Annakodi Vs. the State

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Court : Chennai

Decided On : Jul-12-1994

Reported in : 1995(2)ALT(Cri)364; 1995CriLJ3387

Judge : Rengasamy, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 363 and 375; Evidence Act - Sections 35

Appeal No. : Criminal Revn. Case No. 624 of 1991 and Criminal Revn. Petn. No. 622 of 1991

Appellant : Annakodi

Respondent : The State

Advocate for Def. : P. Govindarajan, Govt. Adv.

Advocate for Pet/Ap. : M. Vijayakumar, Adv.

Judgement :
ORDER

1. This revision, arising against the conviction and sentence imposed by the learned First Additional Sessions Judge, Madurai, is for the offences under Ss. 363 and 375, IPC, to undergo rigorous imprisonment for 5 years and 7 years respectively. The prosecutrix P.W. 3 is said to have been aged only 13 years at

the time of the occurrence and the revision petitioner, who is alleged to have taken prosecutrix to different places after kidnapping her, was arrested after 10 days along with the victim.

2. The prosecution case is as follows :

P.Ws. 1 and 2 are the parents of the prosecutrix P.W. 3, residents of Pappanaickenpatti Village in Madurai District. On 8-5-87 when P.W. 1 had been to his land for watering and P.W. 2 his wife also had been to a temple to attend a festival and P.W. 3, the victim girl alone was in the house with one Vooral, a servant maid. On that day early morning at 05-00 a.m., when P.W. 3 was sweeping in front of her house, this revision petitioner accused, who is related to the servant maid Vooral, started conversation with her (PW. 3). On seeing this, the relative of P.W. 3 by name Seshuraman threatened that he would inform this to her father and asked him to cut her into pieces. So, both P.W. 3 and the revision petitioner became frightened and this revision petitioner asked her to accompany him to go elsewhere, for hiding themselves for about 10 days to save her from the wrath of her father. Though, she initially refused, as he said that it was only for her safety, she agreed for that. When this revision petitioner insisted her to bring cash and also wear her jewels, she declined for that but he getting the key of the box from her, himself opened the box and took the cash with him. He advised her to come to the tank under the guise of going to the tank for taking bath and that he would take her from there to the place of her their destination, or he would kill her for non-compliance. So, P.W. 3 with the jewels joined the revision petitioner near the tank and both of them went to different places and stayed in the house of the relatives of the revision petitioner, where she was raped by the revision petitioner. In the meanwhile, P.W. 1 returned in the evening from the field and finding that his daughter was not in the house and the case box kept open, searched for her in the adjacent villages and having failed to trace her, he launched a complaint on 9-5-87 at 10-00 p.m. in Saptur Police Station. On 18-5-87 at about 12-00 Noon, P.W. 10, the Inspector of Police arrested this revision petitioner and P.W. 3 near a bus stop in Anaikarapatti.

3. The Courts below were satisfied with the evidence of P.W. 3 for the kidnapping and rape and therefore this revision petitioner has been convicted in the manner stated above.

4. The learned counsel appearing for the revision petitioner would contend that the Courts below have erred in accepting that P.W. 2 was aged below 18 years on the date of the alleged occurrence, that actually she was a major, who had completed 18 years is found from the oral evidence and also the medical evidence, that P.W. 3 could not have been forcibly taken by the revision petitioner but she had joined him willingly and therefore the conviction and sentence of the petitioner is an error of law. It is true that P.W. 3 was found missing from her house and that is why her father P.W. 1 had given a complaint on 9-5-87 in Saptur Police Station.

5. On a perusal of the evidence of P.W. 3, it can be easily understood that this girl should have willingly eloped with the revision petitioner, because the cash of Rs. 1,400 kept in the box by her father P.W. 1 and the jewels had been taken by P.W. 3 when she left the house. Even though she would say that the revision petitioner himself opened the box and took out the cash, if she was an unwilling party she would not have allowed that. Therefore, taking the cash of Rs. 1,400 and also taking the jewels from the house, prove that the girl was a willing party to join the revision petitioner to leave her parents' house. Further her evidence discloses that she walked alone for about 5 kilometres distance to join the revision petitioner who was waiting for her near a tank and from there they walked about 10 miles distance upto Sedapatti, from there they went by a bus to Thirumangalam. Unless P.W. 3 was happy to join the revision petitioner and was waiting for an opportunity to leave the house, she would not have walked alone to a tank at a few kilometres distance and thereafter walked a long distance to reach Sedapatti. Any amount of threat by the revision petitioner, would not have made this girl to undertake such ordeal of walking to such a long distance with the revision petitioner, without complaining to anybody, about the alleged enticement by threat. Therefore, I am fully satisfied that P.W. 3, who spoke about the kidnapping, had the fullest desire to go with the revision petitioner herein choosing her own way of life.

6. It is true that if P.W. 3 was below 18 years at that time, her consent in going with the revision petitioner will not have any effect to save him from the crime, alleged to have been committed by the revision petitioner, but if it was otherwise no case is made out against the revision petitioner. Therefore, the age of the prosecutrix is the vital question to be considered in this case.

7. P.W. 1, the father of the girl has spoken in his evidence that her daughter was only 13 years old at the time of this occurrence. To support this oral evidence, a school record sheet Ex. P-8 is also produced by the prosecution. According Ex. P-8, the record sheet issued by P.W. 7, the elementary school headmaster, the date of birth of Tamilselvi was 11-4-74 as provided by her parents at the time of admission of this girl in the school. According to P.W. 7, the girl was admitted in the school on 1-6-79 and she completed her 5th standard on 30-4-84. But the defence case is that Ex. P-8 has been created for the purpose of this case. The learned counsel for the revision petitioner citing certain decisions, would contend that the school certificate is not a reliable document.

8. P.W. 3 was sent for medical examination and P.W. 5, the radiologist, who conducted the ossification test, has deposed that from the fusion of the bones, P.W. 3 had completed 17 years but below 18 years. In addition to the fact that medical evidence also reveals that this girl is below 18 years and the school certificate proves her age only 13 at the time of elopement, the Courts below have found that the offences of kidnapping and rape by this revision petitioner are established. But on a careful consideration of the evidence of P.W. 1 and the margin to be given for the determination of age by ossification test, I doubt the minority age of P.W. 3 at the time of the occurrence. Before that, I may refer to the view of the Courts with regard to the medical evidence and the school certificate for deciding the age of the girl. The Supreme Court in Umesh Chandra v. State of Rajasthan 1982 SCC (Cri) 396 : 1982 Cri LJ 994 has expressed the view that entries in the school register and an admission form maintained in the course of regular official duty are records made ante litem mortem are reliable under S. 35 of the Evidence Act more so where the school is a reputed public school. In Mohd. Ikram Hussain v. State of U.P. : 1964 CriLJ590 also similar view is expressed that the certified copy from the school register and the affidavit of the father of the girl

stating the date of her birth amount to evidence under the Indian Evidence Act, which could be relied on. In Birad Mal Singhvi v. Anand Purohit, : AIR 1988 SC1796 which relates to an election case, the Supreme Court has observed that the entry in the school register is admissible evidence under S. 35 of the Evidence Act but at the same time, it is for the Court to decide in which cases such documents can be given weight in the absence of other satisfactory evidences. In the present case, the prosecution has produced the radiologist report Ex. P-6 issued by P.W. 5. P.W. 5 has stated that the X-ray of the wrist, knee and the hip-joint reveals that there was no fusion in those bones and therefore she had not completed the age of 18 years. Any how, according to his test, P.W. 3 had completed 17 years of age. Therefore, the margin is very narrow and the Courts have decided that the margin may be few years this side or that side. The learned counsel appearing for the revision petitioner has cited a few decisions to support his argument that the school certificates are not the authenticated records to accept the age of a girl. In Chiddaram v. State : 1992(23)DRJ344 in para 5 it is observed that a school certificate or an admission form is not a conclusive evidence of the age of the prosecutrix and that the ossification test also is not a sure test as to the age of the prosecutrix and it gives only an approximate age, which may vary by two years on either side. In Ram Murti v. State of Haryana : 1970 CriLJ991 a school certificate obtained by the Investigating Officer during the investigation was not exhibited though relied upon by the Courts and the Supreme Court has observed that unproved and unexhibited school certificate cannot be relied on for fixing the age. No doubt, in the case on hand, the Head Master of the school P.W. 7 has spoken about the contents of Ex. P-8. But he has not identified the student mentioned in Ex. P-8 and he has simply stated that this record-sheet relates to one Tamilselvi, who was admitted in the school on 1-6-1979 and she left the school on 30-4-84. The mere description of P.W. 3's name and the name of her father P.W. 1 in Ex. P-8 alone, are not sufficient to accept that Ex. P-8 relates to P.W. 3 as there may be so many other persons in the same name in a village. Therefore, the identity of the student mentioned in Ex. P. 8 is not established in the evidence. This certificate has been issued only in the year 1987 during the investigation, taken up by the Inspector of Police. It was not only desirable but also would have been proper directing the headmaster of the school to produce the

original register itself to ascertain the correctness of the entries therein, as is being done in the case of the accident registers, though wound certificates are issued by the doctors. Some times, there may be certain corrections and interlineations in the original register which may throw some light with regard to the authenticity of the entry and the production of the extract of the entry, in the form of the record-sheet cannot dispel the doubt, as to the entry, when especially in this case, the father of the girl himself has made an admission in the chief examination itself that his daughter was the eldest and his son had completed the age of 18 years at the time of his evidence. According to P.W. 1, he has three children of whom the daughter was the oldest and of the two sons, one was aged 18 years and the other was aged 8 years. So, on the date of his evidence, he has admitted that his son had completed the age of 18 and therefore his daughter, who is elder to him, must have been aged more than 18 years. However, he would say that his daughter was aged only 13, in the previous year, when the occurrence took place. From this piece of evidence, which has come out from the mouth of P.W. 1, there is suspicion as to the correctness of Ex. P-8.

9. The prosecution cannot simply brush aside their own document Ex. P-6, the opinion of the radiologist, whose opinion is that P.W. 3 had completed 17 years on the date of her examination in the year 1987. Even though the opinion of P.W. 5, the radiologist, may not be accurate, there cannot be a vast difference of four years in the age, between Ex. P-8 the school register and the opinion of the doctor Ex. P-6. When P.W. 5 says that the girl had completed 17 years, no doubt, some times the medical evidence can even be ignored if there is any other reliable evidence contra to that. But in this case Ex. P-8 itself has become suspicious in view of the testimony of P.W. 1, the father of the girl, who has stated that his son, who is younger to P.W. 3 had completed 18 years in the year 1988. Therefore, it is not safe to place reliance on Ex. P-8 and the evidence of P.W. 1, to accept that the girl was aged only 13 years at the time of the occurrence.

10. The next alternative evidence is the opinion evidence of P.W. 5. Though his evidence is that the girl had not completed 18 years, as mentioned above, it cannot be so accurate and some margin has to be allowed either side. Even if one year margin was allowed to Ex. P-6, there is a possibility for P.W. 3 having

attained the age of majority, completing 18 years, at the time of the occurrence. This will be more so, as P.W. 1 himself has admitted that his son, who is younger to P.W. 3 had attained the age of 18. Therefore, this has created enormous doubt in my mind as to the case of the prosecution that the girl was a minor not attained the age of 18 years on the date of the occurrence. With this evidence leading to the irreconcilable doubt as to the age, it is not safe to convict this revision petitioner for the abovesaid offences, when the benefit of doubt goes to the accused.

11. The learned counsel for the revision petitioner contends that the medical test also reveals that the private part of P.W. 3 allowed two fingers and if she was a virgin girl before this occurrence around the age of 13, the viginal hole could not have been so loose allowing two fingers and therefore the girl must be of immoral character and her testimony cannot be relied upon to accept the case of the prosecution. P.W. 3 has stated in her evidence that twice she had sexual intercourse with the revision petitioner on his compulsion, when they were staying in the house of the relation of the petitioner. If the sexual assault was only twice, as stated by her, and she was a young girl of 13 years old, the vaginal hole could not be so loose to allow two fingers. Normally, girls would attain the puberty at the age of 12 or 13 years. So, the condition of the private part of P.W. 3 also leads to suspicion in the veracity of her evidence that only twice she had sexual intercourse with the revision petitioner.

12. There is also inconsistency as to the place of arrest as P.W. 3 as stated that when she was at Madras, she was arrested by the police, whereas P.W. 10 would state that he arrested the revision petitioner when he was with P.W. 3 near the bus stop in Anaickerpatti of Madurai District. Even ignoring these inconsistencies, as I am convinced from the evidence that P.W. 3 was not a minor, but completed the age of 18, the willing adventure of this girl in the company of the revision petitioner, for their flirting pleasure, may not fall within the rope of Ss. 363 and 375, IPC to deal with this revision petitioner under law, therefore, the Courts below erred in accepting the prosecution case and convicting the revision petitioner. The revision deserves to be allowed.

13. In the result, setting aside the conviction and sentence of the Courts below, the revision is allowed. The fine amount may be refunded to the revision petitioner.

14. Petition allowed.