

In Re: Karichiappa Goundan

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Court : Chennai

Decided On : Apr-25-1941

Reported in : AIR1942Mad285

Appellant : In Re: Karichiappa Goundan

Judgement :

Mockett, J.

1. The appellant has been convicted of the offence of rape under Section 376, Penal Code. The woman on whom he is alleged to have committed rape is named Subbammal. She lived at a village Poovanallur which is nine miles from Kangeyam and the offence is said to have been committed on 9th December 1940 at lamp-lighting time, which may approximately be said to be about 6 o'clock. The allegation is that Subbammal had gone to Kangeyam where the shandy was and was returning in the evening when she was raped by the appellant. The learned Sessions Judge has accepted the case for the prosecution, has taken a very grave view of the offence which, he considered was committed with considerable brutality and sentenced the appellant to rigorous imprisonment for five years and to receive 25 stripes under Section 4, Whipping Act. The occurrence, as I have said, is alleged to have taken place at about, 6 P.M., on 9th December. The first information report reached the police at Kangeyam on the next day at about 7-40 A.M. It is a most important document and I will set it out in full:

Yesterday while I was returning from the Kangeyam shandy with Meenakshi Ammal, Palani Chetty, Subbaraya Chetty, Palaniswami Goundan and Karichiappa Goundan (appellant)-these also came along with us from the shandy. As we were nearing the itteri to the north of Molapalayam, Samiappa Goundan, his younger brother Ponnuswami Goundan, Sellappa Goundan, Muthuswami Goundan and Sundara Goundan-these were sitting in the itteri. On seeing us they observed: 'Why delay? Look sharp' and immediately Karichiappa Goundan (appellant) who was coming with us, caught me, pushed me down, untied my saree and threatened to stab if I raised any alarm by showing a knife in his hand. The said Palaniswami Goundan, caught hold of Meenakshi Ammal who was coming along with me. Karichiappa Goundan ravished me and threatened to stab if I did not give up my jewels.

She sets out in detail the ornaments which she gave up and proceeds:

Palaniswami Goundan, left off Meenakshi Ammal, pushed me down and raped me. Then Karichi Goundan and Palaniswami Goundan these went away to Molapalayam with those five who were sitting in the itteri. We returned to the village. Out of fear we stayed in the village itself for the night and today I came and have reported to you.

So it will be seen that this woman alleged the next day that she was threatened with a knife, robbed of her jewellery and raped by the appellant and that Palaniswami Goundan also raped her. At the Sessions she told another story, a very remarkable story. There her version as P.W. 5 was this: On her return home she passed the appellant at the toddy shop at Sambavalasu. He followed. There were three Chettis in front and she and her sister were walking. The appellant, she said, was walking behind drunk. As they were passing Kannakkankadu, the appellant came in front and told her to stop. As to what happened thereafter this is what she said:

Then he pushed me down and I shouted out. My sister came towards me but the accused pushed me down on some thorns, pulled up my sari and raped me on the spot. My sister shouted out to the accused and he then threatened to stab her if she remained there much longer. When the accused first struggled with me he

showed me a knife and this he showed to the Chettis, P.Ws. 7 and 8, as they came up and they turned tail and went off as soon as they saw it. My sister ran away at the threat and I got up as soon as the accused finished raping.

This is important because those words mean and can only mean that this man had completed the act of intercourse. She proceeds:

As I was arranging my cloth, the accused caught hold of me and dragged me across the field about 80 yards and again threw me down and raped me. I dared not raise any alarm as he threatened me with the knife. I begged him to let me go, but again he dragged me across the field for about 100 yards, again threw me down and ravished me a third time.

She describes how she went home. Now it will be noticed that there is no word with regard to any robbery, but that she explains. She says that she after getting home that evening reported to her relations and they told her that she must complain of having had her jewels stolen to make her case stronger. That part of her complaint was false. She says she does not remember anything about a second man having ravished her. She had apparently forgotten the relatively minor incident which she described in Ex. G of how Palaniswami Goundan had raped her. At the Sessions the appellant was charged with rape only and Palaniswami Goundan was charged with nothing. The rest of the evidence is as follows: The evidence of P.W. 6 is that she was in this party, that she heard a shout and that she saw her sister being thrown down and that the appellant was on the top of her raping her. She says that the Chettis asked the appellant how he dared to do such a thing, but that he threatened them with a knife and that they at once ran back. These Chettis, who were P.Ws. 7 and 8, are brothers and are cousins of Subbammal. She says that she was threatened not to stay there and so she went back to Malapalayam about 3/4 mile, raised an alarm and three Goundans came back with her. They are P.Ws. 9 to 11. The learned Sessions Judge took a very remarkable view in my opinion of this case, because he said that

if the case depended to any great extent on the testimony of this woman, the accused would be entitled to an acquittal since she has shown herself to be largely unworthy of credit by making these false allegations in her complaint.

Now I consider that on that statement alone the appellant was entitled to an acquittal. It is an essential part of the proof in rape that there should have been not only an assault but actual penetration. The only witness who can prove that is the woman. In practice, a conviction for rape almost entirely depends on the credibility of the woman so far as the essential ingredients are concerned, the other evidence being merely corroborative. Her testimony is vital in a case like this where the woman is married and the medical evidence in no way corroborates the charge of rape. There was no violence revealed in the genital organs (which might be natural in a woman of this age who was several times a mother) and the Chemical Examiner's report takes the case no further. Even had there been spermatozoa indicating semen found in the woman's genitals or on her saree, it would have been by no means final in the case of a married woman. The minor injuries found upon her are in my opinion far too trifling to substantiate a charge of rape and cannot be said to lend truth to her story. Taking the evidence therefore at its highest, nothing more was proved than that some form of violence was used to this woman. If her evidence cannot be believed as a whole, it is quite impossible to say that it can be accepted with regard to the vital part, namely, that she was subjected to an act of sexual intercourse against her will. The examination-in-chief which should have elicited those intimate but essential details necessary to prove rape was content to elicit the replies 'I was raped, I was ravished.' But the case does not rest there. I have had the advantage in this case of an argument from Mr. G. Gopalaswami and also from the Public Prosecutor. Mr. G. Gopalaswami has pointed out a number of defects. It has been pointed out that the first information report mentions one rape by the appellant and one by Palaniswami Goundan, whereas in her evidence she alleges that she herself was raped three times by the appellant and not by Palaniswami at all. It is most unfortunate in this case that this man was not defended and I notice that no questions were put in cross-examination by the Court with regard to various matters which called for explanation. A lady doctor was examined and so was Dr. P.S. Vaidhyathan; and I think he might well have been asked whether in his opinion it was possible for a man a drunken man-to commit the offence of rape three times within a few moments. He was never asked this. The learned Judge, having virtually rejected the chief and vital witness for the prosecution, says that he can accept the

evidence of her sister and two of her three companions supported by that of the three Goundans who formed the 'rescue party.'

2. Now as to that, the Public Prosecutor who has most properly in the carrying out of his duty indicated that he cannot support this conviction, has emphasised that this woman, went with a false story of robbery to the police and that she went accompanied by P.Ws. 6, 7 and 8. He has pointed out that all these people were examined together and I think it is quite clear that they were acting together throughout. But if there is any question as to whether the evidence of P.Ws. 7 and 8 can be accepted, let us examine their conduct. The woman who had been raped was their cousin. They came upon the scene and saw what must have been a sexual assault or at least an assault. But they say that being threatened with a knife they ran to their village. That possibly is credible, although it does not show a high standard of courage. Having got to their village and having seen their cousin being assaulted, what did they do? The answer is nothing whatever. But apparently quite casually they went later to P.W. 5's house and were then informed by her what I decline to believe-that she had been raped three times by the appellant. They themselves reported the matter to no one that afternoon. I consider their evidence wholly unreliable and a fulsome prop to the evidence of the woman who was admittedly telling a false story of robbery and whose evidence on the face of it is incredible. P.Ws. 9 and 10, however, appear to have been relied upon. After hearing that there had been this attack, they went to the scene, saw the appellant there and went back to their village and made no report to any one. I decline to believe that these four persons P.Ws. 7 to 10 if they had really seen or heard that the woman was being raped by an armed man, would not have made a complaint, if not to the village munsif, at least to some of the villagers and gone out in force to deal with the matter.

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3. Before leaving this case, I should like to express an opinion, namely, that it would be well in Sessions cases in cases of rape at least in some of them if the Sessions Judges appointed a member of the Bar as amicus curiae. The Bar have never failed to co-operate with the Bench in matters of that sort. I have to day had

the advantage of Mr. G. Gopalaswami's assistance. Rape has been often described as the easiest charge to make and the most difficult to refute. Experience shows that the conduct of defences in these cases is of special difficulty. In England almost as a matter of practice, unrepresented persons charged with rape and other sexual offences are defended under the Poor Prisoners Defence Act. The reason is that cross-examination is of the utmost importance in order to test the complainant's story, especially when the medical evidence is negative. It is lamentable to see in this case that this inarticulate agriculturist was quite undefended. There was virtually no cross-examination at any time of any of the witnesses; and no questions appear to have been asked by the Court. I consider this conviction was wholly unsustainable. The appeal will be allowed, the conviction and sentence set aside and the appellant released.

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