

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2017

C O R A M

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.129 of 2010

State Rep. By
The Inspector of Police,
Crime Branch CID
Namakkal.
[Crime No.206/05]

... Appellant/Complainant

-Vs-

1. Baiya @ R.Mugam
2. Nallammal
3. Palanisamy
4. Kali @ Kaliyakka @ Kaliyammal

... Respondent/Accused

Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, against the judgement of learned Assistant Sessions Judge, Rasipuram, passed in S.C.No.71 of 2008 on 29.06.2009.

For Appellant : Mr.V.Arul
Additional Public Prosecutor.

For Respondent : Mr.V.Krishnamoorthy
Amicus Curiae

J U D G M E N T

This appeal arises against judgement of learned Assistant Sessions Judge, Rasipuram, passed in S.C.No.71 of 2008 on 29.06.2009.

2. The prosecution case is that Baiya @ R.Mugam (A1), who was living in Delhi, along with Kali@Kaliyakka@Kaliyammal (A4) came to Nadupatti Village and stayed in the house of Nallammal (A2) & Palanisamy (A3). On 23.01.2007, PW-5 came to the house of PW-2-Victim, when she was alone and informed her that Baiya @ R.Mugam (A1) wanted to meet her. Believing the words, PW-2 went to the house of A1. Thereafter, A1 along with the assistance of other accused took PW-2-victim to Delhi and married PW-2 in the presence of A4, after obtaining a Certificate from Delhi Doctor that PW-2 is more than 18 years.

3. PW-1, Mother of PW-2-Victim preferred a complaint. On 03.02.2007 at about 5.00.p.m, PW-19-Sub Inspector of Police, All Women Police Station, Rasipuram received a complaint in CSR.No.24 of 2007. Thereafter, PW-1, Mother of victim had filed H.C.P.No.216 of 2007 before this Court and this Court has directed the Inspector of Police, All Women Police Station, Rasipuram, to produce the victim before this Court on 13.03.2017. As directed by this Court, PW-1-victim was produced before this Court on the said date. On 14.03.2007, PW-23-Inspector of Police, All Women Police Station, Rasipuram, registered a case in Crime No.3 of 2007 for offence under Sections 363, 109 IPC. Upon completion of investigation and filing of charge sheet informing commission of offence u/s.120-B, 363, 366 and 376(1) r/w 109 IPC, the case was taken on file in S.C.No.71 of 2008 on the file of learned Assistant Sessions Judge, Rasipuram.

4. Before trial Court, prosecution examined 24 witnesses and marked 18 exhibits. A1 himself was examined on behalf of defence, marked 3 exhibits and one Material Object. On appreciation of materials before it, trial Court, under judgment dated 29.06.2009, acquitted respondents/A1 to A4. There against, the present appeal has been preferred by State.

5. Heard learned Public Prosecutor for State and learned counsel for respondents.

6. In acquitting respondents/A1 to A4, trial Court has found as follows:-

"(i) While it was the evidence of PW-1 that she has preferred a complaint on 24.01.2007 with the Vennathur Police Station and since no action was taken on such complaint, she has preferred another complaint with All Women Police Station, Rasipuram, it was the evidence of PW-19, Sub-Inspector of Police, All Women Police Station, Rasipuram, that PW-1 has given a complaint on 03.02.2007 and a case was registered on such complaint. As per the version of PW-1, it was clear that the original First Information Report was suppressed. Further, there was contradictions between the evidence of PW-1 and PW-19.

(ii) The veracity of Ex.P1, complaint, was doubtful. Several corrections were made in Ex.P1, complaint and the same was admitted by PWs.23 and 24, Investigation Officers and PW-1, complainant.

(iii) The occurrence was said to have taken place on 23.01.2007 and Ex.P1, complaint, was of date 03.02.2007. Delay in preference of complaint has not

been explained.

(iv) Though it was the prosecution case that accused have planned to abduct PW-2, victim, to New Delhi, nothing has been mentioned in Ex.P1, complaint, there regards and the evidence of PWs.1 and 2 did not say so.

(v) Prosecution has failed to establish that PW-2, victim, was a minor at the time of occurrence through proper oral and documentary evidence.

(vi) PW-3 has deposed that upon receipt of summon only, he came to know that he was added as a witness to the case. Hence, recording of Section 161 Cr.P.C. statement of PW-3 was rendered false.

(vii) PW-2, victim, herself has admitted that while she was standing at the Vyapamalai bus stand, she has not informed anybody that she was taken by A1 under force and she did not make any attempt to escape. The above clearly revealed that PW-2 accompanied A1 on her own volition. Further, the marriage between A1 and PW-2, victim, was duly registered. PW-2 has also admitted that after 7 days of leaving home, she married A1 and till the date of marriage, A1 did not have sexual intercourse with her and after marriage, there was a sexual intercourse which was not objected to by her.

7. For the aforesaid reasons, Court below has found that the prosecution has failed to establish its case beyond all reasonable doubt and accordingly, extended the benefit of doubt to the accused. This Court finds no error in the judgment under challenge.

8. The Criminal Appeal shall stand dismissed.

Sd/-

Assistant Registrar (CS-)

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सत्यमेव जयते

Sub Assistant Registrar

kmi

To

1. THE ASSISTANT SESSIONS JUDGE,
RASIPURAM.

2. THE JUDICIAL MAGISTRATE, RASIPURAM.

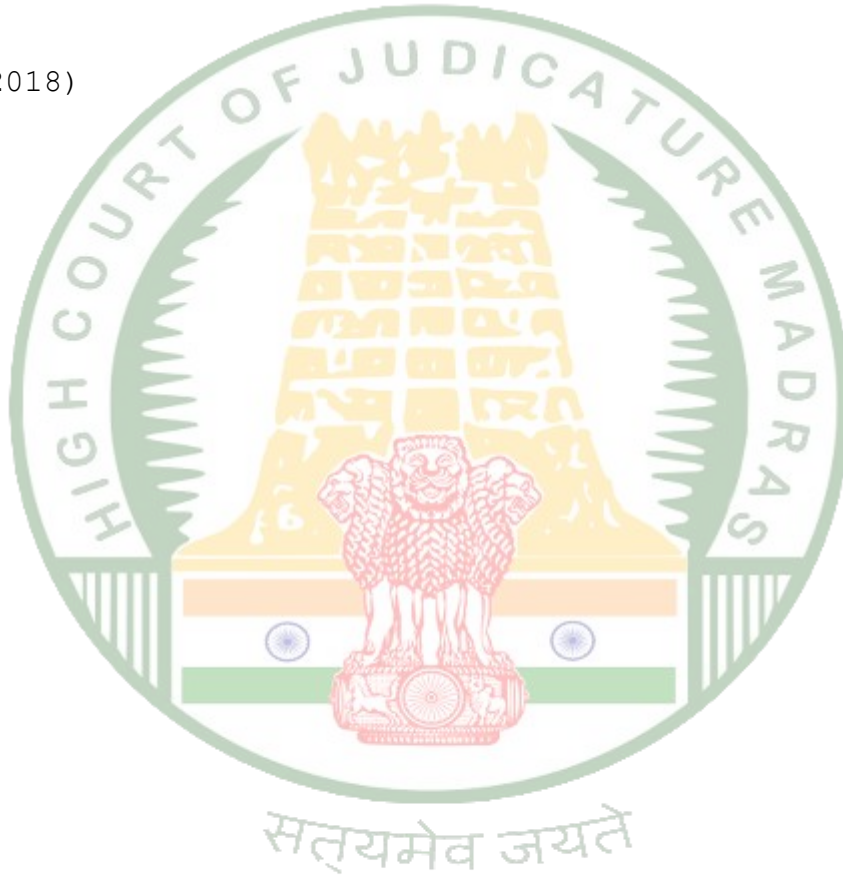
3. DO THRO THE CHIEF JUDICIAL MAGISTRATE, NAMAKKAL.

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4. THE INSPECTOR OF POLICE,
CRIME BRANCH CID, NAMAKKAL
5. THE SECTION OFFICER,
CRIMINAL SECTION, HIGH COURT, MADRAS.
6. THE PUBLIC PROSECUTOR,
HIGH COURT, CHENNAI.

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