

Bail Slip

The Accused namely Sathishkumar, (Sole Accused) S/O Kanagaraj was released on bail in Crl MP 1/11 dated 23/2/2011 in Crl. A.No.112/2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 03.07.2018]

[Pronounced on : 26.09.2018]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.112 of 2011

Sathishkumar ... Appellant/Single Accused

.. Vs ..

State rep. by the Inspector of Police,
Ammamet Police Station,
Salem District.
(Crime No.2364 of 2008)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Cr.P.C. praying to set aside the judgment passed by the learned Sessions Judge, Mahila Court, Salem, in S.C.No.16 of 2010 by judgment dated 09.02.2011.

For Appellant : Mr.B.Vasudevan

For Respondent : Mr.R.Surya Prakash,
Government Advocate

ORDER

The convicted sole accused is the appellant herein. The respondent police has filed final report against the appellant herein/accused for the alleged offences under Sections 366-A, 496 and 376 IPC. After observing the formalities, the same set of charges were framed against the accused and in the trial, the prosecution examined P.Ws.1 to 13 and marked documents Exs.P.1 to P.14 and on the side of the defence, no witness was examined but three documents were marked as Exs.D.1 to D.3 and no material objects were produced.

2. On consideration of both oral and documentary evidence, for the reasons recorded therein, the learned Sessions Judge, Mahila Court, Salem, by judgment dated 09.02.2011, in S.C.No.16 of 2010, had acquitted the accused under Sections 496 and 376 IPC and on appreciation of the evidence available on record and following the decision of this Court reported in 1995 CrI.L.J.632 [Anandhan Vs. The State], has convicted the accused under Section 363 IPC by altering the Section 366 IPC and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/-, in default, to undergo three months rigorous imprisonment.

3. The respondent police has registered a case on 29.12.2008 in Crime No.2364 of 2008 for the offence under Section 366-A IPC based on the complaint preferred by one Natarajan-P.W.1 for kidnapping his daughter namely, Saranya (Aged 17 years) by the appellant and after investigation, the respondent police has filed final report for the offences under Sections 366-A, 496 and 376 IPC before the learned Judicial Magistrate No.5, Salem, and the case has been taken on file in P.R.C.No.22 of 2009 and then, it was committed to the learned Sessions Judge, Salem, and case was taken on file in S.C.No.16 of 2010 and made over to Mahila Court, Salem.

4. The learned Sessions Judge, Mahila Court, Salem, had acquitted the appellant/accused under Sections 366-A, 496 and 376 IPC, but convicted him under Section 363 IPC, since it was not a case of kidnapping or rape and it was voluntarily act of the victim girl, since the parents had arranged her marriage with some other person. As against the said judgment of conviction and sentence passed by the learned Sessions Judge, Mahila Court, Salem, the accused had preferred this criminal appeal before this Court.

5. Learned counsel appearing for the appellant/accused contended that the trial Court wrongly convicted the appellant under Section 363 IPC based on the medical evidence which revealed that the victim girl is below the age of 18 years. It is further contended that the date of occurrence is on 16.12.2008 and the FIR was registered only on 29.12.2008. Further, as per the evidence of P.W.11-Kumaresan, the Sub Inspector of Police, on 29.12.2008, P.W.1 came and lodged the complaint-Ex.P.1 and based on that complaint, Ex.P.11-FIR was registered by him for the offence under Section 366-A IPC in crime No.2364 of 2008. It is also contended that the trial Court has failed to consider the fact that the First Information

Report and the medical evidence are not supported by the oral evidence of the victim girl, her parents, her sister and her grandmother-P.W.6 and further, the trial Court has failed to consider the document Ex.D.3-copy of complaint given by P.W.2 to the District Collector, Salem.

6. Learned Government Advocate (Crl.Side) made submissions in support of the judgment of the trial Court.

7. Points for consideration:-

- (i) Whether the order of conviction passed by the trial Court under Section 363 IPC is sustainable in law? and
- (ii) Whether the sentence awarded by the trial Court is excessive?

8. The case of the prosecution is that P.W.1-Natarajan is the complainant. P.W.2-Saranya is younger daughter of P.W.1. P.W.3-Radha is wife of P.W.1. P.W.4-Usha is elder daughter of P.W.1. P.W.1 is residing along with his family at No.31/11, Thillai Nagar Main Gate, Ponnammampet. Three years prior to the date of occurrence, P.W.1's elder daughter P.W.4-Usha was given marriage to the accused and they have a female child. The accused used to come to P.W.1's house and fell in love with the younger daughter of P.W.1. P.W.1 and his family warned the accused. On 16.12.2008 at about 11.30 a.m., the accused kidnapped the victim girl-P.W.2 from the house of her grandmother, situated at No.3/84, V.O.C. Nagar, Kamarajar Colony, Ammapet near Uzhavar Sandhai. P.W.1 searched her daughter Saranya-P.W.2, but he did not find and hence, on 29.12.2008, P.W.1 lodged a complaint before the police and the said complaint was marked as Ex.P.1 and the copy of the complaint dated 18.12.2008 given by the complainant to the Ammapet police station was marked as Ex.D.1 and the notice sent by this Court in the Habeas Corpus Petition in HCP.No.2094 of 2008 dated 23.12.2008 was marked as Ex.D.2 by the defence side during the cross examination of P.W.1.

9. P.W.11-Kumaresan, who was working as Sub Inspector of Police at Ammapet police station, after receiving the complaint dated 29.12.2008 given by P.W.1, registered a case in Crime No.2364 of 2008 for the offence under Section 366-A IPC and prepared FIR-Ex.P.11. P.W.12-Murugan, who was working as Inspector of Police at Ammapet police station, took up investigation in the case and went to the place of occurrence and prepared Observation Mahazar-Ex.P.12 in the presence of

P.W.7-Perumal and Pushpa. The signature of P.W.7 in the observation mahazar was marked as Ex.P.6. P.W.12 also prepared Rough Sketch-Ex.P.13 and examined the witnesses Natarajan, Kaliammal, Raja, Usha, Perumal, Pushpa and Kumaresan/Sub Inspector of Police and recorded their statements. On 30.01.2009 at about 4.00 a.m., P.W.12 arrested the accused near Ponnampet Railway Gate, examined him and recorded the confession statement given by him in the presence of Arumugam-P.W.8 and one Murugan. The signature of P.W.8 in the confession statement was marked as Ex.P.7. P.W.12 also examined P.W.2-victim girl and recorded her statement. Thereafter, he altered the Section from 366-A IPC to Sections 366-A, 496, 506(ii), 365 and 376 IPC and Section alteration report was marked as Ex.P.14. Then, he sent the accused to the Court for remand and also sent the victim girl to the Government Observation Home, Salem through the Court. Then, he sent a requisition to the Court for conducting medical examination of the accused and the victim girl.

10. It remains to be stated that on appreciation of the evidence of P.W.1, who is the father of the victim girl, P.W.2-Saranya/the victim girl and P.W.4-Usha, who is the elder daughter of P.W.1 and elder sister of P.W.2 and also the evidence of P.W.6-grand mother of the victim girl and also taking into consideration certain answers elicited in the cross-examinations, it appears from the records that the trial Court, for the reasons contained therein, has recorded a finding that the victim girl is a consenting party to the physical relationship and she is over the age of 16 years and below the age of 18 years and therefore, acquitted the accused for the charge under Section 376 IPC and there was no appeal either by the victim girl or by the State in this regard. So also, for the charge under Section 496 IPC, taking note of the evidence of P.W.2 given in the chief examination, the trial Court has discussed her evidence in connection with the said charge under Section 496 IPC and acquitted the accused and the same has not been challenged. Consequently, it has become final.

11. Now, what remains is that after consideration of the evidence of P.W.2, P.W.6 and P.W.10, the owner of the house where the victim girl-P.W.2 was kept by the accused during the relevant point of time, the trial Court has convicted the accused under Section 363 IPC by altering Section 366 IPC and the same is now under challenge in this appeal. P.W.1/father of the victim girl could depose that he gave a complaint-Ex.P.1 on 29.12.2008 to the Sub-Inspector of Police-P.W.11 and the same was registered as FIR and marked as Ex.P.11. P.W.1's further evidence is that he has two daughters and his elder daughter

namely Usha-P.W.4 was given in marriage to the accused and they have two years old female child. P.W.1 further deposed that his son-in-law (accused) used to come to his house and taking advantage of the relationship, he has developed intimacy with P.W.2-victim girl, who is none other than the younger daughter of P.W.1 and younger sister of P.W.4. In view of the frequent visit of the accused, P.W.1 made arrangements for the marriage of the victim girl and he has also moved the victim girl-P.W.2 to his mother's house viz., P.W.6. He has specifically deposed that on 16.12.2008 at around 11.30 a.m., the accused/son-in-law of P.W.1 enticed the victim girl from the residence of P.W.1's mother situated at D.No.3/84, V.O.C. Nagar, Kamaraj Colony, Salem and promised to take her to shop and thereby kidnapped her and this part of the evidence regarding the act of accused in removing the victim girl-P.W.2, who is below the age of 18 years has been clearly spoken by the victim girl in the chief examination. Furthermore, P.W.6-grandmother of the victim girl has also clearly deposed in her evidence that the accused has enticed the victim girl from her residence and since P.W.2 has not returned till the evening on that date, P.W.6 informed the same to P.W.1 and consequently, the complaint has been lodged. In this regard, the evidence of P.W.2-victim girl is clear and cogent and also duly corroborates the evidence of P.W.1 and P.W.6.

12. It remains to be stated that this portion of the evidence of P.W.1, P.W.2 and P.W.6 is found to be natural, without any infirmity and it does not suffer from any artificial as argued by the learned counsel for the appellant. Furthermore, it remains to be stated that in view of the lackadaisical attitude of the police in not taking up the matter in rescuing the victim girl, P.W.1 has knocked the doors of the High Court by way of Habeas Corpus Petition in H.C.P.No.2094 of 2008, which was filed against the Commissioner of Police, Salem and Inspector of Police, Ammapet police station and as per the orders of the High Court dated 07.01.2009, the police have arrested the accused on 30.01.2009 and secured the victim girl assumes significance. Thus, this Court finds that the delay in lodging the FIR will not affect the case of the prosecution on the above stated factual situation. The prosecution, in order to prove the fact that P.W.2 is aged below 18 years, has examined the Doctor-P.W.5, who after conducting necessary examination, has fixed the age of the victim girl as above 16 years and below 18 years and issued Ex.P.5-Age Certificate.

13. The prosecution has also examined P.W.10-Subramani, who is the owner of the house wherein the accused has lodged the victim girl and was leading a life. P.W.10, the house owner

could depose that he is having a residential house at Vasanthapuram, Katpadi and in the Month of January 2009, the accused met him along with his wife and requested to let out the house and the house was let out to the accused at the rate of Rs.500/- per month and they have stayed there only 15 days. It is the specific case of the prosecution that after taking the victim girl-P.W.2 from the lawful custody of P.W.6 viz., from the grand mother's place, the accused has taken the victim girl to two other places of his sister and after filing the Habeas Corpus Petition before the High Court, he has moved over to Vellore and kept the victim girl in the rented house of P.W.10 assumes significance. With regard to moving the victim girl-P.W.2 from the lawful custody of the parents, the evidence of P.W.1 is clear to the effect that the victim girl was kidnapped from the house of P.W.6 on 16.12.2008 around 11.30 a.m. and the said fact has been clearly spoken by P.W.2-victim girl that on promising to take her for shopping, the accused had taken the victim girl to Katpadi from where she was rescued by the police and brought to Ammapet police station. Though during the cross-examination of P.W.2, the accused has marked Ex.D.3, the learned counsel appearing for the appellant has vehemently argued that Ex.D.3 is the complaint given by P.W.2 to the District Collector, Salem. However, to the dismay, there is no evidence or any letter or any language or any sentence to the effect that the complaint was posted to the District Collector, Salem, as projected by the defence. When P.W.2 was confronted in the cross-examination with Ex.D.3, she has clearly spoken that under the threat and coercion given by the accused, when he was under the custody, she wrote the complaint, assumes significance and hence, this Court has no hesitation to reject the defence case projected through Ex.D.3 as the same is obtained by coercion and in the absence of any positive evidence negating the said evidence of P.W.2, the same stands rejected.

14. It is further seen from the prosecution witnesses that the grandmother of the victim girl-P.W.2 namely P.W.6 (who is the mother of P.W.1), has clearly deposed that the accused came to her house and spoken to P.W.2 for some time. Thereafter, the accused requested her to send her granddaughter along with him for shopping. Since the accused is none other than the son-in-law of P.W.1 and also married the elder sister of P.W.2, P.W.6 has not doubted. However, since the accused and the victim girl have failed to return even after one hour, P.W.6 conveyed a message to her son/P.W.1, who had given a complaint. Further, it is clear from the evidence of P.W.10, owner of the house, who had stated about the stay of the accused and the victim girl in his house. Thus, on a combined reading of the evidence of P.W.2, P.W.6 and P.W.10, the trial Court has recorded a finding that the accused has enticed the victim girl from the lawful

custody of P.W.6. Without the consent of the natural guardian father/P.W.1 by making a false promise and subsequently kidnapped the victim girl is found to be in conformity with the established law. In the absence of any worthwhile being elicited in the cross examination of these witnesses touching upon this issue, this Court is of the considered view that the finding rendered by the trial Court is well considered and well merited and it does not call for any interference by this Court.

15. It remains to be stated that the learned counsel appearing for the appellant stated that in the absence of any positive evidence to fix the age of the victim girl, the trial Court erred in convicting the appellant for the offence under Section 363 IPC. This Court has given its anxious consideration to the said contention. However, on a perusal of the medical evidence of P.W.5-Doctor, who had issued Ex.P.5-Age certificate opining that the victim girl is above 16 years and below 18 years and hence, in view of the positive evidence indicating the age of the accused, this Court is of the considered view that the said contention of the learned counsel for the appellant does not worth consideration and the same also stands negatived.

16. As observed earlier, the trial Court has already acquitted the appellant/accused for the charges under Sections 366-A, 496 and 376 IPC and since the appeal is only in respect of conviction under Section 363 IPC, and in view of the specific evidence of P.W.1, P.W.2, P.W.6 and P.W.10 regarding the manner of moving the minor girl from the lawful custody, this court is of the considered view that the evidence of those prosecution witnesses are clear, cogent and are mutually corroborating with each other with regard to removing the custody of the minor girl from the lawful custody and keeping her for more than 30 days far from the place of the father and also in view of the medical evidence of the Doctor and the medical certificate indicating the age of the victim, I am of the considered view that the contention raised by the learned counsel for the appellant/accused that the prosecution has not proved its case beyond reasonable doubt does not worth any consideration and the same is hereby rejected. It appears that based upon the decision of this Court reported in 1995 CrI.L.J.632 [Anandhan Vs. The State], the trial Court has altered the Section from 366 IPC to 363 IPC. Hence, the conviction passed by the trial Court under Section 363 IPC for the act of the accused cannot be interfered with and imposition of sentence to three years rigorous imprisonment cannot be termed as excessive. Therefore, I am of the view that there is no illegality or irregularity in the order passed by the trial Court. Hence, this Criminal Appeal is liable to be dismissed.

17. In the result, the Criminal Appeal is dismissed and the order passed by the learned Sessions Judge, Mahila Court, Salem, in S.C.No.16 of 2010, dated 09.02.2011 is confirmed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

JRL

To

1. The Sessions Judge,
Mahila Court,
Salem.
2. The Inspector of Police,
Ammamet Police Station,
Salem District.
3. The Judicial Magistrate-5,
Salem.
4. The Superintendent of Police,
Salem District.
5. The Public Prosecutor,
High Court, Madras.

Crl.A.No.112 of 2011

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