

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.621 of 2008

State Represented by  
The Inspector of Police,  
All Women Police Station,  
Salem Rural,  
(Kandalampatti All Women  
P.S.Crime No.4/2006) .. Appellant

Vs

Rajendiran  
S/o. Mahendiran .. Respondent

Prayer:- Criminal Appeal filed under Section 378 Cr.P.C., to allow the appeal and set aside the judgment of acquittal passed by the trial Court in S.C.No.313 of 2006 dated 10.01.2008 on the file of the learned Sessions Judge, Magalir Neethimandram, Salem.

For Appellant : Ms.M.F.Shabana,  
Govt. Advocate (Crl. side)  
For Respondent : Mr.M.R.Sivakumar

JUDGMENT

The respondent is the sole accused in S.C.No.313 of 2006 on the file of the learned Sessions Judge, Magalir Neethimandram, Salem. The appellant/State has filed this appeal against the order of acquittal passed by the Trial Court. The respondent/accused stood charged for the offences under Sections 376, 506(2) and 417 IPC. After trial, by judgment dated 10.01.2008, the trial Court acquitted the accused from all charges. Against the order of acquittal, the present appeal has been filed before this Court.

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

P.W.1 is a victim girl in this case. She is a Srilankan refugee and the accused is also a Srilankan refugee. Both families are residing in the Refugee's Camp at Sidharkoil. P.W.1 knew the accused three years ago and the accused, and

P.W.1 loved each other. The accused promised to marry her and by deception, he raped her. When she requested the accused to marry her, the accused threatened her with dire consequences. Subsequently, he married another lady, who is also a Srilankan refugee staying at Thiruvannamali refugee Camp. In the said circumstances, P.W.1 lodged a complaint before the respondent police.

3. P.W.11, the Inspector of Police, on receipt of the complaint, on 1.4.2006 registered a case in Cr.No.4 of 2006 for the offence under Sections 376, 417 and 506(2) IPC and prepared F.I.R. Ex.P.10 and thereafter, she started investigation. On the same day, she recorded the statement of P.W.1 and her parents. On the next day i.e. on 2.4.2006, she visited the scene of occurrence and prepared Observation Magazar Ex.P.2 and Rough Sketch Ex.P.11. She also recorded the evidence of other witnesses. Thereafter, she arrested the accused and remanded him to the judicial custody. Then she sent both the accused and P.W.1 for medical examination.

4. P.W.8, the Doctor, working in Government Hospital, Salem examined P.W.1 and gave a report Ex.P.4 and the same reads as follows:

"Hymen - Not intact  
Peer Vaginal Examination - O S admits  
two fingers loosely  
C x Uterus AV normal size form free"

She also issued a Accident Register Ex.P.5.

After completing investigation, P.W.11 filed a charge sheet against the accused.

5. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 11 witnesses were examined and 11 documents were exhibited. No Material Object was marked.

6. Out of the witnesses examined, P.W.1 is the victim girl in this case. According to her, the accused promised to marry her. With deception, he had intercourse with her. Thereafter, he refused to marry her. When she asked him to marry her, the accused threatened her with dire consequences. Hence, she filed a complaint.

7. P.W.2, is also a Srilankan refugee, residing at Sidharkoil Camp, Salem. She knew both the accused and P.W.1. According to her, the accused promised to marry P.W.1. P.W.3 is the mother of P.W.1. According to her, the accused promised

to marry her daughter and subsequently, when the daughter of P.W.3, asked the accused to marry her, he refused and he threatened her with dire consequences. P.W.4 is the father of P.W.1. P.W.4 stated that the accused had love affairs with her daughter and the accused promised to marry P.W.1, but, the accused got married somebody. When his daughter questioning the accused about the same, he threatened her with dire consequences. P.W.5 is the President and resident of the refugee camp at Sidharkoil. P.W.6 is the another resident of the refugee camp at Sidharkoil. He is a hearsay witness. P.W.7 is also a resident of the refugee camp at Sidharkoil and according to him, the accused promised P.W.1 to marry.

8. P.W.8 is the Doctor. She examined P.W.1 and the accused and gave a report Ex.P.4 and the Accident Register Ex.P.5. P.W.9 is also the Doctor. He examined the accused and stated that the accused is potent and he gave a medical certificate. P.W.10, who is the Radiologist, working the Government Hospital took X-ray Ex.P.9 and he gave a report Ex.P.8 stating that the age of P.W.1 is between 18 and 19.

9. P.W.11, is the Inspector of Police. According to her, three years prior to the occurrence, the accused had love affairs with P.W.1 and he also promised to marry her. Based on that he had intercourse with P.W.1. and thereafter, he refused to marry P.W.1 and he got marriage with some other girl. When she questioned the accused, he threatened her with dire consequences. When P.W.11 was cross examined, she stated that P.W.1 used to go to the house of the accused and where the accused had intercourse with her.

10. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness or mark any documents on his side.

11. Having considered all the above materials, the trial Court acquitted the accused, in respect of the all the charges, as detailed in the first paragraph of this judgment. Aggrieved against the order of the acquittal of the accused from the charge, the present Criminal Appeal has been filed by the State.

12. I have heard Ms.M.F.Shabana, learned Government Advocate (Criminal side) and Mr.M.R.Sivakumar, learned counsel for the respondent. I have also perused the records carefully.

13. P.W.1 in her cross examination stated that there is an enmity between the sister of the accused and P.W.1, and thereafter, a misunderstanding developed between the accused family and P.W.1's family. In view of the same, there is no

connection between P.W.1 and the accused. In her cross examination, she further stated that prior to the present complaint, she gave another complaint before the All Women Police Station. In the said complaint, it is stated that the accused only promised to marry her and in violation of the same, he got marriage with another lady. The said complaint was enquired by the concerned police station.

14. It is further stated by P.W.1 in the cross examination that before giving the complaint, she used to live with the accused as husband and wife and except them, nobody knew their relationship. She did not have any intercourse with anybody else except the accused. In view of the above contradiction, the trial Court disbelieved the evidence of P.W.1. So far as the other witnesses are concerned, they have simply stated that the accused promised to marry P.W.1 and he left her. But, there is no evidence to show that the accused made a promise to her. Hence, the trial Court held that there are lot of contradiction in the evidence and the prosecution failed to prove the case beyond reasonable doubt. Considering the above evidence, the trial Court acquitted the accused from all the charges.

15. In an appeal against acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence available to him. The fundamental principle of criminal justice delivery system is that every person, accused of committing an offence shall be presumed to be innocent, unless his guilt is proved by a competent Court of law. Secondly if the accused has secured an order of acquittal, the presumption of his innocence is reaffirmed and strengthened by the trial Court. Even if two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of the acquittal recorded by the trial Court. Hence, I find no perversity in the judgment of the trial Court. In the above said circumstances, I find no reason to interfere with the order of acquittal passed by the trial Court. Hence, the appeal fails and the same deserves to be dismissed.

16. As a result, the Criminal Appeal fails and accordingly, the same is dismissed. The judgment of the trial Court in S.C.No.313 of 2006 dated 10.01.2008 is hereby confirmed.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,  
Magalir Needhimandram,  
Salem.
2. The Public Prosecutor,  
High Court, Madras.
3. The Inspector of Police,  
All Women Police Station,  
Salem Rural,  
(Kandalampatti All Women)
4. The Judicial Magistrate - I,  
Salem.
5. The Chief Judicial Magistrate,  
Salem.
6. The Superintendent of Police,  
Salem.
7. The Director General of Police,  
Mylapore, Chennai-4
8. The District Collector,  
Salem.
9. The Section Officer,  
Criminal Section,  
High Court, Madras.

+1cc to Mr.M.R.Sivakumar, Advocate, S.R.No.10482

Cr1.A.No.621 of 2008

KS(CO)  
CS/22/11/17

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