



Bail Slip

Muthu Ganesan @ Ganesan, S/o.Muthu Sundaram, Male, aged about 30 years (sole accused) is released on bail vide Court order dated 18.06.2013 made in MP(MD) 1/2013 in Crl.A(MD) 101/2013

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.08.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)No.101 of 2013

Muthu Ganesan @ Ganesan

... Appellant/Accused

Vs.

State represented through,
The Inspector of Police,
All Women Police Station,
Virudhunagar.

... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374 of Cr.P.C., to allow the appeal and set aside the Judgment dated 05.02.2013 made in S.C.No.113 of 2011 on the file of the Assistant Sessions Judge, Virudhunagar.

For Appellants : M/s.S.Jothimani,
Legal Aid Counsel.

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

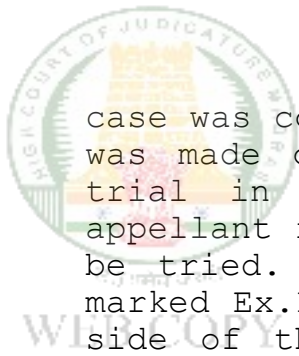
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JUDGMENT

The appellant was convicted for the offence under Sections 376(1) of I.P.C., and Section 366 of I.P.C., and sentenced to undergo 10 years Rigorous Imprisonment and 7 years Rigorous Imprisonment respectively and he was also levied with fine vide Judgment dated 05.02.2013 in S.C. No.113 of 2011 on the file of the Assistant Sessions Judge, Virudhunagar.

2. The prosecution case is that the appellant had kidnapped the victim on 03.10.2010 at about 2 p.m., and committed rape on her on 06.10.2010 at about 07.00 p.m., near Aruppukottai Railway Station. In this regard, P.W.1, father of the victim lodged Ex.P.1 complaint before Soolakarai police station on 04.10.2010 itself. Crime No.293 of 2010 was registered on 06.10.2010 for the offence under Section 366(A) of I.P.C. The case was thereafter transferred to All women police station, Virudhunagar.

3. Investigation was taken up and final report was filed against the appellant for the offences under Sections 376 and 366 of I.P.C., before the Judicial Magistrate No.II, Virudhunagar. The



case was committed to the Sessions Court, in P.R.C.No.3 of 2011. It was made over to the Assistant Sessions Judge, Virudhunagar, for trial in S.C.No.113 of 2011. Charges were framed against the appellant for both these offences. He denied the same and claimed to be tried. The prosecution examined as many as 19 witnesses and marked Ex.P.1 to Ex.P.16. M.O.1 to M.O.3 were also marked. On the side of the accused, no evidence was adduced. The learned trial Judge by the impugned Judgment, convicted and sentenced the appellant as mentioned above. Challenging the same, this Criminal appeal came to be filed.

4. When the matter was taken up for hearing, there was no representation on the side of the appellant. Therefore this Court directed the Registry to appoint a Legal Aid counsel. Today when the matter was taken up for hearing, the learned Legal Aid counsel appeared and reiterated all the contentions set out in the appeal memorandum. He wanted this Court to reverse the impugned Judgment and acquit the appellant.

5. Per contra the learned Government Advocate(Crl.Side) submitted that the impugned Judgment does not warrant any interference and he wanted this Court to dismiss this appeal.

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

7. At the outset, it must be stated that the victim was born on 11.05.1996. The occurrence had taken place in October 2010. The age of the victim has been established by Ex.P.2/Ex.P.16(Birth Certificate). That the victim was aged below 16 years has been established beyond reasonable doubt by the prosecution through these two exhibits.

8. Therefore, the accused cannot plead consent. The only question that arises for consideration is whether the appellant had taken the victim from the lawful custody of P.W.1 and whether he committed sexual intercourse on her. In support of the prosecution case, P.W.1 father, P.W.2 mother and victim were examined as the main witnesses. P.W.1 father of the victim stated that he was working as mason and that the victim was his daughter. The victim was studying in 10th standard in a Government school. She was going for attending tuition from one teacher by name Mrs.Prema P.W.8. On the occurrence date, on 03.10.2010, the victim left the house stating that she was going to attend the tuition class. But then, till late evening she did not return. Thereupon, P.W.1 went to the house of the tuition teacher to enquire about his daughter. The tuition teacher stated that P.W.1's daughter did not come for tuition on the said date. Thereafter, P.W.1 and others went in search of the victim. P.W.1 was informed that the accused Muthuganesan had been telling others about the intention to kidnap her. Thereupon, P.W.1 went to the house of the



appellant and asked his wife Bagyalakshmi as to where was the appellant. As the appellant was not at his house, P.W.1 tried to contact the appellant over his mobile phone, but he could not get any response. Thereupon, P.W.1 went to Soolakarai police station and lodged Ex.P.1 complaint. P.W.1 suspected that the appellant must have kidnapped his daughter and that is why in Ex.P.1 complaint, the appellant's name was implicated specifically. On the advice given by Soolakarai police station, P.W.1 approached All Women police station, Virudhunagar. On 08.10.2010, P.W.1 received information from All Women police station, Virudhunagar. When P.W.1 went to the station, he found the appellant as well as his daughter there. P.W.1's daughter told P.W.1 that the appellant threatened to shame the victim and that is how he made her accompany him. P.W.3/victim told her parents that on 03.10.2010 at about 2.00 p.m., instead of going to the tuition class, they went to Virudhunagar Collectorate and from there, went to quite a few places such as Madurai, Thiruchenkode and Trichy etc. On 06.10.2010, at about 07.00 p.m., the appellant committed forcible sexual intercourse on the victim near Aruppukottai Railway Station. It was there, she was rescued by the All Women police, Virudhunagar. P.W.1 had clearly deposed that his daughter was born on 11.05.1996. Through P.W.1, a photocopy of the Birth Certificate was marked. Of course later the original Birth Certificate was also marked. On 09.10.2010, the victim was taken to Virudhunagar Government Hospital and she was examined. P.W.1 stood his ground in the cross examination also. P.W.2 is the mother of the victim. Her testimony is also on the same lines as that of her husband, namely, P.W.1.

9. P.W.3 is the victim. She deposed that the appellant was stalking her regularly. He had been expressing his desire to marry her. P.W.3 claimed that she resisted the advances of the appellant. But on the occurrence date, the appellant is said to have been threatened P.W.3 that he would shame her by spreading rumour in the village that there is an illicit intimacy between him and P.W.3. Afraid of the same, P.W.3 claimed to have accompanied the appellant. She was rescued a few days later. Even if P.W.3 accompanied the appellant on her own volition, still that would not absolve the appellant of the consequence of his penal conduct. As already pointed out, the victim was a minor who was aged just 14 years and five months. Therefore, she was incapable of giving consent. She had deposed that the appellant had sexual intercourse with her. P.W.11 is the doctor who examined the victim. The said doctor has confirmed that the victim was subjected to sexual intercourse. P.W.4 Balamurugan is also a resident of Azhagapuri village. He deposed that on the occurrence date at about 02.30 p.m., he saw the victim and the accused standing in the Collector's office bus stop. P.W.7 Ganesan is also residing in the very same village and he had joined in the search of Shamugapriya. P.W.8 is the tuition teacher. She had stated that on 03.10.2010, the victim did not attend the tuition class. P.W.9 is the Magazar witness. P.W.10 was working as Village Administrative Officer and he had also signed in the Magazar. P.W.12 is the doctor who examined the victim. P.W.12 examined the



accused and issued Potency Certificate. P.W.13 is the police constable who produced the victim for medical examination. P.W.14 is the Court official who received M.O.1 to M.O.3 and sent them for forensic examination. P.W.15 was working as Special Sub Inspector of Police in Soolakarai police station and received Ex.P.1 complaint. P.W.16 was working as Head Constable in All Women Police Station, Virudhunagar and after receiving the First Information Report from Soolakarai police station, forwarded the same to her higher officials. P.W.17 is the Forensic expert. P.W.18 was working as Inspector of Police in All Women Police Station, Virudhunagar and she conducted part of the investigation. P.W.19 filed the final report. All the incriminating circumstances were put to him in the examination under Section 313 of Cr.P.C. The appellant/accused merely characterised the circumstances as false and did not present any defence version.

10. On a careful reading of the testimony of P.W.1 to P.W.3, one can come to the conclusion that the trial Court rightly held that the prosecution established its case against the accused beyond reasonable doubt.

11. The appellant was a married man even at the time of the occurrence. He was the father of two children. He had induced a young girl child aged less than 15 years to accompany him so that he could satisfy his carnal desires. The conduct of the appellant does not deserve any lenience. The trial Court rightly took a serious view of the offences committed by the appellant and sentenced the appellant to undergo 10 years Rigorous Imprisonment for the offence under Section 376(1) of I.P.C. and seven years Rigorous Imprisonment for the offence under Section 366 of I.P.C. The learned trial Judge had given a cogent and convincing reasons for arriving at the finding of guilt.

12. I have independently gone through the evidence on record and I fully agree with the reasons assigned by the learned trial Judge for convicting the appellant. I find no ground to interfere. I find no merit in this Criminal appeal.

13. This Criminal appeal stands dismissed, accordingly. The learned trial Judge is directed to secure the appellant to undergo the remaining period of sentence. The bail bond, if any, executed by him shall stand cancelled.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)



To:

1. The Assistant Sessions Judge,
Virudhunagar.
2. The Inspector of Police,
All Women Police Station,
Virudhunagar.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Superintendent, Central Prison, Madurai.
5. +1 CC to Mr.S. JOTHI MANI, Legal Aid Counsel
(SR-81431[F] dated 13/08/2019)

Copy to

The Section Officer, Criminal Section(Records),
Madras High Court-Madurai Bench,
Madurai.

Crl.A.(MD)No.101 of 2013
13.08.2019

TP (07.05.2020) 5P 7C