



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.08.2018

Pronounced on : 05.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.450 of 2008

Rajendiran,
S/o.Murugesan.

... Appellant/Accused No.1

Vs.

State Represented by
the Inspector of Police,
Nellikuppam Police Station,
Cuddalore District,
Crime No.986 of 2005

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 (2) of the Code of Criminal Procedure, to call for the records relating to the Judgment dated 09.06.2008 made in S.C.No.406 of 2007 on the file of the Sessions Judge (Mahila Court) Cuddalore and to set aside the same and allow the above appeal.

For Petitioner : Mr.A.Arasu Ganesan

For Respondent : Ms.V.Saratha Devi,
Government Advocate [Crl.Side]

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**J U D G M E N T**

The appellant is the accused No.1 in S.C.406 of 2007 on the file of the Sessions Court (Mahila Court) Cuddalore. The appellant along with two others who were charged and tried for an offence under Section 316 of the Indian Penal Code. On conclusion of trial, the Trial Court had convicted the appellant and had acquitted the other two accused. In the above case the prosecution had examined 10 witnesses and had marked Exs.P1 to P6. No witness were examined and no documents were marked by the accused.

2.The case of the prosecution is that on 10.06.2005 at about 09.00 a.m. the accused had cut a tree in the garden of PW1, when it was questioned, the accused had assaulted the said Saraswathy by hands and kicked on her stomach, due to which, she had a forcible abortion, for which she had preferred a complaint. On completion of investigation the prosecution had filed the charge sheet against the appellant and two others.

3.PW1 victim states that the appellant/first accused had kicked her, due to which she felled down and further, he kicked on her stomach, the other accused had pulled her legs and they also



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abused her, due to the fall, she developed stomach pain and she was taken to the Public Health Centre at Melampattampakkam, administered first aid and thereafter, referred to the Cuddalore Government Hospital, where she was treated for bleeding and admitted as in-patient for three days. Thereafter, she had gone to her native place at Tirunelveli, for taking native treatment.

4.PW2-husband of PW1, who is running a textile shop coming to know about the incident reached home and found that his wife was lying down and he had taken her to the hospital.

5.PW3-an employee of PW2, in his presence the Observation Mahazar was prepared.

6.PW4-relative of PWs'1 and 2 had reached the scene of occurrence after coming to know about that PW1 being assaulted by the accused.

7.PW5 evidence is in the nature of hear-say. This witness was treated as hostile.



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8.PW6 is the Doctor attached to Primary Health Centre, Melpattambakkam, who had administered first aid treatment to PW1 on 10.06.2005 and referred PW1 to Cuddalore Government Hospital.

9.PW7-Doctor of Government Hospital, Cuddalore had examined PW1 on 10.06.2005 and had administered injection and given treatment for abortion.

10.PW8-Resident Medical Doctor of Government Hospital Cuddalore had examined PW1 on 10.06.2005 at 3.25 p.m. and through him Ex.P3, the Accident Register had been marked. This witness had examined PW1 on 17.06.2005.

11.PW9, the Sub-Inspector of Police attached to Nellikuppam Police Station had received the complaint from PW1 on 04.08.2005 and registered an FIR in Crime No.986 of 2005 for the offence under Section 316 of the Indian Penal Code.

12.PW10 is the Inspector of Police, Nellikuppam Police Station, who on receipt of FIR on 04.08.2005 had visited the scene of occurrence, prepared the Observation Mahazar Ex.P4 and Rough



Sketch Ex.P5, thereafter, on completion of investigation had filed the charge sheet against the accused.

13.The contention of the learned counsel for the appellant is that PW1 and the appellant are neighbours and there is a dispute with regard to the sharing of the backyard between them and a false case has been foisted against him. It is further contended that in Ex.P1-complaint was given only on 04.08.2005, for the occurrence of 10.06.2005. The reason for the delay in giving the complaint for the occurrence of 10.06.2005 is that the earlier complaint has been lost and hence, the complaint dated 04.08.2005 was received and in this complaint nowhere it is mentioned about PW1 being pregnant and which fact is known to the appellant.

14.There is no other witnesses to corroborate the version of PW1. PW2 her husband, PW3-the employee of PW2, PW4-relative of PW1 and PW2, PW5-friend of PW2 are the witnesses, who have not witnessed the occurrence and have reached the scene of occurrence latter. These witnesses are all in the nature of hear-say. It is further submitted that the witnesses, who have been present during the alleged occurrence have not been examined in this case.



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15.The appellant contended that PW6-Doctor, Melpattambakkam, Public Health Centre except for administered first aid and referred her to the Government Hospital, Cuddalore. He has not spoken anything with regard to the injuries. PW7-Doctor of Cuddalore Government Hospital, though, states that on 10.06.2005, she had administered injection for the abortion of PW1. On looking at Ex.P3, the Accident Register/Case Sheet, these witnesses have not made any endorsement for the treatment given and she has not spoken to about Ex.P3. PW10-the Resident Medical Doctor of Cuddalore Government Hospital, through him Ex.P3 had been marked. Except for admitting her as in-patient, he has not given any treatment and he says that a female Doctor had examined PW1 strangely, the Gynecologist, who had examined her has not examined as a witness in this case.

16.The appellant further contended that PW9-the Sub-Inspector of Police states that he had received the complaint on 04.08.2005 and on the same day, he had registered the FIR, Ex.P4 for the occurrence on 10.06.2005. The said FIR was sent to the Court only on 17.08.2005. This witness admits that in the complaint, Ex.P1, there is no mention about PW1 sustained bleeding injury and had undergone abortion. PW10-the Inspector of Police



on 04.08.2005 had prepared the Observation Mahazar – Ex.P5, Rough Sketch - Ex.P6 and examined the witnesses and filed the final report. This witness confirms that Ex.P4, FIR had reached the Court only on 17.08.2005 and the Observation Mahazar and Rough Sketch reached the Court on 05.01.2006.

17.Further, he admits that there is a civil dispute between the appellant and PW2 and a civil case is pending between them. No reason for the inordinate delay in receipt of the complaint is given. Admittedly, the complaint had been lodged only on 04.08.2005, for the occurrence of 10.06.2005. Further, the FIR had reached the Court only on 17.08.2005 and the other documents had reached the Court only on 05.01.2006 and hence, there have been no explanation with regard to the inordinate delay in this case.

18.The appellant further submits that Ex.P3 Accident Register/Case Sheet has not been marked through the Gynecologist, who had treated PW1 and on the admission of PW1 that there is no mention in the complaint about that she had forcible abortion on 10.06.2005, due to the assault. Admittedly, the Trial Court had acquitted A2 and A3, on appraisal of the same set of evidence.



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19. The counsel for the appellant relied upon the citation of the Hon'ble Supreme Court of India in the case of ***Prabhat alias Bhai Narayan Wagh & Others Vs. State of Maharashtra*** reported in ***2013 AR SC 2920*** states that on appraisal of the evidence in the case and on the same set of evidence, the Trial Court had acquitted A2 and A3 and on the same facts and circumstances, thus the appellant is also entitled for the same. The relevant paragraph of the above said citation is extracted here under:

11. Having considered the facts and circumstances of the case, in our view, the view expressed by the Trial Court cannot be said to be unreasonable or perverse, warranting disapproval, especially when the trial Court had acquitted rest of the six accused persons, which was affirmed by the High Court on the same set of evidence. Taking into consideration all the fact and circumstances of the case, in our view, the appellants are entitled to the benefit of doubt."



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20.PW1's evidence is not corroborated by any other witnesses. Further, there have been civil dispute with regard to the backyard between the appellant and PW1 and there is a strong motive to implicate the appellant. In view of the same and on relying upon the evidence of PW1, which is clouded with doubtfulness and does not inspire confidence.

21.Hence, the Criminal Appeal is allowed and the Judgment of conviction dated 09.06.2008 made in S.C.No.406 of 2007 passed by the Sessions Judge (Mahila Court) Cuddalore is set aside. Consequently, the appellant is acquitted. The Bail Bond executed stands cancelled. No costs.

05.10.2018

Speaking order/Non-speaking order
Index: Yes/No
Internet: Yes/No
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To

- 1.The Sessions Judge (Mahila Court),
Cuddalore.
- 2.The Inspector of Police,
Nellikuppam Police Station,
Cuddalore District,
Crime No.986 of 2005
- 3.The Public Prosecutor,
High Court, Madras.



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10

M.NIRMAL KUMAR, J.

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PRE-DELIVERY JUDGEMENT IN

Crl.A.No.450 of 2008

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