

Petitioner Vs. Respondent

Petitioner Vs. Respondent

SooperKanoon Citation : sooperkanoon.com/1191647

Court : Chennai

Decided On : Apr-05-2016

Judge : The Honourable Dr. Justice P. Devadass

Appeal No. : Crl.O.P.No.3411 of 2016 in Crl.A.SR. No. 51883 of 2015

Appellant : Petitioner

Respondent : Respondent

Judgement :

1. The defacto complainant/P.W.4 seeks leave of the Court in preferring the appeal as against the order of acquittal passed as against A1 to A3 in the Sessions Case in S.C.No.245 of 2012 on the file of the learned Additional Sessions Judge, Fast Track Mahila Court, Villupuram.
2. A2 and A3 are parents of A1. P.W.4 was then a 25 years old woman. A1 is stated to have raped her.
3. Appreciating the evidence of P.W.4, the trial Court acquitted the accused on the ground that it is a case of consensual sex. The trial Court also essayed its Judgment holding that P.W.4 has voluntarily surrendered to the accused for sexual intercourse, thus, it will not amount to rape.
4. The learned counsel for the petitioner would contend that the findings recorded by the trial Court suffers from legal perversity. The evidence of P.W.4 has not

been considered in its proper perspective.

5. On the other hand, the learned counsel for respondents 2 to 4 would contend that no date, time and place as to commission of rape has been mentioned by P.W.4. Further A2 and A3 have been simply implicated in this case on some imaginary allegations because they happened to be the parents of A1. P.W.4 actuated by malice has engineered this case. There is no perversity in rendering the order of acquittal by the trial Court.

6. I have anxiously considered the rival submissions, perused the Trial Court's Judgment and the findings of the Court and also perused the materials on record.

7. Consideration of the Court in an appeal as against conviction is different from an appeal as against the order of acquittal. In case of an order of acquittal, presumption of innocence has been upheld by a judicial forum. The Appellate Court should not act as a super body.

8. In seeking leave to appeal as against the order of acquittal, the Court has to consider whether any perversity has been committed by the trial Court in passing the order of acquittal.

9. 'Perversity' in general English differs from legal parlance. In legal terminology, it stands for the meaning that matters which ought to have been considered has been omitted to be considered and matters which ought not to have been considered has been considered. Trial Court taking into account matters which are totally unconnected, in other words extraneous ex facie there are legal errors, then it will be a case for grant of leave otherwise not.

10. Now, in this case, so far as A2 and A3 are concerned, we do not find any perversity in the Judgment of the trial Court in acquitting them.

11. Then P.W.4 was 25 years old. A well grown up woman. As per Section 375 IPC, there must be sexual intercourse with a woman against her will or without her consent. If it is absent, then it will be consensual sex, then it will not be rape. However, if the victim is a minor or mentally not alright or administered with stupefying substance, whatever might be the age, question of consensual sex will

not arise because they are incapable of giving consent. The prosecutrix/victim cannot be considered an accomplice. This is a basic principle of criminal law.

12. In the instant case, while considering the evidence of P.W.4, the trial Court concluded that P.W.4 had voluntarily surrendered for sexual intercourse with A1. Thus, the trial Court has omitted to consider the legal principle.

13. In case, when the victim is a major, who has capacity to give consent, the Court must consider whether her consent has been obtained by deception (practicing fraud) i.e., to say that the accused, who made some representation to secure her consent, knows it be false, however believe his representation to be true and she has given her consent on a misconception, it will not be a free consent. It will not be consent. It will be without her consent. It will be against her wish or will. Then it will fall under Section 375 IPC.

14. Now, in this case, the learned counsel for the petitioner drew our attention to the evidence of P.W.4 wherein she has stated that she met the accused on the banks of a river. The accused is stated to have told her that he will marry her and believing him, she had sexual intercourse with the accused. This aspect has been overlooked by the trial Court. The trial Court also taken into account some assumptions, presumptions not based on legal evidence, which are extraneous matters.

15. In such view of the matter, P.W.4 is entitled to be granted permission to appeal as against the order of acquittal passed as against A1.

16. Ordered as under:

(i) Leave is granted with respect to A1 only;

(ii) Leave is refused with respect to A2 and A3.

17. Accordingly, the criminal original petition is disposed of.