



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 28.08.2019
CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

Crl. A. (MD) No.292 of 2019

V.Chellappa

... Appellant/P.W.2

Vs.

1. State rep. by,
The Inspector of Police,
Moondradaippu police station,
Thirunelveli District. ... Respondent/Complainant

2. Shakthivel ... Respondent/Accused

Prayer : This Criminal appeal is filed under Section 397 and 401 of Cr.P.C., to call for the records in S.C.No.20 of 2010 on the file of the Sessions Judge(Mahila Court), Thirunelveli and set aside the Judgment dated 15.06.2011 by allowing this revision petition.

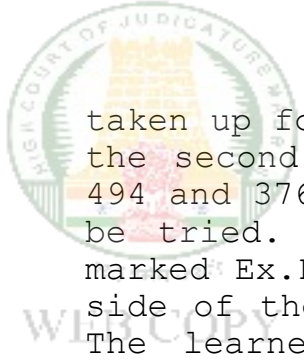
For Appellant : Mr.A.Sivasubramanian
For R-1 : Mr.A.Robinson,
Government Advocate(Crl. Side)
For R-2 : Mr.J.Ashok

JUDGMENT

The appellant herein is the defacto complainant in Crime No.24 of 2009 on the file of Moondradaippu police station.

2. The case of the prosecution is that on 03.03.2009, the second respondent herein kidnapped the victim girl and wrongfully confined her in the house of one Karuppusamy and had sexual relationship with her. The victim was ultimately rescued on 13.03.2009. On 08.03.2009, the appellant herein Chellappa lodged information with Moondradaippu police station about the missing of his daughter Uma. Crime No.24 of 2009 was registered. After the girl was secured, she was sent for medical examination on 16.03.2009. Ex.P.9 certificate issued by the Assistant Civil Surgeon, Thirunelveli Medical College Hospital clearly indicated that there was evidence of recent intercourse. After recording the statements of the various witnesses and after completing all the formalities, final report was laid against the appellant before the learned Judicial Magistrate, Nanguneri, for the offences under Sections 366(A), 342, 494 and 376 of I.P.C.

3. The case was committed to the Sessions Court in P.R.C.No.72 of 2009. The case was assigned to the Mahila Court and

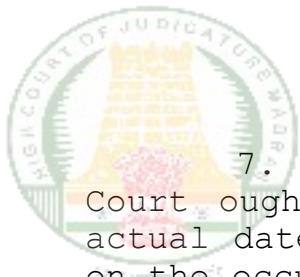


taken up for trial in S.C.No.20 of 2010. Charges were framed against the second respondent for the offences under Sections 366(A), 342, 494 and 376 of I.P.C. The accused denied the charges and claimed to be tried. The prosecution examined as many as 19 witnesses and marked Ex.P.1 to Ex.P.13. M.O.1 to M.O.3 were also marked. On the side of the accused, one diary of the victim was marked as Ex.D.1. The learned trial Judge after consideration of the evidence on record, acquitted the accused of the offences with which he was charged vide Judgment dated 15.06.2011. Challenging the same, this criminal appeal came to be filed by the defacto complainant who is none other than the father of the victim.

4. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the acquitted accused and the learned Government Advocate(Crl. Side) appearing for the first respondent.

5. The victim was examined as P.W.1. She stated that on the occurrence date, her age was 17 years. She clearly deposed that on 03.03.2009 at about 8.15 a.m., the second respondent Shakthivel invited her to go for a movie. P.W.1 is said to have stated that she was having classes to attend and that she did not want to accompany him. But the second respondent is said to have insisted and took her in a bus. Both of them went to a place called Puliyankudi in the said bus. The second respondent is said to have given assurance to the victim that he would marry her. P.W.1 is said to have resisted the advances of the second respondent. The victim was under the control of the accused till 13.03.2009 and during this period, the victim clearly stated that they lived as husband and wife. The victim was extensively cross examined by the counsel for the accused. A careful reading of the same would indicate that their approach was to challenge the age claimed by the victim and also to challenge her claim that she was forcibly taken. In other words, the accused wanted to establish that the victim was more than 18 years old and that she had voluntarily accompanied the accused.

6. P.W.2 is the appellant herein. P.W.2 had stated that his daughter went missing on 03.03.2009 and that they searched and unable to find her, they lodged a complaint on 08.03.2009. P.W.3 is a neighbour but he is not a material witness. P.W.4 is the mother of the victim. P.W.5 is the Forensic Expert. P.W.6 is the Mahazar witness. P.W.7 is another mahazar witness. P.W.8 is the villager. P.W.9 and P.W.10 turned hostile. P.W.11 is not a material witness. P.W.12 is the doctor who examined the accused and issued Ex.P.7 certificate. P.W.13 doctor who examined the victim issued Ex.P.8 and Ex.P.9 and opined that there was an evidence of recent intercourse. P.W.14 registered the First Information Report. P.W.15 handed over the First Information Report to the Inspector of Police for further investigation. P.W.16 produced the accused for medical examination. P.W.18 is the Inspector of Police who conducted the investigation and filed final report.



7. The core argument of the petitioner's counsel is that this Court ought not to take note of Ex.D.1. It can be seen that the actual date of birth of the victim is 29.01.1991 and that therefore on the occurrence date, she had clearly attained the age of 18. But then, from Ex.P.13 Transfer Certificate issued by Sarah Tucker Higher Secondary school, Palayamkottai, it is seen that her date of birth was 20.05.1991. Ex.P.13 was marked through P.W.19. P.W.19 is the Principal of Sarah Tucker college, Tirunelveli.

8. In the cross examination, P.W.19 has not been suggested that Ex.P.13 is a fabricated document. The only question that was put to the witness is whether he was aware of the actual date of birth or not. The allegation of the learned counsel appearing for the second respondent cannot be accepted. This is for the reason that whenever an issue as regards age determination comes up for consideration, one has to look to Rule 12 of Juvenile Justice Rules 2007). During the relevant time, Rule 12 was in force. Rule 12(3) of the Juvenile Justice Rules 2007 reads as follows:

"12(1) ...

(2) ...

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining?

(a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence



whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.''

9. Thus when the school record is available, this Court would be justified in going by the same. In any event, Ex.D.1 cannot prevail over Ex.P.13. I therefore hold that on the occurrence date, the victim was very much a minor and she had not attained the age of majority.

10. The other contention urged by the learned counsel appearing for the accused is that the relationship between the victim and the accused was consensual and voluntary. There was no element of force whatsoever. I would agree with the submission of the learned counsel appearing for the second respondent. But then, the question that arises is whether the consent given by the victim is a valid consent or not. The victim had clearly stated that during the occurrence time, the second respondent Shakthivel was already a married person. The victim in her testimony stated that she was not aware of his marital status. The learned counsel appearing for the second respondent would claim that this statement made by the victim cannot be believed. She had specifically admitted in her testimony that she believed the assurances given by the accused that he would marry her. Thus one can come to the conclusion that the victim submitted to the sexual needs of the accused as he had given his assurance that he would marry her. But then the accused could not have given such an assurance because he was already a married person.

11. That apart since I have already held that the victim was below the age of 18 years, the act of the accused in taking her away from the lawful custody would amount to an act of kidnapping. Keeping a minor confined in a house would certainly attract the offence of unlawful confinement also. The victim had deposed that the accused tied "Thali" on her when he was in the house of Karuppusamy. Viewed in this perspective, I am of the view that the acquittal of the second respondent for these offences is clearly bad in law. Therefore, the impugned Judgment of acquittal is set aside. I find the second respondent guilty of the offences under Sections 366(A), 342, 494 and 376 of I.P.C. At this stage, the wife of the second respondent who is also present before this Court stated that if this Court sent her husband to prison, then the lives of her three children will be ruined. She added that the so-called victim knew the actual marital status of her husband. The accused was in prison for about three months. The victim has also got married.

12. Therefore taking note of mitigating factors, even while holding the second respondent guilty, the sentence of imprisonment already undergone by him is treated as sufficient. However, the second respondent is directed to pay a sum of Rs.25,000/- (Rupees twenty five thousand only) as compensation to the appellant Chellappa. The learned counsel appearing for the second respondent



undertakes that the second respondent will take a Demand Draft favouring the appellant Chellappa for a sum of Rs.25,000/- and hand over the same within a period of eight weeks from the date of receipt of a copy of this order.

13. This criminal appeal stands allowed on these terms.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1. The Sessions Court (Mahila Court),
Thirunelveli.
2. The Inspector of Police,
Moondradaippu police station,
Thirunelveli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

1. Shakthivel,
S/o. Singharam,
Moondradaippu,
Nanguneri Taluk,
Tirunelveli District.
 2. The Section Officer, Criminal Section (Records),
Madurai Bench of Madras High Court, Madurai. (2 Copies)
- +1 CC to M/s.J.ASHOK, Advocate (SR-84068[F] dated 29/08/2019)
- +1 CC to M/s.A.SIVASUBRAMIAN, Advocate (SR-84155[F] dated 29/08/2019)

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