

Arjunan Vs. State Rep. by

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Court : Chennai

Decided On : Nov-26-2014

Judge : The Honourable Ms.Justice R.Mala

Appellant : Arjunan

Respondent : State Rep. by

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

26. 11.2014 CORAM THE HONOURABLE MS.JUSTICE R.MALA
Crl.R.C.(MD)No.242 of 2012 and M.P.(MD)Nos.1 and 2 of 2013 Arjunan :
Petitioner/Accused Vs. State rep. by Inspector of Police, Srivilliputtur Town Police
Station, Virudhunagar District. In Crime No.815/04. : Respondent/Complainant
Prayer : Criminal Revision Case is filed under Sections 397 and 401 of the Code
of Criminal Procedure, to set aside the conviction and sentence imposed by the
Principal Sessions Court, Virudhunagar District at Srivilliputtur in C.A.No.18 of
2007, dated 20.06.2012, in confirming the conviction and sentence imposed by the
Chief Judicial Magistrate Court, Virudhunagar District at Srivilliputtur in S.C.No.80
of 2006, dated 19.01.2007. For Petitioner :: Mr.G.Marimuthu For Respondent ::
Mrs.S.Prabha, Government Advocate (Crl. Side) :

ORDER

This Revision is directed against the judgment passed by the learned Principal Sessions Judge, Virudhunagar District at Srivilliputtur, in C.A.No.18 of 2007, dated 20.06.2012, confirming the conviction and sentence imposed on the Revision petitioner by the learned Chief Judicial Magistrate, Virudhunagar District at Srivilliputtur in S.C.No.80 of 2006, dated 19.01.2007.

2. The case of the prosecution, in a nutshell, is as follows: (i) P.W.1 Govindaraj is the brother of P.W.3 Kachammal. P.W.4 Kaliasammal and P.W.5 Perumal are the parents of P.W.3. On 04.11.2004, P.W.1, P.W.4 and P.W.5 returned to home at 06.00 p.m., after completing their work. At that time, P.W.3 was crying. When they questioned her, she replied that yesterday when she went to grazing sheep, the accused misbehaved with her and also threatened her not to convey the same to others. On 04.11.2004 at 12 noon, the accused committed rape on her. On coming to know about the same, P.W.1 along with P.W.3 and P.W.4 went to the police station and lodged a complaint Ex.P.1. P.W.12 Mahindra Pandian, Sub-Inspector of Police, on receipt of complaint Ex.P.1, registered an F.I.R.-Ex.P.8 in Crime No.815 of 2004 for the offence under Section 376 IPC. Then, P.W.16 Maran, the Inspector of Police took up the case for further investigation and after completing the legal formalities, viz., preparation of mahazar, rough sketch, examination of witnesses, more particularly, the doctors, who examined the victim P.W.3, etc., he laid the final report against the accused for the offences punishable under Sections 354, 506(ii) and 376(2)(f) IPC. (ii) Before the Trial Court, on behalf of the prosecution, P.Ws.1 to 16 were examined and Exs.P.1 to P.22 were marked along with M.Os.1 and 2. On completion of the examination of the witnesses on the side of the prosecution, the accused was questioned under Section 313 Cr.P.C., as to the incriminating circumstances found in the evidence of the prosecution witnesses and he denied the same as false. On behalf of the defence, no witness was examined and no document was marked. (iii) On consideration of evidence available on record, the learned Chief Judicial Magistrate, Virudhunagar District at Srivilliputtur found the accused guilty under Sections 354, 506(ii) and 376(2)(f) IPC and sentenced him to undergo 2 years RI for the offence under Section 354 IPC, sentenced him to undergo one year RI for the offence under Section 506(ii) IPC and sentenced him to undergo 7 years RI, to impose a fine of Rs.500/-, in default, to undergo 3 months RI for the offence under Section 376(2)(f) IPC and the

sentences are ordered to run concurrently. Aggrieved by the Judgment of the Trial Court, an appeal has been preferred by the accused in CrI.A.No.18 of 2007, before the learned Principal Sessions Judge, Virudhunagar District at Srivilliputtur and the same was dismissed, confirming the judgment of the Trial Court.

3. Questioning the conviction and sentence, the petitioner is before this Court with the present revision.

4. Assailing the judgment impugned herein, relying upon Section 29(1) Cr.P.C., the learned counsel for the petitioner would submit that the Court, which passed the conviction and sentence, has no jurisdiction to pass a sentence of imprisonment for 10 years, because the minimum conviction for the offence under Section 376(2)(f) IPC is not less than 10 years. However, the learned Chief Judicial Magistrate, Virudhunagar District at Srivilliputtur, who is having the power only to impose 7 years sentence, has imposed the sentence of imprisonment for 7 years. As per Section 29(1) Cr.P.C., this case ought to have been tried by either the Sessions Judge or the Assistant Sessions Judge and not by the Chief Judicial Magistrate. On that ground, the learned counsel prayed for setting aside the conviction and sentence imposed on the petitioner and wanted de novo trial.

5. Resisting the same, the learned Government Advocate (Criminal side) would submit that at the time of occurrence, the age of the victim girl is 11 years. P.W.14, Dr.Vijayakumar, who assessed the age of the victim, in his evidence, has stated that she is aged above 10 and below 12. To prove the same, the certificate regarding the age of the victim was marked as Ex.P.12 and X-rays were marked as Ex.P.13. Therefore, on the date of occurrence, she is below 12. Stating so, she leaves the matter for discretion of the Court.

6. Before going into the merits of the case, it is appropriate to incorporate Section 376(2)(f) IPC, which reads thus: ".Whoever commits rape on a woman when she is under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine."

7. It is also useful to refer to Section 29(1) Cr.P.C., which reads thus: ".29. Sentences which Magistrates may pass.- (1) The Court of a Chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.".

8. A bare reading of the above said provisions would make the position very clear that the Trial Court and the first appellate Court committed an error in trying the matter. Therefore, on that sole ground, I am of the view that the trial by the learned Chief Judicial Magistrate is illegal and irregular and it cannot be rectified under Section 461 Cr.P.C., and therefore, it is a fit case for ordering de novo trial before the learned Assistant Sessions Judge.

9. In the result, the revision is allowed setting aside the conviction and sentence imposed by the Trial Court and confirmed by the first Appellate Court and the matter is remitted to the learned District and Sessions Judge, Virudhunagar District at Srivilliputtur to make over S.C.No.80 of 2006 to the Court, which is having the jurisdiction to try the case and to dispose of the same within a short span of time. Consequently, the connected miscellaneous petitions are closed. 26.11.2014 Index:Yes/No Internet:Yes/No SML To 1.The Principal Sessions Court, Virudhunagar District at Srivilliputtur. 2.The Chief Judicial Magistrate Court, Virudhunagar District at Srivilliputtur. 3.The Inspector of Police, Srivilliputtur Town Police Station, Virudhunagar District. R.MALA, J.

SML4The Public Prosecutor, Madurai Bench of Madras High Court, Madurai.
Order made in CrI.R.C.(MD)No.242 of 2012 Dated:- 26.11.2014

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