

Victim, vs the State of Kerala,

Victim, vs the State of Kerala,

SooperKanoon Citation : sooperkanoon.com/1443543

Court : Kerala

Decided On : Jan-28-2022

Judge : Honourable Mr.Justice K.Vinod Chandran,Honourable Mr.Justice C. Jayachandran

Appeal No. : CRA(V)/5/2020

Appellant : Victim,

Respondent : The State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN & THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN FRIDAY, THE 28TH DAY OF JANUARY 2022 / 8TH MAGHA, 1943 CRA(V) NO.5 OF 2020 AGAINST CP NO.22/2013 OF JUDICIAL MAGISTRATE OF FIRST CLASS, PARAPPANANGADI SC NO.459/2013 OF SPECIAL COURT UNDER POCSO ACT, MANJERI APPELLANT/VICTIM: VICTIM, AGED 36 YEARS. BY ADVS. O.V.MANIPRASAD SRI.JOSE ANTONY RESPONDENTS/STATE & COMPLAINANT: 1 THE STATE OF KERALA, (REP BY INSPECTOR OF POLICE, TIRURANGADI, CRIME NO.379/2012 OF TIRURANGADI POLICE STATION) REPRESENTED

BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN 682 011. 2 FAIZAL K.C, AGED 43 YEARS, S/O.MUHAMMED KUTTY HAJI, KUZHIKKATTIL CHOLAKKAL, MELEKANDI HOUSE, KADASSERIPATTA, PARAMBIL PEEDIKA P.O, TIRURANGADI, MALAPPURAM DISTRICT PIN 676 315. BY ADVS. SRI.K.RAKESH SMT.AMBIKA DEVI S, SPL.G.P. (ATROCITIES AGAINST WOMEN AND CHILDREN AND WELFARE OF W AND C)(GP-38) THIS CRL.A BY DEFACTO COMPLAINANT/VICTIM HAVING COME UP FOR ADMISSION ON 28.01.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Crl.Appeal (V) No.5 of 2020 2 K.VINOD CHANDRAN & C.JAYACHANDRAN, JJ.
----- Crl.Appeal (V) No.5 of 2020
----- Dated, this 28th January, 2022

JUDGMENT

Vinod Chandran, J.

The alleged victim of rape is before us challenging the order of acquittal passed by the Addl.District & Sessions Judge-I, Manjeri. The accused, who was charged under Ss.450, 376 & 501(ii) of IPC, was found not guilty of the offences alleged.

2. Chandrappa and others v. State of Karnataka (2007 (4) SCC 415) restated the principles regarding the scope of the power of appellate Court to re-appreciate, review or reconsider evidence and interfere with an acquittal. The general principles were encapsulated in the following manner:

42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, re- appreciate and reconsider the evidence upon which the

order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of CrI.Appeal (V) No.5 of 2020 3 such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, substantial and

compelling reasons, good and sufficient grounds, very strong circumstances, distorted conclusions, glaring mistakes, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of flourishes of language to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind

that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

3. With the above principles in the backdrop, we examine the evidence led by the prosecution. PW1

is the Doctor, who examined the prosecutrix immediately after the complaint was given. PW2 is the prosecutrix and PW3, her father. PW4 is the witness to Ext.P3 Scene Mahazar, PW5, the Village Officer, who prepared the sketch, PW6, the Sub

Inspector of Police, who recorded Ext.P4 FIS and registered Ext.P5 FIR, PW7, the Secretary of the Grama Panchayat, who

Crl.Appeal (V) No.5 of 2020 4 produced Ext.P6 Ownership Certificate and PW8, the Investigating Officer.

4. Sri.O.V.Mani Prasad, learned Counsel

appearing for the victim/appellant, contended that the trial court erred in acquitting the accused and disbelieving the prosecutrix. It is urged that the Hon'ble Supreme Court has time and again declared that when the allegation is of rape, there should be due weightage given to the evidence of the prosecutrix and a conviction is permissible on that

count alone. It is pointed out that the learned Sessions Judge had placed undue reliance on Ext.D3 Certificate produced of DNA examination before the Munsiffs Court. The examination was conducted by the Rajiv Gandhi Centre for Biotechnology, which is not an Institute named under sub-S.4 of S.293, as has been held in Babu v. State of Kerala [2013 (2) KLT

574]. Further it is pointed out that what is produced is a photocopy and it cannot be relied on either as a primary evidence or secondary evidence as has been held in Sidhartha Vashisht @ Manu Sharma v. Crl.Appeal (V) No.5 of 2020 5 State (NCT of Delhi) [(2010) 6 SCC 1]. It is also

pointed out that Ext.D3 is not accepted in the proceedings before the Munsiff's Court, which matter is still pending and the same has not even been led in evidence. The learned Counsel specifically points out the plight of the hapless victim, who has now been divorced by reason of the atrocity committed on her, by her husband's uncle. If the reliance on D3 is

eschewed, then definitely there could be a conviction, argues learned Counsel.

5. Sri.Rakesh K., appearing for the accused, sought to sustain the judgment impugned. What is produced as Ext.D3, is a document produced in a civil proceeding between the two parties and a certified

copy issued by that Court. The contention of the appellant before that Court was only that the accused had gone with another person for the sampling and that other person's blood was given for testing. But for the said allegation raised, there is no such substantiation before the proceeding in which that Certificate was brought on record; at the instance of CrI.Appeal (V) No.5 of 2020 6 the appellant itself. The discrepancies in the evidence of the prosecutrix and the admission of her father that the complaint was raised only since the accused was spreading canards about the prosecutrix indicates the complaint to be ill motivated.

6. The prosecutrix was the person who gave FIS, at Ext.P2. The allegation in the FIS was that when the husband of the prosecutrix was working in the Gulf countries, she was staying in her matrimonial house along with her mother-in-law and brothers-in-law. The accused, who was the uncle of her husband, used to occasionally visit the matrimonial house of the prosecutrix. On 15.09.2011, when she was alone with a mentally challenged aunt of her husband, the accused came to the house. On knowing that there was nobody else in the house, he

intruded into her room, caught hold

molestation, herself and her only child will be done away with. Immediately on her mother-in-law CrI.Appeal (V) No.5 of 2020 7 returning, she complained, but she was asked to keep silent since it would tarnish the family name. It was also alleged that her mother-in-law also threatened her and by reason of such threats she did not divulge the incident to anybody. Later, her husband's family, including the mother-in-law and the accused, forcefully put her in a vehicle and on the pretext of taking her to the hospital, took her to her parent's house. Later, she delivered twins on 11.06.2012, which she asserted was a direct consequence of her molestation by the accused, without her consent.

7. Before Court, PW2 deposed that while the accused reached her house on that specific day, she

was cooking in the kitchen. He came inside the kitchen and caught hold of her. When she resisted, he covered her mouth with his palm, dragged her into a room, made her lie on a cot and molested her. He asked her not to tell anybody and also

threatened her that she and her son will be killed, if it is otherwise. The deposition about her having told her mother-in-law and that mother-in-law asked her to CrI.Appeal (V) No.5 of 2020 8 keep silent and so on and so forth was in tandem with what she told in her FIS. We cannot but notice that the version of the prosecutrix with respect to the specific incident varies from that stated in the FIS. In the FIS her statement was that the accused intruded into her room and molested her, while before Court her version was that the accused caught hold of her in the kitchen and dragged her into the room.

8. Further, she admitted that she did not divulge the pregnancy or the cause to her family. The case put forth by the prosecutrix was that in the 7th month she was taken to her house by the family

members of her husband. PW3, her father, also corroborates that statement. According to PW3, the mother-in-law of his daughter informed him of her pregnancy and asked him to enquire with her as to who was responsible. PW3 also admitted that his daughter did not divulge or reveal the identity of the person who had impregnated her.

9. Pertinent also is the fact that at the time of delivery, the prosecutrix had given the name of CrI.Appeal (V) No.5 of 2020 9 her husband as the father of the children. The incident is said to have occurred on 15.09.2011 and the delivery was on 11.06.2012. The complaint was raised after lapse of a month from the delivery, i.e., on 23.07.2012. Though the learned Counsel for the appellant argued that in rape cases usually there

is delay, especially in the context of threats levelled against the victim; we are not convinced that it applies to the facts of this case. PW3, the father of the prosecutrix, deposed that their family used to regularly visit her daughter at her husband's home. The daughter also used to occasionally visit her family home. There is no complaint raised by the family of the victim that she was not allowed such association after the incident on 15.09.2011. Even if the allegation of the threats against the life of herself and her son is accepted; the admitted case is that on the 7th month the family of the husband took

the victim to her parental house. Definitely, if threats were levelled against the victim and her son; for not divulging the incident complained of, the Crl.Appeal (V) No.5 of 2020 10

victim would not have been sent to her parental house. At least, when she reached her parental house, she could have revealed the identity of the person, which she failed to do. The prosecution has failed to establish the case set up against the accused. We also see a number of proceedings initiated before the various courts and also in the Magistrate's Court for prosecution under S.498A IPC.

10. We notice the authoritative pronouncement of the Division Bench of this Court in Babu [supra]

that the question of paternity does not in every circumstances have nexus with the allegation of rape. But even when no reliance is placed on Ext.D3 report, the evidence led fails to impress us. We would also not dwell upon the other suggestions made by the accused regarding the paternity of the children. Suffice it to notice that the evidence led including that of the prosecutrix does not prove the allegations beyond reasonable doubt. The credibility of the prosecutrix is suspect by reason of the inconsistency about the version, in the FIS and her Crl.Appeal (V) No.5 of 2020 11 testimony and is also seriously affected by the delay

in raising the complaint; which has not been satisfactorily explained. Coupled with this is the fact that the accused was divorced by her husband, against whom various proceedings have been initiated including one under S.498A IPC, on which there is no prior complaint raised before any authorities, nor is there such an allegation raised by the father, PW3, in his evidence. In fact PW3 says in his evidence that on questioning, his daughter told him that it was an accident and that there was a rape.

We find no reason to overturn the judgment of the trial court and reject the appeal.
Sd/- K.VINOD CHANDRAN, JUDGE Sd/- C.JAYACHANDRAN, JUDGE sp

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com