

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :: 02.12.2016

PRONOUNCED ON :: 21.08.2018

CORAM

THE HONOURABLE MR.JUSTICE P. VELMURUGAN

CRL.A.Nos.435 TO 437 OF 2012

Vetriselvi,
represented by her father
and natural guardian
Govindaswamy

.. Appellant in
all Crl.Appeals

Vs

Arulandandam .. 1st respondent in Crl.A.No.435 of 2012
Kadarkesavan .. 1st respondent in Crl.A.No.436 of 2012
Saravanan .. 1st respondent in Crl.A.No.437 of 2012

2. State, represented by
the Inspector of Police,
All Women Police Station,
Vadaranyam in charge of
Kariyapattinam P.S.
(Cr.No.93 of 2006)

.. 2nd respondent in all the
appeals

Prayer: Criminal Appeals filed under Section 372 of Cr.P.C
against the judgment of acquittal of the accused persons
passed by the learned Assistant Sessions Judge and Chief
Judicial Magistrate, Nagapattinam in S.C.Nos.190, 191 and 192 of
2009 respectively, dated 27.08.2010.

For Appellant : Mr.S. Rajendrakumar for
M/s. Norton and Grant

For Respondents : Mr. V. Gopinath, Senior Counsel
for Mr.M.Govindaraju for R1
in Crl.A.No.435 of 2012
Mr.V.Gopinath, Senior Counsel, for
Mr.A.S.Balaji for R1
in Crl.A.No.436 of 2012

Mr.John Sathyan for R1

in CrI.A.No.437 of 2012

Mr. P.Govindarajan,
Addl. Public Prosecutor for
R2 in all appeals

COMMON JUDGMENT

These Criminal Appeals have been arising out of the judgment of acquittal passed by the learned Assistant Sessions Judge and Chief Judicial Magistrate, Nagapattinam in S.C.Nos.190, 191 and 192 of 2009 respectively, dated 27.08.2010.

2. The case of the prosecution in S.C.Nos.190, 191 and 192 of 2009 on the basis of the evidence let in by prosecution witnesses is as follows:

(i) One Vetri Selvi, who was a minor, was studying in VI Standard at Panchayat Union Middle School at Poosarikadu. The accused Arulanandam developed affair with her. While so, few months before 8.4.2008, while she was going to School, on the way, she went to accused Arulanandam's house for drinking water, where, the accused Arulanandam forcibly took her into his house and raped her. Thereafter he raped the victim girl several times at his house and also in Casuarina grove.

(ii) Few months before 8.4.2008, one day the accused Kadarkesavan went to the house of Vetriselvi while she was alone in her house, took her forcibly in to nearby casuarina grove and raped her forcibly.

(iii) Few months before 8.4.2008, the accused visited Vetriselvi's house for doing electrical work, he took the minor victim girl to nearby casuarina grove and forcibly raped her

(iv) Subsequently, due to medical complaints, her mother PW2 Gandhimathi brought her to Vedaranyam Sumathi Hospital for check up. During the course of check up only, she came to know that she is pregnant for 6 months. Thereafter, she gave details of the accused regarding the rape committed on her. Hence a complaint was lodged by the victim girl under Ex.P.1 with Kariyapattinam Circle Inspector of Police Mr. Subramanian, who registered a case in Cr.No.93 of 2008 under section 376 IPC against the accused persons.

(v) On receipt of complaint, he prepared printed FIR Ex.P.7. Then he went to the place of occurrence and drew rough sketch Ex.P.9 and observation mahazar Ex.P.10 in the presence of witnesses viz., PW4-Loganathan and PW5-Rajendran, PW6-Duraisamy, PW7-Krishnasamy, PW8-Tamilselvi, PW9-Krishnan and

PW10-Pugazhenthhi and recorded their statements. On 11.4.2008, he arrested the accused Arulanandam (appellant in CrI.A.435 of 2012) and Saravanan (CrI.A.No.438 of 2012) and remanded them under judicial custody. Accused Kadarkesavan surrendered before the court after obtaining bail.

(vi) Thereafter, he sent the victim girl for medical examination to Government Hospital, Nagapattinam, where, PW13 Dr.Thenmozhi examined her and issued Accident Register Ex.P.6. The requisition received by PW13 for conducting medical examination is Ex.P.5. He sent a requisition for conducting medical examination regarding capability of sexual intercourse. He examined PW11 Dr. Serajudeen who examined accused persons Arulanandam and Saravanan and issued Ex.P.2 and Ex.P.3 respectively. The certificate issued by PW12-Dr.Ananthakrishnan regarding the age of the victim girl is Ex.P.4.

(vii) He then forwarded the case for further action to PW13 Jaipoopali, Circle Inspector of Police, All Women Police Station, who, on conclusion of investigation, filed charge sheet against the accused persons for the offence under section 376 IPC before the Judicial Magistrate, Vedaranyam.

(viii) After filing of charge sheet, the accused persons were committed to the Sessions Court. The Sessions Court, in turn, made over the case to the Chief Judicial Magistrate, Nagapattinam. The Chief Judicial Magistrate, Nagapattinam framed charges against the accused persons for the offence under section 376 IPC and since the accused denied the charges and they were put on trial.

3. Before the trial Court, in order to prove the case of the prosecution on their side, as many as 14 witnesses were examined and 11 documents were marked. After completion of prosecution evidence, incriminating circumstances were put to the accused. The accused denied the same as false evidence.

4. After completion of trial, the trial court on perusing the material and documentary evidence on either side, came to the conclusion that the prosecution has not proved its case beyond reasonable doubt as against the accused persons and found the accused not guilty under section 376 IPC and thereby acquitted the accused under section 235(1) Cr.P.C.

5. Aggrieved with the order of acquittal passed by the learned trial Judge, the victim girl has preferred the present appeals through her father raising the following grounds;

(i) the investigating agency and the court ought to have subjected the victim to proper age test after delivery, which they failed to do so;

(ii) the victim now is kept in the custody of a vigilance home in Trichy and she has delivered a female child on 30.06.2008 and so far no steps have been taken for determining her age;

(iii) The petition filed before the trial court on the side of prosecution to send the accused and the victim's child for DNA test, but the same was dismissed by the trial court on 19.5.2009. The trial court ought to have allowed that petition and on account of failure of the trial court to send the child and the accused for DNA test, the child's paternity will be established.

(iv) The Prosecution has not properly adduced the evidence of the Head Master of the School -PW9 to establish the age of the victim from the school records

(v) The victim, being a minor girl has been languishing in the Vigilance Home with her child and the trial court ought to have given proper protection to the victim against threat and intimidation adopted by the rich accused against a hapless victim minor girl.

6. It is the case of the prosecution in CrI.A.No.435 of 2012 that the accused Arulanandam developed affair with Vetri Selvi who was a minor, studying in VI standard. One day, when she went to accused's house for drinking water at about 2 p.m., the accused forcibly had a sexual intercourse with her and thereafter, he raped her several times at his house and Casuarina Thope.

7. It is the case of the prosecution in CrI.A.No.436 of 2012 that few months before 8.4.2008, one day the accused Kadarkesavan went to the house of Vetriselvi while she was alone in her house, took her forcibly in to the nearby casuarina groove and raped her forcibly.

8. It is the case of the prosecution in CrI.A.No.437 of 2012 that few months before 8.4.2008, when the accused Saravanan visited Vetriselvi's house for doing electrical work, he took the minor victim girl to the nearby casuarina groove and forcibly raped her. Due to the act of the accused persons, the victim girl became pregnant, thereby the accused persons have committed offence under section 376 IPC.

9. PW1, the victim girl had deposed that the accused Arulanandam has committed rape on her in his house when she came to his house for drinking water, and subsequently he has committed the same offence several times in casuarina thope.

10. PW1 also deposed in his statement that the accused Kadarkesavan has committed rape on her in her house and he had done the same thing several times .

11. It is the statement of PW1 that the accused Saravanan , while coming to the victim's house for doing electrical work, took her to the nearby casuarina thope and committed rape on her .

12. PW2-Gandhimathi is the mother of the victim girl. She deposed that when the victim girl has medical complaints, she brought her to hospital for medical check up and the Doctor who examined the victim girl informed her mother that the victim girl had developed 6 months pregnancy. After knowing the person responsible for the pregnancy through her daughter, she informed her husband PW3 Govindasamy about the same and thereafter they preferred the complaint.

13. PW11-Dr.Serajudeen examined the accused Arulanandam (Appellant in Crl.A.No.435 of 2012) and Saravanan (Appellant in Crl.A.No.437 of 2012) regarding the potentiality and made potency test and issued Ex.P.2 and Ex.P.3 Accident Registers.

14. PW12- Dr. Ananda Krishnan examined the victim girl with regard to her age and issued Ex.P.4 certificate certifying that the victim girl is aged about 14 years.

15. PW13- Dr. Thenmozhi, on receipt of requisition letter Ex.P.5, examined the victim girl who is pregnant and issued Ex.P.5 Accident Register. In her evidence, she says that the victim girl was pregnant carrying 6 months foetus. PW12- Dr.Ananda Krishnan deposed that on examining the victim girl, he ascertained her age as 14 years.

16. From the evidence of PW12, it is seen that at the time of offence, the victim girl was below 15 years. During the pendency of the trial, the prosecution filed petition for DNA test and the same was dismissed.

17. On a perusal of the entire records, the prosecution has not taken any steps to produce the birth certificate of the victim girl. The Head Master of the school, in which the victim girl was studying was examined as PW9. The prosecution has not taken any steps to secure the birth certificate of the victim girl to produce it before the court . Further, even the trial Court has not issued any direction to call for the birth certificate from the school which she was studying to prove the age of the victim girl.

18. During the pendency of this appeal, this Court

instructed the Public Prosecutor to get the birth certificate from the school where the victim girl was studying at the time of offence, pursuant thereto, they have also obtained the certificate from the school Head Master from the Panchayat Union School, Poosarikadu. In the certificate, the date of birth was mentioned as 20.7.1995 and a statement was also recorded from the Head Master under Section 161 Cr.P.C. But the date of birth of the victim girl has to be proved by producing the documents and also opportunity must be given to the other side. The victim girl has clearly stated during the Chief examination that the accused persons have committed rape on her and subsequently she became pregnant. She was kept in vigilance home and during that time, a female child was born. Further, in this case, three persons, on different occasions, have committed rape on her. Therefore, the complaint was also given against those persons and trial was conducted against those accused in S.C.Nos.190, 191 and 192 of 2009.

19. The learned trial Judge, after considering the arguments and documentary evidence, acquitted all the accused persons. Against which, the victim girl has filed the present appeals before this Court.

20. It is seen that the victim girl was below 15 years, she was subjected to rape, due to which, she became pregnant and now she also begotten a child. When they filed application for DNA test, the same was dismissed. Since more than one persons have committed rape on the victim girl when she was below 15years, subsequently, she became pregnant and now she begotten a female child, it is necessary to find paternity of the child. In this case, except the victim girl, all other witnesses have turned hostile, therefore, the prosecution failed to establish the case. Hence the charge against the accused persons were not proved. The trial court, extending benefit of doubt in favour of the accused persons, acquitted them.

21. In the cases like this nature, no eye witness can be expected. Even in the present case, though there is eye witness, later they turned hostile, but for that reason, the victim should not suffer. In this case at the time of occurrence, at relevant point of time, the victim is below 15 years and now she begot a child. That itself shows that through one of the accused persons, the victim girl was subject to sexual harassment and without marriage she became pregnant and now she begot a female child which implies that she gave birth to a child through one of the accused persons.

22. Though the victim girl has clearly stated the accused names in this case and also the accused in other cases, subsequently during the cross examination, she has not

supported the prosecution case and other witnesses has also not supported the case of prosecution and turned hostile.

23. Now the victim girl, at one point of time, named the accused persons and at that time, she was below 15 years and now she begotten a child. Therefore, it is the duty of the prosecution to find out the person as to who is the cause for her pregnancy. Therefore, in this case, DNA test is very important and the age of the victim girl also has to be ascertained.

24. For the afore said reasons, this Court thinks it necessary to remand back the cases to trial court to mark the birth certificate given in the School of the victim girl and also to make DNA test to find out the paternity of the child.

25. Accordingly, these appeals are disposed of by remanding back the cases to trial court to mark the birth certificate of the victim girl and take steps to conduct DNA test to prove the paternity of the child. In view of the above, the accused persons and the child of the victim girl has to undergo DNA test and the prosecution is directed to extend their fullest cooperation to conduct the DNA test in the manner known to law.

26. After obtaining the DNA report and the birth certificate of the victim girl, the trial court is directed to dispose of the case on merits in accordance with law.

27. These Criminal Appeals are disposed of in the above terms.

Sd/-

Assistant Registrar(CS V)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

msr

To

1.The Assistant Sessions Judge and Chief Judicial Magistrate,
Nagapattinam.

2.The Public Prosecutor, High Court, Madras.

3.The Record Clerk, VR Section, High Court, Madras.

4.The District Munsif-cum-Judicial Magistrate Court,
Vedaranyam.

5.Do Thro The Chief Judicial Magistrate,
Nagapattinam.

6.The Inspector of Police,
All Women Police Station,
Vedaranyam in Charge of
Kariyapattinam Police Station,

7.The Section Officer,
Criminal Section, High Court,
Madras

+1cc to M/s. Norton and Grant, Advocate, S.R.No.57141

+1cc to Mr.M.Govindaraju , Advocate, S.R.No.57544

CRL.A.Nos.435 to 437 of 2012

AK(Co)
CS/11/09/18



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