

BAIL SLIP

The Appellant/Accused namely Rajasekar, S/o.Baskar, Accused in S.C.No. 382 of 2014 on the file of the Court of Mahalir Neethimandram, Chennai was directed to be released on bail vide order dated 16/06/2016 in Crl.MP.No. 1226 of 2016 in Crl.Appeal No. 76 of 2016 passed by this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.A.No.76 of 2016

Rajasekar,
S/o.Baskar,
No.63, Jeyaram Street,
Washermenpet,
Chennai-21.

.. Appellant/Accused

Vs.

State represented by
Inspector of Police,
H-1, Washermenpet Police Station,
Chennai.

.. Respondent/Complainant

Criminal Appeal filed under Section 374 Cr.P.C., to set aside the judgment and order dated 28.01.2016 passed in S.C.No.382 of 2014 on the file of the Sessions Court (Mahalir Neethimandram), Chennai.

For Appellant : Mr.S.Sugendran

For Respondent : Mr.G.Ramar
Government Advocate
(Crl. Side)

J U D G M E N T

This criminal appeal has been preferred seeking to set aside the judgment and order dated 28.01.2016 passed in S.C.No.382 of 2014 on the file of the Sessions Court (Mahalir Neethimandram), Chennai.

2 The facts in brief leading to the filing of this criminal appeal are as under:

2.1 It is the case of the prosecution that the appellant enticed the victim girl X (PW2), aged about 15 years on the promise of marrying her and eloped with her and had conjugal relationship with her.

2.2 On the complaint (Ex-P1), lodged by Amsa (PW1), mother of X (PW2), the respondent police registered a case in Crime No.916 of 2012 on 13.06.2012 for "girl missing". During the course of the investigation, it came to light that X (PW2) had eloped with the appellant as she was in love with him. The police altered the case from "girl missing" to Sections 366-A and 376 IPC. X (PW2) and the appellant surrendered before the police on 19.06.2012. X (PW2) and the appellant were subjected to medical examination. X (PW2) was medically examined by Dr.Shanthi (PW5), who, in her evidence as well in the medical report (Ex-P4), has stated as follows:

"No external injuries.
Old hymenal tear at 3 o' clock to 6 o' clock positions."

The appellant was medically examined by Dr.Balasubramanian (PW7), who, in his evidence as well in the potency certificate (Ex-P7), has stated that the appellant was potent.

2.3 After completing the investigation, the police filed final report in P.R.C.No.36 of 2013 before the XV Metropolitan Magistrate, George Town, Chennai, under Sections 366-A and 376 IPC, against the appellant.

2.4 On the appearance of the appellant, the documents relied upon by the prosecution were furnished to him under Section 207 Cr.P.C. and the case was committed to the Court of Session in S.C.No.382 of 2014 and was made over to the Sessions Court (Mahalir Neethimandram), Chennai, for trial.

2.5 The Trial Court framed charges under Sections 366-A and 376 IPC against the appellant. When questioned, the appellant pleaded "not guilty".

2.6 To prove the case, the prosecution examined nine witnesses and marked ten exhibits.

2.7 When the appellant was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same. On behalf of the appellant, no witness was examined nor any document marked.

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

28.01.2016 in S.C.No.382 of 2014, has acquitted the appellant of the charge under Section 366-A IPC, but, convicted and sentenced him as under:

Provision under which convicted	Sentence
376 IPC	Seven years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo three months simple imprisonment.

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

3. When the matter was taken up for hearing, the learned counsel for the appellant submitted that the appellant has married X (PW2) and they are now having two children.

4. The appellant, X (PW2), their two children and X's (PW2) mother Amsa (PW1) are present. X (PW2) has filed an affidavit dated 27.06.2019, wherein, she has stated as follows:

"3. I further submit that before the commencement of the trial, the appellant and myself married and jointly lived as husband and wife from appellant's house. Out of the wedlock, both of us are having two children viz., 1. R.Sarveshwaran, born on 17.06.2014 and 2. R.Harish, born on 01.03.2016.

4. I further submit that if this petition is not allowed I would be put to irreparable loss and no hardship is caused to other side.

5. I further submit that my husband is the only breadwinner of the family. He is looking after me and my two children who are going to school and further submit that except my husband's earning, no source of income from my family."

5. Heard Mr.S.Sugendran, learned counsel appearing for the appellant and Mr.G.Ramar, learned Government Advocate (Crl. Side) appearing for the respondent/State.

6. In the opinion of this Court, just because the appellant had married X (PW2), the offence cannot be effaced or compounded. Therefore, this Court cannot acquit the appellant on the sole ground that he had married X (PW2).

7. However, on perusal of the evidence of X (PW2), before the Trial Court, it is seen that she has clearly stated that she

had got married to the appellant and is living with him. Therefore, it is obvious that the appellant had not married X (PW2) after the judgment of the Trial Court, in order to escape from the punishment awarded to him.

8. X (PW2), in her evidence, has stated that she was in love with the appellant and she has left her house with him on 12.06.2012 and on coming to know that the police were searching for them, they both surrendered to the police. X (PW2) has not stated that the appellant had premarital sex with her or deflowered her nor is the medical evidence categorical that X (PW2) was raped. Mere hymen tear cannot lead to the inference that the appellant had raped X.

9. The Trial Court has acquitted the appellant of the offence under Section 366-A IPC, holding that he had not kidnapped X (PW2). Therefore, we are left with only the charge under Section 376 IPC, for which, there is no credible and trustworthy evidence for confirming the conviction.

In the result, this appeal is allowed and the judgment and order dated 28.01.2016 passed in S.C.No.382 of 2014 on the file of the Sessions Court (Mahalir Neethimandram), Chennai, is hereby set aside and the appellant stands acquitted. Fine amount, if any, paid by the appellant, shall be refunded to him. Bail bond, if any executed, shall stand discharged.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Inspector of Police,
H-1, Washermenpet Police Station,
Chennai.
2. The Sessions Judge,
The Mahalir Neethi Mandram,
Chennai.
3. The Superintendent,
Central Prison,
Puzhal, Chennai.

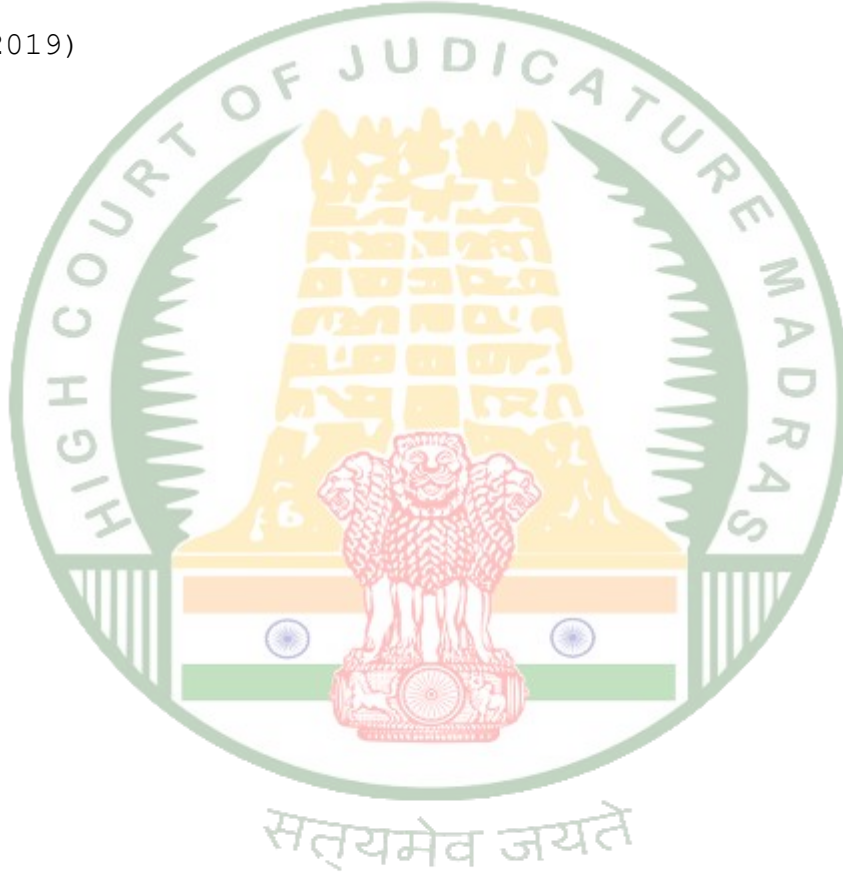
4. The Public Prosecutor,
Madras High Court,
Chennai - 104.

5. The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.S.Sugendran, Advocate, S.R.No. 53772

Crl.A.No.76 of 2016

RSV(CO)
GN(07/08/2019)



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