

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.02.2018

PRONOUNCED ON : 12.11.2018

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Cr1.A.No.193 of 2016

and

Cr1.M.P.No.12220 of 2016

Nari @ Duraisamy ... Appellant/Accused

Vs.

State Rep. by

The Inspector of Police,

C.B.C.I.D. Perambalur,

Cr. No.36 of 2007. ... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records relating to the order dated 06.01.2016 in Session Case No.48 of 2015 on the file of the Fast Track Mahila Court, Ariyalur and set aside the same and allow the above appeal.

For Appellant : Mr.V.Gopinath, Senior Counsel

for Mr.S.Suresh

For Respondent : Mrs.T.P.Savitha

Government Advocate (Criminal Side)

ORDER

The sole accused has filed the instant appeal as against the judgment of conviction passed in Session Case No.48 of 2015 dated 06.01.2016 on the file of the learned Fast Tract Court, Mahila Court, Ariyalur. As the accused/appellant is found guilty for the offence under sections 341, 342, 323, 366, 354 of IPC and he was also found guilty for the offence under section 4 of Tamil Nadu Prohibition of Women Harassment Act, 1988.

2.As far as the offence under Section 341 of IPC is concerned, the accused was sentenced to undergo simple imprisonment of one month and to pay of sum of Rs.500/- as fine, in default of payment of fine he has to undergo one week of imprisonment. For the offence under section 342 of IPC, the accused is sentenced to undergo six months of Rigorous Imprisonment along with fine a sum of Rs.1000/-, in default of payment of fine, the appellant/accused was ordered to undergo one month of Simple Imprisonment. Further for the offence under section 323 of IPC a sentence of six months Rigorous Imprisonment along with fine a sum of Rs.1000/- was imposed, in default of payment of fine, the appellant/accused was ordered to undergo one month of Rigorous Imprisonment. For the offence under section 366 of IPC a sentence of five years rigorous imprisonment along with fine, a sum of Rs.5,000/- and in default of payment of fine, the appellant/accused was ordered to undergo one year of rigorous imprisonment. For the offence under section 354 of IPC a sentence of two years rigorous imprisonment along with fine, a sum of Rs.5,000/- and in default of payment of fine, the appellant/accused was ordered to undergo six months Simple Imprisonment. For the offence under Section 4 of Tamil Nadu Woman Harassment Act a sentence of two years Rigorous Imprisonment along with fine, a sum of Rs.10,000/- and in default of payment of fine the appellant/accused was ordered to undergo three months rigorous imprisonment. As per the judgment of the learned Trial Court the total fine collected (i.e.) a sum of Rs.20,000/- is ordered to be paid to the victim as compensation under Section 357 of Cr.P.C. and further ordered to invoke under Section 428 of Cr.P.C. to set off the period of imprisonment already under gone and as per the judgment the sentence shall be ordered to run concurrently.

3.In order to prove the case of the prosecution PWs-1 to PWs-28 were examined along with Exhibits-P1 to P28 and material objects (MOs1 to 4) were marked and produced respectively before the learned Trial Court.

4.According to the learned counsel for the Appellant/Accused that as per the evidence of PW1, when she was studying on her 7th standard, on 07.03.2007 she returned from her school at about 5.30 p.m., she accompanied by her younger cousin brother at that time an unidentified woman, like a teacher had conversation with PW1. Thereafter, the brother of the PW1 and the woman-like a teacher, left their own way and when PW1 was walking towards her residence, at that time a white color ambassador car came on the right side of the PW1 from which two persons got alighted and they took the PW1 along with her school bag by using force and thereby PW1 was kidnapped. The occurrence

was noticed by an elderly woman, the further version of PW1 was that inside the car her modesty was molested and her life was also attempted and later PW1 was set free. Though PW1 was caused injury, when she was pulled down from the car and by gaining conscious, she found her father and narrated everything. Immediately, the relatives of her father were informed and complaint was lodged immediately on 07.03.2007 itself by 11.00 p.m.

5. In the complaint the physical identify of other accused was not given but the name of one Muruganantham was referred and the person molested the modesty of PW1 informed her that he was the son of Muruganantham. In pursuance of the registration of the First Information Report in Crime No.36 of 2007 on the file of the Kayalarpath Police Station for the offence under sections 341, 342, 354, 506(ii) of IPC. Final report was filed by altering the provision of law into sections 341, 342, 323, 364, 366, 354, 307 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and the learned Trial Court also framed charges under the aforesaid provision of law.

6. At the same time, the accused/appellant was acquitted from the offence under sections 364 and 307 of IPC, whereas conviction was recorded as aforesaid.

7. The learned counsel for the appellant would submit that due to previous enmity, the case has been foisted but the learned Trial Judge has failed to consider the same. Further he has recorded the conviction mechanically. Moreover, apart from that the evidence of PW1 has not been corroborated by any independent witnesses. The manner of preparation of complaint by PW1 has created serious doubt over the prosecution case and the elderly woman who witnessed the alleged occurrence was not at all examined as witness. Despite the fact that even after the alleged occurrence the said elderly woman was very well available in the locality where the alleged occurrence has taken place. All other witnesses are interested witnesses with regard to the alleged occurrence.

8. It is brought to the notice of this Court the First Information Report was registered as against one accused who died even before the filing of charge sheet. It was also brought to the notice of this Court that PWs-2, 6, 11 are having criminal antecedents. Moreover even prior to the identification parade and it is admitted by PW1 that she was made known to the identity of the accused in the police station. So, the identification of the accused will have no much importance. As

per the evidence of PW1 in the chief examination itself it is deposed that even at the time of lodging the complaint Ex-P1 itself, the accused was brought to the police station and the PW1 identified him. Therefore the question of the arrest of the Appellant/Accused by PW26 on 11.03.2007 at about 09.30 p.m. in Valaja City Main Road is falsified. Hence he prays for the acquittal of the Appellant/Accused.

9.Per contra, the learned Government Advocate (Criminal Side) would submit that the case of the prosecution is proved by the evidence of PW1 which is supported and corroborated by the other witnesses. The complaint Exhibit-P1 was lodged immediately without any delay and the same was registered by PW27 as Exhibit-P11 and the case was also entrusted to the file of PW-28 the Inspector of Police, C.B.C.I.D. The investigation was taken up by PW28 on 06.06.2007, thereafter he prepared a rough sketch Exhibit-P26 and on 23.08.2007 confessional statement was recorded from the deceased accused Murugan and thereafter final report was filed. The said deceased accused Murugan died on 29.11.2007 and through PW28 the death certificate the deceased Murugan was marked as Exhibit-P27. He also points out that the investigation was properly conducted in the instant case and all the evidence are pointing at the accused in a proper manner which needs no interference. Further a school going girl who studied only her 7th standard was subjected under molestation which is heinous crime and also would badly affect the mental equilibrium of the girl. So, the act of the Appellant/Accused is to be viewed very seriously, otherwise the accused would take the law on his own hands.

10.I heard Mr.V.Gopinath, learned Senior Counsel for M/s.S.Suresh, learned counsel for the appellant and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent and materials available on record are perused.

11.It is a pathetic case where a girl of 14 years was subjected under sexual violence, her modesty was molested by using force and because of the violent the mental equilibrium of the girl child was shattered. So, this Court is very conscious in appreciating the evidence available by perusing the material.

12.The victim girl is examined as PW1, in her complaint she has narrated the name of one Muruganantham and thereby written in the complaint that one of the accused voluntarily confessed her that he was the son of Muruganantham. Except this version, no other physical identity of any other person or accused who

was allegedly in the car. An important factor is that this version is deposed in the chief examination itself, it was narrated as follows:

“என் அப்பாவிடம் போலிசார் யாருமேலயாவது சந்தேகம் உள்ளதா என்று கேட்டதற்கு மதியழகன் மகன் துரைச்சாமி மீது என்று சோன்னார், அவரை அழைத்து வந்தனர், நான் அவரை அடையாளம் காட்டினேன், அவர் தான் என்னை கொடுமை செய்தார் என்று சொன்னேன்,”

13.Whereas, the evidence of PW26, the first investigation officer would say that on 11.03.2007 at about 09.30 p.m. he arrested the Appellant/Accused in Valaja City Main Road. So the arrest of the accused is doubtful which has created doubt over the prosecution case. At the same time the identification parade held in the concerned jail is not believable as the PW1 was made to know and ascertained the accused on 07.03.2007 at the police station itself. Further PW1 has stated in her in chief examination that the occurrence was witnessed by an elderly woman and in the cross examination she has admitted as follows:

“சம்பவ இடத்தில் என்னை காரில் தூக்கி செல்லும் போது அங்கு இருந்த பாட்டி பார்த்தார், அவர் எனக்கு உறவினர் இல்லை, அதன் பின் அந்த பாட்டியை பலமுறை பார்த்து உள்ளேன்,”

14.When this was being so, naturally investigation would have been conducted in this regard and an elderly woman must have sighted and examined as one of the witnesses. This important factor had not been appreciated by the learned Trial Judge.

15.An important factor which has connected the Appellant/Accused with the commission of offence is the evidence of PW1 alone. However in the identity and the arrest of the appellant / accused, the evidence of PW1 is totally contradictory with the evidence of PW26. Even assuming the arrest is not material as far as the cases in this nature is concerned, the identity of the accused is one of the most important factors in criminal cases. Further in the complaint given by PW1, absolutely no physical identity of any of the accused is given. Moreover in the complaint, PW1 has mentioned that one of the accused introduced himself that he was son of one Muruganantham but the Appellant/Accused is not the son of Muruganantham. At the same time one Muruganantham was died during the trial whose father name is Rajagopal. So there is no investigation as to who is the son of the said Muruganantham and why there is no investigation in this regard. There is no explanation on this aspect offered by the prosecution. At the

same time in a case of murder of one Muruganantham, the close relatives of the PW1 are accused but they were acquitted, this aspect was suggested that due to this previous enmity the appellant/accused who was intentionally roped into the instant case.

16. At the same time the paternal uncle of PW1 initially written the complaint but on the instructions of Inspector of Police, PW26, the complaint itself was written as admitted by PW1. Thereafter as admitted by PW-1 that she had written the complaint on the direction of PW26 which is marked as Ex-P1. In this regard a suggestion put forth on the side of the appellant/accused that the suppression of the previous complaint written by the uncle of PW-1 assumes importance which has created doubt over the prosecution case. Therefore in lodging of the complaint itself creates serious doubt in the mind of this Court which in the opinion of this Court has affected the root of this case.

17. Since in lodging the complaint, in identifying the Appellant/Accused and in the arrest of the Appellant/Accused no corroborative evidence is available which has de-linked the Appellant/Accused from the charges and this Court is unable to concur with the finding of the learned Trial Judge. Accordingly this Court is constrained to allow the appeal.

18. In the result:

(a) this Criminal Appeal is allowed by setting aside the conviction and sentence imposed in S.C.No.48 of 2015 dated 06.01.2016, on the file of the learned Fast Track Mahila Court, Ariyalur;

(b) the appellant/accused is acquitted from all the charges;

(c) the bail bond, if any, executed by him shall stand cancelled and the fine amount, if any paid by the appellant/accused shall be refunded. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vs
To

- 1.The Judge,
Fast Track Mahila Court,
Ariyalur.
- 2.The Principal Sessions Judge,
Ariyalur.
- 3.The Judicial Magistrate,
Ariyalur.
- 4.The Superintendent of Central Prison,
Trichy.
- 5.The Superintendent of Police,
Ariyalur.
- 6.The Inspector of Police,
CBCID, Perambalur.
- 7.The Public Prosecutor,
High Court, Chennai.
- 8.The Section Officer,
Criminal Section, High Court, Madras.

+1cc to Mr.S.Suresh, Advocate Sr.77106

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