

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2017

CORAM

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

Crl.A.No.414/2015

1.Jayaseelan
2.Baby

.. Appellants/Accused 1 & 2

Vs.

State rep. by,
The Deputy Superintendent of Police
Ponneri Sub Division,
Tiruvallur District.
[Crime No.80/2013 of Sholavaram PS]

.. Respondent/Complainant

Criminal Appeal filed under Section 374 of the Criminal Procedure Code to set aside the judgment passed in SC.No.60/2014 dated 29.06.2015 on the file of the learned Principal Sessions Judge, Tiruvallur.

For Appellants : Mr.M.Nirmal Kumar

For Respondent : Mr.Mohammed Riyaz, GA [Crl. Side]

JUDGMENT

The appellants herein were arrayed as A1 and 2 in SC.No.60/2014 on the file of the Court of Principal Sessions Judge, Tiruvallur. A-1 [Jayaseelan] stood charged and tried for commission of offences u/s.376 IPC and section 3[1][xii] of the SC/ST [Prevention of Atrocities] Act, 1989 and A-2 [Baby] was charged for offences u/s.109 read with 376 IPC and 3[1][xii] of the SC/ST [Prevention of Atrocities] Act, 1989. The Trial court, vide impugned judgment dated 29.06.2015, had acquitted the accused persons for the offence u/s. 3[1][xii] of the SC/ST [Prevention of Atrocities] Act, 1989 and however, convicted A-1 for the offence u/s.376 IPC and sentenced him to undergo 7 years rigorous imprisonment and to pay a fine of Rs.10,000/- with a default sentence of 6 months simple imprisonment and convicted A-2 for the offence u/s. 376 IPC r/w 109 IPC and sentenced her to undergo 7 years rigorous imprisonment and to pay a fine of Rs.5,000/- with a default sentence of 3 months simple imprisonment. Challenging the said conviction and sentence, the present appeal is filed.

2 The facts of the prosecution case that are necessary for the disposal of this appeal, in brief, are as follows:-

[a] P.W.2 - Revathy, the victim was a resident of Annai Indira Nagar. She knew the accused. She would state that the daughter of A-2 viz., Selvi, is her schoolmate and friend and she used to visit Revathy's house frequently. Since the father of P.W.2 is no more, A-2 enticing P.W.2 by stating that she would get the Death Certificate of her father, took her to the residence of A-1. Both A-1 and A-2 spoke in a language which the victim could not understand. Thereafter, A-2 took her to a room and undressed her. A-1 raped her. She was provided with food and A-1 bought her a gold ear ring ; nose stud and anklets. She further stated that A-1 had physical relationship with her in the car and whenever, A-1 visited the house of A-2, he used to misbehave with her. Some time thereafter, P.W.2 vomited and when her mother - P.W.1 enquired, P.W.2 narrated the happenings and P.W.1 went to A-1 and questioned his conduct. Thereafter, P.W.1 went to the respondent Police Station and lodged a complaint. She further stated that A-2 had also promised to purchase land in the name of P.W.1.

[b] P.W.1 - Pandiammal / mother of P.W.2 would state that she is a resident of Annai Indira Nagar and that her husband Mani had died 10 years back. She had two daughters viz., Revathy and Lakshmi, and a son and P.W.2 is her elder daughter. They belong to Agamudaiyar Community she knew of the occurrence. She further stated that A-1 took her daughter in his car stating that he would get her gold jewels and give her cash. P.W.2 befriended the daughter of A-2 since both studied in the same school. She also stated that both the accused took P.W.2 to a place near Andra Pradesh and A-1 raped P.W.2 . P.W.1 came to know of the incident only when P.W.2 vomited. Thereafter, P.W.1 complained to the Panchayat President and lodged a complaint with the respondent police. Ex.P.1 is the complaint given by her.

[c] P.W.3-Velu Bala, is also a resident of Annai Indira Nagar and he is running a petty shop. He would state that he knew the family of P.W.1 and that they are residing in the said place for more than 10 years. P.W.1 told him that her daughter was pregnant because of A-1 who had physical relationship with P.W.2. P.W.3 accompanied P.W.1 to the Police Station to lodge the complaint. P.W.2 had stated that the occurrence took place in the Godown belonged to A-1. Hence, P.W.3 accompanied police to the Godown and he along with one Ramaiyah - P.W.4, attested the Observation Mahazar [Ex.P.2] prepared by the police. Since P.W.1 was illiterate, P.W.3 took her to the police station through the Indira Nagar Residents' Welfare Association, to

redress her grievance.

[d] P.W.4-Ramaiyah, is a resident of Ambedkar Nagar. He knew the accused. He would state that on 24.01.2013, P.W.3 and P.W.10 called him over phone and when he went to meet them, he was informed of the occurrence and they enquired P.W.1 and P.W.2. Thereafter, they to the police station to lodge the complaint. He would also state that he signed the Observation Mahazar [Ex.P.2] prepared by the police on 27.01.2013.

[e] P.W.5-Dr.T.T.Senthilnathan, was the Doctor attached to Ponneri Government Hospital and on 29.01.2013, P.W.1 brought her daughter-P.W.2 to him for medical examination and he issued Medical Certificate under Ex.P.3 wherein he had opined that "sexual assault may have taken place" and advised for Gynacological examination ; X-Ray of Elbow [Radiological test] to prove the age and also Dentist opinion.

[f] P.W.6-Dr.C.D.Jayapriya, was the Assistant Surgeon attached to Ponneri Government Hospital and on 31.01.2011, when she was on duty at about 11.40 hours, as required by learned Judicial Magistrate, Ponneri, sheexamined A1 and certified his potency under Ex.P.4.

[g] P.W.7-Dilli, was the Head Constable attached to Sholavaram Police Station and he would depose that on 31.01.2013, he took A-1 to the Government Hospital, Ponneri for medical examination and he produced him before P.W.6-Dr.Jayapriya and after completion of the examination, he handed over custody of A-1 to the Superintendent of Prison, Central Prison, Puzhal and came back to the Station.

[h] P.W.8-Savithiri, Head Constable attached to Sholavaram Police Station, produced the victim Revathy [P.W.2] before the learned Judicial Magistrate No.2, Ponneri along with a requisition and on 30.01.2013, P.W.8 gave the requisition received from the Court to P.W.9 - Dr.Premalatha, for subjecting the victim to medical examination and P.W.2 was admitted as an In-patient in the Government Hospital, Ponneri, from 31.01.2013 to 04.02.2013. On 04.02.2013, P.W.8 received the materials given by Dr.Senthilnathan in a sealed cover and on 05.02.2013, she handed over the same to the Forensic Science Laboratory at Mylapore and reported to the Police Station.

[i] P.W.9-Dr.Premalatha, was the Duty Doctor attached to Ponneri Government Hospital. On 30.01.2013, while she was on duty, P.W.8-Head Constable produced the victim Revathy along with a requisition in connection with the case in Cr.No.80/2012 and the victim had stated to her that a known person had raped her in his car near Gummidipoondi. She found no external

injuries and she referred the victim for further treatment to a Gynecologist.

[j] P.W.10-Kaleelur Rahman, was the President of Annai Indira Nagar. He would state that P.W.1 and P.W.2 are the residents of the said place and that the husband of P.W.1 died long back. A-2 had introduced the victim to A-1 for the purpose of getting Death Certificate. The mother of the victim, viz., P.W.1 told him that under the guise of getting the Death Certificate of P.W.2's father, A-1 took the victim in his Bolero Car and committed the offence of rape on her daughter. He advised her to lodge a police complaint. The Investigating Officer seized the Bolero car near Idaipalayam Melpuri Weigh Bridge and questioned P.W.2-victim as to whether the said offence had taken place in the said car and has also prepared a Mahazar under Ex.P.5 which P.W.10 attested.

[k] P.W.11-Yogava Kavel would state that on 27.01.2013 he too accompanied P.W.1 to the police station for lodging the complaint and on 28.01.2013 he was summoned by the Deputy Superintendent of Police near Idaipalayam Melpuri Weigh Bridge for enquiry. He attested Ex.P.5-Seizure Mahazar for the Bolero car.

[l] P.W.12-P.Subbalakshmi, was the Deputy Director of Biology Department of the Forensic Sciences Department, Chennai and while she was on duty on 05.02.2013, she received the materials, numbering 2, viz., [1] a cotton swab in a test tube marked Revathi 16/F and [2] A microscope slide with whitish smear, in connection with the case in Crime No.80/2013 along with the requisition and upon examination, she issued Ex.P.6-Biological Report, wherein she had opined that "she did not detect semen on item 1 and spermatozoa on the smear in item 2."

[m] P.W.13-D.Rajendiran, was the Inspector of Police [Incharge] of Sholavaram Police Station. On 27.01.2013, he received the written complaint from P.W.1-Pandiammal and registered a case in Cr.No.80/2013 for offences u/s.420, 376 IPC and took up the case for investigation. He went to the Godown belonging to A-1 at Jannappan Road, Periyapalayam, and prepared the Observation Mahazar [Ex.P.6] and the Rough Sketch [Ex.P.7] in the presence of P.Ws.3 and 4. The Printed FIR is marked as Ex.P.8. He examined P.Ws.1, 3 and 4 and one Raja and recorded their statements. He also laid a Special Report in respect of the scene of crime under Ex.P.9. Subsequent to the investigation, he altered the FIR at about 20.00 hours on the same day and the Altered FIR is marked as Ex.P.10. In the said FIR, the offence u/s.3[1][xii] of the SC/ST [Prevention of Atrocities] Act, 1989 was added and he handed the Case Diary to the Deputy Superintendent of Police for further investigation.

[n] P.W.15-Jagatheeswaran, was the Deputy Superintendent of Police, Ponneri and on 27.01.2013, he received the order from the District Superintendent of Police and took up the case in Cr.No.80/2013 for investigation. He examined P.W.1 and recorded her statement and since it was night, he could not examine P.W.2-victim and hence, he went to the house of P.W.1 on 28.01.2013 and recorded the statement of the victim - Revathy. On receipt of information from the Inspector, P.W.15 went to Idaipalayam Weigh Bridge and seized the Bolero Car of A-1 bearing Registration No.TN-18-F-1111 and enquired A-1 and A2/appellants herein individually, in the presence of P.Ws.10 and 11. Both the accused came forward to give their respective voluntary confession statements, the admissible portions of which are marked as Exs.P.15 and 16 respectively. He also prepared the Seizure Mahazar [Ex.P.5] in respect of the car and P.Ws.10 and 11 attested the same. Based on the information furnished by the accused, P.W.15 went to Janappachathiram Junction/scene of crime. Thereafter, the accused were sent for judicial remand. P.W.15 sent the victim girl for medical examination through P.W.8-Savithiri, Head Constable after obtaining necessary permission from the Court. The victim was examined by Dr.Parimala and since she was anaemic, she was admitted as an In-patient. He also sent A-1 for medical examination after obtaining necessary permission from Court and he obtained the Medical Certificates in respect of both the victim as well as A-1. He also examined P.Ws.7, 8, 12 and recorded their statements. On transfer, he handed over the case for further investigation to his successor.

[o] P.W.14-Usharani, was the Deputy Superintendent of Police, Ponneri and she took up the investigation in connection with the case in Cr.No.80/2013 on 09.03.2013. On 10.03.2013, she enquired P.Ws.1 and 2 and since they had deposed on the same lines as before P.W.15, she did not record the same. She received the Community Certificates in respect of the accused and the victim, viz., Ex.P.11-Community Certificate pertaining to A-2 [Baby] certifying that she belonged to Hindu-Mudaliyar Community ; Ex.P.12-Community Certificate pertaining to A-1 [Jayaseelan], certifying that he belonged to Hindu-Nadar Community ; and Ex.P.13-Community Certificate pertaining to the victim-P.W.2 [Revathy], certifying that she belonged to Hindu-Adidravidar Community. She also received the Transfer Certificate [Ex.P.14] in respect of the victim girl from the School in which she had studied, on requisition. Upon completion of the investigation, she laid the Final Report against the appellant/accused before the learned Judicial Magistrate No.II, Ponneri, who took it on file in PRC.No.9/2013 and issued summons to the accused and on their appearance,

furnished them the copies of the documents u/s.207 Cr.P.C. and having found that the case is exclusively triable by the Sessions Court, committed the same to the Court of Principal Sessions Judge, Tiruvallur, who took it on file in SC.No.60/2014 and on appearance of the appellant / accused, framed charges u/s.376 [A-1] r/w 109 I.P.C and section 3[1][xii] of the SC & ST [Prevention of Atrocities] Act, 1989 [A-1 and A-2], and questioned them. The appellant / accused pleaded not guilty to the charges framed against them.

[p] The prosecution, in order to sustain their case, examined P.Ws.1 to 15 and marked Exs.P.1 to 5 besides marking M.O.1-Bolero Car bearing Regn.No.TN-18-F-1111.

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

[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 stated above and hence, this appeal.

3. Heard learned counsel for appellants and the learned Govt. Advocate(Crl.side) for respondent.

4.The complaint has been preferred on 30.01.2013 by P.W.1 mother of the alleged victim, P.W.2, six months after the alleged occurrence wherein A1 is said to have raped P.W.2 and A2 is said to have assisted him in doing so. The discovery of the offence even in the complaint is informed to be morning sickness of P.W.2 noticed by P.W.1. P.W.5- Doctor has examined P.W.2 and issued Ex.P.3- Wound certificate on 30.01.2013. He has deposed to having found her suffering from venereal disease. Quite rightly the defence has questioned Doctor-P.W.6 on whether the appellant/accused had been examined towards ascertaining if he suffered any venereal disease and Doctor-P.W.6 has answered in the negative. It is defence case that a false case has been foisted against A1 owing to political enmity between P.Ws.3,4,10 and 11. P.Ws.3 and 4 are the witnesses to the Observation Mahazar- Ex.P.2. while P.Ws.10 and 11 are witness to Seizure Mahazar-Ex.P.5 where under a Bolero Jeep belonging to A1 and alleged to have been used to commit rape had been seized. Exs.P.15 and 16 are the confession statements said to have been given by A1 and A2 respectively. Both P.Ws. 10 and 11 make no whisper thereof. P.W.2 has admitted that when her family resided

at Indira Nagar it was P.W.10, village President who afforded them protection. She has stated that being under the care and protection of P.W.10, she had come to Court upon his say so. She admitted that after reaching Court, Police handed over the summons to her. She has spoken to P.W.10 belonging to an outfit at the Village and that both appellants/accused earlier were members thereof. She has admitted to a dispute breaking out between P.W.10 and appellant/accused. She has informed of P.W.3 and P.W.4 being one with P.W.10. She has admitted that owing to a dispute with the appellant/accused one Raja had broken away from the appellant/accused and joined hands with P.W.10 and that such Raja had died sometime back. She has spoken to both accused as also P.W.10 and others informed by her as belonging to one group, all having jointly been in politics and that after a rift the area took on two different names as Annai Indira Nagar and Ambedkar Nagar. She has deposed that it was only thereafter that the case was reported to the Police. She has informed that as no action was taken on the complaint, a road roko was resorted to under the leadership of P.W.10 and it was thereafter the appellant/accused was arrested. P.W.2 further has deposed to a close relationship between her paternal uncle and P.W.10 and P.W.3. She has spoken to her mother taking decision of matters in consultation with an auto driver with whom P.W.1/ mother was close. She stated that such auto driver, who was a Secretary in Indira Nagar, had misbehaved with her. She deposed to her father being 73 when he died and her mother being 40, and the auto driver Rajan having ferried her father in his auto of his advising P.W.2s family to join him at his village volunteering to take care of them. She has stated that these issues were not known to P.W.10 and P.W.3 and owing to political differences with appellant/A1, they had played up her issue. She has reiterated that Police had not served summons on her and she had been to Court at the instance of P.W.10 and received the summons on his instructions. Though she has denied the suggestion that she had deposed as instructed by P.W.10 she has admitted to receiving a sum of Rs.1000/- from him on the date of her deposition. Though prosecution has sought to make out a case of offence under the Schedule Caste Scheduled Tribe (Prevention of Atrocities) Act which rightly has been rejected by Trial Court and that offence on rape stood committed against P.W.2 when she was minor, Ex.P.14- Transfer Certificate reveals the date of birth to be 02.02.1994 and therefore a major at the time of alleged occurrence i.e. six months prior to 31.06.2013. Trial Court has failed to see that the prosecution case reeks of motivated false implication .

5. In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellants/accused by the Trial Court vide impugned Judgment in S.C.No.60/2014 dated 29.06.2015 are hereby set aside and the appellants/accused are acquitted of the charge levelled against them. Fine amount, if any paid, shall be refunded to them.

Sd/-
Assistant Registrar (CS-iv)

//True Copy//

Sub Assistant Registrar

AP
To

- 1.The Principal Sessions Judge,
Tiruvallur.
- 2.The Principal District and Sessions Judge
Tiruvallur.
- 3.The Judicial Magistrate No.2, Ponneri.
- 4.The Chief Judicial Magistrate, Tiruvallur.
- 5.The Deputy Superintendent of Police
Ponneri Sub Division, Tiruvallur District.
- 6.The Director General of Police
Mylapore, Chennai-4.
7. The Public Prosecutor,
High Court, Madras.
8. The Superintendent, central prison, puzhal, chennai.
9. The Superintendent, Central prison for women, puzhal, chennai.
10. The Section Officer, Criminal Section, High Court, Madras.

+1cc to Mr.M.NIRMAL KUMAR, Advocate, S.R.No.19282

Cr1.A.No.414/2015

BR (CO)
TR (19/07/2018)

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