

Bail Slip

That the Appellants/Accused 1 & 2 viz Mr.Muthu @ Muthukumar S/o.Vengadesan (A1) and Karthick @ Karthickesan S/o.Datchinamurthy (A2) were direct to be released on bail as per order 4/6/08 in M.P.1 of 2008 in CrI.A.No.373 of 2008 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 19.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.A.No.373 of 2008

1.Muthu @ Muthukumar
2.Karthick @ Karthickesan ...Appellants/Accused 1 & 2

Vs.

State rep. by
The Inspector of police,
Kottuchery Police Station,
Karaikal,
Pondicherry State.
(Crime No.81 of 2006) ...Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 31.10.2007 passed by the learned Additional Sessions Judge, Puducherry at Karaikal in S.C.No.15 of 2007.

For Appellants : Mr.R.Shivakumar

For Respondent : Mr.M.R.Thangavel
Public Prosecutor, Pondicherry

JUDGMENT

The accused 1 and 2, in Sessions Case No.15 of 2007, on the file of the learned Additional Sessions Judge, Puducherry at Karaikal in S.C.No.15 of 2007, are appellants herein. Totally there are three accused in this case. They stood charged for an offence under Section 366 r/w 34 IPC. The trial Court, after trial, by Judgment dated 31.10.2007, convicted the accused and sentenced them to undergo four years rigorous imprisonment and to pay a fine of Rs.1,000/- each in default, to undergo one month rigorous imprisonment. Challenging the above said

conviction and sentence, the appellants/accused 1 and 2 are before this Court with this Criminal Appeal.

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

Totally, there are three accused in this case. The victim in this case is one Vimala/P.W.1. She was studying IX standard in Navodya School at Rayanpalayam and was staying in the hostel. In April, 2006, P.W.1, after completion of her IX standard examination, went to her house and stayed with her parents. At that time, the first accused was regularly visiting his uncle's house. While the first accused visiting his uncle's house frequently and expressed his liking towards P.W.1, and that he wanted to marry her. P.W.1 had also reciprocated positively. Subsequently, on 17.05.2006, at about 6.00 p.m., the first accused told her that he was willing to marry her, and asked her to go along with him to Coimbatore. Then, on the same day at about 6.30 p.m. the first accused and P.W.1 went to Coimbatore along with A-2 and A3. On the next day, they reached Coimbatore. The first accused asked to stay in a hostel. On 19.05.2006, the uncle of the first accused informed him that he will arrange their marriage, and asked them to return back to his native place. Hence, they went to his native place. After they reached their native place, the accused went away and he did not return. Thereafter, P.W.1 informed the same to her parents. In the meantime on 19.05.2006, P.W.2, the mother of the victim found her daughter missing, and hence she filed a complaint before the respondent police against the accused.

(ii) P.W.11, the Head Constable, working in the respondent police station, on receipt of the complaint from P.W.2, he registered a case in Crime No.81 of 2006 for the offence under Section 366 r/w 34 IPC and prepared a First Information Report [Ex.P9], and he proceeded to the scene of occurrence, examined the witnesses and recorded their statements and submitted his report to the Sub Inspector of Police. P.W.12, another Head Constable working in the respondent police station, on receipt of the first information report, searched for the accused and he came to know that the accused had gone to Coimbatore. Thereafter, he went to Coimbatore and arrested the third accused, and handed over the investigation to P.W.14. P.W.14, the Inspector of Police, working in the respondent police station, on receipt of the first information report, continued the investigation, examined the witnesses and recorded their statements, arrested the accused 1 and 2, and sent the accused for medical examination, and obtained the birth certificate from the competent authority, and then he remanded the accused to judicial custody, and after completion of investigation, he laid charge sheet.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 14 witnesses were examined and 10 documents were exhibited and 5 material objects were marked.

4. Out of the said witnesses examined, P.W.1 is the victim in this case. According to her, the first accused promised to marry her and took her to Coimbatore along with second and third accused, where the first accused put her in a ladies hostel for three days. Thereafter, on the advise of the first accused uncle, they came back to her native place and left her in the bus stand, then she went to her parents house. In the cross examination, she has stated that only the first accused took her and induced her that he will marry her and on the promise given by the first accused, she went to Coimbatore, along with second and third accused, but the first accused refused to marry her. P.W.2 is the mother of the victim girl. According to her, she found her daughter missing and on enquiry, she came to know that the accused kidnapped her daughter and then she has given complaint before the respondent police. P.W.3, the villager, spoke about the complaint given by P.W.2 against the accused. P.W.4 is the neighbour of P.W.2. He is the witness to the observation mahazar. P.W.5 is working in a Spining Mill at Coimbatore where the victim girl was staying for three days. According to him, both the accused and P.W.1 stayed on the spinning mill hostel for three days. P.W.6 is also a person working in the spinning mill. He is known to the accused and at the request of the accused, he arranged for accommodation. P.W.7 is one of the inmates of P.W.1 in the hostel. P.W.8 is the Head Master of the School, where P.W.1 was studying and he had issued a certificate regarding the date of birth of P.W.1. P.W.9, is the Doctor working in the Government Hospital, Karaikal. He examined P.W.1 and had given a certificate. She was of the opinion that P.W.1 is not used to an act like that of sexual intercourse. P.W.10 is working as AN Assistant in the District Collector Officer, Nagapattinam. He issued a birth certificate of P.W.1. P.W.11 is the Head Constable working in the respondent police station. According to him, on receipt of the complaint given by P.W.2, he registered a case, prepared a first information report and handed over the case to the Sub Inspector of Police. P.W.12 is the Head Constable working in the respondent police station. According to him, on receipt of the information from the Sub Inspector of Police, he searched for the accused and arrested the third accused and he submitted his report to the Sub Inspector of Police. P.W.13 is working as a Head Constable in the respondent police station. He continued the investigation, searched the accused and examined the

witnesses and recorded their statements, and thereafter he submitted a special report to the Sub Inspector of Police. P.W.14 is the Inspector of Police working in the respondent police station. According to him, on receipt of the case records, he continued the investigation, examined the witnesses and recorded their statements, arrested the accused and sent them for medical examination, thereafter he sent them for judicial custody. He examined the Doctors, and recorded their statements and after completion of investigation, he laid the charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. Their defence was a total denial.

6. Having considered all the above, the Trial Court convicted the accused for the offences as stated in the first paragraph of this judgment. Challenging the above conviction and sentence, the accused 1 and 2 are before this Court with this appeal.

7. I have heard Mr.R.Shivakumar, the learned counsel appearing for the appellants and Mr.M.R.Thangavel, learned Public Prosecutor for Pondicherry appearing for the respondent and perused the materials available on record.

8. P.W.1 is the victim girl. In her evidence, she has categorically stated that A1 had induced and compelled to marry her and took her to Coimbatore, and only on the inducement of the first accused, she went along with him. The second and third accused also went along with her, where A2 and A3 accommodated her in a spinning mill hostel. Thereafter, they took her back to the native village, and she gone to her parents house. P.W.2, the mother of the victim girl also stated that only the first accused induced P.W.1 and promised to marry her, and took her to Coimbatore, and thereafter he did not marry her, and send her back to her house. From the evidence of P.Ws.1 and 2, it is clear that only A1 had induced and compelled P.W.1 to marry him and abducted her to Coimbatore. Thereafter, he left her in the native place. A-2 also had a common intention, and in furtherance of the common intention they abducted P.W.1 and took her to Coimbatore along with the first accused. P.Ws.1 and 2 categorically deposed about the same. Hence, I am of the considered view that the prosecution had proved the guilt of the accused beyond any reasonable doubt and I find no reason to interfere with the conviction imposed by the trial Court.

9. So far as the quantum of sentence is concerned, both the appellants/accused 1 and 2 have already been in jail for more than seven months, and they are poor, and they have no bad

antecedence, P.W.1 is also married and living separately, A-1 and A-2 also were married and they also have a children. Taking into consideration the above mitigating as well as aggravating circumstances, the sentence is modified to that of the period already undergone.

10. In the result, the Criminal Appeal is partly allowed and the conviction imposed on the appellants in S.C.No.15 of 2007 dated 31.10.2007 on the file of the learned Additional Sessions Judge, Puducherry at Karaikal is confirmed, and the sentence is modified to that of the period already undergone by the appellants and to pay a fine of Rs.1000/-, each in default, to undergo one month rigorous imprisonment.

Sd/-

Assistant Registrar

//True Copy//

rrg

Sub Assistant Registrar

To

1. The Additional Sessions Judge,
Puducherry at Karaikal.
2. -do- Thro. The Principal Sessions Judge,
Puducherry at Karaikal.
3. The Judicial Magistrate No.II,
Karaikal.
4. -do- Thro The Chief Judicial Magistrate,
Karaikal.
5. The Officer Incharge, Sub Tail,
Karaikal.
6. The Inspector of police,
Kuttuchery Police Station,
Karaikal,
Pondicherry State.
7. The District Collector,
Puducherry at Karaikal.
8. The Public Prosecutor,
High Court, Madras.

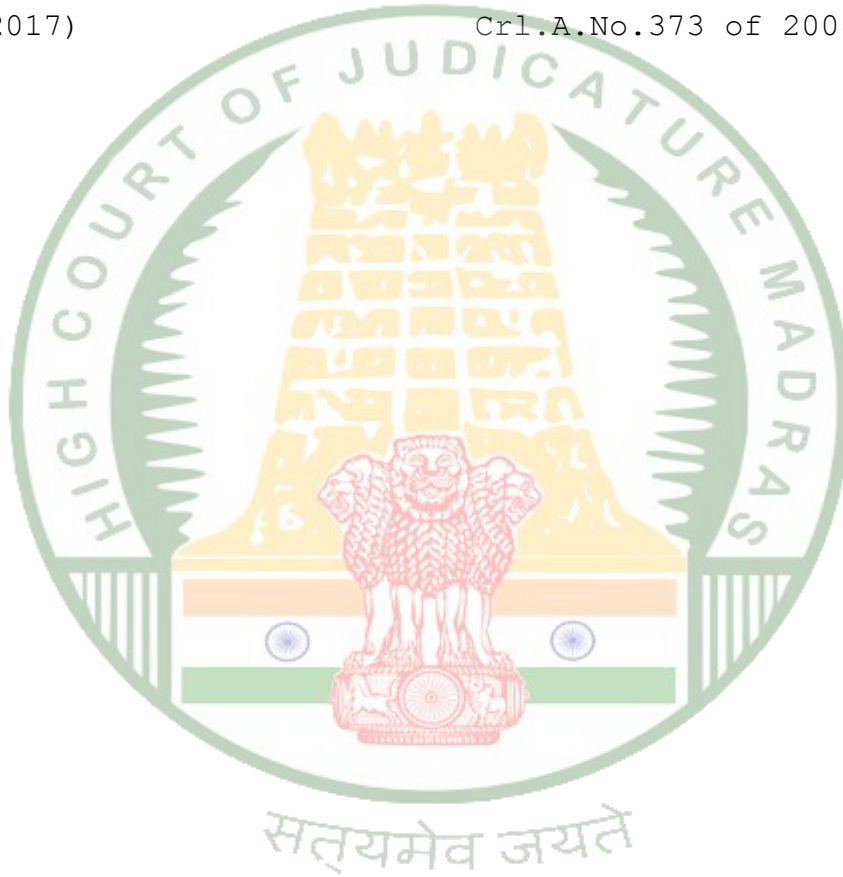
Copy to

The Session Officer,
Criminal Section,
High Court, Madras-104.

+1cc to Mr.Shivakumar, Advocate, S.R.No.3896
+1cc to the Government Pleader, S.R.No.3951

RJ(CO)
RS(10/03/2017)

Cr1.A.No.373 of 2008



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