

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2017

CORAM

THE HONOURABLE MR. JUSTICE M.VENUGOPAL

Crl.O.P.No.12118 of 2016 in
Crl.A.SR16539 of 2016

The State rep. By
The Public Prosecutor,
High Court, Madras
Perambalur P.S.
Crime No.646 / 2013 ... Petitioner / Appellant

Vs.
Solaimuthu ... Respondent / Accused

PRAYER: Criminal Original Petition is filed under Section 378 (3) of the Code of Criminal Procedure to grant leave to appeal against the Judgment of Acquittal of the Respondent / Accused in Spl.S.C.No.03/2015 dated 19.11.2015 by the Mahila Court, Perambalur.

For Petitioner : Mr.K.Mathan
Government Advocate (Crl.Side)

For Respondent : No appearance

O R D E R

Heard the Learned Government Advocate (Crl.Side) for the Petitioner / Appellant / Complainant.

2. The Court notice was served upon the Respondent / Accused. Today on his behalf there is no appearance either in person or through the Learned Counsel. As such, this Court deals with the present Criminal Original Petition on merits.

3. According to the Learned Government Advocate (Crl.Side) for the Petitioner / Appellant / Complainant, the Learned Sessions Judge (Mahila Court) Perambalur while passing the Impugned Judgment on 19.11.2015 in Spl.S.C.No.3 of 2015 at Paragraph No.28 had observed that 'in the present case, all the respective individual witnesses had deposed contrary to the case

of the Respondent / Prosecuting Agency and also that in respect of the occurrence, the affected child had deposed in a contrary manner and also that the Occurrence Date, Occurrence Place, Occurrence Time, Occurrence Details were also not confirmed on the side of the Government and also that the incident was not established on the basis of the eye witnesses, who had seen the occurrence etc'. and ultimately came to a consequent conclusion that the Respondent / Accused was not guilty in respect of an offence under Sections 8 and 18 of the Protection of Children from Sexual Offences Act, 2012 and granted the benefit of doubt and acquitted him from the case.

3. Being dissatisfied with the 'Judgment of Acquittal' dated 19.11.2015, passed by the trial Court in Spl.S.C.No.3 of 2015, the Petitioner / Appellant / Complainant (State) has preferred the present Criminal Original Petition seeking 'Grant of Special Leave' to prefer an Appeal by taking a plea that the trial Court had not appreciated the evidence of witnesses adduced on their side and also not considered the documentary evidence marked at the time of trial of the main case.

4. The Learned Government Advocate (Crl.Side) for the Petitioner / Appellant / State projects an argument that the trial court had failed to note that P.W.1, P.W.3 and P.W.9 are the eye witnesses and their evidence corroborate with that of the evidence of P.W.2.

5. It is represented on behalf of the Petitioner / Appellant that the trial Court had failed to appreciate the evidence of P.W.10 (Doctor) of the Government Hospital, Perambalur to the effect that she examined victim girl and in fact gave an Ex.P.4-Medical report (on medical examination of P.W.2) stating that: (i) Victim has not been raped (ii) There are no signs of rape on the victim's external genitalia.

6. The Learned Government Advocate (Crl.Side) for the Petitioner / Appellant refers to Ex.P.5 - Medical Report (on medical examination of Respondent / Accused) in and by which the Respondent/ Accused was examined and further an opinion was given to the effect that 'There is nothing to suggest he is not capable of taking part in sexual intercourse'.

7. Lastly, it is the stand of the Petitioner / Appellant / State that the trial Court had failed to note that no reasoning was found to the effect that P.W.2 (Victim) and others had falsely implicated the Respondent/ Accused with the serious offence.

8. At this stage, this Court pertinently points out that the case of the Petitioner / Prosecution is that the P.W.1 (Defacto complainant) Velmurugan is residing at Siruvatchur

Village, Perambalur District and that P.W.2, Victim (Sneka - Minor girl) is living under the custody of the P.W.1. Further she is also a relative of P.W.1.

9. It is the stand of the Petitioner / Appellant / Prosecution that on 03.06.2013 at about 4.00 P.M., the victim, P.W.2 was playing in front of the Siruvatchur temple and at that time, the Respondent / Accused (Solaimuthu) who is also residing at Siruvatchur, Perambalur District took the P.W.2 (Minor girl) and went to the backside of the temple and placing her on the ground removed her skirt and was laying on her body for having sexual intercourse and he was attempting to have intercourse with her. In fact, P.W.2 had shouted and P.W.1 (defacto complainant) heard the voice of P.W.2 and came to the occurrence and that the Respondent / Accused on seeing the defacto complainant ran way from that place.

10. It transpires that based on the complaint of P.W.1, a case in Perambalur Police Station in Crime No.646 of 2013 under Sections 4, 8, 18 of Protection of Children from Sexual Offences Act, 2012 was registered against the Respondent / Accused and after completion of investigation a charge sheet was laid against him.

11. Before the trial Court on behalf of the Petitioner / Appellant / prosecution witnesses P.W.1 to P.W.13 were examined and Ex.P.1 to P.8 were marked. However, no material objects were marked.

12. The trial Court on an appreciation of the entire oral and available documentary evidence on record came to a conclusion that the Petitioner / Appellant / Complainant (Prosecution) had not established their case against the Respondent / Accused in respect of an offence under Section 8 and 18 of the Protection of Children from Sexual Offences Act, 2012 and acquitted him under Section 235 (1) of Cr.P.C.,

13. In the instant case, a perusal of Ex.P.1, Complaint indicates that P.W.1 (Maternal uncle - defacto complainant) had among others things stated that '.....Today, on 03.06.2013, Sneka was not found at approximately 04.00 hrs. After searching in several places, when he went near a temple had not found any one and on the back side of the temple when he went, he found that his sister's daughter, Sneka (P.W.2) was kept lying in a flat posture and after removing her inskirt, one Solaimuthu, employed at the temple made an endeavour to misbehave with her and after seeing him ran away from the place etc'..

14. P.W.1 (The Defacto complainant- Maternal uncle of P.W.2) in his evidence had deposed that he went on the back side

of the Solaimuthu temple along with his brother, Manjunathan, at that time, found one Solaimuthu S/o of Muthusamy belonging to the Village (the Respondent / Accused) had made his Sister's Daughter, Sneka (P.W.2) to be in a flat position and after removing her skirt he rested on her and made an attempt to commit rape and after seeing them, he ran away from the place. It is the further evidence of P.W.1 that the Respondent / Accused had given a sum of Rs.20/- to P.W.2 (victim)

15. P.W.1 (in his cross examination) had stated that the people who came from Authur was not known to him and also not his relatives and further that people who came from Authur had informed him that the Respondent / Accused was resting on P.W.2 and also had deposed that he and his brother had already seen the same and that the Respondent / Accused ran away and since the Authur villagers had asked them to lodge a complaint.

16. P.W.2 (Victim girl) in her evidence had stated that the Respondent / Accused had removed her skirt at the back side of Srivatchur Temple and he rested on her and later his uncle came and after arrival of her uncle, the Respondent / Accused ran away from the place.

17. P.W.2 (Victim girl- in her cross examination) had stated that on the date of occurrence, she was wearing a black colour churidhar and further that on the day of occurrence, there was a quarrel between the Respondent / Accused and his uncle and that the said quarrel erupted before the occurrence.

18. P.W.2 in her evidence had also stated that her uncle (P.W.1) had tutted to depose before the court and his uncle P.W.1 in the room made her to sit and he tutted her to give evidence.

19. It is the evidence of P.W.3 that since her Sister's Daughter Sneka was not found, they went in search of her on the back side of Solaimuthu Temple and they saw P.W.2 (Sneka) was made to rest on flat position and her skirt was removed and on removing the skirt the Respondent / Accused was seen lying on P.W.2 and after seeing him, the Respondent / Accused ran away from the scene and that when they called P.W.2 and enquired about the same, P.W.2 informed him that the Respondent / Accused gave her a sum of Rs.20/- and asked her to come with him.

19. P.W.3 (in his cross examination) had categorically stated that at the time of occurrence his sister's daughter, P.W.2 Sneka was wearing inner skirt and shirt and it was wrong to state that at the time of occurrence she was wearing Churidhar.

20. In the instant case, P.W.4 and P.W.5 were not the eye witnesses to the occurrence. As a matter of fact, P.W.6 had deposed (in his cross examination) that he does not know directly as to how the occurrence took place.

21. In so far as the evidence of P.W.2 (victim) was concerned, the trial Court had found that P.W.2 had stated in her evidence (in cross examination) that her uncle P.W.1 had informed her about the happening of the occurrence at a nearby tree in a Court. To put it precisely, the trial court had observed in its Judgment at Paragraph No.22 that the evidence of P.W.2 was unreliable one. Moreover the trial Court had proceeded to observe that there was a quarrel erupted between P.W.1 (P.W.2's maternal uncle) and the Respondent / Accused prior to the occurrence.

22. P.W.5 (Mother of P.W.2) in her evidence had deposed before the trial Court that her daughter, P.W.2 could not even write her name and further that she was not capable enough to speak about the occurrence on being asked with her. In this regard this Court significantly points out that the trial Court had very rightly observed that no endeavour was made on the side of the Petitioner / Appellant / Prosecution to carry out any medical examination upon P.W.2 relating to her mental development / capacity.

23. In the present case, the evidence of P.W.10, Doctor points out to the effect that P.W.2 (Victim) was not harassed / cruelly treated in a physical form. In reality P.W.13 in his evidence had deposed before the trial Court P.W.2 was capable of giving good reply and answering the questions and as such, she is not a mentally retarded person.

24. Be that as it may, the trial Court in view of the contradictory / discrepancy evidence of independent witness and also by taking into consideration of the variant evidence of P.W.2 came to a consequent conclusion that the date of occurrence, occurrence place, occurrence time, occurrence details were not confirmed on the side of the prosecution and resultantly opined that the case of the prosecution was not proved through eye witness and based on the examination of Government Officials evidence, it is not proper in a criminal case to award punishment and finally found the Respondent / Accused not guilty in respect of an offence under Sections 8 and 18 of the Protection of Children from Sexual Offences Act, 2012 and acquitted him under Section 235(1) of Cr.P.C.,

25. Dealing with the aspect of the power of this Hon'ble High Court in 'Appeal' (In respect of a case of an Acquittal) it is to be pertinently pointed out by this Court that the High

Court has the requisite power to weigh the evidence and appreciate the same and consider the views of the trial Judge in regard to the trust worthy / credibility of the witness. Ordinarily, the 'Judgment of Acquittal' passed by the competent Criminal Court shall not be interfered with by this Court because the presumption of innocence of an Accused is further strengthened by an Acquittal.

26. It is to be noted that the power to the High Court lies in reappreciating the evidence of the trial Court and to come to its own conclusion and to place its finding other than the one recorded by the Court. However, if the findings are against weight of evidence and to put it differently, it is perverse one, then also, the High Court can intervene. The High Court is to bear in mind that an Accused is entitled to the benefit of doubt and that doubt must be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the Accused, if the finding of the trial Court are unreasonable, based on misreading of evidence and if the points of Law or Facts are not taken into account in a proper or right perspective, then, the High Court would not hesitate to arrive at a conclusion that the trial Court's findings are perverse certainly it would substitute its own views on a totally different perspective.

27. The clear-cut legal position is that only under an exceptional / compelling circumstances, the High Court, as an Appellate Court, can reverse the 'Judgment of Acquittal' passed by the trial Court, if the conclusions arrived at are contrary to the evidence on record. Even an erroneous understanding of the Law and the facts of the case will give raise to the interference by this Court.

28. That apart, in regard to the facts of the present case are concerned, this Court comes to an inescapable and irresistible conclusion that the trial Court had rightly appreciated the evidence on record in a proper perspective. As such there is no infirmity in the 'Judgment of Acquittal' passed by the trial Court in Spl.S.C.No.3 of 2015 dated 19.11.2015. Consequently, the 'Grant of Special Leave' sought for by the Petitioner / Appellant / Complainant to prefer 'an Appeal' before this Court fails.

In fine the Criminal Original Petition is dismissed.

-s/d-
Assistant Registrar (CS-II)

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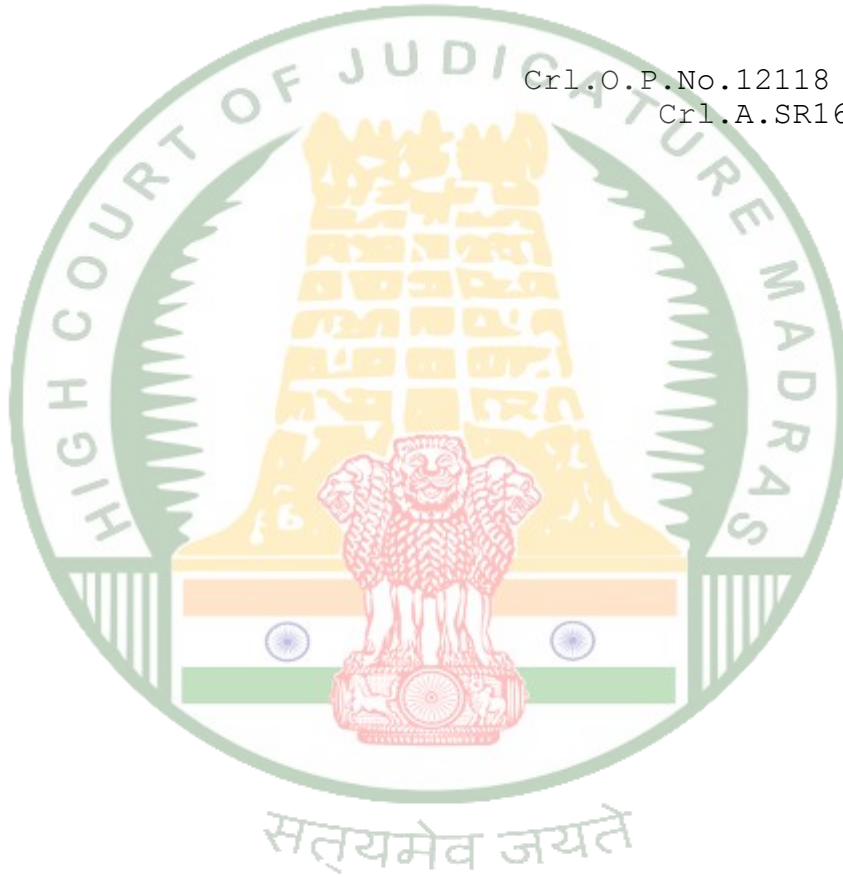
Sub-Assistant Registrar

To

1. The Sessions Judge
The Mahila Court, Perambalur
2. The Public Prosecutor
High Court, Madras
3. The Record Keeper,
High Court, Madras

Crl.O.P.No.12118 of 2016 in
Crl.A.SR16539 of 2016

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