

Bail Slip

The Appellant/Petitioner Accused namely S. Ashok Mithran aged 21 years S/o. Subramaniam in Crl.A.No.413 of 2009 was directed to be released on bail as per order of this court dated 24.07.2009 and made in M.P. 1 of 2009 in Crl.A.No.413 of 2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2018

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Crl.A.No.413 of 2009

S.Ashok Mithran Appellant

Vs.

State rep. by
Inspector of Police,
All Women Police Station (Central)
Coimbatore,
Coimbatore District.
(Crime No.22 of 2007)

.... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., against the Judgment and Order of conviction passed in S.C.No.38 of 2008 by order dated 07.07.2009 on the file of the Court of the Sessions of the Coimbatore Division, Magalir Neethimandram, Coimbatore and prays that the same may be set aside.

For Appellant : Mr.S.N.Arun Kumar

For Respondent : Mrs.T.P.Savitha

Government Advocate (Criminal Side)

JUDGMENT

This criminal appeal is preferred by the appellant/accused against the judgment of conviction and sentence passed by the Court of the Session of the Coimbatore Division, Magalir Neethimandaram, Coimbatore in S.C.No.38 of 2008 dated 7.7.2009 wherein the learned trial Court convicted the appellant/accused and sentenced him to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for one year for the offences under section 363 of IPC, to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for one year for the offences under section 366 of IPC and to undergo rigorous imprisonment for three years for the offences

under section 506(ii) of IPC.

2. Brief case of the appellant/accused:

The prosecution case is that on 4.4.2007 at about 11.00 AM PW1 Shanthini, the defacto complainant herein was working as a trainee in the Kanagaraj Auditor's Office situated at Kattoor. At that time, the appellant/accused met the defacto complainant at the said office and compelled her to come along with him. When the defacto complainant resisted, the appellant/accused threatened with dire consequences to cause death to her and to her brother and kidnapped the minor girl in a motor cycle from the lawful guardianship of her parents with an intent to commit offence and to marry her and for that abducted the defacto complainant at Goundampalayam, Edayarpalayam Pirivu and the defacto complainant managed to escape from the appellant/accused later on. Thereby the accused appears to have committed an offence punishable under sections 363, 366 and 506 (ii) of IPC. PW1 Shanthini went to the Police Station along with PW 3 and preferred complaint about the incident happen to her on 6.4.2007.

3. PW16 Indirani, Inspector of Police attached to All Women Police Station (Central) Coimbatore recorded Ex.P1 statement and obtained the signature of PWs-1 and 3 and registered the FIR in Cr.No.22 of 2007 under Sections 366 and 506(ii) of IPC and examined PW1 Shanthini, PW3 Valarmathi, and PW4 Dinakaran and recorded their statements.

4. On 7.2.2007 PW16 went to the spot of occurrence and observed the scene in the presence of PW14 and prepared Ex.P10 observation Mahazar and obtained the signature of the witnesses.

5. PW16 drawn Ex.P12 rough sketch and examined the witnesses namely Kanagaraj, Mani, Ganesh and recorded their statements. PW16 arrested the accused near residency hotel and recorded his confession statement in the presence of PW11 Rajaram and Manikandan .

6. PW16 recovered M.O.1 knife under cover of mahazar Ex.P6 and forwarded M.O.1 and 2 to the Court under Form-95. After completion of formalities PW16 sent the appellant/accused to the Court on 8.4.2007 for remand. On 9.4.2007 PW16 examined PW5 Veeramani, PW13 Moorthy, and PW7 Satish and recorded their statements. PW16 submitted a requisition to the Court to conduct Ossification Test to PW1 to find out her age.

7.The learned Chief Judicial Magistrate by its order dated 16.4.2007 in Endorsement R.No.2097 of 2007 forwarded the requisition to the learned Judicial Magistrate No.II Coimbatore to record the 164 statement of PW1. PW6 Padmanaban received the order of Judicial Magistrate and issued summons to PW1 to appear before him on 24.4.2007 at 4.00 PM.

8.PW6 made statement touching to the occurrence, the same was recorded by PW 6 and marked as Ex.P.5.

9.PW2 Dr.Sudalaimuthu conducted Ossification Test for PW1 on 19.4.2007. As per the X-ray appearance and as per the test PW 2 formed an opinion that the age of PW1 might be in between 16 and 18 years and issued Ex-P2 certificate. X-ray taken PW1 was marked as Ex.P3 and Ossification result is marked Ex.P4. Ex.P14 school certificate was produced regarding proof of the age of PW 1.

10.On committal, the learned trial Court framed the charges against the appellant/accused under section 363, 366 and 506(ii) of IPC.

11.During the trial, the prosecution examined PWs-1 to 16, marked Exhibits-P1 to P14 and MOs-1 and 2. On the side of the appellant/accused Exs.D1 to D5 were marked.

12.After the trial, on appreciating the material available on record the trial Court convicted and sentenced the appellant/accused to undergo rigorous imprisonment for three years and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for one year under section 363 of IPC to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for one year under section 366 of IPC and to undergo rigorous imprisonment for three years under section 506(ii) of IPC. Aggrieved over the same, the appellant/accused preferred this criminal appeal.

13.The learned counsel for the appellant/accused submits that the trial Court fails to appreciate the fact that the complainant Shanthini is a consenting party to the offence because the complainant and the appellant were loved each other for quite some time and the complainant herself admitted that in her letters to the appellant's and also he admitted the various photographs taken by them were true but because of her brother's instigation she has given the false complaint. This itself shows

PW 1 was not at all kidnapped by the appellant.

14.The learned counsel for the appellant/accused submits that the trial Court fails to appreciate the fact that the complainant is aged about 17½ years and a well grow up girl went along with the appellant and later false case was given and in fact to prove the age of the victim no birth certificate was marked by the prosecution and the school Headmaster has not examined to ascertain whether she studied in the school or not. In view of the conflicting evidence and fact two views were deducible from evidence on record, the learned judge failed to give the benefit of doubt to the appellant/accused.

15.The learned counsel for the appellant/accused submits that the trial Court fails to note that the doctor given an opinion that the victim is almost 18 years and after the occurrence the victim girl was given marriage to PW 12. This itself shows the parents of the victim did not agree the love affairs between the victim and the appellant. The investigation officer also admits that he did not know the PW1 was given marriage to PW12.

16.The learned counsel for the appellant/accused submits that the trial Court fails to appreciate that the fact the accused sister and the victim girl's friend and also the victim and the appellant were gone to various tourist places and that was admitted in the Exhibit-D5. Moreover the PW 1 herself admitted that she wants to withdraw the case against the appellant/accused.

17.The learned counsel for the appellant/accused submits that the trial Court fails to appreciate the fact that PW 8 and PW 9 clearly says that the victim went along with the appellant and she has not raised any alarm or any complaint and also she has not sought for any help which itself shows the offence was not committed, moreover the witnesses says the victim went to Bathroom and did not returned and the other co-workers were not examined the prosecution.

18.The learned counsel for the appellant/accused submits that the trial Court fails to appreciate the important fact that the PW1 a fully grown up woman not jumping down from the motor cycle or putting up a struggle or raising any alarm to protect herself, it clearly shows that the complainant was a willing party and there was no taking out of the guardianship of their parents. This itself clearly falsifies that the

appellant/accused has not kidnapped the complainant in a motor cycle by making to sit as a pillion rider.

19.The learned counsel for the appellant/accused submits that the trial Court fails to see that there is no direct eye witness to the occurrence and no other independent witnesses supported the prosecution case and the other witnesses were all inimical and interested witnesses. No co workers has been examined and lot of contradiction between the PW 1 and other witnesses and PW8 Auditor Kanagaraj clearly says that PW 1 is working under him and the appellant himself introduced the PW1 to him and she joined the job. This itself clearly shows that the victim and the appellant were known each other for a long time. Mahazar witnesses were interested witnesses and all the mahazars were prepared in the police station itself and the phone bills are PW7 and PW13 have not produced and also most of the dates of the witnesses statement were written in a different ink that itself shows that all the documents were fabricated and the benefit of doubts has not been given to the appellant. Then offence of 366 and 506(ii) of IPC is not at all made out.

20.The learned Government Advocate (Criminal Side) appearing for the respondent supported the findings of the trial Court and sought for dismissal of the appeal.

21.I heard Mr.S.N.Arun Kumar, learned counsel for the appellant and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent and perused the entire materials available on record.

22.In the case on hand, the learned trial Court failed to appreciate the under mentioned infirmities affecting the root of the case:

i) It is seen from the evidences that PW1 Tmt.D.Shanthini was a consenting party to the offence since both herself and the appellant/accused were having love quite for some time, which was admitted in her evidence. Further the documents Exhibit D1 to D5 filed on the side of the appellant/accused disprove the case of the PW1. Therefore the alleged complaint of kidnapping cannot be maintained against the appellant/accused.

ii) Except the school leaving certificate, no other material described in the juvenile justice act, for determination of the age was not produced by the prosecution. Further no birth certificate was marked by the prosecution even though PW1 admitted of having the same. With regard to the school leaving certificate, competent officer such as school Headmaster was not

examined. Further the Doctor opined that PW1 is almost 18 years. Therefore in view of the conflicting evidence the learned trial Court ought to have shown the benefit of doubt to the appellant/accused.

iii) PW16, the Investigating Officer categorically deposed that she did not know that PW1 was married to PW12. But PW12 deposed in his evidence that he loved the sister of PW1 and denied that PW3 is not her sister. But PW1 deposed in her evidence that PW3 is a sister of PW12. Further the call records pertaining to the phone calls made by PW1 at the time of occurrence was not supported by any materials.

iv) The learned trial Court failed to appreciate the complaint made by PW1 in a proper perspective. The averments in the complaint that she was kidnapped by the appellant/accused in a motor-cycle by making her to sit a pillion driver without obstructing or raising any alarm to protect herself shows that PW1 was a consenting party.

v) No direct eye witnesses to the occurrence or independent witnesses were examined by the prosecution to support the case of the PW1.

vi) PW8 Auditor deposed that the appellant/accused was introduced to him by PW 1 and she joined the job and working under him. This would shows that PW 1 and the appellant/accused were in touch with long time.

vii) The very foundational allegation in the FIR cannot be believed by any person having normal behavior and I feel that something which is hidden between the appellant/accused and the PW1 not came out. The prosecution was also very much available with the truth but for the reasons best known to them, screened them.

23. Therefore in view of the aforesaid infirmities in the evidences on record, this Court liable to be set aside the judgment of conviction and sentence was passed by the trial Court.

24. In the result:

(a) this Criminal Appeal is allowed by setting aside the conviction and sentence imposed in S.C.No.38 of 2008 by an order dated 07.07.2009 on the file of the Court of the Sessions of the Coimbatore Division, Magalir Neethimandram, Coimbatore;

(b) the appellant/accused is acquitted from all the charges;

(c) the bail bond if any executed by the appellant/accused shall stands cancelled;

(d) the fine amount if any paid by the appellant/accused shall be refunded by the trial Court.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

1. The Sessions Court, Coimbatore Division,
Magalir Neethimandaram, Coimbatore.
2. The Judicial Magistrate III
Coimbatore
3. The Chief Judicial Magistrate
Coimbatore.
4. The Inspector of Police,
All Women Police Station (Central)
Coimbatore,
Coimbatore District.
5. The Superintendent
Central Prison
Coimbatore
6. The Public Prosecutor
High Court, Madras 104.

Copy to

The Section officer
Criminal Section
High Court, Madars 104.

+1 CC to Mr.S.N.Arun Kumar, advocate sr 20575.

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Cr1.A.No.413 of 2009

KAN(CO)
SP(19/03/2019)