

Bail Slip.

That the Appellant/Accused namely Parthiban S/o Jeyavelu was released on bail as per order of this court dated 23.06.2009 in M.P. No. 1/2009 in CrI.A.No.321 of 2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CrI.A.No.321 of 2009

Parthiban

... Appellant

Vs.

State rep. by Inspector of Police
Balluchetty Chatram Police Station
Kancheepuram
(Crime No.60 / 2006)

... Respondent

PRAYER: Appeal filed under Section 374(2) of Cr.P.C. seeking to call for the records in S.C.No.242 of 2007 dated 29.05.2009 on the file of the Sessions Court (Mahila Court) Chengalpattu and set aside the same by allowing this Criminal Appeal.

For Appellant : Mr.R.C.Paul Kanagaraj

For Respondent : Mr.R.Ravichandran
Government Advocate (CrI. Side)

J U D G M E N T

The appellant has filed this appeal seeking to set aside the judgment dated 29.05.2009 made in S.C.No.242 of 2007 by the Sessions Court (Mahila Court), Chengalpattu.

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

The prosecutrix is PW2 daughter of PW1. PW2 and the accused / appellant/ sole accused are the residents of Vadhiyur Village. The accused person used to visit the house of PW1 for the purpose of getting milk for his business. All of a sudden, the

accused / appellant asked PW2 to marry him. When the same was refused by the victim girl, the accused / appellant threatened her that he will pour kerosene on her if she does not marry him. When the victim girl in turn replied that the same would informed to her parents for appropriate action, the accused / appellant threatened her once again that if the same is revealed to her parents, he will pour kerosene on him and commit suicide implicating the victim's parents in a case. The victim girl left with no option but to go along with the accused / appellant in his Hero Honda motor bike on 17.02.2006. PW1 the victim girl's father then filed a girl missing complaint before the respondent police on 21.02.2006, which has been marked as Ex.P1.

3. Thereafter, the accused and the victim girl reached Kancheepuram, from there they went to Thirupathi. In Thirupathi, the accused tied thali to the victim girl in front of the temple, then they reached Tirupur to live together and found employment for them.

4. When that being so, the accused wife came to Tirupur and snatched the Thali from the prosecutrix. Thereafter, the victim girl left Tirupur and reached her parents house. Initially girl missing case was registered by the respondent police, thereafter, based on the statement given by the victim girl, it was altered under Section 366 and 376 IPC, which has been marked as Ex.P16. On the side of the prosecution 13 witnesses have been examined and Ex.P1 to Ex.P17 marked. No material object was marked. On the side of the accused no witness was examined and no document was marked as exhibit.

(i) PW1, the father of the victim girl gave a complaint before the Balluchetty Chatram Police Station, Kancheepuram on 21.02.2006 about the girl missing. During PW2's evidence she deposed and produced her transfer certificate i.e. Ex.P2 to show her age proof that she was born on 03.07.1989 and she has also completed her 10th standard. The victim girl also stated that the accused person kidnapped her without her consent and performed their marriage in Thirupathi, then they moved to Tirupur to live together. When the accused's wife snatched the thali tied on the neck of the victim girl and drove her away from Tirupur, the victim girl came back to her parents house on 17.03.2006 and made allegation against the accused. Thereafter, the complaint was made before the respondent police.

(ii) PW2 in her evidence narrated the events one by one stating that without the consent of her, she was forced to go with the accused person in his motor bike and reached Kancheepuram. From Kancheepuram they went to Thirupathi and in

front of the temple they have performed their marriage and then they left to Tirupur to live together in the rented house and secured job for them. Thereafter, the accused wife chased her away from Tirupur by snatching her thali. Accordingly, in her evidence she had stated that without her consent she was taken to Kancheepuram then to Thirupathi and thereafter to Tirupur. The victim girl was unable to file a complaint due to the threat given by the accused person.

(iii)PW3 is the brother of PW2, supported the prosecution case. In his evidence, he deposed that he went along with the PW1 for filing the complaint against the accused person.

(iv)PW4 and PW5 are the local residents of Vadhiyur Village and they are the hear say evidences.

(v)PW6 is the Assistant Surgeon of Chengalpet Government Hospital, who conducted the clinical examination of the accused person, wherein he had opined that there was nothing to suggest that the accused is an impotent and issued a fitness certificate which has been marked as Ex.P6.

(vi)PW7 is also an Assistant Professor of Government General Hospital, Chengalpet, who conducted a clinical examination of the prosecutrix and her virginity and he deposed that she is not a virgin, which has been marked as Ex.P8. In order to find out the prosecutrix age, radiology report was filed. The doctor who examined the victim girl deposed that the physical age of the girl is 25 years and her actual age is 19 years. The same is marked as Ex.P9 and Ex.P10.

(vii)PW8 is the District Munsif, who recorded the prosecutrix statement under Section 164 Cr.P.C. and the said statement has been marked as Ex.P3. The accused person's statement under Section 161 Cr.P.C. was also recorded.

(viii)PW10 is the Sub Inspector of Police, who registered an FIR and marked Ex.P15. After recording the statement of the prosecution, the same was altered under Section 366 and 376 IPC. The said altered Section of 366 and 376 report was sent to the Judicial Magistrate Court. Thereafter, the said FIR was forwarded to PW11 i.e. the Inspector of Police.

(ix)PW11, the Inspector of Police conducted investigation and recorded his final report as against the accused under

Section 366 & 376 IPC.

5.After following due procedure and after framing of charges, the same was read over and explained to the accused in Tamil. The accused pleaded not guilty. Thereafter, trial was proceeded against the accused.

6.The Trial Court Judge found the sole accused guilty and the judgment was passed by the Sessions Court (Mahila Court) Chengalpattu in S.C.No.242 of 2007 dated 29.05.2009 convicting him under Section 366 IPC and sentenced to undergo Rigorous Imprisonment for three years and fine of Rs.500/- in default to undergo Simple Imprisonment for three months and under Section 376 IPC sentenced him to undergo Rigorous Imprisonment for seven years and fine of Rs.1,000/- in default to undergo Simple Imprisonment for six months. Aggrieved by the said conviction and sentence, the appellant / sole accused has filed this appeal before this Court.

7.The learned counsel appearing for the appellant would submit that the prosecutrix i.e. PW2 on her own volition went along with the appellant. The appellant also tied the Thali with her consent in front of the Thirupathi temple. Thereafter, they reached Tirupur for securing employment and started to live together. Only after 10 days, PW2 left her matrimonial home and came to her parents house and filed a complaint. PW2's evidence clearly discloses that there is no kidnapping or abducting by the appellant. The marriage was performed on her consent. Thereafter, they lived together in Tirupur and had sexual relationship with the appellant. Since the occurrence took place in the year 2006 and at that relevant point of time, PW2 was 16 years, the case was filed under Section 376 IPC. When the victim girl willingly accompanied the appellant, and when the marriage was performed with her own consent, and after her marriage only they had sexual relationship, hence, the same will not amount to rape. PW2 very well knew that the accused person was a married man, knowing it fully, PW2 went with the appellant and their marriage was solemnized at Thirupathi and they stayed happily in Tirupur and the complaint was filed only thereafter. Trial court without considering all these facts, convicted the appellant, which is unsustainable one. Accordingly, prays for allowing this appeal.

8.The learned Government Advocate (Crl. Side) would submit that though the prosecutrix i.e. PW2's marriage was performed with her consent, that consent was given by the victim girl due to the threat given by the accused. The accused has threatened

the victim girl that he will pour kerosene on her if she does not marry him. When the victim girl informed him that the same will be conveyed to her parents, the accused person once again threatened her that he will commit suicide to implicate her and her family members in the case. The victim girl left with no other option and she was forced to give her consent for the marriage to tackle the situation. Hence, the marriage was performed without her consent only and the Trial court after elaborate Trial convicted the accused, which is legal and sustainable one. Therefore, the order passed by the Trial Court need not be interfered with. Accordingly, he prays for dismissal of the appeal.

9. Heard the arguments advanced on either side and perused the materials placed on record.

10. In the light of the above submissions, it has to be proved whether the prosecution proved the guilt or not and the order of conviction based on the material or not.

11. Admittedly it is not disputed that on 17.02.2006 PW2 left her parents house and accompanied the accused in his motor cycle and they reached Kancheepuram bus stand from there they went to Thirupathi and the accused tied thali in front of the temple and thereafter they moved to Tirupur and started to live together after securing job for them. After 10 days the accused wife went to Tirupur and snatched the thali of the prosecutrix and chased her away from Tirupur. Thereafter, PW2 reached her parents house and filed a complaint before the respondent police along with her father and relatives.

12. On a perusal of the evidence, it is seen that the prosecution has registered a case against the accused under Section 366 and 376 IPC, which indicates that if any one kidnapped and abducted a victim girl without her consent that will be punished. However, on a perusal of the evidence given by the victim girl which narrates the events from 17.02.2006 to 17.03.2006, shows clearly that PW2 accompanied the accused willingly. The evidence of PW1 and PW2 indicates that the prosecutrix and the accused knowing each other and PW2 left her house and accompanied with the accused on his motor cycle.

13. Though PW2 deposed that she had to leave her parents house and accompany the accused under threat, on the contrary, she has stated in her own evidence that she accompanied the accused willingly on his motor cycle and they reached

Kancheepuram from there they have travelled in a public transport and reached Thirupathi. In Thirupathi the accused tied thali in front of the temple, from there they left to Tirupur to lead a matrimonial life. The prosecutrix filed a complaint only after four weeks.

14. When the evidence of PW2 and other evidences indicate that there was no threat or inducement either in regard to her leaving the house or in regard to accompanying the appellant, in such situation, there is no materials to show that the victim accompanied the accused only under the threat. It is difficult to prove that there was a forcible marriage or rape as to contemplate the appellant guilty under Section 366 and 376 IPC. The Trial Court proceeded on the basis of PW2's statement that the thali was tied against her will and the prosecutrix left her parents house on her own will was not properly appreciated by the Trial Court.

15. It was admitted by her that she had gone along with the accused willingly on his motor cycle and they reached Kancheepuram bus station. They had waited for sometime before boarding the bus to Tirupathi and thousands of persons were present at the bus stand. She did not raise any alarm. She did not tell any passenger and thereafter they reached Tirupathi in the presence of several people and tied Thali in front of the Temple. All the circumstances indicate that the prosecutrix was a consented party. In the circumstances no offence is made out.

16. There is no doubt that the appellant was doing milk business in the same village and both the family members have good relationship with each other. However, the prosecution has failed to establish the fact that PW2 left the PW1's house without consent, however, evidence indicates she left the house on her own consent and accompanied the accused. In the absence of any threat or inducement either in regard to her leaving the house or in regard to accompanying the appellant has not been established by the prosecution.

17. Hence the prosecution miserably failed to prove the case beyond reasonable doubt. Therefore the accused is given the benefit of doubt and is acquitted of all the charges.

18. In the result, the criminal appeal is allowed. The conviction and sentence as against the appellant/ sole accused in the judgment dated 29.05.2009 in S.C.No.242 of 2007 passed by the Sessions Court (Mahila Court), Chengalpattu, are set

aside. The appellant / sole accused is acquitted from the charges under Section 366 & 376 IPC. The fine amount, if any, paid by him is ordered to be refunded to him. The bail bonds executed by him, shall stand terminated / discharged.

s/d-
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

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To

1. The Judicial Magistrate No.2
Kancheepuram.
2. Do Thro The Chief Judicial Magistrate
Chengalpattu.
3. The Sessions Judge (Mahila Court)
Chengalpattu
4. The Superintendent
Central Prison, Puzhal.
5. The Inspector of Police
Balluchetty Chatram Police Station
Kancheepuram
6. The Public Prosecutor
High Court of Madras
7. The District Collector
Kancheepuram.
8. The Director General of Police
Mylapore, Chennai 4.
9. The Superintendent of Police
Chengalpet at Kancheepuram

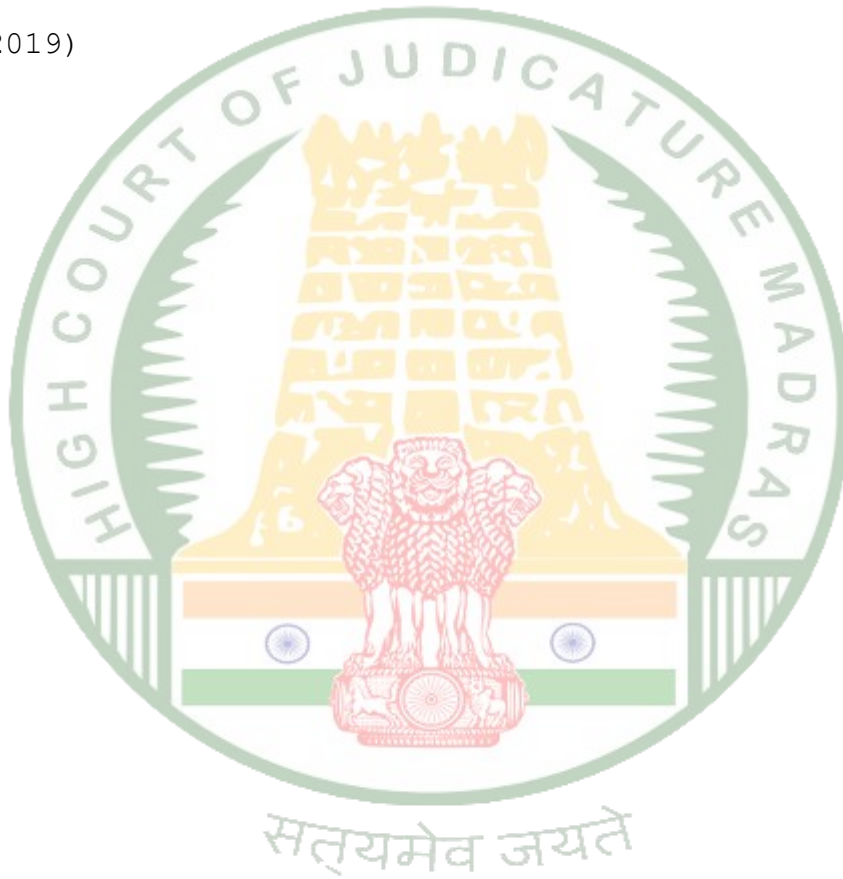
Copy to

1. The Section Officer
Criminal Section
High Court of Madras

+1 CC to Mr.R.C.Paul Kanagaraj, Advocate sr 87832.

Crl.A.No.321 of 2009

MG (CO)
SP (28/01/2019)



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