

Bail Slip

The appellant/accused, namely Gopi S/o Rajendran (Sc No.89/06 on the file of the sessions Judge, Mahalir Court, Salem) was directed to be released on bail as per order of this court dated 22.04.2009 and made in MP.NO.1/09 IN CRL A.NO.71/09.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.11.2018
CORAM

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

Crl.A.No.117 of 2009

Gopi

... Appellant

Vs.

State rep. by
Inspector of Police,
All Women Police Station,
Crime No.9/2004
Ammamet, Salem.

... Respondent

Prayer:

Appeal filed under Section 374 (2) of Cr.P.C. against the conviction and sentence passed by the learned Sessions Judge, Mahila Court, Salem in S.C.No.89 of 2006 by the judgment dated 10.09.2007 convicting and sentenced him u/s 366 A I.P.C. to undergo 7 years rigorous imprisonment and fine of Rs.500/- i/d 3 months and also u/s 376 I.P.C. to undergo 7 years R.I. And fine of Rs.500/- i/s 3 months R.I. (Both sentences to run concurrently) to set aside the same and acquit him.

For Appellant : Mr.S.Sairaman (Legal Aid counsel)

For Respondent : Mr.R.Ravichandran

Government Advocate (Crl.Side)

J U D G M E N T

The appellant has filed this appeal seeking to set aside the conviction and sentence passed by the learned Sessions Judge, Mahila Court, Salem in S.C.No.89 of 2006 dated 10.09.2007.

2.The appellant is the sole accused in S.C.No.89 of 2006 and he was charged for the offence under Sections 366-A and 376 of IPC.

3.The case of the prosecution is that the appellant kidnapped the 15 years old victim girl on 15.11.2004 and without her consent married her on 21.11.2004 in Arulmigu Murugan Temple at Pappireddippatti and without her consent raped her. On the basis of the complaint lodged by the victim's father, the case came to be registered.

4.Initially, FIR was registered against the appellant, his mother and his two friends. Thereafter, the Investigation Officer conducted investigation and after investigation the names of the other three persons were deleted and charge sheet was filed as against the appellant only. Charge sheet was filed by the investigating agency before the learned Judicial Magistrate No.5, Salem.

5.After following due procedure, the case was committed to the Court of Sessions, Salem, by the learned Judicial Magistrate No.5, Salem and made over to the learned Sessions Judge, Mahila Court, Salem.

6.Thereafter, the learned Sessions Judge, Mahila Court, Salem, framed charges against the accused for the offence punishable under Sections 366-A and 376 of IPC and the same was read over and explained to the accused in Tamil. The accused pleaded not guilty. Thereafter, trial was proceeded against the accused.

7.The prosecution examined 9 witnesses P.W.1 to P.W.9 and marked exhibits Ex.P1 to Ex.P12 and also marked 6 material objects. However, no oral evidence was let in and no exhibits were marked on the side of the defence.

8.After trial, the Trial Court convicted the appellant for the offence under Sections 366-A and 376 of IPC and sentenced him to undergo 7 years rigorous imprisonment and to pay a fine of Rs.500/- in default to undergo 3 months rigorous imprisonment for the offence

under Section 366-A of IPC and to undergo 7 years rigorous imprisonment and to pay a fine of Rs.500/- in default to undergo 3 months rigorous imprisonment for the offence under Section 376 of IPC. The sentences were ordered to run concurrently.

9.The learned counsel appearing for the appellant would submit that except P.Ws.1 and 3, no other witnesses prove the guilt against the accused. Even P.W.1 has categorically admitted that initially there was love affair between the appellant and his daughter. However, he has further deposed that without his daughter's volition, the

appellant kidnapped her, performed marriage and had sexual intercourse with her. Though P.W.1 is not an eye witness to the occurrence, he has filed complaint before the respondent Police. The victim girl was examined as P.W.3 and she in her cross examination has admitted that there was love affair inbetween her and the appellant.

10.The learned counsel appearing for the appellant would further submit that the victim girl also not objected the sexual relationship inbetween her and the appellant. He would further submit that even perusal of the deposition of P.W.6 and P.W.7/ Doctors who examined the victim does not implicate the appellant as accused in the above

said offence. P.W.7 who conducted radiology test in order to prove the age of the victim girl certified that the age of the victim girl would be above 14 and below 17.

11.The learned counsel appearing for the appellant would further submit that there are contradictory versions inbetween the evidences of P.W.1 and P.W.3 and other prosecution witnesses. Hence, the prosecution did not prove the case beyond reasonable doubt. Accordingly, he prayed for allowing the appeal.

12.Per contra, the learned Government Advocate (Crl. Side) would submit that P.W.1 who is the father of the victim girl lodged a complaint stating that the appellant had kidnapped his daughter on 15.11.2004. The respondent Police assigned CSR number for the said complaint and after enquiry, registered FIR on 21.11.2004 and proceeded with investigation. During investigation, the statement of the complainant/ P.W.1 and the victim girl/ P.W.3 were recorded. The evidence P.W.1 and P.W.3 corroborated with each other.

13.The learned Government Advocate (Crl.Side) would further submit that P.W.1 in his chief as well as cross examination has admitted that there was love affair inbetween the appellant and his daughter/ victim girl. P.W.1 has further deposed that his daughter is a minor and without her consent, marriage was performed and thereafter, the appellant had sexual intercourse with her in his friend's house and after eight days, the appellant left the victim girl in her parental house.

14.The learned Government Advocate (Crl.Side) would further submit that P.W.3 in her deposition has deposed that the appellant and herself are just friends. P.W.3 would further depose that on 15.11.2004, the appellant asked her to marry him and when she refused, the appellant

kidnapped her to his friends house. The next day she was taken to the house of the appellant's friend namely, Shanmugam and they stayed there. After three days she was taken to the house of the appellant's another friend namely, Senthil. After six days, without her consent, the appellant married her in one Arulmigu Murugan Temple and had sexual intercourse with her. Thereafter, the appellant left her in her parental house.

15.The learned Government Advocate (Crl.Side) would further submit that the victim girl is a minor and it is evident from the deposition of P.W.7 who conducted radiology test on the victim girl and on the accused. P.W.7 had certified that the age of the victim girl would be above 14 years and below 17 years and the age of the accused would be above 18 years and below 20 years.

16.The learned Government Advocate (Crl.Side) would further submit that Ex.P7/ medical report of the accused reveals that there is nothing to suggest that he is impotent. Hence, the appellant/ accused is capable of having sexual intercourse. He would further submit that the deposition of P.W.6/ Doctor who examined P.W.3 reveals that the victim girl has lost her virginity.

17.The learned Government Advocate (Crl.Side) would further submit that as per Section 376 of IPC in the case of a minor girl, even if the accused had sexual intercourse with the minor girl with her consent, it amounts to rape. In the present case, the radiology test conducted on the victim girl shows the age of the victim girl as above 14 years and below 17 years. Hence, the victim girl is a minor girl. Further, in the present case, the appellant married the victim girl and had sexual intercourse with the victim girl without her consent and thereafter left her in her parental house.

18.The learned Government Advocate (Crl. Side) would further submit that non filing of the FIR at the relevant point of time does not vitiate the proceedings. Initially CSR number was assigned for the complaint lodged by the father of the victim. Thereafter, enquiry was conducted and FIR was registered. During investigation, the victim girl was left in her parental house by the appellant. Mere delay in filing the FIR will not affect the prosecution case.

19.The learned Government Advocate (Crl. Side) would further submit that in the present case, the prosecution has proved the case beyond reasonable doubt. Hence, the Trial Court considering the balance of convenience, imposed the minimum punishment of 7 years rigorous imprisonment

though maximum punishment of life time imprisonment is available for the offence under which the appellant was convicted. Accordingly, he prayed for dismissal of the appeal.

20. Heard the arguments advanced on either side. This Court has perused the depositions of P.W.1 to P.W.9 and also perused exhibits Ex.P1 to Ex.P12 marked by the prosecuting agency independently.

21. The father of the victim girl/ complainant was examined as P.W.1. P.W.1 in his deposition has clearly admitted that there was

love affair inbetween the appellant and his daughter and he himself has warned his daughter. However, on the fateful day, on 15.11.2004, the appellant had asked the victim girl to marry him and when she refused, the appellant kidnapped her to his friend's house. The next day she was taken to the house of the appellant's friend namely, Shanmugam and they stayed there. After three days she was taken to the house of the appellant's another friend namely, Senthil. After six days, without her consent, the appellant married her in one Arulmigu Murugan Temple and had sexual intercourse with her. Thereafter, the appellant left her in her parental house. All these facts are deposed by the victim girl in her deposition.

22. P.W.2/ mother of the victim girl was also examined. P.W.2 in her examination has confirmed the deposition of P.W.1 as well as P.W.3 and she also confirmed that immediately after the victim girl did not return from the tuition, they lodged complaint before the respondent Police. Initially the respondent Police assigned CSR number for their complaint and thereafter FIR was registered against the appellant and three others. Thereafter, the law enforcing agency conducted investigation in a proper manner and discharged the other three persons and filed charge sheet only as against this appellant. None of the witnesses have complained about the manner in which investigation was conducted.

23. Though the victim girl was studying X standard at the relevant point of time, no certificate was marked by the prosecuting agency to show her age. However, the deposition of P.W.7 who conducted radiology test on the victim girl and on the appellant reveals that the age of the victim girl would be above 14 years and below 17 years and the age of the accused would be above 18 years and below 20 years.

24.P.W.4 is the grandfather of the victim girl and P.W.5 is the hearsay witness. Though their evidence is not useful to the prosecution case, the depositions of P.W.1 to P.W.3 clearly establish the case against the accused. Hence, the prosecution has proved the case beyond reasonable doubt. The Trial Court has also considered the case and imposed the minimum punishment of 7 years rigorous imprisonment.

25.In view of the above, I do not find any error or perverse in the judgment dated 10.09.2007 made in S.C.No.89 of 2006 by the learned Sessions Judge, Mahila Court, Salem.

26.In the result, the criminal appeal is dismissed. The judgment dated 10.09.2007 made in S.C.No.89 of 2006 by the learned Sessions Judge, Mahila Court, Salem, is hereby confirmed. The appellant is directed to surrender before the nearest Police Station to undergo the remaining period of sentence, failing which, the Trial Court as well as the Investigation Officer shall take necessary and expeditious steps to secure the custody of the appellant/ accused to undergo the remaining part of sentence.

Sd/-

Assistant Registrar(CS iii)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate V, Salem
- 2.do thro Chief Judicial Magistrate, Salem
- 3.The Sessions Judge, Mahila Court, Salem.
- 4.do thro Principal Sessions Judge,Salem.
- 5.The Inspector of Police,
All Women Police Station,
Ammamet, Salem.
- 6.The Public Prosecutor, High Court ,Madras.

+1cc to Mr.S.Sairaman , Advocate SR.No. 81060

Cr1.A.No.117 of 2009

ASK(07/01/2019)