

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on: 02.11.2016

Judgment Pronounced on: 12.07.2017

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.494 of 2010

1.Murugan
2.Arul
3.Sekar

... Appellants/Accused 1 to 3

Versus

State represented by
The Deputy Superintendent
of Police, Villupuram Sub Division
at Periyathachoor Police Station
Villupuram District.

...Respondent/Complainant

Criminal Appeal filed under Section 374 of the Criminal Procedure Code, challenging the conviction under Section 341, 323 and 376 IPC r/w Section 3(2) (5) of Prevention of Atrocities Act and sentence of fine of Rs.300/- i/d to undergo one week SI, for the offence under Section 341 of IPC, sentence of fine of Rs.500/- i/d to undergo 15 days SI, for the offence under Section 323 IPC and sentence of imprisonment of 10 years RI each and fine of Rs.25,000/- each i/d to undergo two years SI, for the offence under Section 376 r/w 3(2) (5) of Prevention of Atrocities Act, passed by the Special Court (Principal Sessions Court) Villupuram in S.C.No.7 of 2008 dated 7.7.2010.

For Appellants .. Mr.D.Gubendragunabalan

For Respondent .. Mr.P.Govindarajan,
Additional Public Prosecutor.

JUDGMENT

The case of the prosecution as per the charge is that on 10.09.2006, the informant-Anjalai, her husband and mother-in-law, were proceeding to their village after watching the first

show Cinema, since the bi-cycle got punctured, they were chasing the bi-cycle by walking. At about 10.00 P.M., when they reached near Rettnai Amman Kolathumedu road, all the three accused have obstructed the husband and mother-in-law of the informant and assaulted them by hands and caused injuries on them. On seeing the same, the informant attempted to escape from there by holding her tender baby. Thereafter, all the three accused chased the informant, snatched the tender baby and thrown out on the floor. Thereafter, they hold the hands and legs of the informant and lift her to a mango thoppu, where they laid her on the ground. Thereafter, the accused 2 and 3 where holding the hands and legs of the informant, the first accused tore her blouse and had sexual intercourse with her. Likewise alternatively, the other accused one by one had sexual intercourse with her. When P.W.4 husband of P.W.3 and father of P.W.2 searched them, on the way, he found P.W.1 to P.W.3 in unconscious state. P.W.4 had taken the victim-P.W.1 and the injured P.W.2 and P.W.3 to the Government Medical College Hospital, Villupuram. The informant, her husband and mother-in-law belongs to Irular Community (Scheduled Tribe), whereas the first accused belongs to Thuluva Vellalar Community and 2nd and 3rd accused belongs to Vanniyar Community the Revenue Divisional Officer, Ginji has also made enquiry and filed a Report regarding the Community of the victim and accused. Thereby, the accused 1 to 3 have committed the offences punishable under Sections 341, 323, 376 of IPC r/w 3(1) (XII) (V) of SC/ST Act 1989.

2. On the basis of the complaint given by the victim before the Periyathachoor Police Station, the Inspector of Police, Periyathachoor Police Station, has registered a case against the accused for the offences punishable under Sections 341, 323, 376 of IPC r/w 3(1) (XII) (V) of SC/ST Act 1989 in Crime No.192/2006. Since the accused have committed the offence punishable under Section 3(1)(XII) (V) of SC/ST Act 1989, the Inspector of Police, Periyathachoor Police Station forwarded the First Information Report to the Superintendent of Police, Villupuram Division. The case was also enquired by the Revenue Divisional Officer, Ginji with regard to the community of the victim, her husband and mother-in-law and he has also issued community certificate to that effect and filed a Report.

3. The Superintendent of Police, Villupuram Division took up the investigation and after completion of investigation, has laid a charge sheet before the Judicial Magistrate No.II, Tindivanam. The Judicial Magistrate No.II, Tindivanam, has taken the case on file in P.R.C.No.18/2007 and committed the same to the Principal District and Sessions Court, Villupuram. The Principal District and Sessions Court Villupuram, took the case on file in S.C.No.7/2008 and framed charges against the accused

for the offence punishable under Sections 341, 323, 376 of IPC r/w 3(II) (V) of SC/ST Act 1989.

4. In order to prove the case of the prosecution, on the side of the prosecution, 10 witnesses were examined as P.W.1 to P.W.10 and 14 documents were marked as Ex.P1 to Ex.P14 and one Material Object was marked as M.O.No.1. P.W.1, is the victim, P.W.2 is the husband of the victim, P.W.3 is mother-in-law of the victim, who have spoken about the occurrence. P.W.9 is the Inspector of Police, Periyathachoor Police Station, who has spoken about the reception of the complaint, registration of First Information Report against the accused and forwarding of the FIR to the Superintendent of Police, Villupuram Division. P.W.4 is the husband of P.W.3 and father-in-law of the victim- P.W.1, who has spoken about the searching of his wife, son and daughter-in-law, finding of them at the place of occurrence, taken them to the Government Medical College Hospital, Villupuram. P.W.5 is the Doctor, who attached to the Government Medical College Hospital, Villupuram, has spoken about the examination of P.W.2 and P.W.3 and the injuries found her on them; P.W.6 is the Doctor, who attached to the Government Medical College Hospital, Villupuram, has examined the victim- P.W.1, who has spoken about the medical examination done by her on the victim. P.W.7 is the Doctor attached to the Government Medical College Hospital, Villupuram, who has spoken about the examination of the accused regarding their potentiality. P.W.8 is the Revenue Divisional Officer, Ginji, who has spoken about the examination of witnesses regarding the community of P.W1 to P.W.4 and issuance of Community Certificate to them. P.W.10 is the Deputy Superintendent of Police, Vilupuram Division, who has spoken about the investigation done by him and charge sheet laid by him.

5. After completion of the examination of prosecution witnesses, in respect of the incriminating circumstances found in the evidence of the witnesses, the accused were examined under Section 313 of Cr.P.C. The accused denied the same. On the side of the accused neither oral evidence nor documentary evidence was produced.

6. The learned trial Judge after hearing the arguments of both the counsel and perusal of the records, found all the accused guilty of offences punishable under Sections 341, 323, 376 of IPC r/w 3(II) (V) of SC/ST Act 1989 and convicted and sentenced them to pay a fine of Rs.300/- i/d to undergo one week SI, for the offence under Section 341 of IPC, to pay a fine of Rs.500/- i/d to undergo 15 days SI, for the offence under Section 323 IPC and sentence of imprisonment of 10 years RI each and fine of Rs.25,000/- each i/d to undergo two years SI, for the offence under Section 376 r/w 3(2) (5) of Prevention of

Atrocities Act. Aggrieved by the conviction and sentence passed by the trial Court, the accused are before this Court by way of filing this appeal.

7. On perusal of the evidence and entire records, the case of the prosecution is that on 10.09.2006, the informant-Anjalai, her husband and mother-in-law, were proceeding to their village after watching the first show Cinema, since the bi-cycle got punctured, the chasing the bi-cycle by walking. At about 10.00 P.M., when they reached near Rettnai Amman Kolathumedu road, all the three accused have obstructed the husband and mother-in-law of the informant and assaulted them by hands and caused injuries on them. On seeing the same, the informant attempted to escape from there by holding her tender baby. Thereafter, all the three accused chased the informant, snatched the tender baby and thrown out on the floor. Thereafter, they hold the hands and legs of the informant and lift her to a mango thoppu, where they laid her on the ground. While the accused 2 and 3 holding the hands and legs of the informant, the first accused tore her blouse and had sexual intercourse with the informant. Likewise, alternatively, the other accused also one by one had sexual intercourse with the informant. Since the informant, her husband and mother-in-law belongs to Irular Community (Scheduled Tribe), whereas the first accused belongs to Thuluva Vellalar Community and 2nd and 3rd accused belongs to Vanniyar Community. Since P.W.1 to P.W.4 belongs to one of suppressed communities, they feared to complain against the accused in the Police Station and to the Doctor who examined them.

8. On the basis of the complaint given by the victim before the Periyathachoor Police Station, the Inspector of Periyathachoor Police Station, has registered a case against the appellants for the offence punishable under Sections 341, 323, 376 of IPC r/w 3(1) (XII) (V) of SC/ST Act 1989 in Crime No.192/2006. Since the appellants have committed the offence punishable under Section 3(1)(XII) (V) of SC/ST Act 1989, the Inspector of Police, Periyathachoor Police Station forwarded the First Information Report to the Superintendent of Police, Villupuram Division. The Revenue Divisional Officer, Ginji has also enquired with regard to the community of P.W.1 to P.W.3 and filed a Report. The Superintendent of Police, Villupuram Division took up the investigation and after completion of investigation, has laid a charge sheet before the Judicial No.II, Tindivanam. Subsequently, the Judicial Magistrate No.II, Tindivanam, has taken the case on file in P.R.C.No.18/2007 and committed the same to the Principal District and Sessions Court, Villupuram. The Principal District and Sessions Court Villupuram, took the case on file in S.C.No.7/2008 and framed charges against the appellants for the offences punishable under Sections 341, 323, 376 of IPC r/w 3(II) (V) of SC/ST Act 1989.

The learned Special Judge (Principal Sessions Court), Vllupuram, after trial, convicted all the three appellants and passed sentences as stated above in para 6 of this judgment.

9.Heard Mr.D.Gubendragunabalan, learned counsel appearing for the appellant and Mr.P.Govindarajan, learned Additional Public Prosecutor.

10.The learned counsel for the appellants would submit that the evidence of P.W.1-prosecutrix does not inspire confidence and according to her she was raped by three persons repeatedly. But P.W.6 Doctor Padmini admits that there is no evidence of rape as she is the doctor who examined the prosecutrix. The learned trial Judge has not appreciated the evidence of P.W.5 Dr.Arutselvam who clearly admits that P.W.3 Lakshmi and P.W.2 Viji have told him that injuries on them were sustained on 12.09.2006, whereas alleged occurrence took place on 10.09.2006. Therefore, the conviction and sentence against the appellants are liable to be set aside.

11.On the other hand, the learned Additional Public Prosecutor would submit that the victim girl was examined as P.W.1 and her husband and mother-in-law were examined as P.W.2 and P.W.3. In their evidence, P.W.1 to P.W.3 have categorically narrated the incident. P.W.1 to P.W.3 have substantiated in their version that all the appellants have committed the offence. The trial Court has also concluded that all the accused have committed the offence and ultimately convicted the appellants for the offence punishable under Sections 341, 323, 376 of IPC r/w 3(II) (V) of SC/ST Act 1989. Therefore, there is no reason to interfere with the judgment of conviction and sentence recorded by the trial Court. Hence, the appeal is liable to be dismissed.

12.Heard the rival submissions made by both the counsel for the parties and perused the records produced before the trial Court and also the judgment passed by the trial Court and the grounds raised by the appellants before this Court and the available documents.

13.As already stated, the case of the prosecution is that on 10.09.2006, the victim, her husband and mother-in-law, were proceeding to their village after watching the first show Cinema, since the bi-cycle got punctured, they were walking by chasing the bi-cycle. At about 10.00 P.M., when they reached near Rettnai Amman Kolathumedu road, all the three appellants have obstructed the husband and mother-in-law of the prosecutrix and assaulted them by hands and caused injuries on them. The victim on seeing the same, attempted to escape from their by holding her tender baby. Thereafter, all the three appellants

chased the victim, snatched the tender baby and thrown out on the floor. Thereafter, they hold the hands and legs of the prosecutrix and lift her to a mango thoppu, where they laid her on the ground. While the appellants 2 and 3 holding the hands and legs of the victim, the first appellant tore her blouse and had sexual intercourse with the victim. Likewise, alternatively, the other appellants one by one also had sexual intercourse with the prosecutrix.

14.Now, the point arises for consideration is:

Whether the offence under Sections 341, 323, 376 of IPC r/w 3(II) (V) of SC/ST Act 1989 are made out against the appellants or not?

15.The Point:- Perusal of the evidence of P.W.1, P.W.2, P.W.3, coupled with the evidence of P.W.5, P.W.6 and P.W.7 would show that the appellants would have committed the offence punishable under Sections 341, 323, 376 of IPC r/w 3(II) (V) of SC/ST Act 1989. The victim-P.W.1 at the time of examination by P.W.6-Doctor, was admittedly aged 40 years, having three children within three years, and conceived for three months, there is no swelling and also there is no injury on the private part of P.W.1-victim. Not deducting semen as well as swelling in the private part of P.W.1-victim would not be taken as advantage to conclude that there was no rape on the victim. If the victim is a minor girl there is a chance to put forth such a case. The married woman aged about 40 years begot three children within three years cannot be expected some injury or swelling noted by the Doctor that too examined after three days of alleged incident. P.W.2 and P.W.3 cannot be said anything since they were unconscious, whereas P.W.1 told the fact that she was lifted by the appellants to the mango thoppu and gang raped. In the evidence of P.W.1 to P.W.3 even there is minor discrepancies they will not vitiate the case of the prosecution. Medical reports collected by the prosecution from the Doctors to prove the case of the prosecution, based on the medical records, there is no ground to reject the case of the prosecution and also for taking the case of the defence for acquittal. Even from the medical witnesses there is no negative opinion about the rape. Even otherwise there is also no discrepancy from the medical evidence. Even assuming that there is discrepancy between medical evidence and ocular evidence latter will prevail that the medical evidence is only an opinion.

16.Still no doubt as a case like rape the evidence of victim itself is enough to prove the case and there is no need to corroborate the same. In this case, since P.W.1 to P.W.3 belongs to suppressed class and weaker section in the society as the manner known to them they approached the villagers and also the relatives of the appellants and complained about the act done by

the appellants. However, they were not given any response, they have preferred a complaint to the police. The Headman of the Village or any elderly person in the family of the appellants are not convinced them. Since, they do not know the basic rights and they have not immediately approached either the police or took any other lawful methods. The evidence of P.W.1 to P.W.3 clearly shows the appellants have committed gang rape on P.W.1 and caused injuries to P.W.2 and P.W.3. Thus, for all the above reasons non filing of complaint to the police immediately and not to go to hospital either for treatment or for medical test are not a fatal to the prosecution case.

17. In this regard, it is relevant to place reliance on the decision in State of H.P. v. Asha Ram, reported in (2005) 13 SCC 766, wherein, the Hon'ble Supreme Court placing reliance on a number of earlier decisions such as in the decisions of Rafiq v. State of U.P. (1980) 4 SCC 262; Bhargava Bhoginbhai Hirijibhai v. State of Gujarat (1983) 3 SCC 217; Madan Gopal Kakkad v. Naval Dubey (1992) 3 SCC 204; Ranjit Hazarika v. State of Assam (1988) 8 SCC 635; State of Punjab v. Gurmit Singh (1996) 2 SCC 384; and State of Rajasthan v. N.K. (2000) 5 SCC 30; have held as follows:-

"It is now a well-settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital, unless there are compelling reasons which necessitate looking for corroboration of her statement. The courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is also a well-settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under the given circumstances. Minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be ground for throwing out an otherwise reliable prosecution case."

18. Further it is placed reliance on the Judgment of Chauhan Aminmiya Mohamadhusen v. State of Gujarat [2016 CrI.L.J.2641], wherein some of the decision of the Apex Court have been made in para 14, 15 and 16, which is extracted hereunder:-

"14. A useful reference can be made to the judgment of the Hon'ble Apex Court in the judgment

reported in AIR 2008 SC 1747 in the case of Ram Swaroop v. State of Rajasthan, wherein it has been observed that where there is variance between medical evidence and ocular evidence, it is trite law that oral evidence has get primacy and medical evidence is basically opinionative. In any case there is no inconsistency in the testimony of the victim and the medical evidence in the form of testimony of the doctor.

15.A useful reference can also be made to the judgment of the Hon'ble Apex Court reported in (1996) 2 SCC 384: (AIR 1996 SC 1393) in the case of State of Punjab v. Gurmit Singh and Ors., wherein it has been observed,

"....The inherent bashfulness of the females and the tendency of conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement, before relying upon the same, as a rule, in such cases amounts to adding insult to injury.....Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable..."

16.....A useful reference can be made to the judgment of the Hon'ble Apex Court reported in (1999) 8 SCC 715: (AIR 2000 SC 185) in the case of State of Karnataka v. K.Yarappa Reddy wherein it has been observed,

".....It can be a guiding principle that as investigation is not a solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinized independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the

roost. The court must have predominance and pre-eminence in criminal trials over the action taken by investigating officers. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case..."

19. Therefore, in this case also the evidence of P.W.1 is enough to convict the accused. The evidence of P.W.2 and P.W.3 are also corroborative. P.W.4 immediately proceeded to the place of occurrence also spoken that the appellants alone have committed gang rape on the P.W.1-victim. There is no reason to disbelieve or discard the evidence of P.W.1 to P.W.4 as their evidence is natural.

20. Therefore, in view of the aforesaid discussion and the fact and circumstances, on re-appreciation of the evidence on record this Court also finds that there are clear, cogent and convincing evidence against the appellants to have committed gang rape on the prosecutrix (P.W.1). Therefore, finding of conviction in this regard needs no interference. So far as the sentence imposed is concerned, the same being minimum also needs no interference inasmuch as no adequate and special reasons are there in favour of the appellants, to reduce the same.

21. In the result, this criminal appeal fails and is dismissed accordingly. The conviction and sentence imposed on the appellants are confirmed. The bail bonds if any executed by the appellants shall stand cancelled. The trial Court is directed to take steps to secure the custody of the appellants to undergo the remaining period of sentence.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gr.

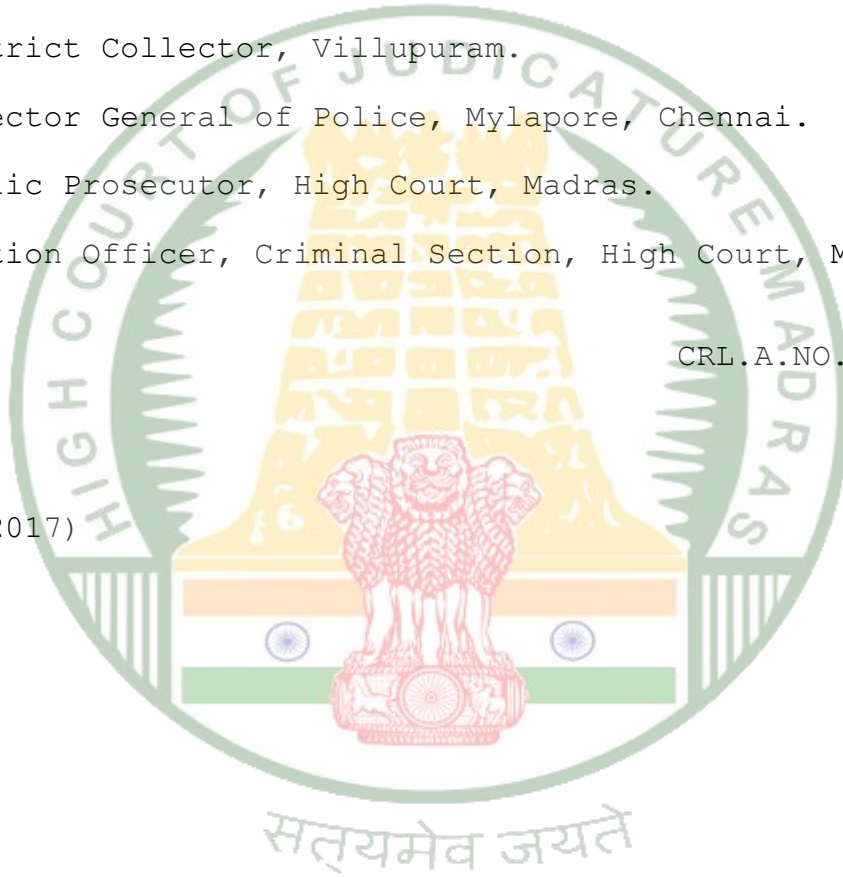
To

1.The Judicial Magistrate II,
Tindivanam.

2. Do Thro' The Cheif Judicial Magistrate,
Villupuram.
3. The Principal Session Judge,
Special Court,
Villupuram.
4. The Superintendent of Police,
Central Prison, Cuddalore.
5. The Deputy Superintendent of Police,
Villupuram Sub Division @ Periyathachoor Police Station.
6. The District Collector, Villupuram.
7. The Director General of Police, Mylapore, Chennai.
8. The Public Prosecutor, High Court, Madras.
9. The Section Officer, Criminal Section, High Court, Madras.

CRL.A.NO.494 OF 2010

GJII (CO)
GN (21/07/2017)



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