2024 INSC 393

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 906 OF 2023

SELVAMANI **...APPELLANT(S)**

VERSUS

THE STATE REP. BY THE INSPECTOR OF POLICE **...RESPONDENT(S)**

J U D G M E N T

B.R. GAVAI, J.

1. This appeal challenges the final judgment and order dated 27th August 2019, passed by the learned Single Judge of the High Court of Judicature at Madras[1], whereby vide a common judgment, the High Court dismissed Criminal Appeal Nos. 449 and 840 of 2012. The present Appellant, who is Accused No. 2, had filed the Criminal Appeal No. 840 of 2012, along with Accused Nos. 3 and 4, under Section 374 of Criminal Procedure Code, 1973[2], challenging the judgment and order dated 26th June 2012, passed by the learned

[1] **Hereinafter referred to as, "High Court".**
[2] **Hereinafter referred to as, "CrPC".**

Additional District and Sessions Judge, Court No. III, Thirupathur, Vellore District[3], in Sessions Case No. 277 of 2010, whereby the trial court had convicted and sentenced the accused persons for offences punishable under Section 376(2)(g) and 506(1) of Indian Penal Code, 1860[4], and Section 4 of the Tamil Nadu Prevention of Women Harassment Act.

2. The facts, in brief, giving rise to the present appeal are as given below:

2.1 On 28th January 2006, Police Station Vaniyampadi Town received a written information from the victim (PW-1), to the effect that she had been gang raped. On the basis of the said written information, Police Station Vaniyampadi Town registered a First Information Report (FIR), vide P.S. Crime No. 115 of 2006 for the offence punishable under Sections 341, 323, 376 and 506(2) IPC read with Section 4 of Tamil Nadu Prevention of Women Harassment Act. On registration of the FIR, Shri Loganthan, Inspector of Police, Vanianpadi Town Police Station (PW-13) (I.O.) visited the place of occurrence and prepared observation Mahazar and sketch. He recorded the statement of witnesses. The accused

[3] **Hereinafter referred to as, "trial court".**
[4] **Hereinafter referred to as, "IPC".**

persons were arrested. The medical officer examined the victim and her statement was recorded under Section 164 CrPC by the Judicial Magistrate, Thirupattur.

2.2 The prosecution case, in a nutshell, is that the victim was working at Emerald Shoe Company, Vaniyampadi for three years leading upto the day of the incident. On the day of the incident, i.e., 27th January 2006, at about 7 PM, when the victim, aged 22 years, was returning to her house, after completing her work, the Accused No. 1 who was the Manager/Owner of the said Company came to her and told her that he wanted to talk to her about certain matter and so he took her to a place near the Railway Bridge, where already the other four persons (Accused Nos. 2 to 5) were standing, who then forcibly dragged her to a secluded place and threatened to throw her on the railway track if she shouted. They then stripped her. The victim cried for help, upon which she was threatened with a knife. The accused persons committed gang rape on her. Accused No. 1 assaulted the victim as well. The act continued till 3:30 AM, the next morning, when she escaped and came back to her house. On her return, she informed her mother (PW-2) and aunt (PW-3)

and later during the same day, she got the FIR registered.

2.3 At the conclusion of the investigation, a charge-sheet came to be filed by the I.O. in the Court of Vanianpadi Judicial Magistrate. Since the offence charged against the accused persons was triable only by the Court of Sessions, the case was committed to the learned Principal District and Sessions Judge, Vellore, and the same was made over to the learned trial court, for disposal.

2.4 Charges were framed by the trial court under Sections 376(2)(g) and 506(1) of IPC and Section 4 of Tamil Nadu Prevention of Women Harassment Act.

2.5 The accused persons pleaded not guilty and claimed to be tried. To bring home the guilt of the accused, the prosecution examined fourteen (14) witnesses, twenty-five (25) exhibits were marked along with two (2) material objects. The defence of the accused was that they had been falsely implicated. At the conclusion of the trial, the trial court found that the prosecution had proved the case beyond reasonable doubt against the accused persons and so convicted them under Section 376(2)(g) and 506(1) IPC and Section 4 of Tamil Nadu Prevention of Women Harassment

Act and sentenced each accused person to 10 years rigorous imprisonment and fine of Rs. 5,000/- for the offence committed under Section 376(2)(g) IPC, 1-year rigorous imprisonment and fine of Rs. 1,000/- for the offence committed under Section 506(1) IPC and 1-year imprisonment for the offence committed under Section 4 of the Tamil Nadu Prevention of Women Harassment Act, in default of payment of fine they were to undergo 3-months simple imprisonment. The sentence was to run concurrently and the period already undergone was to be set-off. Since the Accused No. 5 had died during the trial, the case against him stood abated.

2.6 Being aggrieved thereby, the accused persons preferred appeal against the final judgment and order of the trial court. There were two appeals before the High Court. Accused No. 1 filed Criminal Appeal No. 449 of 2012 and the Accused Nos. 2 to 4 filed Criminal Appeal No. 840 of 2012. Vide impugned judgment, the High Court dismissed both the criminal appeals and upheld the findings of the trial court.

2.7 Aggrieved as a result, the present appeal has been filed only on behalf of Accused No. 2.

3. We have heard Shri Rahul Shyam Bhandari, learned counsel appearing on behalf of the appellant and Shri V. Krishnamurthy, learned Senior Additional Advocate General appearing on behalf of the State of Tamil Nadu.

4. Shri Rahul Shyam Bhandari, learned counsel appearing for the appellant, submits that the High Court has grossly erred in dismissing the appeal filed by the appellant herein. It is submitted that the victim (PW-1) as well as her mother-Jaya (PW-2) and her aunt-Jamuna (PW-3) have not supported the prosecution case in their cross examination. Learned counsel for the appellant further submits that the medical evidence also does not support the evidence of the prosecution. Learned counsel for the appellant, relying on the judgment of this Court in the case of ***Rai Sandeep alias Deepu v. State (NCT of Delhi)***[5], submits that when the evidence of the prosecutrix and the medical evidence does not support the prosecution case, the conviction could not be sustainable.

5. In the present case, the prosecutrix as well as her mother-Jaya (PW-2) and her aunt-Jamuna (PW-3) have fully

[5] **(2012) 8 SCC 21 : 2012 INSC 322**

supported the prosecution case. The examination-in-chief of the prosecutrix would reveal that she has stated that when she was returning to her house, the Accused No.1, who is the owner of the company in which she works, came and asked her to come with him for giving details of some official work. Accused No.1 took the victim, where four accused persons were standing and then Accused No.1 asked the prosecutrix to remove her clothes and when she refused, her clothes were removed by the other accused and thereafter they ravished her. The evidence would also show that though she informed that she was at pains, they committed forcible sexual intercourse with her one by one on various occasions. She has stated that, when the accused persons left at around 3 o'clock in the morning, she went home and narrated the version to her mother and relatives. PW-2 and PW-3, mother and aunt of the prosecutrix respectively, have also stated in their evidence that when the prosecutrix came home, she narrated the incident to them. The FIR came to be lodged immediately on the very same day.

6. The statement of the prosecutrix under Section 164 CrPC was also recorded before Smt. Lakshmi Ramesh,

Judicial Magistrate (PW-6). PW-6 has also deposed about the prosecutrix, giving the statement and narrating the entire incident.

7. Dr. Indrani, Medical Expert (PW.8), who had examined the victim, has clearly stated that the prosecutrix was having injuries on her person. Her evidence establishes the fact that there was forcible sexual intercourse several times by several persons. Her evidence also shows that on account of the said incident, the victim lost her virginity and there were also abrasions on the private parts of the victim.

8. No doubt that the prosecutrix and her mother and aunt in their cross-examination, which was recorded three and a half months after the recording of the examination-in-chief, have turned around and not supported the prosecution case.

9. A 3-Judge Bench of this Court in the case of ***Khujji @ Surendra Tiwari v. State of Madhya Pradesh***[6], relying on the judgments of this Court in the cases of ***Bhagwan Singh v. State of Haryana***[7], ***Sri Rabindra Kuamr Dey v. State of Orissa***[8], ***Syad Akbar v. State of Karnataka***[9], has held

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[6] **(1991) 3 SCC 627 : 1991 INSC 153**
[7] **(1976) 1 SCC 389 : 1975 INSC 306**
[8] **(1976) 4 SCC 233 : 1976 INSC 204**
[9] **(1980) 1 SCC 30 : 1979 INSC 126**

that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. It was further held that the evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.

10. This Court, in the case of ***C. Muniappan and Others v. State of Tamil Nadu***[10], has observed thus:

> "**81.** It is settled legal proposition that : (*Khujji case*, SCC p. 635, para 6)
>
> > '*6.* … the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.'
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> **82.** In *State of U.P.* v. *Ramesh Prasad Misra*, (1996) 10 SCC 360] this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in *Balu Sonba Shinde* v. *State of Maharashtra*, (2002) 7 SCC 543], *Gagan Kanojia* v. *State of Punjab,* (2006) 13

[10] **(2010) 9 SCC 567 : 2010 INSC 553**

SCC 516], *Radha Mohan Singh* v. *State of U.P.,*(2006) 2 SCC 450], *Sarvesh Narain Shukla* v. *Daroga Singh*, (2007) 13 SCC 360] and *Subbu Singh* v. *State*, (2009) 6 SCC 462.

83. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.

84. In the instant case, some of the material witnesses i.e. B. Kamal (PW 86) and R. Maruthu (PW 51) turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with law. Some omissions, improvements in the evidence of the PWs have been pointed out by the learned counsel for the appellants, but we find them to be very trivial in nature.

85. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. Vide *Sohrab* v. *State of M.P.,* (1972) 3 SCC 751, *State of U.P.* v. *M.K. Anthony*, (1985) 1 SCC 505, *Bharwada Bhoginbhai Hirjibhai* v. *State of Gujarat,* (1983) 3 SCC 217, *State of Rajasthan* v. *Om Prakash*, (2007) 12 SCC 381, *Prithu* v. *State of H.P.*, (2009) 11 SCC 588, *State of U.P.* v. *Santosh Kumar*, (2009) 9 SCC 626 and *State* v. *Saravanan,* (2008) 17 SCC 587"

11. In the case of ***Vinod Kumar v. State of Punjab***[11], this Court has observed thus:

> "**51.** It is necessary, though painful, to note that PW 7 was examined-in-chief on 30-9-1999 and was cross-examined on 25-5-2001, almost after 1 year and 8 months. The delay in said cross-examination, as we have stated earlier had given enough time for prevarication due to many a reason. A fair trial is to be fair both to the defence and the prosecution as well as to the victim. An offence registered under the Prevention of Corruption Act is to be tried with all seriousness. We fail to appreciate how the learned trial Judge could exhibit such laxity in granting so much time for cross-examination in a case of this nature. It would have been absolutely appropriate on the part of the learned trial Judge to finish the cross-examination on the day the said witness was examined. As is evident, for no reason whatsoever it was deferred and the cross-examination took place after 20 months. The witness had all the time in the world to be gained over. We have already opined that he was declared hostile and re-examined.
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> **52.** It is settled in law that the testimony of a hostile witness can be relied upon by the prosecution as well as the defence. In re-examination by the Public Prosecutor, PW 7 has accepted about the correctness of his statement in the court on 13-9-1999. He has also accepted that he had not made any complaint to the Presiding Officer of the court in writing or verbally that the Inspector was threatening him to make a false statement in the court. It has also been accepted by him that he had given the statement in the court on account of fear of false implication by the Inspector. He has agreed to have signed his statement dated 13-9-1999 after going through and admitting it to be correct. It has

[11] **(2015) 3 SCC 220 : 2014 INSC 670**

come in the re-examination that PW 7 had not stated in his statement dated 13-9-1999 in the court that recovery of tainted money was not effected in his presence from the accused or that he had been told by the Inspector that amount has been recovered from the accused. He had also not stated in his said statement that the accused and witnesses were taken to the Tehsil and it was there that he had signed all the memos.

53. Reading the evidence in entirety, PW 7's evidence cannot be brushed aside. The delay in cross-examination has resulted in his prevarication from the examination-in-chief. But, a significant one, his examination-in-chief and the re-examination impels us to accept the testimony that he had gone into the octroi post and had witnessed about the demand and acceptance of money by the accused. In his cross-examination he has stated that he had not gone with Baj Singh to the Vigilance Department at any time and no recovery was made in his presence. The said part of the testimony, in our considered view, does not commend acceptance in the backdrop of entire evidence in examination-in-chief and the re-examination.

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57. Before parting with the case we are constrained to reiterate what we have said in the beginning. We have expressed our agony and anguish for the manner in which trials in respect of serious offences relating to corruption are being conducted by the trial courts:

57.1. Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross-examination and the disquieting feature is that the trial courts grant time. The law requires special

reasons to be recorded for grant of time but the same is not taken note of.

57.2. As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurise the witness and to gain over him by adopting all kinds of tactics.

57.3. There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the court while conducting the trial is to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of the rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons.

57.4. In fact, it is not at all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial.

57.5. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safeguarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues.

> How long shall we say, "Awake! Arise!". There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross-examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot be allowed to be lonely; a destitute."

12. Relying on the aforesaid judgments, this Court has taken a similar view in the case of ***Rajesh Yadav and Another v. State of Uttar Pradesh***[12].

13. In the present case also, it appears that, on account of a long gap between the examination-in-chief and cross examination, the witnesses were won over by the accused and they resiled from the version as deposed in the examination-in-chief which fully incriminates the accused. However, when the evidence of the victim as well as her mother (PW-2) and aunt (PW-3) is tested with the FIR, the statement recorded under Section 164 CrPC and the evidence of the Medical Expert (PW-8), we find that there is sufficient corroboration to the version given by the prosecutrix in her

[12] **(2022) 12 SCC 200 : 2022 INSC 148**

examination-in-chief.

14. Insofar as the reliance placed by the learned counsel for the appellant on the judgment of this Court in the case of ***Rai Sandeep alias Deepu*** (supra) is concerned, the said case can be distinguished, inasmuch as in the said case except a minor abrasion on the right side of the neck below jaw, there were no other injuries on the private part of the prosecutrix, although it was allegedly a forcible gang rape. As such, the said judgment would not be applicable in the present case.

15. In the result, we find no reason to interfere with the concurrent findings of fact recorded by the trial court as well as the High Court on appreciation of the evidence.

16. The appeal is dismissed.

17. Pending application(s), if any, shall stand disposed of.

.....J.
(B.R. GAVAI)

.....J.
(SANDEEP MEHTA)

NEW DELHI;
MAY 08, 2024