

Yovan @ John Vs. State by Deputy Superintendent of Police, Thingalur Police Station Erode

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Court : Chennai

Decided On : Nov-18-2015

Judge : The Honourable Dr. Justice S. Tamilvanan & C.T. Selvam

Appeal No. : Criminal Appeal No. 850 of 2013 & M.P. No. 3 of 2014

Appellant : Yovan @ John

Respondent : State by Deputy Superintendent of Police, Thingalur Police Station Erode

Judgement :

(Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code against the judgment dated 31.10.2013 in Special Sessions Case No.46 of 2013 on the file of learned Principal Sessions and Special Judge, Erode District, Erode.)

C.T. Selvam, J.

1. This appeal arises against the judgment of learned Principal Sessions and Special Judge, Erode District, Erode, in Special Sessions Case No.46 of 2013 on 31.10.2013, convicting the appellant for offence under Section 376(2) IPC and sentencing him to undergo life imprisonment and imposing a fine of Rs.1,00,000/-.

2. The case of the prosecution is that PW-1/complainant is the organizer of 'Vavval Foundation' registered under the Societies Registration Act. On 18.07.2012, at about 01.30 p.m., on seeing the victim crying near the Veeranampalayam bus stand, the complainant approached her, caused enquiry and came to know that the victim, who was a minor, staying in the Karunai Orphanage and studying 7th standard, was subjected to sexual harassment. Hence, the complainant preferred a complaint on 18.07.2012 to PW-15, Sub-Inspector of Police, Thingalur Police Station, who registered a case in Crime No.226 of 2012 for offences under Sections 376 r/w 506(i) IPC and 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1994.

3. PW-16, Inspector of Police, took up investigation on 18.07.2012 and examined the victim, PWs.1 and 3 and two others and recorded their statements. Thereafter, he went to the place of occurrence at about 04.00 p.m. and prepared observation mahazar [Ex.P2] in the presence of PW-5 and one Subramani and obtained their signatures. He has also prepared rough sketch [Ex.P17]. Thereafter, he examined PWs.5, 6 and three others and recorded their statements. At about 06.00 p.m. and on identification by the witnesses, he arrested the accused near Grey Nagar Ration Shop. He recorded the confession statement of the accused in the presence of one Sivakumar, Kumar and Kulanthaisamy and obtained their signatures. Thereafter, at about 07.30 p.m., he took the accused to the police station and then sent him to judicial custody. On the same day, he sent a requisition to Judicial Magistrate seeking permission to conduct potency test of the accused. On 19.07.2012, he sent a requisition to Judicial Magistrate seeking permission to send the victim girl Sathyapriya for medical examination through Inspectors Santhi and Rukmani. The requisition letter is Ex.P18. On 20.07.2012, he sent the victim girl Sathyapriya for medical examination through Santhi and Rukmani, women constables. On 23.07.2012, he examined PW-4 and recorded her statement. He sent the accused for examination by a Doctor towards determining his age and examining his potency. On 02.08.2012, PW-13, Doctor, issued Exs.P12 to P14, medical reports, which confirmed the potency of the accused. The Doctors concerned were examined by the investigating officer and their statements were recorded. He obtained Community Certificates of both the accused and the victim, altered the charges to include offences under sections

3(2)(v) and 3(1)(XII) of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 and filed Alteration Report [Ex.P19] before Court. He handed over the case papers to the District Superintendent of Police along with the requisition dated 06.08.2012 seeking appointment of another investigating officer. Investigation was handed over to PW-17, Deputy Superintendent of Police, Gobichettipalayam.

4. PW-17, having gone over the earlier investigation records, went to Mariyalaya Women's Hostel, examined the victim Sathyapriya and recorded her further statement. On 08.08.2012, he went to Grey Nagar Orphanage, examined Esther Baby and Manjula Devi and recorded their statements. Thereafter, he examined PW-1 and recorded her further statement. On 15.08.2012, he went to the place of occurrence, examined one Thavamani and Packiaraj, nearby residents, and recorded their statements. On 07.09.2012, he sent the incriminating materials gathered from the victim and the accused for chemical analysis through Inspector Rukmani. Thereafter, on 12.09.2012, he sent a letter to Chennai Board of Control, towards verifying the genuineness of the license granted to run the orphanage. Again, on 26.09.2012, on the basis of the Chemical Analysis Report and advice of Medical Officers, he sent the victim Sathyapriya to the Erode Government Hospital, where she was examined by P.W.12, Dr.Mythili. As advised by the Child Welfare Officer, PW-7, he provided protection for transferring the children from the Grey Nagar Orphanage. On 30.10.2012, he examined the Tahsildar, Kangeyam, who issued the Community Certificate of the victim Sathyapriya and recorded his statement. On such date, he examined P.W.7 and recorded her statement. He examined PW-9, who had issued the Community Certificate of the accused and recorded her statement. He examined the Headmistress of the School in which the victim Sathyapriya studied and recorded her statement. He examined P.W.10, Doctor and recorded his statement. Thereafter on 30.10.2012, he examined P.Ws.11, 12, 13 and 14 at the Erode Government Hospital and recorded their statements. Upon completion of investigation, he filed charge sheet informing commission of offences under Section 376 (b), 506 (i) IPC r/w 3(2)(v) The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. To substantiate its case, the prosecution examined PWs.1 to 17, and marked Exs.P1 to P20. None were examined on behalf of the appellant/accused. However, two exhibits were marked. On questioning under Section 313 Cr.P.C., the accused denied the charges.

6. Learned trial Judge, on consideration and appreciation of the entire evidence adduced by the prosecution, has found the accused guilty, convicted him for offence under Section 376(2) IPC and sentenced him to undergo life imprisonment and fine of Rs.1,00,000/-. Hence, the present appeal.

7. Heard learned counsel for appellant and learned Additional Public Prosecutor as also perused the records.

8. The present is a case where cursory consideration of the prosecution evidence would lead to the inference of guilt of the appellant/accused. The defence has not been able to make much inroad into the prosecution case through cross-examination. Even so, this Court is unable to sustain the finding of conviction arrived at by the trial Court for the following reasons:

The First Information Report in the case had been registered on 18.07.2012, on complaint of even date (Exs.P1 and P16). Ex.P8 is the communication dated 12.06.2012 caused by PW-10, Doctor, to the Sub-Inspector of Police, Thingalur Police Station, i.e, the station at which the First Information Report has been registered. The same is in response to the letter of such date addressed to such Doctor by the said Sub-Inspector of Police. Ex.P8 reads as follows:

IRT “ PERUNDURAI MEDICAL COLLEGE

PERUNDURAI SANATORIUM “ 638 053. ERODE DISTRICT, TAMIL NADU.

Dean Personal : 04294-220915 Additional Director Personal : 04294-225222

Phone : Office : 04294 “ 220910 to 220913 Fax : 04294 “ 220226 Email : irtpmc@yahoo.co.in

TAMIL ?

Diagnosis : Suspected Pelvic Inflammatory Disease

Circumstantial evidence of child abuse.

TAMIL ?

From Ex.P8, it is apparent that enquiry into sexual abuse against the victim/PW-2 had been commenced at least on 12.06.2012, if not earlier. The same necessarily must be on information received by the said police station. The prosecution has failed to inform what was the information originally received. Clearly, the alleged complaint of 18.07.2012 was not the original information received. The danger in accepting the prosecution case when the original information stands suppressed is that the complaint, which has been registered as the First Information Report, could well be the product of deliberation. When so, there is every possibility of the investigating agency arranging its case and having the witnesses depose in keeping therewith. In the instant case, the medical records and the deposition of the non-participant witnesses, particularly, Doctors, clearly inform that PW-2 has been the victim of sexual abuse. However, it would be unsafe to fix culpability upon the appellant/accused in circumstance where the original information received at the police station has been suppressed and no explanation has been offered there regards.

9. In *Marudanal Augusti vs. State of Kerala* [1980 SCC (Cri) 985], the Supreme Court has informed that "the entire fabric of the prosecution case would collapse if the FIR is held to be fabricated or brought into existence long after the occurrence and any number of witnesses could be added without there being anything to check the authenticity of their evidence."

10. In *Sevi and another vs. State of Tamil Nadu and another* [1981 (Supp) SCC 43], the Supreme Court has informed that where the original FIR is suppressed, the entire prosecution case becomes suspect.

The Criminal Appeal is allowed. The conviction and sentence passed by learned Principal Sessions and Special Judge, Erode District, Erode, in Special Sessions Case No.46 of 2013 on 31.10.2013, are set aside and the appellant is acquitted of

all charges. Fine amount, if any, paid shall be refunded to the appellant. Bail bond(s), if any, executed by him shall stand cancelled. The appellant is directed to be released forthwith, if his detention is not required in any other case. Consequently, connected miscellaneous petition is closed.

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