

Shanmugham Vs. the State

Shanmugham Vs. the State

SooperKanoon Citation : sooperkanoon.com/793185

Court : Chennai

Decided On : Mar-06-1996

Reported in : 1996CriLJ3808

Judge : M. Karpagavinayagam, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 341, 361, 366, 376 and 376(2);
[Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313

Appeal No. : Crl. Appeal No. 735 of 1989

Appellant : Shanmugham

Respondent : The State

Advocate for Def. : S. Manimaran, Govt. Adv.

Advocate for Pet/Ap. : S.E. Victor, Adv.

Judgement :

1. This appeal has been preferred against the Judgment dated 25-8-1989, in S.O. No. 8 of 1987, on the file of Second Additional Sessions Judge, Chengalpattu, convicting the appellant for offences under Ss. 341, 366 and 376(2)(f), I.P.C. and sentencing him to undergo R.I. for one month, three years and ten years respectively. The substantive sentences were directed to run concurrently.

2. The prosecution case is as follows :-

The prosecution has examined 10 witnesses, filed 18 exhibits and marked 4 material objects. P.W. 1 Sumathi, the victim in this case is as resident of Soonampedu colony, staying along with her mother, brother and sister. Her father is at Madras as Rickshawman. P.W. 1 Sumathi was aged about ten years at the time of occurrence. The appellant Shanmugham aged about 49 years, was the neighbour.

3. On 25-5-1986 at 4 p.m., P.W. 1 Sumathi, went for taking water for the pigs. At that point of time, the appellant asked her to come inside his house. P.W. 1 told that she was proceeding to her sister's house for getting ragi. Immediately the appellant pulled her right hand and forcibly took her inside the house and made her lie down and raped her, after gapping her mouth by inserting a cloth piece. After commission of the crime of rape, the appellant threatened her not to disclose anyone, including the parents. When she came out, the neighbours asked her as to what was happened, she did not tell then anything. After three days, when the mother of the victim P.W. 5 Nagammal insisted her, she narrated the events as to what was happened on the date of occurrence inside the house of the appellant. Thereafter, P.W. 5, the mother of the victim took P.W. 1/victim along with her husband (not examined) to the Soonampedu Police Station, where P.W. 1, the victim gave Ex. P-1 complaint. The Head Constable one Arumugham, who was then in charge of the police station registered the case in Cr. No. 86 of 1986 under S. 376, I.P.C. Ex. P-16 is the printed F.I.R. The Head Constable examined P.W. 1 Sumathi/victim, P.W. 5 Nagammal and others. He recovered the clothes worn by P.W. 1/ victim, M.Os. 1 and 2, inskirt and shirt under Ex. P. 17 mahazar. He then arrested the appellant and recovered the clothes M.Os. 3 and 4, under Ex. P-10 mahazar, P.W. 9 Ramanujan, Sub-Inspector of Police, who took up further investigation went to the spot and prepared Ex. P-18 rough sketch. He sent the clothes of both the victim and appellant, M.Os. 1 to 4 for chemical analysis.

4. On 5-6-1986 at 12-00 noon, P.W. 2 Dr. Ravishanker, attached to Chengalpettu Govt. Hospital, examined P.W. 1 Sumathi/victim and gave certificate Ex. P-2, certifying that she was of the age between 12 and 14 years. P.W. 3 Doctor Rajeswari examined P.W. 1 on 29-5-1986 itself and since she did not find any injury, she was not able to give any opinion about the rape. Ex. P-3 is the wound

certificate issued by P.W. 3 doctor. P.W. 6 Chigamani, the Headmaster of Panchayat Union Elementary School, Soonampedu gave Ex. P.8 age certificate to P.W. 1 with reference to the school records.

5. P.W. 8 Doctor Diwakar, examined the accused on 2-6-1986 and opined that the appellant was potent to have sexual intercourse. On receipt of Ex. P-4 requisition from the Sub-Inspector of Police, P.W. 4 Munusamy, the Headclerk of Judicial Magistrate Court, Maduranthagam, sent the M.Os. 1 to 4 along with the copy of Magistrate's letter Ex. P-5 for chemical analysis. Ex. P-6 is the chemical analyst's report and Ex. P-7 is the serologist's report. P.W. 10, Jothilingam, Sub-Inspector of Police, who conducted the further investigation in this case, after completion of the same filed the charge-sheet against the appellant under Ss. 341, 366 and 376(2)(f), I.P.C.

6. When the appellant was questioned under Section 313, Cr.P.C., with regard to the incriminating circumstances appearing in evidence on record, he denied his complicity in the crime and he added that the evidence adduced by the witnesses are all false. However, he did not choose to examine any witness on his side.

7. After conclusion of trial, the Court below on appreciation of evidence, oral and documentary adduced by the prosecution found the appellant guilty for the above offences and dealt with him as stated earlier. Hence, this appeal.

8. Mr. Victor, learned Counsel for the appellant elaborately argued and took me through the entire evidence adduced by the prosecution and contended that the evidence of prosecution witnesses could not be believed as there are various contradictions found therein. I have heard, learned Govt. Advocate, appearing for the State.

9. P.W. 1 Sumathi, according to her school certificate is aged about ten years and as per the medical examination, she was aged between 12 and 14 years at the time of occurrence. Of course, P.W. 3 Doctor says that there was no injury found on her private parts. Taking advantage of the same, learned Counsel for the appellant would contend that she must be a willing party for the incident. It is relevant to note that if the girl is aged below 16 years, even if she is a willing party

for such intercourse, the act done by the other party could be constituted to be an offence of rape. Moreover, in this case the evidence of P.W. 1 is that the appellant gagged her mouth by putting a cloth piece in her mouth while raping her. Even after the rape was committed, the appellant threatened the victim not to disclose the same to anyone. P.W. 1 is certain, that she was raped for five minutes. When she had the continuous bleeding for three days, she informed her mother P.W. 5.

10. Learned Counsel for the appellant has pointed out the delay in filing the complaint Ex. P-1. The reason for such delay has been properly explained by P.W.s. 1 and 5, which has been rightly accepted by the learned trial Judge. Of course P.W. 3 Doctor was not able to say about rape, since she found no symptom for the same. But that evidence cannot affect the core of the prosecution case, in view of the fact that the evidence of P.W. 1, who has got no animosity over the appellant, can be relied upon to conclude that the appellant has committed the crime of rape.

11. It was further argued by learned Counsel for the appellant that the Head Constable Arumugham, who received the complaint Ex. P-1 and registered the case has not been examined in Court. But P.W. 9 Sub-Inspector of Police has given proper explanation for the non-examination of the said Head Constable, stating that he was not in service as he became mentally deranged. Mere absence of injury on the body of the victim cannot be taken to mean that no rape was committed, especially when P.W. 1 says that she was threatened and a piece of cloth was put on her mouth by the appellant while he raped her, in order to prevent her from shouting. The perusal of entire evidence would clinchingly prove that the offence under Section 376(2)(f), I.P.C., has been committed by the appellant and the appellant alone. In these circumstances, I am of the view that the prosecution has been able to prove the case against the appellant under Ss. 341 and 376(2)(f), I.P.C., with regard to which the trial Court has rightly arrived at a conclusion and sentenced the appellant with adequate punishment as referred above. So, I see no reason or justification to interfere with the findings given by the trial Court in so far as the offences under Sections 341 and 376(2)(f), I.P.C. concerned and the sentence of R.I. for one month and R.I. for ten years respectively cannot be said to be harsh, in view of the above fact and

circumstances of the case.

12. With regard to the charge against the appellant under Section 366, I.P.C., learned Counsel for the appellant has vehemently argued that no case has been proved or attributed against the appellant through prosecution witnesses for the offence under Section 366, I.P.C. Section 361, I.P.C., which deals with 'Kidnapping from lawful guardianship' reads thus :

'Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.'

In this case, I do not find any material to show that P.W. 1 Sumathi, the victim was taken away from keeping of the lawful guardian. In that view of the matter, the conviction and sentence imposed on the appellant under Section 366, I.P.C. cannot be said to be valid and the same are liable to be set aside.

13. In fine, the conviction of the appellant under Ss. 341 and 376, I.P.C., and the sentence of R.I. for one month and R.I. for ten years respectively are confirmed and the conviction of the appellant under Section 366, I.P.C., and the sentence of R.I. for three years are set aside. The Criminal Appeal is disposed of in the above terms.

14. Order accordingly.