

**Bail Slip**

Appellant/Sole Accused viz., Ramu, S/o.Alagappan, was released on bail in and by the order of this Court dated 15.04.2010 made in MP (MD)NO.1 of 2010 in Cr1.A.(MD)No.129 of 2010

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED: 16.07.2019****CORAM****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****Cr1.A.(MD)No.129 of 2010**

Ramu ... Appellant/Sole Accused
Vs.

State Rep. by
The Inspector of Police,
Thirumayam Police Station,
Pudukkottai District. ... Respondent/Complainant
(Crime No.8 of 2008)

Prayer: Criminal Appeal is filed under Section 374(2) of Cr.P.C, to set aside the sentence and conviction imposed on the appellant in judgment dated 24.03.2010, passed by the learned Mahila Court (Sessions Judge), Pudukkottai in S.C.No.89 of 2009 and acquit the appellant.

For Appellant : Mr.M.Karthikeya Venkitachalapathy
For Respondent : Mrs.S.Bharathi
Government Advocate (Cr1. Side)

JUDGMENT

The case of the prosecution is that the appellant was dealing in Iron scrap. He was running the shop in the name and style of Pattavan Iron Shop. The victim joined the appellant's shop as a staff. The appellant is said to have given a false promise to marry her and had sexual relationship with her. But then on 20.09.2009, the appellant is said to have had sexual relationship with her against her will. In this regard, Ex.P.1/complaint was lodged by the victim girl before Thirumayam Police Station. Based on the same, Ex.P.9/FIR in Crime No.4 of 2009 was registered for the offence under Sections 417 and 376(i) of I.P.C. The respondent after completing usual formalities, filed the final report for the aforesaid offence against the appellant before the learned Judicial Magistrate, Thirumayam. The case was committed to Sessions Court in P.R.C.No.4 of 2009. It was made over to the learned Mahila Court/Sessions Court, Pudukkottai in S.C.No.89 of 2009. Charges were framed against the appellant under Sections 417 and 376(i) of I.P.C. The appellant denied the charges and claimed to be tried.

2. The prosecution examined as many as 21 witnesses and marked Exs.1 to 11. On the said of the accused no evidence was



adduced. The incriminating circumstances were put to the accused under Section 313 of Cr.P.C. for him to explain.

3.The learned Trial Judge by judgment dated 24.03.2010 while acquitting the appellant of the charge under Section 376(i) of I.P.C. chose to convict for the offence under Section 417 of I.P.C. and sentenced him to undergo one year rigorous imprisonment and a sum of Rs.3,000/- was levied as fine. Questioning the same, this criminal appeal has been filed.

4.Heard the learned counsel on either side.

5.I carefully considered the rival contentions.

6.The appellant's counsel would primarily argue that this appears to be a case of consensual relationship. He drew my attention to the medical witness and stated that during the relevant time the victim was around 17 years of age. It is true that Section 375 of I.P.C. underwent an amendment but then the amendment enhancing the age of consent for the girl to 18 years was made in the year 2013. The occurrence in this case took place in the year 2008, that is before the amendment. Therefore, according to the appellant's counsel, the reckoning age should be 16 years and since as per the medical evidence, the victim was around 17 years of age and in view of the consensual nature of relationship, this Court ought to reverse the judgment of conviction and acquit the appellant totally. I am unable agree with the submission of the appellant's counsel. It is seen from Ex.P.5/Transfer Certificate, the victim was born on 17.04.1993. Thus on the occurrence date, she was below the age of 16 years. Hence, her consent is utterly immaterial. When the evidence regarding the age of the victim is available by way of school records, one need not look to medical evidence. Therefore, I am of the view that theory of consent projected by the appellant cannot hold any water. In fact justice requires that this Court should issue *suo motu* notice calling upon the appellant as to why his acquittal under Section 376(i) should not be reversed. But then, it is stated that the victim got married with some one else and also died. She is not having any surviving legal heirs. Therefore, I am of the view that beyond dismissing this appeal, nothing further needs to be done. I find no ground to interfere and this criminal appeal stands dismissed.

Sd/-

Assistant Registrar (CRL.SIDE)

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To:

1.The Mahila Court (Sessions Judge),
Pudukkottai.

2.The District Munsif cum Judicial Magistrate
Thirumayam, Pudukkottai District

3.The Chief Judicial Magistrate
Pudukkottai District

4.The Inspector of Police,
Thirumayam Police Station,
Pudukkottai District.

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

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

+1 CC to M/s.M.KARTHIKEYA VENKITACHALAPATHY, Advocate (SR-75805
[F] dated 17/07/2019)

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Cr1.A. (MD) No.129 of 2010
16.07.2019

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