

Ratheesh Vs. State of Kerala

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Court : Kerala

Decided On : Jul-26-2013

Judge : Honourable Mr.Justice P.Bhavadasan

Appellant : Ratheesh

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.BHAVADASAN FRIDAY, THE 26TH DAY OF JULY 2013 4TH SRAVANA, 1935 CRL.A.No. 477 of 2008 (D) ----- SC.NO.161/2007 OF ADDL. SESSIONS COURT (SPECIAL COURT), NDPS ACT CASES, THODUPUZHA ----- APPELLANT/ACCUSED : ----- RATHEESH, S/O. VIJAYAN, KANAGATTU HOUSE, BAISONVALLEY KARA, BAISONVALLEY VILLAGE. BY ADVS.SRI.P.VIJAYA BHANU SRI.M.REVIKRISHNAN RESPONDENT/COMPLAINANT : ----- STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SRI. ROY THOMAS THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 26-07-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Mn P.BHAVADASAN, J.

----- Crl. Appeal No.477 OF 200.------ Dated this the 26th day of July, 2013.

JUDGMENT

The accused who was prosecuted for the offence punishable under Section 376 of Indian Penal Code was found guilty of the said offence and was therefore convicted and sentenced to suffer rigorous imprisonment for a period of seven years and to pay a fine of Rs.15,000/- with default clause of simple imprisonment for six months. Set off as per law was allowed.

2. PW1 is the victim in this case. She and the accused are related to each other. According to the allegations, the victim was unemployed and she had studied up to S.S.L.C. She used to stay with her brother and sister-in-law. She became acquainted with the accused and that she used to talk to him. On 14.01.2005, when the brother and sister-in-law of PW1 were not at home, at about 8.30 p.m, while she was reading a book, she heard a knock at the door and someone called her " " and the person who knocked at the door wanted water to drink. Crl. Appeal No.477/2008 2 She opened the door and gave a glass of water to him. After drinking the water, it is alleged that he caught hold of the hands of the victim and forced her into the room. Though she asked him to release her, he did not yield. He used force on her and made her lie on a cot and thereafter ravished her. She was threatened with dire consequences in case she revealed the incident to anybody. He also threatened that he will commit suicide if she made the matter public. Further allegation is that he promised to marry her within six months. Because of the threat meted out by the accused, she did not reveal the incident to anybody. As per the allegations, the act was repeated on several occasions and it is claimed that there was a doubt that PW1 had become pregnant and the accused had given her some tablets. On each occasion, it is claimed that when asked, the accused promised that he would marry her and he continued to exploit her. Finally, on a day, he told that since she had aborted the pregnancy, he could not marry her. Therefore, she laid Ext.P1 First Information Statement.

3. PW10 recorded the First Information Statement and Crl. Appeal No.477/2008 3 registered a crime as per Ext.P9 First Information Report. He had PW1 sent for medical examination and PW4 examined the victim and furnished Ext.P3 certificate. Further investigation was conducted by PW11. He prepared the scene

mahazar, recorded the statement of witnesses, completed the investigation and laid charge before court after arresting the accused.

4. The court before which final report was laid took cognizance of the offence and on finding that the offence is exclusively triable by a Court of Sessions, the case was committed to Sessions Court, Thodupuzha under Section 209 Cr.P.C. The said court made over the case to Additional Sessions Court for N.D.P.S Act cases, Thodupuzha for trial and disposal. The latter court, on receipt of records, framed charge for the offence punishable under Section 376 IPC. To the charge, the accused pleaded not guilty and claimed to be tried. The prosecution therefore had PWs 1 to 11 examined and Exts.P1 to P12 marked. The defence had Exts.D1 series and D2 series marked.

5. After the close of the prosecution evidence, the accused Crl. Appeal No.477/2008 4 was questioned under Section 313 Cr.P.C. He denied all the incriminating circumstances brought out in evidence against him and maintained that he is innocent. He also pointed out that the victim and he were in love for three years and the victim had written several letters to him. There was a proposal for marriage and on enquiry, as it was found that PW1 did not have a commendable character, the marriage did not come through. As a vengeance, a false complaint has been laid.

6. On finding that the accused could not be acquitted under Section 232 Cr.P.C, he was asked to enter on his defence. But he chose to adduce no evidence.

7. On appreciation of the evidence in the case, the court below came to the conclusion that the evidence of PW1 is sufficient to show that the offence had been made out and accordingly found the accused guilty. The conviction and sentence as already mentioned followed. The said conviction and sentence are assailed in this appeal.

8. Learned counsel appearing for the appellant assailed the findings of the court below mainly on the ground that the court Crl. Appeal No.477/2008 5 below has not taken note of the significance of Ext.D1 series of letters which does not support the claim made by PW1 that she was forcibly sexually assaulted. Ext.D1

series of letters tell the tale and they are self explanatory. It is clear from a reading of Ext.D1 series, which is admitted by PW1 in her cross examination as those written by her to the accused, that if at all there were any physical contacts, they were with consent and at the instigation of the victim. There is nothing in those documents to show that at any point of time the accused had forcibly subjected the victim to sexual assault. May be that, according to the learned counsel, there was proposal for marriage and it might have fallen through and that must have prompted the victim to foist a case on the accused. Merely because, the victim says that she has been ravished, though it may not be disbelieved at the first instance, when evidence is adduced in the case, it has to be scrutinized in the light of the evidence available in the case. If the evidence of the prosecutrix is found to be convincing and cogent, it can be acted upon. But when it is shown that she cannot be relied on by virtue of inherent improbability of the case Crl. Appeal No.477/2008 6 or by other items of evidence adduced by the defence or by the prosecution, the court has to necessarily look for corroboration. According to the learned counsel, in the case on hand, Ext.D1 series of letters and Ext.D2 series of statements would clearly show that the claim of rape made by PW1 is absolutely false. Her evidence regarding forced sexual assault cannot be believed when there is no other evidence to show that she was sexually assaulted. The court below has mechanically acted on the evidence of PW1 without having ascertained whether her statement in chief examination stands scrutiny either on the basis of the answers given in the cross examination or on the basis of Ext.D1 series of letters. Learned counsel, therefore, contended that the conviction and sentence cannot be sustained.

9. Learned Public Prosecutor, on the other hand, pointed out that there is no reason to disbelieve PW1 and there is evidence to show that there was a proposal of the accused marrying the victim. Learned Public Prosecutor also invited attention of this Court to the statement given by the accused at the time of being questioned under Section 313 Cr.P.C and that, Crl. Appeal No.477/2008 7 according to the learned Public Prosecutor, will show the complicity of the accused. There is no reason or justification, according to the learned Public Prosecutor, to disbelieve PW1 when she says that on 14.01.2005, she was ravished by the accused. She has also stated that she was threatened with dire

consequences and threat was also meted out that if the incident was revealed to anybody, the accused would commit suicide. Ultimately a situation arose when she could not hide the acts of the accused, she revealed the incident to her parents and it is also pointed out that the evidence shows that the father of the victim namely, PW2 had preferred a complaint. The cumulative effect of the above items of evidence, according to the learned Public Prosecutor, is that the claim of PW1 that she was ravished stands established.

10. One fact is clear from the evidence that there was close acquaintance between the accused and the victim. That relationship continued for over three years. The evidence of PW1 is to the effect that on 14.01.2005, while her brother and sister-in-law had gone elsewhere, in the night, the accused came to the Crl. Appeal No.477/2008 8 place where PW1 was residing and knocked at the door and asked for water. She gave water to him and then he is said to have forced himself into the room and forcibly laid the victim on the cot and raped her. She would also say that he threatened her with dire consequences if she revealed the incident to anybody. Further statement of PW1 is to the effect that he continued to exploit her threatening her continuously. PW1 would further say that he had promised to marry her which she bonafide believed. She also says that whenever there was repeated promise to marry her, she was forced to do sexual intercourse at the instance of the accused. Finally, PW1 says that at the instance of the accused, the suspected pregnancy was aborted. Later when the victim asked whether the accused would marry her, he is said to have told that since she was aborted, he is not willing to marry her.

11. As is usual case, the evidence regarding the incident is confined to the testimony of PW1. Of course, there is some evidence to show that there was close relationship between the victim and the accused and the SNDP branch in the concerned Crl. Appeal No.477/2008 9 place had intervened in the matter. The question is whether the evidence of PW1 is convincing and cogent enough and is sufficient to come to the conclusion that the acts committed by the accused were against her will or consent. In this context, Ext.D1 series of letters assumes considerable importance. A reading of those letters would show that she had considerable affinity towards the accused and that she had taken upper hand on

most of the occasion for the sexual contact. She, at the time of examination, comes forward with a case that affection and love developed after the first incident and that she was raped on the first occasion. Considering the tenure of Ext.D1 series, it is difficult to accept the statement of PW1. The way in which the accused is addressed, the statements contained in Ext.D1 series of letters which, as already stated, are admitted by PW1 to be in her own handwriting and also the tenure of the letters clearly indicate that if at all there was any physical contact, it was a consensual act.

12. There is considerable difficulty in accepting the claim made by the victim that she was forcibly sexually assaulted in CrI. Appeal No.477/2008 in view of Ext.D1 series of letters. Further, Ext.D2 series of documents also would considerably weaken the evidence of PW1. She had approached the SNDP branch and there she had no case that the accused had ravished her at any point of time.

13. Therefore, it is clear that the version given by PW1 in chief examination about the forced sexual assault committed by the accused cannot be readily accepted. The letters written in her own handwriting would belie her version. In fact, learned counsel for the appellant read one of those letters wherein she was fully aware of the fact that the marriage between them was a difficult one and still she carried on the relationship. Even assuming that there was possibility of marriage, that by itself is not a ground to come to the conclusion that she was sexually assaulted on that basis in the light of the tenure of Ext.D1 series of letters. There seems to be considerable force in the submission made by the learned counsel for the appellant that for some reason or other, the marriage had fallen through and that might have disappointed PW1, which had persuaded her to come with a false allegation. CrI. Appeal No.477/200

14. PW2 is the father of the victim. His evidence as regards the incident is confined to what is told to him by PW1. Though PWs 1 and 2 say that they had filed complaints, there is no evidence regarding that. The first complaint that is filed before the Police is the First Information Statement. True, the evidence of PW1 in chief examination is in consensus with the statement in Ext.P1. But, that by itself is not sufficient to prove the offence since in the cross examination she

has admitted that Ext.D1 series of letters are written by her. The contents of those letters belie the claim made by PW1 and it is not safe to accept her version that she was forcibly sexually assaulted by the accused.

15. The medical evidence, of course, shows that she had sexual intercourse. But that is not a ground to come to the conclusion that there was forced sexual assault. Even, as admitted by PW1, they had physical relationship on several occasions though she characterises most of them as forced sexual assault. This claim, as already noticed, cannot be accepted in view of Ext.D1 series of letters. Crl. Appeal No.477/200

16. This is not a case where the evidence of the prosecutrix can be treated to be one which inspires confidence in the mind of court and allows the court to base a conviction solely on her testimony. There is plenty of materials adduced by the defence to show that physical contact if at all any was with the consent of the victim.

17. For the above reasons, this Court is unable to accept the finding of the court below that the accused has committed the offence of rape. The conviction and sentence cannot stand. In the result, this appeal is allowed and the conviction and sentence passed by the court below are set aside and it is held that the accused is not guilty of the offence under Section 376 IPC and he is acquitted of the said offence. His bail bond shall stand cancelled and he is set at liberty. If he has paid the fine amount, the same shall be refunded to him. Sd/- P.BHAVADASAN JUDGE smp // True Copy // P.A. to Judge.

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