

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.195 of 2011

Shanmugadevi ... Appellant/Defecto Complainant

vs.

1. State by
The Inspector of Police
Thirunavalur Police Station.
(Cr.No.331 of 2006) ... Respondent/Complainant

2. R.Veerappan ... Respondents/Sole Accused

The Criminal Appeal has been filed under Section 372 of Cr.P.C, to call for the records and set aside the judgment of acquittal dated 22.12.2010 acquitting the sole accused by the learned II Additional Assistant Sessions Judge, Villupuram, in S.C.No.150 of 2008.

For Appellant : Mrs.M.Ezhilarasi

For Respondents: Mr.T.Shanmugarajeswaran
Govt. Advocate (Crl.Side) for R1
Mr.S.Saravanakumar for R2

JUDGMENT

This criminal appeal has been filed against the judgment of acquittal made by the learned II Additional District and Sessions Judge, Villupuram, in S.C.No.150 of 2008 dated 22.12.2010.

2 Case of the prosecution is that on 18.05.2006, when

the victim/P.W.1 went to the field and was gathering fire wood, at about 3.00 p.m. the second respondent/accused came and committed rape on her forcibly and also convinced her by promising to marry her and P.W.1 revealed all those facts to her parents. When the victim/P.W.1 was pregnant and requested the second respondent/accused to marry her, he refused and instructed to abort the foetus in the womb. Therefore P.W.1 lodged a complaint against the second respondent/accused.

3 The respondent police based on the complaint given by the victim/P.W.1, registered a case against the second respondent/ accused for the offence punishable under Sections 417 and 376 of IPC and after investigation laid a charge sheet and since the offence charged against the accused is triable only by the Court of Sessions, the same was committed to the learned Principal District and Sessions Judge, Villupuram. The learned Principal District and Sessions Judge, Villupuram, made over the case to the learned II Additional District and Sessions Judge, Villupuram, for disposal, which was taken on file in S.C.No.150 of 2008.

4 Before the trial Court, in order to prove the case of the prosecution, P.Ws.1 to 11 were examined and Exs.P1 to 6 were marked. After completing evidence of prosecution witnesses, when incriminating circumstances culled out and put before the accused, he denied as false. On the side of the defence, no one was examined and on document was marked.

5 The learned trial Judge, after completing trial, found the second respondent/accused not guilty of the offence charged against him and hence by judgment dated 22.12.2010, acquitted the second respondent/accused from the charges levelled against him. The victim/P.W.1 being aggrieved against the judgment of acquittal, has filed the present appeal before this Court.

6 According to learned counsel appearing for the appellant/victim, P.W.1 is the victim and when she was gathering fire wood, the accused came to the field and committed rape on her forcibly and also threatened not to disclose anyone and subsequently convinced her and her parents also by promising to marry the victim. Believing the words of the accused, they had not filed any complaint against him soon after the occurrence, but when the victim informed the accused about her pregnancy and requested to marry her, he forced her to abort the foetus in the womb and refused to marry her. Therefore, the victim P.W.1, made a complaint against the accused. P.W.1, who is the victim, had clearly deposed the chain of occurrence before the trial Court and the evidence of P.Ws.2 & 3, who are her mother and father, corroborated the same. Further panchayat was also conducted and there also the accused refused to marry the victim, which was witnessed from the evidence of P.Ws.4 and 5. Evidence of P.Ws.7

and 10, the Doctors, reveal that the victim was pregnant and the foetus in the womb was 13 to 14 weeks. P.W.1/Victim had filed a petition seeking DNA test and the same was also allowed, but, the accused had filed revision against the same before this court and this Court allowed the same. The trial Court has failed to consider the evidence of victim and erroneously acquitted the accused, which warrants interference.

7 The learned counsel appearing for the second respondent/accused would contend that the alleged rape had taken place, according to prosecution on 18.05.2006, whereas, complaint was lodged only on 01.10.2006, after the lapse of five months, for which no explanation was offered either by the prosecution or by the victim. The victim did not challenge the order of this Court allowing the revision filed by the second respondent/accused against the order passed by the trial Court allowing the petition seeking DNA test filed by the appellant. The victim not even contested the revision. The victim and the accused are residing in the same village and the victim very well known that the accused was already married and got two children. If the victim got pregnant only because of the alleged rape said to have been committed by the accused, she would have very well lodged complaint immediately and there is no necessity for her to wait till the foetus grown upto 13-14 weeks. Further it is to be noted that the alleged occurrence taken place on 18.05.2006 and the evidence of Doctors P.W.7 and P.W.11, reveal that the growth of the foetus in the womb is 13-14 weeks. It is clear that if the victim got pregnant only because of the alleged rape, growth of the foetus must be more than 20 weeks and hence the prosecution has failed to investigate the matter in a right manner and foisted false case against the second respondent/accused. The trial Court has rightly appreciated the evidence of prosecution witnesses and acquitted the accused, which does not call for any interference.

8 The learned Government Advocate (Crl.Side) appearing for the first respondent police would submit that the respondent police has registered a case against the second respondent/accused for the offence under Section 376 and 417 of IPC based on the complaint given by P.W.1 stating that the accused committed rape on her forcibly. Trial Court, after trial, come to the conclusion that prosecution had failed to prove its case and acquitted the accused.

9 Heard the learned counsel appearing on either side and perused the materials available on record.

10 It is alleged by the victim, who examined as P.W.1, that the accused committed rape on her forcibly and due to the same she became pregnant but, the accused refused to marry her. But, the second respondent/accused totally denied the

allegations made by the victim. It is seen that the victim/P.W.1 has filed a petition seeking DNA test and the trial Court has also allowed the same. But, the accused has filed a revision before this Court challenging the same and this Court allowed the revision. The appellant/victim did not challenge the order of this Court allowing the revision filed by the second respondent accused against the order passed by the trial Court allowing the petition seeking DNA test filed by the appellant and also the appellant not even contested the revision. It is admitted that both the victim and the accused are residing in the same village and the victim very well knows that the accused was already married and got two children. If the victim got pregnant subsequent to the rape said to have been committed by the accused, she would have very well lodged complaint immediately and there is no necessity for her to wait till the foetus grown upto 13-14 weeks. Further it is seen that the alleged occurrence taken place on 18.05.2006 and the evidence of Doctors P.W.7 and P.W.11, reveal that the growth of the foetus in the womb is 13-14 weeks. If at all the victim got pregnant only because of the rape committed by the accused, growth of the foetus must be more than 20 weeks and not as evidenced by the medical records, which creates doubt in the minds of the Court.

11 The allegations made by the appellant/victim against the second respondent/accused are not believable, since the accused is not a stranger or unknown person to the victim and he committed rape on her, it is admitted that both the appellant and the accused are residing in the same village and the appellant herself admitted in her evidence that she knew that the accused is a married man and having two children. It is also not believable that after commission of offence, when the victim insisted the accused to marry, he made a promise to marry her and the victim believed the words of the accused did not file a complaint soon after the occurrence. It is seen that the victim/P.W.1 is 19 years old and she gave consent for physical relationship, which does not falls under Section 376 of IPC and even as per the admission made by the victim, the second respondent/accused, on the date of occurrence, is a married man and having two children and further both are in the same village and victim also knows that he is a married man and got two children and hence she should not have believed him that he would marry her. Therefore the second respondent has not committed any offence under Section 417 of IPC. This Court finds that prosecution has miserably failed to prove its case beyond reasonable doubt. The evidence of victim and P.Ws.2 and 3 are not tallying with the medical records.

12 Considering the facts and circumstances of the case, this Court does not find any compelled circumstances and sound reason to take a different view in the judgment of acquittal made by the trial Court, since it is well founded and reasoned

and there is no merit in the appeal. The criminal appeal is dismissed as devoid of merit and substance.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The IInd Additional Assistant Sessions Judge, Villupuram.
2. The Inspector of Police, Thirunavalur Police Station.
3. The Additional Public Prosecutor, High Court of Madras.

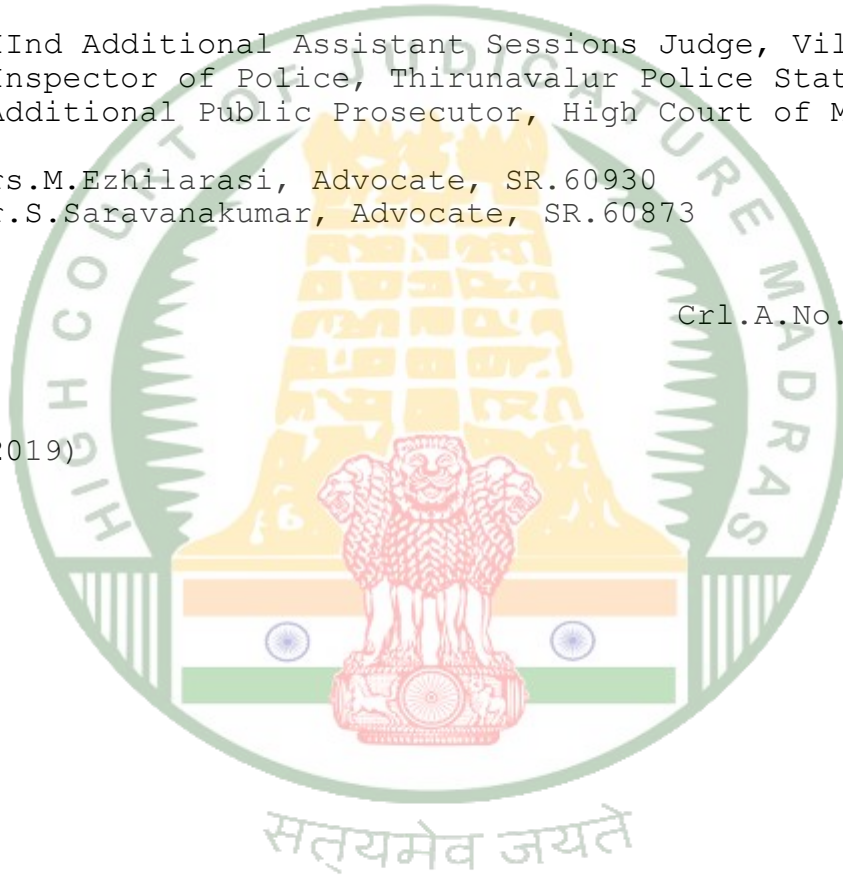
+1cc to Mrs.M.Ezhilarasi, Advocate, SR.60930

+1cc to Mr.S.Saravanakumar, Advocate, SR.60873

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CB(09/10/2019)



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