

A.Kavi @ Kavinathan Vs. State Represented By

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Court : Chennai

Decided On : Nov-18-2014

Judge : The Honourable Ms.Justice R.Mala

Appellant : A.Kavi @ Kavinathan

Respondent : State Represented By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 18.11.2014 CORAM THE HONOURABLE Ms.JUSTICE R.MALA Criminal Appeal (Md.No.383 of 2006 A.Kavi @ Kavinathan ..Appellant Vs State represented by The Inspector of Police, Chekkanoorani Police Station crime No.1/2005 Madurai District..Respondent Prayer: Criminal appeal filed under Section 374 (2) Cr.P.C.To call for the records and set aside the order dated 23.08.2006 made in S.C.No.602 of 2006 on the file of the learned Sessions Judge, Mahila Court, Madurai and acquit the appellant/accused.

!For appellant : Mr.M.Ramasubramanian ^For Respondent : Mr.S.Prabha, G.A.(
Crl.

Side) :

JUDGMENT

The Criminal Appeal is directed against the judgment of conviction and sentence passed under Section 354 of I.P.C., dated 23.08.2006 rendered in S.C.No.602 of

2006 by the Sessions Judge, Mahila Court, Madurai for the offence under Section 354 of I.P.C.2.The case of prosecution briefly is as follows: i) P.W.1 Anbuselvi is the victim.

The appellant/accused is her neighbour.

P.W.2 Ravi is her uncle.

P.W.3 Deivakannan and P.W.4 Tamilselvi are her parents.

On 30.12.2004, at about 9.00 a.m.While, P.W.1 was collecting Co.dung in her cattle yard, the appellant/accused came there, pulled down and raped her and on hearing her noise, P.W.2 Ravi and brother of P.W.1 viz., Arivazhagan came there along with P.W.4 Boominathan, Vellaiyan and Ravi, and on seeing them, the appellant/accused flee away from the scene of occurrence.

Thereafter, she gone to police station and gave a complaint Ex.P1.

(ii)On 01.01.2005, at 12.00 noon, P.W.11 Karuppiah, Sub Inspector of Police, Checkanoorani police station, received the complaint Ex.P1 and registered a case in crime No.1 of 2005 for the offence under Section 354 of I.P.C.and prepared Ex.P.12, the printed FiRs.Information Report and he sent P.W.1 for medical treatment.

(iii)On 12.01.2005, Head Constable 516 brought the victim girl and produced at Government Rajaji Medical Hospital, Madurai for medical examination under Ex.P5, letter of the learned Judicial Magistrate No.I Usilampatti and P.W.8 Dr.Ravikumar, Radiologist examined the victim P.W.1 and took X-ray to ascertain her age and issued age certificate Ex.P6 stating that the victim is aged above 18 and below 21 yeaRs.The X-rays are marked as M.O.1 series(5 in nos.).Further, the victim girl was examined by P.W.10, Dr.Mallika on 11.01.2005 and she issued medical certificate Ex.P.11 stating that the victim is fit to have sexual contact and taken vaginal smear in 2 slides and sent the same for chemical examination.

P.W.9, Tmt.

Mahalakshmi, Scientific Assistant received Ex.P9, the letter of the learned Judicial Magistrate and after chemical examination, she issued Ex.P10, chemical analysis report.

(iv)P.W.11, Karuppiah, Sub Inspector of Police, took up the investigation and visited the place of occurrence and prepared Ex.P4 observation mahazer and drew Ex.P13 rough sketc.in the presence of P.W.7 Vayakadu and Peyathevar and recorded their statements.

He arrested the accused on 04.01.2005 and sent him for judicial custody.

He gave a requisition Ex.P7, before the Court to send the accused for medical examination.

(v)On 08.02.2005, Police Constable Dhanuskodi brought the accused and produced at Government Rajaji Medical Hospital, Madurai for medical examination under Ex.P7, letter of the learned Judicial Magistrate No.I Usilampatti and one Dr.Seethalakshmi examined him and issued Ex.P8, sexual offence certificate stating that the accused is potent.

(vi)After obtaining the medical reports of the victim and accused, P.W.11 Karuppiah, Sub Inspector of Police, altered the section from Section 354 of I.P.C.to Section 376 read with 511 of I.P.C.and he handed over the file to P.W.12, Inspector of Police for further investigation.

The Alteration report is Ex.P14.

(vii)P.W.14 Mr.Dhanapal, Inspector of Police, took up the case for further investigation and examined the witnesses and recorded their statements and after due completion of investigation, he filed charge sheet against the accused for the offence under Sections 376 and 511 of I.P.C.on 07.05.2005.

3.The learned trial Judge, after following the procedures, framed necessary charges against the accused.

Since the accused denied the same in toto and pleaded not guilty, to prove the charges, P.Ws.1 to 12 were examined and Exs.P.1 to 14 and M.O.1 was marked

on the side of the prosecution.

On completion of the examination of witnesses on the side of the prosecution, the accused was questioned under Section 313 of Cr.P.C., as to the incriminating circumstances found in the evidence of the prosecution witnesses and he denied them as false.

No witness was examined on the side of the defence, however Ex.C1, petition sent by the father of P.W.1 to the Child Welfare Committee, Madurai and Theni District has been marked by Court.

4. On consideration of the evidence on record, the learned Sessions Judge, Mahila Court, Madurai found the accused guilty under Section 354 of I.P.C and convicted and sentenced him to undergo one year rigorous imprisonment and imposed fine of Rs.3,000/- in default to undergo three months simple imprisonment, against which the present appeal has been preferred.

5.

Challenging the said conviction and sentence passed by the trial Court under Section 354 of I.P.C, the learned counsel for the appellant would submit that there is a delay in preferring the complaint and P.W.2 Ravi, who was the eye witness had turned hostile and since P.Ws.3 and 4, who are the parents of P.W.1 were not eye witnesses, their evidence are not reliable and P.Ws.5 and 6 were giving a different version and hence, the trial Court has rightly held that the charge under Section 376 read with 511 of I.P.C.has not been made out.

However, on presumption, the appellant/accused was convicted for the offence under Section 354 of I.P.C., whereas the ingredients of Section 354 of I.P.C.has not been made out and because of the enmity between the two families, the father of P.W.1 has used his daughter as a tool for lodging a false complaint against the appellant and that factum was not considered by the trial Court and hence, he prayed for setting aside the conviction and sentence passed by the trial Court against the accused/appellant.

6. Resisting the same, the learned Government Advocate (criminal side) would submit that the trial Court, even though framed charge under Section 376 read with 511 of I.P.C. and acquitted the appellant for the said charge, convicted him for the offence under Section 354 of I.P.C. She would further submit that during the investigation only, the case has been altered from Section 354 of I.P.C. to Section 376 read with 511 of I.P.C., as per Ex.P14 alteration report and the ingredients of Section 354 of I.P.C. has been made out.

To substantiate her case, she relied upon the judgment of this Court in CrI.A.No.111 of 2002 dated 19.02.2010 and stated that intention is not necessary for convicting the accused for the offence under Section 354 of I.P.C. and hence, she prayed for the dismissal of the appeal.

7. Considering the rival submissions made by both sides and also on perusal of the typeset of papers, it is pertinent to note that the alleged occurrence is said to have taken place on 30.12.2004 at 09.00 a.m. and the complaint has been given only on 01.01.2005 and hence, there is a delay in preferring the complaint.

But, as per the evidence of P.W.3, the father of P.W.1, he has given a complaint on 30.12.2004 and that has not been seen in the light of the day and hence he approached the Superintendent of Police and then only, he gave a complaint before the Deputy Superintendent of Police.

Admittedly, Ex.P1 has been recorded by P.W.11, Karuppiah, Sub Inspector of Police and the case has been registered at 01.01.2005 at 12.00 noon.

8. At this juncture, it is appropriate to consider the argument of the learned Government Advocate (criminal side) that since the offence is affecting the modesty of women and the victim girl is hailing from the rustic village, immediately after the occurrence, she did not approach the police and they may go for compromise and hence, the delay has been occurred.

But, the above argument does not hold good.

Because, as per the evidence of P.W.3, Ex.C1 has been marked, which shows that initially, P.W.3 has given a complaint before the police and he has also given

a complaint before the Child Welfare Committee for taking steps against the police and also before the Human Rights Organization, which shows that the intention of the father of P.W.1 is only to punish the appellant/accused and not to save the dignity of his daughter.

Therefore, I am of the view that the reason for the delay explained by the learned Government Advocate (criminal side) is unacceptable.

9. Now, this Court has to decide as to whether the evidence of P.Ws.1 to 3 is reliable or not?.

10. P.Ws.2 and 3 are the parents of P.W.1 and they are not the eye witnesses.

On perusal of their oral and documentary evidence would show that their main intention is to punish the appellant/accused.

It is pertinent to note that P.W.1 in her cross examination has fairly conceded that due to the purchase of land, there was enmity between both the families and also for grazing of cattles, there was enmity between their families.

In such circumstances, I am of the view that the evidence of P.Ws.2 and 3 is not natural, cogent and trustworthy and hence, it is not reliable and hereby discarded.

11. It has been held by the Apex Court, that the conviction can be based on the sole testimony of the prosecutrix, if found to be worthy of credence and reliable and for that no corroboration is required.

It has often been said that oral testimony can be classified into three categories, viz., (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable.

In case of wholly reliable testimony of a single witness, the conviction can be founded without corroboration.

This principle applies with greater vigour in case the nature of offence is such that it is committed in seclusion.

In case, prosecution is based on wholly unreliable testimony of a single witness, the Court has no option that to acquit the accused.

Therefore, this Court has to scrutinize the evidence of P.W.1 with great care and caution.

12.P.W.1 in her evidence has stated that at the time of occurrence, she is aged about 16 years. whereas, P.W.8 Dr.Ravikumar has assessed her age as above 18 and below 21 years. Furthermore, in her chief examination, P.W.1 has fairly conceded that she is having illicit intimacy with one Panneerselvam.

P.W.10 Dr.Malliga has also given Ex.P11, sexual offence certificate for P.W.1 stating that she used to have cohabitation.

Therefore I am of the view that the evidence of P.W.1 is partly reliable and it is not trustworthy, which needs corroboration.

But, here, there is no corroborating evidence.

In such circumstances, I am of the view that the trial Court is correct in held that the ingredients of Section 375 of I.P.C.has not been made out acquitted the appellant for the charge under Section 376 read with 511 of I.P.C.In paragraph 13 of the Judgment, the trial Court has held as follows: "That may be the true version regarding the occurrence which was exaggerated by stating that the accused attempted for rape for which no acceptable and reliable evidence is available.

On the basis of complaint Ex.P1, fiRs.information report Ex.P12, was registered under Section 354 of I.P.C.only and for which there is a possibility as the evidence shows that the accused pulled the hand of the victim which may be an act of outrage of modesty of the woman" 13.It is a settled canon of criminal jurisprudence that the conviction of an accused cannot be founded on the basis of inference.

The offence should be proved against the accused beyond reasonable doubt either by direct evidence or even by circumstantial evidence if each link of the chain of events is established pointing towards the guilt of the accused.

The prosecution has to lead cogent evidence in that regard so far as it satisfies the essentials of a complete chain duly supported by appropriate evidence.

But, here, there is no evidence to show that the accused/appellant herein, had an intention to outrage the modesty of P.W.1.

While perusing the evidence of chief and cross examination of P.W.1, I am of the view that her evidence is not trustworthy and hence, it is not reliable and discarded.

14.P.W.2 Ravi, P.W.5 Boominathan and P.W.6 Sivandammal have given evidence stating that because of the enmity, there was a quarrel between both the families on that day and when they made enquiry, they stated that because of the grazing of cattles, the alleged occurrence is said to have been taken place.

In such circumstances, I am of the view that the prosecution has failed to prove that the appellant/accused has outraged the modesty of P.W.1 beyond all reasonable doubt.

15.At this juncture, it is appropriate to consider the decision of this Court relied upon by the learned Government Advocate (criminal side) in Crl.A.No.111 of 2002, wherein, I have held in paragraph No.10 as follows: "Intention is not the sole criterion of the offence punishable under Section 354 of I.P.C., and it can be committed by a person assaulting or using criminal force to any woman, if he knows that by such act the modesty of the woman is likely to be affected.

Knowledge and intention are essentially things of the mind and cannot be demonstrated like physical objects.

The existence of intention or knowledge has to be culled out from various circumstances in which and upon whom the alleged offence is alleged to have been committed.

A victim of molestation and indignation is in the same position as an injured witness and her testimony should receive the same weight.

(Vidhyadharan V.

State of Kerala (2004) 1 SCC215" Here, perusal of the cross examination, P.W.1 would show that a suggestion was posed to her as to whether she know the incident which was occurred on that day morning when the accused ploughing his land, the parents and brother of P.W1 made quarrel with the accused/appellant and caused injury on his ear, she replied that she did not know about the same and she never stated that the said occurrence has not been happened.

In such circumstances, the presence of the accused in the place of occurrence itself is not proved by the prosecution beyond all reasonable doubt.

Therefore, I am of the view that the above citation is not applicable to the facts of the present case.

16.The trial Court has also not given a specific finding that the guilt of the accused for the charge under Section 354 of I.P.C.has been proved by the prosecution beyond all reasonable doubt.

As stated supra, the trial Court has committed an error in convicting the accused for the offence under Section 354 of I.P.C., merely on presumption.

Therefore, I am of the view that the conviction and sentence passed by the trial Court is unsustainable and hence, the same is hereby liable to be set aside and the appellant/accused is liable to be acquitted by giving benefit of doubt.

17.In fine, The Criminal Appeal is allowed.

Judgment of conviction and sentence passed in S.C.No.602 of 2005 dated 23.08.2006 by the Mahila Judge, Mahila Court, Madurai under Section 354 of I.P.C.is hereby set aside.

The fine amount already paid by the appellant/accused is ordered to be refunded.

The bail bonds, if any executed by the appellant/accused, shall stand cancelled.

18.11.2014 Index : Yes/No website: Yes/No Arul To 1.The Inspector of Police, Chekkanoorani Police Station Madurai District.

2.The Mahila Judge, Mahalir Sessions Judge, Madurai.

3.The Public prosecutor, Madurai Bench of Madras High Court, Madurai.

R.MALA, J.

Arul CrI.A.(MD)No.383 of 2006 18.11.2014

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