



CRL.A(MD).No.85 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.12.2023
Pronounced on : 09.01.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.A(MD)No.85 of 2022

The Inspector of Police,
Uppliyapuram Police Station,
Trichy District.
(Crime No.301 of 2017)

State rep. by
The Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

... Appellant/Complainant

Vs.

Manikandan

... Respondent/Accused

Prayer: This Criminal Appeal is filed under Section 378 (1) (a) (b) of Cr.P.C. to call for the records and set aside the acquittal rendered in Judgment dated 29.10.2020 made in Spl.S.C.No.26 of 2018 on the file of the learned Sessions Judge, Mahila Court, Tiruchirappalli.

For Appellant : Mr.T.Senthil Kumar
Additional Public Prosecutor

For Respondent : Mr.P.Arun Jayatram



CRL.A(MD).No.85 of 2022

WEB COPY

JUDGMENT

The State preferred this criminal appeal against the acquittal judgment dated 29.10.2020 passed in Spl.S.C.No.26 of 2018.

2. The victim is the daughter of PW1. She was kidnapped by the respondent on 22.12.2017 at 3.00 a.m, and he had committed aggravated penetrative sexual assault on her and thereafter he dropped her in her house. Therefore, the appellant police registered a case in Crime No.301 of 2017 for the alleged offence under Sections 366 @ 366A IPC r/w 5 and 6 of POCSO Act, 2012. The investigating Officer conducted investigation and filed the final report before the learned Special Judge. The learned Special Judge summoned the accused and served the copies under Section 207 Cr.P.C and framed charges and questioned the respondent. The respondent denied the charges and pleaded not guilty and he stood for trial.

3. To prove the charges, the prosecution examined PW.1 to PW.18 and marked the Ex.P1 to Ex.P16. During the course of the trial, the victim



CRL.A(MD).No.85 of 2022

girl was dead and hence, she was not examined. The learned trial Judge questioned the accused on the basis of the material adduced by the prosecution under Section 313 Cr.P.C and the respondent/accused denied the same as false and he did not examine any witness on his side to prove the case.

4. The learned trial Judge, after considering the evidence, acquitted the respondent from all the charges. The learned trial Judge specifically held that in the absence of the statement of the victim girl, the conviction on the basis of the circumstantial evidence is not sustainable. There was no evidence to prove the aggravated penetrative sexual assault committed by the appellant. In the said circumstances, the learned trial Judge acquitted the respondent. Challenging the same, the State preferred this criminal appeal.

5. The learned Additional Public Prosecutor submitted that the victim girl gave the 164 Cr.P.C statement and the same was admissible under the Evidence Act to convict the respondent for the above said alleged offence. The same was not properly considered by the learned trial



CRL.A(MD).No.85 of 2022

WEB COPY

Judge. The learned Additional Public Prosecutor further submitted that the victim girl immediately disclosed the factum of the aggravated penetrative sexual assault committed by the respondent to the PW.1, who is none other than her father and PW2. In the said circumstances, the above evidence is admissible under Section 6 of the Evidence Act and hence, the prosecution clearly proved the case beyond reasonable doubt. Once sufficient evidence is available that the appellant kidnapped the victim girl and committed aggravated penetrative sexual assault, the presumption under the Act comes and the respondent did not produce any evidence to rebut the same and hence, the judgement passed by the learned trial Judge is liable to be set aside and the proper conviction and sentence could be imposed upon the respondent.

6. The learned counsel Mr.P.Arun Jayatram, appearing for the respondent/accused submitted that there was no evidence to prove the charge of aggravated penetrative sexual assault committed by the respondent on the deceased victim girl. Further, the medical evidence also not collaborated the prosecution case. The Doctor did not find any injury on the body of the victim girl. The 164 Cr.P.C statement of the victim girl



CRL.A(MD).No.85 of 2022

is not admissible without their evidence. Hence, the learned trial Judge correctly acquitted the accused on the ground that in the absence of the victim girl's evidence for the grave charge of aggravated penetrative sexual assault the offence under Section 366 IPC is not made out. He further submitted that the offence under Section 366 IPC is not made out on the ground of the finding of the learned trial Judge that the prosecution failed to prove the marriage between the victim girl and the respondent. There was no evidence against the respondent that he committed aggravated penetrative sexual assault. In the said circumstances, there was no reason to interfere in the order passed by the learned trial Judge.

7. This Court has considered the rival submissions made by either side and perused the records and also the impugned judgement passed by the learned trial Judge.

8. The prosecution case is that and there was a love affair between the respondent and the deceased victim girl. At the time of the occurrence, the deceased victim girl was more than 17 years. The victim girl was kidnapped by the respondent on 22.12.2017 at 3.00 a.m. He is said to have



CRL.A(MD).No.85 of 2022

taken the victim girl to Coimbatore, Namakkal and other places. He is said to have married the victim girl and committed the offence of the aggravated penetrative sexual assault. Thereafter, the respondent dropped the victim girl in her house. The victim girl disclosed the above facts. In the meantime, on 22.12.2017, PW.1 also gave the complaint to the jurisdictional police. The appellant police thereafter continued the investigation by arresting the respondent and completed investigation and filed the final report for the offence under Sections 366 @ 366A IPC r/w 5 and 6 of POCSO Act, 2012. The victim girl gave the 164 Cr.P.C statement before the jurisdictional Magistrate and the same was not marked. The available evidence of PW1 is that he was informed by the deceased about the kidnapping and the aggravated penetrative sexual assault. In the absence of the victim girl, the evidence of PW.1 is not admissible. Further, in this case, even the 164 Cr.P.C statement also not marked by the prosecution. In the said circumstances, the available evidence on the side of the prosecution is the evidence of PW.1 and the medical evidence. The PW.1's evidence is not corroborated with the evidence of the medical expert. The Doctor, who examined the victim girl did not depose before the Court about any trace of the aggravated penetrative sexual assault. In



CRL.A(MD).No.85 of 2022

the said circumstances, in the absence of the evidence of the victim girl, the conviction for the grave offence of aggravated penetrative sexual assault under Section 6 of the POCSO Act is not made out against the respondent.

9. It is relevant to extract the guidelines issued by the Hon'ble Supreme Court to deal with the appeal against acquittal. While dealing with the appeal against acquittal, this Court is required to bear in mind the guidelines issued by the Hon'ble Supreme Court in the following decisions:

9.(i)(a). In *Sheo Swarup v. King Emperor* [*Sheo Swarup v. King Emperor*, reported in *1934 SCC OnLine PC 42* the Privy Council observed as under: (SCC Online PC: IA p. 404)

'... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.'



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9(ii)(b). In *Chandrappa v. State of Karnataka* [*Chandrappa v.*

State of Karnataka, reported in (2007) 4 SCC 415 the Hon'ble Supreme

Court framed the following guidelines as under: (SCC p. 432, para 42)

'(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further



reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.'

9.(iii)(c). Doshi case [Ramesh Babulal Doshi v. State of Gujarat,

reported in (1996) 9 SCC 225 the Hon'ble Supreme Court held as follows:

“first recording its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered a well-considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal? We think, not. In our view, in such a case, the approach of the court which is considering the validity of the judgment of an appellate court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the



CRL.A(MD).No.85 of 2022

order of acquittal was not justified; then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand.”

9.(iii)(d). In **Babu [Babu v.State of Kerala**, reported in (2010) 9 SCC 189), the Hon'ble Supreme Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 CrPC. In paras 12 to 19, it is observed and held as under: (SCC pp. 196-99)

“12. This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court.”

9(iii)(e). In **State of Rajasthan v. Naresh [State of Rajasthan v. Naresh**, reported in (2009) 9 SCC 368 : (2009) 3 SCC (Cri) 1069], the



CRL.A(MD).No.85 of 2022

Hon'ble Supreme Court again examined the earlier judgments of the Hon'ble Supreme Court and laid down that: (SCC p. 374, para 20)

'20. ... An order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused.'

10. Applying the above principle, this Court finds no ground to interfere in the judgment of acquittal passed by the learned trial Judge. In this case, the victim's evidence is not available. Even in the absence of the evidence of the victim girl, conviction can be sustained provided that the prosecution witnesses are trustworthy and they are reliable. In this case, PW.1 stated that the deceased died on 26.01.2018. She disclosed the fact that she entered into love marriage with the respondent and on the date of the marriage, she was under 18 years. After that, she had sexual relationship with the respondent. The said information is hearsay evidence. In the absence of the evidence of the victim girl, the said hearsay evidence is not admissible. Hence, without any evidence to prove the prosecution case beyond reasonable doubt, this Court does not find any merit in this appeal and hence, this Court concurs with the finding of the learned trial Judge in acquitting the respondent.



CRL.A(MD).No.85 of 2022

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11. In the result, this Criminal Appeal stands dismissed.

09.01.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Sessions Judge,
Mahila Court,
Tiruchirappalli.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
3. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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CRL.A(MD).No.85 of 2022

K.K.RAMAKRISHNAN,J.

PJL

Pre delivery Judgment made in
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09.01.2024