

Bail Slip

The Appellant/Petitioner/Accused namely Siva @ Sivananthan S/O Perumal was directed to be released on bail as per the order of this court dt:05/03/2013 in Crl.MP.2/2012 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.09.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.A.No.751 of 2012

Siva @ Sivananthan

... Appellant/
Accused

Vs.

State by,
Deputy Superintendent of Police
Katpadi Sub-Division
Vellore District

... Respondent/
Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C., to call for the entire records in respect of the judgment rendered by the learned Principal Session Judge, Vellore dated 11.09.2012 in Special Session Case No.24/2011 and set aside the same in view of the above mentioned grounds and acquit the appellant.

For Appellant : Mr.D.Rajagopal

For Respondent : Ms.P.Kritika Kamal,
Govt. Advocate (Crl. Side)

J U D G M E N T

This appeal is directed against the judgment and order of conviction and sentence dated 11.09.2012 passed by the Sessions Court, Vellore in Special Session Case No.24 of 2011.

2. It is the case of the prosecution that on 03.07.2010, at 03.15pm, the appellant aged 24 years, kidnapped the victim girl 'X' aged 17 years from Latheri Bus stop by an autorickshaw, took her by a transport bus to his friend's house in Krishnagiri, raped her and abandoned her. On the

written complaint (Ex.P1) lodged by Ganesh (PW1), father of 'X', Raghupathi, Sub-Inspector of Police, Latheri Police Station registered a case in Cr.No.146 of 2010 on 03.07.2010 at 22 hours and prepared the printed FIR (Ex.P11) which reached the jurisdictional Magistrate along with the original complaint on 06.07.2010 at 10.35 a.m. Investigation of the case was taken over by Thirunavukarasu (PW15), Inspector of Police, who went to the place of occurrence (Latheri bus Stop) and prepared the Observation Mahazer (Ex.P2) and Rough sketch (Ex.P12). Since 'X' is a Dalit, further investigation was conducted by Radhakrishnan, Deputy Superintendent of Police on the orders of Superintendent of Police. The appellant was arrested on 22.07.2010 and medical examination was conducted on 06.08.2010 by Dr.Anandan (PW10), who, in his evidence as well in the examination report (Ex.P9), has stated that the appellant was 24 years old and capable of having sexual intercourse. 'X' was medically examined on 06.07.2010 by Dr.Ganga (PW14), who in her evidence as well in the examination report (Ex.P14), has stated that 'X' is not a virgin and she has had sexual intercourse. The clothes, which were worn by 'X' (MOs 1 to 5) and the clothes, which were worn by the accused (MOs 7 to 8) were seized and were sent to the Tamil Nadu Forensic Sciences Laboratory immediately for examination and report. Mr.Jaganathan (PW7) Scientific Assistant, who examined the clothes, in his evidence and in his report (Ex.P6), has stated that there is no traces of semen in any of them. The police obtained a report (Ex.P5) from the school where the victim girl studied through Govindan (PW6), the Head Master and the same shows the Date of Birth of 'X' as 20.06.1993. The police obtained the community certificates of 'X' and the accused from the Revenue Department (Exs.P8 and P10), which show that 'X' is a Dalit and the accused is a caste Hindu. After completing the investigation, Radhakrishnan (PW16), the Deputy Superintendent of Police filed a final report in P.R.C.No.6 of 2011 before the Judicial Magistrate, Katpadi under Sections 366, 417 and 376 IPC and Section 3(2)(V) of SC/ST (POA) Act, 1989. When questioned, the accused pleaded not guilty.

3. To prove the case, the prosecution examined 16 witnesses, marked 16 exhibits and 8 material objects. When the appellant was questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against him, he denied the same.

4. After considering the evidence on record and hearing either side, the trial Court, by judgment and order in Special Sessions Case No.24 of 2011, convicted and sentenced the appellant as under:

Provision under which convicted	Sentence
Sections 366 IPC	Five years rigorous imprisonment and fine of Rs.5000/-, in default to undergo one month simple imprisonment
Section 417 IPC	One year rigorous imprisonment and fine of Rs.1,000/-, in default to undergo 3 months simple imprisonment
Section 376 IPC	Seven years rigorous imprisonment and fine of Rs.15,000/-, in default to undergo one year simple imprisonment
Section 3(2)(V) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989	Three years rigorous imprisonment and fine of Rs.2000/-, in default to undergo six months simple imprisonment

Challenging the conviction and sentence, the appellant is before this Court.

5. Heard Mr.D.Rajagopal, learned counsel for the accused/appellant and Ms.Kritika Kamal, learned Government Advocate (Crl.side) for the respondent.

6. The case of the prosecution rests on the evidence of 'X' who was examined as PW2. 'X' has stated that she hails from Maliyapattu Village, Vellore District; she was born on 20.06.1993; she studied in Bharadharami Girls Higher Secondary School upto 10th Standard and she did not clear the examination; she knows the accused (appellant); the accused belongs to Vanniyar Community; there was a festival in the village temple in which cultural programmes were held; in one such programme, the accused danced well; so 'X' complimented him for dancing well; from then on, their friendship blossomed and the accused frequently came to her village to see her; one day, the accused proposed to her and she agreed; her parents came to know about it and chided her; once, she went to her friend Rekha's house in Bharadharami Village; the accused came there and spoke to her; he took her to his friend's house in that village and wanted to have sex with her; but she refused saying that he can wait till marriage; so, he did not do anything; however, he told her that he will return with food and went out locking her in the house from outside; he did not

return for a long time; so, she called out a passerby through the window and with his help, she came out of the house and went to her village; on 03.07.2010, she along with her parents, came to Latheri bus stop for boarding a bus to Vellore; while they were in the bus stop, her parents went to a nearby sweet stall to buy some sweets; at that time, the accused came by an autorickshaw, forcibly pulled her inside and took her to Vellore bus stop; when she made noise, he stuffed her mouth with a cloth; from Vellore, he took her by a bus to his friend's house in Krishnagiri; there, he promised her that he will marry her and that he will register the marriage and deflowered her; after that, on the next day at 04.00pm, they left Krishnagiri by bus to Vellore; at Vellore bus stop, he told her that he will get her coffee and left, but did not return; hence, she took a bus and came to Latheri at 09.00pm where she was seen by the police and was handed over to her parents. She has further deposed about the steps taken by the police to collect her clothes etc., which may not be necessary to narrate. In the cross-examination she admitted that in the first occurrence, the accused did not have physical intimacy with her. She further admitted that her father did not give any complaint with regard to the first incident. She has further stated that there were lot of shops in the Latheri bus stop and the police station is also located nearby. She also stated that she did not raise alarm when she accompanied the accused from Vellore bus stop to Krishnagiri. She has further categorically admitted that the appellant/accused and she were in love with each other. Mr.Rajagopal, learned counsel for appellant/accused submitted that had the accused forcibly kidnapped 'X' on 03.07.2010 at 03.00pm, as alleged by the prosecution, her parents would have lodged the complaint immediately at the Latheri police station, which is barely a few meters away from the bus stop, whereas the complaint in this case has been lodged only at 11.00pm on 03.07.2010 and the same has reached the jurisdictional Magistrate only on 06.07.2010 at 10.35 am. Therefore, the learned counsel contended that the girl had eloped on her own accord with the appellant/accused and only after she returned home, at the behest of some people, the police complaint has been given. Otherwise, there is no reason for the First Information Report to reach the jurisdictional Magistrate three days later.

7. There appears to be sufficient force in the submission of the learned counsel inasmuch as Latheri bus stop, even according to 'X' is a busy business area and had there been an incident of this nature, the complaint would have been given immediately and steps would have been taken to secure the girl. From Latheri, Krishnagiri is around 100 kms. Even according to 'X', from Latheri they came to Vellore bus stop and from there took a bus to Krishnagiri. During the travel, 'X' did not raise any alarm and meekly followed the

appellant. There is no evidence to show which autorickshaw was used by the appellant to kidnap 'X'. The police have also not identified the house in Krishnagiri where the appellant is said to have taken 'X' with him. Of course remissness in investigation cannot be a good reason to discard the prosecution case. However, in this case, the testimony of 'X' fairly shows that she fell in love with the accused after seeing him dance in the village festival and their love blossomed and together they went to Krishnagiri where they appear to have had sex. The prosecution has proved beyond cavil that the Date of Birth of 'X' is 20.06.1993 via the evidence of 'X' herself and also by marking her school records as Ex.P5 and also by examining Govindan (PW6), the Head Master of the school through whom Birth Certificate was marked as Ex.P5. The prosecution has proved beyond cavil that the accused is a caste hindu (vide Ex.P10) and 'X' is a Dalit (vide Ex.P8). However, the evidence falls short to sustain the charge of kidnapping and rape. At the time of incident, 'X' was 17 years and 10 days old. The amendment to Section 375 IPC came into force only on 03.02.2013 and therefore, the same will not apply to the case at hand. Section 375 IPC, as it stood prior to the amendment, makes consent of the girl irrelevant when the victim is under 16 years of age. This means that when the victim girl is above 16 years of age, consent is relevant. The testimony of 'X' shows that she has had consensual sex with the accused and hence, the conviction of the appellant/accused under Section 376 IPC cannot be sustained. However, the appellant/accused, who was aged about 24 years, has had physical relationship with her on the promise of marrying her and thereafter has reneged. Therefore, the conviction and sentence of the appellant/accused under Section 417 IPC deserves to be sustained. Since the appellant/accused is acquitted of the offence under Section 376 IPC, his conviction for the offence under Section 3(2)(V) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 cannot be maintained and hence, he is acquitted of that charge also.

In the result, this Criminal Appeal is partly allowed and the appellant/accused is acquitted of the charges under Sections 376, 366 and 3(2)(v) of SC/ST (POA) Act, 1989. The conviction and sentence imposed by the trial Court for the offence under Section 417 IPC stands confirmed. Fine, if any, paid by the appellant/accused for the offences 376, 366 and 3(2)(v) of SC/ST (POA) Act, 1989 shall be refunded to the appellant/accused.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

gpa

To

1.Principal Session Judge
Vellore.

2.The Judicial Magistrate,
Katpadi.

3.The Chief Judicial Magistrate,
Vellore District.

4.The Deputy Superintendent of Police
Katpadi Sub-Division
Vellore District

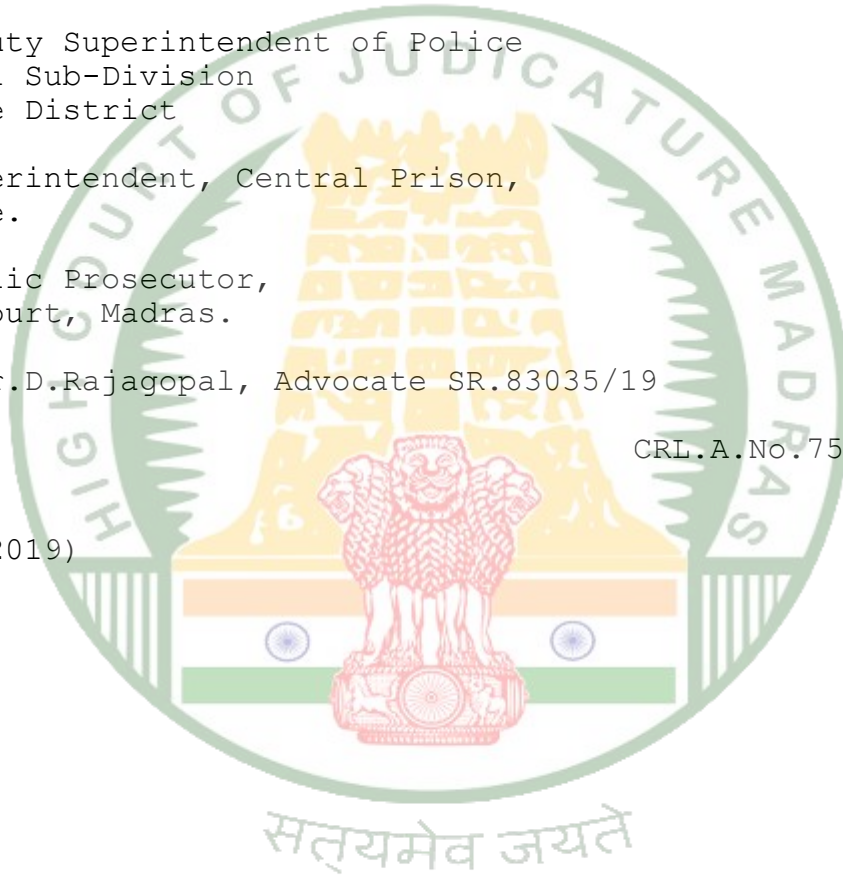
5.The Superintendent, Central Prison,
Vellore.

6.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.D.Rajagopal, Advocate SR.83035/19

CRL.A.No.751 of 2012

SR(CO)
CB(11/11/2019)



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