

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.634 of 2009

Sabarinathan

... Appellant

Vs.

The State rep. by the
Inspector of Police,
Thirunallar Police Station,
Karaikal
[Crime No.177/2006]

... Respondent

Prayer:

Appeal filed under Section 374(2) of Cr.P.C. seeking to set aside the conviction and sentence imposed on the appellant/ accused in S.C.No.26 of 2008 on 28.08.2009 by the learned Additional Sessions Judge, Puducherry at Karaikal.

For Appellant : Ms.S.Sridevi
For Respondent : Mr.V.Balamurugane
Additional Public Prosecutor

J U D G M E N T

The appellant has filed this appeal seeking to set aside the conviction and sentence imposed on the appellant/ accused in S.C.No.26 of 2008 on 28.08.2009 by the learned Additional Sessions

Judge, Puducherry at Karaikal.

2.The appellant was charged for the offence under Sections 448, 354, 376 and 380 of IPC. After trial, the appellant was convicted for the offence under Sections 448 and 376 of IPC and was sentenced to undergo simple imprisonment for one year for the offence under Section 448 of IPC and to undergo rigorous imprisonment for seven and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for six months for the offence under Section 376 of IPC. Both the sentences were ordered to run concurrently. The appellant was acquitted from the charge under Sections 354 and 380 of IPC. Aggrieved by the said conviction and sentence, the appellant/ accused has filed the present appeal.

3.The case of the prosecution is that on 17.08.2006 at about 18.00 hours trespassed into the house of the defacto complainant namely Selvi, attempted to outrage the modesty of Saranya/ defacto complainant's elder daughter and committed rape on Divya/ defacto complainant's younger daughter and also committed theft of some brass items from the said house.

4.After following due procedure, the case was committed to the

Court of Sessions, Puducherry by the learned Judicial Magistrate II, Karaikal vide order dated 11.04.2008 in P.R.C.No.5 of 2007 and made over to the Court of the Additional Sessions Judge, Puducherry at Karaikal by the learned Principal Sessions Judge, Puducherry on 30.04.2008.

5. Thereafter, the learned Additional Sessions Judge, Puducherry at Karaikal framed charges against the accused for the offence punishable under Sections 448, 354, 376 and 380 of IPC and the same was read over and explained to the accused in Tamil. The accused pleaded not guilty. Thereafter, trial was proceeded against the accused.

6. The prosecution examined 18 witnesses P.W.1 to P.W.18 and marked exhibits Ex.P1 to Ex.P43 and also marked 14 material objects. However, no oral evidence was let in and no exhibits were marked on the side of the defence.

7. The brief facts of the case are as follows:

(i) The defacto complainant/ Selvi/ P.W.1 on the date of occurrence was working as a coolie in the SPIC Company. She and her husband came down to Karaikal and settled there from the year 2003.

The defacto complainant's husband died in the year 2004 by committing suicide. The defacto complainant along with her daughters are residing in a rented building belonging to one Madhiazhagan. Her elder daughter is working in the SPIC Company and her younger daughter is a mentally retarded person and also polio attacked.

(ii)The defacto complainant has affairs with one Jayakumar who is working as Driver in the SPIC Company and they are living as husband and wife in the said house. On 17.08.2006 at about 5.00 or 5.30 p.m. she went to Karaikal ration shop and since there was delay in the ration shop, she came to her house at 9.30 p.m. After return to her house, she found her elder daughter/ P.W.2 sitting outside the house and crying.

(iii)When P.W.1/ defacto complainant enquired her, P.W.1's elder daughter told her that the accused came in a drunken state and pulled the nighty worn by her and hence her nighty torned and she sustained injuries on her shoulder. Hence, she ran out of the house through the back yard. The defacto complainant's elder daughter further told her that when she returned to the house after half an hour, she noticed blood oozing out of the private part of her younger sister. Hence, she informed her neighbour/ P.W.3 and brought her to the house and

questioned the accused as to why he came to her house. The accused informed them that he came to see P.W.1. P.W.2 also told P.W.1 that the accused stole away the brass light and the kerosene light from the house.

(iv) Thereafter P.W.1 informed about the occurrence to Jayakumar and the said Jayakumar came to the house. Thereafter, P.W.1 and Jayakumar took the victim girl/ P.W.1's younger daughter to a community health centre at Thenur where first aid was done to the victim girl and intimation was given to Thirunallar Police Station. Thereafter, the victim girl was sent to Karaikal Government General Hospital through ambulance for further treatment. Thereafter, the case came to be registered.

8. The learned counsel appearing for the petitioner would submit that except P.Ws.1 to 3, no other witness deposed against the accused person. She would further submit that even P.W.2 in her cross examination has stated that she did not know whether the accused came to their house or not and there is suspicion as to how many persons entered the house and why the appellant alone has been implicated in the case. She would further submit that except Ex.P7, Ex.P16 and Ex.P17, no other incredible documents are available as

against the accused.

9.The learned counsel appearing for the petitioner would further submit that even the Medical Officer/ P.W.12 who examined the victim did not depose against the accused. Even in Ex.P.14/ final opinion of P.W.12, there is no evidence available to implicate the appellant as accused. She would further submit that the prosecution did not prove the case beyond reasonable doubt. Accordingly, she prayed for allowing the appeal.

10.The learned Additional Public Prosecutor appearing for the respondent would submit that P.W.1 is not an eye witness. She came to the house only 9.30 p.m. and she found her elder daughter/ P.W.2 sitting outside the house and crying. Thereafter P.W.1/ defacto complainant enquired P.W.2 and she told her about the occurrence. Hence, there is no delay in registering the FIR and there is also no delay in sending the victim for medical examination.

11.The learned Additional Public Prosecutor appearing for the respondent would further submit that P.W.2 in her deposition has clearly deposed that the accused came in a drunken state and pulled the nighty worn by her and hence her nighty torned and she sustained

injuries on her shoulder. Hence, she ran out of the house through the back yard. When she returned to the house, she noticed blood oozing out of the private part of her younger sister. Hence, she informed her neighbour/ P.W.3 and brought her to the house and questioned the accused as to why he came to her house. The accused informed them that he came to see P.W.1. and he fled away from the scene of occurrence. P.W.2 has also deposed that brass light and kerosene light were stolen from the house.

12.The learned Additional Public Prosecutor appearing for the respondent would further submit that P.W.3 turned hostile. Though chief examination of P.W.3 was conducted on 15.12.2008, cross examination of P.W.3 was conducted only on 09.06.2009. He would further submit that merely because P.W.3 turned hostile, it will not wipe out the offence committed by the accused. He would further submit that Ex.P39/ finger print opinion is enough to implicate the appellant in the case.

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13.The learned Additional Public Prosecutor appearing for the respondent would further submit that the victim girl is deaf and dumb and she was not able to speak or identify the accused. Even in this worst situation, she expressed the pain through body language to the

Doctor who examined her. He would further submit that Ex.P7, Ex.P16 and Ex.P17 are enough to implicate the appellant as accused. He would further submit that prosecution has proved the case beyond reasonable doubt and the well considered judgment passed by the Court below need not been interfered with. Accordingly, he prayed for dismissal of the appeal.

14. Heard the arguments advanced on either side and perused the materials placed on record.

15. The undisputed facts are that P.W.1 is the mother of the victim and she is not an eye witness to the occurrence. P.W.2 is the sister of the victim and she has deposed that the accused came in a drunken state and pulled the nighty worn by her and hence her nighty torned and she sustained injuries on her shoulder. Hence, she ran out of the house through the back yard. When she returned to the house, she noticed blood oozing out of the private part of her younger sister. Hence, she informed her neighbour/ P.W.3 and brought her to the house and questioned the accused as to why he came to her house. The accused informed them that he came to see P.W.1. and he fled away from the scene of occurrence. P.W.2 has also deposed that brass light and kerosene light were stolen from the house. P.W.3 has

turned hostile.

16. When P.W.1 came to her house at 9.30 p.m., she found her elder daughter/ P.W.2 sitting outside the house and crying. When P.W.1 enquired her, P.W.2 told her about the occurrence. Thereafter P.W.1 informed about the occurrence to one Jayakumar and the said Jayakumar came to the house. Thereafter, P.W.1 and Jayakumar took the victim girl/ P.W.1's younger daughter to a community health centre at Thenur where first aid was done to the victim girl and intimation was given to Thirunallar Police Station. Thereafter, the victim girl was sent to Karaikal Government General Hospital through ambulance for further treatment. Thereafter, the case came to be registered. 14 material objects were marked in the case to substantiate the prosecution case.

17. Admittedly, the victim girl is deaf and dumb and polio affected and she is not able to move. Hence, we cannot expect the victim girl to narrate the entire incident. This Court has to draw inference from the evidences, exhibits and the material objects.

18. The accused was arrested on the next day of occurrence at 4.00a.m. nearly 11 hours after the occurrence and physical

examination was conducted. However, no semen or injuries were found on his body. The accused may have taken bath in order to destroy the evidence from the body. However, exhibits, Ex.P16, Ex.P17 and Ex.P39 – finger print opinion shows that the finger print of the appellant was found to be identical with the chance print obtained from the scene of crime. Perusal of Ex.P14 – final opinion of P.W.12/ Medical Officer who examined the victim girl reveals that the hymen of the victim was not intact and it may be due the result of attempt to penetrate. Bleeding was found in the private part of the victim at the time of admission itself. It is further stated in Ex.P14 that bleeding was due to external force. All these facts clearly establish the case of the prosecution.

19.Hence, I do not find any error in the judgment dated 28.08.2009 made in S.C.No.26 of 2008 by the learned Additional Sessions Judge, Puducherry at Karaikal.

20.At this juncture, the learned Additional Public Prosecutor appearing for the respondent produced a copy of the letter dated 10.11.2018 addressed to the Public Prosecutor from the Thirunallar PS, Karaikal and submitted that the accused was already released from jail after completing his conviction period (Government as well Jail

remission). The same is recorded.

21.The criminal appeal is accordingly dismissed. The judgment dated 28.08.2009 made in S.C.No.26 of 2008 by the learned Additional Sessions Judge, Puducherry at Karaikal, is hereby confirmed.

15.11.2018

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

1.The Additional Sessions Judge, Puducherry at Karaikal.

2.The Inspector of Police,
Thirunallar Police Station,
Karaikal
[Crime No.177/2006].

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M.DHANDAPANI,J.

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