

Bail Slip

The Appellant/Accused, namely Vimal Raj S/o. Yusuraj aged 22 years/in SC NO.126 of 2007 on the file of the Sessions Judge / Mahila Court dated 10.12.2009 was directed to be released on bail as per order of this Court dated 05.02.2010 made in MP.NO.1/09 IN CRL A.NO.818/2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2019

[Special Sitting]

CORAM:

THE HONOURABLE MR.JUSTICE B. PUGALENDHI

Crl.A.No.818 of 2009

Vimal Raj

... Appellant

Vs.

The State of Tamilnadu
Rep. by Inspector of Police,
Thammampatti Police Station,
Salem District.
(Crime No.167 of 2006)

...Respondent

PRAYER: The Criminal Appeal has been filed under Section 374 (2) of Cr.P.C. against the judgment of conviction imposed by the Sessions Judge, Mahila Court, Salem, in S.C.No.126 of 2007 dated 10.12.2009 sentencing the appellant/accused to undergo five years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo 3 months rigorous imprisonment for the offences under Section 366(A) of I.P.C.

For appellant : Mr.C.K.M.Appaji

For Respondent : Mr.T.Shanmuga Rajeswaran
Government Advocate (Crl.Side)

J U D G M E N T

The present appeal has been filed by the sole accused in Crime No.167 of 2006 on the file of the Inspector of Police, Thammampatti Police Station, Salem District.

2. The appellant was charged for the offence punishable under Section 366 (A) I.P.C, before the Sessions Judge, Mahila Court, Salem, and the trial Court, by its order dated 10.12.2009 in S.C.No.126 of 2007, found the appellant

guilty for the offence punishable under Section 366(A) I.P.C, convicted and sentenced the appellant to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- in default of fine amount, three months rigorous imprisonment was also ordered.

3. The case of the prosecution is that the appellant kidnapped the victim girl viz., Priyanka, who was also examined as P.W.6 in this case, to Sennimalai Koil, Nariyappanoor and Chennai, from the lawful custody of her parents with an intent to have illicit intercourse with the victim girl.

4. On behalf of the prosecution, 10 witnesses were examined and 11 exhibits were marked. The evidence available from the prosecution witnesses are as follows:

i) P.W.1, who is the defacto complainant, mother of the victim girl Priyanka, was examined for missing of girl and for lodging of the FIR.

ii) P.W.2 is the Doctor, who examined the accused for his potency and he had given a certificate, Ex.P3 that the accused is potent.

iii) P.W.3 is the husband of P.W.1 and the father of P.W.6. He has stated that his daughter was studying 9th standard and the accused is his brother's son and his daughter was missing from 17.07.2006, for which, they have lodged the complaint.

iv) P.W.4 is another relative of P.W.3 and he has stated about the arrest of the accused and the recovery of Priyanka near Sri Lankan Refugee Camp. He also speaks about the confession statement given by the accused.

v) P.W.5 is the native of the village and he would state that he had witnessed the accused and P.W.6 were talking together during the relevant time and he reported to P.W.3 and insisted him to put her in hostel.

vi) P.W.6 is the victim girl and according to her, the accused is her relative and she used to visit the accused house to hear songs from tape recorder. She also used to talk with the accused on the way to the school and on the particular day, when she was talking with the accused, P.W.5 had witnessed the same and apprehending that her parents would beat her, she insisted the accused to go to somewhere else and the accused has taken her to Sennimalai Temple and thereafter, they went to Chennai and they stayed in their relative's house.

vii) P.W.7 is the witness for observation mahazar.

viii) P.W.8 is the Sub-Inspector of Police, who registered the complaint of P.W.1 on 28.07.2006. The complaint was marked as Ex.P5.

ix) P.W.9 is the Doctor, who examined the victim girl/PW6 and according to the Doctor, there are no external injuries and there is no presence of any sore. According to the Doctor, she would have been used to sexual intercourse earlier.

x) P.W.10 is the Investigation Officer, who altered the offences from Sections 363 to 366 I.P.C.

5. Considering the evidences adduced on behalf of the prosecution, the trial Court found the appellant guilty for the offence punishable under Section 366(A) I.P.C, convicted and sentenced him to undergo five years rigorous imprisonment with a fine of Rs.1,000/-. As against the order of conviction, this appeal is preferred.

6. Heard the learned counsel for the appellant and the learned counsel for the respondent.

7. The learned counsel for the appellant would contend that there is no evidence available to show that the accused had subjected the victim girl for any intercourse by himself or by any other persons. The learned counsel for the appellant would contend that in order to sustain a conviction under Section 366 I.P.C., the following ingredients are necessary:-

- (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.

8. The learned counsel would contend that admittedly, there is no evidence available to show that the victim girl was forced or seduced to illicit intercourse or such intercourse with any other person other than the accused also. The victim girl was examined as P.W.6 and according to her, the accused is her relative and she used to visit his house for hearing songs from the tape recorder and she also used to talk with him in the open place, which was objected by her parents and on the date of occurrence, she was talking with the accused and the same was also witnessed by P.W.5. Apprehending that PW5 would inform the same to her parents, who would assault her, she insisted the accused to go to somewhere else and accordingly, they went away for some time. Even P.W.1 and P.W.3 have not stated that her daughter was subjected to any sexual intercourse or subjected to intercourse by some other persons. Though the victim girl is of 12 days short of 17 years, she, on her own volition, went along with the accused and in fact, from the available evidences, she only insisted the accused to go away from the house. Therefore, the learned counsel for the appellant/accused prays for allowing the appeal.

9. Per contra, the learned Government Advocate (Crl.Side) would vehemently oppose that the victim girl is a

minor girl and she was kidnapped by the accused and she was recovered along with the accused and P.W.9, in her evidence, has stated that this victim girl was accustom to sexual intercourse. Therefore, the learned Government Advocate (Crl. Side) prays for dismissal of this appeal.

10. This Court has paid it's anxious consideration to the rival submissions and also perused the records carefully.

11. Admittedly, there is no material on record to show that the accused has ever subjected the victim girl for any sexual intercourse. As rightly pointed out by the learned Counsel for the appellant, in order to sustain a conviction under Section 366(A) IPC, it is necessary to satisfy the aforementioned ingredients, which are lacking in the case on hand. In the absence of any materials that the victim girl was subjected to sexual intercourse either by the accused or by some other person, this Court is of the view that the conviction and sentence imposed on the accused under Section 366-A IPC cannot be sustained.

12. Moreover, from the evidence of PW5, it could be seen that PW5 had reported PW3 about the conduct of the accused and PW6 in talking together in open place and the same was objected by PW3 on the previous occasions. On the date of occurrence also, the victim girl / PW6 and the accused were talking together and the same was witnessed by PW5. Apprehending that PW5 would inform the same to her parents, who, in turn, would beat her, PW6 alone insisted the accused to take her away. In addition to the same, though the occurrence was taken place on 17.07.2006, the complaint was lodged only on 28.07.2006.

13. In view of the foregoing discussions, this Court is of the view that it is not safe to convict the appellant/accused under Section 366(A) IPC and accordingly, the impugned judgment dated 10.12.2009 passed by the learned Sessions Judge, Mahila Court, Salem, in S.C.No.126 of 2007 is set aside. Consequently, the conviction and sentence imposed as against the appellant/accused are set aside and this appeal is accordingly allowed. The appellant / accused is acquitted in respect of the present case. Since this Court has already suspended the substantive sentence of imprisonment and granted bail to the appellant/accused, the bail bonds, if any, executed by him shall stand cancelled.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

To

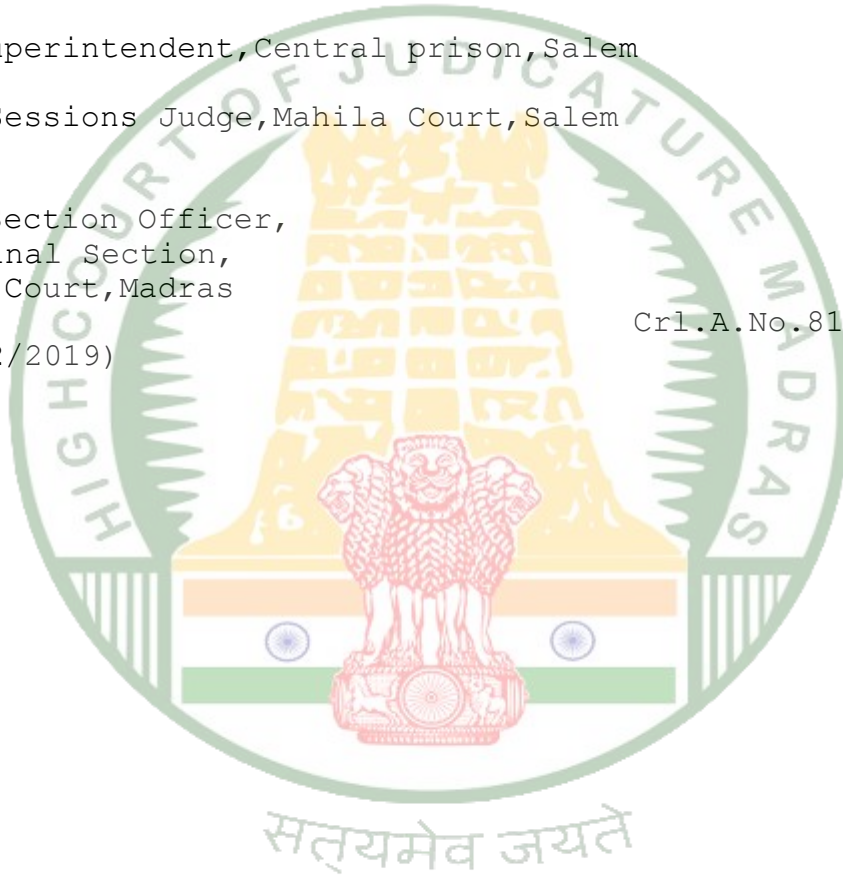
1. The Inspector of Police,
Thammampatti Police Station,
Salem District.
2. The Public Prosecutor,
High Court, Madras.
3. The Judicial Magistrate, No. II, Attur.
4. Do thro the Chief Judicial Magistrate, Salem
5. The Superintendent, Central prison, Salem
6. The Sessions Judge, Mahila Court, Salem

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras

CrI.A.No.818 of 2009

A.SK(11/12/2019)



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