

**Bail Slip**

The Petitioner/Accused No.1 in CrI.RC(MD)No.1068/2008 was directed to be released on bail as per the order of this Court dated:27/10/2009 and made in MP(MD)No.1 of 2009 in CrI.RC(MD)No.1068 of 2009.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on : 28.11.2018

Orders Pronounced on : 29.04.2019

CORAM :

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

CrI.R.C.(MD)No.1068 of 2008

Perumpadayan

...Petitioner/Accused No.1

..Vs..

Inspector of Police,
Sawyerpuram Police Station,
Cr.No.39/06 in S.C.No.69/07

...Respondent/Claimant

PRAYER: Criminal Revision filed under Sections 397 and 401 of the Criminal Procedure Code, against the Judgment of conviction affirmed by the Court of Additional District & Sessions Judge/Fast Track Court No.1, Tuticorin District in C.A.No.25/2008 dated 16.09.2008 against S.C.No.69 of 2007 in the Court of the Chief Judicial Magistrate, Tuticorin District dated 06.02.2008.

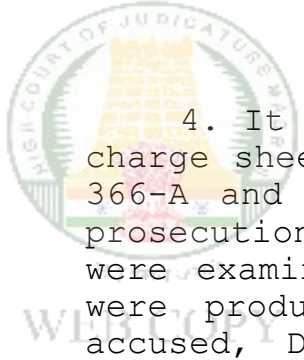
For Petitioner : Mr.T.Senthilkumar
Legal Aid Counsel
For Respondent : Mrs.M.Ananthadevi
Government Advocate (CrI.Side)

O R D E R

The convicted accused is the Revision Petitioner herein.

2. The respondent police have filed a final report against as many as 13 persons for the alleged offences punishable under Sections 147, 149, 323, 366-A and 376 (1) I.P.C. After trial, the Assistant Sessions Judge, Tuticorin in S.C.No.69 of 2007, acquitted all the accused except the first accused from all charges and even for the first accused, he has been acquitted from all charges except 376(1) and sentenced him to undergo 7 years R.I., with default clause.

3. Aggrieved by the said conviction and sentence, the first accused preferred CrI.A.No.25 of 2018 before the Additional District & Sessions Judge/Fast Track Court No.I, Tuticorin. The Additional Sessions Judge, by judgment dated 16.09.2018, confirmed the conviction and sentence rendered by the trial Court. Hence, this revision by the first accused.



4. It is seen from the records that the respondent police filed charge sheet for the alleged offence punishable under Sections 323, 366-A and 376(1) IPC as against the first accused. To prove the prosecution case, on the side of the prosecution, P.W.1 to P.W.24 were examined and Exhibits P1 to P37 were marked and M.Os 1 to 7 were produced. To prove the defence case, on the side of the accused, D.Ws.1 to 3 were examined and Exhibits D1 to D3 were marked.

5. On consideration of both oral and documentary evidence, the Assistant Sessions/Chief Judicial Magistrate, Tuticorin, came to the conclusion that the evidence of the prosecution with regard to the alleged unlawful assembly for sexual relationship with a minor girl are all disbelieved. Accordingly, A2 to A13 were acquitted and on the charge under Section 376(1) I.P.C., the first accused was convicted. In other words, the trial Court disbelieved the prosecution theory in respect of the charges 1 to 4 and convicted the first accused under charge No.5 and also sentenced him for a period of seven years R.I., with a fine of Rs.1,500/-, in default to undergo one year R.I.,

6. Aggrieved against the said finding he has preferred an appeal and the same was dismissed and hence, the present revision is filed challenging the order of conviction and sentence passed by the trial Court and as confirmed by the lower appellate Court.

7. The Legal Aid Counsel appearing for the petitioner/first accused contended that the contradiction spoken by P.W.1 was not taken into consideration and the age of the victim girl is not proved in the manner known to law and therefore, the finding of the trial Court is not in accordance with the law laid down by the Supreme Court.

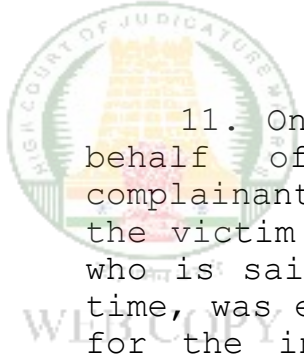
8. The learned Government Advocate (Crl.Side) would submit that the evidence of P.W.2/victim girl is natural and she had deposed about the act of the first accused and the evidence of the victim girl is duly corroborated by the evidence of P.W.11/Doctor, who treated the victim girl and issued Ex.P12.

9. After hearing the rival submissions of the Legal Aid Counsel for the revision petitioner/first accused and the learned Government Advocate (Crl.Side) for the State.

10. The points that arise for consideration in this revision are:-

(i) Whether the conviction passed by the trial Court for the offence under Section 376(1) against the first accused/revision petitioner is sustainable in law?

<https://hcservices.ecourts.gov.in/hcsservices/>
 (ii) Whether the sentence awarded by the Courts below is excessive?



11. On perusal of the oral and documentary evidence adduced on behalf of the prosecution, it could be seen that the complainant/mother of the victim girl, was examined as P.W.1, while the victim girl was examined as P.W.2. The younger sister of P.W.2, who is said to be accompanied with P.W.2 at the relevant point of time, was examined as P.W.3. The Doctor, who gave treatment to P.W.2 for the injuries caused by the accused, was examined as P.W.4. While, P.W.s 5,6 and 16 were turned hostile. The school students, who are said to have accompanied with the victim girl at that point of time, were also turned hostile. Attestor of the observation Mahazar viz., P.W.8 was also turned hostile.

12. During investigation, the statement of P.W.s 1, 2 and 3 were recorded by P.W.15/Judicial Magistrate under Section 164 Cr.P.C., P.Ws.13 and 14 are the police constables, who have accompanied the victim girl and the first accused for medical treatment before P.W.4 and P.W.12. It remains to be stated that P.Ws.22 to 24 are the police witnesses, who depose regarding discharge of their official duty in respect of the receipt of complaint from P.W.1 / mother of the victim girl and conduct of investigation and filing of final report.

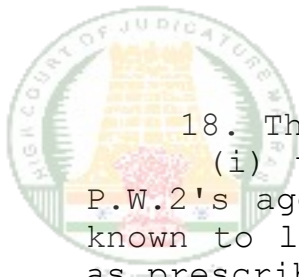
13. It appears from the lower Court records that the case of the prosecution under Ex.P24, the complaint has been lodged by P.W.1 alleging that few months ago, the mother of the first accused came and threatened and criminally intimidated them in connection with the marriage of this girl and the same appears to be disbelieved by the Sessions Court for the reasons recorded therein. Since no appeal has been filed by the State against the said finding, it does not arises for consideration in this revision.

14. On behalf of the accused, Exs.D1 to D3 were marked. Exhibit.D3/School Certificate said to have been issued by the Headmaster of the School reveals that the age of the victim girl is below 15 years.

15. In view of the conviction and sentence passed under Section 376(1) IPC by the Courts below, the scope of this appeal is now narrowed down to the charge No.5 against the first accused i.e., for the offence under Section 376 (1) I.P.C. only.

16. P.W.10-Radiologist, who has determined the age of the victim girl based upon the standard medical procedure as above 14 and below 16 years. The evidence of P.W.12, shows that there is nothing to suggest that the first accused is impotent.

17. After hearing the learned Legal Aid Counsel for the revision petitioner/convict and the learned Government Advocate (Crl.Side), the scope of the revision is now confined whether the charge No.5 namely offence under Section 376(1) of I.P.C has been proved against the first accused beyond reasonable doubt in the manner known to law.



18. The learned counsel for the petitioner would submit that:-

(i) there is discrepancy in the evidence of P.W.1 regarding P.W.2's age and the age of victim girl is not proved in the manner known to law. As P.W.10-Radiologist has not followed the guidelines as prescribed in legal jurisprudence regarding proof of age;

ii) P.W.2 was a consenting party because she stayed with the revision petitioner/first accused from 13.04.2006 to 17.04.2006 at various places;

iii) as per the evidence of P.W.11-Doctor, there is no injury in the private part of the victim girl and as such the Court below have committed an error in laying the conviction.

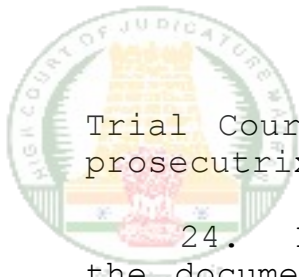
19. Per contra, the learned Government Advocate has drawn my attention of Exhibit P10-Age Certificate and Exhibit R13-School Certificate.

20. After going through the evidence of prosecution witnesses viz., P.W.1, P.W.2 and P.W.3, both the Courts below have come to the conclusion that on 18.12.2005, P.W.1-mother of P.W.2 gave a complaint to the Sub-Inspector of Police, Tiruchendur Police Station. The same was received as Exhibit P.24 by P.W.23 and consequently, an enquiry was made and thereafter, statements were recorded and both the parties were advised go for compromise and accordingly, the complaint was closed in the month of December 2005.

21. The case of the prosecution, as stated supra, is that when P.W.2-victim girl who was studying 9th standard in the year 2009 studying in Sayarpuram Punithamery Girls Higher Secondary School, she along with her sister P.W.3-Shanmugasundari and others coming out of the school on 13.04.2006 (Thursday) evening around 5.20p.m. At that time, the accused have kidnapped her and taken up to various places and performed the solemnization marriage and thereafter, the first accused putting P.W.2 under coercion and threatening had committed sexual assault of rape against her will by force, for more than once and subsequently, taken joint photograph. The matter was taken up by the police on 13.04.2006 based upon the complaint given by the mother of the victim girl.

22. Both the Courts have concurrently held that the first accused has committed the sexual offence of on the body of P.W.2. It is seen from the evidence of the Doctor P.W.10 -Flora Jenita that on the Court requisition, she has examined P.W.2 and she assessed the age of P.W.2 (victim girl) as over 14 years and below 16 years and issued report under Exhibit.P10.

23. It remains to be stated that P.W.11 Doctor -Indrani who had conducted physical examination has found that the victim girl is not pregnant. So also, as stated above, P.W.12-Doctor Selvamurugan has opined that there is nothing to suggest that the first accused is impotent. It is to be stated that based upon the oral and documentary evidence as stated above and the evidence of P.W.10 and P.W.11, coupled with the documentary evidence of Exhibit P10, the



Trial Court come to the conclusion by determining the age of the prosecutrix as above 14 years and below 16 years.

24. In this connection, it remains to be stated that even by the document filed by the accused, which is marked as Exhibit R3, the Date of Birth of the victim is stated as 07.06.1991 and accordingly, both the Courts below has rightly come to the conclusion that the victim is not 15 years of age on the alleged date of the offence, and such a finding which is based upon the legally acceptable evidence does not call for any interference in this revisional jurisdiction and accordingly, the same is hereby confirmed.

25. Taking into consideration of the evidence of P.W.2 coupled with the cross-examination and the cross-examination of P.W.11 Dr.Indrani, both the Courts below has come to the conclusion that the victim girl was subjected to sexual offence of rape. On a close reading of the evidence of P.W.2, both chief and the cross-examination and in the absence of any contra evidence or a material contradiction elicited with regard to the alleged act of the first accused on the body of P.W.2, this Court is of the considered view that the version of P.W.2 on the sexual assault of rape on her body by the accused inspires the confidence of the Court and compelled, this Court to accept the evidence as trustworthy. Furthermore, though a plea has been raised by the petitioner's counsel that it was with her consent and based upon her consent only the sexual intercourse has been taken place. It remains to be stated that Section 375 speaks about sexual offences of rape which is extracted below:-

375.Rape:- A man is said to commit "rape" who except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following description.

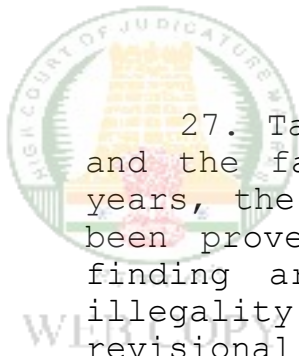
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Sixthly - With or without her consent, when she is under sixteen years of age.

Explanation:- Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape

Exception:- Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

26. Considering the age of the victim as fixed by the medical evidence as well as by the school records being below 15 years, the alleged consent of the girl is immaterial and furthermore, though the first accused projected as if there was a solemnization of marriage, it is to be stated that considering the age of the minor girl / P.W.2, the age is below the age fixed for marriage. Besides, even otherwise, as the age of victim is below 15, the offence of rape under Section 375 is attracted.



27. Taking into consideration of the Exception as stated above and the factual position that the victim girl is aged below 15 years, the finding of the Courts below that the offence of rape has been proved in the manner known to law and also the concurrent finding arrived by the Courts below does not suffer from any illegality or irregularity warranting interference at this revisional jurisdiction and accordingly, the conviction and sentence laid by both the Courts below for the offence under Section 376 of I.P.C on the first accused does not warrant any interference and the quantum of sentence awarded by the Tribunal is commensurate with the gravity of the offence and hence, the sentence cannot be termed as excessive or exorbitant and accordingly, both the conviction and sentence passed by the Courts below, as narrated above, is hereby confirmed and the Criminal Revision is devoid of merits.

28. Accordingly, this Criminal Revision Petition is dismissed. Since the first accused is on bail, the trial Court is directed to take steps to secure the custody of the first accused to undergo the remaining period of sentence, if any.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

- 1.The Additional District Sessions Judge cum Fast Track Court No.1, Tuticorin District.
 - 2.The Chief Judicial Magistrate, Tuticorin District.
 - 3.Inspector of Police, Sawyerpuram Police Station, Tuticorin. Cr.No.39/06 in S.C.No.69/07.
 - 4.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.
- +1 CC to Mr.T.SENTHIL KUMAR, Advocate SR-63628.

Order in
Cr1.R.C(MD) .No.1068 of 2008
29.04.2019

CS: (02/07/2019) 6P 6C