

Bail Slip:

The Appellant/Accused NO.1 namely, Senthilkumar, S/o.Ayyasamy Devar, was directed to be released on bail as per the order of this court dated 14.8.2008 in MP.No.1/2008 in CrI.A.600/2008 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.600 of 2008

Senthil Kumar .. Appellant

Vs

State rep.by
The Inspector of Police,
Attaiyampatti Police Station,
Salem District.
(in crime No.209 of 2005) .. Respondent

Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence imposed on the appellant by the Sessions Judge, Mahalir Court, Salem in S.C.No.181 of 2006 by judgment dated 22.07.2008.

For Appellant : Mr.B.Vasudevan

For Respondent : Mrs.M.F.Shabana
Govt.Advocate (CrI.side)

JUDGEMENT

The first accused, in S.C.No.181 of 2006, on the file of the learned Sessions Judge, Salem, is the appellant herein. There are three accused in this case. A-1 stood charged for the offences under Sections 366-A and 376 I.P.C. A2 and A3 are stood charged for the offence under Section 366-A read with 109 of I.P.C. After trial, the trial Court convicted the appellant/accused under Section 366-A of I.P.C and sentenced him to undergo 7 years rigorous imprisonment, and also imposed a fine of Rs.2,000/- in default, to undergo three months rigorous imprisonment, and acquitted A1 under Section 376 of I.P.C and

acquitted the accused 2 and 3 from all the charges. Challenging the above said conviction and sentence, A1 is before this Court with this appeal.

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

P.W.8 is the victim in this case. P.W.1 is the mother of P.W.8. P.W.1 has 3 children, P.W.8 and two sons, and all engaged in masonry work. A-1 moving closely with P.W.8 and one fine morning, P.W.8 was found missing, thereafter, P.W.1 came to know that A-1 had forcibly abducted P.W.8 with an intention to compel her to marry him. Then, a complaint was filed before the respondent police. P.W.9, the Sub Inspector of Police working in the respondent Police Station, on receipt of the complaint, on 04.07.2005, registered a case in Crime No.209 of 2005, for an offence under Section 366-A I.P.C, and prepared an First Information Report[Ex.P10]. P.W.10, the Inspector of Police working in the respondent police station, on receipt of the first information report, commenced the investigation, went to the scene of occurrence, examined the witnesses and recorded their statements. On 09.07.2005, at about 4.30 p.m, he arrested the first accused and also secured P.W.8, and recorded their statements. Then, he remanded A1 for Judicial custody. P.W.10 also sent P.W.8 to her house, for safe custody. Then, he filed an application for seeking permission for medical examination of the accused as well as P.W.8, before the Judicial Magistrate Court, and after obtaining permission, he sent them for medical examination and obtained statements from the concerned Doctor. After completion of investigation, he filed charge sheet against the first accused for the offences under Sections 366 and 376 of I.P.C, and against the accused 2 and 3 for the offence under Section 366 read with 109 of I.P.C

3. Based on the materials available on record, the Trial Court framed charges as mentioned in the first paragraph of the judgment, and the accused denied the same. In order to prove this case, the prosecution examined as many as 10 witnesses and exhibited 10 documents.

4. Out of the said witnesses examined, P.W.1 is the mother of the victim P.W.8. According to P.W.1, the accused and P.W.8 had been working as coolies in the building construction, and A1 was closely moving with P.W.8, and one fine day, P.W.8 was found missing. On enquiry, she came to know that P.W.8 was abducted by A1 and she was compelled by A-1 to marry him. Then immediately, she lodged a complaint. P.W.2 is the sister of P.W.1. She is only a hearsay evidence. P.W.1 told her that her daughter was found missing and thereafter, she had given a complaint. P.W.3 is the neighbour of P.W.1. He spoke about the friendship between A1 and P.W.8, and P.W.1 told him that P.W.8 was found missing. Then she, along with P.W.1, gave a complaint. P.W.4 is also known to P.W.1, and P.W.1 informed him that her

daughter was found missing. Hence, they gave a complaint to the respondent police. P.W.5 is the witness for the arrest and also for the confession of A1 and A2 before the respondent police. P.W.6, a Doctor, examined P.W.8/the victim girl and given report [Ex.P5] stating that P.W.8 is not used to sexual intercourse. P.W.7, a Doctor, examined the appellant/accused and she has given opinion Ex.P7 and stating that he is potent and she is also examined P.W.8 regarding her age and she conducted radiology test and given opinion that P.W.8 is aged above 16 years and below 18 years. P.W.8 is the victim girl. According to her, on 04.07.2005, while she was in her house, the appellant/accused compel her to go along with him to Kodaikkanal for site seeing. Then, he compel to take her to Tiruchengode to his sister's house. Then, they go to Vedenchendur. Thereafter, he compel her to marry her. A-2 and A-3 also threatened her to marry A-1. Subsequently, the marriage took place in a temple. Thereafter, it was registered in a Registrar Office. But, in the cross examination, she has stated that A-1 took her from her house in a cycle to bus stand, from there, they went to Tiruchengode. Thereafter, they went to Vendenchendur in a bus and they stayed at the house of A-2 for 5 days and during the 5 days, they did not have any sexual intercourse. P.W.9 is the Sub Inspector of Police working in the respondent police station. According to him, on receipt of the complaint from P.W.1, he registered the case and prepared first information report. P.W.10 is working as Inspector of Police in the respondent police station. He stated that on receipt of the first information report, commenced the investigation and arrested the accused on 09.07.2005 and also secure P.W.8 and sent her to Home and he also sent the accused and P.W.8 for medical examination. He further stated that he examined the witnesses 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. They did not examine any witness nor marked any documents.

6. Having considered all the above, the Trial Court convicted the first accused for the offence under Section 366-A of I.P.C and sentenced him to undergo 7 years rigorous imprisonment and also to pay a fine of Rs.2,000/- in default, to undergo three months rigorous imprisonment, and acquitted A-1 for the offence under Section 366 and 376 IPC and acquitted the accused 2 and 3 for the offence under Section 366 r/w 109 IPC. Challenging the above said conviction and sentence, the first accused is before this Court with this appeal.

7. I have Heard Mr.B.Vasudevan, the learned counsel appearing for the appellant and Mrs.M.F.Shabana, the learned Government Advocate (crl.side) appearing for the respondent.

8. P.W.8 is the victim in this case. According to her, while she was in her house on 04.07.2005, the accused met her and ask her to go with him to Kodaikkanal for site seeing, when she refused, he compel her to took her to Tiruchengode. Thereafter, they went to Vedenchendur, where P.W.1 compel her to marry him, when she refused, A-2 and A-3 compelled her and subsequently she got married in a temple, which was also registered in the Registrar Office, A-1 also compel her to have a sexual intercourse with her. But, in the cross examination, P.W.8 has stated that both A-1 and P.W.8 were went in a bicycle from her house to bus stand. From there they gone to Tiruchengode in a bus and A-1 alone took the ticket. Thereafter, they went to Vedenchendur in a bus and they stayed in the house of A-2 for 5 days and during the 5 days they did not have any intercourse. From her evidence, it could be seen that it is only P.W.8 went along with A-1 in a bus from Ariyalur to Tiruchengode and then they went from Tiruchengode to Vedenchendur, where she stayed along with A-1 for 5 days. From her evidence, it could not be seen that for those 5 days she did not raise any objection. Hence, it could be seen that it is not the appellant compel her to go along with him. But, it is only the victim girl on her own has gone along with A-1. Apart from that it is also the evidence of P.W.8, both of them stayed together in the house of A-2 and during the 5 days there is no sexual intercourse between them. Even though, P.W.8 alleged that the marriage took place between A-1 and P.W.8, the trial Court did not believe the same. Apart from that the trial Court after considering the evidence, acquitted the accused for the offence under Section 376 of IPC and also acquitted the accused 2 and 3 for the offence under Section 366-A r/w 109 IPC. In the above circumstances, except the evidence of P.W.8, there is no other evidence is available on record to show that this appellant/accused induced P.W.8 and took her along with him or forcibly sexual intercourse with her and even from the evidence of P.W.8, it cannot be seen that the appellant has induced her to go along with him. In the above circumstances, the offence under Section 366-A IPC against the appellant/accused is not proved by the prosecution beyond any reasonable doubt. Hence, the appellant/first accused is entitled for acquittal.

9. In the result, this Criminal Appeal is allowed. The conviction and sentence passed by the learned Sessions Judge, Mahalir Court, Salem in Sessions Case No.181 of 2006, dated 22.07.2008 is set aside and the appellant/accused is acquitted

and bail bond if any executed by him, shall stand cancelled and the fine amount if paid by him, is ordered to be refunded forthwith.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To

- 1.The Sessions Judge, Mahalir Court, Salem
 - 2.The Judicial Magistrate, No.IV, Salem
 - 3.The Chief Judicial Magistrate, Salem
 - 4.The Inspector of Police, Attaiyampatti Police Station,
Salem District.
 - 5.The Superintendent, Central Prison, Coimbatore
(Induplicate for communication for the detainee)
 - 6.The Public Prosecutor, High Court, Madras.
 - 7.The Director General of Police, Mylapore, Chenna-4
 - 8.The District Collector, Coimbatore.
- +1cc to M/s.B.Vasudevan, Advocate sr.1909

Criminal Appeal No.600 of 2008

nrI (co)
ss (21/6/2017)

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