

Bail Slip

Appellant in CRL.A.No.387 of 2009 (Accused) namely Rajesh S/O Karuppusamy was directed to be released on bail as per order of this Court dated:22/07/2009 in CrI.MP.1/2009 in CrI.A.No.387 of 2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CrI.A.No.387 of 2009

1.Rajesh @ Karuppusamy

.... Appellant/Accused

Vs.

The State rep. by
The Inspector of Police,
All Women Police Station,
Palladam,
Coimbatore District.
(Cr.No.13 of 2007)

.... Respondent/Complainant

Prayer:Appeal filed under Section 374 (2) of Cr.P.C. seeking to set aside the conviction and sentence imposed against the appellant in S.C.No.321 of 2008 on 18th day of June 2008 by the learned Sessions Judge, Mahalir Neethimandram, Coimbatore and acquit the appellant.

For Appellant : Mr.P.Saravanan
For Respondent : Mr.B.Arulmozhi Maran
Government Advocate

J U D G M E N T

The appellant has filed this appeal seeking to set aside the judgment dated 18.06.2008 made in S.C.No.321 of 2008 by the learned Sessions Judge, Magalir Neethimandram, Coimbatore.

2.The brief case of the prosecution is as follows: P.W.2 is the mother of the victim and P.W.3 is the father of the victim and they are the residents of Arunthathiyar Colony, Nallurpalayam, Vadambacheri, Palladam. P.W.1 is the victim/daughter of P.W.2 and P.W.3 aged about 15 years. The victim was under the lawful guardianship of her parents and was studying X

Standard at Sokkan Chettiar Mallammal Higher Secondary School, Vadambacheri. The accused/ appellant who is the resident of the same Village, knowing that P.W.1 is a minor induced her to come out of the lawful guardianship of her parents by giving false promise that he was in deep love with her and the accused also assured that he would give a fanciful luxurious life and would allow P.W.1 to study further.

3. Believing the words of the accused, P.W.1 accompanied the appellant/ accused on 05.08.2007 at 11.00 a.m. and they went to Chinnaputhur where the accused approached one Duraisamy and Senthil and sought their help to perform their marriage. Since they refused to extend their help and advised the accused to not to indulge in illegal activities and since it was late night, the accused abducted the victim to a house at Valasupalayam belonging to one Rangan. On the way to Valasupalayam, the accused took the victim to Kodanki Naicker Family Temple and tied a yellow rope and also performed the customary ceremony of affixing vermilion (Kumkum) on the forehead of the victim and made her believe that it was the lawful marriage. By saying so, the accused started to live with the victim in the house belonging to one Rangan from 05.08.2007.

4. The parents of the victim searched for her and on knowing that the accused had kidnapped her, they went to the All Women Police Station, Palladam and lodged Ex.P1 complaint.

5. P.W.12/ Head Constable attached to All Women Police Station, Palladam, received Ex.P1 complaint from P.W.2 on 07.08.2007 and registered Ex.P10 first information report under Section 363 of IPC and sent Ex.P10 along with Ex.P1 to the learned Judicial Magistrate, Palladam. P.W.13/ Sup-Inspector of Police received the copy of Ex.P10 and Ex.P1 from P.W.12 and took up the case for investigation.

6. During the course of investigation, P.W.13 went to the scene of occurrence and observed the scene in the presence of P.W.8 and prepared Ex.P4/ observation mahazer and obtained signature of the witnesses. Thereafter, P.W.13 prepared Ex.P11/ rough sketch and

also examined P.W.2, P.W.3, P.W.4 and some other witnesses and recorded their statements.

7. On 11.08.2007, the accused surrendered before P.W.13 at 17.30 hours. Thereafter she arrested the accused and after following due procedure, P.W.13 forwarded the accused to Court for remand. P.W.13 also sent a requisition to the learned Judicial Magistrate, Palladam, seeking an order to send P.W.1 to

Hospital for medical check up. On 14.08.2007, P.W.13 went to Sokkan Chettiar Mallammal Higher Secondary School, Vadambacheri, examined P.W.7/ Head Master and obtained Ex.P3 Certificate with regard to the age of the victim and also recorded his statement. P.W.13 also examined P.W.1 and recorded her statement. Thereafter, P.W.13 handed over the case to the Inspector of Police for further investigation.

8. On the basis of the order issued by the learned Judicial Magistrate, P.W.10/ Assistant Surgeon, Department of Gynaecologists examined P.W.1 on 12.08.2007 at 08.20 p.m. During examination, P.W.1 had stated that a known male kidnapped her on 05.08.2007 at 11.00 a.m. at Nallurpalayam. She entered the same in the accident register. On medical examination P.W.10 did not notice any external

injury over the body or on external genitalia and she issued Ex.P5/ accident register. She also referred the victim for ossification test in order to find out the age.

9. P.W.11/ Radiologist attached to the Department of Radiologists and Cancer conducted ossification test over P.W.1. He issued Ex.P6/ certificate opining that the age of P.W.11 would be above the age of 16 years and below the age of 18 years. He also examined the accused and issued Ex.P8/ certificate opining that the age of the accused would be above the age of 20 years and below the age of 22 years. P.W.6/ Urologist and Chairman of the Regional Medical Board examined the accused in order to find out the potency and issued Ex.P2/ Potency Certificate opining that the accused is capable of having sexual intercourse.

10. P.W.14/ Inspector of Police took up the case for further investigation. On 15.08.2007 at 10.00 a.m., she went to the scene of crime and observed the scene in the presence of one Murugesan and one Kanagaraj and prepared Ex.P13/ observation mahazer and obtained signature of the witnesses. Thereafter, P.W.14 prepared Ex.P12/ rough sketch and also examined P.W.1, P.W.2, P.W.3 and recorded their further statements and also examined some other witnesses.

11. Since the witnesses examined by P.W.14 have made a categorical statement that the victim was subjected to sexual intercourse and since the victim was a minor, P.W.14 filed Ex.P14/ alteration report altering the offence to under Sections 366 (A) and 376 of IPC.

12. On 14.10.2007, P.W.14 completed the investigation and

laid the final report as against the accused before the learned Judicial Magistrate, Palladam. The case was committed to the Court of Sessions by the learned District Munsif - cum - Judicial Magistrate, Palladam and made over to the Trial Court. Based on the materials produced before the Trial Court, the Trial Court framed charges as against the accused for the offence under Sections 363, 366 and 376 of IPC.

13. When the incriminating documents available against the accused in the evidence were explained to the accused and when questioned under Section 313 of Cr.P.C., the accused denied the same as not true. Thereafter, trial was proceeded against the accused.

14. On the side of the prosecution, 14 witnesses were examined as P.W.1 to P.W.14 and 14 documents were marked as exhibits Ex.P.1 to Ex.P.14. The defence side neither choose to examine any witness nor to mark any document. Neither the prosecution nor the defence marked any material object.

15. After trial, the Trial Court convicted the appellant/ accused for the offence under Sections 363 and 366 of IPC and sentenced him to undergo 3 years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo 6 months simple imprisonment for the offence under Section 363 of IPC and to undergo 10 years rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo 1 year simple imprisonment for the offence under Section 366 of IPC. The Trial Court ordered the sentences to run concurrently. The Trial Court acquitted the accused from the charge under Section 376 of IPC. Aggrieved by the said conviction and sentence, the appellant / accused has filed this appeal before this Court.

16. The learned counsel appearing for the appellant would submit that there is no material evidence whatsoever available on record to prove the charge under Sections 363 and 366 of IPC. He would further submit that even Ex.P.1 is totally contrary to the evidence of P.W.1. P.W.1 in her evidence has deposed that she had love affair with the accused for the past two years and when her parents came to know about the love affair, they made arrangement for her marriage with their relative and hence she left the parental house and stayed in the house of a known person. On seeing the paper news, she joined with her parents. Though P.W.1 was declared to be hostile witness, the respondent law enforcing agency was not able to extract any useful evidence from P.W.1.

17. The learned counsel appearing for the appellant would further submit that even perusal of the evidences let in by P.W.2 and P.W.3 discloses that they are improved version and

cannot be believed. He would further submit that though the Trial Court based on the evidences and documents rightly acquitted the appellant from the charge under Section 376 of IPC, convicted and sentenced the appellant for the offence under Sections 363 and 366 of IPC which is un-sustainable one. Accordingly, he prayed for acquittal of the appellant/ accused.

18.Per contra, the learned Government Advocate would submit that P.W.1 was declared as a hostile witness. P.W.2, P.W.3 and P.W.9 in their evidences have categorically deposed that P.W.1 was kidnapped by the accused from the lawful custody of P.W.2 and P.W.3/ parents of P.W.1. He would further submit that when a minor girl was kidnapped by the accused, whether with the consent or without the consent of the minor girl, it is sufficient to implicate the accused under Sections 363 and 366 of IPC.

19.The learned Government Advocate would further submit that there are lot of materials available to implicate the accused in the above said offence. The Trial Court passed the conviction and sentence based on the evidence of P.W.2, P.W.3 and P.W.9 which corroborated with the evidence of P.W.14 who investigated the case. Hence the prosecution proved the case beyond reasonable doubt. Therefore, the well considered judgment of the Trial Court need not be interfered with. Accordingly, he prayed for dismissal of the appeal.

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

21.In the light of the above submissions, now it has to be analyzed whether the prosecution has proved the guilt on the accused beyond reasonable doubt.

22.The evidence of P.W.1 is crucial evidence since P.W.1 is the victim girl. Admittedly, P.W.1 was a minor on the date of occurrence. According to her, she had love affair with the accused for the past two years and when her parents came to know about the love affair, they made arrangement for her marriage with their relative and hence she left the parental house and stayed in the house of a known person. On seeing the paper news, she joined with her parents.

23.P.W.1's evidence clearly discloses that at the age of 15 years when she was studying X Standard, she had love affair with the accused. When her parents made arrangement for her marriage with another person she stayed in the house of a known person and she did not join with the accused and she also did not indulge in any activities with the accused. On seeing the paper publication, she returned to her parental house. Thereafter she

was taken to the Police Station and thereafter for medical check up.

24.The Trial Court after elaborate discussions and after seeing the credibility of the evidences that the evidence of P.W.10/ Assistant Surgeon, Department of Gynaecologists who examined P.W.1 did not corroborate with the evidence of P.W.1, arrived at the conclusion that

the prosecution has not proved the guilt on the accused beyond reasonable doubt for the offence under Section 376 of IPC and rightly acquitted the appellant from the charge under Section 376 of IPC, however, convicted and sentenced the appellant for the offence under Sections 363 and 366 of IPC.

25.Though P.W.2, P.W.3 and other witnesses in their evidence have stated that the victim girl was kidnapped by the accused, P.W.1 has categorically stated that she had love affair with the accused. When her parents came to know about the love affair, they made arrangement for her marriage with another person and hence, she stayed in the house of a known person. On seeing the paper publication, she returned to her parental house.

26.It is relevant to note here that P.W.2/ mother of the victim in her deposition has deposed that the law enforcing agency has secured the victim from the accused. However, perusal of the evidence of P.W.13 clearly discloses that the accused surrendered before her and P.W.1/ victim voluntarily appeared before P.W.13 and stated that no one kidnapped her. She on her own volition left her parental house and on seeing the paper publication, she joined her parents.

27.The evidences let in by P.W.2, P.W.3, P.W.13 and P.W.14 are contradictory in nature and they do not corroborate with each other. Though P.W.1 was minor at the relevant point of time, she did not even make any allegation as against the accused and in her evidence she has categorically deposed that she had love affair with him for the past two years. When her parents came to know about the love affair, they made arrangement for her marriage with another person and hence, she stayed in the house of a known person. On seeing the paper publication, she returned to her parental house. Hence, there is no question of abduction or kidnap.

28.The law enforcing agency miserably failed to establish that the victim was kidnapped by the appellant from the lawful guardianship of her parents. Further, the appellant neither abducted the victim with intent nor compelled her to marry him. In the absence of any material to establish the alleged marriage or intercourse without the consent of the victim girl, this

Court finds that there is no ingredients available to implicate the appellant for the offence under Sections 363 and 366 of IPC.

29.Thus, I am of the view that the prosecution has not established the guilt of the accused beyond reasonable doubt. Hence, the judgment of the Trial Court needs interference and the same is liable to be set aside.

30.In the result, the criminal appeal is allowed. The conviction and sentence as against the appellant/ accused in the judgment dated 18.06.2008 in S.C.No.321 of 2008 passed by the learned Sessions Judge, Magalir Neethimandram, Coimbatore, are set aside. The appellant/ accused is acquitted from the charge under Sections 363 and 366 of 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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Sessions Judge, Magalir Neethimandram,
Coimbatore.
- 2.The Inspector of Police,
All Women Police Station,
Palladam, Coimbatore District.
(Cr.No.13 of 2007)
- 3.The Superintendent Central Prison, Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The District Munsif Cum Judicial
Magistrate Palladam.
- 6.The Chief Judicial Magistrate, Coimbatore.
- 7.The District Collector, Coimbatore.

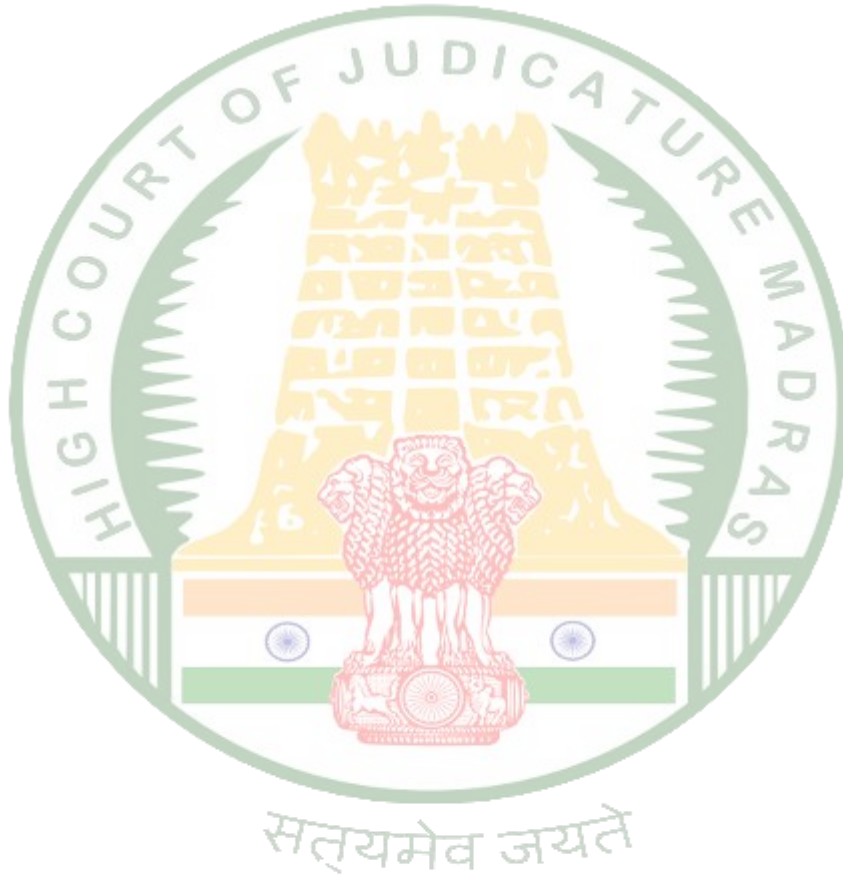
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8.The Director General Police,
Mylapor Chennai

9.The Section officer,
Crl.Section, High Court, Madras.

Crl.A.No.387 of 2009

JP (CO)
GSP (31/01/2019)



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