

Jeyakumar Vs. State, Rep.By

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Court : Chennai

Decided On : Aug-18-2015

Judge : The Honourable Mrs.Justice S.Vimala

Appellant : Jeyakumar

Respondent : State, Rep.By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 18.08.2015 CORAM THE HONOURABLE MRS.JUSTICE S.VIMALA Crl.R.C.(MD)No.304 of 2010 Jeyakumar ..Petitioner -versus State, rep.by Inspector of Police, Swamimalai Police Station, Thanjavur District.

(Cr.No.6 of 2007) ..Respondent Petition filed under Section 397 r/w 401 of the Criminal Procedure Code, against the judgment in C.A.No.77 of 2008 dated 26.03.2010 on the file of the Additional District and Sessions Judge / Fast Track Court No.1, Thanjavur, confirming the conviction and sentence imposed by the learned Chief Judicial Magistrate, Thanjavur at Kumbakonam in S.C.No.63 of 2008, vide judgment dated 14.08.2008.

!For petitioner : Mr.A.Thiruvadikumar ^For respondent : Mr.P.Kandasamy, Govt.Advocate (Crl.Side) :

ORDER

Reserved on : 06.08.2015 Delivered on : 18.08.2015 ?.Criminal Justice System does not admit of 'pigeon-holding.' Life and the Law do not fall neatly into slots.

When a Court starts laying down rules enumerated (1).(2).(3).(4) or (a).(b).(c).(d).it is arranging for itself traps and pitfalls.

Categories, classifications and compartments, which statute does not mention, all tend to make law 'less flexible, less sensible and less just.' ?.

So said, the Supreme Court in Ayodhya Dube v.

Ram Sumer Singh, reported in AIR 1981 SC1415 2.When the Trial Court has adopted the approach of pigeon-holding in interpreting the evidence of the prosecution witnesses and while acting upon the evidence of the prosecutrix exclusively, during which the material evidence were omitted to be considered, and immaterial evidence came to be considered resulting in miscarriage of justice, whether this Court should interfere in revision is the issue involved.

3.This revision petition has been filed by the fiRs.accused who was found guilty, as confirmed by the appellate Court in C.A.77 of 2008, under Section 354 IPC and sentenced to undergo 6 months rigorous imprisonment and to pay a fine of Rs.3,000/- in default to undergo 3 months rigorous imprisonment.

4.The case of the prosecution in brief: On the night of 06.01.2007, witness X was returning from Kumbakonam by travelling in a mini bus.

She got down at a place called Nalroad.

At that point of time, A-1 and A-2 came from back in a cycle and with a criminal intention to commit sexual intercourse, caught hold of X and caused extensive bodily injury apart from causing damages to the saree, petticoat and jacket.

In respect of the same, final report was filed against the accused under Sections 341, 323, 354, 376 r/w 511 r/w 34 IPC.

5.Prosecution has examined as many as 14 witnesses and marked 7 documents apart from exhibiting 3 material objects.

Based upon the materials placed before it, the Court came to the conclusion that though the offence under Section 376 r/w 511 is not made out, the offence under Section 354 IPC is made out as against the accused and the accused is guilty of the same.

6. From the reading of the judgment, it is evident that the Trial Court has appreciated evidence in a truncated fashion, and the appreciation of evidence is also mechanical.

The Trial Court, in paragraph-23 of the judgment, has given a finding that the injury against P.W.1 is proved by the Doctor.

This finding is contradictory to the oral and documentary evidence placed before this Court and this finding is perverse.

7. There is also a finding, which is lacking in clarity, which reads as under: ?. It is true, that there are some contradictions between the FiRs. Information Report.

But, it will not affect the full case of the prosecution. ?.

8. From the reading of the finding, it is evident that whether the alleged contradiction was between the FiRs. Information Report and the evidence of the witnesses or there was contradiction between the allegations made in the earlier part of the FiRs. Information Report with that of the later part of the FiRs. Information Report.

The Trial Court was not sure about the contradictions.

The Trial Court has also not considered as to whether those contradictions are material or immaterial.

It is not explained what were those contradictions and how the contradictions will not affect the case of the prosecution.

Without explaining the same, it is impossible to say that those contradictions will not affect whole of the prosecution case.

9.The contradictions on material aspects, which will go to the root of the prosecution case, has been omitted to be considered by the Trial Court as well as by the appellate Court, which are enlisted here: 10.No doubt, the uncorroborated testimony of the prosecutrix can be relied upon provided it is trustworthy.

The contention of the learned counsel for the revision petitioner is that when the evidence of prosecutrix is belied by the medical evidence, then the evidence of prosecutrix is unworthy of acceptance.

According to P.W.1, she sustained extensive injury over the private part of her body, but the Doctor would say that there was no injuries on the private part of the prosecutrix.

In a case of sexual assault, it is not necessary that the victim should have sustained injuries.

But when it is alleged by the prosecutrix herself that she sustained injuries and when the injuries are found missing, then the inference is that the occurrence could not have taken place in the manner alleged by the prosecutrix, thereby creating doubt in the veracity of the prosecution case.

11.

Identity of the accused persons: The serious contention of the learned counsel for the revision petitioner is that the prosecution has not taken any pain to identify the real accused persons and the accused persons in this case have been fixed either randomly or according to the will and wish of the prosecutrix, which has resulted in failure of justice to the accused persons.

12.Relying upon the decision reported in (2009) 3 SCC (Cri) 28, in Hem Singh alias Hemu v.

State of Haryana, it is contended that failure to conduct test identification parade is fatal to the prosecution case especially when the occurrence had taken place at about 10.30 p.m., in the night.

It is pointed out that if the evidence of prosecutrix is considered along with the evidence of the other prosecution witnesses (alleged eye witnesses).the prosecution would have understood that these accused persons are not really involved in the occurrence.

In order to appreciate this contention, it is necessary to look into the details furnished in the FiRs.Information Report and the evidence of P.Ws.2 to 4.

13.As per the FiRs.Information Report, the incident is said to have taken place at 10.30 p.m.P.W.1 has stated that she did not know the accused persons before the occurrence.

Even according to the case of the prosecution, when P.W.1 was walking on the road, after alighting from the bus, the accused persons came behind her.

According to the prosecution, the incident was witnessed by Subramanian, Kittu and Batcha.

Only after seeing them, the accused persons are stated to have ran away from the place.

The witnesses Kaliyaperumal and Selvaraj are the persons to whom the prosecutrix is alleged to have disclosed the incident, seeking solace.

14.The allegation regarding outraging modesty or being subjected to sexual intercouRs.need not have any corroboration because of the process of secrecy involved while committing the offence.

But in this case, the occurrence is said to have taken place in a public road in the presence of witnesses.

When the defacto complainant has stated that she did not know the accused persons prior to the occurrence, the identity of the accused is the primary question involved, especially when the incident is said to have taken place at night 10.30.

The witness P.W.2 Subramanian would say that the victim told him that she was molested by two college boys but she do not know who those persons were.

Witness Krishnamoorthy would say that the victim told him that she was dragged by two persons.

He would further say that they handed over the accused Murugan to somebody, but because of the darkness, he cannot say to whom custody of Murugan was entrusted.

According to the version of P.W.4, P.W.1 told him that the accused persons attempted to humiliate her and on seeing witness Krishnamoorthy, they ran away.

With these contradictions, which are on material aspects, ie., (a)whether P.Ws.2 to 4 could have been eye-witnesses as alleged by the prosecution; (b)whether the witness X was attempted to be subjected to sexual intercourse/whether there was any attempt to molest her or whether she was dragged etc.; (c)Whether the accused Murugan was secured in the same place or they were later arrested on the next day of occurrence as spoke to by the prosecution; and (d)whether the prosecution witnesses would have got opportunity to witness the incident at all, because as per the version of witness Kaliyaperumal, it was dark at that time.

These contradictions, which are material, create a doubt as to whether such an incident as alleged by witness X could have taken place in the manner alleged.

The allegation made by P.W.1 with regard to outraging of modesty or attempt to commit sexual assault is not corroborated by the remaining witnesses but contradicted by the witnesses each one of them propounding one theory furnishing four different versions.

Under such circumstances, it is not safe to believe the exclusive testimony of the prosecutrix.

15. When it is the case of the witness X that she did not know the accused persons prior to occurrence, it is not known how the details of the accused persons find a place in the FiRs. Information Report.

It is for the investigating officer to have explained as to how the identity of the accused persons were fixed.

From the evidence adduced, the only conclusion is that something might have happened in the night hours and the prosecution has fixed these persons as accused persons without any investigation.

Therefore, when the Trial Court and the Appellate Court did not consider those material aspects, the conviction, based on perveRs.finding, cannot be maintained.

16.It is settled law that when the finding is perveRs.or when relevant materials are not taken into account / irrelevant materials were taken into account, revisional jurisdiction of this Court has to be invoked.

As a matter of fact, the Delhi High Court, in the decision reported in 1992 Cr.L.J.408 in Brahmjit Singh v.

State, has held that the revisional Court would be justified in re-appreciating the evidence where vital aspects of the case were ignored by the Courts below while passing the judgment.

17.In the result, the Criminal Revision Petition is allowed and the conviction and sentence imposed on the accused are set aside and the petitioner / accused is acquitted of the charge levelled against him.

Bail bonds if any, executed by the petitioner / accused shall stand discharged.

To 1.The Inspector of Police, Swamimalai Police Station, Thanjavur District.

2.The Chief Judicial Magistrate, Thanjavur at Kumbakonam.

3.The Additional District and Sessions Judge / Fast Track Court No.1, Thanjavur.

4.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai..

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