

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.Nos.644 & 645 of 2019

Asharuthe ... Appellant/Accused in
Crl.A.No.644/2019

Velmurugan ... Appellant/Accused in
Crl.A.No.645/2019

Vs.

1. State rep by
The Inspector of Police,
Erode South Police Station,
Erode District.
(Crime No. 530/2019) ...1st Respondent/Complainant
in both appeals

2. Lalitha ...2nd Respondent/Defacto
complainant in both appeals

(R2 is impleaded as per order in Crl.M.P.Nos.13878 & 13879/2019
in Crl.A.Nos.644 & 645/2019, dated 26.09.2019)

COMMON PRAYER:

These Criminal Appeals have been filed by the appellants/Accused, seeking to set aside the order dated 07.09.2019, made in Crl.M.P.No.299/2019, by the Sessions, Mahalir Neethi Mandram, (Fast Track Mahila Court) Erode and enlarge the appellants on bail, pending investigation, in connection with the case in Cr.No.530/2019, on the file of the respondent police.

For appellant
in both appeals : Mr.I.C.Vasudevan

For Respondents
in both appeals : Mr.M.Mohamed Riyaz, APP
for R-1

: No appearance for R-2

O R D E R

These criminal appeals have been filed by the appellants/accused, seeking to set aside the order dated 07.09.2019, made in CrI.M.P.No.299/2019, by the Sessions, Mahalir Neethi Mandram, (Fast Track Mahila Court) Erode.

2 This Court heard the learned counsel for the appellants and the learned Additional Public Prosecutor for the 1st respondent.

3 The case of the prosecution as per the de-facto complainant Lalitha is that the de-facto complainant belongs to the Scheduled Caste community and that her father has left them and her mother has been affected by mental illness and that the complainant was living along with her mother and two sisters. Her younger sister Durhashini, was aged about 15 years and that when she had gone to school, on 20.02.2019 and she did not return back and thereby, a complaint was given to the respondent police and a case in Cr.No.530/2019 was registered under the caption for "girl missing". During the course of investigation, it was found that the 1st accused along with 2nd accused had kidnapped the minor girl Durhashini and committed sexual assault on her and thereby, the case was altered to one under Sections 366 and 109 of IPC read with Section 8 and 17 of the POCSO Act and Section 3(1)(w)(i) SC & ST ACT (POA) act against the accused and both 1st and 2nd accused were arrested and remanded to judicial custody on 29.08.2019. The Appellants had filed CrI.M.P.No.299/2019, seeking for bail and the Sessions Court, Mahalir Neethi Mandram (Fast Track Mahila Court) Erode, by order dated 07.09.2019 had dismissed the petitions. Against which the present appeals have been filed.

4 The learned counsel for the appellants/Accused would submit that the 1st accused is aged about 19 years and the victim is aged about 15 years and there was a love affair between them and that since, it was opposed by the relatives of the victim, she has insisted the 1st accused to take her away and that she had gone along with the 1st accused. Initially, a case was registered in Cr.No. 530/2019 for girl missing and thereafter, the case has been altered to one and under Sections 366 and 109 of IPC read with Section 8 and 17 of the POCSO Act and Section 3(1)(w)(i) SC & ST ACT (POA). The learned counsel for the petitioner would submit that the victim has been secured and even as per the statement recorded from the victim there had been no allegation of sexual harassment and that the victim had not stated anything against the petitioners as if that they have abused her. In fact, she had stated that she had gone along with the 1st petitioner on her own volition.

5 The learned Additional Public Prosecutor would submit that the 1st accused along with 2nd accused have kidnapped the minor girl and that A1 in the guise of marrying her had taken her to Tirunelveli and based on the search by the police, they were secured. The petitioners were arrested on 28.09.2019 and he would submit that investigation is pending.

6 I have gone through the C.D., File and also perused the materials place on record. Even as per the statement of the victim, there is no allegation of sexual harassment. It appears like a case of elopement of the petitioners who are youngsters have taken the girl without understanding the consequences.

7 Notice was issued to the de-facto complainant and the petitioners were permitted to take private notice on the de-facto complainant/elder sister of the victim. The respondent had also intimated about the pendency of the case. Despite the service of notice and the name of the de-facto complainant having been printed in the list, there is no appearance.

8 Considering the facts and circumstances of the case and also considering the submissions of the learned counsel on either side, these criminal appeals are allowed and the Appellants/Accused are ordered to be enlarged on bail on the following conditions:-

- a) The Petitioners/Accused are ordered to be released on bail, on his executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the Judicial Magistrate Court No.III, Erode.
- b) The Petitioners/Accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.
- c) The Petitioners/Accused shall appear before the respondent police every day at 10.30 a.m., until further orders.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Session Judge, Mahalir Neethi Mandram,
(Fast Track Mahila Court) Erode.
 2. The Judicial Magistrate-III,
Erode.
 3. do Through the Chief Judicial Magistrate,
Erode.
 4. The Inspector of Police,
Erode South Police Station, Erode District.
 5. The Public Prosecutor,
High Court, Madras.
 6. The Central Prison, Coimbatore.
- +2cc to Mr.I.C.Vasudevan, Advocate, S.R.No.85677 & 85678

CrI.A.Nos.644 & 645 of 2019

CS/15/10/2019



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