

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.06.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.17 of 2021
and
Crl.MP.No.6079 of 2021

Parasuraman ... Appellant/Accused

Versus

The State Rep. by
The Inspector of Police,
Porur All Women Police Station,
Thiruvannamalai District.
(Crime No.15 of 2015) ... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the order of conviction and sentence passed by the learned Principal District Session Judge, Tiruvannamalai in S.C.No.82 of 2018, dated 20.11.2020 and acquit the appellant.

For Petitioner : Mr.V. Parthiban,
for Mr.E.Sathyaraj.

For Respondent : Mr. Damodharan,
Counsel for Govt. of Tamil Nadu
(Crl.side)

JUDGMENT

In Crl.MP.No. 393 of 2021, petition, seeking suspension of sentence, this court by an order dated at 21.01.2020 not inclined to entertain the suspension of sentence and directed the Registry to prepare the typed set of papers and post it for hearing on 09.03.2021. Thereafter, typed set of papers made ready and it was listed before this Court. Since the appellant is confined in the Jail, both the learned counsel for the appellant and the learned counsel for Government of Tamil Nadu (Crl.side) are ready for taking up the appeal for final hearing. In view of the same, the appeal is being disposed of.

2.The appellant was convicted by the learned Principal District Session Judge, Tiruvannamalai in S.C.No.82 of 2018, dated 20.11.2020, for the offences under Sections 448, 323 of IPC, and sentenced him to undergo Six months Simple Imprisonment along with fine of Rs.500/- in default in payment of fine to undergo One month Simple Imprisonment. Further, he was convicted for the offences under Section 376 of IPC., to undergo Seven years Rigorous Imprisonment along with fine of Rs.1,000/- in default in payment of fine to undergo One year Rigorous Imprisonment. As against the said judgment, the present appeal is filed.

3.The gist of the case is that PW.1 was residing at Kengalamahadevi Village and on 11.08.2015 at about 3.00 p.m, when she was alone in home, the appellant with an intention to commit rape, forcibly entered into the house of the victim and attempted to commit rape. At that time, when victim/PW.1 resisted the same, she sustained injuries on neck, hand and legs. When PW1 attempted to flee from the appellant, he had taken a billhook and threatened her to do away with her life. Further, he had also caused damages to the utensils, which were available at the place and damaged the motor wires and attempted to commit rape. Thereafter, on complaint lodged by the victim, the case came to be registered for the offences under Sections 448, 376 r/w 511, 323, 506 (ii) of IPC., and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman (Amendment) Act, 2002 and Section 3 of the Prevention of Damage to Public Property Act, 1984. On completion of investigation, charge sheet was filed. The trial court examined all witnesses and materials adduced before it, thereafter, convicted the appellant as stated above.

4.In this case, PW.1 is the victim. PW.2 was present in the scene of occurrence but not supported to the case of the prosecution. PWs.3 & 4 are the witnesses to the observation mahazar, they have also not supported the case of the prosecution. Hence, their signature alone was marked. Pws.5 & 6 are the witnesses for the seizure mahazar and these two witnesses have not supported the case of the prosecution and only their signatures have been marked. PW.7, is the son of the victim/PW.1, who is residing in Chennai and the occurrence had been narrated to PW.7 by PW.1 and he is not an eye witness. PW.8, is the utensil merchant, who has given the valuation for the damaged vessels. PW.9 is the casualty Doctor, who had examined the victim/PW.1 on 11.08.2015 and issued the Accident Register/Ex.P6. PW.11, is the Assistant Surgeon, who had given Wound Certificate/Ex.P7. PW.10 is a Woman Constable, who accompanied the victim to the Doctor/PW.11 on 23.08.2015. PW.12 is the Sub-Inspector of Police, who received the complaint and

registered the First Information Report/Ex.P9. PW.13 is the Investigation Officer, who took up the investigation, visited the scene of occurrence, prepared the observation mahazar/Ex.P10, rough sketch/Ex.P11 and seizure mahazar/Ex.P12. Thereafter, seized the material objects 1 to 3 and examined the witnesses present in the scene of occurrence, referred PW.1 to the hospital for treatment on 23.08.2015 along with medical memo. On completion of investigation filed the charge sheet on 28.09.2015 for the offences under Sections 448, 376 r/w 511, 323 and 506(ii) of IPC.

5. In the Trial Court, on the side of the prosecution PW.1 to PW.13 were examined, Ex.P1 to P12 documents were exhibited, and M.Os.1 to 3 have been marked. On the side of the Appellant/accused, no one was examined and no document was marked.

6. The contention of the appellant in this case is that the alleged occurrence is said to have taken place on 11.08.2015 and the complaint was lodged only on 20.08.2015. There is no proper reason given for the delay in lodging the complaint. PW.2, projected as eye witness present in the scene of occurrence, PW.2 not supported the case of the prosecution. Other than the victim/PW.1, there is no other witness for the occurrence. PW.3, PW.4, PW.5 and PW.6 are the witnesses to the Observation Mahazar, Rough sketch and Seizure Mahazar and they have not supported the case of the prosecution. PW.7 is the son of the victim, who was staying at Chennai. On 13.08.2015, the victim, his mother had gone there and informed him about the assault and attempt of the appellant on her. On 20.08.2015, the First Information Report is said to have been registered, based on the complaint given by the victim under Ex.P1. The appellant further submitted that PW.9, the causality Doctor, attached to the Government Hospital, Polur had examined the victim on the date of occurrence at about 9.10 p.m., the victim was accompanied by one Saravanan. The said Saravanan has not been examined. The Accident Register/Ex.P6 shows that only abrasion injuries on the right hand, left leg were found. PW.1 is said to have complained of head-ache and pain on her neck. She further states that she was assaulted with hands and stick. There is no mention about the billhook, which is mentioned in the complaint/Ex.P1. From Ex.P6, and from the evidence of PW.9/Doctor, it is clear that PW.1/victim, had not whispered anything about any sexual attempt of rape. The attempt of rape is clearly an after thought, which is for the first time made only on 20.08.2015. Further, there is delay of 9 days in lodging the complaint and no proper reason given for the delay. The Lower Court failed to look into the same.

7.Further, the appellant submitted that PW.11 is the Assistant Surgeon attached to the Government Hospital, Polur, who states that on 23.08.2015, the victim /PW.1 appeared and was examined, who issued the Wound Certificate/Ex.P7. At that time, the alleged attempt of rape is mentioned. Thus, it is an after thought and improvement which has been made at a later point of time to some how implicate the appellant. On 23.08.2015, PW.11 was accompanied by PW.10, who is a woman constable. PW.12, is the Investigation Officer, who received the complaint and investigated the case after registration of the case. She would given explanation as though CSR.No.235 of 2015 has been received on 13.08.2015, the First Information Report was registered on 20.08.2015 with delay. The said CSR did not produced. PW.7, son of the victim/PW.1, who accompanied by PW.1, clearly states that the complaint was lodged only on 20.08.2015.

8.Further, from the complaint, it is seen that it is well deliberated and detailed one, hence, there is possibility and likelihood of improvement and false implication. Further, he submitted that the Lower Court failed to look into to the material evidence in this case and had failed to advert to the evidence of witness in detail but simply reproduced the deposition of witness of PW.1 and extracts of Ex.P1/complaint in a selective manner. Thereafter, relied on the evidence of PW.7, who is in the nature of hearsay. The Trail Court had mechanically convicted the appellant.

9.The learned counsel for the Government of Tamil Nadu (Crl.side) appearing for the respondent submitted that PW.1 came to the Police Station along with PW.7 and lodged the complaint Ex.P1. The complaint was received and the First Information Report/Ex.P9 was registered by PW.12, thereafter, PW.13, took up investigation, visited the scene of occurrence, prepared observation mahazar, rough sketch, seizure mahazar and seized the articles available in the scene of occurrence, examined the persons present in the scene of occurrence and recorded the statements of witnesses. PW.10 was directed to accompany with PW.1, taken to PW.11/Doctor, who examined the victim and issued the wound certificate, which is marked as Ex.P7, Prior to 23.08.2015, the victim/PW.1 had gone to Government Hospital, Polur on 11.08.2015 at 9.10 p.m., along with one Saravanan. PW.9, the Casualty Medical Doctor examined PW.1 and issued Ex.P7/Accident Register. Since the victim is a Widow, she had gone to Chennai to meet her son on 13.08.2015. Thereafter, come back to Polur to lodge the complaint, that is the reason for delay in lodging the complaint. PW.9 & PW.11 are the Doctors, who examined PW.1 and stated about the injuries sustained.

10. In this case, PW.1/victim had clearly spoken about the overtact of the appellant and had narrated the entire incident in natural manner. PW.2, was present in the scene of occurrence, but he had not supported the case of the prosecution. The evidence of PW.1 is natural and believable, PW.2 not supporting the prosecution case, will not affect the above case. The evidence of PW.1 is natural, inspires confidence. The other witnesses viz., Pws.3, 4, 5 & 6, who are witnesses to the Mahazar, have not supported the case of the prosecution, which is possible for the reason both the appellant and the victim hail from the same Village and are known to them. PW.7 son of the victim clearly corroborates the evidence of PW.1. PW.8, has given the valuation for the damages caused in the victim's house. Pws.10, 12 & 13 are police personnel. PW.13 is the Investigation Officer, who received the First Information Report/Ex.P9, from PW.12, thereafter, took up the investigation, prepared the mahazar, seized the articles and examined the witness. After collecting all the materials, charge sheet was filed before the Lower Court, where PW.1 to PW.13 were examined, Ex.P1 to P12 were marked and M.Os.1 to 3 were also marked. The Lower Court, on considering the evidence and materials on record has rightly convicted the appellant.

11. It is further contended that the offence committed by the appellant is grave in nature. The appellant, knowing that the victim /PW.1 is a widow has been stacking her for quite sometime. The appellant finding that the victim/PW1 was alone, forced into house of PW.1 and attempted to commit rape. The act of the appellant is serious in nature no indulgence to be shown. Hence, he prayed for dismissal of the appeal.

12. Considering the rival submissions and perusal of the materials, it is seen that the appellant and the victim hail from the same Village. The occurrence is said to have taken place on 11.08.2015. The complaint was lodged only on 20.08.2015, which is admitted by PW.7, son of the victim /PW.1. According to PW.7, his mother had come to Chennai on 13.08.2015 at the night hours and informed him about the incident occurred on 11.08.2015. He narrates the entire incident as stated to him by his mother/PW.1. Admittedly, PW.7 is not a witness to the occurrence. He categorically states that only on 20.08.2015 he had gone with PW.1, when the complaint/Ex.P1 was lodged.

13. On perusal of Ex.P1, it is seen that it is a neatly typed complaint in computer. In the complaint, it has been stated that the appellant was in an inebriated condition and knocked the door for asking water. At that time, he attempted to misbehave with PW.1 and PW.1, banged the door on him, he sustained cut injury on his little finger. When PW.1 forced him out and tried to close the door, the appellant said to have taken a billhook

and threatened her to do away with her life. The PW1/victim had taken a stone and threw it on the appellant, which caused injury on his forehead. In her deposition it was stated that one Mohan, /PW.2, was available and he rescued her. In her witness she confirms the same.

14. In this case, the said PW.2/Mohan has not supported the case of the prosecution. The only witness in this case is PW.1, It is to be seen whether the witness of PW1 inspires confidence, can be acted upon without any corroboration. It is seen that in this case, there is delay in lodging the complaint. There is nothing to show when and how the appellant was arrested. It is also not known where was the billhook found or concealed, why it has not been seized, no explanation available.

15. On perusal of Ex.P6/Accident Register dated 11.08.2015, it is recorded that "alleged to assault by named person", known, by hand and stick on 11.08.2015 at 3.00 p.m., near her house. There is nothing mentioned about the billhook. Further, injuries recorded therein are only abrasion on the right hand at 3 x 0.25 cm, 2 x 0.25 cm on left leg. It is also stated that PW1 complained of head-ache, pain on her neck and back. There is no mention of any misbehaviour or outraging the woman's modesty.

16. PW.9, does not mention anything with regard to the outrage of modesty and attempt to commit rape. Thus, at the first instances on 11.08.2015, there is nothing mentioned about the attempt of committing rape. The Complaint was given after 9 days, then only these overtacts are made. The complainant had given a exaggeration version of the alleged incident. The immediate medical record does not mention the same. Further, Ex.P7/wound certificate issued by the Doctor/PW.11, it is seen that there is over writing and insertion of words "alleged to attempt/rape". This causes concern and leads to conviction that the case is exaggerated.

17. The testimony of PW.1/victim in this case is doubtful and it does not inspire confidence of this Court with regard to the above facts. Further, though PW.1 categorically states that the appellant had sustained injuries on his little finger and also on his forehead, no explanation has been given for these injuries. The Investigating Officer is silent with regard to the manner in which the accused was secured and also about the injuries on him. This would only lead to the fact that there is a clear exaggeration and embezzlement, which the Trial Court failed to consider.

18. In view of the same, this Court disbelieve the evidence of PW.1. On these aspects, the prosecution failed to prove the case beyond reasonable doubt against the appellant for the

offence under Sections 376 r/w 511 of IPC. and the appellant acquitted for this charge. With regard to other charge, this Court finds that evidence of PW.1 is sufficient to convict the appellant for the offence under Section 448 and 323 of IPC., Hence, the conviction of the appellant under Section 448 and 323 of IPC., is confirmed.

19.Now, the appellant is left with conviction for the offences under Section 448, 323 of IPC. for which he had been sentenced for Six months Simple Imprisonment. The appellant was convicted on 20.11.2020. during investigation, he had been in confinement for 30 days. Thus, the appellant had already undergone sentence for more than Six months.

20.With the above modification, the appeal is partly allowed. The appellant is directed to be released forthwith, if his custody is not required in connection with any other case. Consequently, the connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To

1.The learned Principal District Session Judge,
Porur, Tiruvannamalai.

2.The Superintendent of Prison,
Central Prison, Vellore.

3.The Inspector of Police,
Porur All Women Police Station,
Thirvannamalai District.

4.The Public Prosecutor,
High Court, Madras.

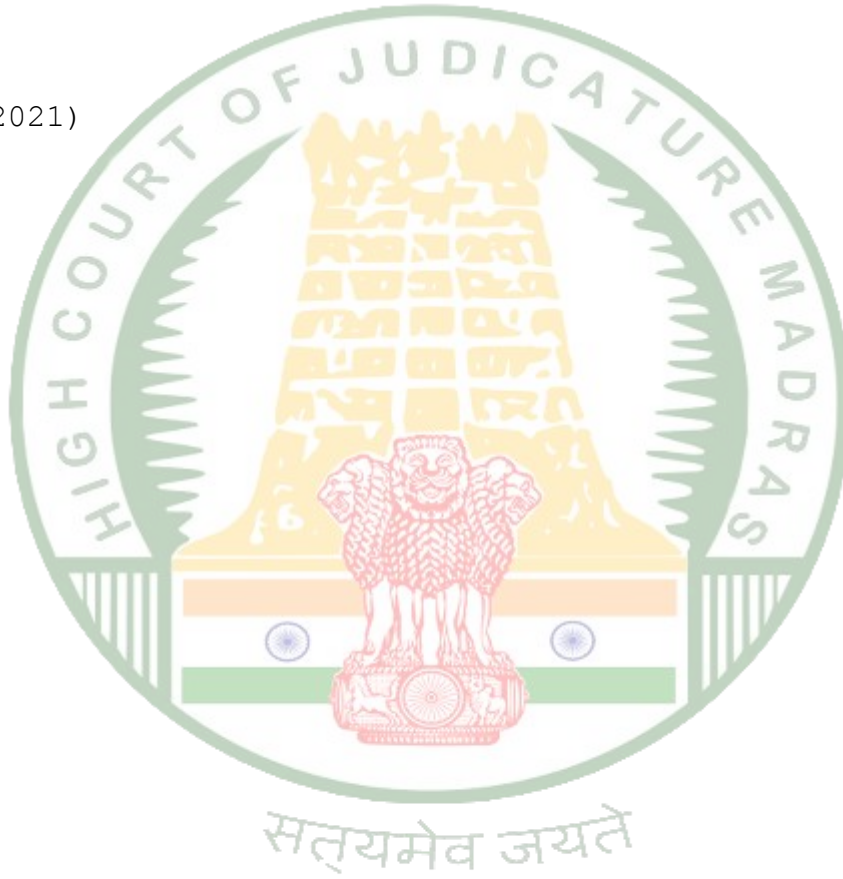
5.The Section Officer
Criminal Section
High Court, Madras 104.

6.The Judicial Magistrate
Porur, Tiruvannamalai District

7.The Director General of Police
Dr. Radhakrishnan Salai
Mylapore, Chennai 4.

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and
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