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Crl.A.No.756 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2023

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Criminal Appeal No.756 of 2017

1. Manikandan
S/o Ramasamy

2. Dhanalakshmi
W/o Ramasamy

.. Appellants

-vs-

State by Inspector of Police
Tholasampatty Police Station
(Crime No.88 of 2011)

.. Respondent

Memorandum of Grounds of Criminal Appeal under Section 374(2) of the Code of Criminal Procedure against the judgment dated 20.11.2017 passed in S.C.No.287 of 2013 on the file of the learned Sessions Judge, Mahila Court, Salem.

For Appellants :: Mr.R.Rajarathinam
Senior Counsel for Mr.M.Rajan

For Respondent :: Mr.A.Gokulakrishnan
Additional Public Prosecutor

JUDGMENT

The appellants, who were tried as Accused Nos.1 & 2 in S.C.No.287 of 2013 on the file of the learned Sessions Judge, Magalir Needhimandram,



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Salem, stand convicted for the offences and sentenced to undergo

imprisonment, vide the judgment dated 20.11.2017 passed by the trial

Court, as detailed below:-

<i>Rank of the Accused</i>	<i>Conviction under Section</i>	<i>Sentence imposed</i>
A-1	376 r/w 511 of IPC	To undergo 3 ½ years rigorous imprisonment and to pay a fine of Rs.10,000/-, i/d to undergo 6 months simple imprisonment
	323 of IPC	To undergo 1 year simple imprisonment and to pay a fine of Rs.1000/-, i/d to undergo 1 month simple imprisonment (Both the sentences were ordered to run consecutively)
A-2	324 of IPC	To undergo 3 years rigorous imprisonment and to pay a fine of Rs.2000/-, i/d to undergo 3 months simple imprisonment

Challenging the above conviction and sentence, the appellants have preferred this criminal appeal.

2. It is the case of the prosecution that on 29.03.2011, while the victim went out of the house at 8.00 P.M., to attend nature's call, the first appellant followed her, hugged her and pushed her down and also sat on her and attempted to commit rape by removing her nighty and thereafter, the second appellant, the mother of the first appellant, brought a wooden log



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and attacked the victim on the knees and caused injury to the victim and that the victim shouted for help and P.W.3 and P.W.5, the relatives of the victim, came out and on seeing them, the appellants fled from the scene.

3. It is the further case of the prosecution that after the occurrence, the victim became unconscious and only on 31.03.2011, the victim regained consciousness and thereafter she lodged the complaint, Ex.P1 on 31.03.2011, which was registered in Crime No.88 of 2011 by the respondent for the offence under Section 376 read with 511, 307, & 324 IPC. The First Information Report was marked as Ex.P5. The First Information Report was registered by P.W.9, Sub Inspector of Police attached to the respondent police station. On receipt of the First Information Report, P.W.10, Inspector of Police took up investigation and examined the witnesses, went to the scene of occurrence and prepared Observation Mahazar, Ex.P2 and drew a rough sketch, Ex.P6. On 31.03.2011, P.W.10 arrested the accused at his residence. Thereafter, he examined the other witnesses and handed over investigation to P.W.11, who completed the investigation and laid the final report for the offence under Sections 376 r/w 511, 307 and 324 IPC on 07.02.2012 before the learned Judicial Magistrate, Omalur.



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4. The accused were furnished with the copies under Section 207 Cr.P.C., and the case was committed to the file of the learned Sessions Judge, Magalir Needhimandram, Salem.

5. The trial Court framed two charges against the first appellant, namely, charge under Section 376 r/w 511 and Section 307 IPC. As against the second appellant, charge under Section 324 IPC was framed. The prosecution examined witnesses, P.Ws.1 to 11 and marked exhibits, P1 to P6 to prove their case. The appellants examined D.W.1 on their side and did not mark any document. The trial Court, after considering the oral and documentary evidence, held that the first appellant was guilty of the offence under Section 376 r/w 511 and Section 323 IPC and that the second appellant was guilty of the offence under Section 324 IPC and sentenced them to undergo the imprisonment as stated above. The trial Court, however, acquitted the first appellant of the charge under Section 307 IPC.

6. Mr.R.Rajaratnam, learned Senior Counsel appearing for the appellants submitted that the evidence of the victim and the other witnesses do not inspire confidence. It is the version of P.W.1, the victim that she fell



unconscious after the occurrence on 29.03.2011, which is contradicted by

P.W.2 and the other witnesses, namely, P.Ws.3 to 5, who are said to have gone, on hearing the cry of the victim, to the place of occurrence. It is further contradicted by the evidence of P.W.8, the doctor, who had issued the accident register, Ex.P3 and the wound certificate, Ex.P4 after examining the victim at the Government General Hospital at Salem. The learned Senior Counsel submitted that there is also evidence to show that P.Ws.1 to 7 are closely related to each other and they had a property dispute with the family of the appellants and that is the reason why the victim was forced to give this false statement two days after the occurrence and the reason for the delay is artificial and cannot be accepted. The learned Senior Counsel further contended that if A1 had intended to commit rape on the victim, there was no necessity to do it in the presence of his own mother, A2 and that the version, therefore, is not only self-contradictory, but highly improbable. The learned Senior Counsel, therefore, pointed out the portions of the evidence in support of the aforesaid submissions.

7. The learned Additional Public Prosecutor, per contra, submitted that the prosecution had established its case beyond reasonable doubt.

P.W.3 and P.W.5 have both stated that on hearing the victim's shout for help,



they went to the scene of occurrence and saw both A1 & A2 running away from the scene of occurrence. The delay in the instant case is not fatal to the prosecution case and there is no reason for the victim to make a false statement against the first appellant with regard to the attempt to rape and the assault committed by the second appellant. The learned Additional Public Prosecutor further pointed out the evidence of P.W.2, the husband of the victim, who had deposed that the victim had told him that she was going out to attend nature's call and when he went in search of the victim, the victim told about the occurrence and therefore submitted there is no reason to interfere in the judgment of the trial Court convicting the appellants.

8. On perusal of the records, this Court finds that P.Ws.1 to 7 and the appellants are close relatives. The occurrence is said to have taken place on 29.03.2011 and the complaint was lodged by P.W.1 on 31.03.2011. Though delay by itself is not a ground to reject the prosecution case, this Court finds, in the instant case, the reason for the delay given by P.W.1 is unbelievable. P.W.1 would state that she became unconscious immediately after the occurrence and she regained consciousness only in the hospital on 31.03.2011. P.W.2, the husband of P.W.1 himself contradicts this version of P.W.1. P.W.2 had stated that immediately after the occurrence, he enquired



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with P.W.1 and she told about the alleged occurrence to him. P.W.3 and P.W.5, the other witnesses who went to the scene of occurrence, also would state that the victim was conscious and had narrated the details of the occurrence to both of them. Therefore, this Court is of the view that the delay in the instant case is definitely a reason to suspect the version of the victim, P.W.1 and the other witnesses.

9. Be that as it may, this Court finds that P.W.8, the doctor, who examined P.W.1 and issued the accident register (Ex.P3) and wound certificate, had stated in clear terms that when the victim was brought to the hospital on 30.03.2011 i.e., one day after the occurrence, she was conscious and she had sustained only simple injuries. This evidence, therefore, makes the version of P.W.1 as regards the cause for delay, false. This Court also finds that though P.W.2, P.W.3 and P.W.5 were aware of the alleged occurrence even as early as on 29.03.2011, there is no reason why they had not lodged any complaint to the police. Though P.W.3 would state that he has informed the police immediately after the occurrence, admits in his cross examination that he was not aware as to who gave the complaint to the police. P.W.1 further in her deposition would state that she was taken to the hospital on the day of occurrence in a police jeep. All the above facts



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would reveal that the prosecution has suppressed the genesis and origin of the occurrence.

10. It is trite law that where the genesis and origin of the occurrence is suppressed, the entire fabric of the prosecution case would collapse. In this regard, it would be useful to refer to the observation of the Hon'ble Supreme Court, in *Marudanal Augusti v. State of Kerala*, (1980) 4 SCC 425, as follows:-

“...The High Court seems to have overlooked the fact that the entire fabric of the prosecution case would collapse if the F.I.R is held to be fabricated or brought into existence long after the occurrence and any number of witnesses could be added without there being anything to check the authenticity of their evidence....”

11. Further this Court finds that in Ex.P3, the accident register, the doctor has recorded that the victim was assaulted by two known persons by hands. This is contrary to P.W.1's version that there was an attempt to rape her.

12. In view of the above, this Court is of the view that it is highly



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unsafe to hold the appellants guilty of the offence charged against them on the basis of the evidence of P.W.1 and the other witnesses. It is also seen that P.Ws.1 to 7 and the family of the appellants had a property dispute, which is spoken to by D.W.1. Therefore, the aspect of false implication cannot be ruled out.

13. Hence, for the aforesaid reasons, this Court finds that the judgment of conviction rendered by the trial Court is liable to be set aside. Accordingly, the judgment of the trial Court is set aside and the appeal stands allowed acquitting the appellants of all the charges framed against them. Fine amount paid by the appellants is ordered to be refunded to them. Bail bonds executed by the appellants shall stand discharged.

Index : yes/no

Neutral Citation : yes/no

07.12.2023

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To

1. The Sessions Judge, Magalir Needhimandram, Salem
2. The Judicial Magistrate, Omalur
3. The Inspector of Police, Tholasampatty Police Station, Salem District
4. The Public Prosecutor, High Court, Madras



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SUNDER MOHAN, J.

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