(2009) 06 MAD CK 0255

Madras High Court

Case No: Criminal A. No. 681 of 2008

S. Balaraman		APPELLANT
	Vs	
State		RESPONDENT

Date of Decision: June 10, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 376
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 2, 3, 3(2)

Citation: (2009) CriLJ 3603 : (2009) 2 LW(Cri) 847 : (2009) 4 RCR(Criminal) 723

Hon'ble Judges: Chitra Venkataraman, J; C. Nagappan, J

Bench: Division Bench

Advocate: Kaithamalai Kumaran, for the Appellant; M. Babu Muthu Meeran, Additional Public Prosecutor, for the Respondent

Judgement

C. Nagappan, J.

The appellant-Balaraman is the sole accused in Special Sessions Case No. 1 of 2004 on the file of Principal Sessions Judge, Vellore and he has preferred this appeal challenging the conviction and sentence imposed on him by judgment dated 8.11.2004 in the case. For the sake of convenience, in this Judgment, the appellant will be referred to as accused.

2. Charges under Sections 376, IPC and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 were framed against the accused. The learned Principal Sessions Judge found the accused guilty u/s 376, IPC read with Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and convicted and sentenced him to undergo Life Imprisonment and to pay a fine of Rs. 10,000/-, in default, to undergo Rigorous Imprisonment for six months.

3. To prove the charges, the prosecution examined P.Ws. 1 to 16 and marked Exs.P 1 to P19 and M.Os. 1 to 7.

4. The case of the prosecution, as could be discerned from oral and documentary evidence, can be briefly summarised as follows:

P.W.1-Chinnakulandai and P.W.3-Sagunthala are the parents of P.W.2, minor victim. P.W.4-Balasubramaniam is the sister''s son of P.W. 1-Chinnakulandai. P.W.2, the victim, studied up to first standard and was grazing the sheeps. On the date of occurrence viz., on 4.9.2003, P.W.2, the victim, was grazing the sheeps along with P.W.5-Ananthi, Lavanya, Jayalalitha and in the afternoon at about 2 p.m., P.W.6-Venkatesan asked the accused Balaraman, who was a pump operator, to set-right the channel course of the canal. The accused Balaraman directed P.W.5-Ananthi, Lavanya and Jayalalitha to go and bring spade and they refused. The accused directed P.W.2, the victim, to go and get the spade. P.W.2, the victim went through the sugarcane field and the accused followed her and inside the sugarcane field, the accused Balaraman caught hold of P.W.2, the victim, laid her in the channel, closed her mouth with cloth and raped her in violent manner.

Since P.W.2, the victim, did not return, P.W.5-Ananthi along with others went in search of her inside the sugarcane field and she saw the accused Balaraman running away from the scene of occurrence and noticed the clothes of P.W.2, the victim, stained with blood. P.W.2, the victim, returned home. P.W.I-Chinnakulandai and P.W.3-Sagunthala found her looking tired and the victim went to sleep without taking food. The next day viz., on 5.9.2003, P.W.3-Sagunthala found blood in the clothes worn by P.W.2, the victim and the victim complained of stomach pain and did not go for grazing the sheeps. In the evening at 6 p.m., P.W.7-Rajamani came to the house of P.W. 1-Chinnakuiandai and informed him that he came to know through Lavanya that the accused Balaraman had raped P.W.2, the victim, in the sugarcane field on 4.9.2003. P.W.I-Chinnakulandai and P.W.3-Sagun-thala enquired P.W.2. the victim, regarding the same and P.W.2 narrated the rape committed by the accused-Balaraman on her in the sugarcane field and she also identified the accused Balaraman who was going through the street.

P.W.4-Balasubramaniam prepared the complaint and obtained the left thumb impression of P.W. 1-Chinnakulandai in it and attested the same and they went to Kurisilapattu Police Station. P.W.15-Sub-Inspector Sampath received Ex.P1-complaint from P.W. 1-Chinnakulandai and registered a case in Crime No. 235/2003 u/s 376, IPC read with Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and prepared Ex.P18-First Information Report and despatched the same to the Court and higher officers. He sent P.W.2, the victim, for medical examination.

P.W.9-Dr.Lakshmipathy saw P.W.2, the victim on 6.9.2003 in Government Hospital, Tirupattur and referred her for examination to a lady doctor. Ex.P7 is the Accident Register issued by him. P.W. 10-Dr. Parimala examined P.W.2, the victim and found the

following:

H/o Rape as mentioned in AR Copy

O/E conscious 80/mt BP 100/70

No External Injury. Bleeding P.V. more present. Hymen teared. There was vaginal tear in the post fornix. 3 cm size. Bleeding from the injury more present. Wound sutured with difficulty and hemostasis attained, Breasts, Axillary hair, Pubic hair moderately developed.

Oral Examination 7/817/8

1. Approximate age of the person is 16 years.

2. There is possibility of rape as per history of the patient in a violent manner.

3. Vaginal Swab, smear, pubic hair preserved for examination.

Lab No. 8742, dated 6.9.2003 Vaginal Smear - Blood stained No Spermatozoa seen RB. Cs more present.

Ex. P8 is the Accident Register issued by her.

P.W. 16-Deputy Superintendent of Police Mr. Ramasamy received the intimation at 9.15 p.m. on 5.9.2003 and took up investigation and he went to Tirupattur Government Hospital and examined P.W. 1-Chinnakulandai and P.W. 2, the victim and recorded their statements. On 6.9.2003 at 6 a.m., he went to the occurrence place and prepared Ex.P2-Observation mahazar in the presence of P.W.8-Krishnamoorthy and Manokaran. Ex.P19 is the Rough Sketch. He examined P.W.3-Sagunthala at 9.30 a.m. and seized M.Os. 1 to 4, clothes worn by the victim under Ex.P3-mahazar in the presence of same witnesses. He examined P.W.4-Balasubramaniam and some other witnesses on the same day and recorded their statements. On 6.9.2003 at 4 p.m., he arrested the accused Balaraman in Perumapattu Bus Stop and examined him in the presence of P.W.8-Krishnamoorthy and Manokaran and recorded the confession statement given by him in the presence of same witnesses. Ex.P5 is the admissible portion. The accused took them to his house and took and produced M.Os.6 and 7, clothes worn by him at the time of occurrence and he seized the same under Ex.P6-mahazar in the presence of same witnesses. He seized M.O.5-sample earth from the occurrence place under Ex.P4-mahazar in the presence of same witnesses. He subjected the accused to judicial remand on the same day. He gave requisition for medical examination of the accused.

P.W. 11-Dr. Prabakar examined the accused-Balaraman on 9.9.2003 and found him potent. Ex.P9 is the Certificate issued by him. P.W.13-Tahsildar Mr. Sankaran issued Ex.P16-Community Certificate stating that P.W.2, the victim belongs to "Adi-Dravidar"

Community. P.W. 14-Deputy Tahsildar Tmt. Vasantha issued Ex.P17-Community Certificate stating that the ac-cused-Balaraman belongs to "Hindu-Vanniar" Community. On 7.9.2003, P.W. 16-Deputy Superintendent of Police Mr. Ramasamy examined P.W.5-Ananthi, P.W.6-Venkatesan and.P.W.7-Rajamani and some other witnesses and recorded their statements. On 8.9,2003, he gave Ex.P10-requisition to the Court for sending the properties for chemical examination. P.W. 12-Head Clerk of Judicial Magistrate Court No. 3, Tirupattur sent the properties for chemical examination through Ex.P11-letter of the Court. Exs.P12 to P15 Chemical Examiner Reports, Serologist Report were received in Court.

P.W. 16-Deputy Superintendent of Police Mr. Ramasamy examined P.W.9-Dr. Lakshmipathy, P.W. 10-Dr. Parimala and P.W.11-Dr. Prabakar on 9.9.2003 and recorded their statements. On 12.9.2003, he examined P.W. 13-Tahsildar Mr. Sankaran and P.W. 14-Deputy Tahsildar Tmt. Vasantha and recorded their statements. On 26.9.2003, he examined P.W. 12-Head Clerk and P.W. 15-Sub Inspector Sampath and recorded their statements. He completed the investigation and filed final report on 7.10.2003.

5. The accused was questioned u/s 313, Cr.P.C and he denied complicity. No witness was examined and no document was marked on his side.

6. The Trial Court found the accused guilty of the charges and sentenced him as stated earlier. Challenging the conviction and sentence, the accused has preferred the present appeal.

7. The prosecution case is that accused Balaraman committed rape on P.W.2 minor victim during the occurrence. P.W.2 Victim is the unmarried daughter of P.W.I Chinnakulandai and P.W.3 Sagunthala, aged 16 years and she studied up to first standard and thereafter she was grazing the sheeps along with P.W.5 Ananthi and other girls and she belongs to Adi-Dravida Community. Accused Balaraman was employed as pump operator in the Panchayat Board in the same place and he belongs to Hindu Vanniyar Community. On the date of occurrence, i.e. on 4.9.2003, P.W.2 Victim was grazing the sheeps along with P.W. 5 Ananthi, Lavanya and Jayalalitha and at about 2.00 p.m., P.W.6 Venkatesan asked the accused Balaraman to set-right the channel course of the canal. Accused Balaraman directed P.W.5 Ananthi and Jayalalitha to go and bring the spade and they refused and thereafter he directed the victim to do so.

8. P.W.2 Victim has testified that accused Balaraman directed her to go and bring the spade and she proceeded through the sugarcane field and accused-Balaraman followed her and inside the sugarcane field the accused caught hold of her and laid her in the channel and closed her mouth with cloth and raped her in violent manner. P.W.5 Ananthi has testified that when they were grazing the sheeps in the field on the occurrence day, the accused directed P.W.2 Victim to go and get the spade and when P.W.2 Victim went through the sugarcane field, accused-Balaraman followed her and P.W.2 Victim did not return even after considerable time and hence, she along with others went there and saw

the accused running from the place and they saw P.W.2 Victim''s clothes stained with blood. According to P.W.I Chinnakulandai and P.W.3 Sagunthala, P.W.2 Victim returned home in the evening at 6'' O clock looking tired and she did not take her food and went to sleep and on the next day, P.W.3 Sagunthala noticed blood in the clothes worn by P.W.2 Victim and P.W.2 Victim complained of stomach pain and did not go for grazing the sheep on that day and at about 6.00 p.m., P.W.7 Rajamani came to their house and told that he came to know through Lavanya that accused-Balaraman had raped P.W.2 Victim in the sugarcane field and they enquired P.W.2 Victim and she narrated the rape committed by accused-Balaraman on her in the sugarcane field on the previous day. P.W.4 Balasubramaniam, uncle of the victim, wrote Ex.P1 complaint and obtained Left Thumb Impression of P.W. 1 Chinnakulandai and they lodged the complaint in the police station.

9. The learned Counsel appearing for the appellant submits that P.W. 1 Chinnakulandai in his complaint has not stated that P.W.7 Rajamani first informed him about the occurrence and whereas in his testimony he has stated so and there is contradiction and his testimony is doubtful. It is true that P.W.I Chinnakulandai in Ex.P1 complaint has not stated that he came to know about the occurrence only through P.W.7 Rajamani, but that does not affect the prosecution case in any way. P.W.7 Rajamani is the Nattamai (Village headman) and he has testified that Lavanya informed him at 5.00 p.m. on 5.9.2003 that accused-Balaraman committed rape on P.W.2 Victim on 4.9.2003 and he immediately went to the house of P.W.2 Victim and informed the same to her parents. P.W. 1 Chinnakulandai and P.W.3 Sagunthala have categorically stated that P.W.7 Rajamani came to their house at 6.00 p.m. on 5.9.2003 and conveyed the information about the occurrence received from Lavanya and they enquired their daughter P.W.2 Victim and the victim told them the rape committed by the accused on her in sugarcane field. Though Lavanya was not examined in the case, P.W.5 Ananthi has been examined and she has stated about the occurrence.

10. After the case was registered. P.W.2 Victim was referred for medical examination and P.W.9 Dr. Lakshmipathy had seen the victim at 1.20 a.m. on 6.9.2003 in Thiruppathur Government Hospital and has referred her to a lady doctor for examination and Ex.P7 is the Accident Register issued by him. P.W. 10 Dr. Parimala on the same day had examined P.W.2 Victim and according to P.W. 10 Dr. Parimala, the Hymen was found torn and there was vaginal tear in the post-Fornix and there was bleeding from the injury and she sutured the wound with difficulty. P.W. 10, the Doctor has expressed opinion stating that the approximate age of the victim is 16 years and there is possibility of rape in a violent manner. Ex.A8 is the Accident Register issued by her.

11. P.W.2 Victim is 16 years'' old rustic girl grazing the sheep on the field. She has testified about the rape committed by the accused-Balaraman on her at the time of occurrence. Her testimony is natural, cogent and convincing and it is corroborated by the testimony of P.W.5 Ananthi. Further the medical evidence also corroborates her testimony. The evidence of a victim of sex offence is entitled to great weight and there exist no circumstances which cast a shadow of doubt over her veracity. The trial Court

has rightly accepted the testimony of P.W.2 Victim and found the accused guilty of the offence u/s 376, IPC.

12. The next contention of the learned Counsel for the appellant is that there is no evidence to prove the commission of offence u/s 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the conviction and sentence of the trial Court for the said offence are liable to be set aside. In support of his submission, the learned Counsel relies on the following two decisions of the Supreme Court:

(1) Dinesh @ Buddha Vs. State of Rajasthan, ; and (2) Ramdas and Others Vs. State of Maharashtra, .

13. Per contra, Mr. Babu Muthu Meeran, learned Additional Public Prosecutor, submits that the prosecution has adduced evidence to show that the minor victim belongs to Adi-Dravidar Community and the accused belongs to Hindu Vanniyar community and since the rape was committed on the victim, who is a member of Scheduled Caste, the offence u/s 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is attracted and the conviction and sentence for the said offence are sustainable.

14. In the first decision in Dinesh @ Buddha Vs. State of Rajasthan, . Their Lordships of the Supreme Court considered the applicability of the provision u/s 3(2)(v) of the Act and laid down as follows:

14. At this juncture it is necessary to take note of Section 3 of the Atrocities Act. As the Preamble to the Act provides "the Act has been enacted to prevent the commission of offences of atrocities against the members of the Scheduled Castes and Scheduled Tribes. The expression "atrocities" is defined in Section 2 of the Atrocities Act to mean an offence punishable u/s 3. The said provision so far relevant reads as follows:

3(2)(v): Punishments for offences of atrocities:

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,:

xxx xxx xxx

(v) commits any offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;

xxx xxx xxx

15. Sine qua non for application of Section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of Scheduled

Castes and Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not case of the prosecution that the rape was committed on the victim since she was a member of Scheduled Caste. In the absence of evidence to that effect, Section 3(2)(v) has no application.

15. Subsequently, the Apex Court considered the offence u/s 3(2)(v) of the Atrocities Act in the decision in Ramdas and Others Vs. State of Maharashtra, and has observed as follows:

11. At the outset we may observe that there is no evidence whatsoever to prove the commission of offence u/s 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The mere fact that the victim happened to be a girl belonging to a Scheduled Caste does not attract the provisions of the Act. Apart from the fact that the prosecutrix belongs to the Pardhi community, there is no other evidence on record to prove any offence under the said enactment. The High Court has also not noticed any evidence to support the charge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and was perhaps persuaded to affirm the conviction on the basis that the prosecutrix belongs to a Scheduled Caste community. The conviction of the appellants u/s 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 must, therefore, be set aside.

16. In the present case, the prosecution examined P.W.13 Tahsildar to prove that P.W.2 Victim belongs to Adi-Dravidar Community. Ex.P16 is Community Certificate issued by him. P.W. 14 Deputy Tahsildar has been examined to prove that accused Balaraman belongs to Hindu Vanniyar Community. Ex.P17 is the Community Certificate issued by PW. 14. P.W. 1 Chinnakulandai in his testimony has stated that they belong to Adi-Dravidar Community and accused Balaraman belongs to Hindu Vanniyar Community. The mere fact that the victim happened to be a girl belonging to a Scheduled Caste does not attract the provision u/s 3(2)(v) of the Act and it is not the case of the prosecution that the rape was committed on the victim since she was a member of Scheduled Caste and there is no other evidence on record to prove the said offence under the Act. Hence, the conviction and sentence imposed on the appellant u/s 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are liable to be set aside.

17. The learned Counsel for the appellant submits that the trial Court has awarded the sentence of life imprisonment on the finding that Section 3(2)(v) of the Atrocities Act is applicable and in view of the fact that it has no application to the present case, a lesser sentence may be imposed on the accused for the conviction u/s 376, IPC. Undisputedly, the victim was 16 years of age at the time of occurrence and the accused is undergoing the sentence for the past four years. In the facts and circumstances of the case, we are of the considered view that sentence of seven years" Rigorous Imprisonment, which has been statutorily provided as minimum sentence, would meet the ends of justice for the conviction u/s 376, IPC.

18. In the result,

(i) The conviction and sentence imposed on the appellant/accused u/s 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act are set aside and the accused is acquitted of the said charge.

(ii) The conviction u/s 376, IPC is confirmed and the sentence of life imprisonment imposed on the appellant/accused is set aside and instead, sentence of seven years Rigorous Imprisonment is imposed on him and the fine of Rs. 10,000/- imposed by the trial Court is sustained and the appeal is allowed to the extent indicated above.