Then, he was caught red handed. This part of the evidence of PW-9 assumes more importance, which clearly corroborates the evidence of PW-1. When she entered into the toilet, she found PW-1 half naked with bleeding injuries. There is no reason to reject the evidence of PW-9. Thus, from the evidences of PW-1 to PW-3 and that of the evidence of PW-9, coupled with the medical evidence, the prosecution has clearly proved that the accused was responsible for the injuries found on PW-1.

7. Now, the next question is as to what was the offence committed by the accused by his act. As I have already pointed out, he trespassed into the toilet, with a view to commit the crime. Therefore, the conviction imposed on the accused under Section 342 of the Indian Penal Code deserves to be confirmed. It is in evidence that the accused bit PW-1 with his teeth on her mouth, chest, naval, thighs and vagina. This has been duly corroborated by the medical evidence. According to the doctor, there were bit marks found on these places. Apart from the above, there was a lacerated injury on her vagina. Thus, for having caused voluntary hurt, he is liable for punishment under Section 324 of the Indian Penal Code.

8. Now, turning to the next question as to whether the accused had committed rape on PW-1, the prosecution relies only on the evidence of PW-1. PW-1, in her statement, has stated that the accused spoiled her. She has not stated that the accused had penile intercourse with her either in full or in part. The doctor also gave opinion that there was no sign of recent rape. Of course, there was a lacerated injury on her vagina. In the absence of any positive evidence to the effect that the accused had penetrated his penis into her vagina, it is too difficult for this Court to hold him guilty of rape. But, at the same time, in my considered view, the act of the accused would not merely amount to outraging her modesty, since PW-1 was not even known to the accused previously. But, the proved facts that the accused pushed PW-1 into the toilet, bolted the door from inside, hugged her, bit her on her chest, naval, thighs and vagina, would all go to prove that the accused had attempted to commit rape, but, he could not succeed, because of the resistance made by PW-1. Thus, I hold that there are overwhelming evidences to hold that the accused had committed an attempt to rape on PW-1. Therefore, the conviction of the accused under Section 376 of the Indian Penal Code is liable to be set aside and instead, he is liable to be convicted under Section 376 r/w 511 of the Indian Penal Code.

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 9. Now, turning to the quantum of punishment, it is brought to the notice of this Court that the accused has already undergone imprisonment for two and half years. It is also on record that he has got two



children, aged three years and one and half years, respectively, at the time occurrence. He has got a big family to be taken care of by him. He has got no bad antecedents. Subsequent to this occurrence also, he has not involved in any other crime. Having regard to the mitigating circumstances as well as the aggravating circumstances, by striking a balance between these two, I am inclined to impose a sentence of rigorous imprisonment for five years for the offence under Section 376 r/w 511 of the Indian Penal Code and fine of Rs.1,000/- in default to undergo rigorous imprisonment for one month. The sentence imposed by the Trial Court for the offence under Sections 342 and 324 of the Indian Penal Code are liable to be confirmed.

10. In the result, the Criminal Appeal is partly allowed in the following terms:-

- The conviction and sentence imposed on the appellant under Sections 342 and 324 of the Indian Penal Code are confirmed.
- The conviction of the appellant under Section 376 of the Indian Penal Code and the sentence imposed by the Trial Court are set aside and instead, he is convicted under Section 376 r/w 511 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for one month.
- The fine amount, if any paid already, as ordered by the Trial Court, shall be adjusted towards the fine imposed herein.
- It is directed that the sentences shall run concurrently.
- It is further directed that the period of sentence already undergone by the appellant shall be set off as required under Section 428 of the Code of Criminal Procedure.

NB

Sd/-

Assistant Registrar[Crl side]

/True copy/

TO

Sub Assistant Registrar

1. THE SECOND ADDITIONAL DISTRICT AND SESSIONS JUDGE, TIRUNELVELI DISTRICT
2. THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, TIRUNELVELI DISTRICT.
3. THE JUDICIAL MAGISTRATE, TENKASI.
4. THE CHIEF JUDICIAL MAGISTRATE, TIRUNELVELI.
5. THE DIRECTOR GENERAL OF POLICE, MYLAPORE, CHENNAI.
6. THE DISTRICT COLLECTOR, TIRUNELVELI.
7. THE DEPUTY SUPERINTENDENT OF POLICE, TENKASI,
TENKASI POLICE STATION, TIRUNELVELI DISTRICT.
8. THE SUPERINTENDENT OF POLICE, CENTRAL PRISON, PALAYAMKOTTAI.
9. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC TO MR.P.T.RAMESH RAJA, ADVOCATE SR.NO.36051.

JUDGMENT MADE IN
CRIMINAL APPEAL (MD).No.58 of 2014
DATED:01.07.2015

5P/11C

RPB 22.07.2015

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