
(2011) 09 MAD CK 0350
In the Madras High Court
Case No : Criminal R.C. No. 1568 of 2008

Ragothu

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 21-09-2011

Acts Referred:

Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 376, 417

Citation : (2011) 09 MAD CK 0350

Hon'ble Judges : C.T. Selvam, J

Bench : Single Bench

Advocate : M.G. Sankaran, for the Appellant; P. Govindarajan, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice C.T. Selvam

1. This revision petitioner stood trial for offence u/s 376 IPC, while he and four others stood trial for offences under Sections 417 IPC and Section 4 of the Dowry Prohibition Act, 1961 in S.C.No.107 of 2005 on the file of the learned Principal Assistant Sessions Judge, Villupuram.

2. The prosecution case was that at about 9.00 p.m., on 01.02.2004, the 1st accused had accosted PW1 Manimegalai, when she was alone in her house, took her to the back of the house, promised that he would not marry anyone other than her and against her will forced her into sexual intercourse. Thereafter, the act was repeated upon false inducement of a promise to marry. PW1 became pregnant and on 01.06.2004 all the accused asked her to undergo an abortion informing her that they would arrange the marriage. Thereafter, the 1st accused refused to marry her and all the accused demanded dowry as a pre condition of marriage.

3. Before the trial Court, the prosecution examined 14 witnesses and marked 7

exhibits. None were examined on behalf of the defence and no exhibits were marked. P.Ws. 2 and 3 were the mother and father of PW1, while PW4 was her brother. Accused A2, A3 and A5 are the brothers of A1, while A4 was a relative. On appreciation of the evidence before it, the trial Court found no proof in respect of offence u/s 417 IPC and Section 4 of the Dowry Prohibition Act and acquitted all the accused of such charges. However, the trial Court convicted the petitioner / A1 of offence u/s 376 IPC finding that the sole testimony of PW1 in this regard was sufficient. Against this conviction the petitioner moved appeal in C.A.No.35 of 2007, which came to be dismissed under judgment of the learned Principal Sessions Judge, Villupuram, dated 01.09.2008.

4. Heard Mr. M.G. Sankaran, learned counsel appearing for the petitioner and Mr. P. Govindarajan, learned Additional Public Prosecutor.

5. Learned counsel for the petitioner submitted that the very evidence of PW1 is at variance as regards the time of commission of offence. In chief examination, she had deposed that the same had taken place at 8.00pm whereas, in cross examination she had informed the time as 2.00p.m. PW1 had denied the suggestion that in the complaint preferred by her Ex.P1, she had informed the time of occurrence as 8.00 p.m. P.W.13, the Sub Inspector of Police had deposed that PW1 had not informed in the complaint of the occurrence having taken place at 2.00pm or her having raised an alarm at such time or for that matter of the accused having prevented her for raising an alarm by closing her mouth.

6. Learned counsel for the petitioner further submitted that the trial Court had fell into error in observing that though PW1 had not spoken to her having raised an alarm in her chief examination, she had informed thereof in the course of cross examination. The prosecution case of PW1 having aborted the foetus necessarily was false as PW9, the Doctor who examined her had informed that there was no symptom of abortion. The complaint had been preferred four months after the date of occurrence on 12.08.2004 owing to the petitioner having entered into a marriage with another. PW1 had informed of the petitioner being a friend of her brother and of having moved closely with him, this had been spoken to also by PW2, the father of PW1 as also PW4, the brother. The case was one of consensual sex between consenting parties and a false case stood foisted owing to ill-will arising over the marriage of the petitioner.

7. Learned counsel for the petitioner relied upon the judgment in Deelip Singh Alias Dilip Kumar v. State of Bihar reported in 2005 SCC (Cri) 253, to inform that in near similar circumstances, the Apex Court had held that the accused could not be held guilty of rape.

8. Heard the learned Additional Public Prosecutor on the above submissions.

9. This Court finds that the relationship between the petitioner and PW1 is admitted by PW1, PW2, her father as also PW4, her brother. The offence of rape is alleged in respect of the 1st instance of sexual intercourse. As regards the same, it is unthinkable that PW1 would be unsure as regards the time thereof.

Her evidence informing two different times i.e., 8.00pm in chief examination and 2.00 pm in the course of cross examination, raises a doubt of the truth of her version. The evidence of PW13, that she (PW1) had not informed of having raised any alarm would go to show that sexual relationship was with her consent. Though in a case of rape mere delay in lodging the FIR would not undo the prosecution case since the nature of occurrence is such that many a girl or parent would be hesitant to inform of, in the circumstances of this case this Court is inclined to hold that the delay in registering the FIR came about not owing to any reservations had by the prosecution party. This is a case of admitted affair between the petitioner and PW1 and this Court would hold that there is no proof of commission of rape. This revision succeeds and the order of the Courts below stand set aside.

10. Finding the case on hand most close on facts to the decision cited by the learned counsel for the petitioner, we would reproduce hereunder paragraphs 12 and 13 of such judgment.

12. The next question is whether the appellant had sexual intercourse with the victim girl against her will (vide first clause of Section 375). The expression "against the will" seems to connote that the offending act was done despite resistance and opposition of the woman. On this aspect, the trial Court did believe the version of the informant-victim without much of discussion. In reaching this factual finding, the trial court failed to analyse and evaluate the evidence of PW12, the victim girl. The High Court merely affirmed the trial court's finding on this point. We should, therefore, scrutinise her evidence and examine whether it would, beyond reasonable doubt, lead to the conclusion of the accused having had sexual contact against her will. Though in the FIR, the version of forcible sexual intercourse has not been put forward, in the deposition before the court, PW 12 tried to build up this plea. According to PW12, the first act of rape took place in the wheat field of her father. This is how she described the incident:

In the field, once getting a chance, Dilip Singh forcible raped me. Dilip Singh forcibly raped me. Dilip Singh told, "you marry me", when I was weeping. He said weeping is useless and we shall marry. He promised me of marriage and raped me several times.

13. She then stated that after she became pregnant, she revealed to her mother about the rape. Later on, the accused became ready to marry her but his father and others took him away from the village. She also stated that the accused time and again told her that they will have a "Court Marriage" (means, registered marriage). In substance, what she deposed was that the first sexual intercourse took place against her will, though she became a consenting party later on. The first thing to be noticed is that in the report which she admittedly gave to the police, this version was not given by her and she did not complain of forcible rape. That apart, the version of rape in the wheat field seems to be highly doubtful when tested in the light of her statements in the cross-examination. She

stated in para 14 that

one day, while talking, he pulled me down and forcibly raped me. This incident occurred at 12.00 in the night". That means, according to her version, the first incident of rape took place on the wheat field at 12.00 in the midnight. It is highly doubtful whether they would go to the wheat fields at that hour. Moreover, in cross-examination, she makes a further improvement by stating that at the time of first incident of rape at midnight, when she started shouting, the accused gagged her mouth. One more thing which affects the credibility of her version is her statement in the cross-examination that when the accused kept on making gestures, she went to the house of the accused and lodged her protest with his bhabhi. It is most unlikely that such unwilling person will go to a secluded place in the company of the accused at an odd time in the night and take the risk of being sexually assaulted. In any case, if the rape was committed by the accused much against her will, she would not have volunteered to submit to his wish subsequent to the alleged first incident of rape. She admitted that the accused used to talk to her for hours together and that was within the knowledge of her parents and brother. This statement also casts an element of doubt on her version that she was subjected to sexual intercourse in spite of her resistance. Above all, the version given by her in the court is at variance with the version set out in the FIR. As already noticed, she categorically stated in the first information report that she "surrendered before him" in view of his repeated promise to marry. In short, her version about the first incident of rape bristles with improbabilities, improvements and exaggerations. It is a different matter that she became a consenting party under the impact of his promise to marry her. That aspect, we will examine later. But, what we would like to point out at this juncture is, it is now safe to lend credence to the version of PW12 that she was subjected to rape against her will in the first instance even before the appellant held out the promise to marry. We cannot, therefore, uphold the finding of the trial Court that the girl was raped forcibly on the first occasion and that the talk of marriage emerged only later. The finding of the trial court in this respect is wholly unsustainable.

11. The Criminal Revision case stands allowed and the order of the Courts below are set aside. The petitioner shall stand acquitted of the charges. The fine amount, if any paid shall stand refunded to the petitioner.