

Bail Slip

L.Udayasankar S/o.Lakshmanan, Kumararajapuram, Mutharasanallur, Srirangam Taluk, Trichy District, was released on bail of this Court Order dated 28.02.2013 made in MP(MD)No.3 of 2012 in Cr1.A (MD).No.266 of 2012.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1.A. (MD)No.266 of 2012

L.Udayasankar

... Appellant/Accused

Vs.

The State rep. by,
The Inspector of Police,
All Women Police Station,
Thiruverumbur,
Trichy.
(Crime No.4 of 2010)

... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374 of Cr.P.C, to set aside the judgment of the learned District and Sessions Judge, Mahila Court, Tiruchirapalli, dated 07.08.2012, made in S.C.No.112 of 2012.

For Appellant : Mr.C.Vetriyan
Legal Aid Counsel

For Respondent : M/s.S.Bharathi
Government Advocate (Cr1. Side)

J U D G M E N T

The appellant was convicted for the offence under Sections 376 and 366(A) of I.P.C. and sentenced to undergo 10 years rigorous imprisonment and 3 years rigorous imprisonment respectively and he was also levied with fine of Rs.1,65,000/-, vide judgment dated 07.08.2012 in S.C.No.112 of 2012, on the file of the learned Sessions Judge, Mahila Court, Trichirappalli.

2.The prosecution case is that the appellant induced the minor victim/P.W.1 to have sexual intercourse with him by giving her a false assurance of marriage. The appellant had kidnaped the victim on 20.10.2009 at about 08.00 p.m. from the lawful



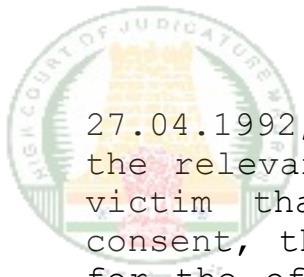
guardianship of her parents and took her to his uncle's house at Mutharasanallur. As a result of sexual intercourse, which the appellant had with the victim, a girl child was born. P.W.1 lodged Ex.P.1/complaint before All Women Police Station, Thiruverumbur on 14.03.2010. Based on same, Crime No.4 of 2010 was registered for the offence under Section 417 and 376 of I.P.C. Investigation was undertaken and final report came to be filed before the learned Judicial Magistrate No.III, Tiruchirappalli for the offence under Sections 366(A) and 376 of I.P.C. Cognizance of the offence was taken and case was committed to Sessions Court vide P.R.C.No.14 of 2012. It was made over to learned Sessions Judge, Mahila Court, Tiruchirappalli in S.C.No.112 of 2012. Charges were framed against the appellant for the said offence. The appellant denied the charges and claimed to be tried.

3.The prosecution examined as many as 12 witnesses and marked Exs.1 to 25. On the side of the accused one witness namely., Annavi was examined as D.W.1.

4.The learned Trial Magistrate by the impugned judgment dated 07.08.2012 convicted and sentenced the appellant as mentioned above. Questioning the same, this criminal appeal has been filed.

5.This Court directed the appellant to appear in person. The appellant/L.Udayasankar is present in person before me. In this case, according to Ex.P.2/school transfer certificate, the victim/P.W.1 was born on 29.04.1994. But then, victim/P.W.1 would claim that her date of birth was wrongly entered in the school record and she was born on 27.04.1992. But then, the occurrence is said to have taken place on 20.10.2009. Even going by the version of P.W.1, she was still a minor in October, 2009.

6.It is not in dispute that on account of the physical relationship between the appellant and P.W.1, a girl child was born on 19.07.2010. The appellant was subjected to DNA test and that the DNA report clearly states that the appellant is the father of Renuga born through P.W.1. In other words, the paternity of the child has been clearly established. But then, I am of the view that the Court below erred in convicting the appellant for the offence under Section 376 of I.P.C. P.W.1 had stated that she was in love with the appellant and that she had relationship with him several times. P.W.1 had also conceived as a result. Even though the occurrence had taken place in the year 2009, the complaint itself came to be lodged only on 14.03.2010. The gross delay in lodging the complaint would indicate that the relationship between the appellant and the victim was rather consensual. The victim though technically a minor was very much in the age of discretion. According to her, she was born on



27.04.1992, which means that she was more than 17 years old during the relevant time. Since it is evident from the testimony of the victim that the appellant had relationship with her only by consent, the Court below ought not to have convicted the appellant for the offence under Section 376 of I.P.C. In this view of the matter, the conviction and sentence imposed on the appellant under Section 376 of I.P.C. is set aside. But then, having regard to the circumstances, the learned counsel appearing for the appellant submitted that he would not challenge the finding of guilt in respect of the offence under Section 366(A) of I.P.C. It is not in dispute that the victim was a minor during the relevant time. Taking a minor girl away from the custody of her lawful guardian and having sexual relationship would certainly attract the offence under Section 366(A) of I.P.C. In this case, the appellant had impregnated the victim and a girl child has been born. It is stated by the appellant himself that a maintenance petition has been filed by her and that the concerned Court had awarded a sum of Rs.3,000/- as monthly maintenance payable by the appellant to the child. It is the matter of shame, the appellant had not honoured the maintenance order. The Court below had directed the appellant to pay a sum of Rs.1,65,000/- as fine so that the same can be paid as compensation to the victim and the child. The fine amount had also not been paid. The appellant spent about seven months in prison. The appellant undertakes to pay the fine amount of Rs.1,65,000/- within a period of four weeks from the date of receipt of a copy of this judgment. He also undertakes to deposit a further sum of Rs.1,50,000/- within a period of four weeks thereafter and a further sum of Rs.1,00,000/- will be deposited by the appellant before the Trial Court to the credit of S.C.No.112 of 2012, on the file of the learned Sessions Judge, Mahila Court, Tiruchirapalli, within a period of six months thereafter. The appellant gives a further undertaking that he would honour the maintenance order passed in favour of the child/Renuga in M.C.No.38 of 2015, on the file of the learned Chief Judicial Magistrate, Trichirappalli. If the compensation amount of Rs.4,00,000/- is not deposited within the time stipulated above, the sentence of imprisonment passed by the Court below shall stand automatically restored. If the appellant honours the undertaking now given before this Court, the sentence of imprisonment for the offence under Section 366(A) shall stand modified and reduced to the period already undergone. With this modification, this criminal appeal is partly allowed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)



To:

1.The District and Sessions Judge,
Mahila Court, Tiruchirapalli.

2.The Inspector of Police,
All Women Police Station,
Thiruverumbur,
Trichy.

Copy to: The Government Advocate (Crl.Side)
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.C.VETRIAN, Advocate SR-78926.
+1 CC to Mr.M.KARUNANITHI, Advocate SR-79553.

Crl.A. (MD)No.266 of 2012
31.07.2019

CS(13.08.2019) 4P 7C