

BAIL SLIP

The Petitioner/Accused namely Rajeswaran, S/o. Sadhasivam, aged 22 years was directed to be released on bail as per order of this Court dated 23.12.2011 in Crl M.P.No.1 of 2011 in Crl.A.No.841 of 2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.841 of 2011

Rajeswaran

...Appellant/Accused

Vs.

State represented by
The Inspector of Police,
Veppur Police Station,
Cuddalore District.

... Respondent

The Criminal Appeal has been filed under Section 374(2) of Cr.P.C, against the conviction and sentence passed by the learned Sessions Judge, Mahila Court, Cuddalore, Cuddalore District, made in S.C.No.249 of 2010, dated 09.12.2011.

For Appellant : Mr.S.Senthilnathan

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

JUDGMENT

This criminal appeal has been filed against the judgment of conviction dated 09.12.2011 made in S.C.No.249 of 2010 by the learned Sessions Judge, Mahila Court, Cuddalore, Cuddalore District.

2 The respondent police registered a case against the appellant in Crime No.338 of 2009 for the offence punishable under Section 366(A) and 376 of IPC and after investigation laid a charge sheet before the learned Judicial Magistrate I, Virudhachalam. The learned Magistrate has taken the charge sheet on file in P.R.C.No.8 of 2010 and since the offence charged against the appellant/accused is triable only by the Court of Sessions, the case was committed to the learned Principal Sessions Judge, Cuddalore, which was taken on file in S.C.No.249

fo 2010 and the same was made over to the Mahila Court, Cuddalore, for disposal. The learned Judge, after completing legal formalities, framed charges against the appellant for the offence under Sections 366(A) and 376 of IPC.

3 Before the trial Court, in order prove the case of the prosecution, P.Ws.1 to 9 were examined and Exs.P1 to 10 were marked besides two material objects. After completing prosecution witnesses, when incriminating circumstances culled out from the prosecution witnesses and put before the appellant/accused, he denied as false. On the side of the defence, no one was examined and no document was marked.

4 The learned trial Judge, after trial, found the accused guilty for the offence punishable under Sections 366(A) and 376 of IPC and by judgment dated 09.12.2011 convicted and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a further period of one month for the offence under Section 366(A) and to undergo rigorous imprisonment for a period of two years with fine of Rs.1,000/- in default, to undergo simple imprisonment for a further period of one month for the offence under Section 376 of IPC. Aggrieved by the judgment of conviction, the appellant is before this Court with the present criminal appeal.

5 Learned counsel appearing for the appellant would submit that P.W.1 is father of the victim, P.W.2 is victim girl, P.W.3 and 4 are friends and relative of P.W.1. Prosecution has stated that the appellant/accused has taken the victim/P.W.2 from Chennai to Vridhachalam and stayed at Vridhachalam at one night in the house of appellant's relative, but, prosecution has not examined any person in the house, who have permitted them to stay there. P.W.2, the victim girl did not say anything about the presence of P.W.3, who said to have informed father of the victim about the presence of the victim with the accused in the bus and hence his presence in the bus, is doubtful. Further, the Doctor/P.W.6, who examined the victim, has stated that there is no possibility of forcible intercourse. Since parents of the victim girl had made arrangements for her marriage, which she did not like, the victim eloped with the accused voluntarily and accepted the acts of the accused in having sexual intercourse and therefore offence under Section 366(A) would not attract. There is no evidence to prove the fact that the victim was forcibly taken by the accused and had sexual intercourse with her forcibly. As far as the offence under Section 376 is concerned, evidence of the Doctor/P.W.6 would go to show that there is no evidence for forcible physical relationship and hence there is no ingredients to attract this section also. Evidence of P.W.3 cannot be relied on, since he is relative of

P.W.1 father of the victim. The trial Court has failed to consider the above facts and erroneously convicted the appellant/accused, which warrants interference.

6 Learned Government Advocate (Crl.Side) appearing for the respondent police would submit that the accused expressed his love affair to P.W.2, who is the victim girl and was 16 years old and studying Chepauk Government School, at the time of occurrence. The victim informed the same to her parents and they also brought the fact to the knowledge of parents of the accused and they assured that it will not happen again. Thereafter, at holidays for Diwali, when the victim went to her house, the accused again made the same attempt and the victim returned to Chennai. On the day of occurrence, at about 7.30 a.m. when the victim was waiting in the Bus Stand, to attend the School, the accused came and did not allow her to attend School and threatened her and taken in the Bus and reached Vridhachalam. There itself the accused had sexual intercourse with the victim against her will and on the next day he taken her to Chennai and stayed in the relative's house for six days and in those six days he had physical relationship with the victim forcibly. The victim/P.W.2 has clearly stated about the occurrence and the Doctor/P.W.6 has opined that there is possibility of having sexual intercourse and hymen not intact. Therefore, prosecution has proved its case beyond reasonable doubt and the trial Court has rightly convicted the appellant, which does not call for any interference.

7 Heard the learned counsel appearing on either side and perused the materials available on record.

8 Case of the prosecution is that the victim girl and accused are resident of Muthukrishnapuram Village and the victim has not completed 18 years at the time of crime committed on her. She was studying in the Government Higher Secondary School, Chepauk, staying in the Hostel attached to the School. When the victim/P.W.2 had gone to her house for celebration of Diwali, the appellant/accused approached her and expressed his love affair on her and the victim informed the same to her parents and they also warned through parents of the appellant/accused. Thereafter, On 20.10.2009, the victim went back to Chennai and was waiting in the Bus Stop at around 7.30 a.m. to attend the School, the appellant/accused came and threatened her that he would expose his love affair with her to the School authorities and under the threat he abducted her in the Bus and both went to Vridhachalam and stayed in house of the appellant's relative and on that day, the appellant/accused had sexual intercourse with the victim forcibly against her will. Thereafter, on the next day, they both went to Chennai and stayed in the house familiar to the appellant/accused for six days and there also the

appellant/accused forcibly had sexual intercourse with the victim girl/P.W.1. Therefore, case was registered against the appellant for the offence under Section 366(A) and 376 of IPC, which was ended in conviction and against which this appeal has been filed by the convict.

9 P.W.1 is father of the victim, and he is the defacto complainant and P.W.2 is victim girl. P.W.3 is the person, who informed P.W.1 about the offence committed by the appellant. P.W.6, is the Doctor, who examined the victim girl. P.W.7, is the Radiologist, who has certified that the victim is aged about 17 years at the time of examination. The victim/P.W.2 has clearly narrated the chain of incident. From the evidence of P.W.1, P.W.2 and P.W.6, it is clear that the appellant committed offence under Section 366(A) of IPC. Even assuming that the victim gave consent, procuring a minor girl, who has not completed 18 years with an intend to have illicit intercourse, is an offence under 366(A) and the act of the appellant is well within the meaning of 366(A) of IPC. Further, cases like this, the Court cannot expect corroboration and eye witnesses, rather evidence of victim girl itself would suffice to come to the conclusion that the accused has committed offence under Section 376 of IPC. In the case on hand, the victim/P.W.2 has clearly spoken about the offence committed by the appellant/accused on her. Even though, the learned counsel for the appellant has pointed out some defects in the case of the prosecution, mere defect in investigation, is not a sole ground to acquit the accused and certainly it would not take away the offence committed by the accused, unless it has been disproved by the accused. The Doctor, P.W.6, who examined the victim girl has opined that there was possibility of sexual intercourse and the hymen not intact. On reading of the evidence of P.Ws.1, 2, 6 and 7, this Court is of the view that prosecution has proved its case beyond reasonable doubt and the appellant committed offence and the trial Court has rightly convicted him and imposed sentence. This Court does not find any reason to interfere with the judgment of conviction and there is no reason to modify the sentence also, since two years of imprisonment only imposed, which itself is very less.

10 In the result, the criminal appeal stands dismissed as devoid of merit and substance. Trial court is directed to secure the custody of the appellant/accused to undergo remaining period of sentence, if any.

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Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Sessions Judge,
Mahila Court, Cuddalore,
Cuddalore District.
2. The Additional Public Prosecutor,
High Court of Madras.
3. The Inspector of Police,
Veppur Police Station,
Cuddalore District.
4. The Judicial Magistrate No.I,
Virdhachalam, Cuddalore Dist.
5. The Chief Judicial Magistrate
Cuddalore (For Information)

Crl.A.No.841 of 2011

Kak(14/10/2019)

Kak(12/11/2019)



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