Amirthalingam Vs State

Court: Madras High Court

Date of Decision: Jan. 19, 1995

Acts Referred: Penal Code, 1860 (IPC) â€" Section 354, 376

Citation: (1996) 1 LW(Cri) 165

Hon'ble Judges: Rengasamy, J

Bench: Single Bench

Advocate: R. Balsubramanian, for the Appellant; P. Govindarajan Government Advocate (Crl.), for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Rengasamy, J.
This revision is against the order of conviction and sentence passed by the learned Additional Sessions Judge, South Arcot,

in C.A. No. 67/90 confirming the conviction and sentence imposed by the learned Asst. Sessions Judge, Vridhachalam, in S.C. No. 162 of 1988

for the offence u/s 376 Indian Penal Code to undergo rigorous imprisonment for 5 years.

2. The prosecution case in brief is as follows:

P.W. 1, who is deserted by her husband, lives alone in Neyveli. Her livelihood is by collecting up the waste paper and also the scrap irons. She

used to pick the scrap iron within the Neyveli Lignite Corporation premises. Even though security is provided in the Corporation Mines area, P.W.

1 and some others stealthily used to pick up the scrap irons lying therein for their livelihood. On 2.6.87 at about 1 "o" clock, she, along with P.W.

2 and some others, entered into the corporation area and tried to pick up the scrap irons in the area known as "B" point. This accused/revision

Petitioner, who was working as Havildar guarding the area, saw these women and called P.W. 1 alone to follow him. Though P.W. 1 was

reluctant and was hesitating to obey his direction, due to the persuasion of the other women, she followed him and after reaching some distance,

this revision Petitioner caught hold of her hands and dragged close to him. When she protested, he scolded her saying that she was pretending to

be a woman of virtues and pushed her down close to the shrubs grown therein. Then, he undressed himself and raped her. Even though P.W. 1

shouted for help, no one came there. There was bleeding from her private parts. She returned back weeping to the place where her companions

were waiting for her and told them the incident. Two persons, who came there, enquired them and took them to 1 point security office where P.W.

1 narrated the incident to P.W. 5, the Security Superintendent, who recorded her statement under Ex. D-1. He also called all the security staff and

asked P.W. 1 to identify the culprit. She identified this revision Petitioner as the culprit. By about 9 "0" clock, she, along with her companions, was

brought in a jeep to Neyveli bus stand, where they were dropped and she was given Rs. 105/- whereas others were paid each Rs. 25/- with a

direction that they should not reveal this to any one as their livelihood itself was by picking up scrap irons within the Corporation area. Some days

later, an anonymous letter Ex. P-4 was sent to the Chief Vigilance Officer stating that this revision Petitioner, even if he had committed any offence,

should have been dealt with according to law, but he was beaten on 2.6.87 and that Rs. 2,000/- was extracted from him as though it was paid as

compensation to the victim woman but actually it was not paid to her and this amount was utilised by the higher officers and their links on drinks.

On the basis of this letter, the Chief Security Officer took steps to trace P.W. 1 and obtained a statement Ex.P-1 from her on 25.6.87. The same

was forwarded to the Inspector of Police for necessary action and on the basis of Ex. P. -1, P.W. 16 Sub Inspector of Police took up the

investigation and P.W. 17 Inspector of Police charge-sheeted the accused/revision Petitioner.

3. Both the courts below have found that the charge against the revision Petitioner herein is proved and therefore convicted him to undergo

rigorous imprisonment for 5 years for the offence u/s 376 Indian Penal Code.

4. The learned Counsel appearing for the revision Petitioner Mr. Balasubramanian, submitted that the courts below have failed to consider the

series of suspicious circumstances and also the inconsistent version of P.W. 1 and that the delay of more than 23 days in lodging the complaint also

was ignored by the courts below and therefore the conviction is not sustainable. The argument raised by the learned-counsel Mr. Balasubramaniam

are on the following part.

1) The improbability of P.Ws. 2 and 3 for being present at the time of occurrence;

2) the non-examination of certain person to whom the alleged secret was divulged soon after the occurrence.

3) the failure on the part of P.W. 1 to lodge a complaint to the police for more than 20 days;

4) the absence of symptoms of rape in the medical report; and

5) Inconsistent version of P.W. 1 in Ex. D-1.

5. With regard to the first point, the learned Counsel for the Petitioner contended that as it is admitted by P.W. 1 that they picked the scrap irons

within the protected area stealthily, P.Ws. 2 and 3 and the other woman mentioned in the evidence, would not have gone in a group when

especially security is cordoned in that area and it is also artificial to say that when these women were spotted by the revision Petitioner, who asked

P.W. 1 to follow him, the other women, viz. P. Ws. 2 and 3 and others were simply waiting there without trying to

6. Even though the evidence is to the effect that the security guards were employed in the B point area, there is nothing in the evidence indicating

that it is a prohibited area for the movement of the public. Sometimes even in the non-prohibited areas, security guards might be employed for

certain purposes. Therefore, from the evidence, it cannot be taken that no one was allowed to enter the B point without the permission of the

authorities. But it is clear that the scrap irons scattered on the earth in that area were stealthily removed by P.W. 1 and other women. P.W. 1 to 3

would admit that on 2.6.87, they had been to the B point only for collecting the scrap irons. But when they were spotted by the revision Petitioner

herein, they did not possess any scrap iron with them. Therefore, as these women did not have any scrap iron in their possession at the time when

the revision Petitioner spotted them, they might not have tried to run away on seeing the revision Petitioner. Therefore, the argument of the learned

Counsel for the revision Petitioner that P.Ws. 1 and 3 would not have waited till P.W. 1 returned, is not an acceptable argument.

7. The evidence discloses that the revision Petitioner on seeing these four women directed only P.W. 1 to follow him. The learned Government

Advocate pointed out that P.W. 1 was a young woman of 21 years old while others were aged and therefore the revision Petitioner''s eyes fell on

her for his carnal urge, that when she was asked to follow him, the other women might have thought that for the purpose of warning or to threaten

her collecting the scrap irons, she was asked to follow him and therefore they also asked P.W. 1 to obey his direction. Soon after the alleged

occurrence, P.Ws. 2 and 3 would state that P.W. 1 came to them weeping and two persons who came there, took them to the B point security

office. P.W. 5, the Security Superintendent, has stated in his evidence that P.Ws. 1, 2, 3 and another woman, whose name he did not know, came

to him by about 03.00pm on 2.6.87. From the evidence of P.W. 5, it is clear that P.Ws. 2 and 3, and another woman, were with P.W. 1 when

they were in B. point. P.W. 8, the Security Officer, also would state in his evidence that P.Ws. 1 to 3 and another woman by name Panki were

present in the B point area. The evidence of P.Ws. 5 cannot be brushed aside and their evidence make it clear that P.Ws. 2 and 3 also should

have been present with P.W. 1 as all of them came together for picking up the scrap irons scattered on the earth.

8. The next point raised by the learned Counsel is that though P.W. 3 in her evidence has stated that soon after the occurrence, when they were

waiting under the shades of the tree, two persons, who came there, enquired them for their presence in that place and when it was revealed to

them, they took them to the security office and though it is the version of P.Ws. 1 to 3 that they revealed this incident to these persons, they were

not examined as witnesses and similarly though P.W. 1 has stated in her evidence that soon after her return to the house, she told about this

incident to the owner of the house in which she was staying he also was not examined and this is an infirmity in the prosecution case. P.Ws. 1 to 3

did not mention the names of those persons who enquired them when they were staying under the shades of the tree. Even though those two

persons were not examined P.W. 1 has narrated the incident to P.W. 5 also the security officer. If P.W. 1 had not revealed this incident to anyone

on that day, we can suspect the truth of her version. But she has told this incident to P.W. 5 after the occurrence. Therefore, non-examination of

the strangers, who took P. Ws. 1 to 3 to security office, will not affect the prosecution case. Similarly, the non-examination of the owner of the

house in which P.W. 1 was residing also has no significance because P.W. 1 has already informed about the occurrence to P.W. 9. Hence, the

non-examination of the above-mentioned persons will have no consequence in this case.

9. The third point is the failure on the part of P.W. 1 to lodge a complaint to the police. The learned Counsel refers to the decision in Vijayan and

Ors. v. State, by Inspector of Police (1992 L.W. (Cri.) 557) wherein the delay of 54 days was considered to be fatal for the prosecution. But the

delay in this case has been considered by the courts below elaborately and the prosecution also has explained the reasons. P.W. has stated that

her livelihood was by collecting the waste papers and also picking up the scrap iron wherever found on earth. From the evidence of P.Ws. 1 to 3,

as the scrap iron was easily available within the Lignite Corporation area and particularly in B point, these women used to go there to pick up

them. The security guards are there to protect the properties of the Corporation and in spite of that, these women somehow were able to collect

the waste and scrap iron found in that area. Therefore, certainly, it will amount to theft though the value of this scrap iron might have been

negligible. P.W. 1 would state that as she had to go for picking these waste materials within the premises of the Corporation, breaking the

surveillance of the security guards, she did not want to earn their enmity by lodging a police complaint against the person who misbehave with her.

No doubt after the alleged occurrence, they went to P.W. 5 to complain about the conduct of this revision Petitioner. That was at the instance of

two strangers was took them to the security office. Probably, soon after the occurrence, P.W. 1 might have felt in the fit of anger that she must get

justice for the Act of violence against her. The evidence discloses that P.W. 1 and other two women were made to wait in the security office till

might and they were dropped in Neyveli Bus Stand paying each some amount and they were also advised to forget about this incident as they had

to face the security guards in their day-to-day life and therefore, she did not think to give a complaint against the accused. As mentioned above,

picking up the waste and scrap iron in that area cannot be done without the cooperation of the security guards. Some time, they might have

allowed these things to go on taking pity upon these poor women, who live by this manner and also taking into consideration of the negligible value

of the scrape. But if anyone of the security guards was made to face the trial by giving a complaint, that would infuriate them all and these women

cannot enter into the premises of the Corporation. Therefore as rightly held by the courts below P.W. 1 might have felt that it would be foolish on

her part to give a complaint against the revision Petitioner especially when she was advised by the security staff who dropped them in the bus stop,

advising them to forget about the incident and that too after paying Rs. 105/- to P.W. 1. Therefore P.W. 1, realising her enduring life, with the

sympathy of the security men who did not drive her from picking the scrap irons, had to bury her feelings against this revision Petitioner. Ex. P-4

shows that someone interested in the revision Petitioner sent an anonymous letter to the Chief Vigilance Officer for the way in which this revision

Petitioner was dealt with by beating him and also extracting Rs. 2,000 from him and only on the basis of this anonymous letter, the Chief Vigilance

Officer seems to have directed his staff members to trace P.W. 1 for the purpose of taking action against the offender. Thereafter, Ex. P-1 was

recorded from P.W. 1 on 25.6.87 and the same was forwarded to the police. The evidence discloses that P.W. 1 due to the circumstances

mentioned above, was forced to forget about this incident on 2.6.87 itself, but the Chief Vigilance Officer, on knowing this from Ex. P-4, wanted

to on earth the incident to take action against the concerned person and therefore it has come to light to the police. Hence, the delay in lodging Ex.

P.1 has been properly explained and that (sic) it will not affect the prosecution case.

10. The fourth point raised by the learned Counsel for the Petitioner is the absence of symptoms of rape on medical examination by P.W. 14.

According to the learned Counsel, as P.W. 1 has stated that she was pushed down on earth, where there was wild growth of bushes, and was

raped, in that rough surface, she ought to have had bruises on her body while she resisted and further she has stated that there was bleeding, but no

symptoms of rape was found by the doctors

11. The last point raised by the learned Counsel Mr. Balasubramaniam is that even though P.W. 1 in Ex. P-1 statement has stated that she was

raped by this revision Petitioner, soon after the occurrence when P.W. 5 had enquired her, she has stated in her statement Ex. D-1 that this

revision Petitioner lifting her saree, attempted to rape her that when she shouted for help, he released her and she escaped from him and as this

version in Ex. D-1 is contra to the present version, the whole prosecution case which is doubtful should be thrown out. According to the learned

Counsel, Ex. D-1 was recorded by P.W. 5, who was not treated as hostile and Ex. D-1 copy also was furnished to the accused and in view of

these circumstances, when especially P.W. 5 has stated that this statement Ex. D-1 was given by P.W. 1, it completely falsifies the prosecution

case. No doubt P.W. 5 has stated in his evidence that Ex. D-1 is the statement recorded by him as narrated by P.W. 1. But courts below did not

accept this as a statement of P.W. 1 for the reason that she has stated in her evidence that the contends of Ex. D-1 were not read over to her. The

courts below have taken the view that as P.W. 5 is the Security Superintendent, he did not want to implicate his subordinate in a grave offence of

rape and therefore, as he could not suppress the whole event he has recorded this much as though this revision Petitioner had only attempted to

rape her and that Ex. D-1 cannot be relied upon. The courts also have pointed out another circumstance that even though an allegation of attempt

of rape on P.W. 1 is mentioned in Ex. D-1 this was not forwarded by P.W. 5 or his superior officer P.W. 8 to the police for taking action against

the offender and from this circumstance, the favour shown by the security officers to their subordinate to shield him is proved and therefore Ex. D-

1 cannot be the statement of P.W. 1 as narrated by her.

12. The learned Government Advocate (Criminal Side) submitted that P.Ws. 5 and 8 not only failed to forward the statement given by P.W. 1 to

police but, while they arranged to drop P.Ws. 1 to 3 in Neyveli Bus Stop in a Jeep, the person who accompanied these women was made to

persuade P.W. 1 and other women, not to divulge this incident to anyone as they had to enter the Corporation area daily to pick up the scrap iron

in the presence of the security guard and further P.W. 1 was paid Rs. 105/- and while other were paid Rs. 25/- each by that person to gag the

mouth of these woman from revealing this incident and therefore according to the learned Government Advocate (Criminal Side), P.W. 1 was

brainwashed by the higher officials of the Security Branch not to lodge any complaint purely for the purpose of protecting this revision Petitioner

and therefore what has been recorded by P.W. 5 cannot be the true statement of P.W. 1. He further points out that if Ex. D-1 is the true statement

recorded as narrated by P.W. 1, there cannot be the interalienations in the statement and the space in between the lines also cannot differ. In the

statement Ex. D-1, a sentence has been added in between the lines stating that she shouted and he released her. The last three lines have more

space in between them when compared to the previous line and the word is overlapping the last line. So, from these circumstances, the learned

Government Advocate (Criminal Side) would point out that Ex. D-I should have been created subsequently after the anonymous letter to the Chief

Vigilance Officer to save their skins. The learned Counsel for the Petitioner Mr. Balasubramanian points out that P.W. 1 has not stated in her

evidence that her signature was obtained in blank paper but she has merely stated that without reading the contents, her signature was obtained and

further if P.W. 5 had thought of protecting the revision Petitioner, he would not have informed P.W. 8 about this incident and conducted the

identification parade to identify the person who misbehaved with P.W. 1 as P.W. 1 has specifically mentioned that the security guards were called

to the office to identify the person who misbehaved and hence Ex. D-1 must be the statement given by P.W. 1. Though the writing in Ex.D-1

creates some suspicion with regard to the recording of it as narrated by P.W. 1, that suspicion alone cannot take the place of proof to hold that

P.W. 5 did not record the statement as narrated by P.W. 1, when especially this incident was informed to P.W. 8 and disciplinary action also was

initiated against the revision Petitioner. Therefore, the evidence of P.W. 5 has to be accepted as to the contents of Ex. D-1. From Ex. D-1, soon

after the occurrence, P.W. 1 had told P.W. 5 that the revision Petitioner herein attempted to rape her and as she shouted for help, she was

released by her and she escaped from him. From this version, only an attempt on the part of revision petition has been reported to the higher

security officials. But the learned Counsel Mr. Balasubramanian contended that Ex. D-1 cannot be a substantive evidence to convict the accused

for the offence of attempt to rape and further the version in Ex. D-1 will not amount to attempt because there was no sexual assault on P.W. 1 and

only if such an assault was made, with the ingredient for rape except the penetration, it will amount to attempt for rape and in this case, it cannot be

viewed that the revision Petitioner has committed the attempt of rape on P.W. 1. Ex. D-1 cannot be lightly ignored because it is the earliest

statement of the victim P.W. 1 to the higher officials. There is no reason for P.Ws. 5 and 8 to falsely allege that these women, viz. P.Ws. 1 to 3,

came to the security office alleging misconduct of the revision Petitioner. Therefore, certainly Ex. D-1, especially when it is marked on the side of

the accused, an important piece of evidence. Only on the basis of this statement, disciplinary proceeding also was initiated against the revision

Petitioner. As a matter off Act Ex. P-4, the anonymous letter sent in support of the revision Petitioner condemning the beating of the revision

Petitioner and also extracting the money of Rs. 2,000/- for the purpose of paying as compensation to the victim girl, does not read that false

allegation has been made against the revision Petitioner. On the other had, this letter Ex. P-4 criticises only the excess punishment or double

punishment on the revision Petitioner. A reading of Ex. P-4 also makes it clear that on 2.6.87, the revision Petitioner was involved in an incident in

which a woman became a victim. Therefore, the version of P.W. 1 in Ex. D-1 has to be accepted.

13. For the reason that in Ex. P-5 P.W. 1 had mentioned only the attempt on her, whereas in Ex. P-1 and also in the evidence, the actual rape is

mentioned, it comes to light that the entire evidence of P.Ws. 1-3 must be false and that P.W. 1 would not have been subjected to the sexual

assault. There was no reason for P.W. 1 to make false allegation in Ex. D-1 that the revision Petitioner herein, pulled her by catching hold of her

hands and thereafter lifted her saree. P.Ws. 2 and 3 also would state that this revision Petitioner took P.W. 1 by threat to some distance where

there was wild growth of bushes. P.W. 3 also has spoken about the shouting of P.W. 1 for help. The evidence of P.Ws. 2 and 3 about the

approach to P.W. 5 for justice and P.W. 5 sending information to P.W. 8 are all corroborative evidence establishing that P.W. 1 had been a victim

of the incident as alleged in Ex. D-1. Therefore, I accept the statement in Ex. D-1 to be the true version.

14. From the allegations in Ex. D-4, the contention of the learned Counsel for the revision Petitioner, that they would not constitute an attempt for

rape seems to be correct. No doubt the revision Petitioner might have approached P.W. 1 and caught hold of her hands with the aphrodisiac

excitement to satisfy his lust. But it was only in the stage of intention. But this intention could be changed at any time. The statement of P.W. 1 in

Ex.P-1 is that when he pushed her down and lifted her saree, she shouted and therefore he released her. In Abhayanand Mishra Vs. The State of

Bihar,), the Apex Court has held that there is a thin line difference between the prepa ration and an attempt to commit an offence. The Supreme

Court observes.

Undoubtedly, a culprit first intends to commit an offence, then makes preparation for committing it and thereafter attempts to commit the offence. If

the attempt succeeds, he his committed the offence and if it fails due to the reason beyond his control, he is said to have attempted to commit the

offence. Attempt to commit an offence, therefore, can be said to begin when the preparations are complete and the culprit commences to do

something with intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do

an Act with necessary intention, he commences his attempt to commit the offence. This is clear from the general expression "attempt to commit on

offence.

From the above expression, in addition to the preparation and thereafter to commit the offence only if his attempt fails due to reasons beyond his

control, it could constitute the offence the attempt u/s 511 Indian Penal Code. In this case, no doubt, catching 1 of P.W. 1"s hands, pushing her

down and lifting her saree, were all only the stage of preparation. Therefore, the attempt for rape had not commenced. Ex. D-1 reveals that on her

shouting for help, the revision Petitioner himself released her and she escaped from him. Therefore, when Ex. D-1 itself reads that the revision

Petitioner himself released her on account of her shouting, it cannot be said that his attempt had failed due to the reasons beyond his control.

Hence, certainly the offence will not fall u/s 376 Indian Penal Code read with Section 511 Indian Penal Code. But catching hold P.W. 1"s hands,

pushing her down and lifting here saree. will amount to outraging the modesty of a woman falling within the definition of Section 354 Indian Penal

Code. Therefore, the revision Petitioner is guilty of the offence u/s 354 Indian Penal Code for which he has to be dealt with. For the offence u/s

354 Indian Penal Code, I feel that 1 year rigorous imprisonment and a fine of Rs. 300/- will be an adequate punishment.

15. In the result, subject to the alteration in the nature of offence, to Section 354 Indian Penal Code and the consequential punishment as referred

to above, the revision otherwise stands dismissed. In view of the G.O. Ms. No. 279 dated 233.2.92 and G.C. Ms. No. 298 dated 20.2.93 the

entire punishment is remitted and therefore, the revision Petitioner cannot be detained for this conviction. For payment of the fine amount, two

weeks and amount collected be paid to P.W. 1 as compensation.