

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2019

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.336 of 2016

1. Rajesh
2. Ashok

... Appellants

-Vs-

The State rep. by
Inspector of Police,
Kothagiri Police Station,
Nilgiris District.
(Crime No.480 of 2010)

... Respondent

Criminal Appeal filed under Section 341 of the Code of Criminal Procedure, against the judgment dated 08.06.2015 made in SC No.3 of 2013 on the file of Mahila Sessions (Fast Track) Court, Udhagamandalam.

For Appellant : Mr.D.J.Venkatesan

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

J U D G M E N T

This appeal arises against the judgment dated 08.06.2015 made in SC No.3 of 2013 on the file of Mahila Sessions (Fast Track) Court, Udhagamandalam.

2. The case of the prosecution is that on 30.10.2010 while the victim girl returning from Mettupalayam to Kozithorai, near Manal Kuttai one Rajesh of Kozikarai, Ashok of Chemmanarai and one Rajini of Kanthavayal waylaid her, taken her inside the Forest and all the three raped her. After committing the rape, they left her in the Forest. Since the victim is not able to walk, she laid there and on the next day morning she went her home, informed the rape to her parents. On the advice of her parents, she lodged a complaint on 31.10.2010. The respondent police registered a case in Crime No.480 of 2010 for the offence under Section 376 IPC. After investigation, the respondent police laid charge sheet against the accused before the learned Sessions Judge, Udhagamandalam. The learned Sessions Judge

taken the case on file in SC.No.3 of 2013 and made over to the Assistant Sessions Judge, Udhagamandalam for disposal.

3. During trial, on the side of the prosecution, prosecution examined 11 witnesses and marked 26 documents and 5 material objects. After completing the evidence, incriminating circumstances culled out from the prosecution witnesses, which were put against the accused and they denied as false. None were examined on behalf of the defence nor any exhibits were marked. There are three accused involved in this case. Apart from the appellants, one Rajini was also involved in this case. Since Rajini was juvenile, the case was split up. Trial Judge, on appreciation of the oral and documentary evidence, under judgment dated 08.06.2015, convicted the appellants/accused for the offence under Section 376 IPC and sentenced them to undergo 10 years Rigorous Imprisonment and fine of Rs.10,000/- (each), in default, one year Simple Imprisonment. There against, the present appeal has been filed before this Court.

4. The learned counsel for the appellants would submit that the prosecutrix had love affair with one Prakash and he also loved the victim girl. She was under the impression that the accused had given advice to Prakash to leave her, due to which, she had vengeance against the appellants/accused and foisted the false case. Further, PW-8-Doctor, who has stated that there is no external injuries, which creates doubt. PW-1 stated that she has no knowledge about Prakash, whereas, PW-6/brother of the victim girl stated that the victim girl left with Prakash for some time, thereafter, they secured her. Since the victim girl denied the fact that she does not know Prakash, whereas, PW-6 stated that the victim had love affair with Prakash, which strengthens the case of the defence. There are material contradictions and medical evidence gone against the victim girl. Therefore, the prosecution has not proved its case beyond reasonable doubts. Since two views are possible in this case, the benefit of doubt should be extended to the appellants/accused. The learned Sessions Judge failed to see the material contradictions and also failed to consider the motive of the appellants/accused. In such circumstances, the judgment is liable to be set aside.

5. The learned Government Advocate (Crl.Side) would submit that PW-1 is the prosecutrix and she has clearly narrated the incident. PW-2 father of the victim stated that after knowing the information from PW-1, he went to police station and gave complaint and admitted PW-1 in the hospital. PW-8 Doctor, who has clearly stated in the Accident Register that 3 known persons forcibly raped her. The medical evidence also supported the case of the prosecution. There is also a nail mark on the thigh of the victim, which shows that there is a possibility for

attempting rape forcibly on her. The evidence of prosecution is corroborated. The prosecutrix is the best person to speak about the occurrence. There is no reason to discard the evidence of prosecutrix and the corroborated medical evidence. There is sufficient reason for convicting the accused. PW-8-Doctor, who examined the victim, has given Ex-P12-Accident Register, PW-9-Doctor, who examined the appellants/accused, has given the potential certificates -Exs.P14 & P15. The evidence of PW-1 coupled with the evidence of PWs-8 & 9 and also the documents Ex.P1-complaint, Ex.P12-Accident Registrar, Exs.P14 & P15-Potential test reports of the appellants/accused. The prosecution has proved its case beyond reasonable doubts.

6. In this case, the date of commission of offence is on 30.10.2010. Prior to Criminal Law (Amendment) Act, 2018, Section 376 (2) (g) reads as follows:-

"376.(2) Whoever, (g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine".

7. In this case more than one person involved in the occurrence and committed rape as per Section 376(2)(g) IPC maximum punishment is Life sentence. Hence, made over of this case to the learned Assistant Sessions Judge itself is not correct. The learned Assistant Sessions Judge framed the charge under Section 376 IPC and tried the case. If it is found that the gang rape was committed, the Mahila Sessions (Fast Track) Court ought to have altered the charge under Section 376(2) (g) IPC.

8. Therefore, this Criminal Appeal shall stand allowed. The judgment dated 08.06.2015 made in SC No.3 of 2013 on the file of Mahila Sessions (Fast Track) Court, Udhagamandalam, is set aside. The Sessions Case No.3 of 2013 is remitted back to the Sessions Judge, Mahila Court (Fast Track), Udhagamandalam, and the learned Sessions Judge is directed to alter charge, if necessary take additional evidence, if any, or otherwise impose appropriate punishment in accordance with law.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

kmi

To

1.The Sessions Judge,
Mahila Sessions (Fast Track) Court,
Udhagamandalam.

2.The Inspector of Police,
Kothagiri Police Station,
Nilgiris District.

3.The Superintendent,
Central Prison, Coimbatore.

4.The Judicial Magistrate,
Kotagiri.

5.The Chief Judicial Magistrate,
Nilgiri.

6.The Public Prosecutor,
High Court, Madras 600 104.

7.The Section Officer,
Criminal Section, High Court, Madras 600 104.

+1cc to Mr.D.J.Venkatesan, Advocate Sr.37320

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srg 01/07/2019

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