

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.A.No.408 of 2012

State represented by
The Inspector of Police,
Alanthurai Police Station,
Coimbatore District. Appellant/Complainant

Vs.

1. Ravi Ramachandran @
Ravi.
2. Easwaran
3. Selvaraj @ Selvam
4. Kumar
5. Visvanathan
6. Senthilkumar Respondents/Accused

Criminal Appeal filed under Section 378 Cr.P.C. against the judgment and order dated 27.06.2001 passed in S.C.No.54 of 2000 on the file of the I Additional Assistant Sessions Court, Coimbatore.

For Appellant : Mrs.P.Kritika Kamal
Government Advocate
(Crl. Side)

For RR 1 and 2 : Mr.B.Kumarasamy

JUDGMENT

Challenge in this criminal appeal is to the judgment and order dated 27.06.2001 passed in S.C.No.54 of 2000 on the file of the I Additional Assistant Sessions Court, Coimbatore.

2. The case at hand raises an interesting legal conundrum, for which, of course, a solution has been provided by the Kerala

High Court in State of Kerala Vs. Ussain¹, on which, the learned counsel for the accused placed strong reliance.

3. On the allegation that the accused had committed act of gang rape on Chinnathangam (PW1) and Velumani (PW2), the police registered a case in Crime No.89 of 1997 and laid a final report in P.R.C.No.76 of 1995 before the Judicial Magistrate Court No.V, Coimbatore, against six accused for the offences under Sections 147, 376 (II) (g), 376 (II) (g) r/w 149, 376 (II) (g) r/w 511 IPC. The case was committed to the Court of Session in S.C.No.54 of 2000 and was tried by the I Additional Assistant Sessions Court, Coimbatore.

4. After a full-fledged trial, the accused were acquitted in S.C.No.54 of 2000 on 27.06.2001.

5. Challenging the order of acquittal, the victims Chinnathangam (PW1) and Velumani (PW2) filed CrI.R.C.No.1369 of 2001 under Section 397 r/w 401 Cr.P.C. before this Court, in which, the six accused and the State were arrayed as respondents. On notice, the accused entered appearance and contested the case.

6. This Court heard both sides and by a detailed order dated 12.03.2003 in CrI.R.C.No.1369 of 2001, dismissed the criminal revision, on the ground that the evidence of Chinnathangam (PW1) and Velumani (PW2), does not inspire the confidence of the Court and that the findings of the trial Court were not perverse, warranting interference.

7. In the mean time, the State filed the present appeal against the accused on 25.04.2002 and it was returned by the Registry for certain compliances. The papers were re-presented only in the year 2004 together with a petition under Section 5 of the Limitation Act, for condonation of delay of 212 days in filing the appeal against acquittal.

8. Notice was ordered in the petition for condonation of delay and the accused entered appearance. The petition for condonation of delay came up before a learned Single Judge of this Court on 28.06.2012. On that day, neither the Public Prosecutor nor the learned counsel for the accused informed the Court that CrI.R.C.No.1369 of 2001 filed by Chinnathangam (PW1) and Velumani (PW2) was dismissed as early as 12.03.2003. Oblivious of this fact, the learned Single Judge condoned the delay of 212 days on 28.06.2012 by passing a detailed order on merits. Thereafter, the special leave petition and appeal were numbered and admitted in the year 2012.

¹ 1990 (1) KLT 498

9. Now, when the matter is taken up for final hearing in 2020, the learned counsel for the accused brought to the notice of this Court about the earlier order passed by this Court in CrI.R.C.No.1369 of 2001 on 12.03.2003.

10. The learned Government Advocate (CrI.Side) submitted that this Court is not bound by the order passed in CrI.R.C.No1369 of 2001, since it was passed by this Court in exercise of its revisional jurisdiction under Section 397 r/w 401 Cr.P.C., whereas, the present appeal is one under Section 378 (4) Cr.P.C.

11. As alluded to in paragraph no.2 (supra), the learned counsel for the accused placed strong reliance on the judgment of the Kerala High Court in Ussain (supra), wherein, the facts are identical to the facts of the case at hand. Apposite it will be to refer to paragraph nos.5 and 6 of the judgment in Ussain (supra), which reads as under:

"5. As clearly indicated in Section 401 of the Code of Criminal Procedure, the High Court, in exercise of its re-visional powers, can exercise any of the powers conferred on a Court of appeal by Sections 386, 389, 390 and 391 or the Court of Sessions under Section 307 subject to certain restrictions. When the aid of the High Court is a superior Court and it can interfere for the purpose of rectifying the errors of the Court below. Though the limit of that jurisdiction is prescribed, the jurisdiction, which is exercised, is part of the general appellate jurisdiction of the High Court as a superior Court. It is only one of the modes of exercising the powers conferred by the statute; basically and fundamentally it is the appellate jurisdiction of the High Court, which is being invoked and exercised in a wider and larger sense. If there are two modes of invoking the jurisdiction of the High Court and one of these modes has been chosen and exhausted effectively, it would not be a proper and sound exercise of discretion to grant relief in the other set of proceedings in respect of the same order of the subordinate Court. That is necessary to prevent abuse of the process of Courts as also to respect and accord finality to its own decisions (Chopra's case - AIR 1955 S.C. 633 - and Shankar Ramachandra Abhyankar v. Krishnaji Dattarya Bapat, AIR 1970 S.C. 1)

6. A judgment, pronounced by the High Court in exercise of its appellate or re-visional jurisdiction, after issuing notice to the opposite party and after a full hearing in the presence of both the parties, would

certainly be arrived at after due consideration of the evidence and all the arguments and would, therefore, be a judgment. Such judgment, when pronounced, would replace the judgment of the lower Court, thus constituting the judgment of the High Court, the only final judgment to be executed in accordance with law by the Court below. It is now well settled that, whether it be on the civil side or criminal side, the decision of the subordinate Court will merge in the decision of the appellate Court and will be superseded by it if the Court has fully heard the matter after giving notice to the respondent and has disposed of the appeal or application on the merits. It is the decision of the appellate or re-visional Court, in these circumstances, which is operative, and that of the trial Court becomes extinct and is not available for challenge in appeal or revision (Chopra's case - AIR 1955 S.C. 633) Vyankatrao Khushalrao Sawarkar v. Pandurang Janbajji Gurao and another - AIR 1980 S.C. 1, Kantilal v. Chiba, AIR 1967 Bombay 310). These aspects were considered and followed by a Full Bench of this Court in Kannan and others v. Narayani and others - AIR 1980 Kerala 76)."

12. The learned Government Advocate (Crl.Side) placed strong reliance on a recent unreported judgment of the Supreme Court in Naval Kishore Mishra Vs. State of Uttar Pradesh and Others² in support of her contention that the present appeal can be dealt with by this Court albeit the order passed by this Court in Crl.R.C.No.1369 of 2001. In Naval Kishore Mishra (supra), the accused therein faced trial for the offences under Section 452 and 302 r/w 34 IPC and was acquitted by the trial Court on 19.12.2016. The State filed an appeal against acquittal under Section 378 (3) Cr.P.C. in the High Court together with a leave petition. The leave petition was dismissed by the High Court on 18.04.2017. The victim filed a regular appeal under the proviso to Section 372 Cr.P.C., which was also dismissed by the High Court on 23.11.2017, on the short ground that the leave was declined to the State. The victim took the matter to the Supreme Court and in that context, the Supreme Court held that the refusal of leave to the State will not affect the right of the victim to maintain the appeal under the proviso to Section 372 Cr.P.C. inasmuch as the victim is not required to obtain any special leave like the State in the light of the very recent judgment in Mallikarjun Kodagalli (d) through legal representatives Vs. State of Karnataka and Others³.

13. The above judgment cannot be of any avail to the State, because, Section 372 Cr.P.C. was amended with effect from

² Crl.A.No.979 of 2019 decided on 05.07.2019

³ (2019) 2 SCC 752

30.12.2009 by Amendment Act 5 of 2009, whereby, the victim of a crime was conferred with a right to file an appeal against acquittal de hors the power of the State to file such an appeal under Section 378 (3) Cr.P.C. Thus, the code today envisages two streams of appeals against acquittal, viz., one by the State and the other by the victim.

14. In that context, the Supreme Court held that the dismissal of the special leave petition filed by the State will not extinguish the statutory right of the victim under the proviso to Section 372 Cr.P.C. However, the case at hand is totally different. In this case, the learned Single Judge of this Court has heard the victims, the accused and the State and has returned a finding that the evidence of Chinnathangam (PW1) and Velumani (PW2) do not inspire the confidence of the Court. It may be necessary to extract those findings in paragraph nos.14, 15 and 16, which read as under:

"14.The learned counsel for the petitioner would strenuously argue that the evidence of the prosecutrixes, if accepted, would alone be sufficient to base a conviction and all these matters need not be gone into. True, if their evidence inspires confidence and if this court feels that they have come out with the truth, certainly this court will not look in other corroborations. But this is not a case where prosecutrixs could be believed.

15.This is a case where the evidence of the witnesses contradict each other and the court below was of the opinion that P.W.1 and P.W.2 were not speaking the truth. P.W.1 and P.W.2 were examined in the presence of the Judge who has seen the demeanour of the witnesses and apparently has come to the conclusion that their evidence cannot be relied. If really the incident has taken place and the matter has been reported to the parents, there is no need why they should go to Sampath's house to inform the matter and why Sampath should take them to the Police Station. It has been admitted by P.W.1 that A-1 contested against Sampath in the elections and Sampath won it. But Sampath has not been examined and as to what P.W.1 and P.W.2 told Sampath, we are not aware of. Therefore, the suggestion that Sampath is the person who has made these witnesses speak voluntarily cannot be ruled out, especially when 6 accused have been brought it and admittedly, according to P.W.2, she who is said to have been lifted by A-5, has not committed rape. In this context, it is also pertinent to note that P.W.3, the person who is alleged to have given lift to P.W.1, has

not supported the prosecution and he has been treated as hostile.

16. Though the evidence of prosecutrix is enough in a case of rape to convict a person, but such evidence should inspire confidence of the court that it is true. In my opinion, there is considerable doubt as to whether PW-1 would have spoken the truth and in the absence of any corroboration, I am not inclined to accept the evidence and consequently, I am not inclined to interfere with the judgment rendered by the court below.''

15. In the teeth of such findings, it is not open to this Court to re-appreciate the evidence of the same witnesses and come to a different conclusion, since this Court cannot sit on appeal over the orders passed by a coordinate Bench. Such exercise is barred by Sections 362 and 393 Cr.P.C.

In the result, this criminal appeal is dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The I Additional Assistant Sessions Judge,
Coimbatore.
2. The Inspector of Police,
Alanthurai Police Station,
Coimbatore District.
3. The Public Prosecutor,
Madras High Court,
Chennai - 600 104.

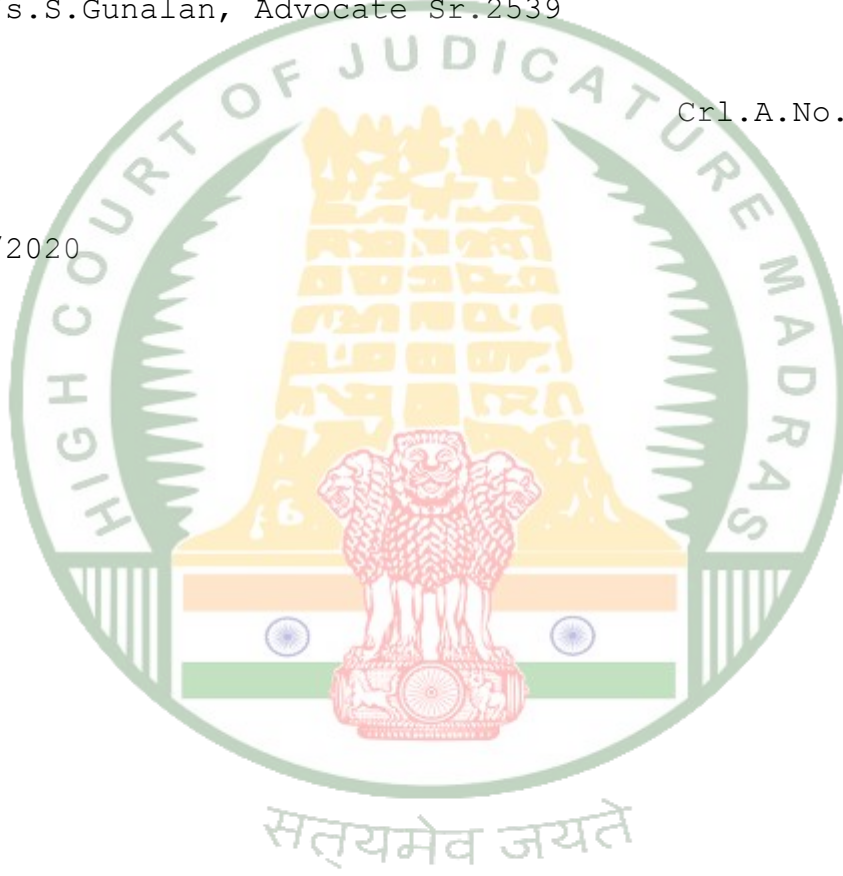
4. The Deputy Registrar,
(Crl.Side)
Madras High Court,
Chennai - 104.

with a direction to return
the original records to the
Court below concerned

+lcc to M/s.S.Gunalan, Advocate Sr.2539

Crl.A.No.408 of 2012

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srg 21/02/2020



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