

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.387 of 2014

Suresh @ Rasappan @ Selvan ... Appellant/ Accused

-Vs-

State

Rep. by Inspector of Police

All Women Police Station (Central)

Coimbatore. Respondent/ Complainant
(Crime No.31/2010)

This Criminal Appeal has been preferred to set aside the conviction imposed in judgment dated 28.11.2013 made in S.C.No.13 of 2012 on the file of the Mahila Court, Coimbatore by allowing this appeal.

For Appellant : Dr.G.Krishnamurthy

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by S.NAGAMUTHU, J.)

The appellant is the sole accused in S.C.No.13 of 2012 on the file of the learned Mahila Judge, Coimbatore. He stood charged for offences under Sections 366 and 376 (1) IPC. By judgment dated 28.11.2013, the Trial Court convicted him under both the charges and sentenced him to undergo rigorous imprisonment for 10 years and pay a fine of Rs.20,000/-, in default to undergo simple imprisonment for one year for the offence under Section 366 IPC; and to undergo imprisonment for life and to pay a fine of Rs.1,00,000/, (no default sentence imposed). Challenging the said conviction and sentence, the accused/appellant is before this Court with this appeal.

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

P.W.2 - was doing third year B.Com course at Hindustan College, Coimbatore. She was aged more than 19 years. P.W.1 is her mother. P.W.2's father used to take her to college every day in the morning. In the evening, she would return on her own. On 20.10.2010, in the usual course, her father took P.W.2 to the college and left her. She attended the classes. By about 1.30 p.m., when she was returning on walk, she received a phone call through her cell phone from one Mahendran. Mahendran wanted her to come to V.O.C. Public Amusement Park in Coimbatore. P.W.2 went in an auto to the Park. When she entered into the Park, she did not find Mahendran, instead, she found only the accused. The accused approached her and started talking to her. P.W.2 enquired about Mahendran and asked the name of the accused. The accused told her that his name was Suresh. Then, the accused enquired as to what was the class, in which, she was studying. Then, he further enquired her as to why she had returned so soon from the college. Then the accused received the cell phone of P.W.2 and spoke to Mahendran. After a short while, Mahendran himself spoke to her. But Mahendran's replies were not to her satisfaction. Therefore, she wanted to leave the park. But the accused told her that he would take her around the park to show many exciting places. She agreed and followed him. He took her to various places in the park in a friendly manner. After a long time, P.W.2 wanted to go home. But the accused wanted her to accompany him to cinema theatre. She followed him. They went to a cinema theatre and watched the first show by sitting side by side. While watching cinema, the accused touched her and attempted to misbehave with her. Since it was happened in the midst of the crowd of audience, she did not raise any resistance. After the cinema was over, both of them came to the bus stop and took a bus. The accused told her that he would take her to her house. But instead of doing so, he took her to a hotel, where P.W.2 had evening tiffin. Then they boarded another bus and went to the house of the accused at Kuniamuthur. From the bus stop, he took her to his house. At his house, his mother, sister-in-law and children were there. He introduced her to them and told them that on her own, out of love for him, she had come with him.

3. Thereafter, she was made to stay in the house of the accused. The accused went out to purchase food for her. His sister gave drinks to P.W.2. Then the accused returned from the shop with parotta. P.W.2 and the accused together had parotta. Thereafter, the accused took her to a room in the house and wanted her to sleep. Closing the door, the accused came out of the room and started sleeping outside. But P.W.2 came out of the room and wanted the accused to come inside the room and to sleep with her. She told him that it would be a protection for her. The accused entered in the room. According to P.W.2, her invitation to the accused to come inside was mistook as an invitation for sex. At last, in the room, the accused, without

the consent of P.W.2 had repeated sexual intercourse with her. When she cried out of pain, his mother came and tapped the door. The accused shouted against her mother and therefore, her mother did not raise any alarm. For the whole night, he stayed with her in the room and had sexual intercourse repeatedly. The next day morning the accused took P.W.2 to the bus stop, where they had breakfast. Thereafter, in the town bus, he boarded her and informed her not to disclose the occurrence to anybody. P.W.2 then returned to her house in the morning.

4. In the mean while, P.W.1, mother of P.W.2 was worried about the fact that she did not return from the college in the evening on 20.10.2010. She informed her husband over phone about the same. He along with others went in search of P.W.2. They could not find her anywhere. On the next day, on her own, P.W.2 returned home as detailed herein above. She was very tired and there were some changes in her physical appearance. When P.W.1 enquired P.W.2, she kept silent and did not disclose anything about the occurrence.

5. Thereafter, P.W.1 took P.W.2 to a local hospital. The Doctor in the said hospital, on examination of P.W.2 found out that she had been sexually exploited. She found injuries in her vaginal cavity indicating that she had sexual intercourse. The hymen was not intact. The Doctor informed the same to P.W.1. Thereafter, P.W.1 intensively enquired P.W.2. Then P.W.2 narrated the entire occurrence to her. Shocking over the said incident, P.W.1 went to All Women Police Station and made a complaint at 2.00 p.m. on 26.10.2010. On receipt of the said complaint, P.W.9, the then Inspector of Police registered a case in Crime No.31 of 2010 under Sections 363, 376 and 506(i) IPC.

6. Taking up the case for investigation, P.W.9 proceeded to the place of occurrence and examined P.Ws.1 and 2 and few more witnesses. He prepared Observation Mahazar at 3.30 p.m. on 26.10.2010 and also drew a rough sketch. Then from the house of the accused, he recovered a nighty and a lungi under the Mahazar. On 26.10.2010, at 4.30 p.m., on being identified by P.W.2, P.W.9 arrested the accused in the presence of witnesses. Then he forwarded him to the hospital for medical examination. P.W.4 - Dr.Jayasingh examined him and gave opinion that he was capable of performing sexual intercourse with a woman. Then he forwarded P.W.2 to the hospital for medical examination. P.W.5 - Dr.Vatchala Devi examined her and gave opinion that she had been subjected to sexual intercourse. At his request, P.W.8 recorded the statement of P.W.2 under Section 164 Cr.P.C. On completing the investigation, P.W.9 laid charge sheet against the accused.

7. Based on the above materials, the trial Court framed charges as detailed in the first para of this judgment against the accused. The accused denied the same. In order to prove the

case of the prosecution, on the side of the prosecution, as many as 9 witnesses were examined and 16 documents were exhibited, besides 2 Material Objects were marked.

8. Out of the said witnesses, P.W.1 - mother of P.W.2 has spoken about the fact that P.W.2 did not return from the college in the evening on 20.10.2010. She further stated that she returned to her house only on the next day morning. She has further stated that she took P.W.2 to the Doctor and the Doctor found out that she had been sexually exploited. Thereafter, when she enquired P.W.2, she narrated the entire occurrence and only thereafter, complaint was made. P.W.2, the victim has spoken about the entire occurrence in a vivid fashion. P.W.3 has spoken about the preparation of Observation Mahazar and rough sketch. P.W.4 has spoken about the medical examination conducted on the accused and his opinion. P.W.5 has spoken about the medical examination conducted on the victim and her medical opinion. P.W.6 - the mother of the accused has not stated anything incriminating against the accused. P.W.7 turned hostile and he has not supported the case of the prosecution in any manner. P.W.8 has spoken about the recording of the statement under Section 164 Cr.P.C. from P.W.2. P.W.9 has spoken about the registration of the case and investigation done.

9. When the above incriminating materials were put to the accused under Section 313 Cr.P.C, he denied the same as false. However, he did not choose to examine any witness on his side nor marked any document in his favour. His defence was a total denial.

10. Having considered all the above, the trial Court convicted the accused on both the charges. Aggrieved over the same, the accused/appellant is before this Court with this appeal.

11. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

12. Admittedly, as on the date of the alleged occurrence, P.W.2. was 19 years old. She was a student doing final year degree course in the local college. According to her evidence, she received a phone call from Mahendran asking her to come to VOC Park at Coimbatore. She went in an auto to the said Park. However, Mahendran was not there, but the said accused was there. The accused approached her and spoke to her and she responded. They were talking for quite some time and making a jolly trip to various places in the park. Then, she had gone to the theatre along with him and enjoying the cinema. When cinema was going on, the accused touched her and made sexual advances. She did not resist. Thereafter, along with the accused, she

had gone to a hotel and had evening tiffin. There also she did not make any resistance. Thereafter, he took her to his house in a bus. On reaching his house, he introduced her as the girl in love for him. At that time also, she did not tell anything to his parents and others refuting the love stories spoken by the accused. When the accused went to fetch parotta, P.W.2 was in the house of the accused. The accused returned with parotta and P.W.2 had parotta with him. Thereafter, crucial time comes. The accused wanted her to sleep in the room and he came out of the room and slept. It was only P.W.2, who came out of the room and wanted him to come inside the room and to sleep. Thereafter only, they had sexual intercourse for the whole night repeatedly. The next day morning P.W.2 returned home in a town bus and did not disclose the occurrence to anybody including her mother. These narration of facts would go to show that at no point of time, P.W.2 tried to make any resistance against the accused. She was a consenting party all through, from 2.00 p.m. to 7.00 a.m. on the next day. Assuming that though the accused denies that he did not have sexual intercourse with her, we are prepared to believe the evidence of P.W.2.

13. Assuming that the accused had sexual intercourse with P.W.2 at his house, from the above narration of facts, it is crystal clear that it was out of her full consent. There is no evidence that the said consent was obtained by coercion or misrepresentation. The conduct of P.W.2 would clearly disclose that it was a free consent. Therefore, the act of the accused would not amount to rape at all. Similarly, there is no evidence that the accused kidnapped her. Instead, P.W.2 had followed him everywhere he was going. Thus, there is no scope to convict the accused for kidnapping also. Thus in our considered view, the conviction of the accused is liable to be set aside as the same is not sustainable.

13. The Criminal Appeal is allowed and the conviction and sentence imposed on the appellant by the Trial Court in S.C.No.13 of 2012 are hereby set aside. The appellant is acquitted and he is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case. Fine amount, if any, paid by the appellant, shall be refunded to him. Bail bond, if any, shall stand discharged.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1.The Presiding Officer
Mahila Court, Coimbatore.

2. The Principal Sessions Judge,
Coimbatore

3. The Judicial Magistrate No.3,
Coimbatore

4. Thro the Chief Judicial Magistrate
Coimbatore

5. The Superintendent
Central Prison,
Coimbatore

6.The Inspector of Police
All Women Police Station (Central), Coimbatore.

7.The Public Prosecutor
High Court, Chennai.

1 cc to Dr.G. Krishnamurthy, Advocate, Sr. 33744

Crl.A.No.387 of 2014



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