



BAIL SLIP

The Appellant/Accused viz., Harikrishnan, S/o.Govindan, was released on bail as per the order dated 15.4.2013 made in MP(MD)No.2 of 2013 in Crl A(MD)No.123 of 2013.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)No.123 of 2013

Harikrishnan

... Appellant/Sole Accused

Vs

Stater rep. by
The Inspector of Police,
Tiruchendure Temple Police Station,
Crime No.50/2010,
Tuticorin District.

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the records relating to the Judgment dated 26.03.2012 made in S.C.No.271 of 2010 passed by the learned Additional Sessions Judge (FTC No.1), Tuticorin and set aside the same.

For Appellant
For Respondent

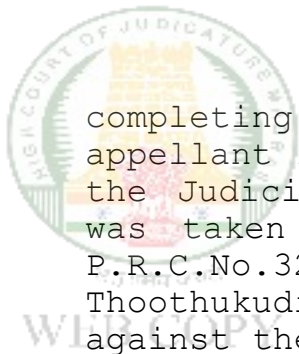
: Mr.S.Duraiaraj
: Mrs.Bharathi
Government Advocate (Crl.side)

JUDGMENT

The appellant was convicted for the offences under Section 366 and 376 of IPC and sentenced to suffer rigorous imprisonment for five years and seven years respectively, vide Judgment dated 26.03.2012 in S.C.No.271 of 2010 on the file of the Additional Sessions Judge, Fast Track Court No.1, Thoothukudi.

2.The prosecution case in brief is this:-

The appellant kidnapped the victim/P.W.2 near Tiruchendure Subramania Swamy Temple on 27.02.2010 at about 11.00 a.m., and took her to various places and had sexual relationship with her by giving a false promise to marry. The victim was aged around 17 years at the time of occurrence. In this regard, Ex.P1-Complaint was lodged by P.W.1-father of the victim before the Tiruchendur Police Station. Ex.P7-FIR in Crime No.50 of 2010 was registered as "girl missing case". Investigation was taken up and the girl was rescued on 08.04.2010. The appellant was arrested on the same day. After



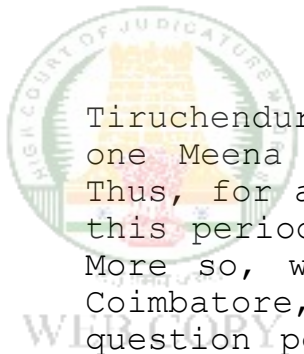
completing the usual formalities, final report was laid against the appellant for the offences under Sections 366 and 376 of IPC before the Judicial Magistrate, Tiruchendure. Cognizance of the offence was taken and the case was committed to the Sessions Court in P.R.C.No.32 of 2010. It was made over to the Fast Track Court No.1, Thoothukudi for trial in S.C.No.271 of 2010. Charges were framed against the appellant in respect of the aforesaid two offences. The appellant denied the charge and claimed to be tried. The prosecution examined as many as nine witnesses and marked Ex.P1 to Ex.P11. On the side of the accused, no evidence was adduced. The learned trial Judge, by the impugned Judgement, convicted and sentenced the appellant as mentioned above. Challenging the same, this appeal came to be filed.

3. 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 accused.

4. 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 this appeal.

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

6. The victim was examined as P.W.2. The victim deposed before the Court that she was studying in 12th standard at the World Redeemer Higher Secondary School, at Thisayanvilai. At the time of occurrence, she was studying in 11th standard at Vulagaratchaga Higher Secondary School, Tiruchendur. According to the prosecution, the victim was aged around 17 years at the time of occurrence. That is why, one of the charge against the appellant was that he had taken the victim from the lawful custody of her parents. She further stated that on 27.03.2010, she had gone to Tiruchendur Temple. She was waiting in the temple hall for having her food. Her mother had gone away to dry the clothes. The victim claimed that the accused sprayed some powder on her. She does not remember what had happened thereafter. She however claimed that he took her in a bus and to various places. She claimed that the appellant had sexual intercourse with her against her will. She thereafter contacted her father and that she returned to Tiruchendur along with the accused on 08.04.2010 and that, the Police secured her in the bus stand and arrested the accused also. The testimony of the victim does not inspire my confidence. She had gone on a Padayatra along with her mother. They had taken bath in the sea and were waiting in the temple hall to have their food. The mother had gone to dry her clothes. The victim would claim that she did not know what happened, after the appellant threw some powder on her. This version is simply impossible to believe. Admittedly, both had travelled in a public transport. Even according to the victim, <https://hdsccs.ecourts.gov.in/cases/> they went to Thenkasi. Thereafter, they went to



Tiruchendur. She stated that she stayed at a house belonging to one Meena in Tiruppur and that, the accused went to Coimbatore. Thus, for almost 40 days, the victim was with the appellant. During this period, she could have very easily escaped from the appellant. More so, when he had left her in the house of Meena and gone to Coimbatore, no such attempt was made by the victim. To a specific question posed in the cross examination that the marriage between the two took place at Santhanamariamman Temple Rajapalayam, the victim feigned ignorance. I therefore have no hesitation to conclude that the relationship between the victim and the accused was purely consensual in nature. The prosecution did not make any effort to mark the school certificate. However, it is seen that the said document was made available before the Court. The Court below, after going through it and after taking note of the opinion of the radiologist, confirmed that the victim was below the age of 18.

7. Taking a person who is below the age of 18 from the lawful custody of her parents, clearly attracts Section 366 of IPC. In as much as I have come to the conclusion that the relationship between the two was consensual, the appellant is acquitted of the charge under Section 376 of IPC. However, the conviction of the appellant for the offence under Section 366 of IPC is confirmed. The Court below has awarded five years rigorous imprisonment for the said offence. The appellant was in prison for about three years and five months. It appears that the appellant was very much interested in marrying the victim and that, it was only the victim, who was not willing to marry the appellant. This was because, the victim belongs to Nadar Community, while the appellant belongs to SC Community. The appellant had first taken the victim only to a temple and after marrying, he had sexual intercourse with her. The conduct of the appellant appears to be rather bonafide. Therefore, even while sustaining the conviction for the offence under Section 366 of IPC, the sentence of imprisonment is reduced and modified to the period already undergone by him. The conviction and sentence in respect of the offence under Section 376 of IPC is set aside. The conviction imposed on the appellant for the offence under Section 366 of IPC is sustained. The criminal appeal stands partly allowed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Additional Sessions Judge (FTC No.1), Tuticorin.

2.-do-Thro The Principal Sessions Judge, Tuticorin.

3.The Judicial Magistrate, Tiruchendur

4.The Superintendent,
Central Prison,1
Palayamkottai.

5.The Inspector of Police,
Tiruchendure Temple Police Station,
Tuticorin District.

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

Copy to: The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1 cc Mr.S.DURAIRAJ ,Advocate, SR.No. 84235

Crl.A(MD)No.123 of 2013

KK/SAR/09.10.2019/4P-10C/