

BAIL SLIP

The 1st appellant herein viz., Swaminathan, who is the 1st accused in SC.No.408/2005 on the file of the Assistant Sessions Judge-Cum-Chief Judicial Magistrate, Vellore was directed to be released on bail as per Order of this court dated 29-01-2008 in MP.No.1 of 2008 in CRL.A.No.826/2007 and the 2nd and 3rd appellants herein viz., Margabandhu and Suguna who are the 2nd and 3rd accused in SC.No.408/2005 on the file of the Assistant Sessions Judge-cum-Chief Judicial Magistrate, Vellore were directed to be released on bail as per Order of this Court dated 25-09-2007 in MP.No.2 of 2007 in CRL.A.No.826/2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.826 of 2007

1.Swaminathan

2.Margabandhu

3. Suguna

... Appellants/Accused

Vs

The Inspector of Police,
Vellore Taluk Police Station,
Vellore District,
Crime No.480 of 2004.

... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) of Cr.P.C., to allow the appeal and set aside the conviction and sentence passed in S.C.No.408 of 2005 dated 24.08.2007 on the file of Assistant Sessions Judge cum chief Judicial Magistrate, Vellore.

For Appellants : Mr. R.Margabandhu

For Respondent : Mrs.M.F.Shabana,
Gov. Adv. (Crl. Side)

JUDGEMENT

The accused in S.C.No.408 of 2005 on the file of Assistant Sessions Judge-cum-Chief Judicial Magistrate Court, Vellore are the appellant herein. A1 stood charged for the offences under Sections 120-B, 506(i), 342, 366 and 376 IPC and A2 and A3 stood charged for the offences under Sections 120-B, 506(i), 342, 366 and 376 r/w.120-B IPC. By judgment, dated 24.08.2007, the trial court, convicted and sentenced the accused as follows :-

Accused	Conviction under Section	Sentence
A1	342 IPC	Rigorous imprisonment for 6 months and to pay Rs.1000/- as compensation to victim/P.W.2 under Section 357(3) Cr.P.C., in default, to undergo rigorous imprisonment for one month.
A1	506(i) IPC	Rigorous imprisonment for 6 months and to pay Rs.1000/- as compensation to victim/P.W.2 under Section 357(3) Cr.P.C., in default, to undergo rigorous imprisonment for one month.
A1	366 IPC	Rigorous imprisonment for 3 years and to pay Rs.1000/- as compensation to victim/P.W.2 under Section 357(3) Cr.P.C., in default, to undergo rigorous imprisonment for one month.
A1	376 IPC	Rigorous imprisonment for 8 years and to pay Rs.22,000/- as compensation to victim/P.W.2 under Section 357(3) Cr.P.C., in default, to undergo rigorous imprisonment for one month.
A2	342 IPC	Rigorous imprisonment for 6 months and to pay a fine of Rs.500/-, in default, to undergo rigorous imprisonment for one month.
A2	506(i) IPC	Rigorous imprisonment for 6 months and to pay a fine of Rs.500/-, in default, to undergo rigorous imprisonment for one month.

Accused	Conviction under Section	Sentence
A2	366 IPC	Rigorous imprisonment for 3 years and to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for 2 months.
A3	366 IPC	Rigorous imprisonment for 3 years and to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for one month.
A3	506(i) IPC	Rigorous imprisonment for 6 months and to pay a fine of Rs.500/-, in default, to undergo rigorous imprisonment for one month.

Challenging the above said conviction and sentence, the appellants/accused are before this Court with this Criminal Appeal.

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

P.W.2 is the victim in this case. A1 and P.W.5 brother of P.W.2, were friends, and A1 used to go to the house of P.W.2. Earlier, A1 tried to misbehave with P.W.2 and he was warned by P.W.1, the mother of P.W.2, and others. Subsequently, on 24.09.2004, when P.W.2, was alone in the house, the accused called her to his house as if A2 and A3 wanted to see her. When P.W.2, went to the house of A1, where A2 and A3, threatened her to marry A1, but she refused and all the accused confined her in his house and A1 forcibly had sexual intercourse with P.W.2. On the next day morning, they took P.W.2 to Kanchipuram, where A1 and P.W.2 stayed in a hut. There also, A1 forcibly had intercourse with P.W.2. Then, A1, took P.W.2 to his relative's house and A1 confined her at Kukunthi village.

3. In the meantime, P.W.1, mother of P.W.2, lodged a complaint before the respondent police on 18.10.2004 alleging that P.W.2 was found missing. Based on the complaint, P.W.10, Sub-Inspector of Police, registered a case in Crime No.480/2004 for girl missing and sent the First Information Report, Ex.P.6 to the Jurisdictional Magistrate and also to his higher officials. Then, he commenced the investigation and recorded the statements of the witnesses and handed over the case records to P.W.12, Inspector of Police.

4. P.W.12, Inspector of Police, based on the investigation, altered the case into one under Sections 342, 366, 376 and 506(i) r/w. 120(b) IPC, alteration report is Ex.P.8. Then, on 29.10.2004, near Thoothikadu bus-stand,

P.W.12, arrested A2 and A3, and on 10.01.2005, at 3.15 p.m., near Cholvaram bus-stop, he arrested A1 and remanded him to judicial custody and rescued P.W.2. Then, P.W.12 sent P.W.2, and A1 for medical examination with a memo. P.W.3, Doctor, working in the Government Hospital, Vellore, examined A1 and has given a certificate stating that he is potent. P.W.11, Doctor, working in the Government Hospital, Vellore, examined P.W.2, where, P.W.2 told P.W.11 that, she was in love with A1 and on 24.10.2004, they left the house and went to Kanchipuram and there, they had sexual intercourse till 09.01.2005, P.W.11 has also given a opinion that she had frequent intercourse with a known person, and has also given a certificate Ex.P.7.

5. P.W.4, Doctor, working in the Government Medical College Hospital, has taken x-ray of P.W.2 and has also given a opinion that age of P.W.2 was above 18 years and below 21 years and has also given a report Ex.P.3.

6. P.W.12, continued the investigation and examined the Doctors and also obtained the birth certificate from P.W.13-Sub-Registrar and after completion of investigation, he laid charge sheet against the accused.

7. Based on the above materials, the trial Court framed charges as mentioned in the first paragraph of the judgment and the accused denied the same. In order to prove its case, on the side of the prosecution, as many as 13 witnesses were examined and 12 documents were exhibited, besides 2 material objects.

8. Out of the witness examined, P.W.1 is the mother of P.W.2. According to her, A1, who is a friend of his son P.W.5, used to come to her house and one fine day, she found her daughter missing. When, she enquired A2 and A3, they pleaded ignorance and, she searched her for 4 days, thereafter, she lodged a complaint before the respondent police. After a period of one month, the respondent police found A1 and P.W.2 and when, P.W.1 enquired P.W.2, she told her that A1 married her against her will and further stated that A1 took P.W.2 to Kanchipuram and they rented a house there stayed there for 2 1/2 months, where A1 had spoiled her.

9. P.W.2 is the victim girl. According to her, A1 is a friend of his brother and A1 took her to his house as if A2 and A3 want to talk with her, where, they threatened her to marry A1. But she refused and they confined her in their house. On that day, A1 forcibly had sexual intercourse with her. Then, on the next day morning they took her to Kanchipuram and there also A1 had forcibly intercourse with P.W.2 against her Will. Then, A1 took P.W.2 to his relative's house and P.W.2 asked him to send her to parental house, but he refused. Thereafter, he took her to Kukunthi village, where, A1 confined her for 2 months. When they came to Cholvaram, the police arrested A1.

10. P.W.3 is the Doctor, who examined A1 and has given a report stating that he is potent. P.W.4, Radiologist, working in the Government Medical College Hospital, Vellore, examined P.W.2 and has given opinion that the age of P.W.2 was above 18 years and below 21 years. P.W.5 is the brother of P.W.2. He has spoken about missing of P.W.2 and subsequently, he came to know that A1 had married P.W.2. P.W.6 is one of the relative of P.W.2 and he, along with P.W.1, had given a complaint. P.W.7 and P.W.8, who are witnesses to the confession statement said to have given by A1, but, turned hostile. P.W.9, Constable in the respondent police, took P.W.2 for medical examination to Government Medical College Hospital, Vellore. P.W.10, Sub-Inspector of Police, registered the case and handed over the same for further investigation to P.W.12. P.W.11, Doctor, working in the Government Medical College Hospital, examined P.W.2 and has given a report Ex.P.7. P.W.12, Inspector of Police, conducted further investigation, arrested the accused, recorded the statements of the witnesses and after completion of investigation, he laid charge sheet. P.W.13, Sub-Registrar, produced the birth certificate of P.W.2.

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

12. Having considered all the above materials, the trial Court convicted the appellants/accused as stated in the first paragraph of this judgment. Challenging the same, the appellants/accused are before this Court with this Criminal Appeal.

13. I have heard Mr.R.Margabandhu, learned counsel appearing for the appellants and Mrs.M.F.Shabona, learned Government Advocate (Crl.Side) appearing for the State and also perused the records carefully.

14. P.W.2 is the victim girl. From the evidence of P.w.2, it could be seen that A1 also belongs to the same place and he was a friend of her brother, P.W.5, and A1 called her to his house, she went there voluntarily, where A2 and A3 asked her to marry A1, but she refused. Thereafter, the accused confined her in their house and at that time, A1 forcibly had intercourse with her. On the next day, all the accused took her to Kanchipuram in a bus and they stayed there in a hut and thereafter, A1 took her to number of his relatives houses and finally, they have settled at one Kukunthi Village, in one of his relatives house for two months. In the cross examination, P.W.2 has stated that she travelled along with A1 in bus and auto, to various places, and admittedly, both A1 and P.W.2 had stayed together for more than two months. In the above two months, they have

travelled to so many places together and stayed in the relative houses of A1. But she never raised any objection or made any complaint. Subsequently, based on the complaint given by P.W.1, A1 was arrested only on 10.01.2005. At the time of arrest, both A1 and P.W.2 were together. Then, she was taken for medical examination.

15. P.W.11, Doctor, working in the Government Medical College Hospital, Vellore, examined P.W.2, where she has stated that she had a love affair with a known person and they got married at Kanchipuram and she voluntarily had intercourse with him from 24.10.2004 to 09.01.2005 and the Doctor has also given a certificate, Ex.P.7, wherein he has stated that he she has love affair for 2 years with one Swaminathan/A1 and got married on 24.10.2004 at Kanchipuram and she had sexual intercourse with A1 since 24.10.2004 till 09.01.2005 and she has also given a opinion that P.W.2 had frequent sexual intercourse with a known person. It is the evidence of P.Ws.1 and 5 that P.W.2 was abducted by A1 and A1 married her and he has also tied Thali. But P.W.2 denied the same in her evidence.

16. Eventhough in cases of this nature, the evidence of the victim can be a sole basis for conviction, provided her truthfulness and trustworthiness is proved beyond suspicion. But in the instant case, considering the conduct of P.W.2 that, she went along with A1 on her own and stayed with him in various places for more than 2 months and she has admitted before the Doctor that she voluntarily had intercourse with A1 from 24.10.2004 to 09.01.2005. But now she turned around and says that A1 has raped P.W.2, and the evidence of P.W.2 is highly unbelievable. Considering the above circumstances, it could only be construed that P.W.2 is a willing party and she has consented for sexual intercourse and hence the charge under Section 376 IPC was not made against A1.

17. So far as the charge under section 366-A IPC is concerned, from the available evidence it could be seen that A1 did not compell her and abducted her against her Will, and she on her own went along with A1 to various places and she was living with A1 for more than two months, hence the charge under Section 366 IPC is also not made out. So far as the conviction under Sections 342, 506(i) are concerned, absolutely there is no evidence to show that accused have wrongfully confined her and criminally intimated her. Hence, the conviction for that offence is liable to be set aside. Considering all those circumstances, I am of the considered view that the prosecution has failed to prove the charge against the accused beyond any reasonable doubt and the appellants are entitled for acquittal.

18. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants/accused in S.C.No.408 of 2005 are set aside and the appellants/accused

are acquitted of the charges. Fine amount, if any, paid by the appellants/accused, are directed to be refunded. Bail bonds, if any, executed by the accused, shall stand cancelled.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

mrp

To

1. The Assistant Sessions Judge-cum
Chief Judicial Magistrate,Vellore.

2.The Judicial Magistrate No I,
Vellore.

3.The Inspector of Police,
Vellore Taluk Police Station,
Vellore District.

4.The Superintendent,
Central Prison, Vellore.

5.The Public Prosecutor,
High Court, Madras.

6.The Section Officer,
Criminal section,
High Court, Madras-104.

+1cc to Mr.R.Margabandu, Advocate SR.No.10376

Cr1.A.No.826 of 2007

KGK(CO)
GN(07/12/2017)

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