Vellapandi Vs. State

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Court : Chennai

Decided On : Mar-05-2001

Reported in : 2001(2)ALT(Cri)252; 2001CriLJ2772

Judge : M. Karpagavinayagam, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 313; ;Indian Penal Code (IPC), 1860 - Sections 376(2) and 387(2)

Appeal No. : Criminal Appeal No. 395 of 1994

Appellant : Vellapandi

Respondent : State

Advocate for Def. : V.R. Balasubramaniam, G.A.

Advocate for Pet/Ap. : S. Ashok Kumar, Adv.

Disposition : Appeal dismissed

Judgement :

M. Karpagavinayagam, J.

1. Vellapandi, the appellant herein has filed this appeal challenging the conviction for the offence under Section 376(2)(g), I.P.C. and sentence of rigorous imprisonment for 10 years and a fine of Rs. 500/-, in default, to undergo rigorous

imprisonment for six months.

2. The accusation is that the appellant and two others on 16-3-1986 at about 2.00 p.m. in Thottakudi village near Poonakudi Karuva forest, committed a gang rape on the victim girl Kalvi alias Kalvi Lakshmi aged about 18 years.

3. On behalf of prosecution, P.Ws. 1 to 8 were examined, Exs. P1 to P11 and M.Os. 1 to 5 were marked. On the side of the accused, Exs. D1 to D7 were marked.

4. The short facts could be summarised as follows :-

(a) P.W. 1 Kalvi alias Kalvi Lakshmi, the victim belonged to Thottakudi village. At that time, she was unmarried, aged about 18 years. On the date of occurrence, i.e. on 16-3-1986, she went for cooly work to the place situated near her village and finished the work at 11.00 a.m. Since the cooly amount was not given to the victim, she requested Thangapandi, Forest Watcher, an accused to get the cooly amount from her employer. Thereafter, the said Thangapandi and two others, namely, Shanmugam and Vellapandi (appellant) were conversing with each other for some time.

(b)At about 12.00 noon, Thangapandi informed her that he got the amount from the employer on her behalf and they could leave the place. All the accused persons belonged to her village. Therefore, on believing their words, she accompanied them. On the way to the village near tank, Thangapandi pulled her half-saree for molesting her, but she tried to run away from the place. However, Thangapandi caught and lifted her and went to a secluded place. The gunny bag which she was carrying was snatched away and the same was spread in the secluded place. She was laid down facing upwards. Thereafter, Shanmugam and Vellapandi (appellant) caught hold of her hands and legs. At that time, Thangapandi raped her and after him, other two persons also one after another committed rape. While she was crying, Shanmugam, another accused with a stock beat her on the left thigh. In the process, the blouse and brassiere got torn. The entire incident took place for half-an-hour. Thereafter, they threatened her that she should not tell the incident either to her parents or to police.

(c) The victim, then left the place and reached the village and informed to her parents at about 5.00 p.m. The matter was informed to the Panchayatdars. P.W. 2 is the father and P.W. 3 is the sister of the victim. Since there was no response from the Panchayatdars, they went to Nanguneri police station and gave a complaint against all the accused including the appellant at 7.00 p.m. on 17-3-1986. The complaint is Ex. P1. The half-saree M.O.1, petticoat M.0.2, blouse M.O. 3, brassiere M.O. 4 and gunny bag M.O. 5 were recovered from her.

(d) Nextdayatabout2.55p.m., the victim was taken to the Doctor P.W. 5. She examined and found the hymen ruptured. She also gave certificate Ex. P2 and age certificate Ex. P3.

(e) P.W. 8, the Inspector of Police took up investigation and went to the spot and prepared observation mahazar. Thereafter, he came to know that all the accused surrendered before the Court on 20-3-1986. Subsequently, on the request of the Inspector of Police, the Doctor examined them and gave certificates to the effect that they were not impotents. After finishing the investigation, the charge sheet was filed against the accused under Section 387(2)(g), I.P.C.

5. Initially, since Vellapandi, the appellant was absconding, the trial was conducted only against the other accused in S.C.No. 215 of 1986 by the Principal Sessions Court, Tirunelveli. Thereafter, after the appellant was apprehended, the split-up case was taken up for trial in S.C.No. 215-A of 1986 and the same was tried by the Assistant Sessions Court, Tenkasi.

6. After trial was over, the appellant was questioned under Section 313, Cr. P.C. He would simply state that it is a false case.

7. After analysing the evidence on record, the trial Court convicted the appellant for the offence under Section 376(2)(g), I.P.C. and sentenced to undergo R. I. for 10 years and to pay a fine of Rs. 500/-.

8. Mr. Ashok Kumar, the learned counsel for the appellant, while attacking the judgment of the trial Court, would mainly contend that the medical evidence in this case is contrary to the evidence of P.W. 1 and therefore, the entire case of the

prosecution is liable to be thrown out, as the offence was not proved. He would also cite the decisions in State of Andhra Pradesh v. Lankapalli Venkateswarlu and Ramnivas v. State of Karnataka 1994 SCC 503.

9. The learned Government Advocate, while refuting the above submission, would contend that once the P.W. 1 (victim's) evidence is believed, there is no necessity for corroboration. He would cite the authority in Rafiq v. State of Uttar Pradesh .

10. I have carefully considered the submissions made by the counsel for the parties.

11. At the outset, I shall mention that the victim was examined in the trial which was conducted against other two accused, namely Thangapandi and Shanmugam on 22-12-1986. After the trial as against those persons was concluded, the victim had to again come to the Court to depose evidence as against the appellant in a split-up case on 22-6-1994. ON behalf of the accused, various documents have been marked as Exs. D1 to D6 in order to mark contradictions in their statements made by them in the earlier trial before the trial Court.

12. On going through the deposition of P.W.I, I am of the view that P.W. 1 victim who is a village girl aged about 18 years at the time of offence is fully reliable and she is a trust-worthy witness. Her deposition both in chief and cross would make it clear that she has given a clear narration of the incident by which she was subjected to the gang rape committed by the appellant and two others. On the same day, P.W. 1 informed to her father P.W. 2, who, in turn, approached the Panchayatdars, since the accused persons belong to Thevar community and the victim's family belongs to Cobbler community. Despite the request of P.W. 2, there was no response from the Panchayatdars. Thereafter, P.W. 1 along with others went to the police station and gave a complaint against all the accused. Next day, she was medically examined by Doctor P.W. 5. P.W. 4, a Panchayatdar also has actually supported the version of P.W. 2.

13. The only contention urged by the counsel for the appellant is that the medical evidence was quite contrary to the evidence of P.W. 1.

14. The above contention, in my view, is untenable, in view of the fact that the medical evidence adduced by P.W. 5 is not contrary to the evidence of P.W. 1 and on the other hand, in a way it supports the case of the prosecution. P.W. 5 would state that the victim girl sustained contusion on the back of left thigh and hymen ruptured. She has also given opinion in Ex. P2 that the victim was not accustomed to intercourse. It is true that she stated in Ex. P2 that there is no bleeding or semen stains over the private part. In Ex. D7 also no blood or semen was detected on any of the five items sent for analysis. But, it shall be noticed that gunny bag, brassiere, black blouse, coloured skirt, all found to be torn. This would certainly corroborate the evidence of P.W. 1.

15. It is to be remembered again, while appreciating the evidence of P.W. 1, that she was an unmarried girl aged about 18 years belonging to Cobbler community. We cannot expect that the girl from Cobbler community would make such servious allegations against the appellant and others who belong to the higher community, that too in the village.

16. The decision reported in (supra) would not help the appellant, since in that decision, the prosecutrix has given a complete contradictory version in her evidence, which is totally contradictory to the F.I.R. That is not the case here.

17. Even the decision in 1994 SCC 503 (supra) would not be of any use, since in that case, the victim was a married woman and there was no injury and her evidence had been disbelieved, since the Doctor did not find any injury suggesting the forcible rape. In that case, it is the specific finding by the Supreme Court that no reliance could be placed on the evidence of the victim in the said case.

18. In the case on hand, as stated above, the evidence of P.W. 1 not only reflects reliability but also is corroborated by the medical evidence, since the Doctor would say that there was an injury on the left thigh and the hymen was ruptured.

19. In this context, it is worthwhile to refer to the observation of the Supreme Court made in (supra), which is as follows :-

The facts and circumstances often vary from case to case, the crime situation and the myriad psychic factors, social conditions and people's life-styles may fluctuate and so, rules of prudence relevant in one fact-situation may be inept in another. We cannot accept the argument that regardless of the specific circumstances of a crime and criminal milieu, some strands of probative reasoning which appealed to a Bench in one reported decision must mechanically be extended to other cases. Corroboration as a condition for judicial reliance on the testimony of a prosecutrix is not a matter of law, but a guidelines of prudence under given circumstances. Indeed, from place to place, from age to age, varying life-styles and behavioural complexes, inferences from a given set of facts, oral and circumstantial, may have to be drawn not with dead uniformity but realistic diversity lest rigidity in the shape of rule of law in this area be introduced through a new type of precedential tyranny. The same observation holds good regarding the presence or absence of injuries on the person of the aggressor or the aggressed.

20. In the light of the above observation, I am of the view that mere absence of injury on the private part would not be a ground to hold that the evidence of P.W. 1 is to be rejected. Moreover, the gang rape was committed on the victim by all the three persons one after another in the secluded place. She was also threatened by the accused persons by beating her on the thigh. While one was committing rape, the other persons were catching hold of her hands and legs. Under those circumstances, it cannot be said that there must be injury on the private part also.

21. The minimum sentence for the offence under Section 376(2)(g) is 10 years. In this case, only minimum sentence has been imposed. In my view, in the light of the facts of this case, sentence more than the minimum could have been imposed. However, I do not propose to enhance the sentence in the absence of any appeal by the State.

22. In the result, the appeal is dismissed. The conviction and sentence imposed by the trial Court are confirmed. The trial Court is directed to take immediate steps to secure the custody of the appellant to undergo the remaining period of sentence.