

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 18.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE **V.BHARATHIDASAN**

Crl.A.No.648 of 2008

Kutty @ Murugesan @ Murugan ... Appellant

vs.

State, rep. by
The Inspector of Police,
Kariapatty Police Station,
Salem.
(Crime No.95 of 2006)

... Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 05.08.2008 passed by the learned
Sessions Judge, Mahila Court, Salem, in S.C.No.5 of 2007.

For Appellant : Mr.V.Sairam

For Respondent : Mrs.M.F.Shabana
Government Advocate(Crl. Side)

JUDGMENT

The sole accused, in Sessions Case No.5 of 2007, on the
file of the learned Sessions Judge, Mahila Court, Salem, is the
appellant herein. He stood charged for the offence under Sections
376, 366, 312 and 506(ii) of IPC. The trial Court, after trial, by
Judgment dated 05.08.2008, convicted the appellant/accused under

Section 366 of IPC and sentenced him to undergo three years

rigorous imprisonment and imposed a fine of Rs.2,000/-, in default to undergo rigorous imprisonment for three months and acquitted him from the offence under Sections 376, 312 and 506(ii) of IPC. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

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

(i) P.W.1 is the victim girl, the accused is her cousin. Two years prior to the occurrence, the accused told P.W.1 that after completion of her school education, he will take steps to admit her in a nursing course. Subsequently, one day he took her, near to a water channel and sexually assaulted her and threatened her not to disclose the same to anybody. Thereafter, she left her house and went along with the accused and they stayed at Tiruppur for two months and during that period, the accused had intercourse with P.W.1 and she has become pregnant. Two months later, the accused took her to a private clinic wherein they aborted the child and then accused left her at Salem bus stand. P.W.1 came back to her parental house. Though, she filed a complaint[Ex.P1] before the respondent police on 11.03.2006.

(ii) P.W.9, the Sub Inspector of Police, working in the respondent police station, on receipt of the complaint, registered a case in Crime No.95 of 2006 for the offence under Sections 376,

366-A, 417 and 506(ii) IPC and prepared first information report [Ex.P12] and sent the same to the higher police officials.

(iii) P.W.10, the Inspector of Police, working in the respondent police station, on receipt of the first information report, commenced investigation, proceeded to the scene of occurrence, prepared observation mahazar[Ex.P11], rough sketch[Ex.P13] and examined the witnesses and recorded their statements. Then, he arrested the accused and remanded him to judicial custody. Subsequently, he sent P.W.1 for medical examination. P.W.10 examined the Doctors, who examined the accused and P.W.1 and other witnesses and recorded their statements. 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 10 witnesses were examined and 13 documents were marked.

4. Out of the said witnesses examined, P.W.1 is the victim girl. According to her, the accused is being her cousin. Two years prior to the occurrence, the accused told her that after completion of her school education, he will get admission for nursing course.

Subsequently, he took her near to a water channel and raped her,

and threatened her not to disclose the same anybody. Thereafter, she left the house and went along with the accused and they stayed at Tiruppur for two months and during that period, the accused had sexual intercourse with her and due to the same she became pregnant. Two months later, the accused took her to the private clinic and aborted and then accused left her at Salem bus stand, then, she came back to her parental house. Thereafter, she filed a complaint before the respondent police. P.W.2, the Doctor, running a private clinic at Seelanaickenpatti. According to him, on 24.12.2000, the accused took P.W.1 to his Hospital and they aborted the child. P.W.3 is the father of P.W.1, according to him, the accused is his brother son and he took P.W.1 to Tiruppur, thereafter, she has given complaint against the accused. P.W.4, a radiologist, working in the Mohan Kumaramangalam Medical College Hospital, Salem., he examined the age of the accused, according to him, the age of the accused is between 22 to 25 years. P.W.5 is the brother of P.W.1. At the time of occurrence, he was working at some other place and he was informed that the accused took P.W.1 and sexually assaulted her. Thereafter, P.W.1 given complaint against the accused. P.W.6, the Doctor, working in the Mohan Kumaramangalam Medical College Hospital, Salem, he examined the accused and given a certificate that the accused is potent. P.W.7, the Doctor, working in the Mohan Kumaramangalam Medical College

Hospital, Salem. On 15.03.2006, he examined P.W.1 and given certificate (Ex.P9) that the hymen was not intact, she has been used to have sexual intercourse. P.W.8 is the witness to observation mahazar. P.W.9, the Sub Inspector of Police, working in the respondent police station. According to him, on receipt of the complaint, registered a case and prepared first information report and sent the same to the higher officials. P.W.10, the Inspector of Police working in the respondent police station. According to him, on receipt of the first information report, conducted investigation, examined the witnesses and recorded their statements, arrested the accused and after completion of investigation he laid charge sheet.

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 witnesses nor marked any documents.

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 is before this Court with this appeal.

7. The learned counsel appearing for the appellant would submit that the evidence of P.W.1 shows that she left the house on her own volition and she was not abducted by the accused. Even as per the evidence of P.W.3, the father of the victim that he had arranged a marriage for P.W.1 and not agreeing for the same, she left the house. Apart from that, the trial Court acquitting the accused for the offence under Sections 376, 312 and 506(ii) IPC. Therefore, there is no reason to convict the appellant under Section 366 IPC. Hence, she sought for acquittal and allowing this appeal.

8. Per contra, the learned Government Advocate(Crl. Side) appearing for the state would contend that the evidence of P.W.1 clearly shows that it is only this accused who induced her that he will get admission in a nursing course and abducted the victim and sexually assaulted her and thereafter he left her in Salem bus stand and later she has given complaint to the respondent police. Hence, based on the evidence of P.W.1, the offence under Section 366 IPC is made out. Hence, she sought for dismissal of the appeal.

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

10. According to P.W.1, the accused and P.W.1 before leaving their houses, had intercourse. Then, P.W.1 took two sovereigns of gold jewels and she left the house, and she stayed along with the accused at Tiruppur for two months, where they had sexual intercourse and she became pregnant, after two months she got aborted and the accused left her at Salem bus stand. But, in her cross examination, she admitted that both the accused and P.W.1 left the house separately and before leaving their houses they have consulted each other and decided to go separately. Apart from that P.W.3, the father of the victim girl also says in his cross examination that he had arranged marriage for P.W.1 and not willing for the same, she left the house. Even after P.W.1 came back to house, no complaint was given and only on the compulsion of P.W.4, the brother of the victim girl, P.W.1 has given complaint. Hence, from the evidence of P.Ws.1 and 3, it is clear that the appellant did not abduct P.W.1, she left the house in her own volition along with the appellant. The trial Court also acquitted the accused for the offences under Section 376, 312 and 506(ii) IPC. In the above circumstances, this Court is of the considered view that the prosecution has failed to prove the case beyond any reasonable doubt. Hence, the accused is entitled for acquittal.

11. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellant in S.C.No.5 of 2007 dated 05.08.2008 on the file of the learned Sessions Judge, Mahila Court, Salem is set aside and the appellant/accused is acquitted from the charge levelled against him, and bail bond, if any, executed by him shall stand cancelled and the fine amount paid by him is ordered to be refunded forthwith.

18.01.2017

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To

1.The Sessions Judge,
Mahila Court,
Salem.

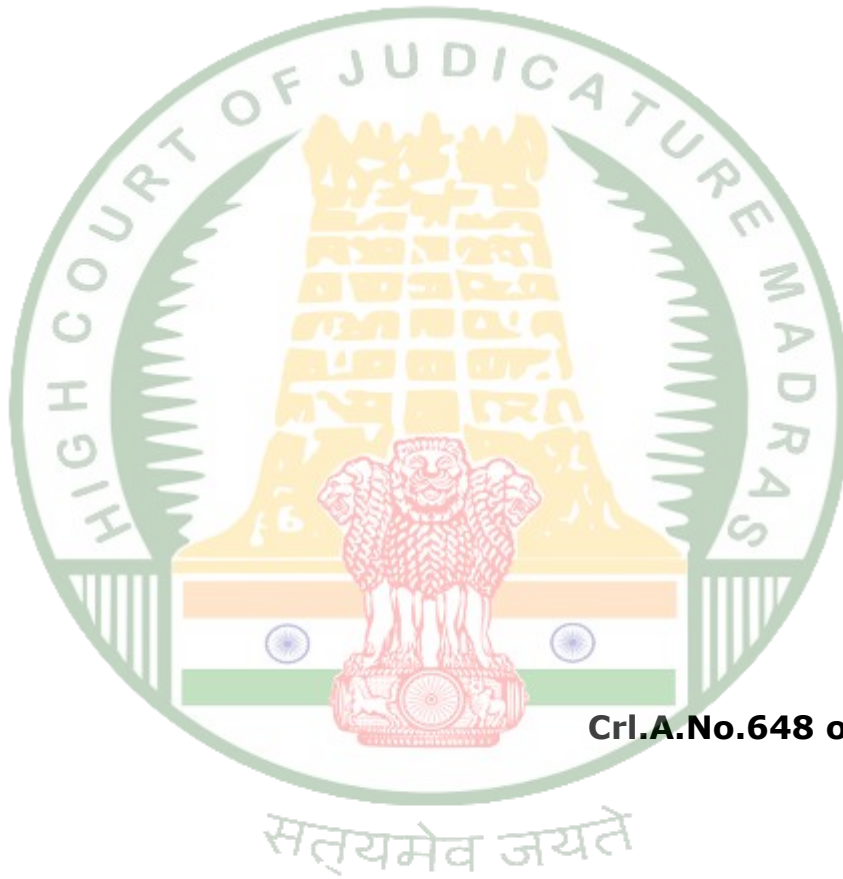
1.The Inspector of Police,
Karipatti Police Station,
Salem.

3.The Public Prosecutor,
High Court, Madras.

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V.BHARATHIDASAN.J.,

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