

Settu Alias Ranganathan. Vs. State by Inspector of Police

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Court : Chennai

Decided On : Jul-26-2012

Judge : R.Mala, J.

Acts : Indian Penal Code(IPC) - Sections 366, 342, 376,417 ; Code of Criminal Procedure(CrPC) - Section 378

Appeal No. : Cri.A.No.709 of 2005

Appellant : Settu Alias Ranganathan

Respondent : State by Inspector of Police

Advocate for Def. : Mr.C.Emalias, Adv

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

Judgement :

Prayer.:- Appeal is filed under Section 378 of Cr.P.C. against the Judgment dated 05.08.2005 made in S.C.No.118 of 2005 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.II, Ranipet.

JUDGMENT

1. The appeal arises out of the Judgment of conviction and sentence made in S.C.No,118 of 2005 on the file of the learned Additional District and Sessions

Judge, Ranipet, whereby, the accused was convicted for the offences under Sections 366, 342 and 376 IPC and for the offence under Section 366 IPC, sentenced to undergo 10 years Rigorous Imprisonment with fine of Rs.5,000/-, in default, to undergo one year imprisonment; for the offence under Section 342 IPC, sentenced to undergo one year imprisonment; for the offence under Section 376 IPC, sentenced to undergo 7 years Rigorous Imprisonment with fine of Rs.5,000/-, in default, to undergo one year imprisonment.

2. The respondent Police filed a charge sheet against the accused stating that on 24.12.2004, the accused had wrongfully restrained one Sundari, a victim girl, when she was proceeding to her house after finishing her work and she was taken to some other place and wrongfully confined there, where the accused committed rape upon her, thereby, committed offences under Sections 342, 366, 417 and 376 of IPC.

3. The learned Sessions Judge, after following the procedure, framed necessary charges against the accused. Since he pleaded not guilty, on the side of the prosecution, P.Ws.1 to 10 were examined and Exs.P1 to P7 and M.O.1 were marked.

4. The case of the prosecution, based on the evidence, is as follows:

(i) P.W.1-Mahendran is the father of P.W.2-Sundari. P.W.2-Sundari, victim girl, who studied upto 7th standard, was working under the accused, who was the Chief Priest of Om Sakthi Temple. On the fateful day, i.e., on 24.12.2004, P.W.2-Sundari, went to work at morning 8 O'clock. Since she had not returned back to home at usual time, i.e. evening at 7 O'clock, P.W.1 made search of his daughter along with P.W.3-Manickam. Thereafter, he came to know that the accused abducted his daughter in a TVS 50. In spite of his effective search, he was unable to secure his daughter and the accused. Thereafter, he went to the Ranipet All women Police Station and gave a complaint. On 26.12.2004, after hearing the news that the accused and P.W.2 were at Sipcot, P.W.1 along with P.W.4-Palani and P.W.8-Anbukkarasi, Sub-Inspector of Police, went there at Ranipet Bus stop, where the accused and P.W.2 were secured by P.W.8.

(ii) P.W.2-Sundari, in her evidence, deposed that on 24.12.2004, at 7.00 p.m. she was proceeding to her house after finishing her work. When she was reaching near Erikkarai, she felt that somebody had sprinkled water on her and put a Thilakam on her forehead, after that, she was taken away in a vehicle and confined in a room, where the accused had sexual intercourse with her for several times. On 26.12.2004, since she cried and wanted to go to her house, the accused took P.W.2 to Sipcot Bus Stand. While they were standing at the Sipcot bus stand, they were caught hold by P.W.8.

(iii) On receiving the complaint from P.W.1, P.W.8 registered a case in Crime No.35 of 2004, on 26.12.2004 at 7.00 p.m., under Sections 366 IPC and prepared Ex.P1-FIR. She sent a requisition letters to the concerned Judicial Magistrate for sending the accused and P.W.2 for medical examination and sent the papers to P.W.9-Geetha, Inspector of Police. Thereafter, she examined the witnesses and recorded their statements.

(iv) P.W.5-Dr.Kumar, on receiving the letter from the learned Judicial Magistrate No.1, Vallaja, i.e.Ex.P2, examined the accused and gave Ex.P3-Certificate stating that he is potent.

(v) P.W.6-Dr.Sathyanarayanan, on receiving Ex.P4-letter from the learned Judicial Magistrate No.1, Vallaja, examined P.W.2 on 28.12.2004 and gave Ex.P5-report stating that she was subjected to sexual intercourse.

(vi) P.W.7-Dr.Rangasamy, took X-ray and assessed the age of P.W.2, stating that the age of the victim girl was above 21 years.

(vii) P.W.9, Inspector of Police, examined the Doctors and obtained certificates. Since she was transferred to other place, P.W.10-Ariyamala, Inspector of Police, who was the succeeding officer, took up the matter for investigation. After concluding investigation, on 09.01.2005, she filed a charge sheet against the accused under Sections 366, 342, 417 and 376 of IPC.

5. The learned Sessions Judge placed the incriminating evidence against the accused. But the accused denied his complicity. After considering the oral and

documentary evidence, the learned Sessions Judge, acquitted the accused from the charges punishable under Section 417 of IPC and convicted him for the offence punishable under Section 366, 342 and 376 IPC and sentenced him as stated above.

6. Challenging the conviction and sentence passed by the learned Sessions Judge, the learned counsel appearing for the appellant submitted that there was a delay in preferring the complaint, because, P.W.1, with a motive to grab money from the appellant, gave a false complaint. P.W.2 and the accused fell in love with each other and she wanted to marry him. Further, there is no evidence to show that she was in unconscious stage and was abducted by the accused without her knowledge. The evidence of Doctor has clearly proved that there was no external injury on P.W.2. He further submitted that the accused is an innocent person and he wore sacred mala at the time of incident. Hence, he prayed for allowing this appeal.

7. Resisting the same, the learned Government Advocate (Crl. Side) submitted that there is a possibility for tantric method by the accused and the same had been deposed by P.W.2. As per the evidence of P.W.6, P.W.2 was subjected to sexual intercourse and the same had been deposed by P.W.2. The accused, who is a married man, had sexual intercourse without her consent. He submitted that in the absence of any external injuries, an offence could have been committed. He further submitted that the victim had lost her virginity earlier, it did not and cannot in law give licence to any person to rape her and to substantiate the same, he relied upon the Judgment of the Apex Court reported in CDJ 2005 SC 063 and (2011) 3 MLJ (Crl) 556 (SC) and prayed for dismissal of this appeal.

8. Considered the rival submissions made on either side and perused the records.

9. The fact of the case is that the accused was a Chief Priest in the Om Sakthi Temple and the construction was going on in the Temple. P.W.2 was a helper under the accused for construction work. On 24.12.2004, as P.W.2 never returned back to home till 7.00 p.m., P.W.1, father of P.W.2, made a search along with P.W.3-Manickam. Admittedly, on 26.12.2004 at 6.00 p.m. the accused and P.W.2 were secured by P.W.8-Anbukarasi, Sub Inspector of Police, after identifying by

P.W.1 along with P.W.4-Palani. So, P.W.2 was away from P.W.1's house from 24.12.2004 to 26.12.2004 till 6.00 p.m. and both were secured on that day which shows that P.W.2 was with the accused / appellant till then.

10. Now, this Court has to decide whether she was wrongfully confined and subjected to rape? Admittedly, as per the evidence of P.W.7-Dr.Rangasamy, who gave Ex.P6-Age Certificate, P.W.2 was aged about 21 years. In the evidence of P.W.6-Dr.Sathyanarayanan, he deposed that P.W.2 was aged about above 17 years and below 19 years. Considering the evidence of P.W.6 and P.W.7, it is clear that on the date of occurrence, P.W.2 was major.

11. At this juncture, it is appropriate to consider the ingredients of Section 366 and the same is extracted hereunder:

336. 1. Ingredients:

Essential ingredients are as follows:

(1) First part of the section contains ingredients as follows:

(i) Accused kidnapped or abducted.

(ii) Kidnapped person was a woman.

(iii) Accused intended or knew it likely that.

(a) Woman would be compelled to marry any person against her own will.

(b) Woman will be forced or seduced for illicit intercourse.

(2) Ingredients for the second part:

(i) Accused induced any woman to go from any place.

(ii) He did it by criminally intimidating her.

(iii) By abuse of the authority.

(iv) By any method of compulsion.

(v) Accused intended or knew that it was likely that such woman will be forced or seduced for illicit intercourse.

12. Admittedly, the victim girl was major at the time of incident. Now, this Court has to decide whether she was actually abducted by the accused?. Except the evidence of P.W.2, no other corroborating evidence is available. In such circumstances, this Court has to scrutinize the evidence of P.W.2 with great care and caution.

13. P.W.2, in her evidence, deposed that for the past 10 days, she was going to the Temple for doing work, where, she carried sand and water. On 24.12.2004, when she was returning from her work at 7.00 p.m. near Erikkarai, she felt that somebody sprinkled water on her and put a Thilakam on her forehead, then, she was taken away in a two wheeler. Thereafter, she was confined in a room, where she was subjected to rape. On 26.12.2004, she cried and requested the accused that she wanted to go to her parents house, the accused took her at the Sipcot bus stand. At that time only, they were secured. In her cross examination, she deposed that three persons were working along with her. One Settu and her neighbourhood lady, Sathiya were working there. On that day, Settu and Sathiya, after finishing their works, left the place at afternoon itself. She deposed that after finishing her work, she kept the key in the temple. The house of the appellant is adjacent to the Temple. Indrirani was residing adjacent to the accused's house, in which inmates are there. In her evidence, she deposed that before the incident only, the accused requested her to marry him. In her cross examination, she fairly conceded that she has not raised any alarm and she has not made any cry and she kept quite while she was confined in the room. She further deposed that there were houses situated adjacent to the house, where she has been wrongfully confined. She fairly conceded that from 24.12.2004 to 26.12.2004, she has not raised any alarm and on 26.12.2004 only, she requested the accused that she wanted to go to her parents house. She fairly conceded that she refused to marry him, because, he has already married and got children and his daughter was given to marriage. Her candid admission is that at the time of incident, the accused wore sacred mala. A person, who wears sacred mala would not have sexual intercourse and the factum is also known to her. A suggestion was posed to P.W.2 that P.W.1,

in order to grab money from the appellant, has given a false complaint against the accused and the same was denied by her.

14. Considering the evidence of P.W.2, it is a well settled principle of law, the evidence of prosecutrix is a sole evidence and sufficient to convict the accused, provided that the evidence must inspire the confidence of this Court. Considering the evidence and attitude of P.W.2, it is clear that the evidence of P.W.2 is not reliable, because, she worked under the accused for 10 days only. Furthermore, no person, who was working along with P.W.2, was examined to prove that the accused is having intention to marry her. Admittedly, the accused /appellant is a married man and his daughter was given to marriage. Further more, while considering the evidence of P.W.2, she deposed that before the incident, the accused requested her to marry him. But, the said factum was not disclosed by P.W.2 to her father. In such circumstances, I am of the view that the evidence of P.W.2 is not trust worthy and not reliable.

15. The Apex Court, in a case of State of U.P vs. Chhoteylal reported in (2011) 3 MLJ (CrI) 556 (SC), relied upon by the learned Government Advocate, held that absence of alarm by the victim girl in public place, same cannot lead to inference that she willingly accompanied accused. Circumstances made her submissive victim, does not mean her inclination and willingness to intercourse with accused. A woman and more so a young unmarried woman will not put her reputation in peril by alleging falsely about forcible sexual assault. In examining the evidence of the prosecutrix the Courts must be alive to the conditions prevalent in the Indian Society and must not be swayed by beliefs in other countries. The stigma that attaches to the victim of rape in Indian Society ordinarily rules out the leveling of false accusations. An Indian woman traditionally will not concoct an untruthful story and bring charges of rape for the purpose of blackmail, hatred, spite or revenge. She had no free act of the mind during her stay with A1 as she was under constant fear. Although the doctor did not find any injury on the external or internal part of body of the prosecutrix and opined that the prosecutrix was habitual to sexual intercourse, that does not make the testimony of the prosecutrix unreliable. It is wrong to assume that in all cases of intercourse with the women against will or without consent, there would be some injury on the

external or internal part of the victim. The prosecutrix has clearly deposed that she was not in a position to put up any struggle as she was taken away from her village by two adult males. The absence of injuries on the person of the prosecutrix is not sufficient to discredit her evidence; she was a helpless victim. She did not and could not inform the neighbours where she was kept due to fear.

16. But, in the present case on hand, when P.W.2 was proceeding to her house, near Erikkarai, she felt that somebody sprinkled water on her and put a Thilakam on her forehead, thereafter, she was taken away in a two wheeler. The said fact is unbelievable. Furthermore, it is not the case of the prosecution that P.W.2 was confined in a house under threat. While perusing the evidence of P.W.2, it shows that she has not raised any alarm and she has not made any request while she was confined in the room. In her cross examination, she deposed that only on 26.12.2004, she requested the accused to take her to her parents house, then only, the accused, in order to take her, took her at the Sipcot bus stand, where, both were secured. Considering the facts of the present case, I am of the view that the evidence of P.W.2 is not reliable.

17. The learned Government Advocate appearing for the respondent has also relied upon the Judgment of the Apex Court, reported in CDJ 2005 SC 063 (State of U.P. vs. Pappu @ Yunus & Another) and culled the portion of the Judgment that even in the absence of any external injury an offence could have been committed after analysing the doctor's evidence. Even assuming that the victim was previously accustomed sexual intercourse, that is not a determinative question. On the contrary, the question which was required to be adjudicated was did the accused commit rape on the victim on the occasion complained of. Even if it is hypothetically accepted that the victim had lost her virginity earlier, it did not and cannot in law give licence to any person to rape her. It is the accused who was on trial and not the victim. She has a right to refuse to submit herself to sexual intercourse to anyone and everyone. The girl being of loose morale and easy virtues and easy virtues the accused were entitled to acquittal is indefensible.

18. P.W.6-Dr.Sathyanarayanan, in his evidence, deposed that P.W.2 was subjected to sexual intercourse and gave a report Ex.P5. In his cross examination,

he denied a suggestion that P.W.2 had sexual intercourse for several times. But, he has not mentioned the period of sexual intercourse. It may be six months. Therefore, it is appropriate to incorporate the portion of P.W.6 cross examination.

As per the evidence of P.W.6, P.W.2 was subjected to sexual intercourse. Therefore, the prosecution has proved that P.W.2 was subjected to sexual intercourse.

19. Now, this Court has to decide whether P.W.2 was subjected to sexual intercourse with her consent or without consent?. P.W.2 in her cross examination, had not mentioned anything in this regard and mentioned only that she was subjected to sexual intercourse.

20. Considering the same, I am of the view that the evidence of P.W.2 is not reliable and the accused is a married man and his daughter was given to marriage. Furthermore, as per the evidence of P.W.2, the accused wore sacred mala and no person, wearing sacred mala will dare to have sexual intercourse.

21. The learned counsel for the appellant submitted that there was a delay in preferring the complaint. Considering the facts of the case, P.W.2 left the place on 24.12.2004 at 7.00 p.m. and she was secured on 26.12.2004 at 7.00 p.m. then only, the complaint had been given and no reason had been assigned. Even though P.W.1 father of the victim girl, gave a complaint, it was not seen on the light of the day.

22. P.W.1, in his chief examination, he deposed that he heard the news that the accused abducted his daughter at 8.00 p.m. on 24.12.2004, but, he has not given any complaint. He further stated that on that day, when he went to outside to enquire about the accused and his daughter, he saw that there was Iyyappa and Om Sakthi Poojas, where, he made an enquiry. Thereafter, he came to know that the accused went to Sipcot.

23. Considering the evidence of P.W.1 and P.W.2, it is clear that the incident is a concocted story. As per the evidence of P.W.1, he is aware of the accused person, who abducted his daughter. Normally, if really his daughter was abducted, he

should have rushed to the place of occurrence and attempted to secure his daughter. But, he did not do so. P.W.1 has stated that when he made search at 8.00 p.m., he came to know that the accused abducted his daughter. But, P.W.1, after being well aware of the fact that P.W.2 and the accused were stayed at Sipcot, went only upto Arcot and thereafter, he returned to Home and gave a complaint on 26.12.2004. The said factum has proved that P.W.1 gave a false complaint against the accused stating that the accused abducted his daughter and wrongfully confined in a room and committed rape. In such circumstances, I am of the view that the prosecution has miserably failed to prove that the accused is guilty of offence under Sections 366, 342 and 376 IPC beyond all reasonable doubt and the benefit of doubt is given in favour of the accused.

24. So, the learned Sessions Judge has not considered all the aspects in a proper perspective and convicted the accused based on the evidence of P.W.1 and P.W.2, which is not reliable and trustworthy. Hence, the conviction on the basis of the evidence of P.W.1 and P.W.2 is not sustainable and the conviction and sentence imposed on the accused for the offences under Sections 366, 342 and 376 IPC is hereby set aside.

25. In fine:

a) the appeal is allowed

b) the conviction and sentence passed by the learned Sessions Judge under Sections 366, 342 and 376 IPC is hereby set aside.

c) the bail bond if any executed by the accused shall stand cancelled

d) the fine amount if any paid by the accused is ordered to be refunded.

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