

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2017

CORAM:

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

Criminal Appeal No.667 of 2007

Vijay Amirtharaj .. Appellant

Vs

State rep. by
The Inspector of Police,
Sreemushnam Police Station,
Cuddalore
(Crime No.272/2004)

.. Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against
the order of conviction and sentence passed by the learned Sessions
Judge (Mahila Court) Cuddalore dated 27.07.2007 in
S.C.No.314/2006.

For Appellant : Mr.K.Govindan
Legal Aid Counsel

For Respondent : Ms.M.F.Shabana,
Govt. Advocate (Crl. Side)

JUDGEMENT

The sole accused, in S.C.No.314 of 2006 on the file of the
learned Sessions Judge (Mahila Court), Cuddalore, is the appellant

herein. He stood charged for the offences under Sections 363, 366 and 376(1) IPC. By a judgement dated 27.07.2007, the trial Court convicted the appellant for the offence under Section 363 IPC and sentenced him to undergo Rigorous Imprisonment for 7 years and to pay a fine of Rs.1,000/-, in default, to undergo Rigorous Imprisonment for three months; and convicted him for the offence under Section 366 IPC and sentenced him to undergo Rigorous Imprisonment for 7 years and to pay a fine of Rs.1,000/- in default, to undergo Rigorous Imprisonment for three months and also convicted him for the offence under Section 376(i) IPC and sentenced him to undergo Rigorous Imprisonment for 7 years and to pay a fine of Rs.10,000/- in default, to undergo Rigorous Imprisonment for three months and out of fine amount, a sum of Rs.5,000/- is ordered to be paid as compensation to P.W.1 under Section 357 of Cr.P.C. The trial Court ordered the above sentences to run concurrently. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

(i) P.W.1, is a victim girl in this case. On 18.05.2004, at 7.00 p.m, a drama was conducted in the Church. P.W.1, the victim girl along with her friends went there to see the drama. At that time,

the accused came there and told P.W.1 that he wanted to marry her. But, she refused. Then he took P.W.1 in his TVS 50 Moped, tied her mouth and took her to a neighbouring village called Andimadam to his relative's house, wherein they have stayed for two days. Thereafter, the accused took P.W.1, to Pattabi in Kerala State and kept her there for eight days, where, the appellant had intercourse with P.W.1. Then P.W.1 told the accused that she wanted to see her parents. Hence, he took P.W.1 to Andimadam and left her in a bus stop. Then she reached her home and informed the same to her parents - P.W.1 and P.W.2. Thereafter, on 29.05.2004, P.W.1 went to the Srimushnam Police Station and filed a complaint.

(ii) P.W.13, the Inspector of Police, on receipt of the complaint on 29.5.2004 registered a case in Cr.No.272 of 2004, prepared the First Information Report Ex.P15, and commenced the investigation. He recorded the statement of P.W.1 and other witnesses and proceeded to the scene of occurrence, prepared the Observation Magazar Ex.P.12, Rough Sketch Ex.P.11, and arrested the accused.

(iii) P.W.10, who is a Doctor working in Government Hospital, Cuddalore, examined P.W.1 and gave a report Ex.P.6 stating that P.W.1 has completed 18 years and she is fit enough to have sexual intercourse and she has willingly had intercourse with the accused.

P.W.11, the Radiologist, who is working in Cuddalore Government Hospital, after examining P.W.1 gave a report stating that P.W.1 had completed her age of 18 years and issued a certificate Ex.P.7. He also examined the accused and issued a certificate Ex.P.8 stating that the accused had completed the age of 20 years. Ex.P.10 is a certificate issued by P.W.12, the Doctor to the effect that the accused is potent. P.W.13, the Inspector of Police, recorded the statement of Doctors and other witnesses and thereafter he was transferred.

(iv) P.W.14, Inspector of Police in Srimushnam Police Station continued the investigation and after completing his investigation, he filed a charge sheet against the accused for the offences under Sections 363, 366 and 376 IPC.

(v) Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 14 witnesses were examined and 15 documents were exhibited, besides the Material Object (M.O.1), the series of X-rays were marked.

(vi) Out of the said witnesses, P.W.1, is the victim girl. According to her evidence, on 18.05.2004, when she along with her friends, went to watch a drama in the Church, the accused came there and expressed his interest that he wanted to marry her. When P.W.1 refused, the accused took her in T.V.S 50 Moped, tied her mouth and took her to Andimadam and kept her for two days. Thereafter, the accused took her to Pattabi in Kerala State, where they stayed for eight days. During the stay at Pattabi, the accused had intercourse with her. Then, she wanted to see her parents. Hence, the accused took her to Andimadam and left her in a bus stop and she went home and informed the same to her parents. Thereafter, she went to the Police Station and gave a complaint.

(vii) P.W.2 is the father of P.W.1. According to him, after coming to know that his daughter P.W.1, was missing, he preferred a complaint before the respondent police, and after she returned back, he withdrew his complaint. P.W.3 is the mother of P.W.1. She has also spoken about missing of P.W.1.

(viii) P.W.4 and P.W.5 have turned hostile. P.W.6 has deposed that his brother one Kannan told him that the accused and P.W.1

wanted to stay in his house for two days, thereafter they are going to marry, then P.W.1 and the accused came to his house and stayed there for two days. P.W.7, is an attester of the Observation Mahazar. P.W.8 deposed that the Inspector of police, Sree Mushnam Police Station arrested the accused at Nachiarpet bus stop and at that time P.W.8 and one Sunderavel were present and the accused gave a confession statement, wherein P.W.8 signed and the same has been marked as Ex.P.3. P.W.9, who is a Head mistress of a School where P.W.1 has studied, issued a certificate Ex.P.4.

(ix) P.W.10, the doctor and P.W.11, the Radiologist examined P.W.1, and have spoken about the age of P.W.1 and they issued their reports separately stating that P.W.1 has completed the age of 18. P.W.12, the doctor, examined the accused and issued a certificate Ex.P.10 stating that the accused is potent. P.W.13, the Inspector of Police, conducted investigation and arrested the accused. P.W.14 enquired the Head mistress and got the certificate regarding the date of birth of P.W.1. After completing the investigation, he laid a charge sheet.

(x) When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not examine any witness or mark any documents

on his side.

(xi) Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

3. I have heard Mr.K.Govindan, learned legal aid counsel appearing for the appellant, Mrs.M.F.Shabana, learned Government Advocate (Crl.Side) appearing for the State. I have also perused the records carefully.

4. The learned counsel appearing for the appellant/accused submitted that there is no abduction as alleged by the prosecution. P.W.1 on her own went along with the appellant and they have stayed in various places and she has willingly given consent for intercourse with the appellant. Further, the learned counsel submitted that there is no material evidence to prove that the appellant has committed the offence under Section 363 IPC, as stated by the prosecution.

5. P.W.1 is the victim girl. From the evidence of P.W.1, it is seen that on 18.05.2004, she went along with her friends to watch a

drama in the Church, at that time, the appellant expressed his interest that he wanted to marry her. When she refused, he took her in T.V.S.50, Moped in the neighborhood place called Andimadam. Subsequently, they stayed there for two days. Then the appellant took her to Pattabi in Kerala State, where they stayed for eight days. In Pattabi, the appellant had intercourse with her. Thereafter, P.W.1 told him that she wanted to see her parents. Hence, the appellant took her to Andimadam and left her.

6. P.W.6, in whose house, both the accused and P.W.1 stayed for two days. According to him, they came to his house, when he enquired them, they told that the appellant and P.W.1 were going to marry and thereafter, the accused and P.W.1 went along with his brother Kannan. But, Kannan was not examined by the prosecution.

7. Even in her cross examination, P.W.1 has stated that, while the appellant took her in T.V.S.50 Moped, they crossed a village, where there are houses, thereafter, they went to Andimadam and from there, they went to Pattabi in Kerala. From her evidence, it could be seen that she has willingly accompanied the accused all along and stayed with him.

8. P.W.1 is a grown up girl and she was fully aware of the

consequences. But, she has willingly stayed with the accused for about 11 days at various places and in her evidence, she has not stated anywhere that she has resisted while the accused taken her to various places. Hence, it could be seen that P.W.1 has willingly accompanied the appellant. Therefore, the charge under Section 367 IPC was not proved by prosecution.

9. So far as the charge under Section 376 IPC is concerned, the prosecution tried to establish the age of P.W.1 as 18 from the bona-fide certificate issued by P.W.9, the Headmistress of the school, where P.W.1 studied. According to her, P.W.1 was studying in 12th Standard, and her date of birth is 20.05.1987, but the said certificate is only a bona-fide certificate and the date of birth mentioned in the bona-fide certificate cannot be taken as conclusive proof for date of birth of P.W.1. Whereas P.W.10, the Doctor, examined P.W.1 and stated that the age of P.W.1 is above 18 and P.W.11, the Radiologist, after examining P.W.1 issued a report stating that the age of P.W.1 is more than 18.

10. From the above evidence, it is seen that at the time of occurrence, the age of P.W.1 is above 18 years. It is also seen from the evidence of P.W.1 that there is no allegation that the appellant had intercourse with her against her willingness, and P.W.1 is a

consenting party for that. Since there is no evidence that the accused had intercourse with P.W.1 without her consent and against her will, the accused cannot be punished under Section 376 IPC. In such circumstances, as the prosecution failed to prove the offence under Section 376 IPC against the appellant, he is entitled for acquittal. Hence, the Criminal Appeal is liable to be allowed.

11. In the result, the Criminal Appeal is allowed. The judgment of conviction and the order of sentence passed in S.C.No.314 of 2006, dated 27.07.2007 by the learned Sessions Judge (Mahila Court) Cuddalore is set aside. The appellant shall stand acquitted of the charges. The fine amount if any paid, shall be returned to the appellant.

12. While parting with the case, I appreciate the services rendered by Mr.Govindan, learned counsel, who appeared on behalf of the appellant as Legal Aid counsel. The State Legal Services Authority is directed to pay his remuneration.

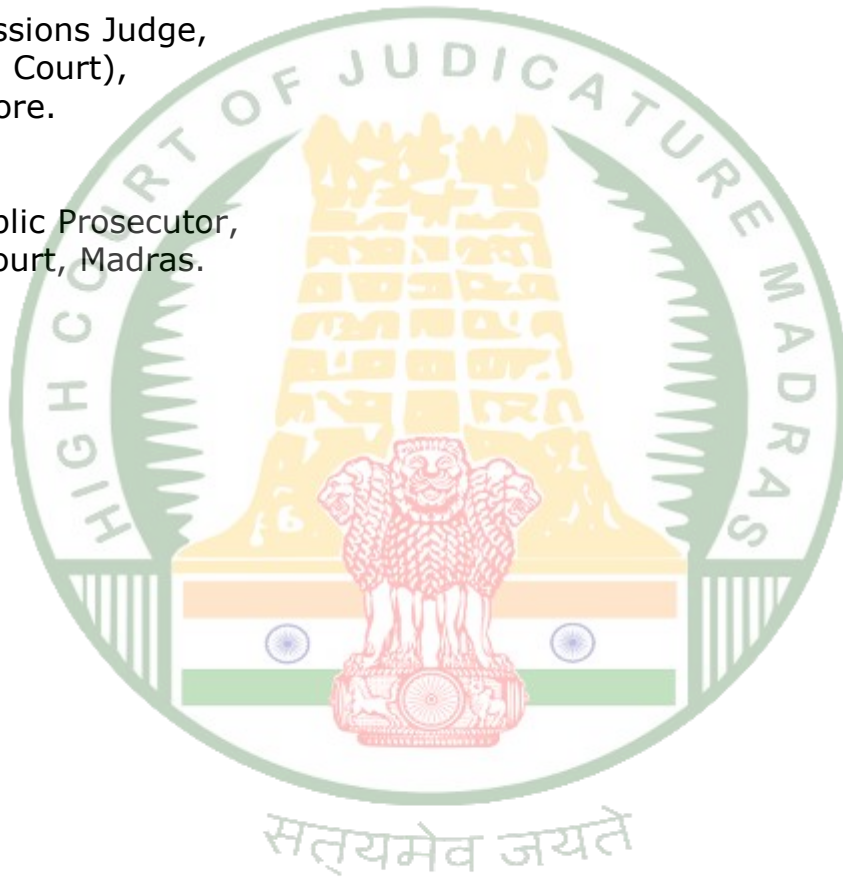
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Index:Yes/No
Internet:Yes

To

- 1.The Sessions Judge,
(Mahila Court),
Cuddalore.
- 2.The Public Prosecutor,
High Court, Madras.



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V.BHARATHIDASAN,J

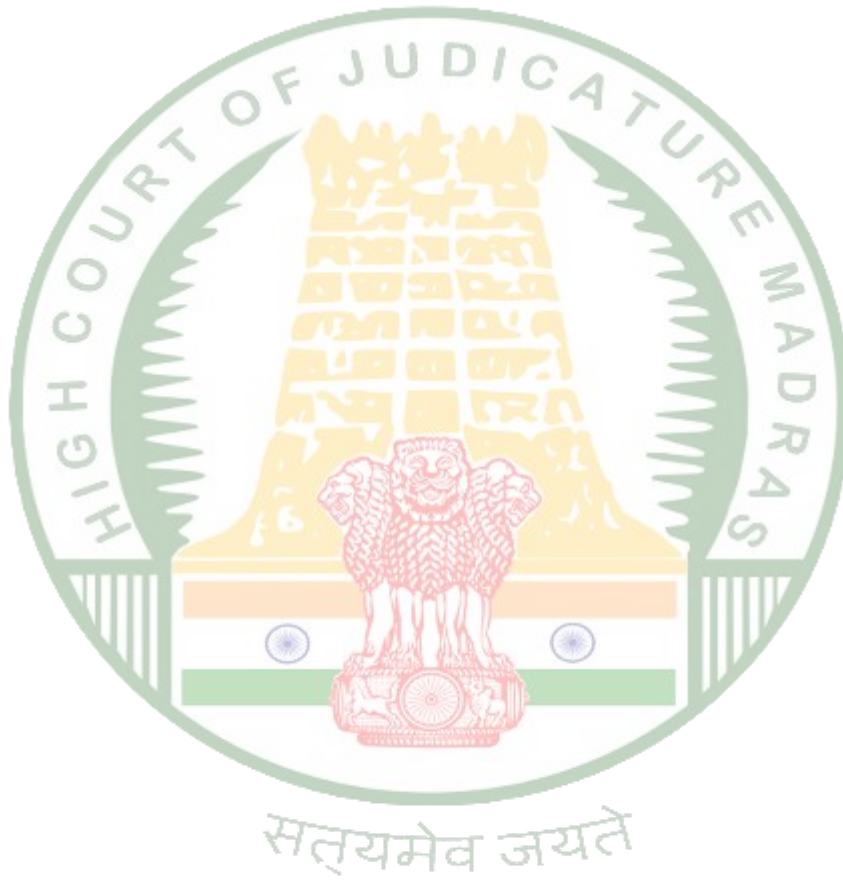
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