

**Bail Slip**

Chinnadurai, S/o.Selvaraj, Sole Accused was released on bail as per Order of this Court dated 14.12.2011 made in MP(MD)No.1 of 2011 in CrI. A(MD)No.326 of 2011.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED: 25.07.2019****CORAM****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****CrI.A.(MD)No.326 of 2011**

Chinnadurai

... Appellant/Accused

Vs.

State through,
The Inspector of Police,
Rathapuram Police Station.
Tirunelveli District.
(Crime.No.118 of 2007)

... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374(2) of Cr.P.C, to set aside the conviction and sentence imposed in S.C.No.490 of 2008, on the file Additional Sessions Judge, Mahila Court, Tirunelveli and thereby acquit this appellant.

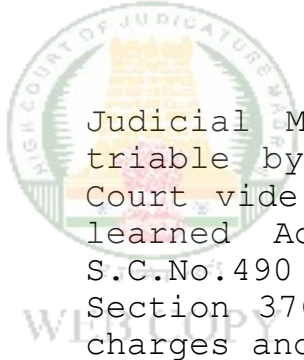
For Appellant : Mr.R.Appavu Rethinam

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

J U D G M E N T

The appellant was convicted for the offence under Section 363 of I.P.C. and sentenced to seven years rigorous imprisonment vide judgment dated 11.10.2012 in S.C.No.490 of 2008, on the file of the learned Additional Sessions Judge, Mahila Court, Tirunelveli.

2.The prosecution case is that the appellant developed intimacy with the victim girl/P.W.2 and kidnapped her on 31.07.2007. The original charge against the appellant was that he raped the victim girl. The mother of the victim had lodged Ex.P.1/complaint on 31.07.2007 before Rathapuram Police Station. Based on the same, Ex.P.11/FIR in Crime No.118 of 2007 was filed. The appellant was charged with the offence under Section 366(A) of I.P.C. The victim was finally rescued and after completing all the usual formalities, final report came to be filed before the learned



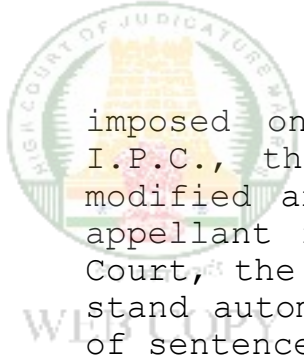
Judicial Magistrate, Valliyoor. Since the case was exclusively triable by the Sessions Court, it was committed to the Sessions Court vide P.R.C.No.37 of 2008. It was taken up for trial by the learned Additional Sessions Judge/Mahila Court, Tirunelveli in S.C.No.490 of 2008. Charges were framed against the appellant under Section 376 as well as 366(A) of I.P.C. The appellant denied the charges and claimed to be tried.

3.The prosecution examined as many as 16 witnesses and marked Exs.1 to 13. On the side of the accused no evidence was adduced.

4.The learned Trial Judge after a detailed consideration of the evidence on record, acquitted the appellant for the offence under Section 376 of I.P.C. However, the appellant was found guilty in respect of Section 363 of I.P.C. and sentenced to seven years rigorous imprisonment and levied with fine of Rs.10,000/-. Questioning the same, this criminal appeal has been filed.

5.The learned counsel appearing for the appellant submitted that having regard to the evidence on record, he would not challenge the conviction or the finding of guilt and that he would be satisfied if leniency is shown in the matter of punishment. The appellant was in prison for 83 days. The appellant is now married. He is having two children. Likewise, the victim/P.W.2 has also married and is settled elsewhere. In the normal course, this Court would have given quietus to the issue by simply confirming the conviction and without putting the appellant on further terms. But then, due to the relationship between the appellant and the victim/P.W.2, a child was born. It is seen from the evidence of P.W.2, the appellant and the victim were living as husband and wife for several months at Kerala. During which time, she conceived. The appellant's relationship with his employer came under strain. The employer tipped off the girl's father and that is how, their whereabouts came to be found out. The appellant and the victim wanted to be formally married in the presence of their parents and continue to live as husband and wife. But unfortunately, there was opposition from the victim's family because the appellant belonged to a different community. I am therefore of the view that the appellant did not want to ditch P.W.2 and it was only the attitude of the family of the victim that was responsible for the breakup in the relationship between the appellant and the victim.

6.Be that as it may, the fact remains that a child was born. The child was put in an orphanage and later given away in adoption. Of course the identity of the child should not be disclosed and confidentiality will have to be maintained. Since the child born on account of the appellant's relationship with P.W.2 is being maintained in an institution, it is only proper that the appellant contributes in some way. The appellant has come forward to donate to Tirunelveli Social Service Society Saranalayam - Adoption Centre, Tirunelveli District. In view of the undertaking given by the appellant before this Court, even while sustaining the conviction



imposed on the appellant for the offence under Section 363 of I.P.C., the sentence of imprisonment imposed on the appellant is modified and reduced to the period of already undergone. If the appellant fails to abide by the undertaking now given before this Court, the sentence of imprisonment imposed by the Court below will stand automatically restored. With this modification in the matter of sentence, this criminal appeal is partly allowed.

Sd/-

Assistant Registrar (Ad-II)

// True Copy //

Sub Assistant Registrar(CS)

To:

- 1.The Additional Sessions Judge,
Mahila Court, Tirunelveli.
 - 2.The Inspector of Police,
Rathapuram Police Station.
Tirunelveli District.
 - 3.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2)
 - 4.The Officer In-Charge,
Tirunelveli Social Service Society Saranalayam,
Adoption Centre,
Tirunelveli District.
 - 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- +1 CC to Mr.S.SAJI BINO, Advocate SR-77785.

Crl.A. (MD) No.326 of 2011
25.07.2019

CS(12.09.2019) 3P 8C