

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.538 of 2015

C.Banumathi

... Appellant/Victim

vs.

1. State Rep. By
Inspector of Police,
Thirukovilur All Women Police Station

2. Vinayagam @ Vinayagamoorthy

3. Rani

4. Dhandapani

5. Sundar

... Respondents/Complainant/Accused

Criminal Appeal filed under Section 372 of Cr.P.C., to set aside the order of the Sessions Judge, Magalir Needhi Mandram, Villupuram in S.C.No.563 of 2013 dated 26.5.2015.

For appellant : Mr.G.Surya Naryanan

For Respondents : Mr.P.Govindarajan,
Additional Public Prosecutor for R1
Mr.V.Vadivel for R2 to R5

JUDGMENT

The order of acquittal dated 26.5.2015 passed in Sessions Case No.563 of 2013 by the District and Sessions Court, Magalir Neethi Mandram (Fast Track Mahila Court) Villupuram is being challenged in the present Criminal Appeal.

2. The case of the prosecution is that prior to one year from the date of occurrence, both the prosecutrix and first accused have acquainted with each other. On 1.9.2011 at about 7 a.m., while the prosecutrix has gone outside to attend call of nature, the first accused has met and given attractive words of

marrying her and tried to have sexual intercourse with her. Since the prosecutrix has refused to concede the demand of the first accused, he has shown a knife and threatened her and subsequently raped her. After such occurrence, all the accused have threatened the prosecutrix and thereafter, a complaint has been given by the prosecutrix and on that basis, investigation has been done and after completing investigation, the Investigating Officer has laid a final report on the file of Judicial Magistrate Court, Thirukoilur and the same has been taken on file in P.R.C.No.44 of 2013.

3. The Judicial Magistrate, Thirukoilur, after considering the facts that the offences alleged to have been committed by all the accused are triable by Sessions Court, has committed the case to the court of Sessions, Villupuram Division and the same has been taken on file in Sessions Case No.563 of 2013 and subsequently made over to the trial Court.

4. The trial court, after hearing arguments of both sides and upon perusing relevant records, has framed relevant charges against all the accused and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

5. On the side of the prosecution, P.Ws.1 to 11 have been examined and Exhibits P.1 to P.9 have been marked.

6. When the accused have been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

7. The trial court, after hearing arguments of both sides and also evaluating the available evidence on record, has found all the accused not guilty under the sections mentioned in the charges and ultimately acquitted them. Against the order of acquittal passed by the trial court, the present Criminal Appeal has been filed at the instance of the prosecutrix as appellant.

8. The learned counsel appearing for the appellant/prosecutrix has contended with great vehemence that in the instant case, the prosecutrix has been examined as P.W.1 and in fact, trustworthy evidence is available for the purpose of proving that on the date of occurrence, the first accused without consent of the prosecutrix has raped her and to that effect, medical evidence is also available and the trial court, without considering the evidence adduced on the side of the prosecution, has erroneously acquitted all the accused by way of

holding that both the prosecutrix and first accused have had consensual intercourse and therefore, the order of acquittal passed by the trial court is liable to be set aside and all the accused are liable to be punished in accordance with sections of law mentioned in the charges.

9. Per contra, the learned counsel appearing for respondents 2 to 5/accused has also equally contended that even the prosecutrix has given clear evidence during the course of cross-examination to the effect that she and the first accused have acquainted with each other for a long time and both of them have gone outside frequently and the trial court, after considering the evidence given by the prosecutrix, has rightly found all the accused not guilty under the sections mentioned in the charges and therefore, the order of acquittal passed by the trial court is not liable to be set aside.

10. As stated supra, the prosecutrix has been examined as P.W.1. In fact, this Court has closely perused her evidence. Even in chief-examination, she has clearly stated that both she and first accused have acquainted with each other. But, during the course of cross-examination, she candidly admitted to the effect that on several occasions both of them have gone out. From the evidence given by the prosecutrix, the Court can easily deduce that prior to occurrence, both the prosecutrix and first accused have acquainted with each other and only with her consent, the first accused has had sexual intercourse with her. If really such kind of relationship has not come into existence between the prosecutrix and first accused, definitely the prosecutrix would not have gone out along with the first accused.

11. Considering the fact that the evidence given by the prosecutrix itself is a negative answers to the charges framed against all the accused and also considering that both the prosecutrix and first accused have acquainted with each other for a long time and only on the basis of her consent, the first accused has had sexual intercourse with her, the act of the first accused would not come within the purview of Section 376 of Indian Penal Code.

12. The trial court, after considering the evidence given by the prosecutrix, has rightly found all the accused not guilty under the sections mentioned in the charges and ultimately acquitted them. In view of the discussions made earlier, this Court has not found any acceptable force in the contentions put forth on the side of the appellant/prosecutrix and altogether the present Criminal Appeal deserves to be dismissed.

In fine, this Criminal Appeal is dismissed. The order of

acquittal passed by the trial court in Sessions Case No.563 of 2013 is confirmed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ajr

To :

1. The Sessions Judge, Magalir Needhi Mandram, Villupuram
2. The Judicial Magistrate, Thirukoilur,
3. The Inspector of Police,
Thirukovilur All Women Police Station
4. The Public Prosecutor, High Court, Chennai

Copy to:
The Section Officer,
Criminal Section,
High Court, Madras.

+1 cc to Mr.V.Vadivel, Advocate, sr.3222
+1 cc to Mr.G.Suryanarayanan, Advocate, sr.3245

Cr1.A.No.538 of 2015

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kra 29.01.2016

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