

Sam Vs. State, rep. By The Inspector of Police, Coimbatore

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Court : Chennai

Decided On : Jun-23-2016

Judge : S. Nagamuthu & V. Bharathidasan

Appeal No. : Crl.Appeal No. 126 of 2014

Appellant : Sam

Respondent : State, rep. By The Inspector of Police, Coimbatore

Judgement :

(Prayer: Appeal against the judgment, dated 28.02.2014, made in S.C.No.42 of 2010 on the file of Sessions Court-cum-Mahila Court, Coimbatore.)

S. Nagamuthu, J.

1. Appellant is the first accused in S.C.No.42 of 2010 on the file of Sessions Court-cum-Mahila Court, Coimbatore. There were four more accused in the case, arrayed as Accused 2 to 5. The accused 2 and 3 are the parents of the fifth accused and the accused 4 and 5 are the friends of the first accused. The trial Court framed charges under Sections 417, 366, 376 and 506-II IPC against the first accused and under Section 506-II IPC against accused 2 to 5. By judgment, dated 28.02.2014, the trial Court acquitted accused 2 to 5, but, convicted the first accused under Section 366,376, 417 IPC alone and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.10,000/- , in default,

to undergo simple imprisonment for six months for the offence under Section 366 IPC; to undergo imprisonment for life and pay fine of Rs.1,00,000/- for the offence under Section 376 IPC; and to undergo rigorous imprisonment for one year and pay fine of Rs.5,000/-, in default, to undergo simple imprisonment for three months under Section 417 IPC. The Trial Court ordered Rs.1,00,000/- to be paid as compensation to P.W.1. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

2. The case of the prosecution, in brief, is as follows :

2.1. Admittedly, the age of P.W.1, the alleged victim, at the time of occurrence was 20 years. According to her, during the year 2002-2003, when she was studying in a school in XI Standard, the appellant was also studying in the same school. While they were so studying, on one occasion, the appellant met P.W.1 and invited her to be his friend. P.W.1 responded positively. They started talking in person and also through phone, frequently. They used to go to many places of amusement together. In due course of time, both of them felt that they had fallen in love for each other. After the school studies were over, the appellant joined an engineering course in Karpagam Engineering College in Coimbatore. P.W.1 joined an arts college in B.A.(English Literature) Course. When they were studying in the college also, the love affair between them continued. The love became so intimate that they frequently visited many places, enjoying their time happily. They used to see cinemas together on many occasions. They exchanged short messages through cell phones and they also spoke through cell phones exchanging their love. Thus, the intimate love affair between P.W.1 and the appellant went on smoothly for a few years.

2.2. While so, the above intimate love affair between P.W.1 and the appellant had come to the knowledge of the mother of the appellant. She once called P.W.1 to her house through phone and wanted her to come to her house. Accordingly, P.W.1 went to her house. The third accused, mother of the appellant, enquired about her personal and family details. P.W.1 narrated everything to her. The third accused also informed her that they were aware of the love affair between her and the appellant. When the talk between A-3 and P.W.1 was going on, the father of

the appellant, namely, the second accused also came and joined in the discussion. During the course of the said discussion, P.W.1 told them that she was very intimate towards the appellant and they had decided to marry. The accused 2 and 3 told her that it was not possible to agree for such marriage and, so saying, they wanted her to forget the appellant and choose her own way of living. This disturbed the mind of P.W.1 a lot. For quite some time, out of shock over the above incident, she did not speak to P.W.1. She evaded meeting him also.

2.3. Within a short time thereafter, on one day, when P.W.1 had just come out of her college, she told the appellant lying in wait for her that any parents would be like his parents, in not agreeing for the love of their son and consequential marriage. He persuaded her that they could continue the love affair and, at any rate and at any cost, he would see that the marriage between him and P.W.1 would be celebrated. P.W.1 believed these words. Again, they started moving together frequently to cinema halls, amusement parks, hotels etc. They again exchanged their love and developed the same by personal meetings, through cell phones and by their visits to various places.

2.4. When the love affair was thus getting strong, on one day, P.W.1 had information that the appellant had fallen in love with one Nandini. She asked him whether it was true. The appellant assured her and tried to convince her to believe that there was no truth in the said allegation. P.W.1 did not believe the words of the appellant. She wanted to speak to Nandini. The appellant requested her not to speak to Nandini and, instead, to believe him. Since P.W.1 was not ready to believe him and since she was telling that the appellant was having some relationship with Nandini, he went into his house, came out with a knife and inflicted an injury to himself, to prove his true love for P.W.1. There was profuse bleeding from the injury. P.W.1 was much moved by this act. Even then, she insisted that she should speak to Nandini. Then, the accused kept the knife on his neck and threatened her that to prove his innocence, he would not hesitate to cut his neck and die. This moved P.W.1 very much. Then, she sincerely believed that the appellant had true love for her. Again, the love affair continued.

2.5. In due course, they sat together and thought of marriage. The appellant told her that the parents of him as well as P.W.1 would not agree for marriage and, therefore, it would be in their interest to go alone and marry elsewhere in the presence of friends. The accused further told that his sister, by name, Ms.Dhanam had been transferred to Kodaikanal. He further told that they could go to Kodaikanal, inform Ms.Dhanam and, with her help, they could marry at Kodaikanal. But, P.W.1 did not agree for this. She had her own hesitation. But, the appellant told her that even after many number of years, the parents of both sides would not agree for marriage and, therefore, the only way for them was to go and marry without their knowledge. P.W.1 believed his words.

2.6. On 06.06.2007, the appellant again met P.W.1. He wanted P.W.1 to know about her decision. He enquired as to whether she had thought over the marriage. Immediately, he dialled to the phone number of his sister Ms.Dhanam and gave phone to her. P.W.1 spoke to Ms.Dhanam. During the conversation, Ms.Dhanam assured that she would make arrangements for the marriage between P.W.1 and the appellant at Kodaikanal. The appellant also spoke a lot about the proposed marriage. At last, P.W.1 agreed to go with the appellant to Kodaikanal and marry him.

2.7. On 07.06.2007, as originally planned, P.W.1 came out of her house. At 08.00 a.m., the appellant and P.W.1 boarded a bus from Ukkadam Bus Stand at Kodaikanal and went to Palani and from Palani, they went to Kodaikanal in another bus. While travelling in the bus, throughout, they were talking only about their marriage and their future. He further told that surely Ms.Dhanam would make arrangements for their marriage. On reaching Kodaikanal, at the Bus Stand, the appellant tried to contact his sister Ms.Dhanam over phone. He made P.W.1 to wait at the Bus Stand itself. He went away and, after an hour, returned. He told P.W.1, who was lying in wait at the Bus Stand, that his sister Ms.Dhanam had gone elsewhere and as soon as returning home, she would inform. He further told that after arrival of Ms.Dhanam, they could go to her house and by that time, P.W.1 became hungry. The accused, therefore, purchased two cool drink bottles, gave one to P.W.1 and he drank the other. They both went to a restaurant known as Jaya Restaurant in Kodaikanal, but, there was no information from Ms.Dhanam.

It had already become 05.00 p.m. P.W.1 told the appellant that she was slightly drowsy. P.W.1 believed that because of the long travel, she had such drowsiness. The appellant told her that they could stay in a hotel and then go over to the house of Ms.Dhanam, to which, P.W.1 agreed. Then, both of them booked a room in Jaya Restaurant. They stayed in a room, which had no television. On the order of the appellant, food was served by the room boys in the room itself. After taking dinner, since P.W.1 was very tired, she slept.

2.8. Around 02.30 a.m. midnight, she woke up. At that time, she found that her dress was in disarray. She felt bodily pain and then, she realised that she had been raped by the accused without her knowledge, when she was almost drowsy. She questioned the appellant as to how he could behave like that to spoil her, bodily. The appellant assured that he would marry her and take her as his wife. P.W.1 was repeatedly questioning him as to how dare he was to have sexual intercourse with her without her knowledge. The appellant was trying to convince her. This went on for the whole night. In the morning, again, P.W.1 lamented about the above incident. The accused told because there was no television facility available in the room, she was thinking of the past. Therefore, they decided to switch over to another room, where there was television facility. Accordingly, they stayed there. The appellant was repeatedly trying to contact Ms.Dhanam, but, in vain. Finally, on 10.06.2007, he took P.W.1 in a bus to Coimbatore. P.W.1 went to her house. She did not inform anything about the occurrence.

2.9. While they were in Kodaikanal, P.W.1 spoke to her grandmother with whom she was staying, that she had come to the house of a friend and her friend was unwell and, therefore, she was staying with her. Her grandmother believed the same. After her return to her house, P.W.1 did not disclose about the occurrence either to her grandmother or to her parents. P.W.1's father was then working in a private company and her mother was a school teacher. On account of their jobs, they were staying elsewhere, whereas P.W.1 was staying with her grandmother. Her grandmother noticed some changes in the attitude of P.W.1, inasmuch as she did not take food on time and she did not sleep on time and, like this, there were lot of behavioural changes. Therefore, after ten days, when her grandmother enquired her, P.W.1 disclosed everything to her. Then, her grandmother informed

the same to her parents and they also came. When they enquired, she told them also about the entire occurrence. Thereafter, her parents, through some mediators, approached the appellant and his family members. Their attempt to persuade the appellant to marry P.W.1 was not accepted by him. Having failed in all her attempt to persuade the appellant to marry her, P.W.1, at last, made a complaint at Pothanur Police Station on 27.09.2007. On that complaint, an enquiry was held in the Police Station, during which, the appellant was summoned. The appellant accepted the statement of P.W.1 that he had love for P.W.1 and he had sexual intercourse with her. In the Police Station, he agreed to marry her. His parents told that he could marry P.W.1, but, thereafter, there would be no connection between him and them. Accordingly, all of them gave statements to the police on 27.09.2007. Then, an affidavit before a notary was prepared on 28.09.2007, in which, P.W.1 and the appellant signed, agreeing to marry. On 03.10.2007, they entered into a bilateral agreement to marry. On 05.10.2007, a Pastor came to her house along with the parents. In the presence of Pastor, parents and other friends, they married each other. The Pastor performed the marriage. They exchanged gold rings during the marriage ceremony. Photos were also taken of the said marriage. They also made prayer for a good and prosperous marital life. They also took a vow that they would live as husband and wife for ever happily. The parents of the appellants also participated in the ceremony. Thereafter, all of them went away. P.W.1 felt happy that the marriage had been celebrated.

2.10. After the marriage, there was a turn of events. P.W.1 once tried to speak to the appellant over phone, but his mother picked up the phone. When P.W.1 told her that she wanted to speak to the appellant, she had refused. All her efforts thereafter to join the appellant proved futile. Thus, she felt that she has been cheated and the marriage was only a formal one and not a real one. Finally, again, P.W.1 went to the Police Station on 21.11.2007 and, during the enquiry at the Police Station, the appellant agreed to continue the marital life with P.W.1, but, his parents told that there would be no relationship between them and the appellant thereafter. Such statements were also given at the Police Station. As per the agreement made at the Police Station, on 09.12.2007, the appellant tied Thali at Christ Church, near Coimbatore Government Hospital, and married her. He took

P.W.1 to his house, but, the other accused, who were at the house, did not allow them to enter. They scolded them, abused them and criminally intimidated them. Unable to bear the above abusive language, P.W.1 and the appellant went to her house. He lived there with P.W.1 for simetime. Then, on 10.12.2007, he again went to his house. After that, he did not return. Every attempt made by P.W.1 to join him proved futile. Finally, she made another complaint to the police on 31.01.2008.

2.11. The Inspector of All Women Police Station (P.W.17) registered a case on the said complaint in Crime No.7 of 2008 under Sections 328, 417 and 506-II IPC. During the course of investigation, she examined P.Ws.1 to 9. She forwarded P.W.1 to doctor for medical examination. P.W.10 examined P.W.1 also on 06.02.2008 at 04.00 p.m. On such examination, she gave opinion that P.W.1 had undergone sexual intercourse. Ex.P-15 is the Accident Register. After the arrest of the accused, he was sent to the doctor for examination. On such examination, P.W.14 gave opinion that the appellant was capable of performing sexual intercourse with a woman. On completing the investigation, P.W.17 laid charge sheet against the accused.

3. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of its judgment as against the accused and he denied the same.

4. In order to prove the case, on the side of prosecution, as many as 17 witnesses were examined, 19 documents and 5 material objects were marked. On the side of accused, a letter, dated 02.12.2007, given by P.W.1 on 02.12.2007 to the Inspector of Police, All Women Police Station, had been marked. Similarly, a letter of the accused, dated 02.12.2007, agreeing to marry P.W.1 had been marked. Ex.D-3 is the extract from the Register Book of Marriage, kept by Rev.Dhinakaran Joe David, to prove the marriage between P.W.1 and the appellant.

5. Out of the said witnesses, P.W.1, the victim, had narrated the entire events, as we have already discussed above. P.W.2 is the mother of the victim, who has also stated about the love affair between P.W.1 and the appellant and all other later events. P.W.3, grandmother, and P.W.4, cousin of P.W.1, have also stated about the love affair and the marriage between P.W.1 and the appellant. P.W.5 has

spoken about the compromise reached between P.W.1 and the appellant in the Police Station. P.W.7 is the Manager of Jaya Hotel. He stated that on 07.06.2007, the appellant came to the hotel and booked a room. He has further stated that in Room No.106, the appellant stayed with a girl. He has also stated that on the next day, they shifted to Room No.205, they stayed in the room for three days and then vacated. P.W.8 is the Pastor, in whose presence, the marriage between P.W.1 and the appellant was celebrated. He has stated elaborately about the same. P.W.9 has spoken about the photographs taken at the time of marriage between P.W.1 and the appellant on 05.10.2007 in the presence of P.W.8. P.W.10, doctor, who examined P.W.1, has stated that she had undergone sexual intercourse. P.W.11 has spoken about the earlier complaint made by P.W.1 at Pothanur Police Station on 27.09.2007. P.W.12 has stated that on one occasion, P.W.1 and the appellant went to his house and informed him that they were in love with each other. P.W.13 has spoken about the complaint, dated 21.11.2007, made by P.W.1 to Peelamedu Police Station. P.W.14 has stated that he examined the appellant and gave certificate that he was capable of performing sexual intercourse with a woman. P.W.15 is a handwriting expert. He examined the handwriting in the register maintained by Jaya Hotel at Kodaikanal and opined that the handwritings and the signatures found the register tallied with that of the appellant. P.W.16 is the learned Judicial Magistrate, who has stated that he recorded the statement of P.W.1 under Section 164 Cr.P.C. P.W.17 has spoken about the registration of the case and the investigation done.

6. When the above incriminating materials were put to the accused, the accused denied the same. Further, he did not choose to examine any witness or to mark any document.

7. Having considered all the above, the trial Court convicted the appellant alone and sentenced him as stated in first paragraph of the judgment. That is how, he is before this Court.

8. We have heard the learned counsel for the appellant; learned Additional Public Prosecutor, appearing for the State; and also perused the materials carefully.

9. As we have already narrated, it is in the evidence of P.W.1 that the appellant and P.W.1 were in love for a long time. She has stated that they visited many places of amusement, such as, hotels, cinema halls etc., and developed love for years. She has further stated that their parents did not agree for marriage. Therefore, they decided to go to the house of Ms.Dhanam at Kodaikanal and celebrate the marriage and, that is how, she went there. She is not a minor. She herself being student of a college, aged 20 years, was fully matured enough to know the consequences of her going with the appellant to Kodaikanal. She went to Kodaikanal and stayed with the appellant in a room in Jaya Hotel. But, according to her, without her knowledge, the appellant had sexual intercourse with her. In our view, it is difficult to be believed. This is because of her subsequent conduct. It is not as though she came out of hotel immediately. She stayed with the appellant in the hotel without raising any objection. Thus, she was a consenting party. After her return from Kodaikanal, she did not disclose about the occurrence to anybody, including her grandmother. Her complaint to the police was that the appellant was not willing to marry her. At the Police Station, on a compromise, the appellant agreed to marry her. Thereafter, the marriage was performed by the Pastor. After the marriage, she lived with him. Thereafter, again, the appellant left her and did not return. When P.W.1 spoke to the parents of the appellant, they did not allow the appellant to speak. She again made a complaint to the police. This time, the parents of the appellant declined to accept the marriage. Therefore, the appellant came out of his house and stayed with her. During this time, he tied Thali in a church and married her. Again, they lived together as husband and wife. Thereafter only, dispute arose, which resulted in the complaint. The narration of events, as spoken to by P.W.1 hereinabove, would go to show that P.W.1 was a consenting party for all the above occurrences and thus, in our considered view, it is very difficult to believe that the appellant had sexual intercourse with her, without her knowledge and consent. We hold that the sexual intercourse, which the appellant had with P.W.1, was with her full consent. Thus, it is not possible to convict the appellant/accused for the offence under Section 376 IPC. Similarly, the appellant did not abduct P.W.1 at all to Kodaikanal. P.W.1 went to Kodaikanal along with the appellant for the purpose of marriage and returning happily. Therefore, there is also no offence of abduction committed by the appellant.

Similarly, there is no cheating, because, the appellant married P.W.1, in the presence of Pastor and lived with her as her husband. It appears that because of some matrimonial dispute, they have got separated. Thus, there is no scope to sustain the conviction under Section 417 IPC. In our considered view, the conviction and sentence imposed on the appellant cannot be sustained. Accordingly, the prosecution has failed to prove the charges against the appellant/accused.

10. In the result, the appeal is allowed. The conviction and sentence imposed on the appellant by the trial Court are set aside and the appellant is acquitted. Bail bonds executed by the appellant shall stand cancelled and the fine amount, if any paid, shall be refunded.

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