



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 27.02.2020
PRONOUNCED ON : 28.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.(MD)No.106 of 2014

Muneeswari

... Appellant

Vs.

1.The State Rep.by
The Inspector of Police,
All Women Police Station,
Srivilliputhur,
Virudhunagar.

2.Paulraj ... Respondents

PRAYER : Criminal Appeal filed under Section 372 of Criminal Procedure Code, to set aside the judgment of acquittal in S.C.No.16 of 2013, dated 27.11.2013, passed by the Chief Judicial Magisterial at Srivilliputhur, Virudhunagar District.

For Appellant : Mr.A.Jeyaramachandran
For R1 : Mr.K.Suyambulinga Bharathi,
Government Advocate (Criminal Side)
For R2 :Mr.G.Marimuthu

JUDGMENT

This Criminal Appeal has been filed as against the order dated 27.11.2013, passed by the learned Chief Judicial Magistrate at Srivilliputhur, Virudhunagar District, in S.C.No.16 of 2013.

2. The Sessions Case in S.C.No.16 of 2013 pertains to the case in Crime No.13 of 2012, on the file of the All Women Police Station, Srivilliputhur. After full fledged trial, the Trial Court, by order dated 27.11.2013, acquitted the accused from all the charges framed against him. As against the judgment of acquittal, the appellant/defacto complainant preferred the present appeal.

3. The facts of the case are briefly stated hereunder:-

On 10.07.2012, at about 11.00.p.m, when the appellant/victim was studying in her home at upstairs, the second respondent entered into her house from back side and suddenly, stood before the appellant and made a false promise that he will marry the appellant and exhorted for physical relationship, when the appellant refused the same, the second respondent pushed down her and had physical relationship. He also threatened her that he will murder her, if she



tells about the issue out side.

4. Thereafter, the appellant/victim came down from the upstairs informed her mother and sister/P.W.2 and P.W.4 respectively, who were sleeping in ground floor. The appellant's father/P.W.3 was informed, when he came from work on the next day. Thereafter, he approached the Headman of the village, namely, Muthu (P.W.7) for resolving the issue. Panchayat was convened between the parents of the second respondent and appellant. But, the second respondent denied all the allegations stated against him.

5. On failure of Panchayat, the appellant/victim lodged a complaint before the All Women Police Station, Srivilliputhur. The Inspector of Police, All Women Police Station, Srivilliputhur registered a case as against the second respondent for the offence punishable under Sections 417, 376 and 506(ii) IPC.

6. In order to prove the case of the prosecution, on the side of the prosecution as many as 13 witnesses were examined as P.Ws.1 to P.W.13 and 6 documents were marked as Ex.P.1 to Ex.P.6. No material objects were marked. On the side of the accused, one document was marked as Ex.D.1 and no witness was examined.

7. The available evidences from the prosecution side are as follows:

(i) The appellant (P.W.1) is victim in this case. The second respondent/accused is her neighbour. P.W.1 lodged the complaint (EX.P.1) and speaks about the occurrence.

(ii) P.W.2 /Mariammal and P.W.3/ Thiruvengkadam are parents of P.W.1. P.W.2 informed the incident to P.W.3. P.W.3 met the Headman of the village and complained to him about the incident.

(iii) P.W.4/Thangamani is the elder sister of P.W.1. She came to know about the occurrence from P.W.1, when the complaint to her mother.

(iv) P.W.5 /Arumugasamy is a neighbour of P.W.1. He instructed P.W.3 to meet P.W.7.

(v) P.W.6 /Sakkarai is also a neighbour of P.W.1. He speaks about the investigation conducted by police.

(vi) P.W.7/Muthu is Headman of the village, who called the parents of the second respondent and tried to mediate them. After failure of mediation, P.W.1 lodged the complaint before the All Women Police Station, Srivilliputhur.

(vii) P.W.8/Epsibai is the Police, who took P.W.1 to Government Hospital, Srivilliputhur for medical examination.

(viii) P.W.9/Shanmuganathan is the Police, who took the second respondent to Government Hospital for medical examination.

(ix) P.W.10/Dr.Pushpalatha, examined P.W.1 and issued the certificate Ex.P.3.



(vii) P.W.11/Dr.Ramesh Babu, examined the second respondent and issued a certificate Ex.P.4.

(viii) P.W.12/Pandiammal is the Sub Inspector of Police, Srivilliputhur, registered a case in Crime No.13 of 2012.

(ix) P.W.13/Mariaglory is the Inspector of Police, who visited the scene of occurrence, recorded the statement of witnesses, prepared observation mahazar (Ex.P.2) and rough sketch (Ex.P.6).

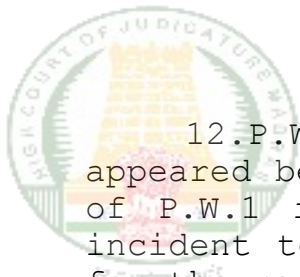
(vi) The Sub Inspector of Police (P.W.12) received the complaint and registered the case in Crime No.13 of 2012, for the offence punishable under Sections 417, 376 and 506(ii) IPC. Thereafter, P.W.13/Inspector of Police, All Women Police Station, Srivilliputhur conducted further investigation and visited the place of occurrence, examined all the witnesses and filed the charge sheet.

8.After completion of trial, the trial Court acquitted the accused/second respondent.

9.Aggrieved over the same, the appellant/defacto complainant filed this appeal.

10.The contention of the learned counsel for the appellant is that the defacto complainant was studying in her home at first floor for her examination at about 11.00.pm on 09.07.2012, the second respondent, who is neighbor, entered into the house gave false promise to marry her (P.W.1). Thereafter, he compelled P.W.1 for physical relationship, which was resisted by her, the second respondent pushed down her and had physical relationship. He threatened her that he will murder her, if she reveals about the same. P.W.1 informed her mother and sister/P.W.2 and P.W.2, they informed P.W.3. Thereafter, the appellant and her parents met P.W.7, who is Headman of the village to conduct Panchayat. On failure of Panchayat, they lodged a complaint before the All Women Police Station, Srivilliputhur.

11.The learned counsel for the appellant submitted that in the case of such nature, there could be no eye witness, except the statement of the victim. In this case, P.W.1 being the victim had clearly stated about the physical assault carried on her by the second respondent and at that time, no one was present in the scene of occurrence. He further submitted that P.W.1 gave a reason that when the second respondent had physical assault on her, she had not raised any alarm for the reason that her morality and her family's good name would be affected and for reason only, she kept silent. But immediately, thereafter, she came down and informed about the incident to her mother and sister, who were sleeping in the ground floor.



12.P.W.12/Sub-Inspector of Police has stated that P.W.1 appeared before her and lodged the complaint - Ex.P.1. The evidence of P.W.1 is without any latches. P.W.1, immediately informed the incident to P.W.2 and P.W.4. The delay in lodging the complaint is for the reason that the local Headman tried for compromise solution.

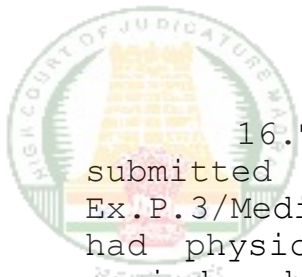
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13.The learned counsel for the appellant in support of his contention relied upon the judgment of Honourable Supreme Court in the case of **Anurag Soni Vs. State of Chhattisgarh** reported in **2019 (1) MWN (Cr.) 582 (SC)**. The relevant paragraph is extracted hereunder:

12. The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the Accused, who gave the promise to the Prosecutrix to marry, did not have any intention to marry and the Prosecutrix gave the consent for sexual intercourse on such an assurance by the Accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 of the IPC., and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed rape as defined under Section 375 of the I.P.C., and can be convicted for the offence under Section 376 of the I.P.C.

14.The learned counsel appearing for the second respondent submitted that for the delay of 10 days in lodging the complaint, no reason has been given by the prosecution. Further, P.W.1 initially states that the second respondent had made false promise and had physical relationship with her. But in Ex.P.3, the date and the time of physical assault is not clearly mentioned. In such circumstances, it could not be stated that on 09.07.2012, the respondent had any physical relationship with P.W.1. Further, in Ex.P.2/ observation mahazar, there is no mention about the hut put up in the first floor as well as the staircase. PW.1 does not mention anything with regard to the place whether it is first floor or ground floor in Ex.P.1/complaint, the incident had taken place.

15.Further, Ex.P.6/rough sketch, it is seen that the staircase leading to the first floor is on the front side of the house, where P.W.2 and P.W.4 were sleeping in the ground floor, it is not possible to the second respondent to reach the first floor without being noticed. In order to prove the same, Ex.D.1 has been marked. It is also admitted that on the date of occurrence, P.W.1 was major, aged about 23 years. The second respondent was wealthy person, P.W.1 wants to marry him, which was refused by the second respondent and hence, the false case has been fabricated against him.



16.The learned counsel for the second respondent also submitted that P.W.10-Doctor, who examined P.W.1 and issued Ex.P.3/Medical certificate, in which, the doctor opined that P.W.1 had physical intercourse, but, unable to specify the time and period, when P.W.1 was subjected to physical assault. P.W.10 is categorical that hymen tear found is a old injury and not of recent past. Thereby demolishing the case of prosecution that occurrence had taken place on 09.07.2012.

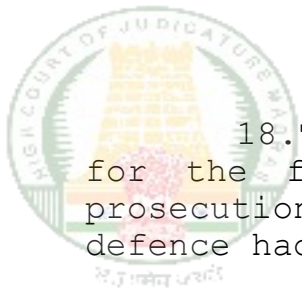
17.In view of major discrepancy with regard to the time factor. According to P.W.1, she informed about the incident to her father on 10.07.2012 at about 07.00.am. On the contrary, P.W.7 / headman in his evidence stated that on 10.07.2012 at about 05.00.a.m, P.W.3 informed to him about the incident. The trial Court, on consideration all these aspects including the delay had given a well reasonable judgment shall not be interfered with. He has also relied upon the judgment of the Honourable Supreme Court in the case of **State of Madhya Pradesh Vs. Rajaram** reported in **2019(1) MWN (Cr.) 50(SC)**. The relevant paragraphs is extracted here under.

"12.In the instant case, except the evidence of PW3 and PW4, there is no other material or Medical evidence to support or substantiate the case of Prosecution. In a case of acquittal by the High Court, the State has to make out a strong case to interfere with the impugned Order. Until and unless, there is some perversity or non-consideration of the material facts, it is not proper to interfere with the Order of Acquittal passed by the High Court. Similar view was taken by this Court in the case of State of Kerala and anr. V. C.P.Rao, 2011 (6) SCC 450.

13.Similarly, in the case of State of U.P. V. Punni and ors., 2008 (11) SCC 153, it was held that:

"11.In any view of the matte, we are of the view that this Court, while dealing with the Order of Acquittal of the High Court, would not ordinarily interfere with the findings of the High Court unless it is satisfied that such finding is vitiated by some glaring infirmity in the appraisal of evidence or such finding was perverse or arbitrary."

14.In State of Punjab V. Ajaib Singh, 1995 (2) SCC 486, this Court, on the same lines, held that "if the Order of Acquittal was not perverse or palpably erroneous, this Court would not interfere with such finding of the High Court acquitting the Accused//Respondents from the offences charged against them."



18.The learned Government Advocate (Criminal Side) appearing for the first respondent would submit that in this case, the prosecution had examined 13 witnesses and marked six exhibits, the defence had marked Ex.D.1.

19.The learned Government Advocate (Criminal Side) further submitted that P.W.1 /victim girl had clearly stated about the physical assault caused on her by the second respondent. P.W.1 in her statement mentioned the place of occurrence in the first floor and on 09.07.2012 at about 11.00.p.m, the second respondent who is a neighbor entered into the house from back side and thereafter, committed a rape. These aspects have been spoken by P.W.1. Further P.W.1 came down and informed to P.W.2 and P.W.4, who are her mother and sister, they were sleeping in the ground floor. P.W.3/father of victim had came back to the house, immediately, P.W.1 informed about the incident to her father also. Thereafter, they approached P.W.7 /head man of the village. P.W.7/Headman of the village, who called the parents of the second respondent and tried to mediate between them. After failure of mediation, P.W.1 lodged the complaint to the All Women Police Station, Srivilliputhur on 20.07.2012. Immediately, on registration of FIR, the respondent police reached the scene of occurrence, recorded the statements of witnesses, prepared observation mahazar and rough sketch. Thereafter, on the same day, the victim sent for medical examination. P.W.10 /Doctor issued a certificate Ex.P.3. Thereafter, the accused was arrested, he also sent for medical examination and P.W.11, had examined him and issued a certificate Ex.P.4.

20.It is natural that each person would react in differently, the victim and all the witnesses have spoken about the same fact without any discrepancy. Except time factor, other aspects have been spoken by the witnesses P.W.1 was physically assaulted by the second respondent, which was confirmed by P.W.10 and Ex.P.3.

21.P.W.7/Headman, who is common man state that P.W.3/father of the victim approached him and the parents of the second respondent was called for explanation. The second respondent denied the allegations. Thereafter, they were trying to resolve the issue. On such failure of the panchayat, the complaint was lodged by P.W.1. Hence, in the delay in this type of cases are natural. He also relied upon the judgment of the Honourable Supreme Court in the case of **Palani Vs. State of Tamil Nadu**.

"Delay in setting the law into motion by lodging the complaint is normally viewed by the courts in suspicion because there is possibility of concoction of evidence against the accused. In such cases, it becomes necessary for the prosecution to satisfactorily explain the delay in registration of FIR. But there may be cases where the delay in registration of FIR is inevitable and the same has to be considered. Even a long delay can be condoned if the



witness has to motive for falsely implicating the accused. In the present case, P.W-1 had no motive to falsely implicate the accused. As pointed out earlier, P.W.-1 seeing her own son being brutally attacked, the effect of the incident on the mind of the mother cannot be measured. Being saddened by the death of her son, it must have taken sometime for P.W.1 to come out of her shock and then proceed to police station to lodge the FIR. The delay of two and half hours in lodging the complaint and registration of FIR and the delay in receipt of the FIR by the Magistrate was rightly held as not fatal to the prosecution case."

22.Considering the rival submissions and on perusal of the materials on records, this Court finds, in this case, it is admitted that P.W.2 and 3 were sleeping in the first floor at the time of the incident without the knowledge of P.W.2 and P.W.3, the second respondent could not reach the first floor. Hence, the entire topography of the place has been changed. There was forced physical relationship by the second respondent against the appellant, she had not make nay alarm or called for help from P.W.2 and 3, who were sleeping in the ground floor.

23.In this case, P.W.1 had failed to raise any alarm, the reason given by her that any alarm made, it would alert the neighbors about the incident, is not acceptable, is highly artificial. P.W.2 and P.W.4/mother and sister were sleeping in the ground floor have given a different version with regard to the incident reported by P.W.1. Further, P.W.3/ father of P.W.1, gives another version about when he was informed. Further, P.W.2 and 3 approached P.W.7 for mediation. Therefore, a delay has been occurred for lodging the complaint. There are inherent contradictions between the evidence of P.W.1 to 4 and with regard to the information of the incident to P.W.3. From Ex.P.3/Accident Register, it is found there is no date and time in it. P.W.7 admits that he had not conducted any panchayat. Hence, the reason for the delay of 10 days is unacceptable. The complaint become doubtful.

24.P.W.10/Doctor had clearly states that the date and time when P.W.1 was subjected to physical assault cannot be stated exactly would demolished the case of the prosecution that on 09.07.2012. P.W.1 was subjected to physical assault by second respondent. Further, P.W.10 states that for the reason that hymen was not intact, it cannot be stated that a person has been subjected to sexual assault. Thus clearly go to show that no such incident had taken place on 09.07.2012. Ex.P.6 /rough sketch would clearly show that the staircase is on the front side of the house, which is conformed by Ex.D.1. The version of P.W.1, that the second respondent approached first floor through the stairs from the back side is false. Further, without being noticed by P.W.2 and P.W.4,



who were in the ground floor, the second respondent could not have reached first floor.

25. In view of the same, there are major discrepancy with regard to the time manner, in which the second respondent reached first floor. According to P.W.1, she informed about the incident to her father on 10.07.2012 at about 07.00.a.m. On the contrary, P.W.7/headman in his evidence state that on 10.07.2012 at about 05.00.am., P.W.3 informed to him about the incident. The trial Court, on consideration all these aspects including the delay had given a well reasonable judgment shall not be interfered with.

26. It is seen that P.W.1 is major and educated person. According to her, she was in the first floor, the second respondent had come from behind and sexual intercourse with her and she failed to raise any alarm, since the act would be known to every one.

27. This fact is not mentioned in the complaint/Ex.P.1. Though she states that she immediately informed P.W.2 and 4/mother and sister, who are in the ground floor. There has been delay of 10 days in lodging the complaint. This delay has not been explained. P.w.7, the village headman categorically states that he had not conducted any mediation. Hence, the delay is unexplained.

28. P.W.10/Doctor examined P.W.1 had clearly states that there is no external or internal injuries, the hymen was not intact. Further, there was no injuries, P.W.10 was certain that the rapture of hymen had taken place long back and not on the immediate past. The fact that 09.07.2012, such incident taken place is highly doubtful. As per Ex.P.6 and Ex.D.1, staircase leading to the first floor is on the front side and nobody can reach the first floor without notice of others in the ground floor. P.W.2 and P.W.4 were in the ground floor on that day, during the alleged occurrence. Hence, the second respondent reached the first floor without being noticed by P.W.2 and P.W.4 is highly doubtful. There are contradictions with regard to place of occurrence, as narrated by P.W.1 and P.W.2 as well as P.W.4. There are vital contradictions between the evidence of P.W.1 to P.W.4.

29. The trial Court had analyzed the evidence and materials in detail and given a well reasoned judgment by acquitting the second respondent.

30. Although offence under Section 376 of IPC has to be treated with sensitivity, in the instant case, the circumstances taken as a whole, create doubt correctness of prosecution version. Hence, a case is made out for giving benefit of doubt to second respondent.

30. This Court is considered all the fact that in the absence of any perversity, the view of the trial Court cannot be disturbed.



In this case, there is no perversity. On the other hand, the trial Court by analyzing the cogent evidence of the witnesses and documents has disbelieved the case of the prosecution and acquitted the second respondent.

32. In view of the above, this Court is not inclined to interfere with the finding of the trial Court. Accordingly, this Criminal Appeal is dismissed. The order dated 27.11.2013, passed by the learned Chief Judicial Magistrate at Srivilliputhur, Virudhunagar District in S.C.No.16 of 2013, is confirmed.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar(CS)

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To

1.The Chief Judicial Magisterial at Srivilliputhur,
Virudhunagar District.

2.The Inspector of Police,
All Women Police Station,
Srivilliputhur, Virudhunagar.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Section Officer, Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.(2c)

+1cc to M/s.G.M.Law Office, Advocate, SR No.9243

Crl.A.(MD)No.106 of 2014
28.02.2020

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