

BAIL SLIP

The Appellant/Sole Accused namely Ramesh S/o.Jayagopal, was directed to be released on bail as per order of this Court dated 05/11/2009 made in Crl.Mp.No. 1/2009 in Crl.A.No.663 of 2009 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.663 of 2009

Ramesh Appellant/Accused

.Vs.

State rep. by its
Inspector of Police
Magudan Chavadi Police Station, Salem
Crime No. 135/2004 Respondent/Complainant

Prayer: The Criminal appeal filed under Section 374 (2) of Cr.P.C to call for entire records in respect of Judgment in S.C.No.80/2008 on the file of Session Judge, Magila Court, Salem dated 08.10.2009 and set aside the Judgment and acquit the appellant.

For Appellant : Mr.D. RajaGopal
For Respondent : Mr. R.Ravichandran
Government Advocate

JUDGMENT

This Criminal appeal has been filed by the Accused against the conviction and sentence made in S.C.No.80/2008 on the file of Session Judge, Magila Court, Salem dated 08.10.2009.

2. The brief facts of the prosecution case are as follows:

The victim in this case is a minor girl named Santhi aged about 17 years and she got married with one Kumar five months prior to 27.03.2004 and their marriage ran into rough weather, due to the suspicious character of the said Kumar. The accused

is having good relationship with the said Santhi and her family. Whenever, there was a dispute in between the couples the accused used to pacify Santhi. Likewise, a situation took place on 15.03.2004 and the said Kumar picked up quarrel with his wife Santhi. Making use of that situation the accused induced Santhi by saying that if she comes with him he will look after her very well and she believed her words. On 17.03.2004 at about 06.00 A.M, the victim girl was abducted by the accused with an intention to have intercourse with her and he took her to Palani and Madurai and without her consent and the accused committed rape, in respect of which PW1 father of victim lodged a complaint and the said complaint is marked as Ex.P1.

3. PW.7 Rajamanickam, Sub Inspector of Police registered the FIR and the case was registered in Crime No. 135 of 2004 U/s 366 of I.P.C which is marked as Ex.P.6.

4. Thereafter, PW.9/Kasinathan Inspector of Police took up the case for further investigation and went to the scene of occurrence, prepared sketch and recovered material objects. After examination the case was altered to Section 366 IPC and 376 IPC. The altered report is marked as Ex.P.13.

5. Based on the above materials, the trial Court framed the charges and the accused denied the same in order to prove the charges, on the side of the prosecution 11 witnesses have been examined and Exhibits Ex.P1 to Ex.P13 were marked and MO.1 to 3 were identified. When the Trial Court examined the accused in respect of the alleged crime there is no substantial evidence available to prove the innocence in the part of the appellant.

6. The trial Court after considering the oral and documentary evidences has found the accused guilty and the learned Sessions Judge acquitted the accused for the offence U/s 376 of I.P.C and convicted the accused for the offence under Section 366 (A) of I.P.C and sentenced him to undergo 3 years rigorous imprisonment and Rs.2,000/- as fine. Aggrieved by the said conviction and sentence the appellant had come up with this appeal.

7. The learned counsel appearing for the appellant would contend that there is no materials whatsoever available on record to prove the offence U/s 366(A) of I.P.C against the accused. Though initially the trial Court framed charges U/s 366 (A) and 376 of I.P.C thereafter, the accused was acquitted U/s 376 of I.P.C and convicted under Section 366(A) of I.P.C which is not a sustainable one. The learned counsel further contend that basic ingredients required to implicate the accused U/s 366 (A) of I.P.C have not been established before the Trial Court and Section 366 (A) has no application in the present case.

Accordingly, he prays for acquittal and to support his contention he produced the Judgment reported by the Hon'ble Supreme Court in (2007) MLJ (crl) 1414 SC (Iqbal Vs. State of Kerala), and submits that the said decision squarely applies to the facts of the present case. Para Nos. 8, 9 and 10 of the said Judgment are extracted hereunder:

8. Clause "sixthly" clearly stipulates that sexual intercourse with a woman with her or without her consent when she is under 16 years of age, amounts to rape. The evidence on record clearly establishes that the victim was less than 16 years of age and, therefore, the conviction for offences punishable U/S 376 IPC Cannot be faulted.

9. The residual question is of applicability of Section 366-A IPC. In order to attract Section 366-A IPC, essential ingredients are (1) that the accused induced a girl; (2) that the person induced was a girl under the age of eighteen years' (3) that the accused has induced her with intent that she may be or knowing that it is likely that she will be forced or seduced to illicit intercourse: (4) such intercourse must be with a person other than the accused: (5) that the inducement caused the girl to go from any place or to do any act.

10. In the instant case, the admitted case of the prosecution is that the girl had left in the company of the accused of her own will and that she was not forced to sexual intercourse with any person other than the accused. The admitted case is that she had sexual intercourse with the accused for which, considering her age, conviction under Section 376 IPC has been maintained. Since the essential ingredient that the intercourse with any person other than the accused has not been established. Section 366-A has no application.

8. Per contra, the learned Government Advocate (Criminal side) would submit that PW1/ father of the victim girl clearly deposed that without her consent she was kidnapped by the accused to Palani as well as Madurai and the accused committed rape. Though, the Trial Court acquitted the accused U/s 376 of I.P.C it convicted the accused under 366(A) of I.P.C, for taking her to some other places like Palani and Madurai and therefore, it would attract the provisions of 366(A). Hence, the Judgment of the Trial Court requires no interference.

9. Heard the learned counsel for the appellant as well as the submissions made by the Government Advocate. Perused the materials carefully.

10. In the light of the above submissions, the prosecution has to prove the guilt of the accused beyond all reasonable doubt and also make clear that whether the prayer for acquittal U/s 366(A) is a sustainable one or not. Before advertng to the issue, the relevant provisions of the Section 366(A) is extracted hereunder:

366(A) of IPC (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.

11. On a close persual of the above Section, it is amply clear that to attract Section 366(A) of I.P.C the accused should have induced the girl to have sexual intercourse with some other person other than the accused. But, the victim girl in her evidence stated that she was not forced to have intercourse with any other person other than the accused. Hence, the essential ingredient of Section 366(A) of I.P.C is not applicable to this case. Hence, the Judgment of the Trial Court in convicting the appellant for the offence U/s 366(A) of I.P.C to undergo 3 years rigorous imprisonment and to pay fine of Rs.2,000/- (two thousand only) is hereby set aside.

12. Though an ingredient is available to convict the accused U/s 497 of I.P.C, the said Section is struck down as unconstitutional, vide Judgment rendered by the Hon'ble Apex Court in Writ petition (Criminal) No.194 of 2017, dated 27.09.2018 in Joseph Shine Vs. Union of India, wherein Para No. 55 and 18(i) of the said Judgment it has been held as under:

"55. In this regard, another aspect deserves to be noted. The jurisprudence in England, which to a large extent, is adopted by this country has never regarded adultery as a crime except for a period of ten years in the reign of Puritanical Oliver Cromwell. As we see the international perspective, most of the countries have abolished adultery as a crime. We have already ascribed when such an act is treated as a crime and how it faces the frown of Article 14 and 21 of the Constitution.

Thinking of adultery from the point of view of criminality would be a retrograde step. This Court has travelled on the path of transformative constitutionalism and, therefore, it is absolutely inappropriate to sit in a time machine to a different era where the machine moves on the path of regression. Hence, to treat adultery as a crime should be unwarranted in law.

18. In view of the aforesaid discussion, and the anomalies in Section 497, as enumerated in para 11 above, it is declared that:

(i) Section 497 is struck down as unconstitutional being violative of Articles 14, 15 and 21 of the Constitution."

13. In the light of the above submissions, it is now clear that the prosecution has not proved the guilt of the accused beyond all reasonable doubt.

14. In the result, the Criminal Appeal is allowed and the conviction and sentence passed by the Court below is set aside and the appellant is acquitted of all the charges. The bail bond executed by the appellant is discharged.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To.

- 1.The Judicial Magistrate II,
Sankari.
- 2.Do Thro the Chief Judicial Magistrate,
Salem.
- 3.The Sessions Judge, Magila Court, Salem.
- 4.The Inspecor of Police,
Maagudanchavadi Police Station,
Salem (Crime No. 135/2004)

5.The Public Prosecutor,
High Court, Madras.

6.The Section Officer,
Criminal Section,
High Court, Madras.

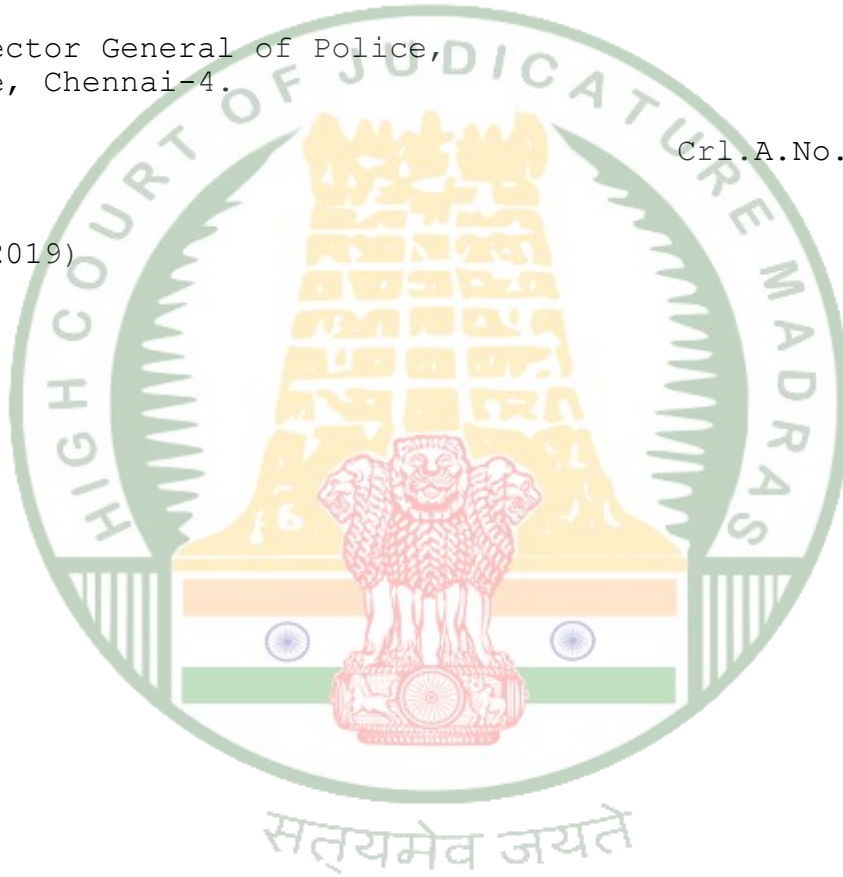
7.The District Collector,
Salem.

8.The Commissioner of Police,
Salem City.

9.The Director General of Police,
Mylapore, Chennai-4.

Cr1.A.No.663 of 2009

SKV (CO)
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