

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 07.08.2018

Orders Pronounced on: 28.11.2018

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Criminal Appeal No.297 of 2010

Kolanjinathan ... Appellant/Accused

Versus

State Rep. by:

Inspector of Police

All Woman Police Station,

Jayankondam

Perambalur District.

[Crime No.11 of 2008]

... Respondent/Complainant

Appeal filed under Section 374(2) of the Criminal Procedure Code, to set aside the conviction and sentence, with fine, imposed against the appellant / accused by the District Sessions Judge, Magila Court, Perambalur dated 09.04.2010 in S.C.No.78 of 2009.

For Appellant : Mr.K.Mathan

For Respondent : Ms. P. Kritika Kamal
Government Advocate (Crl.Side)

JUDGMENT

The convicted sole accused is the appellant herein. He was tried for the offences punishable under Section 354, 450, 376 read with Section 511 and 506 (ii) of IPC, however, after trial, he was convicted by the trial court only for the offence punishable under Sections 450 and 354 of IPC and sentenced to undergo rigorous imprisonment for a period of two years each with fine of Rs.1,000/- (two counts), failing which to undergo rigorous imprisonment for a period of three months. However, the sentences were ordered to run concurrently.

2. The case of the prosecution is that on 24.05.2008, at 7.00 hours, when the victim was alone at her home, the

appellant/accused trespassed into her home with an intention to commit an offence punishable with life imprisonment. After entering into her house, with an intention to outrage her modesty, the accused stuffed clothes into her mouth, lifted her to the back side of her house, tried to remove her cloths, squeezed her breast and pressed her private part in order to have a sexual intercourse, however, the victim escaped from his clutches. Subsequently, the victim girl has given a complaint, based on which the case in crime No. 11 of 2008 and set the criminal law in motion. Ex.P5 was the First Information Report. After investigation a final report has been filed against the accused alleging offences punishable under Section 354, 450, 376 read with 511 & 506(ii) of IPC.

3. In support of the case of the prosecution, PW's.1 to PW.13 were examined and EX's.P1 to Ex.P7 were marked but no material objects were produced. On consideration of both oral and documentary evidence, the learned District Sessions Judge, Magila Court, Permabalur has acquitted the accused for the alleged offences under Section 376 read with 511 & 506 (ii) of IPC. However, the accused was convicted for the offence under Sections 354 and 450 of IPC. Hence, the appeal.

4. The learned counsel for the appellant contended that the trial judge has convicted the appellant based only on presumptions, surmises and conjectures which are not relevant to the circumstances of the case. The prosecution stood only on the sole testimony of the complainant. No documentary evidence has supported the prosecution case. Apart from these facts, there are so many contradictions, which warranted disbelieving the sole testimony of the complainant but the trial Court has failed to consider the contradictions of PW.1, in his chief examination. The delay in filing the complaint was not properly explained, which itself create doubt on the sole testimony of the victim.

5. The learned Government Advocate (Crl.side) made her submissions in support of the case of the prosecution.

Points for consideration:

(i) Whether the prosecution has proved the guilt of the accused for the offence punishable under Sections 354 & 450 of IPC?

(ii) Whether the order of conviction passed by the trial Court is sustainable in law? and

(iii) Whether the sentence awarded is excessive?

6. Heard the rival contentions raised by the both parties and after perusing the prosecution witnesses of PW's .1 to PW.13 and perusing the EX's.P1 to Ex.P7 documents.

7. It is seen from the records that PW1 is the victim, her husband was examined as PW.2, her father was examined as PW.7. PW's.3 to PW.6 were neighbours of PW1 and 2. PW.8 was the attester who attested the mahazar prepared by the investigation officer. PW.10 is the Doctor who had given treatment for the victim/ PW.1. PW's.11, 12 and 13 are Police officials who deposed regarding the registration of Ex.P5 / FIR, conducting investigation and filing of the charge sheet.

8. It remains to be stated that PW.1 deposed that she was sexually assaulted by the accused and also she has sustained external injuries during the time of alleged occurrence. But in the cross examination, she has not whispered anything about the external injuries sustained by her. However, in the deposition of PW11, she has stated that when she examined PW1 soon after the occurrence, she has not disclosed anything about the injuries sustained by her during the alleged commission of offence. Further, PW12 and 13, investigation officers in this case admitted that both the accused and PW1 were not subjected to any medical examination. This material contradiction in the deposition of PW1 on the one hand and PW11, 12 and 13 were not considered by the trial Court.

9. This appeal is preferred by the accused /appellant as against the conviction and sentence imposed on him in respect of charge under Sections 354 and 450 of IPC. In this context, PW1, the victim has clearly stated that the accused had trespassed into her house in the absence of her husband. PW5 is the neighbour of the PW1 who has stated that on the fateful day, she saw PW1 crying and on being enquired, she has stated about the act of the accused. PW3 was a mason and he is a hear-say witness. PW4 and PW6 have turned hostile and he did not support the case of the prosecution.

10. PW.1/victim had told and informed about the act of the accused on her body. However, in the cross examination, she could not say, whether the accused has committed such act and it assumes significance. It is also significant to note that PW.1 at the time of occurrence said to have been alone in her house. PW.2/husband has admitted PW1 in the Government Hospital, wherein PW.10 /Doctor had examined and given treatment. Ex.P4/ Accident Register was issued by PW10 to the victim. The medical

evidence of PW.10 has clearly indicated that PW.1 has stated that the accused attempted to commit rape on her body and outraged her modesty and there is no external injuries found. No doubt PW.10 examined PW.1 six days after the alleged occurrence. The deposition of PW.10 is corroborated by the explanation offered by PW.1, PW.2 and PW.5 that only after the arrival of her husband, they went to Government Hospital assumes significance and the same appears to be reasonable. Taking into consideration of the social backwardness and also rural backwardness of the people, the complaint was given belatedly. Admittedly, PW.2, husband of the victim was working as coolie and he has given the complaint belatedly. The trial Court has also accepted the explanation given by the prosecution for the delay as reasonable and held that the delay in filing FIR does not vitiate the case of the prosecution. The said finding of the trial, on facts and circumstances of the case and the reason for delay and finding thereon does not call for interference at this appellate stage.

11. The suggestive case of the defence is the presence of accused has not been spoken to by any of the prosecution witnesses except PW.1. It is also the case of the defence that due to previous enmity, the accused was falsely implicated. On contrary, it is the definite case of the prosecution that since the husband of PW.1 was an innocent and while he was away from his house for his coolie work, taking advantage of the above situation, accused entered the house and tried to molest and outrage her modesty. Taking into consideration of the evidence of PW.1 and PW.2 and in the absence of any worthwhile being elicited in the cross examination to discredit the evidence of the prosecution witness and in the absence of any evidence to probablize the suggestive case, I find that the evidence of PW.1 clearly proves the charge against the accused with regard to Sections 354 and 450 of IPC and it is sufficient for sustaining the conviction against the accused. In view of this, the conviction laid by the Trial Court for the offence under Sections 354 and 450 of IPC, does not warrant interference at the appellate stage. However, taking into consideration of the nature of the act of the accused on the body of the PW.1 this Court is inclined to reduce the punishment imposed on the accused to one year for both charges and the sentence awarded for both charges shall run concurrently.

12. In the result, the conviction imposed on the accused/appellant by the trial Court for the offences punishable under Section 450 and 354 of IPC are confirmed. However, the conviction imposed on the trial court on the accused/appellant is reduced from two years to one year. The fine amount awarded

by the trial court is confirmed. The period of sentence undergone during the period of investigation and during the pendency of this appeal are ordered to be given set-off. The Criminal Appeal is partly allowed to the extent indicated above. Bail bond, if any, executed by the accused shall stand dismissed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The District Sessions Judge,
Mahila Court, Perambalur, Perambalur District.
2. The Inspector of Police,
All Woman Police Station,
Jayamkondam, Perambalur District.
3. The Judicial Magistrate,
Jayamkondam, Perambalur District.
4. The Public Prosecutor,
High Court, Madras.
5. The Section Officer,
Criminal Section, High Court, Madras.

Judgment in
Crl.A.No.297 of 2010

BR(CO)

CSL/13.03.2019

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