

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.01.2017

DELIVERED ON : 11.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

Criminal Appeal No.494 of 2012

State rep. by

The Inspector of Police,
All Women Police Station,
Arakkonam,
Vellore District
Crime No. 2/96

... Appellant/Complainant

Vs.

1.Murugapandian

2.Punniyakodi

...Respondent / Accused No.2 and 3

Prayer: Criminal Appeal filed under Section 378 Cr.P.C., seeking to set aside the Judgment passed in S.C.No.4 of 1997, dated 21.07.2004 by the learned Assistant Sessions Judge, Ranipet, Vellore District.

For Appellant :: Mr.E.Raja, Additional Public Prosecutor

For Respondents :: M/s.R.John Sathyan & A.R.Sindhu

JUDGMENT

The above Criminal Appeal is filed u/s 378 of Cr.P.C. 1973 against the Judgment of acquittal of the accused passed by the Learned Assistant Sessions Judge, Ranipet, Vellore dated 21-07-2004 made in S.C.No.4 of 1997 and prayed to set aside the impugned judgment.

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

In this case totally 3 accused are arrayed. The first accused namely Velayutham (since deceased) and the victim girl Rajeswari were living in Arakkonam Cheyyur Colony, the 2nd accused is the sister's husband of the 1st accused and the 3rd accused is cousin sister's husband of first accused. The 1st accused used to make marriage proposal to the victim girl, for which she had been refusing considering her family circumstances. While so, on 22-11-1995 at about 8.00 or 8.30 a.m

when the victim girl, who deposed as PW-1 was going to her school which is situated 1 km away from Arakkonam Railway Station by foot after alighting from the train at Arakkonam Railway Station, the 1st accused followed her and compelled PW-1 to accompany him, otherwise he will abuse her there itself. Further he also snatched the books from PW-1. As such, due to fear and apprehension, P.W.1 accompanied the 1st accused wherever he called. The 1st accused took her to a house at Pudupettai in Arakkonam at about 2.00 or 3.00 p.m. P.W.1 was not allowed to go out of the house and at about 8 p.m., the lady who owns the house arrived and enquired about P.W.1. Then the accused informed her that P.W.1 is his sister and told her that P.W.1 will leave later. P.W.1 and the 1st accused stayed in the said house that night. On the next day early morning they woke up and along with one Settu, the 1st accused and P.W.1 went to Arakkonam Railway Station, boarded a train and proceeded to Sevvapet. After getting down from the train they went to Tholuvur and on the way, they stayed in the house of Raja at Ramapuram and thereafter they stayed at one Chandru's house till 24-11-1995. Thereafter, on the advice of Raja, the 1st accused and PW-1 were proceeding from the house of Raja to another for safety purpose. At that time, the brother of PW-1 came there in a Maruthi Car along with two other persons in two scooters and asked PW-1 to accompany him. However, due to the instigation of 1st accused, PW-1 refused to go with her brother. On the same day in the midnight at about 12.00 or 1.00 hour, PW-1 was taken to the house of Vijaya, sister of one Settu. Both the accused and P.W.1 spent the night on the pial of Vijaya's house. In Tholuvur the brother of PW-1 informed to some person that he would take her sister and requested them to send her sister along with him, for which the 1st accused Settu and Raj informed the brother of PW-1 that if his sister is ready to come, he could take her with him. Even though her brother called PW-1 to return with him, she refused to go with her brother since the 1st accused threatened PW-1 that she should not go with her brother and if she does so, her brother will be assassinated. Thereafter, they proceeded to Sevapetai Railway station by foot and from there, they went to Mannur where P.W.1 stayed in the sister's house of Settu. In the meantime they went to Thiruvallur and P.W.1 was brought PW-1 to Krishna Lodge by 1st accused, Raja and Settu. On that day at about 7 or 7.30 pm, the father and mother of PW-1, Uncle, Aunt, her brother Muthuraman, her sister Usha and one Amalraj came there and informed the village head one Hendry and they wanted to take PW-1 for which the said Hendry and other informed them that if PW-1 was ready to come with them they could take PW-1. The mother of PW-1 asked PW-1 to come with her for which PW-1 refused to come with her since PW-1 was threatened by 1st accused, Settu and Velayutham. Thereafter, the parents, sister

and brother left the place. The 1st accused took PW-1 to a house behind the temple at Tholuvur. Thereafter she was brought to one Chandru's house by one Raja and Settu since there was quarrel between the house owner lady and the accused party, where they stayed there for 10 days and they lived like husband and wife. On 02-02-1996 at about 9.00 or 9.30 am Raja, Chandru, Settu and 1st accused came and took PW-1 to Anjaneyar Temple at Kakkaloor where the 1st accused tied Thali around the neck of PW-1 without PW-1's consent and willingness. On the next day the 1st accused and PW-1 went to Thiruvallur. From there they went to Kurisal where they stayed in the house of Suriya Kala who is the sister of 1st accused on 04-02-1996. In the midnight on the same day the husband of Suriya Kala, Murugapandian the 2nd accused came to the house. After taking food PW-1 and 1st accused took their bed in a separate room. At midnight PW-1 felt that her skirt was removed and she woke up and found that the 2nd accused put his hand on the neck of PW-1 and forcibly had sexual intercourse with PW-1 and thereafter the 2nd accused left the place and at about 4.00 a.m PW-1 came out from the house where the 1st accused was standing and PW-1 informed about the occurrence happened in the night to the 1st accused for which the 1st accused did not take care. Thereafter the 1st accused took PW-1 to his sister's house at Mangadu where the 1st accused and PW-1 stayed there for one month. During that period A1 and PW-1 had sexual intercourse. On 02-03-1996 at about 3.00 a.m the 3rd accused who is the husband of Santhi, the sister of 1st accused forcibly had sexual intercourse with PW-1 by putting clothing on the mouth of PW-1 and also threatening PW-1. This incident was also informed to 1st accused by PW-1 for which also the 1st accused did not respond and thereafter, the 1st accused demanded Rs.20,000/- from PW-1 on 04-03-1996 and beat PW-1 and thereafter he left for work. PW-1 took Rs.10/- from the pocket of 1st accused and left Mangadu and came to the house of her uncle at Thruvallore at 6.30 or 6.45 p.m. Then the uncle of PW-1 informed the parents of PW-1 and so the parents came to the house of PW-1's uncle and after revealing everything by PW-1 to her parents that had happened, the parents of PW-1 took her to Sengipanapakkam and then to Chennai and thereafter a complaint was written, typed and sent to DSP which is marked as Ex.P1 and the same was forwarded to Arakkonam police station where it was registered in Cr.No.360 of 1996 U/s 376, 366, 506(ii), 294(b), 498(A) r/w 109 of IPC and the FIR was sent to court and higher official for further action. On receipt of copy of FIR by PW-32, he commenced the investigation and examined the witnesses and arrested the accused and sent to court for judicial custody. PW-18 Dr. Radhakrishnan along with lab technician went to Sub Jail, Arakkonam and collected blood 15 ml each from the body of A1 to

A3 separately, preserved and sent through constable for DNA test. On 24-05-1996 PW-1 was admitted in the Kasthuriba Hospital, Chennai for the purpose of doing abortion. On 25-05-1996 the pregnancy of PW-1 was aborted. PW-1's blood and aborted dead foetus were preserved and sent to Hyderabad for DNA Test. PW-30 who is working as scientist at CDFD at Hyderabad conducted DNA test with the blood samples of A1 to A3 and PW-1 and dead foetus sample aborted from PW-1 and the test concluded that the suspect Murugapandian(A2) is responsible of product of conception (tissue of aborted foetus) whose biological mother is Kumari Rajeswari (PW-1) and he issued Ex.P5. PW-32 on completion of investigation, laid a final report U/s 366, 365, 368 and 376 (i) IPC before the Judicial Magistrate No.1, Arakkonam.

3. After committal to Principal Sessions Judge, Vellore, the case was sent to the Assistant Sessions Judge, Ranipet for disposal in accordance with law and copies of documents were furnished to the Accused u/s 207 Cr.P.C. After hearing both sides and perusal of charge sheet, connected records and statements filed along with the charge sheet, the trial court framed charges U/s 366, 365 and 376(i) IPC against A1 and Sections 368, 376(i) IPC against A2 and A3. The accused denied all the charges framed against them and pleaded not guilty. Hence the case went for trial. During the pendency of the trial, the 1st accused died and hence the charge against the 1st accused abated.

4. During trial, the Prosecution examined 32 witnesses and marked Ex.P1 to P6. The accused was questioned u/s.313 (1)(b) of Cr.P.C., and they denied all the incriminating evidence against them as false. On the side of the accused DW1 and DW2 were examined. The Trial Court, after hearing arguments of both sides and upon perusing the relevant evidence available on record has found that the prosecution has not proved the charges against the accused and acquitted the respondents/Accused of all the charges. Aggrieved over the judgment of acquittal, the State has preferred this appeal.

5. The learned Additional Public Prosecutor who appeared for the Appellant/State raised the following grounds seeking to set-aside trial court judgment and to convict the accused.

6. The learned Additional Public Prosecutor argued that the court below failed to see that the prosecution had established the charges U/s 366, 365, 368 and 376 IPC against the accused beyond all reasonable doubts and the trial court went wrong in disbelieving the evidence of victim girl PW-1 and also the trial court went wrong in holding that the victim girl, PW-1 did not complain about the rape by the 2nd and 3rd accused to their respective wives and so benefit of doubt is to be given and the

trial Court failed to see that it is not uncommon that in the case of rape, victim girl and their parents generally do not come forward to launch the prosecution immediately after the incident and so the trial court went wrong in acquitting the accused on the ground that there was delay in making the complaint and also court below went wrong in discarding the DNA report and further argued that the evidence of PW-1 itself is sufficient which is corroborated by the evidence of PW-30 with DNA report and other aspects, to prove the guilt of the Accused Nos.A2 and A3 and in these circumstances, the appeal may be allowed and judgment of acquittal passed by the trial court may be set aside and the respondents/A2 and A3 may be convicted and major punishment of sentence may be imposed against them in respect of the charges framed.

7. Whereas the learned counsel for the respondents/A2 and A3 would contend that the evidence of PW-1 is totally unbelievable, even as per her version she was a consented person who accompanied A1 voluntarily and got married and as an afterthought with the inducement of her parents she deposed false evidence and the age of foetus in the womb of PW-1 found by PW-29 did not coincide with the date of alleged commission of sexual intercourse by the 2nd accused with PW-1 and though the DNA report is positive against A2, the possibility of pasting the label of one person into another person's sample mistakenly is not ruled out as per the evidence of PW-18 and in this aspect the trial court has elaborately discussed about the veracity and credibility of the evidence and properly appreciated the oral and documentary evidence and came to the correct conclusion and there is no material available to reverse the judgment of trial court and hence prayed for dismissal of the appeal.

8. Now the point for consideration is as to whether the judgment of trial court is legally sustainable or warrant interference of this Court:-

PW-1 deposed that on the date of occurrence i.e. on 22-11-1995 at about 8.00 or 8.30 a.m., when PW-1 was going to her school which is situated 1km away from Arakkonam Railway Station by foot after alighting from train at Arakkonam Railway Station, the 1st accused followed her and compelled her to accompany him, otherwise he would commit ugly things and also snatched the books of PW-1, and PW-1 frightened of ugly scene that would be created by the 1st accused, heading to the words of the 1st accused, accompanied him to the places as per the instructions of the 1st accused. This conduct of PW-1 is quit unnatural. Ordinarily any prudent man or woman would know the consequences of a woman going with another man without the knowledge of her family would be very serious, affecting the reputation of her family and also the sufferings of mental agony and that they

could not face their relatives or appear in public and that irreparable loss would be caused to the family, whereas if she had resisted when compulsion is made by the man and if any ugly scene is created by the 1st accused, that will not affect her family reputation and other things will not affect her family reputation and unfortunate events as stated above would not have occurred bringing damage and disrepute to her and her family. So it is clear from the evidence of PW-1 itself that she consented to accompany the 1st accused voluntarily. Further even when her brother came and asked to come with him, she refused to go along with him. Further even when her parents, uncle, aunt, brother and sister came and informed the Village Head viz., Hendry and in turn the Village Head and other persons informed them that if she was ready to go with them they can take her, even then she refused to go with her family members. The reason stated by P.W.1 for refusing to go with her parents or with her brother, was that the 1st accused, Raja and Settu threatened of dire consequence to her brother. This aspect cannot be believed at all, because if she was forcibly taken away by the 1st accused upon posing threat and that she was not a consented party to the will and pleasure of the 1st accused, definitely she would have gone with her parents or with her brother, that too when the parents approached through Village head Mr.Hendry. The above conduct and circumstances would clearly go to show that P.W.1 was a consented person and she willingly and voluntarily accompanied the 1st accused and got married. Even as per the evidence of PW-1, no resistance was made by her at any stage till she left the 1st accused and reached her uncle's house at Tiruvallur. In the above circumstances, the allegations that she was kidnapped or abducted for the purpose of compelling her for marriage or forcible sexual intercourse cannot be believed and the same is not made out with clear acceptable evidence by the Prosecution. Further the 1st accused is stated to have tied Thali in the Anjaneyar Temple. This aspect also goes to show that the 1st accused and PW-1 married each other with the consent of P.W.1. After marriage she lived with A1 for some time and then she left 1st accused and came to her uncle's house and only then lodged the complaint.

9. As far as allegations against the 1st respondent herein viz., A2 is concerned, that while the victim P.W.1 was sleeping in the house of A2 in the midnight, A2 lifted the skirt of PW-1 and when she resisted, A2 gagged the mouth of PW-1 and caught hold of hands of PW-1 and committed sexual intercourse against her will. During cross examination she deposed that till such act is completed A2 gagged her mouth with his one hand and caught hold of her hands with another hand and she all along kept both her legs closed together tight. If it is so,

definitely there could not have been possibility of any penetration on the vaginal part of PW-1. Further no evidence of penetration is available from the evidence of PW-1 or any other witness examined on the side of Prosecution. With regard to the positive DNA test of the aborted foetus with that of the blood samples taken from the 2nd accused is concerned, PW-18 who took the blood sample from all the three accused in the jail, deposed that there was a possibility of mistakenly sticking the label of one person into another person's sample and he deposed that he was not able to say who affixed the label on the sample bottle and he could not recollect who wrote the names on the label and also do not know remember whether he has signed on the label. P.W.1 further deposed that he did not sent the sample to the concerned authority, but his lab technician handed over the samples to the police. As such, considering the above said evidence of P.W.1, doubt arises as to whether really the samples sent for DNA Test containing the label of A2's name is that of A2 only. Further PW29 the doctor who did abortion to PW-1 deposed that she aborted on 29-05-1996 and at that time she was 20 weeks pregnant. As per the evidence of PW-29, PW-1 informed her that the last menstruation happened on 26-12-1995. So these aspects would go to show that the pregnancy of PW-1 could not have happened due to alleged sexual intercourse with PW-1 by A2 on 04-02-1996. Further the wife of A-2 was there in the portion of the house where the alleged rape is said to have been committed by A2. If such an act was committed by A-2 against the will of P.W.1, definitely she would have complained to the wife of A2. But no such thing occurred. The same creates doubt over the alleged occurrence involving A-2. Likewise the alleged Sexual intercourse with PW-1 by A3 is not believable since A3's is also stated to be available in the same house at that time. If such things as alleged by P.W.1 had happened against her will, definitely, she would have reported to the wife of A3 or the wife of A-3 would not have quite allowing such thing to happen. In the FIR it is stated that the 1st accused compelled P.W.1 to indulge in prostitution with A2 and A3, whereas in her evidence P.W.1 has stated that at the time committing rape by A2 and A3, A1 was not in the room and subsequently when she informed A1, he did not take care of. So this material contradiction in the evidence of PW-1 in respect of commission of rape by A2 and A3 is fatal to the case of the Prosecution.

10. From the forgoing discussion, it is very clear that PW-1 was consenting person who accompanied the 1st accused voluntarily for the purpose of getting married with 1st accused and marriage was also held in the Anjaneyar Temple and hence no question of committing rape by A1 would arise and likewise the unbelievable nature of evidence of PW-1 in respect of

commission of rape by A2 and A3 would not prove the case of prosecution against A2 and A3 and in these circumstances, there is no material available to interfere with the judgment of trial court and the same is to be upheld and this point is accordingly.

11. In general, unless, the conclusion reached by the trial court is palpably wrong based on erroneous view of the law or if such conclusion is allowed to stand, they are likely to result in grave injustice and the reluctance on the part of appellate court in interfering with such conclusion is fully justified. On the other hand merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced weighing of the evidence would not warrant interference by the appellate court in the judgment of the trial court.

12. In the present case the trial court recorded the judgment of acquittal on the material available on record and the evaluation of evidence made by the trial court while recording an order of acquittal does not suffer from any infirmity or illegality or manifest error and the grounds on which the order of acquittal is based, cannot be said to be unreasonable. Therefore the appeal is liable to be dismissed.

13. In the result, the Criminal Appeal is dismissed. The judgment of acquittal dated 21-07-2004 made in S.C.No.4 of 1997 on the file of the Assistant Sessions Judge, Ranipet, Vellore, is confirmed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

nvsri

To :

1. The Inspector of Police,
All Women Police Station,
Arakkonam, Vellore District
2. The Assistant Sessions Judge,
Ranipet, Vellore District.

- 3.The Section Officer,
Criminal Section,
High Court, Madras.
4. The Sub Judge,
Sub Court, Ranipet.
5. The Principal District Judge,
Vellore District, Vellore - 9.
6. The Chief Judicial Magistrate,
Vellore.
7. The Judicial Magistrate I,
Arakkonam.
8. The Director General of Police,
Mylapore, Chennai -4.
- 9.The District collector,
Vellore.
10. The Public Prosecutor ,
High Court, Madras.

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