

Crl.A. No 870/2008

That the appellant/Accused No 2 namely Suresh was directed to be released on bail as per the order of this court dated 19.01.2009 in M.P. No 1/2008 in Crl.A. No 870/2008.

Crl.A. No 741/2009

That the appellant/Accused namely Raji was directed to be released on bail as per the order of this court dated 29.01.2010 in M.P. No 1 of 2010 in Crl.A. No 741/2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.08.2017

Coram :

The Honourable Mr. Justice C.T. Selvam

Criminal Appeal Nos. 870 of 2008 & 741 of 2009

1. Suresh
S/o. Viswanth

...Appellant in Crl.A.No.870 of 2008/2nd Accused

2. Raji
S/o Pichai Pillai

...Appellant in Crl.A.No.741 of 2009/1st Accused

Versus

State Rep. by
Sub-Inspector of Police,
Kalpakkam Police Station,
Kancheepuram District.

...Respondent/Complainant Crl.A.No.870 of 2008

State by
Inspector of Police,
Kalpakkam Police Station,
Kanchipuram District.

...Respondent/Complainant Crl.A.No.741 of 2009

Prayer in Crl.A.No.870 of 2008:

Criminal Appeal filed under Section 374 of Cr.P.C calling for the records and set-aside the judgment of conviction and sentence passed by the Learned Sessions Judge (Mahila Court) Chengalpet, in S.C.No.350 of 2006 dated 12.11.2008 wherein he found the appellant guilty for the offence u/s. 366(A) I.P.C and sentenced him to undergo 4 years R.I and to pay a fine of Rs.1,000/- i/d to undergo 3 months S.I.

Prayer in Crl.A.No.741 of 2009:

Criminal Appeal filed under Section 374(2) of Cr.P.C calling for the records and set-aside the judgment of conviction and sentence passed by the Learned Sessions Judge (Mahila Court) Chengalpet, in S.C.No.350 of 2006 dated 12.11.2008 wherein he found the appellant guilty for the offence u/s. 366(A) I.P.C and sentenced him to undergo 4 years R.I and to pay a fine of Rs.1,000/- i/d to undergo 3 months S.I and for the offence u/s. 376 I.P.C, sentenced him to undergo 7 years R.I and to pay a fine of Rs.1,000/- i/d to undergo 3 months S.I.

For Appellants : Mr. K. Gandhi Kumar (In Crl.A.870 of 2008)
Mr. P. Pugalenthil(In Crl.A.741 of 2009)

For Respondents : Mr. V. Arul,
Addl. Public Prosecutor
(In both the Crl.As)

C O M M O N J U D G M E N T

These appeals arise against the judgment of conviction and sentences imposed against appellants/accused in S.C.No.350 of 2006 dated 12.11.2008 on the file of the learned Sessions Judge (Mahila Court) Chengalpet.

2. The case of prosecution is that victim girl Selvi.Sofiya was a minor girl, aged 14 years and she was under the care and custody of her parents at Pudhupattinam village. After completing the eighth standard, she discontinued her studies and stayed home. The accused Raji and Suresh were working in a prawn farm in Pudhupattinam village. Both accused often used to talk with the victim girl and induced her to marry the first accused i.e., Raji. On 09.03.2005 at around 07:00 p.m. while Selvi.Sofiya was standing behind her house, both accused approached the girl and requested her to marry the first accused. On the same day, she was taken by bus from

Pudhupattinam village, near Kalpakkam to Mathapuram near Jeyankondam which is the native village of first accused. On the night of the same day, the first accused had sexual intercourse with the victim girl, without her consent. Victim girl Selvi.Sofiya stayed for about 4 days in the appellant's house. The first accused indulged in sexual intercourse with the victim girl all those four days. After four days, the first accused took the victim girl to Aadhampaakkam.

3. P.W.2 Thangaraj, father of the victim girl preferred Ex.P.1, complaint, on 10.03.2005 at about 03:00 p.m. Based on the complaint, P.W.5 Sub-Inspector of Police, Kalpakkam Police Station registered a case in Crime No.69/2005. Ex.P.2 is the FIR. P.W.5 sent FIR and complaint to the District Munsif Cum Judicial Magistrate Court, Thirukazhukundram. P.W.5 took up the case for investigation and went to the place of occurrence. There he examined the witnesses P.Ws 2, 3 and others and recorded their statements. On 12.03.2005, P.W.5 again examined P.W.2 and recorded his statement. He examined P.W.4 and recorded his statement. Based on the statement of P.W.4, P.W.5 altered the Section of the case to 366 IPC and sent it to Court. Ex.P.3 is the Alteration Report. He handed over the case to P.W.6 Inspector of Police, Kalpakkam for further investigation. On 30.06.2007, P.W.6 took the case for investigation. When P.W.6 examined P.Ws 2, 3 and other witnesses, he found that they repeated their statements given to P.W.5. P.W.6 did not record any further statement of theirs. P.W.6 secured the first accused and P.W.1 victim girl at Madhapuram Bus Stand near Jeyankondam on 14.03.2005, at about 06:00 a.m. P.W.6 examined P.W.1 victim girl and recorded her statement. P.W.6 took both the first accused and the victim girl to the Police Station and sent the first accused to Judicial custody. P.W.6 caused their medical examination through Court through submission of Requisition Letters Ex.Ps. 4 & 5. P.W.6 examined Doctors P.Ws 7 & 8, recorded their statements and obtained Ex.P.8 & 10 medical certificates on 05.04.2005. P.W.6 searched for the second accused but could not find him. On 19.07.2005, P.W.6 altered the Section of the case to one u/s. 366(A) & 376 IPC under Ex.P.6. On 19.07.2005, P.W.6 completed the investigation of the case and filed the Charge Sheet. The case was tried in S.C.No.350 of 2006 on the file of the Learned Sessions Judge (Mahila Court) Chengalpet dated 12.11.2008.

4. Before the trial Court, prosecution examined 8 witnesses and marked 11 exhibits. No material objects were marked. No witnesses were examined and no exhibits were marked on the side of defence.

5. On appreciation of materials before it, trial Court, under judgment dated 12.11.2008 convicted first accused for the offence u/s. 366(A) IPC and sentenced him to undergo 4 years R.I and to pay a fine of Rs.1,000/- i/d to undergo 3 months S.I and for the offence u/s.376 IPC sentenced him to undergo 7 years R.I and to pay a fine of Rs.1,000/- i/d to undergo 3 months S.I and second accused for the offence u/s. 366(A) IPC and sentenced him to undergo 4 years R.I and to pay a fine of Rs.1,000/- i/d to undergo 3 months S.I. There against, these appeals were filed.

6. Heard learned counsels for appellants and learned Additional Public Prosecutor for respondents.

7. The evidence of P.W.1 in chief, is indicative of the case being one of consensual sex. She has deposed to having stayed at the house of first accused for four days and of sexual intercourse on all such days. She has further deposed of first accused taking her to Adhampakkam and the father bringing along Police from Kalpakkam and further that both the victim girl and the first accused were secured at the Adhampakkam bus stand.

8. The occurrence took place during March 2005 prior to amendment of Section 376 IPC under Criminal law Amendment Act, 2013. Consensual sex with one not below 16 years of age did not amount to rape. Though P.W.1 victim as also her father, had informed her age to be 14 years at the time of occurrence. P.W.8 Doctor had issued Ex.P.11 which informed her age to be between 14 and 15 years. Doctor P.W.8's assessment of the age of the victim/P.W.1 does not stand scrutiny since he deposed to making his assessment on the basis of X-rays which have not been marked before the Court. It is also his admission in cross that he had not informed the Police of making his assessment through studying of X-rays. He has further deposed that there was possibility of variance of age. He has further deposed that P.W.1 may have been aged a year more or less. Evidence of P.W.1 is to the effect that she had stayed home after having completed her eighth standard. The best manner for prosecution to prove the age of the victim to be below 16 at the time of occurrence is by producing her school certificate. The prosecution not having done so has given rise to doubt that P.W.1 may well have been aged 16 years or above on the date of occurrence. Her evidence in chief indicates a case of her having accompanied the first accused and having stayed with him for a period of 4 days on her own volition. Commission of offences u/s. 366(A) and 376 IPC is rendered doubtful. In the circumstances, appellants would be entitled to the benefit of doubt.

9. Accordingly, these appeals are allowed. The judgment in S.C.No.350 of 2006 dated 12.11.2008 on the file of the learned Sessions Judge (Mahila Court) Chengalpet is set aside. Fine amount, if any, paid shall be refunded. Bail bonds if any, executed shall stand cancelled.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

1. The Judicial Magistrate, Tirukalukundram.
2. Do Thro The Chief Judicial Magistrate, Chengalpet
3. The Sessions Judge,
Mahila Court,
Chengalpet.
4. The Superintendent , Central Prison, Puzhal, Chennai.
5. The Inspector of Police,
Kalpakkam Police Station,
Kanchipuram District. (Crime No 69/2005)
6. The Sub-Inspector of Police,
Kalpakkam Police Station,
Kancheepuram District.
7. The Public Prosecutor,
High Court,
Madras.

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Criminal Appeal Nos. 870 of 2008 & 741 of 2009

MG(CO)
SP(30/11/2017)