

BAIL SLIP

The Appellant/Accused viz. Saravanan @ Ravi was released on bail as per the order of this court dated 11.7.2007 in CrI.M.P.No.1/2007 in CrI.A.No.578/2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.578 of 2007

Saravanan @ Ravi ... Appellant/Accused.

vs.

The State
Rep. by the Inspector of Police,
D7 Govt.Estate Police Station,
Chennai ... Respondent/Complainant.
(Cr.No.38/04)

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment dated 06.07.2007 made in S.C.No.34 of 2006, on the file of the Mahila Sessions Court, Chennai.

For appellant : M/s.L.Mahendran

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

JUDGMENT

This criminal appeal has been directed against the conviction and sentence dated 6.7.2007 passed in Sessions Case No.34 of 2006, by the Mahila Sessions Court, Chennai.

2. The case of the prosecution is that both the accused and prosecutrix have lived in same area and both of them have loved each other and due to that, the parents of the prosecutrix have changed their abode. On 31.08.2004, at about 2.00 p.m., the accused has abducted the prosecutrix with an intention to marry her and brought her to Redhills and on 1.09.2004, he married her in Sri Karumari Amman Temple and subsequently, abducted her to the house of his friend, where, he raped the prosecutrix. After occurrence, the father of the prosecutrix, as defacto complainant, has given a complaint and

the same has been registered in Crime No.38 of 2004. The complaint given by the defacto complainant has been marked as Ex.P1.

3. On receipt of Ex.P1, the investigating officer, viz., P.W.10, has taken up investigation, examined connected witnesses and also made arrangements to conduct medical examination both to the accused and prosecutrix and after completing the investigation, laid a final report on the file of the Metropolitan Magistrate No.XIII, Egmore and the same has been taken on file in P.R.C.No.114 of 2005.

4. The Metropolitan Magistrate No.XIII, Egmore, after considering the facts that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the Court of Sessions, viz., Mahila Court, Chennai and the same has been taken on file in Sessions Case No.34 of 2006 and subsequently, made over to the trial Court.

5. The trial Court, after hearing arguments of both sides and upon perusing the relevant records, has framed first charge against the accused under Section 366 of the Indian Penal Code; second charge against him under Section 376(1) of the Indian Penal Code and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 10 have been examined and Exs.P1 to P18 and M.Os.1 to 7 have been marked.

7. When the accused has been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. On the side of the accused D.W.1 has been examined and Exs.D1 to D6 have been marked.

8. The trial Court, after hearing arguments of both sides and also upon perusing the relevant evidence available on record, has found the accused guilty under Section 366 of the Indian Penal Code and sentenced him to undergo five years Rigorous Imprisonment and also imposed a fine of Rs.1000/- with usual default clause. The trial Court has acquitted the accused in respect of the charge framed under Section 376(1) of the Indian Penal Code. Against the conviction and sentence passed by the trial Court, the present criminal appeal has been preferred, at the instance of the accused, as appellant.

9. The learned counsel appearing for the appellant/accused has contended that both the appellant/accused and prosecutrix have loved each other and only with her consent,

the accused has taken her out and therefore, the question of abduction does not arise and the trial Court, without considering the over all evidence available on the side of the prosecution has erroneously found the appellant/accused guilty under Section 366 of the Indian Penal Code and therefore, the conviction and sentence passed by the trial Court are liable to be set aside.

10. Per contra, the learned Additional Public Prosecutor has contended that the prosecutrix has been examined as P.W.2 and as per her evidence, the Court can easily come to a conclusion that she is only a minor at the time of occurrence and further, the prosecutrix has not loved the accused and the trial Court, after considering the evidence available on record, has rightly found the accused guilty under Section 366 of the Indian Penal Code and therefore, the conviction and sentence passed by the trial Court do not warrant interference.

11. On the basis of the divergent submissions made on either side, the Court has to analyse as to whether the prosecutrix is a believable/credit worthy witness?

12. The prosecution has set the law in motion only on the basis of Ex.P1, complaint. In Ex.P1, it has been clearly stated that the accused has abducted the prosecutrix and subsequently, married her.

13. The author of Ex.P1, viz., the defacto complainant, has been examined as P.W.1 and his specific evidence is that earlier the prosecutrix has eloped with the accused and subsequently recovered from ICF Police Station. At this juncture, the Court has to look into the evidence adduced by the prosecutrix, who has been examined as P.W.2. The specific evidence given by the prosecutrix is that she has not loved the accused and the accused has voluntarily abducted her. It has already been pointed out that P.W.1 has given clear evidence to the effect that both the prosecutrix and accused have loved each other and due to that, she eloped with him and subsequently recovered from ICF Police station. Therefore, it is quite clear that the prosecutrix has given totally contra evidence to the evidence given by P.W.1. Since P.W.1 has given clear evidence to the effect that both the accused and prosecutrix have loved each other and the prosecutrix has gone along with the accused and subsequently recovered from ICF Police station, it is needless to say that both the accused and prosecutrix have loved each other and only with her consent, both of them have gone out. Since both of them have gone out and that too, with the consent of the prosecutrix, the question of abduction does not arise.

14. On the side of the prosecution, a futile exercise has been made to the effect that at the time of occurrence, the prosecutrix is only a minor and therefore, her consent does not play any role.

15. It is an admitted fact that the appellant/accused has been charged under Section 366 of the Indian Penal Code, wherein it has been explicitly stated to the effect that if a woman is abducted against her will, the said Section is attracted. In the instant case, even though, a specific stand has been taken on the side of the prosecution that at the time of occurrence, the prosecutrix has attained only 17 years of age, no credible document has been forthcoming on the side of the prosecution. One radiologist has been examined on the side of the prosecution and he opined that the age of the prosecutrix is above 18 and below 21 years. Therefore, it is needless to say that absolutely there is no evidence on the side of the prosecution for the purpose of ascertaining the age of the prosecutrix on the date of occurrence.

16. It has already been pointed out that the prosecutrix is not a credit worthy witness and in fact, she has given evidence against what has actually happened in between her and accused. Since the prosecutrix is not at all a believable witness, her evidence is liable to be eschewed.

17. The trial Court, without considering the evidence available on record, has erroneously found the appellant/accused guilty under Section 366 of the Indian Penal Code. In view of the discussion made earlier, this Court has found considerable force in the contention put forth on the side of the appellant/accused and altogether, the present criminal appeal is liable to be allowed.

In fine, this criminal appeal is allowed. The conviction and sentence passed by the trial Court in S.C.No.34 of 2006, under Section 366 of the Indian Penal Code, against the appellant/accused are set aside. The appellant/accused is acquitted. Bail bond, if any, executed by him shall stand cancelled. Fine amount, if any, paid by him is ordered to be refunded forthwith.

msk

s/d-

Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

To

1.The Judge,
The Mahila Sessions Court, Chennai.

2.The Inspector of Police,
D7 Govt.Estate Police Station,
Chennai

3.The Public Prosecutor,
High Court, Madras

4.The Metropolitan Magistrate No.XIII
Egmore, Chennai.

5.The Chief Metropolitan Magistrate,
Egmore, Chennai.

6.The Superintendent,
Central Prison, Puzhal,
Chennai.

7.The District Collector,
Chennai.

8.The Director General of Police,
Mylapore, Chennai.

9.The Assistant Commissioner of Police,
Govt. Estate Police Station Range,
Chennai.

rsk(co)
prk15/10

Cr1.A.No.578 of 2007

सत्यमेव जयते

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