

Bail Slip

C.Mahesh sole Accused in SC.No.132 of 2007, The Sessions Judge Magalir Court Chengalpattu, enlarged on bail by the order of this court in CMP.No. 1 of 2008 in CrI.A.No.852/2008, dated 09.01.2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2017

C O R A M

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No. 852 of 2008

Mr. C. Mahesh
S/o Chellakannu

...Appellant/Sole Accused

Versus

State: rep. by its
Inspector of Police,
Peerkankaranai Police Station.

...Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment of learned Sessions Judge, Magalir Court, Chengalpattu, passed in S.C.No.132/2007 in PRC No.10/2007 on 29.11.2008 in Crime No.2869/2006 on the file of Peerkankaranai Police Station.

For Appellant : Mr.K.P.Narayana Kumar

For Respondent : Mr.V.Arul,
Additional Public Prosecutor

J U D G M E N T

This appeal arises against judgment of learned Sessions Judge, Magalir Court, Chengalpattu, passed in S.C.No.132 of 2007 on 29.11.2008 convicting appellant/accused for offences u/s. 366-A and 376 I.P.C and sentencing him to 7 years of R.I. and fine of Rs.3,000/- i/d 1 year of R.I for each of the offences.

2. The case of prosecution is that there was a love affair between appellant/accused and the victim girl. On the night of 12.12.2006, appellant/accused kidnapped the victim girl and took her away to Kerala and had sexual intercourse with her against her wishes. On 13.12.2006 at about 08.00 a.m., PW-1, father of

victim girl, preferred Ex.P1, complaint, with P.W.10, Inspector of Police, Peerankaranai Police Station. P.W.10 registered a case in Crime No.2869 of 2006 as 'girl missing'. Ex.P.3 is the Printed First Information Report. P.W.10 examined P.Ws 1, 3, 4 and 5 and recorded their statements. On 28.12.2006 at around 09:00 a.m, when P.W.10 was on his rounds, he saw the accused and the victim girl near the Perungalathoor Bus Stand. He arrested the accused in the presence of P.W.6 and another. P.W.10 examined the accused in the presence of same witnesses and obtained his statement. P.W.10 sent the accused to judicial custody. PW-10 altered the First Information Report to reflect offence u/s.366-A IPC and forwarded the same to Court. Ex.P.4 is the alteration report. P.W.10 sent the victim girl to the Government Home through Court. Upon obtaining permission from Court, sent both the accused and the victim for medical examination. Exs.P5 and P6 are requisition letters towards conduct of medical examination. P.W.10 sent the victim girl for medical examination through P.W.8, Nithyanandham, constable and Nirmala, woman constable. P.W.10 examined P.Ws. 9 and 11, Doctors, who examined accused and the victim girl and recorded their statements. On 02.03.2007, on completion of investigation, PW-10 filed a charge sheet informing commission of offence u/s.376 IPC before learned Judicial Magistrate, Tambaram. Upon committal, the case was tried in S.C.No.132 of 2007 on the file of learned Sessions Judge, Magalir Court, Chengalpattu.

3. Before trial Court, prosecution examined 11 witnesses and marked 8 exhibits. One witness was examined on the side of defence and no exhibits were marked.

4. On appreciation of materials before it, trial Court, under judgment dated 29.11.2008, convicted appellant/accused for offences u/s.366-A and 376 IPC and sentenced him to 7 years R.I and fine of Rs.3,000/- i/d 1 year R.I for each of the offences. There against, the present appeal has been filed.

5. Heard learned counsel for appellant and learned Additional Public Prosecutor for State.

6. The contention of learned counsel for appellant that having had a love affair, appellant and PW-2, victim girl, eloped and indulged in consensual sex is probabalised by the evidence of PW-2, alleged victim. In cross, PW-2, deposed that accused gave her two tablets, instructed her to mix the same in water and give it to her parents and that she did so. She further deposed that on instructions of accused, she went along with him to a nearby temple, wherein appellant/accused tied a 'thali' against her will and took her to Kerala where they stayed for 13 days against her will. PW-2 has also deposed that

accused forced her into sexual intercourse and that on 26.12.2006, they started from Kerala and reached Tamil Nadu on 28.12.2006, where they were caught by police.

7. Heard learned Additional Public Prosecutor on the above submissions.

8. It is the prosecution case that PW-2, victim, was 16 years of age at the time of occurrence. Prior to amendment under the Criminal Law Amendment Act (13 of 2013) which came into effect on 03.02.2013, consensual sex would not amount to rape when the girl was not under 16 years of age. Such position emerges from a reading of Section 375 IPC prior to amendment. The same read as follows:

'375. Rape. - A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following description: -
First to fifthly - otiose
Sixthly - With or without her consent, when she is under sixteen years of age.'

The very deposition of PW-2 points to consensual sex. Her deposition of leaving the parental home voluntarily with appellant/accused but of having been forced into sexual intercourse against her will by him does not merit acceptance.

For the aforesaid reasons, the Criminal Appeal shall stand allowed. The judgment of learned Sessions Judge, Magalir Court, Chengalpattu, passed in S.C.No.132 of 2007 on 29.11.2008, shall stand set aside. Appellant/accused is acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

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To

1.The Sessions Judge,
Magalir Court,
Chengalpattu.

2.The Judicial Magistrate,
Tambaram.

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3.The Chief Judicial Magistrate,
Chengalpattu.

4.The Inspector of Police,
Peerkankaranai Police Station.

5.The Superendendent,
Central Prison, Pullzhal.

6.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.P.Narayana Kumar, Advocate, S.R.No.50766

Criminal Appeal No.852 of 2008

CNR(CO)
RRK(26/03/2018)



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