

Bail Slip

Vijayan @ Vijayakumar, S/o.David, aged about 33 years, Mathuram, S/o.Sami Thevar, aged about 54 years, Anand @ Anandaraj, S/o.Rathinam, aged about 33 years, Jeya @ Cheeting Jeya, S/o.Chellai, accused Nos.1 to 4 were released on bail vide order of the Court dated 09.02.2011 made in MP(MD).No.1 of 2011 in Crl.A.(MD).No.39 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)No.39 of 2011

1.Vijayan @ Vijayakumar
2.Mathuram
3.Anand @ Anandaraj
4.Jeya @ Cheeting Jeya

... Appellants/Accused 1 to 4

Vs.

State represented by,
The Inspector of Police,
Mannur Circle,
Thevarkulam Police Station,
Tirunelveli District.
(Crime No.118 of 2006)

... Respondent/Complainant

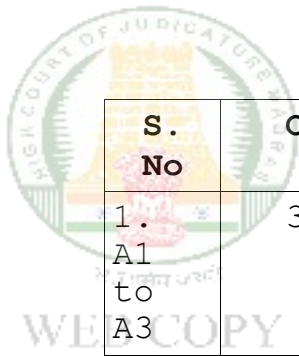
Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C, to call for the records from the lower Court and duly set aside the judgment passed by the Sessions Judge, Mahalir Neethimandram, Tirunelveli, Tirunelveli District in S.C.No.300 of 2008, dated 03.02.2011.

For Appellants : Mr.V.Kathirvelu, Senior Counsel
For Mr.K.Prabhu

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

J U D G M E N T

The appellants were convicted and sentenced vide judgment dated 03.02.2011 in S.C.No.300 of 2008, on the file of the learned Sessions Judge, Mahila Court, Tirunelveli as follows:-

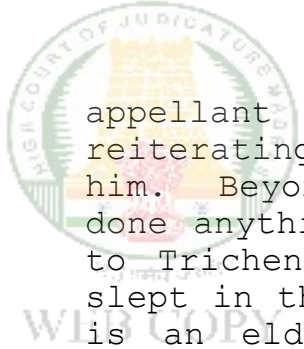


S. No	OFFENCE	SENTENCE	FINE	DEFAULT OF PAYMENT
1. A1 to A3	366 IPC	7 Years Rigorous Imprisonment	Rs.5,000/-	6 Months Rigorous Imprisonment
2. A4	366 r/w 34 IPC	7 Years Rigorous Imprisonment	Rs.5,000/-	6 Months Simple Imprisonment
3. A1 to A4	342 IPC	6 Months Rigorous Imprisonment	-----	-----

Questioning the same, this criminal appeal has been filed.

2.The learned Senior Counsel for the appellants submitted that having regard to the evidence on record, he would not challenge the finding of guilt and he only seeks the benefit of the Probation of Offenders Act, 1958, in favour of the appellants. It is seen that the victim/P.W.2 is the relative of the appellants herein. The first appellant namely., Vijayan @ Vijayakumar is a practising Lawyer and he was in love with the victim/P.W.2. In fact, he along with his parents went to the house of the victim and asked for her hand. But there was no proper response from the girl's family. P.W.2 had come down to her native place namely., Devarkulam, in connection with a school function on 07.11.2006. The second appellant/Mathuram is the uncle of the victim. He had induced her to accompany him on his two wheeler. Mathuram told the victim that he is needing her help for writing out a telegram in English. Believing his words, the victim accompanied Mathuram on his two wheeler. Mathuram stopped the two wheeler enroute and the victim was bundled into a waiting sumo car bearing Registration No.TN 76 Y 1450. This happened at around noon on 07.11.2006. The victim was abducted and taken to Kayalpattinam and then to Trichendur. In the meanwhile, the victim's mother namely., P.W.1 lodged a police complaint. In connection there with, the mother and sister of the first appellant were taken to the police station. The victim was rescued on the next day. The victim had spoken in support of the prosecution case, when she was examined as P.W.2 before the Court below. I am of the view that on the testimony of the victim, one can easily come to the conclusion that the appellants had abducted her. The Court below rightly held the appellants guilty of the offences with which they were charged. The victim could not be shaken in her cross examination. In fact, that is why, the learned Senior Counsel rightly submitted that he is not questioning the finding of guilt arrived at by the Court below.

3.The first appellant is the practising Lawyer. The victim herself had frankly stated that at no point of time, the first



appellant misbehaved with her. In fact, he was constantly reiterating his love for her and wanted the victim/P.W.2 to marry him. Beyond pleading with the victim, the first appellant had not done anything more. The victim had stated that when she was taken to Trichendur, where two rooms were booked, while A1, A3 and A4 slept in the other room, A2/Mathuram alone was with the victim. He is an elderly uncle of the victim and whose presence was not objected to by the victim. Therefore, I am inclined to view the case of the appellants with some indulgence and sympathy. They had probably taken inspiration from Tamil movies. Taking note of their general good conduct, even while sustaining the conviction, the sentence of imprisonment imposed on A2 to A4 is set aside. The sentence of imprisonment is set aside in the case of A1 also and additionally this Court is invoking the benefit of the Probation of Offenders Act, 1958, particularly Section 4 of the Act. The character of the first appellant admittedly has not come under adverse notice of the police subsequent to the occurrence. He was not having any bad antecedents. In fact, he was practising as a Lawyer during the relevant time. Of course, the fact remains that he abducted. That is why, this Court found him guilty of the offence with which he was charged. But taking note of the exemplary manner in which he had conducted himself post abduction, this Court deems it fit and appropriate to invoke the power under Section 4 of Probation of Offenders Act, 1958. The first appellant is having a fixed place namely., Devarkulam, Tirunelveli District. He is also having a regular profession. That is why, even without calling for a report from the probation officer, this Court is straightaway applying Section 4 of the Act. Since the first appellant has been dealt with under Section 4 of the Probation of Offenders Act, the first appellant though found guilty of the offence, he shall not suffer any disqualification attaching to conviction. It is reiterated that the first appellant's practice as an advocate will not any way be affected by the dismissal of this appeal as far as the conviction part is concerned. In other words, the Bar Counsel will not take any action against the first appellant, merely because, this Court has sustained the conviction imposed on him by the Court below. It is reiterated that the sentence of imprisonment imposed on all the appellants is set aside. With this modification in the matter of sentence, this criminal appeal is partly allowed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

ias

<https://hcservices.ecourts.gov.in/hcservices/>



To:

- 1.The Sessions Judge, Mahila Court,
Tirunelveli District.
- 2.The Judicial Magistrate No.III, Tirunelveli.
- 3.Do through The Chief Judicial Magistrate, Tirunelveli.
- 4.The Inspector of Police, Mannur Circle,
Thevarkulam Police Station, Tirunelveli District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 6.The Superintendent of Prison, Central Prison,
Palayamkottai, Tirunelveli District.

Copy to:

The Record Keeper, Criminal Section, (2 Copies),
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.K.PRABHU, Advocate (SR-79673[F] dated 05/08/2019)

Cr1.A.(MD)No.39 of 2011
05.08.2019

JMN(31.01.2020) 4P : 10C