

Bail Slip

The Appellant/accused viz 1. Govindan, 2. Kuzhanthaivel, 3. Madhaiyan, 4. Kavery, 5. Ganesan were directed to be released on bail as per the order of this court dated 18/07/2008 in CrI.MP 1/08 in CrI.A.530/08.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.07.2018

PRONOUNCED ON : 12.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.A.No.530 of 2008

1. Govindan
2. Kuzhanthaivel
3. Madhaiyan
4. Kavery
5. Ganesan

... Appellants/Accused 1 to 5

Vs

The State rep by
The Inspector of Police,
Attayampatti Police Station,
Salem District.
(Crime No.116 of 2006)

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., against the conviction under Section 366(A) r/w 511 of IPC and the consequential sentences passed by the learned Sessions Judge, Mahila Court, Salem by its Judgement and order dated 19.06.2008 made in S.C.No.327 of 2006.

For Appellant : Mr.C.Prabakaran

For Respondent : Mr.R.Ravichandran
Government Advocate

J U D G M E N T

This appeal is directed as against the judgement dated 19.06.2008 made in S.C.No.327 of 2006 on the file of the learned Session Judge, Mahila Court, Salem, thereby convicting the appellants for the offence under Section 366A r/w 511 of IPC and sentenced each of them to undergo Rigorous Imprisonment for

three years and to pay a fine of Rs.1000/- in default of payment of fine to undergo Rigorous Imprisonment for three months.

2. The case of the prosecution is that on the early morning of 20.03.2006 at about 1.00 a.m., the appellants/accused were attempted to kidnap the victim aged about 16 years (P.W.2), the daughter of P.W.1, while she was sleeping, for the purpose of marrying the second accused. While she was sleeping, on compulsion she had been taken to Maruthi van by false statement and while boarding into the Maruthi van, neighbours shouted and rescued her. On the complaint of P.W.1, the crime was registered by P.W.8, the Inspector of Police in Crime No.116 of 2006 for the offence under Section 366A r/w 511 of IPC. P.W.9, the Inspector of Police investigated the case and recorded the statement from some of the witnesses and on his transfer, he handed over the investigation to P.W.10. Thereafter, P.W.10 examined the remaining witnesses and filed charge sheet charging the appellants for the offence under Section 366A r/w 511 of IPC. The trial Court had taken cognizance of the offence under Section 366A r/w 511 of IPC, against the appellants and questioned them under Section 313 of Cr.P.C. The appellants denied the charges, pleaded not guilty and claimed trial.

3. In order to prove the guilt of the appellants, the prosecution has examined P.W.1 to P.W.10 and marked exhibits Ex.P.1 to Ex.P.6 and produced one material object M.O.1. The appellants examined D.W.1 and D.W.2 as defence witnesses. After affording opportunity of hearing to the parties, the learned trial Judge has convicted and sentenced the appellants as afore mentioned. As against which, the appellants preferred this appeal.

4. The learned counsel for the appellants would vehemently contend that it cannot be said that the victim was a minor, on the date of occurrence. Ex.P.6 the school certificate cannot be considered, since it is marked through the investigating officer P.W.10, who was not the author of the said document.

5. The learned counsel for the appellants would also submit that the charges under Section 366A r/w 511 of IPC are not made out against the appellants and the prosecution failed to prove the necessary ingredients to constitute the said offence against the appellants. Further, he would state that there was an inordinate delay in lodging the complaint, since the occurrence took place on 20.03.2006 and the complaint was lodged on 25.03.2006. The said delay in lodging the complaint has not been properly explained by the prosecution. There is contradiction between the deposition of P.W.1 and P.W.5 and there is no material to prove the charges against the appellants. The prosecution failed to examine any independent witness, since the witnesses and the appellants are close

relatives and only for the previous enmity, the charges were framed. Hence the appellants are entitled for acquittal and prayed to allow this criminal appeal.

6. On the other hand, the learned Government Advocate appearing for the State would vehemently oppose the arguments of the learned counsel for the appellants and submit that the delay in lodgement of complaint was promptly explained by the prosecution and in the case related to a woman, the delay is immaterial and it would not affect the case of the prosecution and sought for confirmation of conviction and sentence.

7. Heard the arguments advanced by Mr.C.Prabakaran, learned counsel appearing for the appellants and Mr.R.Ravichandran, learned Government Advocate appearing for the State.

8. It is seen from the records, P.W.1 who is the mother of the victim, deposed that she and her daughter were invited for the function at the house of the third appellant and the third appellant requested her to marry the victim to his son, second appellant herein. P.W.1 refused to give her daughter in marriage to the second appellant as requested by the third appellant and immediately, P.W.1 and her daughter (P.W.2) returned to their home. On the same day, the third and fourth appellants came to their house and knocked the door and had taken the victim girl P.W.2, with an intention to kidnap her to marry the second appellant. While compelling P.W.2 to board into the Maruthi van, the neighbours rescued her. After five days from the said incident, she lodged the complaint (Ex.P.1) before P.W.8.

9. P.W.2, the victim girl, daughter of P.W.1 deposed that on the date of occurrence, there was no electricity power in their home and as such she went to her uncle's house for her studies and she slept there itself. At about 1.00 a.m., on 20.03.2006, the third and fourth appellants knocked the door and asked her whereabouts of her mother. When she proceeded to show her house, she was compelled and threatened to board into the car. When she shouted, the neighbours came there and rescued her. Since while they were attended the function of the third appellant, she was asked to marry to his son, for which, they refused.

10. P.W.3, the driver of the car deposed that he was a driver of the car owned by his father. On the date of occurrence, his car was taken for lease by the appellants for which they paid only Rs.100/- and said that the balance amount of Rs.150/- will be paid later. P.W.4 is the mahazar witness. P.W.5 deposed that when she came out from her house, after hearing the noise, she had seen the victim girl along with first

and third appellants herein, while proceeding to show her mother. Thereafter, she had taken the victim girl to her house. P.W.6 is the brother of P.W.1 and uncle of the victim girl, deposed that the victim girl stayed on the date of occurrence at his house and the accused had come there and asked the victim girl in respect of whereabouts her mother. Further, he also had seen the car out side, parked by the accused. When the victim girl was compelled to board into the car, she was rescued and the accused persons had gone with their vehicle.

11. P.W.7 is the witness to the observation mahazar. P.W.8, the Sub Inspector of Police deposed about the registration of First Information Report in Crime No. 116 of 2006 for the offence under Section 366A r/w 511 of IPC against the appellants. P.W.9, the first Investigating Officer investigated the case and recorded the statements from some of the witnesses. P.W.10, the Investigating Officer completed the entire investigation and filed charge sheet for the offence under Section 366A r/w 511 IPC against the appellants.

12. When the appellants were questioned under Section 313 of Cr.P.C. as to incriminating circumstances appearing against them in the evidence of prosecution witnesses, the appellants denied each and every circumstances put against them as contrary facts and they had denied their complicity with crime.

13. On the side of the appellants D.W.1 and D.W.2 were examined as defence side witnesses. D.W.1 was being the head of the Village deposed that the victim girl and her grandfather went for function to the second appellant house and had a cup of coffee. Thereafter, he along with others went to Police Station for negotiations. When P.W.1 lodged the complaint, the third appellant refused to marry his son to the victim girl. D.W.2, the neighbour of P.W.1 reiterated the deposition of D.W.1.

14. The first contention raised by the learned counsel for the appellants is with regard to the marking of school certificate. This Court is not agreed with the said argument, since the school certificate is authored by the Head Master of the said school and issued to the concerned person. Therefore, it could not have been marked through author and more over it is a public document and as such it can be marked through the Investigating Officer. Further contention that the victim girl was not a minor on the date of occurrence cannot be accepted. The prosecution has to establish the age of victim as below 18 years, as it has been able to produce the school certificate which proved the age of the victim. The said document being a legal document and public document, it has to be given weightage. The Register maintained in a school itself is admissible in evidence to prove the age of the person concerned

in terms of Section 35 of the Evidence Act. It may be true that in the register there might be endorsement made by the school authorities, but it has evidentiary value. The said evidentiary value of the document must be corroborated by oral evidence, as the same may be recorded on the basis of original evidence. In view of the above this Court is of the concluded opinion that the victim girl was a minor on the date of the occurrence.

15. Further contention of the learned counsel for the appellant is that the complaint was lodged only after five days and the said inordinate delay was not explained by the prosecution. It is seen from the evidence that there was a Panchayath between the two families with regard to the marriage between the victim girl and the second appellant. Since both families are very close relatives, the prosecution clearly explained the reasons for the delay in lodgement of complaint. More over in this type of cases, the delay is immaterial one.

16. In the present case, the appellants were charged for the offences under Section 366A r/w 511 of IPC. Section 366A reads as follows:-

"366A. Procuration of minor girl -
Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine"

So far as the offence under Section 366A is concerned, in such offence what is required to be proved by the prosecution is that there is cogent and reliable evidence to prove and establish that the minor girl under the age of eighteen years was induced to come from one place to other with the intention that the said girl may be forced to have illicit intercourse with another person. Therefore, in such offence, the chief ingredient is that the girl is made to go from one place to other with intention or knowledge that she may be forced to illicit intercourse. Evidence on records does not reveal any such intention. While appreciating the evidence, it will be the obligatory duty and responsibility of the Court, to see that chaff is separated from the grain.

17. It is seen from the evidences and records that no offence is proved and established as against the appellants or there is even no allegation in the complaint or from the evidence that any of the appellants can no way contribute to the kidnap of the victim from her lawful guardian. This Court is

unable to believe that the appellants are guilty for the offence under Section 366A r/w 511 IPC. The prosecution has not been able to clearly prove by cogent evidence that the victim girl was kidnapped by the appellants with the intention of having sexual intercourse with them or any other person. No such reliable or cogent evidence has been laid by the prosecution to prove the charge. In view of the above conclusion arrived by this Court, it is not necessary to appreciate the evidence to see whether the conviction of the appellants can be sustained or not.

18. In the result, the conviction and sentence imposed by the learned Sessions Judge, Mahila Court, Salem in the judgement dated 19.06.2008 is set aside and the appellants/accused are acquitted of all charges. Fine amount, if any, paid shall be refunded to the appellants forthwith. Bail bonds, if any, executed shall stand cancelled.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rts

To

1.The Judicial Magistrate,
No.4, Salem.

2.The Chief Judicial Magistrate,
Salem.

3. The Sessions Judge,
The Sessions Court,
Mahila Court, Salem

4. The Inspector of Police,
Attayampatti Police Station,
Salem District.

5. The Public Prosecutor,
High Court, Madras.

6.The Superintendent,
Central Prison,
Salem.

7.The Section Officer,
High Court, Madras-104

+lcc to Mr.N.Anand, Advocate sr.no.46272

JUDGMENT IN
CRL.A.530 OF 2008

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