

Bail Slip

The Petitioners/Accused No.2 Viz., Kaliyan S/o. Kannan and Accused No.4, Viz., Saminathan, S/o. Samikunnu are directed to be released on bail as per the order of this Court, dated 16.2.2006 in CrI.MP.No.722 of 2006 in CrI.A.104 of 2006.

The Petitioner/Accused No.I Viz., Karunamoorthy, S/o.Mahalingam is directed to be released on bail as per the order of this Court, dated 3.8.2006 in CrI.MP.No.2693 of 2006 in CrI.MP.NO.722 of 2006 in CrI.A.NO.104 of 2006.

The Petitioner/Accused No.3, Viz., Balamurugan, S/o. Kaliyaperumal is directed to be released on bail as per the order of this Court, dated 23.2.2006 in CrI.MP.NO.1224 of 2006 in CrI.A. No.170 of 2006.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.104 and 170 of 2006

1. Karunamoorthy
2. Kaliyan

3. Saminathan(died) .. Appellants in CrI.A.104/2006
(recorded as per order
dated 03.11.2014)

Balamurugan .. Appellant in CrI.A.170/2006

Vs

The Inspector of Police,
Karuveppilankurichi Police Station,
Cuddalore District,
(Crime NO.241/2003)

..Respondent in CrI.A.104/2006

State rep. By
The Deputy Superintendent of Police,
Karuveppilankurichi Police Station,
Vridhachalam,
Cuddalore (District)

..Respondent in CrI.A.170/06

Prayer in both Crl.As.:– Criminal Appeals filed under Section 374(2) of Cr.P.C., against the judgment passed by the Principal Sessions Judge, Cuddalore in S.C.No.286 of 2005 dated 23.01.2006.

For Appellants in Crl.A.104/2006: Mr.V.Parthiban

For Appellant in Crl.A.170/2006: Mr.K.Gandhi Kumar

For Respondent in both Crl.As : Mrs.M.F.Shabana,
Gov. Adv. (Crl. Side)

COMMON JUDGEMENT

The accused A1 to A4 in S.C.No.286 of 2005 on the file of the Principal Sessions Court, Cuddalore, are the appellants herein. They stood charged as under:–

Rank of the Accused	Charged under Sections
A1	376, 366, 368 r/w.109, 417 IPC, 3(1)(xv) SC/ST Act 1989 & 3(2)(v) SC/ST Prevention of corruption Act 1989 r/w.376, 366, 368 r/w.109, 417 IPC
A2	376 r/w.109, 366, 368 r/w.109, 417 r/w.109 IPC.
A3	376 r/w.109, 366 r/w.109, 417 r/w.109, 368 IPC and 3(1)(xv) SC/ST Act 1989 & 3(2)(v) SC/ST Prevention of corruption Act 1989 r/w. 376 r/w.109, 366 r/w.109, 417 r/w.109, 368 IPC
A4	417 r/w.109 IPC

The trial Court, by judgment dated 23.01.2006, convicted the accused as detailed under :

Rank of the Accused	Conviction under Sections	Sentence	Fine
A1	376	7 years R.I.	Rs.2000/-, in default, to undergo 3 months R.I.
	366	one year R.I	Rs.500/-, in default, to undergo 2 months R.I.
	368 r/w.109 IPC	one year R.I	Rs.500/-, in default, to undergo 2 months R.I.

Rank of the Accused	Conviction under Sections	Sentence	Fine
	417 IPC	one year R.I	Rs.500/-,in default, to undergo 2 months R.I.
	3(1) (xv) SC/ST Act 1989	one year R.I	Rs.500/-,in default, to undergo 2 months R.I.
A2	366 IPC	one year R.I	Rs.500/-,in default, to undergo 2 months R.I.
	368 r/w.109 IPC	one year R.I	Rs.500/-,in default, to undergo 2 months R.I.
	417 r/w.109 IPC	one year R.I	Rs.500/-,in default, to undergo 2 months R.I.
A3	366 r/w.109 IPC	one year R.I	Rs.500/-,in default, to undergo 2 months R.I.
	368 IPC	one year R.I	Rs.500/-,in default, to undergo 2 months R.I.
	417 r/w. 109 IPC	one year R.I	Rs.500/-,in default, to undergo 2 months R.I.
A4	417 r/w.109 IPC	one year R.I	Rs.500/-,in default, to undergo 2 months R.I.

and acquitted them in respect of other charges levelled against them. Challenging the same, A1, A2 & A4 filed an appeal in CrI.A.No.104 of 2006, A3 filed an appeal in CrI.A.No.170 of 2006.

2. Now, pending appeals, the third appellant/A4 in CrI.A.No.104 of 2006 died on 17.05.2013 and a memo has also been filed to that effect by the learned Government Advocate and hence, the appeal against A4, dismissed as abated.

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

P.W.4, by name, Chinnaponnu, is the victim in this case and she belongs to a schedule caste community. When she was studying in 10th standard in the Government High School, Pelanthurai, A1 who also belongs to the same village, and belonging to a backward class community, developed a love affair with P.W.4 and he promised her that he will marry her

and forced her to love him. In the first week of September, 2003, while P.W.4 was coming from the school A1 and A2 kidnapped her and took her to A3's house, where A1 promised P.W.4 that he will marry her. Then, A1 and P.W.4 stayed in A3's house for nearly one month. During that period, against the wish of P.W.4, A1 forcibly had intercourse with her. Thereafter, A4 came to the house of A3 and he also promised her that he had made arrangements for marriage between her and A1. Then, A4 took her to RDO, Virudhachalam, and asked her to give a complaint stating that the parents of P.W.4 compelled her to get married, but she wants to continue her studies and willing to get married. Then, he produced P.W.4 before P.W.1, District Social Welfare Officer on 26.09.2003. Then, P.W.1 sent a memo to the parents of P.W.4. In the meantime, on 29.09.2013, P.W.3, father of P.W.4 gave a complaint before the respondent police. Thereafter, the police informed P.W.3 that his daughter was kept in a Government home. As P.W.3 is not willing to take her from the home, P.W.4 was kept in the home.

4. Subsequently, P.W.16, Sub-Inspector of Police, in the respondent police, on receipt of the complaint filed by P.W.3, registered a case in Crime No.241 of 2003 for the offences under Sections 366, 376 IPC and 3(2)(v) of SC/ST Act 1989 and sent the First Information Report, Ex.P.11, to the jurisdiction magistrate and also the copy to the higher officials.

5. P.W.17, Deputy Superintendent of Police, Virudhachalam, on receipt of the First Information Report, commenced investigation and recorded the statement of P.W.4 and also the parents of P.W.4. On 03.11.2003, near Virudhachalam bus stand, he arrested A1 and remanded him to judicial custody. Then, he sent the victim girl for medical examination to the Government Hospital, Virudhachalam. On 20.11.2003, near Karuvepilankurichi bus stop, he arrested A2 and remanded him to judicial custody. P.W.17 after obtaining community certificate and school certificate of P.W.4, recorded the statement of the doctors, who examined P.W.4 and A1 and on completion of investigation, laid charge sheet against the accused.

6. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused, and the accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 17 witnesses were examined and 17 documents were exhibited.

7. Out of the witness examined, P.W.1 is the District Social Welfare Officer. According to her, on 26.09.2003, A4 brought by P.W.4 to home and P.W.4 told her that her parents compelling her to marry, but she was willing to continue her studies, hence she came out of her house. P.W.4 also told her that, she is having affair with A1 and she

was under impression that he will marry her. P.W.2 is the helper in the home at Manchakuppam, Cuddalore, and she turned hostile.

8. P.W.3 is the father of P.W.4. According to him, her daughter, P.W.4 was studying 10th standard, and A1 had harassed P.W.4, hence he informed A1's father to warn him. Subsequently, on 05.09.2003, P.W.4 was found missing, thereafter, on receipt of an information from P.W.1, he visited the home, then, he has given a complaint before the respondent police.

9. P.W.4 is the victim girl. According to her, she was studying in 10th standard in the Government High School, Pelandurai and A1 promised to marry her, and raped her. Then, in the first week of September 2003, A1 and A2 kidnapped her and kept her in the house of A3 and there, A1 again promised her that he will marry her and they stayed there for nearly one month. Against her will, A1 had intercourse with her. Then, A4 took her to P.W.1 and on the instruction of A4, she has given statement before P.W.1 and A4 left her in the Government home.

10. P.W.5 is the mother of P.W.4. According to her, A1 had sexually harassing her daughter and she made complaint against A1, but no action was taken. P.W.6 is the brother of P.W.3 and he has also spoken about the missing of P.W.4. P.W.7, Special Tahsildar, had given Community Certificates Ex.P.2, and Ex.P.3 to A3, and A4, that they belong to a backward community. P.W.8, Deputy Tahsildar, has given community certificate, Ex.P.4 to A1 stating that he belongs to a backward community. P.W.9, Doctor, working in the Government Hospital, Cuddalore, examined P.W.4 and has given a report that that P.W.4 is aged about 16 years and she was subjected to sexual intercourse.

11. P.W.10, Doctor, working in the Government Hospital, Cuddalore has given certificate Ex.P.8 based on the radiology report, that the age of the victim is about 20 years. P.W.11, Doctor, working in the Government Hospital, Cuddalore, examined A1 and he has given a report Ex.P.9 that there is nothing to suggest that he is impotent. P.W.12, is a witness to the arrest of A1 and also for the confession given by A1. P.W.13, Head master, working in the Government High School, Pelandurai, has given a transfer certificate, Ex.P.10, wherein the age of P.W.4 is mentioned as 16 years on 05.12.1987. P.W.14 Head Constable, took P.W.4 for medical examination and also produced her before the Judicial Magistrate Court. P.W.15, Head Constable, working in the respondent police, on receipt of the complaint given by P.W.3, given CSR No.161/2003 on 29.09.2003. P.W.16 is the Sub-Inspector of Police, registered a case in Crime No.241 of 2003. P.W.17 is the Deputy Superintendent of Police, conducted investigation, examined the witnesses, arrested the accused and laid the charge sheet.

12. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness on their side. The family card of A3 is marked as Ex.D.1 showing that he is residing somewhere else not in the place as mentioned by the prosecution.

13. Having considered all the above materials, the trial Court convicted the appellants/accused as stated in the first paragraph of this judgment. Challenging the same, the appellants/accused are before this Court with these Criminal Appeals.

14. Pending appeals, third appellant/A4 in CrI.A.104 of 2006 died and hence, the appeal against A4 was dismissed as abated and only the appellants/A1, 2, & 3 are prosecuting the appeals.

15. I have heard the learned counsel appearing for the appellants and the learned Government Advocate (Crl. side) appearing for the respondent.

16. The learned counsel appearing for the appellants would submit that from the evidence of P.Ws.1 and 4, it could be seen that there was a love affair between A1 and P.W.4 and from the evidence of P.W.4, it could be seen that there is no kidnapping, and she has voluntarily gone with A1 and residing in the house of A3 for more than one month. Hence, the charge against the accused for kidnapping is not made out. Apart from that when P.W.4 has been voluntarily living with A1 and she is a consenting party for the sexual intercourse, hence, the offence under Section 376 IPC also not been made out. Even though P.W.4 belongs to Scheduled Caste community, the prosecution failed to prove the charges under Section 3(1)(v) of SC/ST Act. Hence, sought for acquittal. The learned counsel appearing for A2 submits that A2 already undergone the sentence of one year.

17. I have considered the rival submissions and perused the materials available on record carefully.

18. P.W.4 is the victim girl in this case. From her evidence, it could be seen that she was a minor and she was studying 10th standard at the time of occurrence. The transfer certificate, Ex.P.10, given by the Head Master shows that she was born on 05.12.1987 and the occurrence took place in the year 2003 and hence, she was a minor on the date of occurrence. Even though as per the radiology report, age of P.W.4 was stated about 20 years, in view of the school certificate produced by the prosecution, which is a public document, age of the victim girl at the time of occurrence was only 16 years and hence, she was a minor on the date of occurrence.

19. From the evidence of P.W.4, it could be seen that A1 on the promise of marrying her had sexual intercourse with her. Thereafter, A1 took her to the house of A3, and they stayed there for more than one month and at that time, A1 had intercourse with her against her consent. Thereafter, A4 came to the house of A3 and took her to P.W.1 and left her in the home. The further evidence of P.W.4 is that only on the compulsion of A4 she has given a statement before the RDO and other officials that her parents compelled her to marry and hence, she came out of the house, and only on the compulsion, she has not spoken anything about the kidnapping. P.Ws.3 and 5, parents of P.W.4, have also spoken about the sexual harassment given by A1 and they have also informed the same to the father of A1 and despite the same, he did not stop. Subsequently, they kidnapped P.W.4. P.W.6 has also spoken about the same. P.W.9, Doctor, who examined P.W.4 has clearly stated that she has symptoms of having intercourse several times and she has also given a report Ex.P.7 to that effect. P.W.9, Doctor, has also given an opinion that the age of P.W.4 was about 16 years. From their evidence, it could be seen that A1, on deception, kidnapped P.W.4 and had sexual intercourse against her will and committed the offence. It is the categorical evidence of P.W.4 that A2 along with A1 has kidnapped her and took her to A3's house and they stayed there. There is no reason to disbelieve the evidence of P.W.4, which was also corroborated by the medical evidence. In the above circumstances, I am of the considered view that the prosecution has proved the charge against A1 and A2 beyond any reasonable doubt.

20. So far as the charge against A3 is concerned, he has been convicted under Section 366 r/w.109, 368 and 417 r/w.109 IPC and sentenced to undergo rigorous imprisonment for one year for each of the offences. But, absolutely, there is no evidence available on record to show that A3 has abetted A1 in this case. It is the evidence of P.W.4 that A1 and A2 took her to A3's house and they stayed there for nearly one month and there is no evidence that A3 has forcibly confined her in his house. In the above circumstances, the charge under Section 368 was not proved against A3. Hence, A3 is entitled for acquittal.

21. Regarding the quantum of sentence is concerned, the trial Court awarded punishment of 7 years for the offence under Section 376 IPC. The learned counsel appearing for the appellants submitted that now P.W.4 got married and she is living separately and A1 also got married and he is living with his family separately. The accused have a family to maintain, and sought for reducing the sentence, also relied upon a judgment of the Hon'ble Supreme Court of India in 2006 (2) SCC (Cri) 308 (Ram Kumar /vs/ State of Haryana), wherein

" We have carefully analysed the evidence tendered by the prosecution. In our opinion, sufficient evidence was tendered by the prosecution to prove the guilt of the accused. However, at the time of hearing it is brought to our notice that the girl has now got married and living with her husband. The said statement is also ratified by the evidence of the father of the girl. Having regard to the peculiar facts and circumstances of the case, we are of the view that the sentence imposed by the sessions Court and as affirmed by the High Court under Sections 366 and 376 of the Penal Code is on the high side. In our opinion, ends of justice would be amply met if we reduce the sentence to three years. We do so accordingly. "

22. Considering all the above aggravating and mitigating circumstances and considering the fact that the occurrence took place in the year 2003 and P.W.4 got married and living with her family and A1 has also got married and living with his family, to meet the ends of justice, the sentence is modified to that of rigorous imprisonment for 4 years.

23. In the result,

(i) The Criminal Appeal in CrI.A.No.104 of 2006 is partly allowed and the conviction of the first appellant/A1 under sections 376, 366, 368 r/w.109, 417 IPC and 3(1)(XV) of SC/ST (Prevention of Atrocities) Act is confirmed and the sentence under Section 376 is modified into that of rigorous imprisonment for 3 years and to pay the fine of Rs.2000/- in default to undergo rigorous imprisonment for 3 months, and the sentence imposed for the other offences are confirmed and all the sentences are directed to run concurrently. The conviction and sentence imposed on the second appellant/A2 under sections 366, 368 r/w.109, 417 r/w.109 are confirmed and all the sentences are directed to run concurrently. The trial Court is directed to take steps to secure the custody of A1 and A2 to undergo the remaining period of sentence, if any.

(ii) Since the third appellant/A4 in CrI.A.104 of 2006 has died, the appeal against third appellant/A4 shall stand abated.

(iii) the Criminal Appeal in CrI.A.No.170 of 2006 is allowed and the conviction and sentence imposed on the appellant/A3 is set aside and the appellant/A3 is acquitted

from all the charges. The bail bond, if any, executed by the appellant/A3 shall stand cancelled. The fine amount, if any, paid by him shall be refunded to him.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mrp

To

- 1.The Principal Sessions Judge,
Cuddalore Division, Cuddalore
- 2.The Public Prosecutor,
High Court, Madras.
3. The Judicial Magistrate, No.II, Vridhachalam.
4. -do- Through The Chief Judicial Magistrate, Cuddalore District.
5. The Superintendent of Central Prison, Cuddalore.
6. The Inspector of Police, Karuvepilankurichi Police Station, Cuddalore District.
7. The Deputy Superintendent of Police, Karuvepilankurichi Police Station, Vridhachalam, Cuddalore District.

Copy to: The Section Officer, Crl.Section, High Court, Madras.

- + 1 cc to Mr.V. Parthiban, Advocate Sr.5119
- + 1 cc to Mr.K. Gandhikumar, Advocate Sr.5097

Crl.A.Nos.104 & 170 of 2006

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