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Radhakrishnan Vs. State of Kerala

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Court : Kerala

Decided On : Aug-19-2013

Judge : Honourable Mr.Justice P.R.Ramachandra Menon

Appellant : Radhakrishnan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.BHAVADASAN MONDAY, THE 19TH DAY OF AUGUST 2013 28TH SRAVANA, 1935 CRL.A.No. 184 of 2009 ( ) -------------------------- (

JUDGMENT
IN SC 524/2006 OF THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, FAST TRACK (ADHOC-I), KOZHIKODE DATED 23 12-2008) APPELLANT(S)/ACCUSED: --------------------- RADHAKRISHNAN @ PERAVAKUTTY, S/O PARANGODAN, KOORAMKUNDU CHALIL, NELLIKKAMKANDY VALIPARAMBA DESOM, KOZHIKODE TALUK. BY ADV. SRI.P.V.KUNHIKRISHNAN RESPONDENT(S)/COMPLAINANT & STATE: -------------------------------- STATE OF KERALA, REP.P.PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19-08-2013, THE COURT ON THE SAME DAY

DELIVERED THE FOLLOWING: SCL. P. BHAVADASAN, J.

--------------------------- Crl. A. No.184 of 2009 --------------------------- Dated this the 19th day of August, 2013

JUDGMENT

The accused, who was prosecuted for the offence punishable under Section 511 of 376 of IPC, was found guilty of the same. He was convicted and sentenced to undergo rigorous imprisonment for two years.

2. PW1 is the victim in this case and PW3 is her mother. The incident is alleged to have taken place on 21.10.2005 at about 9.30 a.m. The allegation is that on that day, PW1 was alone at home as her school had been closed for a short vacation. It is stated that the accused came to the house of the victim on the pretext that, a phone call of the father of the victim had come and that he had come to inform the same to PW1. Thereafter, it is alleged that he sat on the half verandah of the house of PW1 and asked for a glass of water. PW1 brought a glass of water and after taking the water while she was going back with the glass, the accused is said to Crl.A. No. 184 o

2. have followed her. The accused caught hold of her, dragged into the middle room of the house and attempted to ravish her. In the process, her dresses were torn. She did not divulge the incident to anybody then. Long thereafter, that is on 25.11.2005, it so happened that PW3, the mother of PW1, noticed that PW1 was wearing a torn petticoat and when asked for the reason, PW1 had divulged the incident to her mother, PW3. On the very same day in the evening, PWs 1 and 3 were alleged to have gone to the police station and laid Ext.P1 First Information Statement. PW8 recorded Ext.P1 and on the basis of the same, registered crime as per Ext.P1(a) FIR. Investigation was taken over by PW9. He had the scene mahazer prepared and also the torn petticoat seized. He had PW1 examined by the doctor, PW6, who issued Ext.P5 certificate. He recorded the statements of witnesses and sent the materials collected during the investigation for examination and after completing investigation, laid charge before the court.

3. The court before which the charge was laid, took Crl.A. No. 184 o

3. cognizance of the offence and finding that the offence is exclusively triable by a Court of Sessions, committed the case to Sessions Court, Kozhikode under Section 209 of the Code of Criminal Procedure. The said court made over the case to the Additional District and Sessions Court (Adhoc-I) for trial and disposal.

4. The latter court on receipt of records and on appearance of the accused, framed charge for the offence punishable under Section 511 of 379 of IPC.

5. To the charge, the accused pleaded not guilty and claimed to be tried. The prosecution therefore had PWs 1 to 10 examined and Exts. P1 to P10 marked. MOs 1 and 2 were got identified and marked. Exts. D1 and D2 were marked on the defence side as contradictory portions of the respective statement under 161 of Cr.P.C.

6. After the close of the prosecution evidence, the accused was questioned under Section 313 of Cr.P.C. He denied all the incriminating circumstances brought out in evidence Crl.A. No. 184 o

4. against him and maintained that he is innocent. He also stated that the entire evidence is concocted and he had been unnecessarily implicated with ulterior motive. According to him, he was on good terms with the husband of PW3 and he had occasion to inform the husband of PW3 regarding the illicit relationship, which PW3 was maintaining with another person. That resulted in a quarrel between PW3 and her husband and believing that it was the accused, who spread the scandal, he was falsely implicated.

7. Finding that the accused could not be acquitted under Section 232 of Cr.P.C, he was asked to enter on his defence. He chose to adduce no evidence.

8. Relying on the evidence of PWs 1, 3 and 7 and also Ext.P3 the trial court came to the conclusion that the victim is only aged 13 years and found the accused guilty of the offence alleged against him. Conviction and sentence as already mentioned followed. The said conviction and sentence are assailed in this appeal. Crl.A. No. 184 o

5. 9. The learned counsel appearing for the appellant contended that the court below has not appreciated the evidence in the proper perspective and has been merely carried away by the testimony given by PWI. A careful scrutiny of the evidence of PW1 will clearly reveal that she cannot be believed and her evidence is not above board. Apart from the fact that she has no consistent version, it can also be seen that she stands contradicted by the evidence of PW3 and also PW7. It is also pointed out by the learned counsel for the appellant that the considerable delay in lodging the FIS has not been properly explained. The occasion for PW3 to come to know about the incident is that when she saw PW1 wearing a torn petticoat on 24.11.2005, she asked for the reason and then the incident was disclosed to her. Surprisingly enough, according to the learned counsel, this torn petticoat which sparked off the queries of the incident to PW3, was not put to PWs 1 and 3. Apart from the above facts, the learned counsel pointed out that there is no mention in Ext.P1 regarding the reason for delay in lodging the Crl.A. No. 184 o

6. complaint. However, at the time of evidence, PW1 came forward with a different version. Again, referring to the evidence of PWs 1 and 3, it is contended by the learned counsel for the appellant that, it is clear from a reading of their evidence that there was a 'bhajan' in the house of PW1 on 20.11.2005, on which day, the father was also present for the function. A reading of the evidence of PW1 clearly shows that on that day, the father came to know about the incident and he had talked about the matter with PW3. But PW3 would deny this fact and would contend that she came to know about the incident only on 24.11.2005.

10. The learned counsel pointed out that the occasion for the accused to come to the house of PW1 was that he had come under the pretext that the father of PW1 had called PW1 over the phone in his house. Surprisingly enough, instead of going to attend the phone, PW1 simply ignores the same. This is unusual and highly improbable. Even assuming that the accused sought for a glass of water, at least after giving him a glass of water, one would have expected PW1 to go to the house of the accused Crl.A. No. 184 o

7. to attend the phone call. Again, PW3's evidence is to the effect that on the previous day of lodging of the FIS, three persons had come to her house and

requested them not to make an issue over the incident. One fails to understand how those person came to know that PW1 and PW3 were going to lay a complaint on 25.11.2005. The learned counsel for the appellant also pointed out that, even though the father is very much present at the time of disclosure of the incident and thereafter even at the time of lodging of Ext.P1, he does not take any active role in the act. While PWs 1 and 7 would say that at the time when PW1 had gone to lodge FIS, PWs 1, 3 and 7 alone were present. PW1 has a case that PW1 and 3 alone were there. PW3 on the other hand, includes the father of PW1 also. These inconsistencies and contradictions in the evidence of PWs 1, 3 and 7 have not at all been considered by the court below and according to the learned counsel for the appellant, the court below has mechanically acted on the evidence of the above witnesses. The inherent improbabilities of the case have not Crl.A. No. 184 o

8. been considered at all. It can easily be seen according to the learned counsel for the appellant that, it is a concocted story. The conviction and sentence, according to the learned counsel for the appellant, cannot stand.

11. The learned Public Prosecutor, on the other hand, contended that, it is seldom one gets an eye witness to the incident and in this case the prosecution is fortunate to have PW7. PW7 says of having gone to the house of PW1 on the date of incident and finding that there appeared to be no one at home, she knocked at the door and finds it bolted from inside. She then goes behind the house and removed the curtain of a window and happens to see the incident in which PW1 and the accused were involved. The learned Public Prosecutor would say that there is no reason to disbelieve PW7 at all. The learned Public Prosecutor conceded that there may be slight inconsistencies and contradictions in the evidence of PW1 and 3 but they by themselves are not sufficient to make their evidence vulnerable or unacceptable. There is no reason or justification to Crl.A. No. 184 o

9. disbelieve PW1 and there is no ill motive suggested to her for falsely implicating the accused. At any rate, according to the learned Public Prosecutor, the court below has chosen to accept the evidence of PWs 1, 3 and 7 and unless it is shown

that the findings are perverse, an interference at the hands of this Court is not warranted while exercising the appellate powers.

12. One can only wish that one could accept the contentions of the learned Public Prosecutor, but, the evidence seems to be to the contrary. The incident as spoken to by PW1 is that on the date of the incident, she was alone at home as the school was closed for a short vacation. She says that the accused came to her house and informed her about a phone call that had come from her father and as rightly pointed out by the learned counsel for the appellant, one would have expected PW1 to go and attend the phone. Assuming that the accused asked for a glass of water and she rushed inside to get water for the accused, one would have expected PW1 at least after giving glass of water to the accused to go to the house of the accused Crl.A. No. 184 o

10. to attend the phone call made by her father. But the evidence of PW1 is quite strange in this regard. She says that she ignored the phone of the father. It seems highly improbable. Then the long delay in lodging FIS is also to be considered in this case. Of course, if one goes by the evidence of PW1 alone, without analyzing its worthiness with respect to other items of her evidence, one may be able to say that the prosecution has proved the case. PW1 does say that the accused dragged her into the middle room and there was an attempt to rape her, which she successfully resisted.

13. The reason for disclosing the incident to the mother almost after one month of the incident is that PW3, the mother of the victim, happened to see PW1 wearing a torn petticoat and asked PW1 how the petticoat had been torn, she then revealed the incident to PW3. As rightly pointed by the learned counsel for the appellant, the torn petticoat which is marked as MO1 is neither put to PW1 nor to PW3 to confirm that it was the same petticoat, which caught the attention of the mother of the victim. Crl.A. No. 184 o

11. 14. Apart from the above fact, there is also inconsistency regarding the presence of the persons at the police station at the time of furnishing Ext.P1 FIS. Going by the evidence of PW1, only PWs 1 and 3 were present at the relevant time. Going by the evidence of PW7, she along with PWs 1 and 3 were present at

the relevant time. Going by the evidence of PW3, she, her husband and PW1 were present. This conflict in the evidence cannot be easily brushed aside, especially when one notices the considerable delay in lodging the FIS.

15. Again, going by the evidence of PWs 1 and 3 and on a reading of Ext.P1, it would appear that the mother, PW3, came to know the incident only on 24.11.2005, the day, prior to day of lodging of Ext.P1 FIS. At the time of giving evidence, PW1 deposed that on 20.11.2005, the day on which the "bhajan" was conducted in the house, the father had knowledge about the incident and that there was a talk about the incident between the father and mother. It is in this context that the passive attitude of the father assumes importance. The evidence shows that he Crl.A. No. 184 o

12. was present on the date of 'bhajan' and also on the date of lodging of the complaint and subsequent dates also. But, there is nothing to show that he had gone to the police station or even questioned by the investigating officer.

16. Equally artificial is the evidence of PW7. PW7 claims to have gone to the house of PW1 to see TV on the day and finding the door bolted from inside, she watched through the window. If her evidence is believed, she came to know about the incident on the same day itself and she conveyed the information to her parents. It may be remembered here that the parents of PW7 are closely related to PW3. Normally, it is difficult to believe that they would have kept silent about the incident. Going by the evidence of PW7, on 21.10.2005, she had occasion to go to the house of PW1 and then she happened to see the incident.

17. The court below placed considerable reliance on Ext.P5 to come to the conclusion that the age of the victim is below 16, so also Ext.P10 which is the certificate said to have Crl.A. No. 184 o

13. been produced by the investigating officer after the trial had commenced. Apart from the fact that Ext.P10 is insufficient to prove the age of the victim, reliance placed on Ext.P5 by lower court also does not appear to be legally sustainable. Whatever that be, since the age of the victim does not have much relevance in the context of the allegations, that matter need not detain this court.

18. Thus, on a close analysis of the evidence, it can be found that the evidence of PWs 1, 3 and 7 cannot stand scrutiny so as to inspire confidence in the mind of the court. The unnatural and unusual conduct of PW1, the long delay in lodging the FIS, the inconsistency in the evidence of PWs 1, 3 and 7 and the improbability of PW7 watching the incident etc., make the case of the prosecution extremely vulnerable.

19. It is therefore difficult to accept the finding of the court below that the offence had been made out on the basis of the testimony of PWs 1, 3 and 7. In the result, this appeal is allowed. The conviction and Crl.A. No. 184 o

14. sentence passed by the court below are set aside and it is held that the prosecution has not succeeded in establishing the case against the accused beyond reasonable doubt. The accused is found not guilty of the offence alleged against him. 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. Scl. True Copy PA to Judge

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