



WEB COPY



Crl.A.No.555 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.11.2022

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.555 of 2018

Selvaraj

... Appellant

Vs

1. The State represented by
Deputy Superintendent of Police,
Salem Rural,
Salem District.

2. The Inspector of Police,
Attayampatti Police Station,
Salem District.
(Cr.No.645 of 2009)

... Respondents

Prayer:- Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the judgment passed on the appellant/accused by the learned Principal Sessions Judge, Salem made in S.C.No.252 of 2015 dated 10.08.2018 and to acquit the appellant.

For Appellant

: Mr.R.Muthu Ramananand
For Mr.NAnand

For Respondents

: Mr.A.Gopinath
Government Advocate (Crl.Side)



Crl.A.No.555 of 2018

WEB COPY

JUDGMENT

This Criminal Appeal is directed as against the judgment dated 10.09.2018 passed in S.C.No.252 of 2015 by the learned Principal Sessions Judge, Salem, thereby convicting the appellant for the offence under Sections 451 and 354 of IPC.

2. The case of the prosecution is that the victim belonged to SC/ST caste and the accused belonged to Most Backward Class community. On 11/12.12.2009 at about 1 hours at Serangorai, Arunthathiyar Colony, Biroji Village, Attayampatti, when the victim was sleeping in her house, the accused trespassed into her house and attempted to commit rape on her. When she made alarm, the accused ran away. On receipt of the complaint, the respondent registered FIR in Crime No.645 of 2009 for the offences punishable under Sections 451, 376, 511, 506(ii) of IPC and Sections 3(1)(x) of the SC/ST (Prevention of Atrocities), Act, 1989. After completion of investigation, the respondent filed final report and the same has been taken cognizance in S.C.No.252 of 2015 by the Court below.

3. In order to bring the charges to home, the prosecution



Crl.A.No.555 of 2018

examined P.W.1 to P.W.12 and marked documents as Ex.P.1 to Ex.P.12.

WEB COPY

On the side of the appellant, no one was examined and no documents were marked. On a perusal of oral and documentary evidences, the trial Court found the appellant's guilty for the offences under Sections 451 and 354 of IPC and sentenced him to undergo two year rigorous imprisonment and a fine of Rs.2,000/- in default to undergo further three months rigorous imprisonment for the offence under Section 451 of IPC and also sentenced him to undergo two years rigorous imprisonment and a fine of Rs.3,000/- in default to undergo further six months rigorous imprisonment for the offence under Section 354 of IPC. Aggrieved by the same, the present appeal.

4. The learned counsel appearing for the appellant submitted that there were contradictions between the evidences of P.W.1 and P.W.6. In fact, P.W.6 is also an interested witness and except P.W.6, no one was examined as against the appellant. Even according to P.W.1, at the time of occurrence her mother-in-law and neighbours came there and rescued her from the accused. That apart, they also chased the accused to catch him. But they are not eye witnesses and all are hearsay witnesses.



Crl.A.No.555 of 2018

WEB COPY

4.1. He further submitted that before investigation made by the respondents Police, there was no order from the superior officers as contemplated under Section SC/ST Act. It is mandatory in nature and it vitiates the entire trial, since the respondent had no experience to examine the case as mandatory under Section 7 of the SC/ST Act. These contradictions are fatal to the case of the prosecution. Originally the case was registered for the offence under Section 354 of IPC. When there was no assault on the victim, no offence is made out under Section 354 of IPC. Further P.W.1 also deposed in her cross-examination that her son also attacked by the accused. However, there was no evidence to show that the son of the victim was attacked by the accused. No doctor was examined to substantiate the same. In fact, the doctor who examined the victim also deposed that, the victim did not sustained any injury due to the occurrence. Ex.P.11 and Ex.P.12 viz., the accident register and medical report revealed that no injury found in her body or private part. Even then, the trial Court mechanically convicted the appellant and prayed to allow this appeal.



Crl.A.No.555 of 2018

WEB COPY

5. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondents/Police submitted that in order to prove the charges, the prosecution examined P.W.1 to P.W.12 and they are corroborated each other. The victim deposed that the accused trespassed into her house and attempted to commit rape on her. The accused also pushed her down and sat on her chest and strangled her. She was went to hospital at about 10.10 p.m., on 12.12.2009 and P.W.12 the doctor examined the victim and recorded the accident register which was marked as Ex.P.11. In the accident register, the victim categorically stated that she was attacked by one known person and he also attempted to commit rape on her. Thereafter, she was examined by P.W.11 and she issued medical report which was marked as Ex.P.12. Therefore, the prosecution categorically proved the case and the trial Court rightly convicted the appellant for the offences under Sections 451 and 354 of IPC. Hence, he prayed to dismiss the appeal.

6. Heard Mr.R.Muthu Ramananand, learned counsel appearing for the appellant and Mr.A.Gopinath, learned Government Advocate (Crl. Side) appearing for the respondents/police.



Crl.A.No.555 of 2018

WEB COPY

7. The case of the prosecution is that on 11/12.12.2009 at about 1 a.m., early morning, when the victim was sleeping in her house, the accused trespassed into her house and attempted to commit rape on her. Therefore, she raised alarm and her father-in-law, mother-in-law and neighbours came to her house and rescued her from the accused. The victim examined as P.W.1 and she deposed that when the accused attempted to commit rape on her, she raised alarm. Immediately her mother-in-law, father-in-law and neighbours came to her house and rescued her from the accused. In fact, the accused also strangled the victim and while strangulating, her 3½ chain also got damaged and she sustained injury on her neck.

8. On a perusal of FIR, which was marked as Ex.P.7, the victim lodged complaint at about 4.00 pm., on 12.12.2009, and there is no explanation for the delay in lodgement of complaint. After lodgement of FIR, she was referred to medical examination. P.W.12 examined the victim at about 10.10 pm., on 12.12.2009 and she recorded accident register which was marked as Ex.P.11. Thereafter, the victim was examined by P.W.11, and she found no injury on her body. The doctor



Crl.A.No.555 of 2018

opined that there was no injury on her vaginal as well as all over the body and there was no evidence in respect of attempt to commit rape on her. She issued medical report which was marked as Ex.P.12.

9. On a perusal of Ex.P.11, accident register, it revealed that no external injury found on her. On perusal of Ex.P.12, medical report also revealed that no external injuries seen, external genitalia normal, vaginal introiturn, admits two fingers loosely. No smear found. There is no opinion in respect of sexual assault. Though, P.W.1 deposed that she sustained injury on her neck, nothing found in the medical report. Further the prosecution had examined her mother-in-law as P.W.6. She deposed that only on hearing the sound from the victim, she went to the place of occurrence and had seen the accused while he was running after the house. She chased him to catch but the accused ran away. Thereafter she heard that the accused attempted to commit rape on her. Whereas, P.W.1 victim deposed that at the time of alleged occurrence P.W.6 and her father-in-law along with neighbours were present. These contradictions are fatal to the case of the prosecution, since it played major role.



Crl.A.No.555 of 2018

WEB COPY

10. According to the prosecution case, the accused entered into the victim house and attempted to commit rape on her. He also pushed her down and sat on her chest and strangled her for which no evidence was produced by the prosecution. It is well settled that where the direct evidence is not supported by the expert evidence then the evidence is wanting in the most material part of the prosecution case and therefore, it would be difficult to convict the accused on the basis of the such evidence. If the evidence of the prosecution witnesses is totally inconsistent with the medical evidence this is a most fundamental defect in the prosecution case and unless this inconsistency is reasonably explained it is sufficient not only to discredit the evidence but the entire case. Therefore this contradiction played major role in this case and it is very difficult to convict the appellant for the offence under Sections 451 & 354 of IPC.

11. That apart, the learned counsel appearing for the appellant vehemently contended that the respondent police failed to obtain any order to investigate the matter. The Investigating Officer was examined as P.W.10 and he deposed that after registration of FIR, he got oral



Crl.A.No.555 of 2018

WEB COPY

instruction from the District Superintendent of Police and went to the place of occurrence and recorded statement from the witnesses and prepared seizure mahazar and other documents. Only on 13.12.2009, he was issued written order by the District Superintendent of Police to investigate the matter.

12. In this regard it is relevant to rely upon the judgment reported in **2019 Cri LJ (NOC 168) 57** in the case of **Sekar and ors Vs. State** in which this Court held as follows :-

“20.The learned counsel for the appellants, inviting my attention to a decision of the Division Bench of the Andhra Pradesh High Court in Viswanadhula Chittibabu vs. State of A.P. (2002 (4) Andhra Law Times Reports 456) would submit that the investigation done by any person, not authorized under Rule 7 of the rules, should be treated as prejudice caused to the accused, since Rule 7 is mandatory and not directory. It is observed in the above Ruling.

21.The Act was enacted in the year 1989, whereas the Rules were framed in the year 1995,



WEB COPY



Crl.A.No.555 of 2018

under section 23 of the said Act. There was a delay of about six years in framing the Rules. It has to be considered why the Government framed this Rule. According to our logic, the Government experienced that the Act is being misused and therefore, felt that under such acts, the investigation has to be done by a responsible Senior Officer and therefore, they chose Deputy Superintendents of Police to make an investigation. This rule does not provide that all the Deputy Superintendents named by the State Government or Director General of Police or Superintendent of Police has to nominate and select Deputy Superintendent with integrity and experience to investigate into such offences, which will prevent the misuse of the Act, and therefore, the provision contained in Rule 7 of the said Rules has to be interpreted as mandatory. In some of the rulings cited, their Lordships held that if there were procedural defects, the trial would not vitiate. The procedure means a procedure which is adopted by the Court. When the investigation has to be done by a Police Officer not below the rank by Deputy Superintendent of Police under Rule 7 of the said rules framed under section 23 of the said act, it has



Crl.A.No.555 of 2018

some meaning. It is not the procedural defect, it is inherent defect in making the investigation and that would vitiate the entire trial.

22.The same view was taken by this Court also in H.Thenmozhi Vs Inspector of Police P.R.Unit, St.Thomas Mount Police Station, Chennai and another (2006) 2 MLJ (Crl.) 463], wherein it is stated that the investigation done by the Inspector of Police vitiates; the entire proceedings and the accused is entitled to an acquittal. In the case involved in the above decision, as seen from the judgment, the investigation has been done by the Inspector of Police and the same has been forwarded to the Deputy Superintendent of Police to investigate the matter further, probably considering the facts, took the view that the same would vitiate the entire proceedings, giving acquittal which should be followed by me also, since I am in conformity with the view expressed by the learned judge.”

It is clear that it is not the procedural defect, it is inherent defect in making the investigation and that would vitiate the entire trial.

13. Without considering the above facts and circumstances, the



Crl.A.No.555 of 2018

WEB COPY

trial Court convicted the appellant and it cannot be sustained as against him. Hence, this Court has no hesitation to interfere with the impugned order passed by the Court below. Accordingly the conviction and sentence imposed on the appellant by the judgment dated 10.09.2018 passed in S.C.No.252 of 2015 by the learned Principal Sessions Judge, Salem, is hereby set aside and he is acquitted from the charge for the offence under Sections 451, 354 of IPC. Fine amount, if any paid, shall be refunded to the appellant forthwith. Bail bonds, if any executed, shall stand cancelled.

14. Accordingly, the Criminal Appeal stands allowed.

16.11.2022

Index:Yes/No

Internet:Yes/No

Speaking/Non-speaking order

rts



Crl.A.No.555 of 2018

To
WEB COPY

1. The Principal Sessions Judge,
Salem
2. The Deputy Superintendent of Police,
Salem Rural,
Salem District.
3. The Inspector of Police,
Attayampatti Police Station,
Salem District.
4. The Public Prosecutor,
Madras High Court,
Chennai.



WEB COPY



Crl.A.No.555 of 2018

G.K.ILANTHIRAIYAN, J.,

rts

Crl.A.No.555 of 2018

16.11.2022