



BAIL SLIP

M.Chinraj, Male aged about 22 years (2011), S/o.Mani was released on Bail as per order in MP(MD)No.2 of 2011 in CRL A(MD). No.266 of 2011, dated 07/09/2011.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.08.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)No.266 of 2011

M.Chinraj

... Appellant/Accused No.1

Vs.

State by
The Inspector of Police,
All Women Police Station,
Cantonment,
Trichy.

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C, to set aside the order passed in S.C.No.170 of 2009, on the file of Sessions Judge, Mahila Court, Trichy, dated 16.12.2010 and allow the criminal appeal.

For Appellant : Mr.N.Sankar Ganesh

For Respondent : Mr.A.Robinson,
Government Advocate (Crl. Side)

J U D G M E N T

The appellant was convicted for the offences under Sections 366(A) and 417 of I.P.C. and sentenced to undergo five years rigorous imprisonment and two years rigorous imprisonment respectively and also levied with fine, vide judgment dated 16.12.2010 in S.C.No.170 of 2009, on the file of the learned Sessions Judge/Mahila Court, Tiruchirappalli.

2.The prosecution case is that the appellant and the victim were in love with each other and that the appellant gave a false promise to marry her and took her away on 14.03.2009 from her lawful guardian and on 15.03.2009 had sexual relationship with her. But on 19.03.2009, the appellant went back on his words.



Therefore, the victim lodged a complaint before All Women Police Station, Cantonment, Trichy. Crime No.28 of 2009 was registered. Investigation was taken up and final report came to be laid against the appellant as well as his mother and maternal aunt. Cognizance of the offences was taken and the case was committed to Sessions Court, vide P.R.C.No.20 of 2009. It was made over to the file of the learned Mahila Court, Tiruchirappalli, for trial in S.C.No.170 of 2009. Charges under Sections 366(A), 376 and 417 of I.P.C. were framed against the appellant. As against his mother and aunt charges were framed under Sections 366(A) r/w. 109, 376 r/w. 109 and 417 r/w 109 of I.P.C. The accused pleaded not guilty to the charges and claimed to be tried.

3.The prosecution examined as many as 14 witnesses and marked Exs.P.1 to P.11. M.O.1 to M.O.5 were also marked.

4.The learned Trial Judge after a detailed consideration of the evidence on record acquitted A2 and A3 but convicted the appellant and sentenced him as mentioned above. Challenging the same, this criminal appeal has been filed.

5.The learned counsel appearing for the appellant reiterated the contentions set out in the appeal memorandum and wanted this Court to reverse the impugned judgment and acquit the appellant.

6.Per contra, the learned Government Advocate (Crl. Side) submitted that the impugned judgment does not call for any interference and wanted this Court to dismiss the appeal.

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

8.The primary submission of the appellant's counsel is that the victim was aged above 18 years and that since the relationship between the appellant and the victim was consensual, no offence under Section 366(A) of I.P.C. was made out. But this contention is rebutted by the learned Government Advocate (Crl. Side), who would draw my attention to Ex.P.7, wherein the date of birth of the victim has been mentioned as 05.05.1993. The occurrence had taken place on 14.03.2009. Therefore, she was aged about above 16 years but below 18 years on the occurrence date. As per the statutory provision then prevailing, the age of the victim being above 16 years would come to the rescue the appellant if the charge was under Section 376 of I.P.C. But as far as the charge under Section 366(A) of I.P.C. is concerned, if the victim was below 18 years, consent was immaterial. That is why, the age of the victim becomes relevant. The learned counsel for the



appellant pointed out that the victim had refused to cooperate for radiological examination. He also pointed out that the father of the victim has been mentioned as Palaniyappan/Philomen Das in the school record. The Headmaster, who was examined as P.W.12 had stated that no birth certificate was produced before the school authorities. Be that as it may, as rightly pointed by the learned Government Advocate (Crl. Side) during the relevant time, Rule 12 of Juvenile Justice (Care and Protection of Children) Act, 2007 held the field. Rule 12(3) of the said act reads as follows:-

"(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining-

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law."

Therefore if the school record is available, the absence of a birth certificate from the local body will not make any difference. I am in full concurrence with the aforesaid submission of the learned Government Advocate (Crl. Side). Therefore, I have no hesitation to reject the contention of the learned counsel for the appellant/accused.



9.The victim was examined as P.W.1. She had clearly and categorically deposed as to what happened. She had supported the prosecution case in toto. The victim was medically examined by P.W.10/Dr.Backiavathy. On examination, she found that the victim had sexual intercourse. It is true that in this case there are two complaints. One is dated 28.06.2009 while the other is dated 11.04.2009. Merely because, the complaints were not given immediately that would not in any way weaken the prosecution case. This is a case involving the girl's honour and future. Therefore, the parents are bound to think not once but many times before lodging a police case. Therefore, the delay occasioned in filing the complaint cannot be put against the prosecution. The learned Trial Judge after carefully examining the testimony of the victim as well as the medical evidence and also Ex.P.7 rightly came to the conclusion that the charges framed against the appellant for the offences under Sections 417 and 366(A) of I.P.C. have been established by the prosecution beyond reasonable doubt. I see no reason to take a different view. The conviction imposed on the appellant is confirmed. But then, the learned counsel for the appellant would submit the appellant was in prison for about 72 days during investigation and was in prison for about 10 months post conviction. It is also stated that the victim has since got married and settled. Therefore, taking note of the subsequent developments and the mitigating factors, the sentence of imprisonment imposed on the appellant is modified and reduced to the period already undergone. With this modification in the matter of sentence, the criminal appeal is partly allowed. The fine amount, if any, paid by him shall be refunded. The bail bond, if any, executed by the appellant shall stand cancelled.

Sd/-

Assistant Registrar(AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To:

1.The Sessions Judge,
Mahila Court,
Trichy.



2. The Judicial Magistrate No.II, Trichy.

3. Do Through The Chief Judicial Magistrate, Trichy.

4. The Superintendent, Central Prison, Trichy.

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

6. The Inspector of Police,
All Women Police Station,
Cantonment, Trichy.

copy to
The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

+1 CC to M/s.N. SHANKAR GANESH, Advocate (SR-83257[F] dated
26/08/2019)

Cr1.A.(MD)No.266 of 2011
22.08.2019

PK(CO)
TR(20.03.2020) 5P 10C