

**Bail Slip**

J.Ammaiyappan, S/o.Jayaprakasam, aged about 30 years/2011, sole Accused was released on Bail vide order of this Court dated 25.07.2011 in MP(MD)No.1 of 2011, in Crl.A(MD) No.195 of 2011.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED: 25.07.2019****CORAM:****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****Crl.A. (MD)No.195 of 2011**

J.Ammaiyappan

... Appellant/Sole Accused

Vs

The Inspector of Police,
Puliyangudi Police Station,
Tirunelveli District.
(Crime No.79 of 2010)

. Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the records pertaining to the Judgment passed in S.C.No.352 of 2009, dated 17.05.2011 by the Mahila Court, Tirunelveli and set aside the same acquitting the appellant and allow criminal appeal.

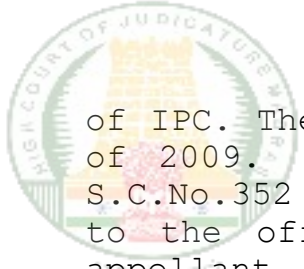
For Appellant : Mr.V.Sasikumar

For Respondent : Mrs.S.Bharathi
Government Advocate (Crl.side)

JUDGMENT

The appellant was convicted for the offences under Sections 363 and 366 of IPC and sentenced to seven years rigorous imprisonment for each offence, vide Judgment dated 17.05.2011 in S.C.No.352 of 2009 on the file of the Mahila Court, Tirunelveli.

2.The prosecution case is that the appellant was married to one Thennila. He had divorced her. He developed intimacy with one Mariammal wife of Sundaram. The said Mariammal had two children born through her wedlock with Sundaram. While so, on 23.02.2009, the appellant abducted Mariammal along with her children and took them to Thirupathi. On 26.02.2009, the appellant had tied Thali on the said Mariammal. In this regard, P.W.1 Sundaram, lodged Ex.P1-Complaint before the Inspector of Police, Puliyangudi Police Station. Crime No.79 of 2009 was registered for the offences under Sections 366 and 498 of IPC. Investigation was undertaken and both Mariammal as well as her children were brought back. Final report was filed before the Judicial Magistrate, Sivakiri against the appellant for the offences under Sections 366, 366 A and Section 494



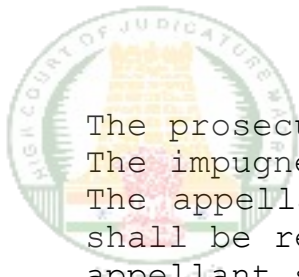
of IPC. The case was committed to the Sessions Court in P.R.C.No.16 of 2009. It was made over to the Mahila Court, Tirunelveli in S.C.No.352 of 2009. The appellant was charged with having committed to the offences under Sections 366, 366A and 494 of IPC. The appellant denied the charges and claimed to be tried. The prosecution examined as many as 11 witnesses and marked Ex.P1 to Ex.P4. On the side of the appellant, no evidence was adduced. The learned Judge, acquitted the appellant for the offence under Section 494 of IPC, but then, found him guilty in respect of the offences under Sections 363 and 366 of IPC and sentenced him to seven years rigorous imprisonment for each offence. Questioning the same, this appeal has been filed.

3.The learned counsel appearing for the appellant reiterated the contentions set out in the appeal memorandum and wanted this Court to reverse the Judgment of the Court below.

4.Per contra, the learned Government Advocate (Crl.side) submitted that the impugned Judgment does not warrant any interference.

5.I carefully considered the rival contentions and perused the evidence on record.

6.P.W.1 is the Defacto complainant and the husband of P.W.8. P.W.8 is Mariammal. This Court carefully went through her testimony, she had stated that she got married to P.W.1 Sundaram in the year 1995. Two children namely Subashini and Gokulakrishnan were born to her. The appellant was a tenant occupying the upper portion of their house. The specific case of P.W.8 was that P.W.1 was treating her cruelly. Therefore, P.W.8 fell into a depression and wanted to go on pilgrimage. She took her two children and visited Thirupathi, Kalakasthi, Kumbakonbam and Kuchanallur etc. According to P.W.8, she had taken the appellant more for protection. She specifically denied that the appellant tied Thali to her. When P.W.8 came to know that P.W.1 lodged a case of elopement against her and the appellant, P.W.8 immediately appeared before the Puliyangudi Police Station along with her children. Even before the police, P.W.8 stated that she was not able to bear the torture. In fact, P.W.8 had expressed her desire that she had not gone with him and lived alone. In the case of such categorical statement of P.W.8, I fail to understand as to how the Court below could have rendered a finding that the appellant had abducted them. It is true that the two children were also with P.W.8. But then, P.W.8 is none other than the mother and therefore, she is entitled to take two children along with her. The impugned Judgment of the Court below is indefensible. P.W.8 was aged about 29 years at the time of occurrence, she was a grown up lady and she can take her own decision. The appellant has not been charged with the offence of adultery. He was only charged with the offence of abduction. P.W.8 had stated that she had voluntarily gone with the appellant and had availed his service more for protection purpose.



The prosecution has not established its case against the appellant. The impugned Judgment is set aside. This Criminal Appeal is allowed. The appellant is acquitted. The fine amount, if any, paid by him shall be refunded forthwith. The bail bond, if any, executed by the appellant shall stand cancelled.

WEB COPY

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The District Munsif cum Judicial Magistrate, Sivagiri.
 - 2.The Chief Judicial Magistrate, Tirunelveli.
 - 3.The Sessions Judge, Mahila Court, Tirunelveli.
 - 4.The Inspector of Police, Puliyangudi Police Station,
Tirunelveli District.
 - 5.The Superintendent, Central Prison,
Palayamkottai, Tirunelveli District.
 - 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- +1CC to Mr.V.Sasikumar, Advocate, Sr.No.78094.

Crl.A. (MD) No.195 of 2011
25.07.2019

CS(30.08.2019) 3P 8C