

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.01.2017

Pronounced on : 12.07.2017

C O R A M

THE HONOURABLE MR.JUSTICE S.BASKARAN

Criminal Appeal No.632 of 2011

Maran ... Appellant/Accused

Vs

State rep. by the Inspector of Police,
K.7, I.C.F. Police Station,
Chennai-38. ... Respondent/Complainant
(in Crime No.57/2009)

Criminal Appeal is filed under Section 374 (2) of Cr.P.C. against the judgment of the learned Sessions Judge, Mahila Court, Chennai, made in S.C.No.140/2009 dated 16.08.2011.

For Appellant : Mr.C.Vijayakumar

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

J U D G M E N T

The appellant is the sole accused in S.C.No.140/2009 on the file of the learned Sessions Judge, Mahila Court, Chennai. By judgment dated 16.08.2011, he stood convicted for an offence under Section 376(2)(f) of IPC and the trial court sentenced him to undergo ten years rigorous imprisonment and also sentenced him to pay a fine of Rs.6,000/-, in default, to undergo 6 months imprisonment and out of the said fine amount, Rs.5,000/- was ordered to be given to the victim girl through her mother as compensation. Challenging the said conviction and sentence, the sole accused/appellant is before this Court with this Criminal Appeal.

2. The case of the prosecution in brief is as follows:

(a) The case of the prosecution is that on 15.01.2009, the victim Ashwini attained puberty. Her parents P.W.1 and P.W.4 arranged for a small function for the same on 19.01.2009. It is stated that the parents of the victim Ashwini were already known to the present accused Maran and his wife Hema. While so, on 19.01.2009, the said Hema invited P.Ws.1 and 4 to their house

for taking food. Accordingly, they went to the house of the accused with their children, the victim girl P.W.2 and their elder daughter P.W.3. Thereafter, except the victim girl, all others, namely, P.Ws.1, 3 and 4 have gone out in connection with some other works and also to go to Pattalam Market to purchase dress materials to the victim Ashwini for the function and only the accused and the victim were there in the house of the accused.

(b) While so, it is alleged by P.W.1, the father of the victim girl that when the wife of the accused and P.W.3 Ammu returned at about 3.30 p.m. and opened the door of the accused house, they found that the accused Maran was lying on the victim girl in a cot and at that time, both remained without dress. On enquiry, the victim girl complained about the misconduct of the accused towards her and his action of intercourse with her. Since the puberty function was arranged on 19.01.2009 evening, the dresses which were worn by the victim P.W.2 Ashwini, during the occurrence were burnt by P.Ws.1 and 4 and the on the same day evening, the function was celebrated.

(c) It is alleged that on the next day viz. on 20.01.2009, as the victim girl P.W.2 reported pain in her genital organs, she was brought to a private lady Doctor who gave first aid and asked them to consult with a Psychologist. Later, as the victim was having unbearable pain, on 28.01.2009, a complaint was preferred before P.W.11, the Inspector of Police, ICF Police Station by P.W.1, the father of the victim girl. On receipt of the complaint Ex.P.1, he registered a case in Crime No.57/2009 under Section 376 of IPC against the accused. The printed copy of the First Information Report is Ex.P.9. Thereafter, he proceeded to the place of occurrence and prepared an Observation Mahazar Ex.P.3 and Rough Sketch Ex.P.10 in the presence of the witnesses P.W.5 and P.W.10, Rajesh and Suresh Kumar. Then, he sent the victim girl to the K.M.C. Hospital for examination where P.W.8 Doctor Arulmozhi examined her and gave a report stating that there was no injuries on her genital organs, but it permits a little finger and the hymen found ruptured.

(d) Thereafter, he arrested the accused on 28.01.2009 at about 7.00 p.m. at Aynavaram Bill Clinton Road and sent the accused also for medical examination through Court and the Doctor Kuppusamy-P.W.7 who examined him gave a report that he is a potent man and capable of doing intercourse. On completion of the investigation, he laid charge sheet against the accused under Section 376 of IPC.

3. Based on the above materials, the lower court framed a lone charge under Section 376 of IPC. Since the accused denied the charge, he was put on trial. During the course of trial, on

the side of the prosecution, as many as 11 witnesses were examined and 12 documents were marked, and no material object was produced.

4. When the incriminating materials were put to the accused under Section 313 of Cr.P.C., he denied the same as false. But, he has neither chosen to examine any witness nor mark any document on his side. His defence was a total denial. Having considered the above materials, the trial court convicted him as detailed in the first paragraph of this judgment. That is how, the appellant is before this Court with this appeal.

5. I have heard Mr.C.Vijayakumar, learned Counsel appearing for the appellant and Mr.E.Raja, learned Additional Public Prosecutor for the respondent and also perused the records carefully.

6. Learned Counsel for the appellant would submit that a false case has been foisted on the accused and the trial court, ignoring the contradictions in the evidence of the prosecution, has found the accused guilty and the same is liable to be set aside. The learned Counsel for the appellant further pointed out that there is enormous delay in lodging the complaint and there is no medical evidence available on record to prove the alleged charge of rape against the accused. The learned Counsel for the appellant also pointed out the contradictions in the evidence of the complainant P.W.1, his wife and daughters including the victim girl who deposed as P.Ws.2 to 4 about the visit to the house of the accused on the fateful day where the occurrence is alleged to have taken place. It is further contended by the learned Counsel for the appellant that the purpose of the visit of the victim girl along with the family members to the house of the accused is also not established and the averments in the complaint are not established by probable and acceptable evidence. It is also pointed out that the dress materials of the victim girl were not seized and sent for chemical examination and the Serology Report is also not produced in support of the prosecution case. Thus, according to the learned Counsel for the appellant, the finding of the trial court is perverse and therefore, the same has to be set aside.

7. As stated above, the prosecution claims that the victim girl P.W.2 Selvi Ashwini, aged about 10 years, was at the house of the accused, who is the family friend of the victim's family on 19.01.2009 and at about 03.30 p.m., the accused committed an act of rape on the victim girl.

8. Admittedly, the complaint Ex.P.1 is lodged on 28.01.2009 only. Thus, there is a delay of nearly 9 days in lodging the complaint. It is pointed out by the learned Counsel

for the appellant that no acceptable reason for the said delay is advanced by the prosecution except by stating in the F.I.R. that the delay was caused by the complainant. The prosecution has also not stated categorically the reason for such delayed registration of the complaint and further, P.W.1, who is the father of the victim girl and the complainant in this case stated in his evidence that 8 days after the occurrence, the complaint was lodged by him and the same was written down at about 6.00 p.m. on 28.01.2009 in his house by his friend P.W.6 Kumaraguru, since he is an illiterate. Thus, according to P.W.1, the complaint was written in his house around 6.00 p.m. on 28.01.2009 by P.W.6 Kumaraguru and thereafter, the complaint was lodged on the same day.

9. Contradicting the claim of P.W.1, the person, who is stated to have written the contents of the complaint, P.W.6 Kumaraguru has stated that on 28.01.2009 at about 10.00 a.m., the complaint was lodged and he was examined by the police. P.W.6 Kumaraguru further stated that he came to the police station at about 09.50 a.m. on 28.01.2009 and within ten minutes, he wrote down the complaint and there was nobody with him at that time. P.W.6 has also stated that he was informed by P.W.1 about the occurrence on 28.01.2009 at about 9.50 a.m. and he is unaware as to when P.W.1 Kumar came to the police station. Thus, P.W.6 contradicts the version of P.W.1 as to when and where the complaint was drafted by him.

10. Contradicting the version of P.W.1 and P.W.6 about the lodging of the complaint, the Investigating Officer of the case, who deposed as P.W.11 has stated in his evidence that while he was on duty at K.7 I.C.F. Police Station on 28.01.2009 at about 16.00 hours, the complainant P.W.1 Kumar came along with his wife and daughters (P.Ws.2 to 4) and also along with P.W.6 Kumaraguru and produced the written complaint. On receipt of the same, he registered a case in Crime No.57/2009 and prepared Ex.P.9 First Information Report. According to him, he saw for the first time P.W.6 Kumaraguru at 4.00 p.m. in the police station on 28.01.2009 and he was informed by P.W.1 that the complaint was written by Kumaraguru. Thus, the prosecution witnesses have contradicted each other in this regard.

11. That apart, as stated above, there is a delay of more than 8 days in lodging the complaint itself and the said delay has not been properly explained. In this regard, no acceptable evidence is adduced by the prosecution. In a case of such serious nature, as pointed out by the learned Counsel for the appellant, the unexplained delay in lodging the F.I.R. is fatal to the case of the prosecution and the said contention is acceptable in the absence of any reasonable, acceptable cause being stated for such a delay.

12. The prosecution witnesses P.Ws.1 to 4 have categorically stated that the accused and his wife are family friends of their family. P.W.1 has stated that the victim girl attained puberty and a function in that connection was arranged on 19.01.2009 in his residence and on that day, he along with his daughters, namely, the victim girl P.W.2 and her elder daughter P.W.3 visited the house of the accused as requested by the wife of the accused and took lunch there and in the evening after they left the home of the accused, leaving behind the victim girl P.W.2 alone, the occurrence has taken place. When such a serious occurrence is alleged to have taken place, it is pointed out by the learned Counsel for the appellant that it is unbelievable that the accused and his wife were allowed to attend the puberty function at the residence of P.W.1 on the same day evening. P.W.1, the father of the victim girl stated that the function on 19.01.2009 was over by 8.00 or 9.00 p.m. and about ten known persons attended the function and the accused and his wife also were present. The wife of the complainant, P.W.4 who is the mother of the victim girl P.W.2 has stated in her evidence that the Puberty function took place at 7.00 p.m. and the accused and his wife came to the function around 6.00 or 7.00 p.m. It is unbelievable that if the accused has committed the offence as alleged by the prosecution, around 3.00 p.m. on the same day of function, he along with his wife would have attended the Puberty Function on the same day evening at P.W.1's residence around 07.00 p.m. The said issue clubbed with the fact that there was a delay of 8 days in lodging the complaint creates serious doubt about the genuineness in the case of the prosecution.

13. It is true that in a case of this nature, the evidence of the victim alone is sufficient to prove the guilt of the accused, but, her evidence should be of such a nature that it is to be believable and acceptable. In the case on hand, the victim girl, who deposed as P.W.2 stated that she attained puberty on 15.01.2009 and the function was to be held on 19.01.2009. According to her, the wife of the accused came to their house and invited herself and her elder sister P.W.3 and her father P.W.1 for taking food and accordingly, they went to the house of the accused. P.W.2 further stated that after lunch, the wife of the accused along with P.W.3 went out at 01.00 p.m. to purchase dress materials for her and her father P.W.1 along with the son of the accused went to their house to make preparations for the function in the evening and at that time, she was alone with the accused and she was asked by the accused to press his legs and when she told him that she was feeling sleepy, he asked her to lay down in the bed and thereafter, the accused closed the door and when she questioned him, he asked her to keep quite and thereafter, removed her clothes and committed the physical contact which would amount to raping.

14. P.W.2 also stated that at that time, the wife of the accused and her sister P.W.3 returned back and saw the accused lying over her and immediately, the accused was beaten by his wife. Thereafter, the wife of the accused went away to inform P.W.1 about the occurrence. Thus, P.W.2 has stated about the act of rape committed by the accused on her at about 3.00 p.m. in the accused house itself. The victim girl, as well as, her parents P.Ws.1 and 4 stated that on the next day, the victim girl was taken to a private Doctor nearby and they were informed about the rupture in two inch in the hymen of the victim girl by the said private Doctor and they were advised to take the victim girl to a Psychologist, but, they did not do so for want of money. Subsequently, the complaint was lodged on 28.01.2009.

15. In this regard, the learned Counsel for the appellant contended that even assuming that the evidence of P.W.2 is true, it should be supported by medical evidence, but, in the case on hand, there is nothing on record to substantiate the claim of P.W.2. It is further pointed out by the learned Counsel for the appellant that the so called Private Doctor, who is alleged to have examined the victim girl on 20.01.2009, has not been examined by the psychologist and no report given by her is placed before the court. Though P.W.1, the father of the victim girl stated in his evidence that the medical record relating to the treatment taken with the private Doctor was handed over to the police by him, P.W.11, the Investigating Officer of the case denied the said contention and stated that no such medical record was given to him. He has also stated that he did not examine and record the statement of the said Private Doctor who examined the victim girl on 20.01.2009. P.W.11 has further stated that no report or prescription given by the said Private Doctor was seized and produced. Thus, the claim of the victim girl and her parents, namely, P.Ws.1 and 4 that she was treated by a private doctor immediately after the alleged occurrence is not established by the prosecution.

16. According to P.W.11, after registration of the case on 28.01.2009, the victim girl was sent for medical examination and the medical report was obtained. The Doctor P.W.8, who examined the victim girl, has deposed that as per the requisition letter Ex.P.7, she examined P.W.2 on 29.01.2009 and issued an Accident Register Copy Ex.P.6 stating as follows:

'No obvious external injuries like contusion, bite mark, abrasions, nail marks. No abrasions, edema, contusion. Hymen not intact, just admits tip of little finger. No bleeding/abnormal vaginal discharge.

Likewise, the Forensic Science Expert P.W.9 stated that she examined the material received by her office relating to ICF P.S.Cr.No.57/2009 and no sperm was found in the material

received by her. The report given by her is marked as Ex.P.8. Thus, the medical evidence of P.W.7 and the evidence of P.W.9 Forensic Expert are of no help to the prosecution to establish the alleged crime of the accused. It is also pointed out that the dress materials of the victim girl were not seized and it is averred by the prosecution witnesses that as the Puberty Function was to be held, the dress materials worn by P.W.2 at the time of the alleged occurrence was put on fire and destroyed. Even assuming that it is true, as stated above, in the absence of the evidence of the Private Doctor, who is alleged to have treated the victim girl on the next day of occurrence and the medical evidence let in by the prosecution is of no use to prove the guilt of the accused. Therefore, the contention of the learned Counsel for the appellant that the evidence of P.W.1 is not corroborated with the medical evidence is to be accepted.

17. As stated earlier, the evidence of the victim girl alone is sufficient to prove the guilt of the accused if the same is believable and acceptable. In the case on hand, when it is claimed that the occurrence took place around 3.00 p.m. on 19.01.2009, the evidence of P.W.1 and P.W.4 that the accused and his wife attended the Puberty Function of the victim girl on the same day evening around 7.00 p.m. cast a shadow over the claim of the prosecution. Further, it is to be seen as to whether the victim girl and her family members visited the house of the accused on the occurrence day as claimed by them.

18. The father of the victim girl, who deposed as P.W.1 stated that himself and the accused are friends and they used to visit their respective houses and that on 19.01.2009 at the request of the wife of the accused, he himself along with his two daughters, namely, P.Ws.2 and 3 went to the house of the accused and took lunch therein. Thereafter, his first daughter P.W.3 and the wife of the accused went to Pattalam Market to purchase new dress materials for the victim P.W.2 and he along with the son of the accused returned to his house to make preparation for the evening function leaving behind P.W.2 at the house of the accused wherein, the alleged occurrence took place. P.W.1 stated that his wife did not come with them to the accused house. However, P.W.4, the wife of P.W.1 stated that as there was no money to conduct the Puberty Function of P.W.2 on 19.01.2009, she along with her husband went to the house of the accused on 19.01.2009 morning and handed over the anklet of her elder daughter P.W.3 to the accused and requested him to pledge the same and get money for purchasing the articles for the function. She further stated that after informing about the same to the wife of the accused, she left for work and returned home around 3.30 p.m. At that time, her husband was making preparation for the function and the wife of the accused and P.W.3 came there and informed about the act of rape committed by

the accused on P.W.2 victim girl. Since the puberty function was to be held in the evening, they did not inform anyone about the occurrence and proceeded with the function in the evening. Thus, P.W.4 stated that she along with her husband went to the house of the accused on the occurrence day, but, in contradiction, P.W.1 in his evidence has stated that his wife did not come with him.

19. Further, P.W.4 in contradiction to her statement in the chief examination deposed in cross-examination that on 19.01.2009, herself along with her husband and two daughters reached the home of the accused by 6.30 a.m. and after sitting there for one hour, she left the accused house by 7.30 a.m. along with her two daughters. P.W.4 further stated that when she went to the house of the accused, her husband did not come with her. P.W.4 also stated in her cross-examination that her husband left home at 5.00 a.m. and she met him only at 3.00 p.m. in their house and she does not know as to where he was from 5.00 a.m. to 3.00 p.m. Thus, the evidence of P.W.4 totally contradicts the evidence of P.W.1, thereby creating doubt about the case of the prosecution.

20. Further, in contrast to the evidence of P.W.1 and P.W.4, P.W.3, who is the elder sister of the victim girl P.W.2, has stated that herself along with her parents and P.W.2 went to the house of the accused at 10.00 a.m. on 19.01.2009 and her mother handed over the silver anklet to the accused to get money to purchase things for the puberty function of P.W.2 and immediately left. Likewise, the victim girl also stated that on 19.01.2009, herself with her sister and father went to the house of the accused in the morning and her mother went to Koyembedu straight away from their house. She further stated that P.W.1 was not aware of handing over of the silver anklet to the accused to get money and as P.W.1 was not well, he went to the hospital immediately leaving them in the house of the accused. P.W.2 also stated that she did not know the time when her father left for hospital. However, P.W.3 stated that her father was well and he was not suffering from any ailment on that day. While P.Ws.3 and 4 have categorically stated that they went to the house of the accused to hand over the silver anklet of P.W.3 so as to get money for the puberty function on the evening of 19.01.2009, P.W.1 stated in his chief examination that he never sought any monetary help on that day from the accused. He has deposed in his cross-examination as follows:

''...19.01.09 அன்று என்னுடைய மகள் சடங்கு வைத்திருந்தபோது எங்களுக்கு எந்த பணத்தேவை இருந்ததில்லை. 19.01.09 அன்று என் மகள் தேவைக்கு பணம் கேட்டு எதிர்ப்பட்டம் போகவில்லை...''

However, when he was cross-examined further, P.W.1 has stated that on that day, his wife along with two daughters went to the

accused house at 8.00 a.m. and he came to know about the occurrence only at 5.00 p.m. on the same day. He further stated that he was informed by his elder daughter about the handing over of silver anklet to the wife of the accused to get money to purchase things for the function. P.W.1 further stated that he did not give money to purchase the dress materials and the same was done by pledging the silver anklet. Thus, it is clear from the above said evidence that there is total contradiction among the evidence of P.Ws.1 to 4 as to when and who among them visited the house of the accused and the purpose of their visit. Thus, as rightly pointed out by the learned Counsel for the appellant, the evidence of P.Ws.1 to 4 is unbelievable and contradictory as to who were all visited the house of the accused and when they left. In such circumstances, this Court is of the view that the evidence of P.W.2 victim girl alone is not sufficient and acceptable to hold the accused as guilty.

21. P.W.6 has categorically stated in his evidence about the time of arrival in the police station and also stated that he left the police station at 11.00 a.m. on 28.01.2009 and thereafter, he do not know as to what happened thereafter. In these circumstances, the claim of the appellant that the evidence let in by the prosecution is not cogent and believable has to be accepted. It is also pointed out that the occurrence is said to have been taken place around 3.00 p.m. on 19.01.2009, but, P.W.1 stated in his evidence that while he was in his house, the wife of the accused and his daughter P.W.3 came home around 3.00 p.m. and informed about the occurrence. P.W.3, the elder daughter of the complainant stated that when she returned with the wife of the accused around 3.00 p.m., the door of the accused house was opened and they saw the accused and the victim girl in a compromising position. Thereafter, she went to her house and informed her father. It is further stated that after taking lunch, P.W.3 and the wife of the accused went for shopping. Taking into consideration the said fact, doubt arises as to whether really the occurrence would have taken place as alleged by the prosecution and that too, by keeping the door open at day time. Further, as stated earlier, doubt exists about the victim girl going over to the house of the accused itself.

22. It is also contravened by the appellant that being a family friend of P.W.1 and when all of them were making arrangement together for the puberty function of P.W.2, he would have committed rape on the victim girl and that too in the day time by keeping the door open. As stated earlier, the prosecution has not explained the reasons for the delay in lodging the complaint. The medical evidence has not supported the claim of the prosecution. There is contradiction among the prosecution witnesses about the visit of the victim girl and their family members to the house of the accused on the fateful

day. Further, there is contradictions as to when and where the complaint was prepared and lodged. Thus, in my considered view, it is not safe to sustain the conviction imposed by the trial court, solely based on the evidence of the victim girl. Thus, this Court concludes that the prosecution has failed to prove the guilt of the accused beyond all reasonable doubts and therefore, he is entitled for acquittal.

23. In the result, the appeal is allowed and the appellant is acquitted. The conviction and sentence imposed on the accused by the trial court are set aside. The bail bond, if any executed by the accused, shall stand discharged. The fine amount, if any, paid by the accused, shall be refunded to the accused.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

tsi

To

1.The V Metropolitan Magistrate,
Egmore,Chennai.

2.The Chief Metropolitan Magistrate,
Egmore,Chennai.

3. The I Sessions Judge, Mahila Court,
Chennai.

4.The Principal and District Sessions Judge,
Chennai.

5. The Inspector of Police,
K.7, I.C.F. Police Station,
Chennai-38.

6. The Superintendent, Central Prison, Puzhal, Chennai.

7.The District Collector, Chennai.

8.The Director General of Police, Mylapore, Chennai.

9. The Public Prosecutor, High Court, Chennai.

+lcc to Mr.C.Vijaya kumar,Advocate sr.48467

+lcc to Mr.M.Kalyani,Advocate sr.48843

Cr1.A.No.632 of 2011

sr(co)

ss(8/8/2017)