

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl.A.No.881 of 2012

and

M.P.No.1 of 2013

Pandiyan

... Appellant/Accused No.1

Vs.

State by :

The Inspector of Police,
All Women Police Station,
Perambalur District.

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C.,
praying to set aside the judgment of conviction and
sentence, dated 25.08.2012, passed by the Sessions Judge,
Mahila Court, Perambalur, in S.C.No.174 of 2010.

For Appellant : Mr.T.Padmanabhan

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

J U D G M E N T

This Criminal Appeal has been filed to set aside the
judgment of conviction and sentence, dated 25.08.2012,
passed by the Sessions Judge, Mahila Court, Perambalur, in
S.C.No.174 of 2010.

2.1.The victim girl "X" is a dalit and she was 16
years old when she was allegedly ravished by the
appellant. "X" had lost her parents and she, along with
her two siblings Sukanya and Sudha, were brought up by
their uncle Velmurugan (P.W.1). They hail from Velluvadi
Village in Perambalur District. On account of poverty,
"X" did not study and was working as a daily wager in a
local cottage industry that manufactured pappads.

2.2.On 04.08.2008, "X" went for work and returned
home in the evening after sunset. She went for taking
bath in the thatched bathroom behind her house. The
appellant, who was also from the same village, was
watching her going for bath. While she was undressing, he
entered the bathroom and held her tight saying that he

loves her. When she resisted, he stuffed her mouth with a cloth, carried her to the house of one Suresh, which was under construction, and raped her. Her protest and shouts for help were heard by their neighbour Manivel (P.W.4), who rushed to the place and found the appellant lying on "X". On seeing Manivel (P.W.4), the appellant quickly got up, pushed him, and fled. "X" was in tears.

2.3.Manivel (P.W.4) escorted "X" to her house and apprised Velmurugan (P.W.1) of what had happened. Velmurugan (P.W.1) and other villagers went to the house of the appellant and complained to his (appellant's) parents Lakshmanan (A2) and Deivanai (A3). The parents of the appellant assured Velmurugan (P.W.1) that they will accept "X" as their daughter-in-law and requested him not to make an issue of it. In view of the assurance given by them, Velmurugan (P.W.1) waited for the day to dawn.

2.4.On the next day, Velmurugan (P.W.1) went with some villagers to the house of the appellant, but no one was there. The appellant and his parents became scarce. Three days later, they surfaced and took a belligerent stand that they will not agree for the marriage.

2.5.Therefore, Velmurugan (P.W.1) lodged a written complaint (Ex.P1), based on which, Vasuki (P.W.10), Sub-Inspector of Police, registered a case in Crime No.23 of 2008 on 13.08.2008 at 13.00 hours for the offences under Sections 376 and 506(i) IPC, against Pandiyan (appellant) and his parents Lakshmanan (A2) and Deivanai (A3) and prepared the printed F.I.R. (Ex.P4), which reached the jurisdictional Magistrate on the same day at 04.00 p.m.

3.Investigation of the case was taken over by Joseph Seril (P.W.11), Inspector of Police, who went to the place of occurrence and prepared the Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P5) in the presence of witnesses Manivannan (P.W.3) and Shanthi (not-examined).

4.Dr.Priya Vasanthakumar (P.W.5) examined "X" on 15.08.2008 at 10.55 a.m. and issued the report of medical examination (Ex.P3). "X" was subjected to age determination by Dr.S.Thulasiraman, B.D.S., and the medical examination report (Ex.P3) reads as follows :

"8.Opinion :

1.I am of the opinion that the approximate age of the victim is 15 to 16 years.

2.She is not a virgin as her hymen is not intact but patulous, admits 2 fingers easily and

3.She is not pregnant as her last menstrual period was only 3 days ago."

27.07.2009 and was taken into custody. He was medically examined by Dr.Aruna (P.W.13) on 28.07.2009 at 03.30 p.m. and the copy of Accident Register (Ex.P6) was issued. Dr.S.Arulselvan (P.W.14) conducted potency test on the appellant on 28.07.2009 and issued the potency certificate (Ex.P7).

6. Investigation of the case was continued by Sivasubramanian (P.W.12), Inspector of Police, who examined witnesses, collected various reports, completed the investigation, and filed a final report in P.R.C.No.21 of 2009 before the Court of Judicial Magistrate, Perambalur, for the offences under Sections 376 and 506(i) IPC against Pandiyan (appellant/A1), Lakshmanan (A2) and Deivanai (A3).

7. On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.174 of 2010 and was made over to the Mahila Court, Perambalur, for trial.

8. The trial Court framed a charge for the offence under Section 376 IPC against the appellant (A1) and a charge for the offence under Section 506(i) IPC against Lakshmanan (A2) and Deivanai (A3), the parents of the appellant. When questioned, the accused pleaded 'not guilty'.

9. To prove the case, the prosecution examined 15 witnesses and marked Exs.P1 to P7.

10. When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. No witness was examined nor any document marked from the side of the accused.

11. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 25.08.2012, in S.C.No.174 of 2010, acquitted Lakshmanan (A2) and Deivanai (A3) of the charge framed against them, but convicted the appellant (A1) of the offence under Section 376 IPC and sentenced him to rigorous imprisonment for seven years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for two years.

12. Challenging the conviction and sentence, the appellant (A1) is before this Court.

13. When the matter was taken up for hearing, learned counsel for the appellant submitted that the appellant had already undergone the sentence and had been released from custody. Learned Government Advocate (Crl. Side)

confirmed the same by producing a report dated 13.02.2020 from the Central Prison, Trichy, to the effect that the appellant had undergone the sentence from 25.08.2012 to 21.03.2018 and was given 518 days remission. In the opinion of this Court, this cannot be a valid reason to close the appeal.

14.The entire case of the prosecution rests on the evidence of "X" and Manivel (P.W.4).

15."X" (P.W.2), in her evidence, has stated as under :

"I am residing in Velluvadi Village and working as a pappad maker; I know the accused; Velmurugan (P.W.1) is my uncle; on 04.08.2008 around 07.00 p.m., I finished my work and came home; I went behind my house for taking bath; after having my bath, I changed my clothes; the appellant (A1) came from behind and stuffed a cloth into my mouth and carried me to the house of Suresh nearby and ravished me; I shouted for help; hearing that, my uncle Manivel (P.W.4) came; the appellant (A1) pushed Manivel (P.W.4) and ran away; I narrated everything to Manivel (P.W.4) and wept; Manivel (P.W.4) took me to my uncle Velmurugan (P.W.1); I told my uncle of what had happened; my uncle took me to the house of the appellant; there, A2 and A3 assured that they will arrange for my marriage with the appellant (A1); three days later, when a village panchayat was convened, the accused started threatening us; therefore, we went to the police and lodged a complaint."

She was examined-in-chief on 07.06.2011 and was not cross-examined on the same day. She was recalled and was cross-examined only on 27.07.2011. In the cross-examination, she has stated that as under :

"I have not gone to school; I do not know my date of birth; I do not know whether my date of birth was registered; at the time of the incident, I was 16 years old; I am married since a year; the complaint (Ex.P1) was written by my uncle Velmurugan (P.W.1) based on what I told him; I was working as house maid in Kerala two years ago; I have not spoken to the appellant (A1) earlier and he has not come to my house before; the house of Suresh was being constructed then; had the appellant not stuffed cloth into my mouth, I would have shouted for help then itself; I did not see the appellant (A1), because he was coming from behind."

The cross-examination goes on and goes forth and the defence was not able to make any serious dent in her testimony. Ultimately, it was suggested to "X" (P.W.2)

that she was a person of loose morals, which suggestion, she denied.

16.The evidence of Manivel (P.W.4) substantially corroborates the evidence of "X" (P.W.2). Manivel (P.W.4) has stated that he had retired as a Village Administrative Officer and he knows the appellant and the victim's family; around 07.00 p.m. on 04.08.2008, from the house next to the house of "X" (P.W.2), he heard sounds and so, he went there and found the appellant (A1) ravishing "X"; when he tried to catch the appellant (A1), he (A1) pushed him (P.W.4) and ran away; "X" was weeping and he took her to her uncle (P.W.1) and told him everything; they searched for the appellant (A1) and could not find and so, they went to his (appellant's) house and told his parents; his parents stated that they agree for the marriage, but later, they became scarce and so, the police complaint (Ex.P1) was given.

17.Velmurugan (P.W.1) has stated that, while he was at home on 04.08.2008, Manivel (P.W.4) brought his niece "X", who was weeping, and both of them told him as to how the appellant had ravished "X".

18.Learned counsel for the appellant contended that there is an enormous delay in the registration of F.I.R., inasmuch as the incident is said to have taken place on 04.08.2008, but the complaint (Ex.P1) was given only on 13.08.2008. It is true that there is a delay in giving the complaint (Ex.P1) to the police, but, that by itself, cannot be a reason to hold against the prosecution in the facts and circumstances obtaining in this case. The victim girl "X" was an orphan and she was a dalit. The family of the appellant was very powerful in that area, as could be seen from the evidence of the witnesses. Immediately after the incident, Velmurugan (P.W.1) and Manivel (P.W.4) had gone to the house of the appellant and had complained to his parents. At that time, the parents of the appellant (A2 and A3) cleverly defused the situation by saying that they will arrange for the marriage and thereafter, they all absconded and were not available in the village for the next three days. After they were traced, a panchayat was held, in which, they went against their assurance given and became belligerent. In such view of the matter, the delay in lodging the complaint (Ex.P1) cannot lead to the inference that the case has been foisted against the appellant.

19.The medical evidence clearly shows that "X" was 15-16 years old at the time of the incident. Even if she had been more than 16 years, the fact remains that she was forcibly ravished. It is not the case of the appellant that he had consensual sex with "X". On the contrary, the appellant had attempted to malign the character of "X" by

suggesting to her that she was having affairs with various persons in the village, which suggestion, she has denied. It is the further case of the appellant that "X" wanted to marry him, because, he was the only son of his parents and that is why, she had tailored the story of rape. Pertinent to state here that, "X" got married after the incident to one Subramanaian and she came and gave evidence in the Court and subjected herself to grilling cross-examination by the accused.

In fine, this Criminal Appeal is devoid of merits and hence, stands dismissed. The judgment of the trial Court is confirmed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sessions Judge,
Mahila Court,
Perambalur.
- 2.The Superintendent,
Central prison,
Tiruchy.
- 3.The Inspector of Police,
All Women Police Station,
Perambalur District.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Deputy Registrar|with a direction to send back the
(Criminal Section),|original records, forthwith, to the
High Court, Madras.|trial Court
- 6.The Judicial Magistrate,
Perambalur.
- 7.The Chief Judicial Magistrate,
Perambalur District.(For information)
- 8.The Principal & District Sessions Judge,
Perambalur District.

9.The District Collector,
Perambalur District.

10.The Director General of Police,
Mylapore, Chennai-4.

Crl.A.No.881 of 2012

NR(CO)
CB(26/08/2020)



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