

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

Criminal Appeal No.293 of 2011

Ramakrishnan

... Appellant/Accused

vs.

The State

rep. By Inspector of Police,
W.4 All Women Police Station
Poonamallee, Chennai-56
(Cr.No.2/10)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment and sentence dated 02.05.2011 imposed in S.C.No.203/2010 on the file of Additional Sessions Judge/Fast Track Court I, at Poonamallee.

For appellant : Mr.R.C.Paul Kanagaraj

For Respondent : Mr.E.Raja, Additional Public Prosecutor

JUDGMENT

Challenge in this Criminal Appeal is to the conviction and sentence dated 02.05.2011 passed in Sessions Case No.203 of 2010 by the Additional Sessions Judge, Fast Track Court I, Poonamallee.

2. The appellant/accused, who was found guilty and sentenced under Section 376 and 506(1) of IPC by the trial court in S.C.No.203 of 2010, has come forward with this appeal seeking to set aside the same and to acquit him.

3. The case of the prosecution is that on 08.03.2009, at about 10.00 p.m., when the minor victim P.W.1/Shalini was alone at home, the accused came there and against her wish, committed rape and also threatened her and thereby committed offence punishable under Section 376 and 506(2) IPC.

4. The trial court, after hearing the arguments of both sides and upon perusing the relevant documents has framed the charge against the accused under section 376 and 506(2) of IPC

and the same has been read over and explained to him. The accused has denied the charges and claimed to be tried.

5. On the side of the prosecution, P.Ws.1 to 6 have been examined, Exhibits P.1 to P.13 have been marked.

6. When the accused has been question under Section 313 of the Code of Criminal Procedure, 1973, as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. Ex.D.1-Photo Album has been marked on the side of accused.

7. The trial court, after hearing arguments of both sides and upon perusing the relevant evidence available on record has found the charge against the accused proved beyond reasonable doubt and thereby found the accused guilty under Section 376 IPC and sentenced him to undergo 7 years rigorous imprisonment and also imposed a fine of Rs.5,000/-, in default to undergo one year simple imprisonment and further found him guilty under Section 506(1) of IPC and sentenced him to undergo one year rigorous imprisonment and ordered both the sentences to run concurrently. Aggrieved over the same, the appellant/accused has preferred this criminal appeal.

8. According to the learned counsel for the appellant/accused, the following infirmities in the prosecution case viz., (1) the evidence of P.W.1 has not been considered properly by the trial court;

(2) the fact of non-examination of one important witness viz., Rajeswari, was not considered by the trial court;

(3) the fact of earlier dispute between mother of the victim who deposed as P.W.2 and the accused has not been taken into consideration by the trial court;

(4) the fact of delay in lodging the complaint and other evidence was not taken into consideration. Thus the learned counsel, pleaded to entertain the appeal and to set aside the conclusion arrived at and the sentence imposed by the trial court.

9.1. According to victim/P.W.1, while she was in the first floor of house along with her neighbour Rajeswari, the accused came there at about 6 p.m., and suddenly caught hold of her hand and kissed her; she pushed aside the accused and proceeded to ground floor and the accused followed her and closed the doors, abused her in filthy language and raped her. According to P.W.1, at that time, her mother, P.W.2-Geetha Priya had gone to Andhra to meet their relatives and on her mother's return on 09.03.2009, at about 6 p.m., the house owner Rajeswari informed P.W.2 about the act of the accused in catching hold of the victim and kissing her. Immediately P.W.2 asked the accused

about the same, but he denied the occurrence. P.W.1 states that she was threatened by the accused not to say anything about the occurrence of rape to anyone. According to P.W.1, the accused stated that he is having a C.D., of her taking bath and if she informed her mother or anyone about the occurrence, he will display the C.D., to everyone. Further according to P.W.1, she was threatened by the accused that he will kill P.W.2, if she informed her about the alleged rape. Further, when P.W.1 stated that the accused married her mother P.W.2/Geetha Priya earlier about 5 years back and subsequently on 08.03.2009, when her mother was away from home, the accused misbehaved with her and the same was informed to the mother only later when her mother found out the message received in the cell phone from the accused. P.W.1 also stated that, in between, the accused took away the jewels kept for her marriage and the accused also assaulted her mother P.W.2 and treatment was taken for the injuries in the hospital and only after returning home from the hospital, the complaint was lodged in All Women Police Station on 01.03.2010 about the alleged act of rape as well as assault committed on P.W.2. The said complaint copy is produced as Ex.P.1. Thus the victim P.W.1, contends that the accused committed intercourse with her against her wish even while she was a minor and also produced Ex.P.2, School Transfer Certificate, wherein, her Date of Birth is stated as 16.05.1993. Thus, according to P.W.1, the occurrence of rape took place on 08.03.2009 and she did not inform about the same to any one including her mother P.W.2 till 13.10.2009 and thereafter only on 01.03.2010, nearly after one year, Ex.P.1/complaint was lodged about the occurrence against the accused.

9.2. P.W.2 also corroborated the version of P.W.1, even though she was not present at the occurrence spot, on the day of alleged occurrence.

9.3. Prosecution examined P.W.3-Doctor Geethanjali, who conducted test on the victim girl to support the case of the prosecution. According to P.W.3/Doctor, while she was on duty in the Madras Medical College Hospital, on 06.04.2010, the victim P.W.1-Shalini was produced for examination by the police and according to her, the girl was aged between 19 and 25 years and there was evidence of the girl having intercourse earlier and the certificate issued by her is produced as Ex.P.5.

9.4. The prosecution also examined P.W.4-Doctor Dhunderseep, who conducted test on the accused and according to him, the accused was not impotent. The medical certificate given in respect of the same is produced as Ex.P.6.

9.5. According to P.W.6-Sakunthala, the Investigating Officer of the case, on the basis of Ex.P.1/complaint given by the mother of the victim, she registered FIR/Ex.P.7 and after examining the victim and other witnesses, she visited the occurrence spot and prepared Ex.P.8 Observation Mahazar and Rough Sketch Ex.P.9 and also took steps to examine the victim under Section 164 Cr.P.C., and recorded her statement and completed the investigation and thereafter, she filed charge sheet under Section 376 r/w.506(2) IPC.

9.6. Thus prosecution contends that oral and documentary evidence gathered by them will substantiate the allegation against the accused and the same has been accepted by the trial court, which found the accused guilty of the offence as stated above.

10. The learned counsel for the appellant/accused contended that the fact of alleged rape is not clearly established. P.W.1 admitted in her evidence that she was with one Rajeswari, the landlady of the building, when the accused came to her house, but the said Rajeswari has not been examined before the trial court. P.W.1 further stated that her house and the landlady house are in the same compound and there are other tenants in the neighbouring portions. P.W.1 also stated that if she called from her portion, it can be heard in other portions. In such circumstances, there is no material before the court to show that the victim resisted or made any attempt to prevent the accused from committing the alleged offence.

11. For considering the submissions made on the side of appellant/accused, the court has to necessarily look into the evidence given by P.W.1. According to P.W.1, the occurrence took place on 08.03.2009. She further admitted that between 8.3.2009 and 16.05.2009, the accused had physical relationship with her on several occasions, but, she has not stated about the same to anyone immediately and Ex.P.1/complaint, as stated above, has been lodged only on 01.03.2010. Further P.W.1 stated to safeguard her self respect, she did not prefer the complaint immediately. In such circumstances, it is unbelievable that she would have kept quite after such occurrence took place without informing anyone though she informed her mother P.W.2 on 13.10.2009. It is surprising even after that no complaint was lodged immediately but they waited till 01.03.2010 to lodge the complaint/Ex.P.1. In such circumstances, the delay in lodging the complaint is not properly explained and the same has not been taken into consideration and appreciated by the trial court. In the absence of acceptable explanation for such a long delay in lodging the complaint, doubt arises about the claim of the victim.

12. Further, according to P.W.1, she kept quite without informing any one about the occurrence, since the accused was threatening her stating that he is in possession of a C.D., of her taking bath and the same will be released by him to public. However P.W.1 stated that she is unaware of how and when that C.D., was taken and the accused informed her about the same only after she submitted herself to him. Further, P.W.1 admits nothing is mentioned about the said C.D., or the accused threatening her on the basis of the C.D., in Ex.P.1/complaint. Likewise, the mother of the victim, who deposed as P.W.2 stated that on 13.10.2009, she was informed about the accused being in possession of C.D., recorded by him while the victim/P.W.1 was taking bath. But nothing was mentioned about the said C.D., or the accused threatening the victim/P.W.1 in respect of the said C.D., in Ex.P.1/complaint. The Investigating Officer of the case who deposed as P.W.6 stated that nothing was mentioned about the said C.D., in the complaint/Ex.P.1., or in the statement given by P.W.1 during enquiry. It is also admitted by P.W.6 that no such C.D., was secured by her. In view of the above said evidence, it is not clear as to whether any such C.D., really existed.

13. According to P.W.1, she informed her mother about the alleged act of rape by the accused on 13.10.2009 and before that, she informed her grandmother Padmavathy, who is residing at Alandur, but her grandmother ignored the same. It is unbelievable that the victim's grandmother would have kept quiet after she informed about such occurrence. Further it is stated by P.W.1 that before she lodged Ex.P.1 complaint on 01.03.2010, her mother has lodged another complaint against the accused. P.W.1 also admitted that she is aware of the complaint lodged by the accused against herself and her mother alleging that they were threatening the accused and demanding money. She also stated that prior to lodging of Ex.P.1/complaint, she gave a complaint before All Women Police Station in writing, but the same was returned by the Police. It is further stated that from January 2010 onwards she had given several complaints to All Women Police Station. Similarly, P.W.2 also stated that she lodged the complaint on 01.07.2010, at Porur Police Station, but no action was initiated on that complaint. She further stated that the accused gave back the amount and jewels taken away by him from her house in the Porur Police Station and settled the matter. She also stated that the accused lodged the complaint against her in the Mylapore Police Station that she is threatening and demanding money from the accused. She also stated that she received Rs.35,000/- from the accused in Mylapore Police Station. The Investigating Officer of the case who deposed as P.W.6 stated that the complainant in this case is P.W.1, before she give complaint on 01.03.2010, in All Women Police Station, Poonamallee, 3 other complaints were lodged

before the Higher Officials, by the accused as well as P.W.1, her mother P.W.2 separately. According to P.W.6, complaint dated 03.02.2010 was given by P.W.2, complaint dated 15.02.2010 was given by P.W.1 and the complaint dated 13.02.2010 was given by the accused and on enquiry, she came to know other complaint given in different police stations by the victim as well as accused herein. It is therefore clear that several complaints were lodged by the victim, her mother as well as accused against each other, prior to present complaint. Ex.P.1 was given by the victim girl. It is therefore clear that dispute existed between the victim, her mother on one side and the accused on the other side. The learned counsel for the accused contended that if really the alleged act of rape has occurred as claimed by P.W.1, she would not have kept quite without mentioning about the same in the earlier complaint filed by her and also filed by her mother. It is stated as to why no mention was made about the alleged occurrence in the earlier complaints lodged by P.W.1 and P.W.2. Further it is admitted by P.W.1 as well as P.W.6/Investigating Officer of the case that the alleged date of occurrence of rape is not mentioned by the victim in her statement under Section 164 Cr.P.C., before the Judicial Magistrate. Thus, the failure to mention about the date of alleged occurrence in the statement given by P.W.1 and also the failure to mention about some of the earlier complaints lodged by P.W.1 and 2, create a doubt in the minds of this court as to whether such an act of rape as alleged in Ex.P.1/complaint occurred.

14. The learned counsel for the appellant also pointed out that due to previous enmity, the present complaint /Ex.P.1 was lodged and there is no proof for the alleged occurrence. He also pointed out that in Ex.P.1, nothing is mentioned about the alleged C.D., with which the accused allegedly threatened the victim girl. It is also pointed out by the learned counsel for the accused that the alleged date of occurrence is not stated by the victim in the statement given by her in the Proceedings under Section 164 Cr.P.C., In such circumstances, doubt arise as to why inordinate delay occurred in lodging the complaint by the victim girl against the accused about the alleged occurrence dated 08.03.2009. Further, the victim girl has not stated in detail about the occurrence except for stating that she was abused in filthy language by the accused and raped.

15. In the light of the above discussion, it is clear that the factum of alleged rape is not established by categorical evidence and the delay in lodging the complaint by the victim is not properly explained and in view of the admission of P.W.1 and P.W.2 that there were previous complaints and counter complaints between them and the accused, doubt arise as to whether really the occurrence as alleged in Ex.P.1/complaint, occurred. In

such circumstances, the benefit of doubt has to go to the appellant/accused and the finding arrived at by the trial court contrary to the same is unsustainable.

16. Further, when the appeal is taken up today, the accused as well as victim P.W.1/Shalini are present and affidavit has been filed by the victim girl Shalini stating that she got married to the accused on 14.12.2011 and they are living together happily. The appellant also filed the copy of their marriage invitation, marriage certificate, marriage photo, marriage receipt from Arulmigu Vadapalani Andavar Thirukoil, Vadapalani, Chennai-26 and the copy of Aadhar Card, wherein, the victim is stated to be the wife of Ramakrishnan, accused herein before this court, in support of the factum of their marriage. The learned counsel appearing for the appellant contended that the alleged victim and the accused are now married, living happily and the said fact also may be taken into consideration by this court. The learned Additional Public Prosecutor also verified the present status and stated that the appellant and the victim are living together after their marriage.

17. In view of the above stated discussion, it is crystal clear that the finding of the trial court cannot be sustained and the same is liable to be set aside. Accordingly, the issues arisen for consideration in this criminal appeal is answered in favour of the accused.

18. In the result, this Criminal Appeal is allowed. The conviction and sentence passed in Sessions Case No.203 of 2010 passed by Additional Sessions Judge, Fast Track court I, Poonamallee, are set aside. The appellant/accused is acquitted. Bail bond, if any executed by him shall stand cancelled. Fine amount, if any paid by him is ordered to be refunded forthwith.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

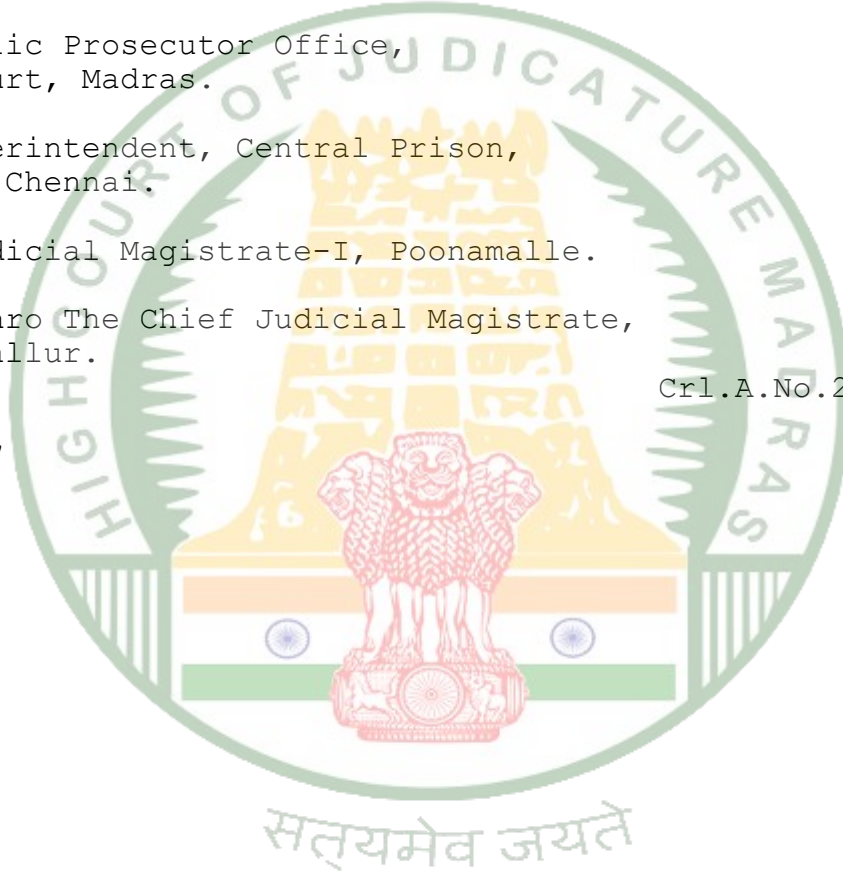
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TO

- 1.The Inspector of Police,
W.4 All Women Police Station,
Poonamallee, Chennai-56
(Cr.No.2/10)
- 2.The Additional Sessions Judge/Fast Tract Court I,
at Poonamallee.
- 3.The Public Prosecutor Office,
High Court, Madras.
- 4.The Superintendent, Central Prison,
Puzhal, Chennai.
5. The Judicial Magistrate-I, Poonamalle.
6. -do- Thro The Chief Judicial Magistrate,
Thiruvallur.

Cr1.A.No.293 of 2011

MP(CO)
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