

A. Ramu Vs Ramaswamy and anothers

Court: Madras High Court

Date of Decision: March 29, 1993

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 313, 397, 401
Penal Code, 1860 (IPC) â€” Section 354

Citation: (1993) CriLJ 2544

Hon'ble Judges: N. Arumugham, J

Bench: Single Bench

Advocate: Mr. Saravanan and Mr. A. Sivaji, for the Appellant; Mr. R. Arunagirinathan and M. Md. Ibrahim Ali, Mr. G. Kumaravel, Government Advocate, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

N. Arumugham, J.

The victim girl aged about 35 years by name Ramu daughter of one Arunachala founder of Pothireddipatti village in

Sattar Taluk, the complainant and examined as P.W. 1 before the trial Court has filed this revision u/s 397 and 401 of the Code of Criminal

Procedure challenging the legality and propriety of the judgment of acquittal rendered by the learned Additional District and Sessions Judge,

Ramanathapuram at Madurai in CrI. R.P. No. 24 of 1988, acquitting both the respondents/accused of the offence u/s 354, I.P.C. and setting aside

the conviction and sentence of imprisonment for a period of six months and the fine amount of Rs. 500/- each to be refunded, which was imposed

by the learned Judicial Second Class Magistrate, Sattar in C.C. 101 of 1987 and confirmed by the learned Assistant Sessions Judge, Sri villiputhur

in C.A. 44 of 1988.

2. Brief facts of the prosecution case as culled out from the recorded evidence are stated as follows :

The revision petitioner being a coolie was waiting in the bus stop to go to her village Pothireddipatti after finishing her day"s coolie work at about

9.30 p.m. on 4-2-1987 along with other coolies. The last bus having accommodated the other coolies but however left the revision petitioner alone

for want of accommodation. She happened to remain in the bus-stop and both the respondents/accused came there in two bi-cycles and

approached the petitioner to give a lift to reach her village and that accordingly, they came near the junction of Kollampatti pirvivu. On being asked

to get down and go to her village, the petitioner got down and was proceeding. At that point of time, while she was being followed by the

respondents to agree for sexual intercourse, she tried to run away. But however, both the respondents overpowered her and took her to a nearby

pit and put her down and whereupon the first respondent attempted to commit rape and the petitioner fought and never budged for them. By

raising hue and cry and by overpowering the respondents, she managed to escape from both the respondents and reached her village. She

informed her sister and uncle about the occurrence at about 12 mid-night. Since there were no bus-facilities, the petitioner along with her uncle

reached the match factory on the next day morning and informed their employees and on their instructions, the petitioner lodged Ex. P. 1 to the

Police and produced the torn jacket M.O. 1. to the Police. On receipt of the complaint Ex. P. 1, P.W. 3 registered the same in Sathur Police

Station Crime No. 93 of 1987 against the respondents u/s 354, I.P.C. and sent P.W. 1 for medical examination. P.W. 2 Dr. Smt. Ulagammal

examined P.W. 1 and issued Ex. P.2, the copy of the Accident Register. As per Ex. P. 2 though the doctor has noted down that P.W. 1 was

alleged to have been beaten with hands by two known persons at 11 p.m. on 4-2-1987 at Kollampatti road, on external injuries were found but

the patient had complained of pain in the chest. P.W. 3, the Sub-Inspector of Police on receipt of Ex. P. 1, had been to the scene of crime,

prepared the rough sketch Ex. P. 3, examined further witnesses, completed the investigation and laid final report against the respondents for the

offence punishable u/s 354, I.P.C. in the trial Court.

3. On being examined by the trial court u/s 313, Cr.P.C. on the basis of the incriminating circumstances appearing against the respondents in

evidence, they pleaded total ignorance and not guilty but however, they did not choose to examine witnesses on their side.

4. On recording the oral evidence of three witnesses examined on behalf of the prosecution, by replying on Ex. P. 1. to Ex. P. 3 and the material

object M.O. 1, the torn jacket belonging to P.W. 1, in the context of the plea taken on behalf of the respondents, the learned trial Magistrate came

to a conclusion that the prosecution had proved the complicity and the guilt of both the respondents for the offence u/s 354, I.P.C. and convicted

and sentenced them to undergo rigorous imprisonment for six months and to pay a fine of Rs. 500/- each in default to undergo rigorous

imprisonment for six months. This judgment of conviction and sentence was challenged by the respondents in C.A. 44 of 1988 before the Assistant

Sessions Judge, Srivilliputhur. On reassessment of the entire recorded evidence, the rival contentions projected on behalf of the respective parties,

the learned Assistant Sessions Judge, dismissed the appeal confirming the conviction and sentence recorded by the trial Court on 30-8-1988.

Against the same, respondents preferred revision before the learned Sessions Judge, Ramanathapuram at Madurai in Crl. R.P. 24 of 1988

challenging the legality and propriety of the impugned judgment of the lower appellate court.

5. While analysing the concurrent findings of both the courts below, in the context of the recorded evidence both oral and documentary and the

legal aspects involved in the case, the learned Sessions Judge, has pointed out several errors of law and erroneous approach adopted by both the

courts below but however concurrently, and for the reasons specifically given by him, has interfered and set aside the impugned judgment of the

lower appellate Court, acquitted the respondents and set them free. Challenging the same, by virtue of Sections 397 and 401 of the Code of

Criminal Procedure, affected party, namely the victim girl examined as P.W. 1, has preferred the above revision on several grounds.

6. Though several grounds were urged in the grounds of revision, Mr. Saravanan, learned counsel appearing for the petitioner, persuaded me to

accept the findings of both the courts below in as much as the reasoning given by them were perfectly correct and on par with the law and that

under the said circumstances, the judgment of acquittal recorded by the learned Sessions Judge of Ramanathapuram is clearly an error of law and

misappreciation of the facts and that therefore, the learned counsel wanted me to interfere with the same in this revision. Per contra, Mr.

Arunagirinathan and Mr. M. Md. Ibrahim Alia, learned counsel appearing for R. 1 and R. 2 respectively, countered the same but however assailed

the concurrent findings of both the trial court and the lower appellate court as was pointed out by the Sessions Judge in the impugned judgment of

acquittal. While narrating the pre-ponderance of improbabilities inherent in the prosecution case and the unnaturalness of the oral claim by P.W. 1,

the complainant herein, added with the long and unbelievable delay in lodging the complaint by P.W. 1 to the concerned police, the learned

Sessions Judge has elaborately discussed and given his reasoning in paras 5 to 7 of the impugned judgment. For the above said reasons, there

exists no need for me to consider or transverse once again about all elaborately and in the said context, I am able to see that there is no reasoning

or grounds available for me to dissent with the views of the learned Sessions Judge in giving a finding of total acquittal to both the respondents by

giving the benefit of doubt. Added to it, it is pertinent to note one another clinching circumstances which would clearly go to the root of the

prosecution case that a girl like P.W. 1 at odd hours of 11 p.m. in the night waiting for a bus and could not get the bus to reach her village, chose

her choice to go along with two males in a bicycle by sitting on the rear side of one of the respondents that again on nearing the alleged scene of

occurrence, at the insistence of the respondents, got down and chose her sojourn lonely and that whereupon both the respondents forceably took

her to a nearby pit, followed by her overpowering them and escaped to her village are far fetched for any human reach and would clearly amount

to an artificial story, which cannot at all be believed for any moment. This view of mine is fortified by the fact that P.W. 2, the doctor, who

examined P.W. 1 at the earliest point of time was able to identify not a single scratch or abrasion over her body, especially, when in the

circumstances, it is alleged that this lonely lady had a fight with two males of young age during the night and ultimately had escaped from their

clutches. That apart, there was considerable delay in lodging this F.I.R. which remained unexplained by the prosecution by no stretch of acceptable

evidence. Above all, regarding the place of occurrence is concerned, the prosecution is not sure about the exact place where the alleged

occurrence has taken place. This is yet another case, in which the investigating agency thought fit that the preparation of the observation mahazar

showing the topography of the scene of occurrence is quite unnecessary, which would hamper the prosecution case in its extenso, which attitude of

the Sub-Inspector of Police is to be highly deprecated. In short, besides the reasonings given by the learned Sessions Judge of Ramanathapuram, I

would like to add that the prosecution in this case had not only virtually but also deliberately failed to place true facts before the court of law for

punishing the real culprits who attempted to outrage the modesty of a young, village, illiterate, rustic woman. Therefore, under the circumstances, I

do not come across any legal or factual or erroneous approach or misappreciation of the recorded evidence or established facts by the learned

Sessions Judge in the impugned judgment of acquittal. Accordingly, this revision deserves a total rejection.

7-8. In the result, the revision fails and accordingly, it is dismissed.

9. Revision dismissed