

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2017

CORAM

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.A.Nos.459 & 460/2014

1.Rajan @ Soundara Rajan
2.Poonai @ Pragasam
3.Sathish @ Saravanan
4.Kollan @ Vijayakumar

..

Appellants / A1 to A4
in Crl.A.Nos.459/2014

1.Vaidiya Velan
2.Buvanendhiran

..

Appellants / A5 and A6
in Crl.A.Nos.460/2014

Vs.

State rep. by,
The Deputy Superintendent of Police
Vellore Sub Division,
All Women Police Station
Vellore, Vellore District.

..

Respondent/Complainant in both the Appeals.

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to call for the entire records in connection with the Spl.SC.No.6/2013 on the file of the learned Principal District and Sessions Judge, Vellore, Vellore District and set aside the judgment dated 01.08.2014.

For A1, A3 & A4 in
Crl.A.No.459/2014

: Mr.D.Thirumoorthy

For A2 in Crl.A.No.459
of 2014

: Mr.D.Rajagopal

For Appellants in Crl.A.
No.460/2014

: Mr.Karthik, Senior Counsel for
M/s.T.S.Gopalan & Co.

For Respondent

: Mr.Mohammed Riyaz GA[Crl.Side]

Appellants in Crl.A.No.459/2014 are A1 to A4 and appellants in Crl.A.No.460/2014 are A5 and A6 in case tried in SC.No.6/2013 on the file of the Court of Principal District and Sessions Judge, Vellore, Vellore District, for offences u/s.147, 341, 366, 376[2] [g] IPC [A1 to A6] ; section 3[1][xi], 3[2][v] of SC/ST [Prevention of Atrocities] Act [A1] ; and section 377 IPC [A1 to A4]. The Trial Court, under impugned Judgment dated 01.08.2014, acquitted A1 for offence u/s.3[1][xi], 3[2][v] of SC/ST [Prevention of Atrocities] Act and A3 for offence u/s.377 IPC and convicted appellants/accused as follows:-

Rank of the accused	Conviction under section	Sentence Awarded
A1 to A6	147 IPC	Each of the accused to undergo 1 years rigorous imprisonment.
	341 IPC	Each of them to undergo 1 month simple imprisonment.
	366 IPC	Each of them to undergo 7 years rigorous imprisonment and a fine of Rs.1000/- each, in default, 1 year simple imprisonment.
	376[2] IPC	Each accused to undergo 10 years rigorous imprisonment and a fine of Rs.1000/- each, in default, 1 year simple imprisonment.
A1, A2 & A4	377 IPC	Each accused to undergo 10 years rigorous imprisonment and a fine of Rs.1000/- each, in default, 1 year simple imprisonment.

Sentences were ordered to run concurrently. Challenging the said conviction and sentence, the present appeals are filed.

2 The facts of the prosecution case, necessary for the disposal of these appeals, in brief, are as follows:-

[a] On 19.07.2010 at about 9.30 p.m., the accused assembled unlawfully near the Mariamman Temple on Pennathur Road at Ariyur Village, waylaid victim Amutha, abducted her to Holy Queen Convent, committed gang rape on her, A1 to A4 forced victim to commit carnal intercourse and A1 outraged the modesty of the victim, who belonged to Scheduled Caste, resulting in the registration of the case.

[b] P.W.1-Vimala is a resident of Malaikodi, Anna Nagar Village and a mason. She would depose that her husband Rajendran, a coolie, was working in Chennai. The couple had a son by name Kannan and two daughters, by name Jamuna and Amutha. Victim Amutha was working in a Shoe Company and on 19.07.2010, victim returned from work at 7.00 p.m. and for want of recharging her mobile phone, Amutha left home ; however she did not return home. Subsequently,

Amutha returned home at about 1.30 a.m. [midnight]. When enquired, victim told her mother that six persons committed gang rape on her. P.W.1 contacted her husband over phone, who informed P.W.1 to take their daughter to hospital. P.W.1 took the victim to hospital on 20.07.2010 at about 9.30 a.m. She lodged a complaint in Ex.P.1.

[c] P.W.2-Amutha, victim, deposed that she was residing at Viswanatha Nagar at the time of occurrence. P.W.1 is her mother ; her father Rajendran, a coolie ; elder sister Pushpavalli, married and younger brother Kannan. She had studied up to 8th standard. She was 18 years at the time of occurrence and was working in a Shoe company. She would further depose that she knew the accused from childhood and their names. A1 belonged to Vanniyar Community and the other accused belonged to Scheduled Caste community. On 19.07.2010, at about 9.30 p.m. she went to recharge her mobile phone in her uncle's shop and her uncle accompanied her back home. Since his residence was at Anna Nagar, he left her half way and P.W.2 was coming along Pennathur Road. Suddenly, A3 came in front of her and held her hands. When she resisted, A4 pulled her tuft. The accused beat her and took her to Holy Queen School. When a lorry passed by, she shouted for help. But the accused prevented her from doing so. Thereafter, she was taken to a nearby tree, where she was raped by the accused. Further, A1 to A4 forced her to have carnal intercourse. She was threatened with dire consequences. P.W.2 further deposed that she came home at 1.30 a.m. When her mother/P.W.1 enquired, victim stated that she was beaten by the accused. Victim informed of having beaten by accused to Ariyur Police Station over phone. She was directed to appear in person in station and lodge a complaint. On 20.07.2010, at about 7.00 a.m., she was taken to hospital and got admitted as In-Patient at 9.30 a.m. P.W.2 told about the actual incident to her mother/P.W.1 only at hospital. P.W.1 gave complaint.

[d] P.W.3-Rajendiran, father of victim and husband of P.W.1 deposed that on 19.07.2010 at about 1.30 a.m. [midnight], his wife - P.W.2 called him and informed that his daughter-P.W.2 has been kidnapped and raped and asked him to start immediately from Chennai. P.W.3 informed P.W.1 to take P.W.2 to Adukamparai Government Hospital. He reached the hospital at about 11.00 a.m. and came to know of his daughter getting admitted as In-Patient. He was advised to write a complaint, pursuant to which he drafted the complaint based on the information given by his wife/P.W.1. He went to Ariyur Police Station at about 3.00 p.m. on 20.07.2010 and gave the written complaint.

[c] P.W.4-Pushpavalli, elder sister of P.W.2 / elder daughter of P.Ws.1 and 3, deposed that she was in Coimbatore at the time of occurrence to see her niece. On 20.07.2010, at about 5.00 a.m., victim / P.W.2 called her over phone and informed that she was unwell. When P.W.4 enquired, P.W.2 told that she has been raped by four persons. Immediately, P.W.4 came to Adukamparai Government Hospital and enquired her sister/victim. She further deposed that

she came to know of the occurrence only through her sister/P.W.2.

[d] P.W.5-Arumugam @ Gnani was the Ex-Ward Member and P.W.6-Mani, a resident of Malaikodi. P.W.5 attested the Observation Mahazar and confession statement of A4 in Exs.P.2 and 3 along with P.W.6. P.W.5 was treated as a hostile witness.

[e] P.W.7-Mrs.A.Daoudh Ammal, Judicial Magistrate No.3, Vellore, received the orders of Chief Judicial Magistrate, Vellore, on 29.07.2010, in Ex.P.5, to record the statement of victim Amutha. Accordingly, on requisition, P.W.2-Amutha appeared before her on 03.08.2010. P.W.7 recorded P.W.2's statement u/s.164 Cr.P.C., in Ex.P.6.

[f] P.W.8-Wilson Rajasekar, Tahsildar, Vellore, on receipt of the requisition from the Deputy Superintendent of Police, Vellore, and recommendation of the Revenue Inspector and Village Administrative Officer, he issued Community Certificates pertaining to victim and accused in Exs.P.7 to 13. He certified that victim belonged to Hindu-Adidravidar ; A1 belonged to Hindu-Vanniyar and A2 to A5 belonged to Scheduled Caste Communities.

[g] P.W.9-Sridhar, resident of Malaikodi, running a Fancy shop, was asked to sign the document by police. He was treated as a hostile witness.

[h] P.W.10-Raja, deposed that he is running Tea Stall in Adukamparai. The signature subscribed by him in the Observation Mahazar is marked as Ex.P.14. He further deposed that he did know the contents of the Observation Mahazar. He was also treated as a hostile witness.

[i] P.W.11-Thomas, Correspondent of Holy Queen School deposed that police enquired him about the abduction and raping of the victim. He stated that after school hours, nobody will be present in the school and that he does not know about the occurrence.

[j] P.W.12-Dr.t.Madan Mohan, Medical Officer attached to X-Ray Department of the Government Hospital, Vellore, on receipt of requisition, took X-Ray pertaining to victim Amutha, to determine her age and certified that the age of the victim is between 18 and 21 year in Ex.P.18.

[k] P.W.13-Dr.Selvaraj, Professor of the Department of Forensic Medicine, on receipt of the requisition from Judicial Magistrate No.1, Vellore, on 07.04.2011, conducted Potency Test on A1 between 3.00 p.m. and 3.30 p.m., A2 between 4.00 p.m., and 4.30 p.m. and A3 between 3.30 p.m. and 4.00 p.m. and issued Exs.P.17, 18 and 19, opining that "there is nothing to suggest that the accused are impotents." Similarly, he examined A4, A5 and A6 on 05.04.2011 between 2.00 p.m. and 2.30 p.m. [A4] ; 2.30 p.m. and 3.00 p.m. [A5]

and between 3.00 p.m. and 3.30 p.m. [A6] and issued Certificates in Exs.21 to 23, opining in same vein.

[l] P.W.14-Dr.P.Jayaseeli, Assistant Professor of Vellore Government Hospital would depose that she is aware of the certificate issued by Dr.Kiruba Jayasoniya pertaining to victim Amudha. She would further depose that the victim was gang raped by 6 persons of whom, 4 are known to the victim on 19.07.2010 at about 9.30 p.m. and she was brought by her mother and sister. P.W.14 also noted injuries on the victim. P.W.14 also deposed that the victim was admitted as an In-patient from 20.07.2010 to 26.07.2010. Ex.P.24-Accident Register ; Ex.P.25-Discharge Summary and Ex.P.26-Psychological Report were issued.

[m] P.W.15-Suryakala, Inspector of Police attached to All Women Police Station, Vellore, on receipt of the written complaint from P.W.1, registered case in Cr.No.31/2010 u/s.376 IPC. Ex.P.27 is the Printed FIR. He despatched the originals of the complaint [Ex.P.1] and FIR [Ex.P.27] to the jurisdictional Magistrate Court and copies of the same to the higher officials. He took up investigation, examined victim Amutha [P.W.2]. He went to the scene of crime on 20.07.2010 at about 16.00 hours and prepared the Observation Mahazar [Ex.P.28] and a Rough Sketch [Ex.P.29] in the presence of P.W.5-Arumugam and P.W.10-Raja. He examined P.W.1, P.W.2, Tamilselvan, P.W.5 and recorded their statements. He sent requisitions to the jurisdictional Court and to the Government Hospital, Adukamparai, for subjecting the victim for medical examination. On 22.07.2010, at about 15.00 hours, P.W.15 effected the arrest of A-4 [Kollan @ Vijayakumar]. She also recorded the voluntary confession statement given by A-4. On the same day at about 18.45 hours, she effected the arrest of A-5 [Vaithiyavelan] and A-6 [Bhuvanendiran] near Oosur Bus Stand in the presence of P.Ws.5 and 6 and sent the accused for judicial remand. On 24.07.2010, P.W.15 examined Dr.Madhan Mohan [P.W.12], who issued the Age Certificate of the victim Amutha, opining that the victim is aged between 18 and 20 years. On 26.07.2010, he came to know that A-1 to A-3 surrendered before Judicial Magistrate No.1, Vellore. She also gave requisition in Ex.P.30 to Court to record 164 Cr.P.C. statement of the victim. On 03.08.2010, victim's statement was recorded in Court. On 01.09.2010, P.W.15 gave requisition in Ex.P.31 for subjecting A-1 to A-3 for medical examination and Ex.P.32 for subjecting A4 to A-6 for medical examination. On transfer, he handed over the Case Diary to the In-charge Inspector.

[n] P.W.16-Saraswathi, Inspector attached to All Women Police Station, Vellore, on receipt of the case file in Cr.No.31/2010, came to understand that the investigation has almost been completed. Since the Community Certificates in respect of P.W.2/victim and accused was not received, she gave a requisition to the Tahsildar, Vellore for furnishing the same. After receipt of Community Certificates, she altered the FIR from that of 376 IPC

to one u/s.376 IPC and 3[1][11] and 3[1][12] and 3[2][5] of SC/ST [Prevention of Atrocities] Act and submitted the Altered Report to Judicial Magistrate No.1, Vellore. Ex.P.33 is the Altered FIR. On the same day, she gave a requisition to the District Superintendent of Police to appoint an Investigating Officer. She also handed over the Case File to the Deputy Superintendent of Police for further investigation.

[o] P.W.17-Dakishnamoorthy, Deputy Superintendent of Police, Vellore Sub Division, on receipt of the case file in Cr.No.31/2010 from P.w.16-Saraswathi, Inspector attached to All Women Police Station, Vellore, prepared an Alteration Report as the offence involved is under the SC/ST Act and sent the same to Court concerned. On 15.10.2012, he sent a requisition to the District Superintendent of Police for appointing a Deputy Superintendent of Police for conducting investigation in the case. Accordingly, under Proceedings in Ex.P.34 of the Superintendent of Police dated 15.10.2012, P.W.17 recorded the statement of the victim. On 30.10.2012, he recorded the statements of P.W.1 and P.W.4. He also recorded the statement of P.W.8-Tahsildar on 05.11.2012. Since the investigation was not fully completed, he submitted a requisition to Court seeking extension of time to complete the investigation. He also sent a further requisition on 14.12.2012, seeking similar prayer. On completion of investigation, he laid the final report against the appellants/accused for the offences u/s.147, 341, 366, 376[2][g], 377 IPC read with 3[1][11] and 3[2][5] of SC/ST [Prevention of Atrocities] Act, 1989, before the Judicial Magistrate No.1, Vellore, who took it on file in PRC.No.8/2013 and issued summons to the accused and on his appearance, furnished them the copies of the documents u/s.207 Cr.P.C. and having found that the case is exclusively tried by the Sessions Court, committed the same to the Court of District Principal Sessions Judge, Vellore, who took it on file in SC.No.6/2013 and on appearance of the appellant / accused, had framed the charges as stated above and questioned them. The appellants / accused pleaded not guilty to the charges framed against them.

[p] The prosecution examined P.Ws.1 to 17 and marked Exs.P.1 to 34.

[q] The appellants/accused were questioned under section 313 Cr.P.C., with regard to the incriminating circumstances against them in the evidence rendered by the prosecution and they denied it as false. No witness was examined and no documentary evidence was marked on the side of the appellants/accused.

[r] The Trial Court, on consideration and appreciation of the oral and documentary evidence and other materials, has convicted and sentenced the appellants/accused as above stated and hence, this appeal.

3 Heard learned counsel for the appellants/accused and Mr.Mohammed Riyaz, learned Government Advocate [Crl.Side] appearing for the State . Perused the materials on record.

4 The prosecution has presented a most improbable case. Towards disposal of this appeal, this Court would inform the following:-

[i] P.W.1 is the mother of P.W.2, the victim. She has spoken to her daughter having left the house at 7.00 p.m. on 19.07.2010, informing her of doing so towards recharging a cellphone. P.W.2, victim has returned home at 1.30 a.m. on 20.07.2010. P.W.1 informs of not having gone in search of her daughter P.W.2, aged 18 years since she took it that P.W.2 would have gone over to her uncle or aunt's house. Her not bothering to verify her daughter's safe presence in anybody else's house even upto 1.30 a.m. on 20.07.2010, is unnatural and P.W.1's explanation therefor is that she had not disturbed the neighbours since they would have gone to sleep and she had merely stayed home.

[ii] P.W.1 has stated that when P.W.2, victim returned home at 1.30 a.m., she told her of having been raped by six persons. She has spoken to informing her husband who was away at Chennai, over phone, who asked her to take P.W.2 to hospital. However P.W.1 has taken P.W.2 to hospital only the next morning at 9.00 a.m. This again is unnatural conduct.

[iii] P.W.2 has stated that on returning home at 1.30 a.m., on 20.07.2010, she merely informed her mother that she has been assaulted by four known and two unknown persons. She has spoken to informing the incident of rape to a nurse at the hospital, the next morning in the presence of her mother, P.W.1. This too, smacks of unnatural conduct.

[iv] P.W.2 has spoken to being dragged along a road over a long distance and of her having raised an alarm. She has spoken to being raped under a tamarind tree in a school compound and of the place being within earshot. It would be reasonable to presume that she has not raised an alarm.

[v] P.W.2 has spoken to all the accused having removed her clothes and taking turns at raping her and indulging in other unnatural sexual perversions while she was on her back on an earthen floor. It is the evidence of the doctor-P.W.14 who examined her that she had suffered no external or internal injuries whatsoever. Even regards an abrasion below an eye, P.W.14 has stated that he had not been informed when the small abrasion below an eye could have been caused. It is highly unlikely that one who had been subjected to rape and other unnatural forms of sexual torture by six persons on an earthen floor, would suffer not more than an abrasion below an eye.

[vi] The First Information Report allegedly had been registered at the instance of P.W.1 on 20.07.2010 at 2.45 p.m. Both P.W.1 and P.W.2 have spoken to having been examined by the police and on recording of their statements while they were at hospital on the morning of 20.07.2010. P.W.3, father of P.W.2/husband of P.W.1, also has deposed that he had gone to the hospital directly from Chennai at 11.00 a.m. on 20.07.2010 when both higher officials and police personnel were present. He has also spoken to recording of statements of both his and of P.Ws.1 and 2 as also obtaining of their signatures. This clearly indicates that the FIR in Cr.No.31/2010 at 2.45 p.m., is a product of deliberation.

[vii] Rather than stating that the present is a case of consensual sex gone bad, this Court simply would inform that the prosecution case lacks merit.

5 The criminal appeals are allowed and the conviction and sentence imposed on the appellants/accused by the Trial Court vide impugned Judgment in S.C.No.6/2013 dated 01.08.2014 are set aside. The appellants/accused are acquitted of the charge levelled against them. Fine amount, if any paid, shall be refunded to them.

6 It is reported that the appellants/accused are in jail. They are directed to be released forthwith unless their presence / custody / detention is required in connection with any other case or proceedings.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Sessions Judge
Vellore.

2.The Judicial Magistrate No.1
Vellore.

3.The Chief Judicial Magistrate,
Vellore.

4.The Deputy Superintendent of Police
Vellore Sub Division,
All Women Police Station
Vellore, Vellore District.

5.The Director General of Police
Mylapore, Chennai-4.

6.The Superintendent of Prison
Central Prison, Vellore.

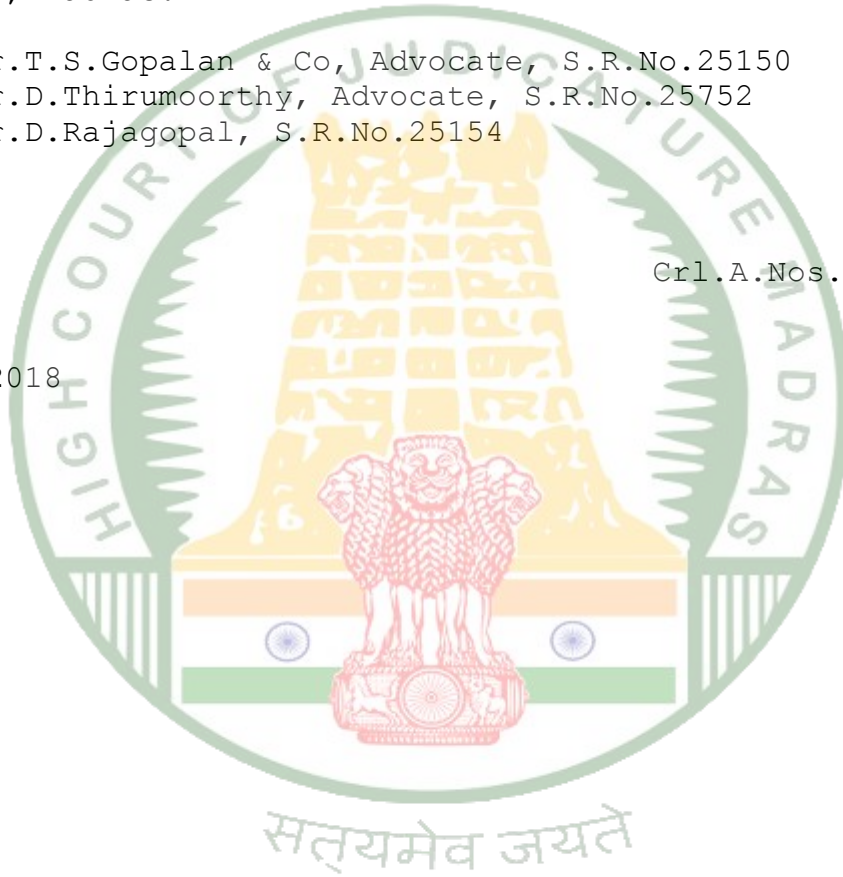
7. The Public Prosecutor,
High Court, Madras.

8.The Section Officer, Criminal Section,
High Court, Madras.

+1cc to Mr.T.S.Gopalan & Co, Advocate, S.R.No.25150
+1cc to Mr.D.Thirumoorthy, Advocate, S.R.No.25752
+1cc to Mr.D.Rajagopal, S.R.No.25154

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