

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2016

(Reserved on :17.10.2016 ; Pronounced on : 02.11.2016)

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.402 of 2013

Rajagopal

..Appellant

Vs.

State Rep by
Inspector of Police,
Vaniambadi Taluk,
Police Station.
(Crime No.421 of 2011)

..Respondent /complainant

Prayer: Criminal Appeal filed to set aside the conviction and sentence passed by the learned Assistant Sessions Judge, Vaniambadi, Vellore District. in S.C.No.185 of 2012 dated 21.03.2013.

For Appellant : Mr.G.Udaya Shankar
for Mrs.S.Shantha kumari

For Respondent : Mr.M.Govindarajan
(Additional Public Prosecutor)

J U D G M E N T

The Criminal Appeal arises against the Judgment dated 21.03.2013 in S.C.No.185 of 2012 passed by the learned Assistant Sessions Judge, Vaniambadi, Vellore District.

2. The appellant herein is the accused in in S.C.No..185 of 2012 on the file of the Assistant Sessions Judge, Vaniambadi, Vellore District. The Trial Court had framed the charges against the accused for the offences under Sections 294(b) and 307 of IPC and 4 of Tamil Nadu Women Harassment Act. By judgment dated 21.03.2013, the Trial Court convicted him under Section 341 of IPC and sentenced him to undergo one month Rigorous Imprisonment, under Section 307 of IPC to undergo ten years R.I and also imposed a fine of Rs.1,000/-, in default to undergo one month Rigorous Imprisonment, under Section 4 of the Tamil Nadu Women Harassment Act and sentenced to undergo R.I., for 3 years and also imposed a fine of Rs.10,000/- in default

to undergo 2 months R.I. Challenging the said conviction and sentence passed by the Trial Court, the appellant is before this Court with the present Criminal Appeal.

3. The case of the prosecution, in brief, are as follows:

On 07.07.2011, at 08.45. p.m., while Gandhamani was returning from her work, the accused Rajagopal intercepted her and compelled her to come for sexual intercourse. When she refused for the same, he twisted her hand and pushed her down, blow on her right eye with his hand and hit her on her face and backside of her head by stone. Due to that, she sustained injuries and fell unconscious. PW2-Jaganathan, on returning from his work, heard the moaning sound of the victim, went to the place of occurrence and rang to the Ambulance and thereby admitted her in the Government Hospital, Vaniyambadi, Vellore District. After examination by doctor, she was referred to further treatment and shifted to Vellore Government Hospital. The next day, when she was conscious, the Special Sub-Inspector of Police went to the hospital and received complaint from the victim. On receipt of complaint, the police registered the FIR in Cr.No.421/2011 for the offences under Sections 249(b), 341 and 307 IPC and handed over the file to the Inspector of Police for further investigation against the accused on 09.07.2011 at 15.00 hours. He has also forwarded the complaint and the FIR to the court forthwith. They were received by the learned Judicial Magistrate at 8.00 p.m., on 09.07.2011. The investigation was taken up by PW14 - the Inspector of Police, Vaniyampadi Taluk Police Station. After receiving the file from Special Sub-Inspector of Police for further investigation, he proceeded to the place of occurrence and prepared observation mahazar and a rough sketch in the presence of PW4 Rathinam and another witness and recorded the statements from the witnesses. On 09.07.2011 itself, he arrested the accused nearby Illayanaragam Rice Mill in the presence of PW10 Arumugam and one another witness. Based on the confession given by the accused, he recovered the material objects MO1 in the presence of the above said two witnesses. Further he examined Dr.Sivakumar who has examined the victim at first instance at Vaniyampadi Government Hospital and recorded the statement. Subsequently, he laid the charge sheet against the accused before the Judicial Magistrate, Vaniyambadi, for the offences under Sections 294(b), 341, 307 of IPC and Section 4 of the Tamil Nadu Women Harassment Act on 31.12.2011.

4. Based on the above said materials, the trial court framed charges against the accused for the offences u/s.294(b), 307 of IPC and Section 4 of the Tamil Nadu Women Harassment Act. When the accused was questioned about the charges framed against him, he denied the same. In order to prove the case of the prosecution on the side of prosecution as many as 14 witnesses were examined (PW1 to PW14) and 10 documents(Exs.P1 to P7) were exhibited and one material object (MO1) was marked.

5. Out of the said witnesses, PW.1 is victim and she has spoken about the entire occurrence. PW2 is the person who had taken the victim by 108 Ambulance and admitted in the Government Hospital. PW2 to 8 have spoken that after hearing the voice from Tamarindthoppu, they went to the spot, where they found the victim lying unconsciously in a pool of blood. PW9 has spoken about the preparation of Mahazar. PW10 & PW11 have spoken about the recovery of material objects and arrest of the accused. PW12 has spoken about the receipt of complaint and registration of FIR. PW13 - Doctor has spoken about the injuries of the victim. PW14 has spoken about the investigation done and filed a final report.

6. When the above incriminating materials were put to the accused under Section 313 of Cr.PC., he denied the same as false. However, he neither chose to examine any witnesses nor to mark any document in his favour. This defence was a total denial.

7. Having considered all the above oral and documentary evidences, the Trial Court convicted the accused for the offences u/s. 294 (b), 341, 307 of IPC and Section 4 of the Tamil Nadu Women Harassment Act. Aggrieved over the same, the accused is before this Court with this Appeal.

8. I have heard both the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and I have also perused the available records carefully.

9. Learned counsel for the appellant would submit that there are certain contradictions between the witnesses which would make their evidence untenable. Further, he would submit that the allegations made in the complaint by PW1 was untenable for the reason that the alleged occurrence took place in the night, that too, in a private property and not in the public place. Therefore, as alleged by the victim, she could not identify the accused. Further he would submit that from the materials available on record, it is seen that the occurrence happened in the dark and the victim never seen the accused before the date of occurrence. The victim could not have identified the accused during the night particularly when there was no light in the place of occurrence. The prosecution has miserably failed to prove the case beyond the reasonable doubt. Therefore, when two views are possible, then the benefit of doubt goes in favour of the accused. Under the said circumstances, the accused is entitled to acquittal.

10. Learned Additional Public Prosecutor appearing for the respondent would oppose this appeal vehemently. According to him, PW1 as a victim as well as eye-witnesses, has spoken about the entire occurrence which is duly corroborated with the medical evidence and also from the evidence of PW2, it is seen that he

took the victim to the hospital in ambulance and also the wound certificate clearly shows that the victim sustained grievous injury. He further submitted that the conviction of the appellant does not require any interference at the hands of this court.

11. I have considered the above submissions made by both the learned counsel appearing on either side and perused the materials available on record carefully.

12. The victim / PW1, in her evidence has stated that at about 08.45.p.m., when she was on her way to house in Pulianthope, the accused intercepted her and compelled her to come for sexual intercourse. Since she refused, he abused her in vulgar words, hit on her face and right eye with his hand and further he took the stone and hit on her head and therefore, she sustained injuries and fell unconscious. Jaganathan(PW2) in his evidence has stated that on hearing of the moaning of the victim, he rushed to the place of occurrence, where he found her in a pool of blood. Immediately, he called the 108 ambulance and took her to the Vaniyambadi Government Hospital. Thereafter on examination, the doctor referred her for further treatment. Therefore, he took the victim and admitted in the hospital where she was referred for further treatment. The Doctor(PW13), who had examined the victim has spoken about the injuries sustained by the victim. The Accident register (Ex. P6) reveals the wound sustained by the victim. Therefore, the medical evidences are also corroborated with the acculur evidence.

13. Learned counsel for the appellant would submit that there is no motive for the accused to cause injury to the victim and also the alleged occurrence happened during the night hours. Further, he has submitted that the victim / PW1, during the cross examination, has stated that before the occurrence, she had not seen the accused and since the accused was a previously convicted person for the offences under Sections 302 of IPC without any proof, imagining that he has been falsely implicated in this case. He further stated that the identification parade also not conducted by the prosecution. Therefore, the prosecution has failed to prove the case beyond all reasonable doubts and the benefit of doubt goes in favour of the accused. Therefore, accused is entitled to acquittal.

14. The prosecution had proved its case beyond reasonable doubt that the accused is the one who had committed the offence. Further there is no reason to disbelieve the evidence of prosecution. The defence taken on the side of accused is not sustainable under law.

15. Having come to the said conclusion, now the question is as to what was the offence that was committed by the accused by the said act. In this regard it is relevant to refer the evidence of PW1 as she has stated that at about 08.45. p.m., when she was going to her house, the accused intercepted the victim and compelled her to come for sexual intercourse and when she refused for the same, hit on her head with stone and she fell unconsciously in a pool of blood.

16. Though there is no separate charge framed against the accused for the offence under Section 341 of IPC while read over and explaining the charges, he was told that he intercepted the victim and compelled her to come for sexual intercourse. Therefore, based on the material available on records, the Assistant Sessions Judge, Vaniyampadi, also convicted the accused under Section 341 of IPC. Since offence u/s.294(b) of IPC was not made out and acquitted for the same.

17. From the evidence of PW1,2, 13, Exs.P1 and P6, it is found that the prosecution has proved the case beyond reasonable doubt that the accused had committed the offences under Sections 341, 307 of IPC and Section 4 of the Tamil Nadu Women Harassment Act. The trial court has correctly come to the conclusion from the above said materials that the accused has committed the offences. Accordingly, he has been convicted under Section 307 of IPC and sentenced him to undergo Ten Years Rigorous Imprisonment and also imposed a fine of Rs.1,000/- in default to undergo one month R.I., under Section 4 of the Tamil Nadu Women Harassment Act and sentenced to undergo 3 years and also imposed a fine of Rs.10,000/- in default to undergo two months R.I., and also sentenced to undergo one month R.I., for the offence u/s.341 of IPC.

18. In view of the above circumstances, there is no reason to discard the evidence of Pws.1, 2, 13, Exs.P1 and P6. Though the learned counsel for the appellant would submit that no motive has been attributed by the prosecution for the commission of the offences and during the night hours, PW1 could not have seen the person who attacked her and further herself has stated during the cross examination that she had not seen the accused prior to the occurrence. The reasons stated by the learned counsel for the appellant is not acceptable because the material evidence shows that the accused and victim belong to the same village and it is clear that the victim had seen the accused closely while he was attacking the victim with hand on her face and right eye. Thus, her evidence cannot be rejected on the ground that test identification parade was not conducted during the investigation. Therefore, the

contention that the victim would not have seen the accused is not acceptable. In this case, the motive is not necessary because the reason is that the victim was called and intercepted by the accused for sexual need for which she refused and made sound for alerting the persons in and around. That might be the reason for the accused to cause injury to the victim. Further, there is no separate motive necessary for that. In addition to that, from the suggestion made on the side of defence, during the cross examination of PW1, it is revealed that he was already convicted in a murder case. Considering the facts and circumstances of the case, the trial court has rightly convicted the accused and there is no reason to interfere with the Judgment of the trial court.

19. Considering the submissions made on either side and taking note of the fact that the offence committed by the accused/appellant is against the woman which should not be encouraged on any score and further considering the antecedent of the accused that he was already convicted in a murder case, this Court is not inclined to either allow the appeal or show any leniency and consequently, the Criminal Appeal is dismissed and the conviction and sentence passed by the learned Assistant Sessions Judge, Vaniambadi, Vellore District is confirmed by the reasons assigned in this Appeal.

gv

Sd/-

Assistant Registrar (CS III)

/TRUE COPY/

Sub-Assistant Registrar

To

1 The learned Assistant Sessions Judge,
Vaniambadi, Vellore District.

2 The Inspector of Police,
Vaniambadi Taluk,
Police Station, Vaniambadi.

3 The Superintendent,
Central Prison, Vellore.

4.The Public Prosecutor,
High Court, Maadras.

5.The Superintendent of Police,
Vellore, Vellore District

Pre-Delivery Judgment in
Crl.A.No.402 of 2013

RP[CO]

MK:12/11/2016



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