

Bail Slip

The Accused/Petitioner Ramesh, S/o Rama Moorthi, is directed to be released on bail as per the order of this court, dated 20.07.2015 made in MP.No.1/2015 in CrI.A.No.212 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 25.07.2016

Judgment Pronounced on 31.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.A.No.212 of 2015

Ramesh ... Appellants/Sole Accused

vs.

The State, by
The Inspector of Police,
All Women Police Station,
Sathyamangalam.
Erode District.
(Crime No.6 of 2014) Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 25.03.2015 passed by the learned Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode, in Spl.S.C.No.10 of 2014.

For Appellant : Mr.N.Manokaran
For Respondent : Mr.Maharaja, Addl.P.P.

JUDGMENT

V.BHARATHIDASAN, J

The appellant in this appeal is the sole accused in Sessions Case No.10 of 2014, on the file of Magalir Neethi Mandram, (Fast Track Mahila Court), Erode. He stood charged for offences punishable under Sections 366 and 370(4) of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

The Trial Court, after trial, by judgement dated 25.03.2015, convicted the appellant/accused under Section 366 IPC and sentenced him to undergo rigorous imprisonment for 10 years and imposed a fine of Rs.5,000/-, in default, to undergo simple imprisonment for two years; convicted him under Section 4 of Protection of Children from Sexual Offences Act, 2012, and sentenced him to undergo life imprisonment and also imposed a fine of Rs.10,000/-, in default, to undergo simple imprisonment for three years and convicted him under Section 370(4) IPC and sentenced him to undergo life imprisonment and imposed a fine of Rs.10,000/, in default, to undergo simple imprisonment for three years. The sentences under Sections 366 and 370(4) IPC were ordered to run concurrently, and the sentence under Section 4 of Protection of Children from Sexual Offences Act, 2012 was ordered to run consecutively. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this appeal.

2. The case of the prosecution, in brief, is as follows:

(i) P.W.2 is the victim girl in this case. She was aged about 17 years and completed XI standard. The accused is known to her, and on 01.06.2014, he kidnapped her to Ooty, in his motor cycle and kept there at the house of P.W.5, for three days. When P.W.2 raised an objection, on 03.06.2014, the accused took her back to his house at Punkar Village and seduced her to have intercourse, with a promise that he would marry her, and forcefully had sexual intercourse with her. P.W.1, the mother of the victim girl, searched for her daughter at that time, P.W.4, a relative, informed P.W.1 that the accused kidnapped P.W.2 to Ooty and he was keeping P.W.2 in his house. Hence, P.W.1 lodged a complaint before the respondent police station.

(ii) P.W.19, Sub Inspector of Police attached to the respondent police station, on receipt of the complaint from P.W.1, registered a case in Crime No. 6 of 2014 under Section 366-A, 376 IPC and Section 3 r/w Section 4 of Protection of Children From Sexual Offences Act, 2012, prepared first information report [Ex.P16] and sent the complaint, along with first information report, to the Judicial Magistrate Court and copies of the same to higher police officials.

(iii) P.W.18, Inspector of Police, working in the respondent police, on receipt of the first information report, commenced the investigation, proceeded to the scene of occurrence and prepared an observation mahazar [Ex.P3], drew a rough sketch [Ex.P15] and recorded statements of P.W.2 and other witnesses. On 04.06.2014 at about 7.00 p.m., P.W.19 arrested the accused in the presence of witnesses and recovered dress worn by the accused as well as P.W.2 and sent them for medical examination. Then, P.W.19 handed over the investigation to P.W.20.

(iv) P.W.20, Inspector of Police, working in the respondent police, on receipt of the case records, continued the investigation. He seized a Motor cycle, bearing Registration No.TN-30-X-9749 [M.O.6], owned by the accused. He collected a copy of birth certificate of the victim girl from the school where she studied. Then, P.W.20 examined Doctors and some witnesses and recorded their statements. After completion of investigation, he laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed above and the appellant denied the same as false. In order to prove the case of prosecution, as many as 20 witnesses were examined and 17 documents were exhibited and 7 material objects were marked.

4. Out of the said witnesses examined, P.W.1 is the mother of P.W.2/victim girl. According to her, on 01.06.2014, she went to Bhavani to attend her relatives marriage, returned home at about 9.30 p.m. and found P.W.2 missing, she searched for her, but she could not find her. She has further deposed that on 03.06.2014, at about 10.45 p.m., P.W.4, one Selvaraj, her relative came to her house and informed her that the accused kidnapped P.W.2 to Ooty under the guise of marrying her and asked P.W.1 to go to the house of the accused to bring back her daughter. She has further stated that since it was late night and her another daughter was alone in the house, she requested P.W.4 to enquire about the matter and P.W.4 went to the house of the accused and enquired P.W.2 and the accused, at that time, P.W.2 informed him that the accused kidnapped her to Ooty and forcefully had intercourse with her and in turn P.W.4, informed the same to her, then, on 04.06.2014, she went to the respondent police and lodged a complaint. P.W.2 is the victim girl. According to her, the accused is known to her and on 01.06.2014 at about 6.00 p.m., the accused kidnapped her to Ooty in his motor cycle, and promised that he would marry her and in Ooty, the accused took her to the house of P.W.5, and stayed there for 3 days and when she raised objection, the accused took her to his house at Punkar village on 03.06.2014 and forcefully had intercourse with her and the accused also promised her that he would marry her on the next day. She has further stated that then, P.W.4 and others came to the house of the accused to take her back to her house, but the accused refused to send her with them and on the next day, she and her mother lodged a complaint. P.W.3 is the Headmaster of the School, where P.W.2 was studying and he has deposed about giving of a certificate regarding date of birth of the victim girl as 12.11.1997. P.W.4 is a relative of P.Ws.1 and 2. According to him, on coming to know about the occurrence, he went to the house of the accused and questioned him, but the accused refused to say anything and sent him out

and hence, on the next day morning, he and P.W.1 and another went to the police station and P.W.1 lodged a complaint. P.W.5 turned hostile. P.W.6 is the learned Judicial Magistrate No.1, Gobichettipalayam, who has recorded the statement of P.W.2 under Section 164 Cr.P.C. P.W.7 is a Junior Scientific Officer, in the Forensic Laboratory, Coimbatore also examined the material objects and gave a report [Ex.P10]. According to him, he did not detect any semen in the dress worn by P.W.2. P.W.8, Doctor, working in the Government Hospital, Sathiyamangalam, examined P.W.2 and issued Accident Register[Ex.P11], as under:

"No external injuries noted. No external stains noted. Examination of breast- Normal no injuries. Examination of arterial genitalia - Pubic hair, sample collected. Vaginal orifice - hyperaemic and tiny abrasion over posterior end. Hyman not intact. Vagina admitting one finger. No abnormal stain noted. Vaginal smear taken. No forniceal tenderness.

Opinion: (1) Age of the patient around 17 years. (2) Penetrated sexual intercourse may be considered as the hymen is not intact. Should be confirmed by regional smear examination.

According to her, hymen was not intact and vagina admitted one finger and she has given final opinion that P.W.2 might have been used in the act of sexual intercourse. P.W.9 is the Doctor, working in the Government Hospital, Sathiyamangalam. According to him, he examined the accused and from the examination, nothing has been suggested and the accused is impotent and he issued accident register[Ex.P12]. P.W.10 is the sister of P.W.2, a child witness. According to her, P.W.2 went out of the house on 01.06.2014, at about 4.00 p.m., and subsequently she was found missing. P.W.11 is a witness to the recovery of dresses worn by the accused and P.W.2. P.W.12 is a relative of P.W.2 and he is a hearsay witness. P.W.13 turned hostile, P.W.14 also turned hostile. P.W.15 is the Head Constable, attached to the respondent police Station. According to him, he submitted the express First Information Report to the learned Judicial Magistrate Court and to the higher officials. P.W.16 is the women constable working in the respondent police station, who took the victim girl to the Government Hospital, Sathiyamangalam for medical examination. P.W.17 is the Head Constable working in the respondent police station and according to him, he took the accused to the Government Hospital, Sathiyamangalam, for medical examination and also submitted the material objects to the Judicial Magistrate Court. P.W.18, Inspector of Police, on receipt of the first information report, commenced the investigation, arrested the accused and recovered the material

objects and thereafter handed over the investigation to P.W.20. P.W.19, Sub Inspector of Police, working in the respondent police station and according to him, on receipt of the complaint from P.W.1, registered a case and sent the first information report to the Judicial Magistrate court and copies of the same to the higher officials. P.W.20, Inspector of Police attached to the respondent police has deposed that he continued the investigation, examined the Doctors and other witnesses recorded their statements and after completion of investigation, he laid charge sheet against the accused.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. His defence was a total denial. The accused did not examine any witness and no document was marked on his side.

6. Having considered all the above materials, the Trial Court convicted and sentenced the appellant/accused for the offences as stated in the first paragraph of this judgment. Challenging the above conviction and sentence, the accused/appellant is before this Court.

7. We have heard Mr.N.Manokaran, learned counsel appearing for the appellant and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. The learned counsel appearing for the appellant would submit that the age of the victim girl was not properly established by the prosecution and Ex.P2, certificate issued by the Headmaster of the School, cannot be considered as basis for determining the age. Further, the evidence of P.W.2 was not corroborated by medical evidence. According to the learned counsel, the medical evidence did not support the theory of rape and the chemical examination of the dress materials of P.W.2 revealed that it does not contain any semen, on the contrary, it only supports the case of the accused that there was no rape. Apart from that, there is a delay in filing the first information report, which creates doubt about the case of the prosecution, according to the learned counsel, so far as the conviction under Section 366 and 370(4) IPC are concerned, learned counsel for the appellant submitted that absolutely there is no evidence and hence the conviction under the above penal provisions cannot be sustained and he prays for allowing the appeal.

9. Per contra, the learned Additional Public Prosecutor appearing for the State would submit that the evidence of P.W.2 has clearly established that the accused had raped her and the

medical evidence also corroborates her testimony. The delay in filing the first information report has also been explained, properly, by P.W.1 and it is not fatal to the prosecution case. So far as the date of birth of the victim girl is concerned, school transfer certificate and mark sheet of P.W.2 are available, but unfortunately, the same were not placed on record, and as per the record the date of birth of the victim girl is 12.11.1997, and she was a child at the time of occurrence. Hence, he prays for dismissal of this appeal.

10. We have considered the rival submissions carefully.

11. The first and the foremost contention of the learned counsel appearing for the appellant is that the age of the victim girl was not established by the prosecution. Ex.P2, certificate issued by the Headmaster of the School, namely, P.W.3, is only a self serving document and hence no reliance can be made on the above certificate and it is not a conclusive proof for the age of P.W.2. Per contra, the learned Additional Public prosecutor would submit that the school Admission Register and mark sheet of the victim girl are available but they could not be marked before the trial Court.

12. In the above circumstance, exercising power under Section 391 and 311 Cr.P.C., this Court recalled P.W.3, the Headmaster of the School on 25.07.2016 for the purpose of examining him and also marking the School Admission Register to establish the date of birth of P.W.2. On that day, the appellant/accused was present, and in the presence of the appellant and his counsel, P.W.3 was examined by this court. P.W.3 produced the original School Admission Register, where P.W.2 was admitted. As per the entries made in the Register, her date of birth is 12.11.1997. The appellant counsel also cross examined P.W.3 and the accused also questioned under Section 313 Cr.P.C. As per the entry made in the Register, the date of birth of the victim girl has been established as 12.11.1997, the occurrence was on 03.06.2014 and on the date of occurrence, the victim girl did not complete even 17 years. Hence, P.W.2 was a child at the time of occurrence as per Section 2(d) of Protection of Children from Sexual Offences Act, 2012.

13. The next question falls for our consideration is whether the prosecution had proved that P.W.2 was subjected to penetrative sexual assault. It was the evidence of P.W.2 that on 01.06.2014, the accused kidnapped her to Ooty under the guise of marrying her and kept her in the house of one Vinodhini/P.W.5 for three days. Since on 03.06.2014, she raised objection, the accused took her back to his house, at Pungar Colony. When the

mother of the accused questioned him, he told her that unknowingly he committed mistake and he would send her back to her mother's house next day. But, in the night, with a deception that he is going to marry her on the next day, the accused forced her and had a intercourse with her against her wish. P.W.4 and another who came to know about the same, visited the house of the accused and asked him to send P.W.2 with them, but the accused had refused and hence, complaint was given on 04.06.2014 by her mother. From the evidence of P.W.2, it is clear that the accused has kidnapped her to Ooty with a false promise that he will marry and then he also forcefully had a intercourse with her against her wish in his house. Evidence of P.W.8, the Doctor examined the victim girl, also supports the testimony of P.W.2. According to P.W.8, at the time of examination, P.W.2, informed her that one known person had sexual intercourse with her, and on medical examination she found that the hymen was not intact and the vagina admitted one finger. She was of the opinion that P.W.2 might have been used in the act of sexual intercourse. Hence the medical evidence also corroborates the evidence of P.W.2.

14. Under Section 29 of the Protection of Children from Sexual Offences Act, 2012, there is a presumption against the accused, even though it is rebuttable presumption, but the accused had not rebutted the presumption in the manner known to law. It is settled law that in a case of this nature, the evidence of victim girl can be considered as sole basis for convicting the accused, provided it inspires confidence of the Court. We are fully satisfied that the evidence of P.W.2 is highly reliable and the medical evidence also corroborates the evidence of P.W.2. Hence, we are of the considered opinion that the prosecution had proved beyond any reasonable doubt that the accused has committed an offence under Section 4 of the Protection of Children from Sexual Offences Act, 2012.

15. So far as the conviction under Section 366 IPC is concerned, as per the evidence of P.W.2, on 01.06.2014, the accused has kidnapped her to Ooty in his motor cycle with a false promise to marry her and then he took her back to his house and seduced her and forcefully intercoursed with her. From the evidence of P.W.2, it is clear that it is this accused, who had kidnapped her and seduced her to have intercourse with her. Hence, the accused is also liable to be punished under Section 366 IPC.

16. So far as the conviction under Section 370(4) IPC is concerned, absolutely there is no evidence on the side of the prosecution to prove the charge under Section 370(4) IPC and hence the accused is entitled for acquittal on the above charge.

17. So far as the quantum of punishment is concerned, learned counsel appearing for the appellant/accused submitted that he is a poor and young man and he has a chance to reform himself. Considering the mitigating as well as the aggravating circumstances, we are inclined to modify the sentence imposed on the appellant. Convicting the appellant under Section 4 of Protection of Children from Sexual Offences Act, 2012 and sentencing him to undergo rigorous imprisonment for 7 years with fine of Rs.2,000/- in default, to undergo four weeks rigorous imprisonment and convicting him under Section 366 IPC and sentencing him to undergo rigorous imprisonment for five years and also to pay a fine of Rs.1000/- in default, to undergo rigorous imprisonment for four weeks, would meet the ends of justice.

18. In the result, the Criminal Appeal is partly allowed. The conviction of the appellant in S.C.No.10 of 2014, dated 25.03.2015, on the file of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court) Erode, under Section 4 of Protection of Children from Sexual Offences Act, 2012, is confirmed and he is sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.2000/- in default, to undergo rigorous imprisonment for four weeks and while confirming the conviction under Section 366 IPC, he is sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1000/- in default, to undergo rigorous imprisonment for four weeks. The conviction and sentence imposed on the appellant under Section 370(4) IPC is set aside. It is further directed that the above sentences are to run concurrently. It is also further directed that the period of sentence already undergone by the appellant/accused shall be given set off, as required under Section 428 Cr.P.C. If the appellant/accused is not in custody, the trial Court is directed to take appropriate steps to secure him and commit him to prison to undergo remaining period of sentence.

Sd/-

Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1.The Sessions Judge,
Magalir Neethimandram,
Fast Track Mahila Court,
Erode.

2.The Inspector of Police,
Sathiyamangalam Police Station,
Erode District.

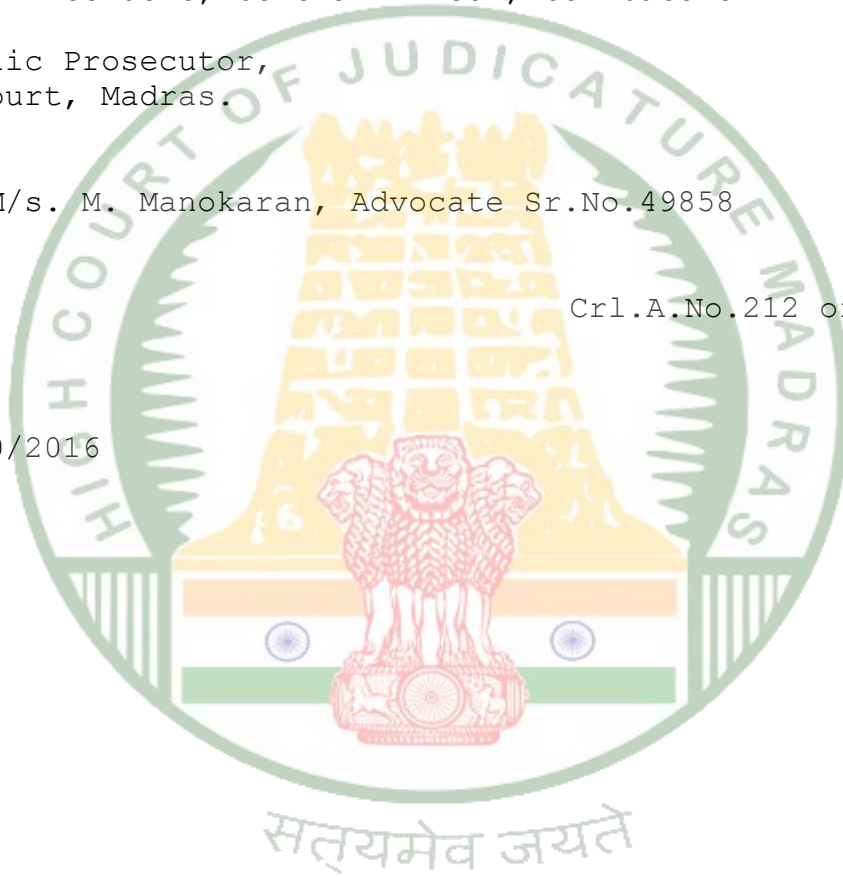
3 The Superintendent, Central Prison, Coimbatore

4.The Public Prosecutor,
High Court, Madras.

+1 CC to M/s. M. Manokaran, Advocate Sr.No.49858

Crl.A.No.212 of 2015

CTK (CO)
MD : 18/10/2016



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