

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.09.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.A.No.264 of 2014

Doss @ Arockiya Doss

.. Appellant/Sole Accused

Vs

State rep. by,
Inspector of Police,
U-Mangalam Police Station,
U-Mangalam Village,
Virudhachalam Taluk,
Cuddalore District.
Cr.No.333 of 2010

.. Respondent/Complainant

Criminal Appeal filed under Section 374 Cr.P.C., against the judgment of conviction and sentence made in S.C.No.119 of 2011 on the file of the District Magalir Sessions Court, Cuddalore dated 27.01.2014.

For Appellant : Mr.S.Annamalai
For Respondent : Mrs.P.Kritika Kamal,
Govt. Advocate (Crl. Side)

J U D G M E N T

This Criminal Appeal has been preferred by the appellant against the judgment of conviction and sentence dated 27.01.2014 passed by the Sessions Judge, Mahila Court, Cuddalore.

2. It is the case of the prosecution that on 03.11.2010, when the victim girl 'X', aged about 21 years was alone at home, the appellant, knowing about it, trespassed into her house and committed rape on her. Unable to withstand the shame, on the same day evening, 'X' self-immolated around 08.30 p.m. and was rushed to the Government Hospital, Virudhachalam, where she was admitted as inpatient. While under treatment, her statement was recorded by Mr.Ganesan (P.W.9), Judicial Magistrate No.II, Virudhachalam. In that, she stated that the appellant had raped her and unable to withstand the trauma, she committed self-immolation. She also gave a statement (Ex.P10) to the police, based on which, Devaraj (P.W.10), the Special Sub Inspector of

Police, registered a case in Crime No.333 of 2010 on 04.11.2010 for the offences under Sections 450 and 376 IPC against the appellant. On 06.11.2010, she succumbed to her injuries and thereafter, her two previous statements, to the Magistrate and to the police, became dying declarations.

3. Investigation of the case was taken over by B.S.Chandrababu (P.W.12), Inspector of Police, who went to the place of occurrence and prepared the observation mahazar (Ex.P14) and rough sketch (Ex.P15). From the place of occurrence, he seized the articles used by 'X' for self-immolation under the cover of a mahazar (Ex.P16). After the death of 'X' on 06.11.2010, the case was altered and Section 306 IPC was added. Inquest was conducted by the police and the inquest report was marked as Ex.P19. Dr.R.Balaraman (P.W.11) performed the autopsy on the body of 'X' and in his evidence as well in the post-mortem certificate (Ex.P12) has stated that 'X' has suffered 90% burns and the death was on account of septicaemia due to burns. After examining the witnesses and collecting various reports, the Investigating Officer filed final report in P.R.C.No.3 of 2011 before the District Munsif-cum-Judicial Magistrate, Neyveli against the appellant for the offences under Sections 450, 306 and 376 IPC and Section 4(B) of the Prohibition of Harassment of Women Act, 1998.

4. To prove the case, the prosecution examined 12 witnesses, marked 19 exhibits and 5 material objects. When the accused was questioned under Section 313 Cr.P.C about the incriminating circumstances appearing against him, he denied the same. On behalf of the accused, two witnesses John Mary (D.W.1) and Marikrutha (D.W.2) were examined.

5. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 27.01.2014 in S.C.No.119 of 2011, has convicted and sentenced the appellant as follows :

Provision under which convicted	Sentence
Section 450 IPC	3 years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo 6 months rigorous imprisonment
Section 376 IPC	7 years rigorous imprisonment and fine of Rs.5,000/-, in default to undergo 2 years rigorous imprisonment

Provision under which convicted	Sentence
Section 306 IPC	3 years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo 6 months rigorous imprisonment

The aforesaid sentences were ordered to run concurrently and the accused was acquitted of the offence under Section 4(B) of the Prohibition of Harassment of Women Act, 1998. Challenging the conviction and sentence, the appellant has filed the present appeal.

6. Heard Mr.S.Annamalai, learned counsel for the appellant and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) appearing for the respondent State.

7. Learned counsel for the appellant strenuously contended that the prosecution has failed to prove the charges and that the trial Court had not appreciated the evidence of defence witnesses in the proper perspective. He further contended that equal weight should be given to the testimony of the defence witnesses, for which, he placed reliance on the judgment of the Supreme Court in State of U.P. Vs. Babu Ram [(2000) 4 SCC 515].

8. Per contra, learned Government Advocate (Crl. Side) refuted the contentions.

9. The prosecution case is based on the two dying declarations viz. the one given to the Magistrate and the other given to the police. Savarimuthu (P.W.3), has stated that, he is the uncle of 'X' and on the fateful day, he went to the house of 'X' for seeing her father and at that time, he saw the appellant forcing himself on 'X'. On seeing him, the appellant ran away. Immediately thereafter, 'X' committed suicide by self-immolation. In the dying declaration (Ex.P9) given by 'X' to the Magistrate, she has stated that the appellant removed her clothes, ravished her and thereafter, she doused herself with kerosene and set fire. At the time of recording the dying declaration, the Magistrate has obtained a certification from Dr.M.P.Vidhyabharathi, to the effect that, 'X' was conscious and was in a fit state of mind through out the period of giving the dying declaration and that, the skin in both thumbs have peeled out. Apart from this certification, the Magistrate has also recorded that 'X' was in a fit state of mind to give statement. The defence was not able to make any serious dent in the testimony of Mr.Ganesan (P.W.9), the Magistrate who recorded the dying declaration.

10. Learned counsel for the appellant contended that the appellant was in love with 'X' and that they were having consensual sex, which was seen by Savarimuthu (P.W.3) and that was the reason for her committing suicide. Unfortunately, the appellant has not stated anything about that, when he was examined under Section 313 Cr.P.C. As regards the evidence of the two defence witnesses viz. John Mary (D.W.1) and Marikrutha (D.W.2), they have stated that after 'X' immolated herself, she came out of the house and fell near a church and at that time, she told them that she decided to commit self-immolation, because of the harassment by her uncle Savarimuthu (P.W.3).

11. In the cross-examination, both John Mary (D.W.1) and Marikrutha (D.W.2) have admitted that they are close relatives of the appellant. Had the version of these two witnesses been true, the accused would have stated about this, when he was examined under Section 313 Cr.P.C. with regard to the evidence of Savarimuthu (P.W.3). Had 'X' been in love with the appellant, she would not have implicated him. Even in the police dying declaration (Ex.P10), which formed the basis of the registration of the F.I.R., 'X' has narrated the sequence of events and has implicated the appellant. There is no contradiction between the two dying declarations.

12. In the opinion of this Court, the appellant has set up his relatives John Mary (D.W.1) and Marikrutha (D.W.2) to depose that 'X' has given dying declaration to them implicating her uncle Savarimuthu (P.W.3).

13. Learned counsel for the appellant submitted that the appellant has undergone the sentence imposed by the trial Court and was released on 25.01.2019.

In the result, this appeal is dismissed as being devoid of merits and the judgment of conviction and sentence passed by the Sessions Judge, Mahila Court, Cuddalore in S.C.No.119 of 2011 dated 27.01.2014 are confirmed. Registry is directed to send the original records to the trial Court forthwith.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Sessions Judge,
Mahila Court, Cuddalore.

2.The Inspector of Police,
U-Mangalam Police Station,
U-Mangalam Village,
Virudhachalam Taluk,
Cuddalore District.

3.The Public Prosecutor,
High Court, Madras.

4.The Section Officer (Records)
Criminal Section,
High Court, Madras.

5.The Superintendent,
Central Prison, Cuddalore.

+lcc to Mr.T.Sundaravadanam, Advocate SR.77168

CRL.A.No.264 of 2014

GMR (CO)
CB(15/10/2019)



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