



Crl.A.Nos.667 of 2017 and 417 of 2019
and
Crl.M.P.No.2103 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :17.08.2022

Pronounced on :23.08.2022

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.A.Nos.667 of 2017 and 417 of 2019
and
Crl.M.P.No.2103 of 2020

Crl.A.No.667 of 2017:

P.Selvam

.. Appellant/accused 2

/versus/

The State represented by
The Inspector of Police,
Panamarathupatti Police Station,
Salem District.
(Crime No.109/2012)

.. Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374(2) of the Cr.P.C., to set aside the order of conviction passed by the learned Mahila Judge, Salem in S.C.No.246 of 2013 and S.C.No.122 of 2017 dated 31.08.2017.

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For Petitioner :Mr.T.Murugananthan
For Respondent :Mr.R.Kishore Kumar
Government Advocate (crl.side)

Crl.A.No.417 of 2019:

1.Anandan

2.Gopi .. Appellant/accused 1 & 3

/versus/

The State rep. by
The Inspector of Police,
Panamarathupatti Police Station,
Salem District.
(Crime No.109/2012)

.. Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374(2) of the
Cr.P.C., to set aside the judgment passed in S.C.No.246 of 2013 along with
S.C.No.122 of 2017 dated 31.08.2017 on the file of Mahila Court, Salem.

For Petitioner :Mr.T.Murugananthan
For Respondent :Mr.R.Kishore Kumar
Government Advocate (crl.side)



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COMMON JUDGMENT

The respondent Police registered case in Cr.No.109 of 2012 based on the complaint given by one Poongodi reporting that on 10.07.2012 at about 07.30 p.m., when she came out from her house to attend nature calls, the accused Anandan (A1), Selvam (A2) and Gopi (A3) came in a motor cycle bearing Reg.No.TN 28 Q 1998, Anandan (A1) and Selvam (A2) forcibly took her in the motorcycle to Chakkiliankaradu hill top and Gopi (A3) followed them by walk. Whole night the first accused (Anandan) forcibly raped her repeatedly, while the 2nd accused (Selvam) and the 3rd accused (Gopi) stood guard. On the next day morning at 08.00 a.m., her sister (Prabavathy), her husband (Azhagar) and her cousin (Saravanan) came in search of her. On seeing them, all the three accused ran away. A complaint was given on 11.07.2012 at 10.00 hours and the police registered a case under Sections 366, 376 r/w 109 IPC. On completion of investigation, final report filed before the Judicial Magistrate No.I, Salem and taken on file as



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P.R.C.No.6 of 2013. Before the family Court, Salem on committal in S.C.No.246 of 2013 pending trial, the first accused Anandan absconded. Hence, case against him was spilt up and S.C.No.122 of 2017 was assigned to his case. Subsequently, the first accused (Anandan) was secured and both the cases were clubbed and taken up for trial together and common witnesses examined and common judgment delivered.

2. As against A1 to A3, charge under Section 366 of IPC was framed; as against A1 charge under Section 376(1) of IPC was framed; and as against A2 and A3, charge under Section 376 r/w 109 of IPC was framed. To prove the charges, the prosecution has examined 11 witnesses, marked 19 exhibits and 4 material objects.

3. Taking note of the evidence, the trial Court convicted A1 to A3 for the offence under Section 366 of IPC and sentenced them to undergo 10 years RI and pay a fine of Rs.5000/- each (totally Rs.15,000/-) in default to



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undergo 3 months RI; convicted A1 for the offence under Section 376 of IPC and sentenced him to undergo 7 years RI and pay a fine of Rs.5,000/- in default, to undergo 6 month SI and convicted A2 and A3 for the offence under Section 376 r/w 109 of IPC and sentenced them to undergo 7 years RI and to pay a fine of Rs.5,000/- (Totally Rs.10,000/-), in default, to undergo 6 months SI. The entire fine amount of Rs.30,000/- was ordered to be paid as compensation to the victim girl. The period of substantive sentence was ordered to run concurrently.

4. Being aggrieved by the conviction and sentence, 2nd accused (Selvam) has preferred appeal in Crl.A.No.667 of 2017 and 1st accused (Anandan) and 3rd accused (Gopi) have preferred appeal in Crl.A.No.417 of 2019. Since the appeal is directed against the common judgment, the learned counsel appearing for the appellants submitted arguments in common.



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5. The learned counsel appearing for the appellants submitted that the complaint is born out of previous enmity and the prosecution failed to prove the guilt of the accused beyond doubt. The medical examination of the victim girl does not reveal any sign of intercourse or sexual violence. The delay in lodging complaint is fatal to the case of the prosecution. However, the trial Court has not considered the prejudice caused to the accused persons due to delay.

6. The learned Government Advocate (Crl.Side) representing the State submitted that the victim girl was minor at the time of occurrence. The victim girl who was examined as PW1 had narrated the incident and her evidence proves that the accused person forcibly kidnapped her to hilltop and had repeatedly raped her. The 2nd and 3rd accused had kept watch and the hands of the victim girl was tied while kidnapping her, her mouth was gaged by Selvam (A2) and she was prevented from raising alarm. The



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Doctor who examined the victim girl had deposed that the presence of blood in the private part of the girl was noticed. PW-3 (Eswari) Anty of the minor victim girl had deposed about the missing of minor girl on the previous day night and she along with Mariappan, Babu, Azhagar, Prabavathy and her uncle Periyasamy went in search of PW-1. On the next day, the minor girl was rescued from the accused persons. Therefore, he submitted that the conviction and sentence imposed on these appellants to be confirmed.

7. The learned counsel appearing for the appellants submitted that the testimony of PW-1 is unreliable and in the absence of corroboration, the accused persons should not have been convicted for the grave offence without proper corroboration. The trial Court failed to consider the said submission and the contradiction in the evidence of PW-1. The investigation was based on the complaint given by the victim girl examined as PW-1. In the complaint and in her chief examination, she has deposed



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that she was kidnapped by the accused persons in the two wheeler. While the first accused driving the two wheeler she was made to sit in between the 1st and 2nd accused. The 3rd accused followed them to Chakkiliankaradu hill top. She was taken to hilltop and she was confined there for the whole night. While the first accused raped her, the 2nd and 3rd accused were keeping watch. On the next day, at 8.00 a.m., PW-1's sister (Prabavathy), uncle (Azhagar) and one Saravanan came to the hill top in search of her. On seeing them, the accused persons fled away. To show her date of birth i.e. on 10.04.1995, the school transfer certificate is marked as Ex.P2. She had been treated as a inpatient for 7 days.

8. Per contra, the learned counsel appearing for the appellants pointing out that the prosecution has not examined the persons, who alleged to have come in search of the victim girl on the next day except PW-3, who is an interested witness. PW-3 (Eswari) had not said anything about the accused persons. She admitted that she was on the foot of the hill top and



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what she has deposed about the incident is only hearsay. While PW-1 had not mentioned Mariappan as one of the persons, who came in search of her on the next day, PW-3 has stated that she along with Mariappan, Babu, Azhagar, Prabavathy went in search of the victim girl. The said Mariappan was examined as PW-6, but he had not supported the case of the prosecution and he was treated as hostile witness. PW-1 though studied up to 10th standard, the complaint was not given by her in her handwriting and she is not certain about who wrote the complaint. In the cross examination, she had stated that at about 9.00 a.m, when she along with her aunty (Eswari-PW-3), Prabavathy (not examined), Azhagar (not examined) Ramachandran(PW-4) (turned hostile) and Edison (not examined) went to the police station, she saw the first accused in station. Ramachandran(PW-4) and Edison are witnesses to sketch, observation mahazar and seizure mahazar which are marked as Ex.P3 and Ex.P4. He is also witnesses to the confession statement of Anandan (Ex.P5) and recovery of motor cycle (M.O.4) based on the information given by A1 (Anandan). If the evidence



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of PW-1 has to be believed, when she went to the police station along with Ramachandran and others at about 9.00 a.m., on 11.07.2012, she saw the first accused in the police station. However, in the confession statement of Anandan(A1) in which Ramachandran (PW-4) has signed along with one Edison, the Court finds that the statement was recorded on 11.07.2012 at 15.00 hours and A1 was arrested only at 15.00 hours on that day. Whereas, PW-1 had deposed that the first accused (Anandan) was present in the police station in the morning 9'0 clock when she went to the police station to give the complaint. According to PW-1 evidence, her sister, uncle and cousin Saravanan came in search of her, but none of them were examined by the prosecution. The other persons were examined to say about the incident are Eswari (PW-3) and Mariappan (PW-6). Eswari (PW3) has deposed that she did not climb the hilltop and she remains in the foot of the hill. PW-6 [Mr.Mariappan] turned hostile and he has not stated anything about the incident.



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9. In the said circumstances, the counsel appearing for the appellants submits that the police though collected the call details of the victim girl they did not produce before the Court since it does not incriminating the accused persons and the absence of any sign of violence on medical examination of the victim girl should enure benefit of doubt to the accused.

10. While PW-2 is the mother of the victim girl was cross examined, she had also said that on hearing incident she went to the police station at 1.00 p.m., and she saw the first accused and the second accused in the police station. Her evidence also belies the case of the prosecution that the accused 1 and 2 were arrested only at 03.00 p.m, on that day. According to PW-3 aunty of the victim girl under whose custody the victim girl was living, she came to know that PW-1 is missing on 10.07.2012 itself, but they did not inform the matter to the police immediately, but searched for her in and around her residence the whole night and on the next day at about 08.00



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a.m., she and others went to Chakkiliankaradu hill top.

11. On considering the evidence relied on by the prosecution, it is clear that solely based on the evidence of PW-1, the trial Court has convicted all the three accused. The prosecution had miserably failed to examine Prabavathy, Azhagar and Saravanan, who according to the complainant came to the hilltop and rescued her. The evidence of PW-1 also does not inspire the confidence of this Court to hold her evidence wholly reliable. More particularly, when the case of the prosecution is that A1 and A2 were arrested at 15.00 hours on 11.07.2012, contrarily the prosecution witnesses had deposed that both the accused were present in the police station, much prior to that time. Even according to the complainant, when the sexual assault was committed by the first accused, the other accused A2 and A3 were standing guard. The case of the prosecution is that PW-1 was forcibly kidnapped from her residence in the two wheeler and taken to nearby hilltop and there illegally confined her for the whole night but, there



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was no sign of physical injury or sign of struggle found on medical examination of PW-1. Hence, the prosecution sounds very artificial.

12. This Court considering the fact that though sole evidence of victim girl can be sufficient in case of sexual assault, there must be some corroboration to her evidence. In this case, unfortunately, the prosecution has not examined Prabavathy, Azhagar and Saravanan. PW-3 [Eswari] and PW-6 [Mariappan] who are examined to corroborate the case of PW-1, have not supported the case of the prosecution.

13. In the said circumstances, though gravity of evidence is severe, punishing a person without proof beyond doubt will be a miscarriage of justice. In this case, this Court finds that there is no sufficient proof to hold that the accused persons were guilty. The trial Court had heavily relied on by the evidence of the victim girl, but when her evidence is not even probablised by examining her sister and sister's husband and one Saravanan



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who according to PW-1 came and rescued her from chakkiliankaradu hill top. The case of the prosecution fails.

14. In the result, these Criminal Appeals are allowed. The common judgment of conviction and sentence passed by the learned Mahila Judge, Salem in S.C.No.246 of 2013 and S.C.No.122 of 2017 dated 31.08.2017 is set aside. Fine amount, if any paid by the appellants shall be refunded to them. Bail bond, if any executed by the appellants shall stand cancelled. The appellants are set at liberty. If the appellants are in prison, they may be released forthwith, if they are not connected with any other case. Consequently, connected Miscellaneous Petition is closed.

23.08.2022

Index:yes/no
speaking order/non speaking order
ari

To :

- 1.The Mahila Court, Salem.
- 2.The Inspector of Police, Panamarathupatti Police Station, Salem District.
- 3.The Public Prosecutor, High Court, Madras.

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DR.G.JAYACHANDRAN,J.

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Delivery Common Order made in
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