

Bail Slip

The Appellant/Accused,namely Androse @ Boopalan S/o. Mahimainathan was directed to be released on bail vide order dated 18.11.2013 made in CrI MP.NO.1/13 IN CRL A.NO.730/2013 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.04.2019

Coram:

THE HONOURABLE DR.JUSTICE G. JAYACHANDRAN

Criminal Appeal No.730 of 2013

Androse @ Boopalan .. Appellant/Accused 1

/versus/

State rep.by
Inspector of Police,
Dhamapatti Police Station,
Salem. Salem District.
Crime No.307 of 2011

.. Respondent/Complaint

Criminal Appeal has been filed under Section 378 of Criminal Procedure Code praying to call for the records and allow this appeal by setting aside the judgment made in S.C.No.122 of 2012, dated 14.09.2013 by the Mahila Court, Salem.

For Appellant : Mr.D.Arun

For Respondent : Mrs.Kritika Kamal,P.
Government Advocate(crl.side)

J U D G M E N T

Heard the learned counsel appearing for the appellant and the learned Government Advocate appearing for the State.

2. Based on the complaint given by the father of the victim girl that his daughter was abducted by the appellant and his friend Lawrence and committed rape, the respondent-police has registered the complaint and filed final report against the appellant for the offence under Sections 366 and 376(1) of IPC and against the acquitted accused for the

offence under Section 366 of IPC.

3. Before the trial Court, 11 witnesses were examined, 16 exhibits and 5 Material Objects were marked. The trial Court, though the victim girl (PW-2) has turned hostile, taking note of the evidence of other witnesses, has convicted the appellant and sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo 3 months Simple Imprisonment for the offence under Section 366 of IPC and to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default to undergo 3 months Simple Imprisonment for the offence under Section 376(1) of IPC. The sentences were ordered to run concurrently. The second accused Lawrence was acquitted by extending the benefit of doubt. Aggrieved by the finding of the Court below, the present appeal is filed.

4. The appellant contended that the judgment is reflection of total non-application of mind. Despite the victim girl (PW-2) has turned hostile and positively deposed that she had consented for sexual intimacy voluntarily, merely taking note of her age, the Court below has convicted the appellant without taking note of the fact that he and the victim girl (PW-2) were in love. Since the parents refused for the marriage, they voluntarily eloped and got married at Vadapalani Murugan Temple and thereafter, living peacefully as husband and wife. The father of PW-2 had with ulterior motive lodged the complaint before the respondent police as if by force the appellant has abducted PW-2 and committed sexual assault on her. The fact that the appellant and PW-2 are living together and blessed with two female children is a proof of their intimacy and cordial relation. While so, the Court below has taken an erroneous view holding the appellant guilty, merely based on the age of the victim girl.

5. The learned Government Advocate(crl.side) appearing for the State fairly conceded the fact that the appellant and PW-2 are living together and blessed with two children.

6. From the records, this Court finds that at the time of the incident, PW-2 was 17 years old. The appellant and PW-2 had eloped on their own, got married at Vadapalani Murugan Temple and living together peacefully.

7. To attract Section 376 of IPC, the victim must either be a stranger or if she is wife, she must be below the age of 15. Admittedly, in this case, the victim girl has married the appellant and at the time of occurrence, the victim girl [PW-2] was 17 years old.

8. It is an admitted fact that the appellant and the victim girl(PW-2) eloped, got married at Vadapalani Murugan Temple and thereafter, started living as husband and wife.

9. Explanation 2 of Section 375 of IPC states that "Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape".

10. In view of the above fact, this Court finds that the judgment of the Court below is illegal and bristles with infirmity. Hence, this Criminal Appeal has to be allowed.

11. Accordingly, this Criminal Appeal is allowed. The conviction and sentence imposed by the Mahila Court, Salem in S.C.No.122 of 2012, dated 14.09.2013 is set aside. Fine amount, if any paid by the appellant shall be refunded to him. Bail bond, if any executed by the appellant shall be cancelled. The appellant is set at liberty.

Sd/-
Assistant Registrar(imp cell)

//True Copy//

Sub Assistant Registrar

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To:

- 1.The Sessions Judge, Mahila Court, Salem.
- 2.The Inspector of Police, Dhamapatti Police Station, Salem. Salem District.
- 3.The Public Prosecutor, High Court, Madras.
- 4.The Superintendent central Prison, Coimbatore

A.SK(10/07/2019)

Crl.A.No.730 of 2013

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