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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.04.2021

Pronounced on : 23.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Cr1.A.No.246 of 2019

Revathi

.. Appellant/Victim

Vs.

1.State rep by is

The Inspector of Police,
W-35 All Women Police Station-Thambaram
(In crime No: 38 of 2014)
Kanchipuram District.

.. 1st Respondent/Complainant

2.Ayyanraj

.. 2nd Respondent/Accused

PRAYER: This Criminal Appeal is filed under Section 372 of Criminal Procedure Code, to set aside the acquittal of the accused passed by the learned Sessions Judge, Mahila Court of Chengalpattu in S.C.No.108 of 2016 dated 14.03.2019 and convicting the second respondent/accused under Section 376 and 417 of I.P.C.

For Appellant : Mr.P.Kalimuthu

For R1 : Ms.T.P.Savitha
Govt. Advocate (Cr1.Side)

For R2 : Mr.S.Doraisamy

JUDGMENT

This Criminal Appeal has been filed to set aside the acquittal of the accused passed by the learned Sessions Judge, Mahila Court of Chengalpattu in S.C.No.108 of 2016 dated 14.03.2019 and to convict the second respondent/accused.

2. The first respondent/police registered a case against the second respondent in Crime No.38 of 2014 for the offence



punishable under Sections 376 and 417 of Indian Penal Code (herein after referred to as 'IPC' for short).

3. After investigation, laid a charge sheet before the Judicial Magistrate, Tambaram. After completing formalities, the learned Magistrate taken charge sheet on file in PRC.No.22 of 2016 and since the offences are exclusively triable by the Court of Session, the case was committed to the learned Principal District and Sessions Judge, Chengalpattu.

4. The learned Principal District and Sessions Judge, Chengalpattu taken the case on file in S.C.No.108 of 2016 and made over the case to the Sessions Judge, Mahila Court, Chengalpattu, since the offences are against the woman. The learned Sessions Judge, Mahila Court of Chengalpattu, after completing the formalities, framed charges against the second respondent/accused for the offences under Sections 376 and 417 of IPC.

5. In order to prove the case of prosecution, on the side of the prosecution as many as 15 witnesses were examined as PW.1 to PW.15 and 9 documents were marked as Ex.P1 to Ex.P9, besides 3 material objects M.O.1 to M.O.3 were exhibited.

6. After completion of evidence of the prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the second respondent/accused and questioned under Section 313 of Criminal Procedure Code wherein he denied the same as false and pleaded not guilty. On the side of the defence, the second respondent/accused was examined as DW.1 and one document was marked as Ex.R1.

7. The Trial Court after hearing the arguments advanced on either side and also considering the materials available on record, found the second respondent/accused not guilty for the charged offences and he was acquitted by judgment dated 14.03.2019. Challenging the said judgment of acquittal, the victim has filed the present criminal appeal before this Court.

8. The learned counsel for the appellant/victim would submit that on 11.03.2014, accused with an intention to commit sexual assault, had taken the appellant/victim to a secluded place and against her will, committed rape on her, due to which, she became pregnant and begotten a child. During investigation, DNA test was conducted and it reveals that the second respondent/accused is the biological father of the child born to the appellant/victim. Though the learned Trial Judge acquitted the second respondent/accused on the ground that the complaint was belatedly filed, it is settled proposition of law that mere delay in filing complaint is not a ground to acquit the accused.



9. He would further contend that the DNA test report proved that the second respondent/accused is the biological father of the child born to the appellant/victim. The accused was initially known as a friend to the appellant. Subsequently, they loved each other, second respondent made a false promise that he would marry her and against her will, he has committed rape, due to which she got pregnant. When the appellant/victim informed the same to the second respondent/accused, he refused to marry her and asked her to abort the fetus and he also provided medical expenses for abortion. Thereafter, the second respondent informed the appellant that his parents are not agreeing for the marriage and they made an arrangement to get him marry with some other girl. Thereafter, the appellant had filed a complaint against the second respondent/accused. Therefore delay occurred in lodging the complaint has been properly explained by the appellant, which could not be simply thrown away. PW.3/victim has clearly stated that she has not given any consent and the second respondent only taking advantage of the fact that she loves him and all of a sudden, he raped her. The second respondent/accused also made a false promise to marry the appellant/victim and subsequently, he refused to marry her and therefore the appellant/victim made the complaint against the second respondent/victim.

10. Learned counsel for the second respondent/accused would submit that the appellant and the second respondent are known to each other and also relatives and they fell in love with each other and during love affair, he also had intimacy, due to which she got pregnant. The appellant herself filed a petition before the Family Court claiming maintenance against the second respondent/accused and hence it is proved that they are living as husband and wife. Therefore, once she stated that they are living as husband and wife and claiming maintenance, the question of commission of rape would not all arise. Further the appellant is a medical student and she very well knows the consequences of the illegal physical relationship. Therefore, the evidence of the appellant is not trustworthy, since knowing fully well about the consequences of the physical relationship, voluntarily she had sexual intercourse with the accused. Therefore, there cannot be any rape as alleged by the appellant/victim and it is only a consensual sexual relationship.

11. The trial court rightly appreciated the entire evidence and acquitted the second respondent/accused. In order to extract money from the second respondent/accused, the appellant/victim has filed the present appeal. There is no perversity in the judgment of acquittal made by the trial Court and hence the appeal is liable to be dismissed.



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12. Learned Government Advocate (CrI. Side) would submit that on receipt of complaint from the victim, first respondent/police registered a case and filed charge sheet and proved the case beyond all reasonable doubt. However, the Trial Court after going through the materials found that the second respondent has not committed any offence under Sections 376 and 417 IPC as alleged by the appellant/victim and acquitted him.

13. Heard the learned counsel appearing for the appellant/victim and the learned counsel appearing for the second respondent/accused and the learned Government Advocate (CrI.Side) appearing for the first respondent/State and perused the materials available on record and also the judgment of the trial Court.

14. The case of the prosecution is that the appellant and the second respondent loved each other. In the year 2007 the appellant was studying Nursing Course, the second respondent used to come to meet her frequently and they both went to various places. On 11.03.2014, the second respondent called the appellant/victim to meet at Chennai, while he was attending his friend's marriage. Thereafter, he took her to his friend's house and the second respondent made a false promise that he would marry her and against her will, he committed rape, due to which she got pregnant. Thereafter, the second respondent refused to marry her and asked her to abort the child. Subsequently, the second respondent informed the appellant that his parents are not agreeing for the marriage and they made an arrangement to get marry with some other girl. Therefore, the appellant had filed a complaint, which ended in acquittal.

15. This Court, being an Appellate Court, is a final Court of fact finding Court, which has to necessarily re-appreciate the entire evidence and give an independent finding.

16. The Trial Court framed charges against the second respondent for the offence under Sections 376 and 417 IPC. The alleged offence of rape said to have taken place on 11.03.2014 and the appellant/victim made a complaint on 15.04.2014. In order to prove the charges, on the side of prosecution totally 15 witnesses were examined as PW.1 to PW.15 and 9 documents were marked as Ex.P1 to Ex.P9 and 3 material objects were exhibited. On the side of defence, the accused himself was examined as DW.1. The victim was examined as PW.3 and she has deposed that she knows the second respondent even from the year 2007 and the accused used to visit her village and they both went to many places. That being the relationship between the appellant/victim and the second respondent/accused, the allegation of the rape said to have committed by the accused is not acceptable.



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17. Further, it is seen that during the examination, she had clearly admitted that she, being a Nurse and working in hospital, knows the consequences about pre-marital sexual intercourse. In her evidence, she has stated that when he came to Chennai, as requested by him, she went along with the second respondent and he took her to his friend's house during that time he made a false promise and had sexual intercourse with her and subsequently, refused to marry her.

18. The second respondent/accused was examined as RW.1 and he denied the allegation of rape. The fact remains that the appellant has filed a case in D.V.No.16 of 2017 before the Judicial Magistrate, Chengalpattu, in which, she has stated that the second respondent/accused is her husband which clearly shows that the appellant, with an intention to extract money from the second respondent/accused has initiated the above proceedings and also this criminal appeal.

19. Though the appellant has stated that at the time of alleged incident on 11.03.2014, the accused forcibly raped her by tearing her clothes, the fact remains that she did not file any complaint immediately soon after the alleged rape and she gave complaint only after a month, which act creates suspicion on the statement of the appellant/victim. The evidence of the appellant/victim does not inspire confidence of the Court.

20. Even though, the DNA test proved that the second respondent had sexual intercourse with the appellant/victim, whether the second respondent committed forceful rape or with consent of the appellant, has to be decided.

21. A careful reading of the evidence of the victim and her deposition before the Court and the complaint, would go to show that there are contradictions and the same are not cogent and trustworthy.

22. It is well settled proposition of law that while interfering with judgment of acquittal, the Appellate Court must be more cautious and has to see whether there is any compelling circumstances to take a different view. Further, when two views are possible, the view which favours the accused has to be taken into account and benefit of doubt should be extended to the accused. Unless, there are compelling circumstances, an Appellate Court should not interfere with an order of acquittal.

23. In this case, there is no compelling circumstances arise for this Court to take a different view and to interfere with the judgment of acquittal made by the Court below.



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24. Therefore, under these circumstances, this Court does not find any merit in the appeal. Hence, the appeal is liable to be dismissed. Accordingly, the same is dismissed.

Sd/-
Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar

dm/cgi

To

1. The Sessions Judge,
Mahila Court of Chengalpattu.
- 2.-do- through Principal Session Judge, Chengalpattu.
- 3.The Judicial Magistrate, Chengalpattu.
- 4.The Judicial Magistrate, Tambaram.
- 5.-do- through Chief Judicial Magistrate, Chengalpattu,
- 6.The Inspector of Police,
W-35 All Women Police Station-Thambaram,
Kanchipuram District.
- 7.The Public Prosecutor,
High Court, Madras.

Copy to

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

+1CC to M/s.S.Doraisamy, Advocate, SR.No. 42132

Cr1.A.No.246 of 2019

SPD(CO)

B.VC (01/11/2021)