

BAIL SLIP

The Appellant/Petitioner Accused namely Shanmugham, S/o.Chellappan was directed to be released on bail as per the order of this court dated 02.08.2011 made in MP.No.1 of 2011 in CrI.A.No.468 of 2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2019

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.468 of 2011

Shanmugham

... Appellant/Accused

-Vs-

State represented by
The Inspector of Police,
Walajabad Police Station,
Kancheepuram District.
(Crime No.194/1999)

... Respondent/Complainant

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, praying to set aside the judgment dated 19.07.2011 passed in S.C.No.334 of 2008 on the file of the learned Sessions Judge, Mahila Court, Chengalpattu.

For Appellant : Mr.T.R.Ravi

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

J U D G M E N T

This appeal has been filed against the judgment dated 19.07.2011 passed in S.C.No.334 of 2008 on the file of the Mahila Court, Chengalpattu, convicted the appellant/accused for the offence under Section 306 IPC and sentenced him to undergo 5 years Rigorous Imprisonment and fine of Rs.2,000/-, in default, to undergo 6 months Rigorous Imprisonment.

2. The respondent police registered a case in Crime No.194/1999 against the appellant herein for the offences under Sections 306 r/w 309 and 506(ii) IPC. After completing investigation, the respondent police filed a final report in

PRC.No.10 of 2008 against the accused before the learned Judicial Magistrate No.1, Kancheepuram. The learned Magistrate, after taking the charge sheet on file, found that the offence was triable by the Sessions Court and committed to the learned Principal Sessions Judge, Kancheepuram at Chengalpattu. The learned Sessions Judge after taking the case on file in S.C.No.334 of 2008, found that the offence was against women and transferred the case to the Mahila Court, Chengalpattu. The learned Sessions Judge, after completing the formalities, framed charges against the appellant for the offences under Sections 366A and 306 IPC.

3. In order to prove the case of the prosecution, on the side of the prosecution as many as 8 witnesses were examined and marked 11 documents and 2 Material Objects. After completing evidence, incriminating circumstances culled out from the prosecution witnesses was put before the accused, he denied as false. On the side of the defence, no oral and documentary evidence was produced. The learned Sessions Judge, after hearing the arguments and considering the entire facts, found that the appellant was not guilty for the offence under Section 366A IPC, however, found guilty for the offence under Section 306 IPC and sentenced him as stated above by judgment dated 19.07.2011. There against, the present appeal has been preferred by the convict before this Court.

4. The learned counsel appearing for the appellant would submit that the prosecution has not proved its case beyond reasonable doubts. There is no eye-witness in this case. The conviction recorded only based on the dying declaration, which is not acceptable and the same is suspicious. The evidence of PW-3/Doctor shows that the victim sustained 90% of burn injuries. When the victim sustained 90% of burn injuries, it is not possible to make such a statement. Further, the doctor has not certified that at the time of recording dying declaration, the victim was in mere conscious. The dying declaration was recorded before the learned Magistrate/PW-5 in the presence of PW-3/Doctor and after one hour of recording Dying Declaration, PW-6/Inspector of Police recorded the statement of the victim without the presence of PW-3/Doctor, which creates suspicious. Though the Dying Declaration was recorded in the presence of PW-3/Doctor, he has not certified that the victim was in sound state of mind at the time of giving Dying Declaration. The conviction recorded by the learned trial Judge is only based on the Dying Declaration, which is not sustainable. PWs-1 and 2/Parents of the victim have stated that one year before the occurrence, the appellant/accused kidnapped their daughter/victim and threatened that if they don't give their daughter to marry him, he would not inform the whereabouts of the victim. PWs-1 and 2/Parents of the victim went to the place and brought

the victim girl and subsequently, they had sent her to her grand mother's house since she was not feeling well. The appellant's house is nearby the victim girl's house and they developed the love and also in that way, the appellant/accused kidnapped the victim girl one year back and after release of the victim, the appellant/accused telephoned her and threatened to marry him, if she has not done so, he would kill her father. Since the victim got two elder sisters and she was also minor at that time, she was not able to take any decision against the will of her parents. The appellant/accused given torture to the victim and also threatened her to marry him. The victim girl was under threat and depression, she poured kerosene on her and set fire herself. PW-5, after seeing the light from the house of the victim, came to the spot and pour water on the fire and thereafter, the victim was taken to the Government Hospital, Kancheepuram. On 12.06.1999, when the victim was admitted in the hospital, the Doctor, one who attended the victim, referred to record Dying Declaration. Based on the instruction, PW-5/the learned Magistrate recorded the Dying Declaration from the victim at about 9.15.p.m in the presence of PW-3/Doctor and thereafter, PW-6/Inspector of Police recorded the statement. Based on the statement of the victim girl, the respondent police registered a case in Crime No.194/1999. The victim has not stated anything about the kidnapping by the appellant/accused one year prior to the date of occurrence. The learned Sessions Judge disbelieved the evidence of PWs-1 and 2. Since there is no material to prove that the accused kidnapped the victim girl, the learned trial Judge rightly acquitted the appellant/accused for the offence under Section 366A IPC, whereas, failed to consider that except the Dying Declaration, no other independent witness corroborated the evidence of the victim girl that the appellant threatened to marry him. Since the doctor has stated that the victim girl sustained 90% burn injuries, the evidence of the victim girl is also suspicious. The learned counsel placed reliance on the Division Bench judgment of this Court dated 07.01.2019 in the case of Suresh Vs. State reported in 2019 (2) MWN (Cr.) 212 (DB) in support of his contentions.

5. The learned Government Advocate (Crl.Side) appearing for the respondent would submit that PWs-1 and 2 are the parents of the victim girl and at that time of occurrence, the victim girl was aged 17 years only. The appellant/accused kidnapped the victim girl one year prior to the date of occurrence and threatened the victim to marry him. On the date of occurrence, the appellant/accused telephoned the victim girl and threatened to marry him, otherwise he would kill her father, due to which, the victim girl frustrated to take the extreme step of committing suicide by pouring kerosene and set fire on herself. The occurrence took place on 12.06.1999 at 6.00 p.m and the victim girl was brought to the Government Hospital, Kancheepuram

immediately. After receiving the intimation from the hospital, PW-5/Judicial Magistrate went to the hospital and recorded the statement in the presence of the Doctor. PW-6 also recorded the statement from the victim girl. The evidence of PWs-1, 2, 5 & 6, Ex.P2/Dying Declaration given by the deceased, Ex.P3/statement recorded by PW-6 show that the appellant/accused committed the offence. Therefore, the judgment of the Trial Court warrants no interference.

6. Heard the learned counsel appearing for the appellant, the learned Government Advocate (Crl.Side) appearing for the respondent and perused the entire materials available on record.

7. The case of the prosecution is that on 12.06.1999 at about 6.00 p.m the appellant/accused telephoned the victim girl and threatened to marry him, if she has not done so, he would kill her father. Due to which, the victim girl frustrated to take the extreme step of committing suicide by pouring kerosene and set fire on herself. PWs-1 and 2 have deposed that the appellant/accused eloped with their daughter one year prior to the date of occurrence. Thereafter, they brought her to home and sent her grandmother's house. Even at the time of occurrence also the appellant/accused threatened the victim. PW-3/Doctor, who has conducted post mortem, spoken about the injuries sustained by the victim and also the cause of death. PW-4 is the independent witness, who is villager and neighbour to the victim and on the date of occurrence, he saw the light from the house of PW-1 and thereafter, he went there and saw that the victim committed suicide and he took her to the hospital. PW-5/Judicial Magistrate-II, Kancheepuram recorded Dying Declaration of the victim. PW-6/Inspector of Police recorded the statement from the victim. PW-7 is the Investigation Officer.

8. On reading of the evidence of PWs-1 & 2, it is seen that they have three daughters and the victim was their third daughter. The victim used to go to the Computer class, nearby the cattle shed, the appellant is having residence and he developed love affair with the victim. One year prior to the date of occurrence, the appellant eloped with the victim girl and after hearing the news, PWs-1 & 2 went to secure the victim. The mother of the victim/PW-2, who has clearly stated that on the date of occurrence at about 6.00 p.m, the victim was talking with telephone and at that time, she asked the victim to whom she was talking, for which, she replied that the appellant threatened her. Immediately, after a short period, she poured kerosene and set fire on herself. PW-4 is the neighbour/who has also spoken about the occurrence. PW-3/Doctor, who has spoken about the injuries sustained by the victim. On conjoint reading of PWs-3, 4, 5, 6 and Exs.P1 to 3, it is seen that the

prosecution has proved its case that the victim has set fire on her and sustained 90% of burn injuries, due to which, the victim died. The Dying Declaration of the victim girl itself shows that the victim had committed suicide. At the same time, the Court has to see whether she has voluntarily committed suicide or anybody instigated her to commit suicide. On reading of the evidence of PWs-5 and 6, it is seen that the Dying Declaration was recorded in the presence of the duty doctors, which shows that the appellant insisted her to marry him or otherwise he would commit suicide or otherwise, he would kill her father. Since she was a minor and also she had two elder sisters, she had mentally depressed and committed suicide. From the evidence of PWs-4 and 5 and Exs.P1 to 3, the trial Court came to the conclusion that the appellant committed the offence punishable under Section 306 IPC. The learned counsel for the appellant vehemently contended that there is no evidence to prove that the appellant insisted the victim girl to marry him. The Dying Declaration itself suspicious since the victim got 90% of the burn injuries, she could not have given the dying declaration. Even otherwise, the doctor, who was present at the time of recording the dying declaration, was also certified that the victim was in sound state of mind. On reading of the evidence of PW-5/Doctor and Ex.P2/Dying Declaration reveals that the victim was conscious. Though the learned counsel for the appellant submitted that mere conscious is not enough to give Dying Declaration, the Dying Declaration was recorded only after obtaining opinion from the doctor. The evidence of PWs-1, 2 and 6 and also Ex.P3 strengthened the case of the prosecution.

9. The citation referred to by the learned counsel for the appellant is not applicable to the present case on hand. The facts mentioned in that case is different and the case on hand is entirely different. Each case has its own merit. There is no quarrel with the proposition laid down in the said decision at the same time the facts of the cases are not applicable to the present case on hand. In this case, while the victim girl sustained 90% injuries, she herself has given dying declaration before the Judicial Magistrate/PW-5 and also given the statement before PW-6 and there is no discrepancies. The only reason stated by the victim is that the appellant insisted to marry him.

10. In the circumstances, this Court is of the view that there is no reason to discard the evidence of PWs-1, 2, 5 and 6 and the prosecution has proved its case beyond reasonable doubts. There is no reason to interfere with the judgment of the Court below. However, considering the facts and circumstances of the case, this Court reduces the sentence to 3 years instead of 5 years.

11. Accordingly, this Criminal Appeal is allowed in part. The sentence imposed on the appellant/accused is reduced to 3 years. The other conditions imposed by the trial Court remains unaltered.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

KMI

To

1. The Sessions Judge,
Mahila Court, Chengalpattu.
 2. The Judicial Magistrate No.1, Kancheepuram.
 3. The Judicial Magistrate No.2, Kancheepuram.
 4. The Chief Judicial Magistrate, Chengalpattu.
 5. The Superintendent,
Central Prison, Puzhal, Chennai.
 6. The District Collector, Chengalpattu.
 7. The Director General of Police,
Mylapore, Chennai.
 8. The Inspector of Police,
Walajabad Police Station, Kancheepuram District.
 9. The Public Prosecutor,
High Court, Madras -104.
 10. The Section Officer,
Criminal Section, High Court, Madras-104.
- +1cc to Mr.T.R.Ravi, Advocate, S.R.No.57897

Criminal Appeal No.468 of 2011

GMR(CO)
CS/18/12/2019