

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2019

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.216 of 2018

Thirugnanam

... Appellant/Second Accused

-Vs-

State of Tamilnadu
represented by
Inspector of Police,
All Women Police Station,
Villupuram District.
(Crime No.3/2014)

... Respondent/Complainant

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, praying to set aside the judgment dated 01.02.2018 passed in S.C.No.132 of 2014 on the file of the learned Sessions Judge, Magalir Neethimandram [FTC], Villupuram.

For Appellant : Mr.M.Devaraj

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.Side)

J U D G M E N T

This appeal arises against the judgment dated 01.02.2018 passed in S.C.No.132 of 2014 on the file of the learned Sessions Judge, Mahila Court [FTC], Villupuram, convicted the appellant/A2 for the offence under Section 307 and 394 IPC and sentenced him to undergo 10 years Rigorous Imprisonment and fine of Rs.10,000/-, in default, six months Simple Imprisonment for the offence u/s 307 IPC and 10 years Rigorous Imprisonment and fine of Rs.10,000/-, in default, six months Simple Imprisonment for offence u/s. 394 IPC. Trial Court directed the sentences to run concurrently.

2. The case of the prosecution is that on 22.11.2013, the prosecutrix went to graze her cow in her land and at about 5.00 pm. when the prosecutrix was cutting grass, the first accused went behind her and gagged her mouth and the 2nd accused the

appellant herein caught hold of her and suddenly, she bite the hand of the first accused and both the accused fisted on her face. When the prosecutrix struggled, the appellant/A2 again caught hold of her and the first accused strangulated her with her saree and she fell down unconscious. Thereafter, the first accused and the appellant/A2 dragged the prosecutrix to the nearby sugar cane field and pulled her thali. While the prosecutrix struggled, the first accused lied down on her and removed her nose pin and torn her blouse. The first accused tried to commit rape on the prosecutrix. The first accused is charged under Section 394, 307, 376 r/w 511 IPC and the appellant/A2 is charged under Section 394, 307 IPC. The respondent police registered a case against the present appellant/A2 and first accused. After investigation, the respondent police laid charge sheet against both the accused before the learned Judicial Magistrate No.1, Villupuram, and the same was taken on file in PRC.No.3 of 2014. As the offence under Section 376 IPC is triable by the Court of Sessions, the learned Judicial Magistrate No.1, Villupuram committed the case to the Principal Sessions Court, Villupuram and the case was taken on file in S.C.No.132 of 2014 and subsequently, made over to the Sessions Judge, Fast Track Mahila Court, Villupuram for disposal.

3. Before trial Court, prosecution examined PWs.1 to 15 and marked Exs.P1 to P36 and 7 Material Objects. None were examined on behalf of the defence nor were any exhibits marked. On questioning u/s.313 Cr.P.C., the accused denied the same as false. Trial Judge, on appreciation of the oral and documentary evidence, under judgement dated 01.02.2018, convicted the appellant/ A2 for offence under Sections 394 and 307 IPC and sentenced him as stated above. There against, the present appeal has been preferred before this Court.

4. The learned counsel appearing for the appellant would submit that there is no direct eye-witnesses in this case. The prosecutrix was not conscious at the time of admitting in the hospital and the copy of the Accident Register also proved the same. Though the occurrence had taken place on 22.11.2013, the FIR was registered only on 23.11.2013. The appellant was arrested on the next day itself and the confession statement recorded by the police officer is not admissible in evidence. If any person took the gold, he tried to sell the same and not keep in safe custody, whereas, it has been alleged that the recovery has been made from the first accused. The prosecutrix never seen the accused prior to the occurrence. Therefore, he has stated that the prosecutrix has given the statement as stated by the police. Before conducting the identification parade, the photos were shown to the prosecutrix and she has admitted that the police officials shown the photograph of the

appellant, but, in the Identification Parade, she has not identified the first accused. She has identified only based on the photos shown by the police officials, which creates suspicion. During the cross examination, Pws-6 and 7 have stated that they signed the paper in the police station, which also creates suspicion. The prosecution has not proved its case beyond reasonable doubts. The accused were arrested on the next day itself, whereas the victim/PW-1 had regained conscious only after 4-5 days in the hospital, which also creates doubts. When two views are possible in this case, the benefit of doubt has to be extended to the appellant/A2. The appellant/A2 was arrested by the investigating officer. Except PW-1/prosecutrix, no one has identified the appellant. The prosecution has foisted a false case against the appellant. The learned Sessions Judge failed to consider the above facts, which warrants interference.

5. Heard both sides and perused the entire materials available on record.

6. The prosecutrix has been examined as PW-1 and she has clearly stated that she went for grazing cows. At that time, both the accused came there and the first accused gagged the mouth of the prosecutrix and the appellant caught hold of her hands. Further, she has stated that both of them fisted on her face and thereafter, dragged her to the nearby sugar cane field and pulled her thali. While the prosecutrix struggled, the first accused lied down on her and removed her nose pin and torn her blouse. The first accused tried to commit rape on the prosecutrix. PW-2-brother-in-law of PW-1 has stated that when PW-1 was there, the accused were found nearby the occurrence place. He has also stated that she alone left the house. PW-6 stated that he knows both the accused and the investigating officer examined both the accused and recovered the belongings viz., material objects from the first accused and he also witnessed the same and signed in the recovery mahazar and both the accused given the confession statements. PW-7 corroborated the evidence of PW-6. The prosecution has established its case beyond reasonable doubts. From the reading of the evidence of prosecutrix and PWs-5, 6 and 7, it is seen that the prosecutrix identified the appellant in the identification parade. The prosecutrix was unconscious and she was rescued by PWs-3 and 4 and admitted in the hospital, which is evident from the Accident Register. The wound certificate and the doctor's evidence show that the prosecutrix sustained injury. There is no reason to discard the evidence of PW-1 the prosecutrix. The Sessions Court while dealing with the case, came to the conclusion that the appellant/accused has committed the offence under Section 307 and 394 IPC.

7. From the reading of the evidence, it reveals that the prosecution has proved its case with cogent and reliable evidence that the appellant has committed offences under Sections 394 and 307 IPC. On reading of the judgment of the learned Sessions Judge, it is seen that the learned Sessions Judge also given the cogent reason for the conviction and imposing the sentence.

8. Considering the facts and circumstances of the case and the serious nature of the offence against the woman and also the prosecution established its case for the offence under Section 307 & 394 IPC through PW-1, this Court does not find any reason to interfere with the judgement passed by the Trial Court and the criminal appeal is liable to be dismissed. Accordingly, this Criminal Appeal shall stand dismissed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

KMI

To

1. The Sessions Judge,
Mahila Court, FTC, Villupuram.
2. The Inspector of Police,
All Women Police Station,
Villupuram District.
3. The Public Prosecutor,
High Court, Madras -104.
4. The Superintendent Central Prison,
Cuddalore.

+1cc to Mr.M.Devaraj, Advocate, S.R.No.35833

Criminal Appeal No.216 of 2018

JP(CO)
CS/13/12/2019