
(2011) 04 MAD CK 0377

Madras High Court

Case No: Criminal R.C. No. 700 of 2009

Raja

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision: April 1, 2011

Acts Referred:

- Penal Code, 1860 (IPC) - Section 366, 376, 506, 511

Citation: (2011) 8 RCR(Criminal) 898

Hon'ble Judges: R. Mala, J

Bench: Single Bench

Advocate: A. Tamilvanan, for the Appellant; S. Rajendiran, Government Advocate (Crl. Side), for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R. Mala, J.

The Crl. R.C. is filed against the judgment dated 8.5.2009 in Crl. A. No. 1 of 2007 on the file of the Additional District and Sessions Court (Fast Track Court No. 3), Viruthachalam, confirming the conviction and sentence passed by order dated 7.12.2006 in S.C. No. 322 of 2005 on the file of the Additional Assistant Subordinate Judge-cum-Sessions Judge, Viruthachalam, whereby the revision Petitioner/accused was convicted for the offence u/s 376 read with 511 IPC and sentenced to undergo three years" rigorous imprisonment and to pay fine of Rs. 500/-, in default, to undergo three months" rigorous imprisonment.

2. The case of the prosecution is as follows:

On 5.8.2004 at about 3 p.m., P.W.1 who is an M. Sc. First year college student alighted from the College bus and was proceeding to her house, near Manakudaiyar Pillai Motor Shed, the revision Petitioner/accused came behind her and wrongfully

restrained her by holding her hands and closed her mouth and lifted her and took her to sugarcane field with an intention to commit rape on her and when she raised alarm, Selvam and Kumaravel rushed to the place of occurrence and on seeing them, the accused left the place. P.W.1 went to her house and since her father was working in Commercial Taxes Department, after his return from Office, intimated the same and she gave a complaint Ex.P-1 to P.W.8 Inspector of Police at about 10 p.m. on 6.8.2004 and that has been received by P.W.8, who registered a case in Crime No. 126 of 2004, for the offences under Sections 366, 506 (Part 1), 376 read with 511 IPC and he prepared printed FIR Ex.P-6 and then he went to the place of occurrence and prepared observation mahazar Ex.P-3 in the presence of P.W.5 Paramasivam and P.W.6 Ganesan and drew rough sketch Ex.P-7. He arrested the accused on 7.8.2004 at about 7.30 a.m., and sent the revision Petitioner/accused to P.W.7 Dr. Natarajan to ascertain the age of the accused and he ascertained the age of the accused and issued Ex.P-4 age certificate, in which, he has stated that the accused has completed 18 years and not completed 20 years. The x-ray is marked as Ex.P-5 series. P.W.8 Inspector of Police examined the other witnesses and concluded the investigation and filed the charge sheet against the 3 accused for the said offences.

3. The learned District Munsif-cum-Judicial Magistrate, Thittakudi, after taking the case in PRC, committed the same to Sessions Court and the learned Additional Assistant Sessions Judge, Vrithachalam, after following the procedures, framed necessary charges and as the accused pleaded not guilty, he examined P. Ws.1 to 8 and marked Exs.P-1 to P-7 on the side of the prosecution and D.W.1 was examined on the side of defence, acquitted the revision Petitioner/accused from the offences under Sections 366 and 506 (Part 2) IPC and convicted him for the offence u/s 376 read with 511 IPC and sentenced him as stated above, against which, the revision Petitioner preferred Criminal Appeal and the Additional District and Sessions Judge (Fast Track Court No. 3), Vrithachalam, after hearing the arguments of both sides and considering the materials available on record, confirmed the conviction and sentence passed by the trial Court, against which, the revision Petitioner/accused has preferred this Crl. R.C.

4. Learned Counsel appearing for the revision Petitioner/accused submitted that except the ipse-dixit of P.W.1, there is no other corroborating evidence let in by the prosecution. Both the Courts below committed error in convicting the accused on the basis of the sole evidence of P.W.1. He further submitted that there was a delay in preferring the complaint and that factum has not been considered by both the Courts below. The eye-witnesses P.W.3 Dhanapal and P.W.4 Ramakannu turned hostile, but, both the Courts below have not considered this aspect. He further submitted that Selvam and Kumaravel who rushed to the place of occurrence, have not been examined who were present after the occurrence. He further submitted that at the time of occurrence, the age of the revision Petitioner/accused is that he completed 18 years and not completed 20 years, and hence he seeks leniency in the

sentence if the Court comes to the conclusion that the revision Petitioner/accused is guilty of the said offences.

5. Repudiating the said contentions, learned Government Advocate (Crl. Side) appearing for the Respondent-Police submitted that since the charges levelled against the Petitioner are in respect of the offences u/s 376 read with 511 IPC, the victim-girl's evidence is sufficient, as the offence alleged is sexual offence against the woman and the corroboration of the evidence of P.W.1-victim-girl is not necessary, even though P. Ws.3 and 4 the alleged eye-witnesses turned hostile and the said Kumaravel and Selvam who rushed to the place of occurrence, were not examined, and so, both the Courts below have considered this aspect in proper perspective and found the accused guilty of the said offence. He further submitted that as per the evidence of P.W.7 Doctor and Exs.P-4 and P-5, the age of the revision Petitioner/accused is that he completed 18 years and not completed 20 years, and so, at the time of occurrence, he was a major and hence, he is not entitled for leniency in the sentence and prayed for dismissal of the Crl. R.C.

6. Considering the rival submissions made by both sides, and the materials available on record, it is seen that the date of occurrence is 5.8.2004 at about 3-3.30 p.m. Admittedly, P.W.1 is M.Sc. Ist Year College student and when she was returning from College and alighted from the College bus, and proceeding to her house, at that time, the revision Petitioner/accused caught hold of her hands and closed her mouth and taken her to sugarcane field and attempted to commit rape on her and at that time, she made alarm and immediately, the villagers Kumaravel and Selvam came to the place of occurrence and then the accused left the place.

7. P.W.2 is the father of the victim-girl-P.W.1 and he is not the eye-witnesses. P. Ws.3 and 4 who are alleged to be the eye-witnesses, turned hostile. The villagers Kumaravel and Selvam, who rushed to the place of occurrence, were not examined. It is well-settled principle of law that the evidence of a single eye-witness is reliable, provided the same must be cogent, natural, trustworthy and convincing. While perusing the evidence of P.W.1, no reason has been suggested for discarding her evidence. In such circumstances, I do not find any reason for discarding the evidence of P.W.1, as her evidence is natural, cogent, trustworthy and convincing and so, the evidence of P.W.1 is reliable. While perusing the evidence of P.W.1, it is clearly proved that the revision Petitioner/accused attempted to commit rape on her. So, the argument advanced by learned Counsel for the revision Petitioner/accused that the sole evidence, namely P.W.1, the single eye-witness, is not sufficient to convict the revision Petitioner/accused, does not hold good.

8. It is also pertinent to note that on the side of defence, D.W.1, one Jayaramn, was examined in his evidence, he has deposed that when he was returning to the village, at the time, he witnessed that the revision Petitioner/accused dashed the cycle on the victim-girl while the cycle has crossed the mud and so, both fell down and he deposed that the occurrence has not taken place. He stated that he know the

accused and the accused would come to the field. In such circumstances, I am forced to endorse the view of both the Courts below that the evidence of D.W.1 is not trustworthy.

9. Next limb of argument advanced by learned Counsel for the Petitioner is that there was delay in preferring the complaint. Admittedly, the occurrence took place on 5.8.2004 at about 3-3.30 p.m. The complaint has been given on 6.8.2004 at about 10 p.m. It is true that since P.W.1 was subjected to sexual offence, in the State of Tamil Nadu, that too in rustic villages, the people are very conservative in disclosing this type of occurrence to third parties and since the father of P.W.1, namely P.W.2 was working in Commercial Taxes Department in Vrithachalam, and when he returned on next day, then only the factum of occurrence was intimated to him and he went to the Police Station on 6.8.2004 and gave Ex.P-1 complaint. P. Ws.1 and 2's evidence has explained the delay in preferring the complaint. Considering the nature of the offence, I am of the view that the delay in preferring the complaint has been properly explained by the prosecution and so, the argument advanced by learned Counsel for the revision Petitioner/accused that the delay in preferring the complaint, is fatal to the case of the prosecution, does not merit acceptance.

10. P.W.7 Dr. Natarajan, after receipt of the request from the investigating officer P.W.8, ascertained the age of the revision Petitioner/accused and after taking X-ray, he issued Ex.P-4 age certificate, in which, he has specifically explained that the accused completed 18 years and not completed 20 years, and in such circumstances, at the time of the occurrence, the revision Petitioner/accused was major and not a juvenile.

11. As already discussed in the earlier paragraphs, the delay in preferring the complaint, has been satisfactorily explained by the prosecution through the evidence of P.W.1, whose evidence is trustworthy and reliable and since it is an offence against woman, that too, a sexual offence, the evidence of P.W.1, the victim-girl of the incident is reliable, who has clearly and categorically deposed before Court as to how the occurrence took place. So, the prosecution has proved the guilt of the revision Petitioner/accused beyond reasonable doubt and so, the conviction imposed on him is sustainable.

12. Now, this Court has to consider the argument advanced by learned Counsel for the revision Petitioner/accused in respect of the quantum of sentence, stating that at the time of the occurrence, he was only 18-20 years, and not completed 20 years and out of infatuation, he committed such offence and now, the revision Petitioner-accused got married and he has already undergone 58 days of imprisonment and to correct and reform him, leniency should be shown to him.

13. Considering the said argument, it is seen that at the time of occurrence, the revision Petitioner/accused has not completed 20 years of age and he was in between 18 and 20 years of age, and because of the infatuation, he committed such

offence and that already he has undergone 58 days of imprisonment and if he is sent to jail, his family would be put to peril. Furthermore, if he mingles with the criminal in the jail, he would become a criminal and considering these aspects and the age of the revision Petitioner/accused at the time of occurrence, since he has not completed the age of 21, and he is an adolescent and hence, I am inclined to modify the sentence as to the period of sentence already undergone by him and the fine amount imposed is liable to be confirmed.

14. In the result:

(a) The Crl. R.C. is partly allowed.

(b) The conviction of the revision Petitioner/accused is confirmed.

(c) The sentence of imprisonment is modified to the one already undergone by him.

(d) The fine amount is confirmed.