

Bail Slip

The Petitioner/Accused viz Mr.N. Vinod Kumar, was released on bail as per order of this Court dated 19.03.2013 in CrI.M.P. 1/2013 in CrI.A.No.208/2013 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.A.No.208 of 2013

N.Vinod Kumar

.. Appellant/Accused

Vs.

State represented by
The Inspector of Police,
H5-New Washermenpet
Police Station,
Chennai - 600 081.

..Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C. against the judgment and order dated 17.12.2012 passed in S.C.No.40 of 2009 on the file of the Mahila Sessions Court (Mahalir Neethimandram), Chennai.

For Appellant : Mrs.V.Anuradha
For Respondent : Mrs.P.Kritika Kamal
Government Advocate (CrI. Side)

JUDGMENT

Challenge in this criminal appeal is to the judgment and order dated 17.12.2012 passed in S.C.No.40 of 2009 on the file of the Mahila Sessions Court (Mahalir Neethimandram), Chennai.

2. The digest of the facts leading to the institution of this appeal is as under:

2.1 It is the specific case of the prosecution that the appellant, aged about 25 years, kidnapped the victim girl "X" (name not divulged for the sake of anonymity), on 02.04.2008 and had physical intimacy with her.

2.2 On the written complaint (Ex-P1) lodged by Sivakumar (PW1), cousin of "X", the respondent/police registered a case in Crime No.140 of 2008 on 06.04.2008 at 08.30 a.m., for "girl missing" and the printed FIR was marked as Ex-P7.

2.3 The investigation of the case was taken over by Murugesan (PW7), Inspector of Police, who went about examining witnesses and searching for the duo. On 08.04.2008 at 15.00 hours, the appellant and "X" surrendered before the police and the appellant was taken into custody.

2.4 Dr.Krishnaveni (PW6) medically examined "X" on 11.04.2008, who, in her evidence as well in the medical report (Ex-P6), has stated that "X" told her (PW6) that she got married to a neighbour and after medically examining "X", Dr.Krishnaveni (PW6) opined that she ("X") would have had sexual intercourse, there was no sign of any violence on her body and the hymen was not intact.

2.5 Dr.Dikkal (PW5), who medically examined the appellant on 11.04.2008, in his evidence as well in the medical reports (Exs-P4 and P5), has stated that the appellant's age would be between 20 and 25 years and he is potent.

2.6 After examining witnesses and collecting various reports, Murugesan (PW7), Inspector of Police, filed a final report in P.R.C.No.86 of 2008 before the XV Metropolitan Magistrate Court, George Town, Chennai, for the offences under Sections 366-A and 376 IPC, against the appellant.

2.7 On appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.40 of 2009 and was made over to the Mahila Sessions Court, Chennai, for trial.

2.8 The trial Court framed charges for the offences under Sections 366-A and 376 IPC, against the appellant. When questioned, the appellant pleaded "not guilty".

2.9 To prove the case, the prosecution examined seven witnesses and marked nine exhibits.

2.10 When the appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same, but, stated that "X" and he were in love with each other and hence, they got married. On behalf of the appellant, no witness was examined nor any document marked.

2.11 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated

17.12.2012, convicted and sentenced the appellant as follows:

Provisions under which convicted	Sentence
Section 366-A IPC	Ten years rigorous imprisonment and fine of Rs.10,000/-, in default to undergo six months simple imprisonment.
Section 376 IPC	Ten years rigorous imprisonment and fine of Rs.10,000/-, in default to undergo six months simple imprisonment.

The aforesaid sentences were ordered to run concurrently.

2.12 Challenging the above conviction and sentences, the appellant is before this Court.

3. Heard Mrs.V.Anuradha, learned counsel for the appellant and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) for the respondent/State.

4. As rightly contended by the learned counsel for the appellant that the date of elopement in this case is 02.04.2008 and as on that date, "X" had crossed the age of sixteen, as could be seen from the date of birth given in the transfer certificate (Ex-P2) viz., 25.02.1992.

5. The incident in this case had taken place prior to the amendment of Section 375 IPC (the amendment came into force with effect from 03.02.2013). Therefore, it cannot be stated that consent of the victim girl would be irrelevant.

6. It is the specific case of the prosecution that the appellant had kidnapped "X" on 02.04.2008 and had deflowered her, whereas, "X", who was examined as PW2, has given a totally different version.

7. "X" (PW2) was examined-in-chief on 05.03.2012, wherein, she ("X") has stated that her mother got divorced from her father; her father died ten years ago; she was living with her senior paternal uncle Ramakrishnan in Tondiarpet; she has completed her 10th standard; the appellant was living two houses away from her house and he would come to see her aunt Tamilarasi, wife of Ramakrishnan; one day, her aunt and aunt's daughter Prabavathy took her to a function; her aunt asked her to be in the function hall by saying that she is going out to buy a gift; while the function was going on, the appellant and his parents locked her ("X") in a room; her cousin (Ramakrishnan's daughter), who was with her, threatened her; in

that room, the appellant forcibly raped her and kept her locked; she was kept in that room for three days and from there, she was taken to the house of the appellant's uncle, where also, she was locked in a room and was raped; the next day, she was brought to the police station and handed over to the police; since her senior paternal uncle Ramakrishnan threatened her, she gave a different version to the police; her paternal uncle Ramakrishnan is wanting to usurp her father's property; so, he dropped her in Madurai and left her in the house of another aunt; from Madurai, she went to Usilampatti to the house of another uncle and from there, she is now residing at her friend's house in Kerala, who is an Advocate; her date of birth is 25.02.1992.

8. Since this version was something very new and was not there in the previous statement of "X" (PW2) to the police, she was contradicted by the defence in terms of Section 145 of the Evidence Act. "X" was also contradicted with the statement given by her to Dr.Krishnaveni (PW6) that she had got married to a known person and had relationship with him, for which also, she stated that she was tutored by her uncle Ramakrishnan to say so.

9. Dr.Krishnaveni (PW6), in her evidence, has clearly stated that "X" (PW2) had told her that she had willingly got married to a person known to her on 02.04.2008. In fact, in the medical report (Ex-P6), it is stated as follows:

"Alleged to have got married willingly to a known person (neighbour) at his residence, Tondiarpet, on 02.04.2008. After marriage, she had regular contact with him."

10. The contradictions so elicited from "X" (PW2) were put to Murugesan (PW7), the Investigating Officer, who has stated that "X" (PW2) did not give the version that was given by her in the Court. Thus, "X" (PW2) has projected a new story which has no resemblance to the prosecution version or the charge that was framed against the appellant. If the version of "X" (PW2) is accepted, then, the charge under Section 366-A cannot be sustained and only the charge under Section 376 IPC can be sustained. Strangely, the trial Court has convicted the appellant under Sections 366-A and 376 IPC.

11. It is true that a witness is not expected to make a parrotlike repetition of the previous statement given to the police while deposing in the Court. However, when a witness projects a totally different case, which runs counter to the prosecution case, the benefit of the dichotomy should be given to the accused. In the instant case, "X" (PW2) has also not stated as to which function she was taken and how, in a function venue, she could be subjected to rape by confining her in a room

for three days. She has implicated her uncle Ramakrishnan, aunt Tamilarasi and her cousin Prabhavathy, in her evidence, whereas, in the statement to the police, which has been proved in the manner known to law, she ("X") has stated that she was in love with the appellant, eloped with him on 02.04.2008, got married to him, had sex with him and on coming to know that the appellant's parents were detained by the police, they surrendered to the police.

12. In such perspective of the matter, this Court has no reason to believe the version proffered by "X" (PW2) that she was raped by the appellant for three days in a function and on the contrary, this Court is inclined to believe the defence version that the appellant and "X" (PW2) were in love with each other, they eloped, got married and later, surrendered to the police on 08.04.2008.

In fine, this criminal appeal is allowed by setting aside the judgment and order dated 17.12.2012 in S.C.No.40 of 2009 on the file of the Mahila Sessions Court (Mahalir Neethimandram), Chennai. As a sequel, the appellant is acquitted of all the charges. Bail bond, if any, executed by the appellant shall stand discharged. Fine amount paid, if any, shall be refunded.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

nsd

To

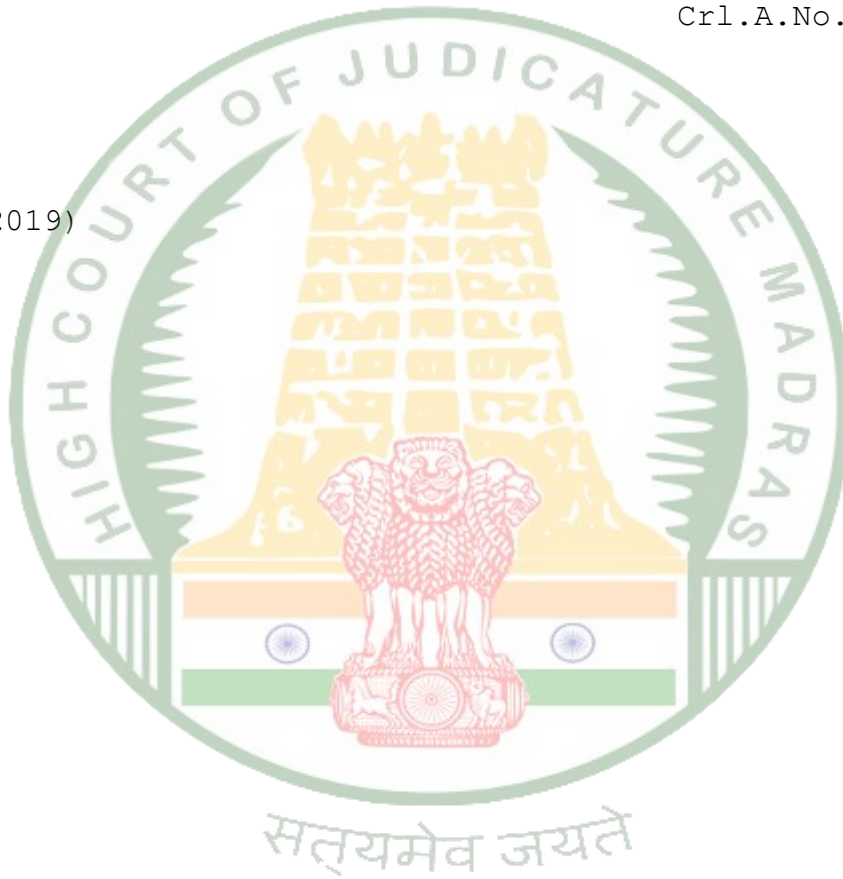
1. The Mahila Sessions Judge,
(Mahalir Neethimandram),
Chennai.
2. The Inspector of Police,
H5-New Washermenpet
Police Station,
Chennai - 600 081.
3. The Metropolitan Magistrate No.XV
George Town, Chennai
4. The Chief Metropolitan Magistrate
Egmore, Chennai (for information)

5.The Superintendent
Central Prison, Puzhal, Chennai

6. The Public Prosecutor,
Madras High Court,
Chennai - 600 104.

CrI.A.No.208 of 2013

SPD(CO)
SP(05/12/2019)



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