

Kumaran Vs. State of Kerala

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Court : Kerala

Decided On : Jul-31-2013

Judge : Honourable Mr.Justice P.Bhavadasan

Appellant : Kumaran

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.BHAVADASAN WEDNESDAY, THE 31ST DAY OF JULY 2013 9TH SRAVANA, 1935 CRL.A.No. 910 of 2009 () ----- SC.NO. 180/2006 OF ADDL.SESIONS COURT (ADHOC)-II, PALAKKAD ----- APPELLANT/ACCUSED: ----- KUMARAN,AGED 3 YEARS,S/O.VELAYUDHAN, RAKKANCHATHU KULAMBU, VADAVANNUR VILLAGE, CHITTUR. BY ADV. SRI.K.MADHUSOODHANAN NAIR RESPONDENT/STATE: ----- STATE OF KERALA,REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM (CRIME NO.200 OF 200.OF KOLLENGODE POLICE STATION) BY PUBLIC PROSECUTOR SRI.DHANESH MATHEW MANJOORAN THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 31-07-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: sts - -Crl.Appeal.-No.-910-of- ----- - - - - P.- BHAVADASAN, J.

- - - - - Dated this the 31st day of July, -2013. - - - - - -2009 - -

JUDGMENT

The accused was prosecuted for the offences punishable under Sections 450 and 376 of Indian Penal Code and he was found guilty. Accordingly, he was convicted and sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.20,000/-, in default, to undergo rigorous imprisonment for two years for the offence under Section 450 of I.P.C. and to undergo rigorous imprisonment for eight years and to pay fine of Rs,25,000/-, in default, to undergo rigorous imprisonment for two years for the offence under Section 376 of I.P.C. Set off as per law was allowed and the sentences were directed to run concurrently. It was also directed that if the fine amount is realised, the same was directed to be paid to the victim as compensation. Crl.Appeal.910/2009

2. P.W.8 is the victim in this case. She is a mentally retarded lady. P.W.7 is her mother. The victim, P.W.8 stays with her parents. On the date of the incident, it is alleged that her father had gone to meet a relative in the hospital and the mother had gone for work. In the afternoon, when P.W.7 returned, she found her daughter crying and when asked for the reason, P.W.8 revealed that she was sexually assaulted by the accused. When the father of the victim came home in the evening, he was informed about the incident and they went to the police station and laid Ext.P6 First Information Statement. That was recorded by P.W.11, who registered crime as per Ext.P6(a) FIR. Investigation was taken over by P.W.10. He prepared Ext.P1 scene mahazar and had the victim, P.W.8, sent for medical examination. P.W.9 examined her and prepared Ext.P7 wound certificate. He had the articles collected during examination sent for chemical examination, result of which is marked as Ext.P8. P.W.10 seized the dress said to have been worn by the accused and the victim at the relevant time as per Exts. P2 and P4 mahazar. He recorded the statements of witnesses. Investigation was completed and charge was laid by his successor-in-office.

3. The court, before which final report was laid, took cognizance of the offence. Finding that the offences are exclusively triable by a court of Sessions, the said court committed the case to Sessions Court, Palakkad. The said court made over

the case to Additional Sessions Court, Fast Track not II, Palakkad for trial and disposal. That court, on receipt of records, and on appearance of the accused framed charge for the offences punishable under Sections 450 and 376 of I.P.C. The prosecution, therefore, examined P.Ws.1 to 11 and had Exts.P1 to P14 marked. M.Os. 1 to 5 were got identified and marked and Ext.C1 was marked as court exhibit. After the close of the prosecution evidence, the accused was questioned under Section 313 Cr.P.C. He denied all the Crl.Appeal.910/2009. 4 incriminating circumstances brought out in evidence against him and maintained that he is innocent. Finding that he could not be acquitted under Section 232 Cr.P.C., he was asked to enter on his defence. He chose to adduce no evidence.

4. On an appreciation of the materials before it, the trial court came to the conclusion that the evidence of P.W.7 taken along with the evidence of P.W.9 and Ext.P8 are sufficient to show that the offences have been made out. Accordingly, the conviction and sentence as already mentioned followed. The said conviction and sentence are assailed in this appeal.

5. The appellant points out that the conviction and sentence cannot stand for more than one reason. Except for the evidence of P.W.7, who has only hearsay knowledge about the incident, there is nothing to indicate that there was sexual assault. The medical evidence adduced by the prosecution does not support the prosecution version at all. The evidence Crl.Appeal.910/2009. 5 of P.W.9, the doctor, would indicate that there were no signs of any injury, either internal or external on the private part of the victim. In Ext.P5, the finding is that there was no evidence of any recent sexual intercourse. It is also pointed out that P.W.7 has improved her case considerably at the time of evidence and that makes her evidence vulnerable. It is further pointed out that P.W.7 in no less terms stated that they had gone to the police station first and gave a statement, and thereafter they were sent to the hospital. Attention of this court was drawn to the fact that Ext.P6 is taken from the hospital from P.W.7. This incongruity in the evidence of P.W.7 belies the prosecution version. These aspects have not been noticed by the court below and the court below has mechanically accepted the evidence of P.W.7 and Ext.P8 to come to the conclusion that the accused is guilty of the offences alleged against him. These items of evidence are Crl.Appeal.910/2009. 6 insufficient to

show that the accused had committed the offences.

6. Learned Public Prosecutor pointed out that the evidence has been analysed by the court below and the court below has come to the conclusion that the evidence of P.W.7 and Ext.P8 are sufficient to show that sexual assault has been committed. Had not the incident occurred as alleged by the prosecution, there was no occasion to detect semen and spermatozoa in the samples collected by P.W.9 and sent for chemical examination. It is also pointed out that there is no suggestion to P.W.7 as to why she should falsely implicate the accused. The evidence of P.W.7 could not be impeached successfully even though she was subjected to lengthy cross-examination. Learned Public Prosecutor therefore pointed out that no grounds are made out to interfere with the findings of the court below. Crl.Appeal.910/2009

7. In the case on hand, the victim, P.W.8, is a mentally retarded lady and that she was found incapable of understanding the questions and answering them, and that is evident from the observation by the learned Sessions Judge when she mounted the box to give evidence. Further, her incapacity to understand the questions and giving cogent replies is discernible from Ext.C1 medical report given by the Board constituted for the purpose of examining P.W.8. Therefore, in the case on hand, the court is handicapped in the sense it does not have the version of the incident as given by the victim.

8. The solitary evidence regarding the incident is given by P.W.7. Of course, P.W.1 would say that she happened to see P.Ws.7 and 8 crying and when asked for the reason P.W.7 told her that the accused had ravished her daughter. P.W.7 does say that on the date of the incident, her husband had gone to the hospital to see one of his relatives and she Crl.Appeal.910/2009. 8 had gone to the paddy field for work. When she returned in the afternoon for lunch, she found her daughter crying and when asked the reason, P.W.8 replied that she had been ravished by the accused. Her husband arrived in the evening and she conveyed the information to him and they went to the police station.

9. P.W.7, at the time of evidence, says that when her daughter told her that the accused had violated her body, she went near her boundary as the accused was

her neighbour and asked Kumaran what he had done to her daughter. She would say that, Kumaran denied having done anything to her daughter and told that probably P.W.7 was mad. This version in her evidence does not find a place in the first information statement. Whatever that be, even assuming one believes P.W.7, it goes only to the extent of having only a corroborative piece of evidence since her knowledge about the incident is hearsay. One has therefore to necessarily depend upon the Crl.Appeal.910/2009. 9 medical evidence. That unfortunately does not support the prosecution version at all. P.W.9 is the doctor who had examined P.W.8. She in chief examination would say that she could not notice any external or internal injury which suggests that there was recent sexual intercourse and she admitted that she had issued Ext.P7. In Ext.P7 certificate, in clause No. C under the caption 'opinion' she indicates that there was no evidence of recent sexual intercourse. She was confronted with Ext.P8 certificate which is the chemical examination report in respect of the samples collected by P.W.9. That shows the presence of semen and spermatozoa in the samples collected by P.W.9. She then came forward with an explanation that there is evidence of sexual intercourse. However, in cross-examination, she had stated that her evidence based on Ext.P8 is not on the basis of her examination of the victim. The result is that there is absolute want of medical evidence to show that there was recent Crl.Appeal.910/2009. 10 sexual intercourse. It could not be said that the medical evidence is in favour of the prosecution. P.W.9 has clearly stated that there was no evidence of any recent sexual intercourse. But she modulated her evidence based on Ext.P8 though she again reasserted that her findings are contrary to the chemical analysis report as evidenced by Ext.P8.

10. May be that, it is an unfortunate incident. But there is absolute want of evidence in this case to show that P.W.8 was ravished by the accused as alleged by the prosecution. It may be quite unfortunate that the victim is unable to depose. However, the medical evidence and also the fact that the dress which were seized by the investigating officer were not sent for chemical examination also surprises one. Whatever that be, this court is unable to concur with the finding of the court below that the prosecution has succeeded in establishing the case against the accused. Crl.Appeal.910/2009

11. At any rate, the accused is entitled to benefit of doubt. In the result, this appeal is allowed and the conviction of the accused for the offence punishable under Sections 450 and 376 of I.P.C. and the sentence passed by the trial court are set aside and it is held that the appellant is not guilty of the offences alleged against him and he stands acquitted for the offences under Sections 450 and 376 of I.P.C. 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. P. BHAVADASAN, JUDGE sb.

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