

BAIL SLIP

CRL.A.No.104/2013 & CRL.A.No.105/2013

The accused 1)Mani M/25, S/o. Sevathakal @ Selvam, 2)Sankar M/25 S/o. Duraisamy, 3)Ramasamy M/25, S/o. Kunjupaiyan, 4)Shankar M/30, S/o. Aandi, 5)Allimuthu M/28, S/o. Lakshmanan, 6)Mani M/28, S/o.Duraisamy, 7)Manikandan M/28, S/o. Perumal on the file of the Sessions Judge Mahila Court, Salem were released on bail as ordered in criminal.MP1&1/2013/Criminal Appeal No.104 of 2013 & 105/2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.02.2020

Delivered on : 13.03.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl.A.Nos.104 and 105 of 2013

1.Man  
2.Sankar  
3.Ramasamy  
4.Shankar  
5.Allimuthu  
6.Man

...Appellants/Accused  
in Crl.A.No.104 of 2013

Manikandan

...Appellant/Accused  
in Crl.A.No.105 of 2013

Vs.

The State by  
Inspector of Police,  
Panamarathupatti Police Station,  
Salem District.  
(Cr.No.149 of 2019)

...Respondent in both  
Criminal Appeals

Criminal Appeals filed under Section 374(2) Cr.P.C., praying to set aside the judgment of conviction and sentence, dated 22.01.2013, passed by the Sessions Judge, Mahila Court, Salem, in S.C.No.67 of 2010.

For Appellant(s) : Mr.R.C.Paul Kanagaraj  
for Mr.R.Nalliyappan  
in Crl.A.No.104 of 2013

: Mr.R.Nalliyappan  
in CrI.A.No.105 of 2013

For Respondent : Mrs. Kritika Kamal. P.  
Government Advocate (CrI. Side)  
in both Criminal Appeals

### C O M M O N J U D G M E N T

These Criminal Appeals have been filed to set aside the judgment of conviction and sentence, dated 22.01.2013, passed by the Sessions Judge, Mahila Court, Salem, in S.C.No.67 of 2010.

2. Distilled from the evidence on record, the prosecution case is as under :

The victim girl "X" (for the sake of anonymity) is the daughter of Kandasamy (P.W.1) and was residing in Suriyakuralnatham Village in Salem District. At the time of occurrence, she was studying in 12<sup>th</sup> Std. in Government Girls Higher Secondary School in Kullappanaickanoor. On 07.07.2009, after school hours, "X" (P.W.2) was proceeding to the bus stop with her friends Sathyapriya (P.W.3), Meena (P.W.7) and Geetha (P.W.8). Around 04.30 p.m., a white colour Maruti Omni Van (M.O.1) bearing Registration No.TN-28-AZ-8091, stopped near "X" and Manikandan (A1) and Mani (A2) got down from the van, bundled her, and sped away. Her friends panicked and informed Appavoo (P.W.4), the School Watchman, who, in turn, informed Kandasamy (P.W.1), the father of "X" (P.W.2). On the written complaint (Ex.P1) given by Kandasamy (P.W.1), Dhanraj (P.W.15), Sub-Inspector of Police, registered a case in Panamarathupatti Police Station Crime No.149 of 2009 on 07.07.2009 at 20.15 hours for the offences under Sections 341 and 363 IPC and prepared the printed F.I.R. (Ex.P10) which disclosed the names of three persons Manikandan (A1), Mani (A2) and Sankar (A3). [in this case, there are three Manis, viz., Manikandan (A1), S/o.Perumal, Mani (A2), S/o.Sevathakali and Mani (A7), S/o.Duraisamy and two Shankars, viz., Sankar (A3), S/o.Duraisamy and Shankar (A7), S/o.Aandi]

3. Investigation of the case was taken over by Thiruneelakandan (P.W.18), Inspector of Police, who went to the place of occurrence and prepared the Observation Mahazar (Ex.P5) and Rough Sketch (Ex.P11) in the presence of witnesses Palanivel (P.W.9) along with one Muthusamy (not-examined). The police formed a team for tracing "X" (P.W.2) and on 09.07.2009 around 12.00 noon, the police located "X" (P.W.2) in the company of Manikandan (A1), Mani (A2), Sankar (A3), and Ramasamy (A4). The accused were arrested and "X" (P.W.2) was rescued and restored

to her parents. Pursuant to the disclosure of the accused, the involvement of Shankar (A5), Allimuthu (A6) and Mani (A7), came to light and they were also arrested on the same day and the white colour Maruti Omni Van (M.O.1) was seized under Mahazar (Ex.P7).

4.Dr.Suganya (P.W.6) examined "X" (P.W.2) on 11.07.2009 and in her evidence as well in the medical examination report (Ex.P3), she has stated that the hymen was intact and there were no injuries on her ("X"'s) body.

5.Dr.Panneerselvam (P.W.17) examined "X" (P.W.2) and determined her age to be between 16-18 years vide Ex.P17. Manikandan (A1) was also examined by Dr.Panneerselvam (P.W.17) and his age was determined to be between 22-24 years vide Ex.P16. Dr.Panneerselvam (P.W.17), who examined Manikandan (A1) with regard to potency, certified that he (A1) was not impotent vide Ex.P15.

6.The police examined Subramani (P.W.14), the Head Master of the Government Girls Higher Secondary School, Kullappanaickanoor and the age certificate of "X" (P.W.2) was marked as Ex.P9, which shows the date of birth of "X" (P.W.2) as 13.04.1993.

7.After examining witnesses and collecting various reports, the police completed the investigation and filed a final report in P.R.C.No.23 of 2009 in the Court of Judicial Magistrate No.I, Salem, for the offences under Sections 366 and 366 r/w. 109 IPC against Manikandan (A1), Mani (A2), Sankar (A3), Ramasamy (A4), Shankar (A5), Allimuthu (A6) and Mani (A7).

8.On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.67 of 2010 and was made over to the Mahila Court, Salem, for trial.

9.The trial Court framed a charge for the offence under Section 366 IPC against Manikandan (A1) and a charge for the offence under Section 366 r/w. 109 IPC against A2 to A7. When questioned, all the accused pleaded 'not guilty'.

10.To prove the case, the prosecution examined 18 witnesses and marked 17 Exhibits and one Material Object.

11.When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they simply denied the same, but did not offer any explanation. However, from the side of the accused, one Jyothi and Elumalai were examined as D.W.1 and D.W.2 respectively. Apart from them, Manikandan (A1) examined himself as D.W.3. Two

Exhibits (Exs.D1 and D2) were marked from the side of the accused.

12.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 22.01.2013, in S.C.No.67 of 2010, convicted and sentenced the accused as follows :

| Accused  | Provision under which convicted | Sentence                                                                                                                            |
|----------|---------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|
| A1       | Section 366 IPC                 | Rigorous imprisonment for seven years and also a fine of Rs.3,000/-, in default, to undergo simple imprisonment for six months      |
| A2 to A7 | Section 366 r/w. 109 IPC        | Rigorous imprisonment for seven years and also a fine of Rs.3,000/- each, in default, to undergo simple imprisonment for six months |

13.Challenging the conviction and sentence, the accused are before this Court.

14.Heard Mr.R.C.Paul Kanagaraj and Mr.R.Nalliyappan, learned counsel for the accused, and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the State.

15.Mr.R.C.Paul Kanagaraj, learned counsel for the accused, submitted that, Dr.Panneerselvam (P.W.17), in his evidence, has stated that the upper age limit of "X" (P.W.2) could be 18 years and 2 months. Based on this statement, the learned counsel submitted that "X" (P.W.2) was not a minor at the time of occurrence.

16.To appreciate this submission, one should read the entire cross-examination of Dr.Panneerselvam (P.W.17). In the cross-examination, he (P.W.17) was asked as to whether the age of "X" (P.W.2) could be 19 years, for which, the witness has stated that it is possible that she may be 18 years and 2 months old, but not 19 years. This is purely an opinion evidence in the light of the suggestion put to the witness as to whether "X" could be 19 years old. Be that as it may, the school record shows that "X" (P.W.2) was born on 13.04.1993 and admittedly, she was studying in 12<sup>th</sup> Std. at the time of occurrence and hence, she would have been only 16 years and 2 months old at the time of occurrence.

17.Mr.R.C.Paul Kanagaraj placed reliance on the following

judgments:

- i.S.Varadarajan v. State of Madras [AIR 1965 SC 942]
- ii.Suramani and others v. State [2011 (3) MWN (Cr.) 27]
- iii.Panchapathi v. State [2007 (2) MWN (Cr.) 238]

18.The facts of those cases turn out on their own merits and hence, the judgments relied upon by the learned counsel do not have relevance to the case at hand.

19.The trial in this case began with the examination of Kandasamy (P.W.1) on 16.06.2010. In the trial, the three friends of "X" (P.W.2), namely Sathyapriya (P.W.3), Meena (P.W.7) and Geetha (P.W.8) turned hostile lock, stock and barrel, by saying that they do not know anything about the case. All these three children were admittedly 18 years old when they came to give evidence in the Court.

20.The prosecution has proved beyond cavil the facts that "X" (P.W.2) is the daughter of Kandasamy (P.W.1); Manikandan (A1) was aged around 30 years (as per his own statement in the deposition) and was living in the same village and was related to the family of "X". The prosecution has also proved beyond doubt that "X" (P.W.2) was studying in 12<sup>th</sup> Std. in Government Girls Higher Secondary School in Kullappanaickanoor at the time of occurrence, via the evidence of Kandasamy (P.W.1), "X" (P.W.2) and Subramani (P.W.14), the Head Master of the School.

21.The case of the prosecution rests mainly on the evidence of "X" (P.W.2). "X" (P.W.2) was examined-in-chief on 16.06.2010.

21.1.In her examination-in-chief, she has stated as under :

"I am a resident of Suriyanoor. I was studying in Government Higher Secondary School in Kullappanaickanoor at the time of occurrence. I know the accused. On 07.07.2009, after school hours, when I was proceeding with my friends Sathyapriya (P.W.3), Meena (P.W.7), Geetha (P.W.8) and Sasi, towards bus stop, a Maruti Omni Van (M.O.1) bearing Registration No.TN-28-AZ-8091 was standing halted. When I crossed the car, Manikandan (A1) and Mani (A2) got down from the car and pulled me. Meena (P.W.7) and Geetha (P.W.8) held me tight; the accused (A1 and A2) pushed them away and rushed me inside the car and sped. I yelled. The other accused were inside the car. When I raised alarm, Manikandan (A1) closed my mouth and Mani (A2) held my legs tight; when I kicked, the car glass broke down. Allimuthu (A6) threatened me that if I don't marry Manikandan (A1), he will ruin my family and

sell me in Andhra Pradesh. Thereafter, they kidnapped me to Sendhamangalam Manthoppu. It would be around 12 to 1 in the night at that time. Mani (A2) said that if I do not marry Manikandan (A1), I will not be allowed to go out and that he had seen jail many times. Mani (A7) brought the vehicle. Around 3 in the early morning, they took me to a house in Periyakombai. Allimuthu (A6) told me that he till take me to my father. Manikandan (A1) locked the door and the accused detained me in the house. Thereafter, Mani (A2) received a phone call that police was in search of them. Immediately, Manikandan (A1) asked everyone to switch off their mobile phones. Manikandan (A1) insisted me to say that I myself asked to bring a vehicle and eloped with him to marry him. To say so, he assaulted me. He asked me to call my brother and say that I myself will return at 5'o clock. He called the police and tutored me to say that I myself will return. Around 5'o clock in the evening, a vehicle came, in which, Jyothi and Palani arrived. A4 to A6 took the Omni Van (M.O.1) and went away. Then, A1 to A3 took me to a house in Salem. While traveling, they intimidated me that if I do not marry Manikandan (A1), they will commit suicide in front of Police Station by consuming poison. They took me to the house of Jyothi's relative, who was a police, and we were there till 12 noon. When we were standing at Salem Linemedu, my father and police arrived and rescued me."

21.2. In the cross-examination of "X", each statement given by her was put to her and she was asked whether she had stated so to the police, for which, she stated in the affirmative.

21.3. However, no question was put to the Investigating Officer who recorded the statement of "X" (P.W.2) under Section 161(3) Cr.P.C. vis-a-vis her evidence in the Court. The Supreme Court, in Tahsildar Singh v. State of Uttar Pradesh [AIR 1959 SC 1012], has lucidly explained as to how the prosecution witnesses and the Investigating Officer should be confronted with the police statement as required under Section 145 of the Evidence Act.

21.4. "X" has further stated that she did not have any mobile phone with her. It was suggested to her that she and Manikandan (A1) were in love with each other; Manikandan's (A1's) mother was asking "X"'s father (P.W.1) for a share in the property; on account of family dispute, her father (P.W.1) had foisted the present case on the accused; she had gone with Manikandan (A1)

to Yercaud, a hill station, once, which suggestions, she denied. Ultimately, it was suggested to her that the accused had not kidnapped her, which suggestion also she denied.

21.5.Thus, there are two conflicting defences that were taken by the accused.

21.6."X" was once again recalled on 19.12.2011 and was further cross-examined, but the defence was not able to make any serious dent in her testimony.

22.In view of "X"'s three friends, who were available with her on the fateful day, turning hostile, the evidence of Appavoo (P.W.4), the Watchman of the School, who was examined-in-chief on 16.06.2010, assumes significance. Appavoo (P.W.4), in his evidence, has stated as under :

"I am a resident of Thippampatti. I am working as Watchman in the Government Girls Higher Secondary School, Kullappanaickanoor. "X" (P.W.2) is a student of our school. Sathyapriya (P.W.3) is also a student of our school. I do not know the accused. on 07.07.2009 around 05.00 p.m., two school girls came to me and told me that "X" (P.W.2) has been carried away in a car. I informed this to the Head Master. Then, I went and informed this to her ("X"'s) parents."

In the cross-examination, he (P.W.4) stated that he does not have any personal knowledge about the details of the case. It was suggested to him that, since Kandasamy (P.W.1) was known to him, he was deposing falsely, which suggestion, he denied. He was recalled on 19.12.2011 for further cross-examination. In that, he has stated that, two girls came and told him that a girl has been kidnapped and that he told them to inform the Head Master of the School and thereafter, he went away to his house and that he did not go and complain to anyone.

23.The Public Prosecutor should have sought permission of the Court to declare this witness (P.W.4) as hostile, as it is obvious that, after he was examined and cross-examined on 16.06.2010, he was recalled one year later and was cross-examined on 19.12.2011, in which he turned turtle. It is trite that the evidence of a hostile witness cannot be thrown aboard lock, stock and barrel, especially in the light of Section 154 (2) of the Evidence Act, which was incorporated with effect from 16.04.2006.

24.Kandasamy (P.W.1), the father of "X" (P.W.2), has stated that he was working as Salesman in Agricultural Co-operative

Society; he has two daughters and a son; his youngest daughter is "X" (P.W.2); at the time of occurrence, "X" (P.W.2) was studying in 12<sup>th</sup> Std. in Government Girls Higher Secondary School, Kullappanaickanoor; he knows all the accused; his daughter would go to school at 08.30 a.m. by Town Bus and return at 04.30 p.m.; on 07.07.2009, she left for school as usual in the morning, but did not return home till 6 p.m.; at that time, the Watchman (P.W.4) of the Government Girls Higher Secondary School, Kullappanaickanoor, came home and told him that when his (P.W.1's) daughter was walking with her friends Sathyapriya (P.W.3), Meena (P.W.7) and Geetha (P.W.8), Manikandan (A1), Mani (A2) and Sankar (A3) came by a Maruti Omni Van (M.O.1) bearing Registration No.TN-28-AZ-8091 and carried away his daughter; immediately, he went to the Police Station and lodged a complaint; on 09.07.2009, the police informed him that his daughter has been secured; when he asked his daughter as to what had happened, she told him that while she was returning home, the accused pulled her into the car and took her away. In the cross-examination, Kandasamy (P.W.1) admitted that the present President of his Society is one Ramar (P.W.10), who is related to him and the ex-President of the Society was one Gandhi, who was not related to him, and that both of them belong to ADMK Party. He also admitted that the accused Shankar belongs to DMK Party, who contested in local body elections against Ramar (P.W.10). He also admitted that Manikandan (A1) is related to him, but he was not in speaking terms with his family. Ultimately, it was suggested to him that, on account of political rivalry, he had set up his daughter "X" to foist a case against the accused, which suggestion, he denied. It may be pertinent to state here that this witness (P.W.1) was also recalled on 19.12.2011 and was subjected to grilling cross-examination, but the defence was not able to make any serious headway.

25.The accused examined one Jyothi and Elumalai as D.Ws.1 and 2 respectively. They, in their evidence, have stated that Manikandan (A1) was in love with "X" (P.W.2) and that they have seen them going to various places. However, with regard to the incident of kidnap, they have stated that on 07.07.2009, in the night, Kandasamy (P.W.1) and Ramar (P.W.10) took "X" (P.W.2) to the Police Station and lodged a false complaint as if she was kidnapped, based on which, all the accused were rounded up on the same day and were kept in police custody.

26.Manikandan (A1), who examined himself as D.W.3, has stated that on 07.07.2009, he saw "X" (P.W.2) returning to her house; on the same day, around 07.30 p.m., "X"'s father (P.W.1) took her somewhere; thereafter, the police rounded him up along with his parents, kept him in police custody and asked him to give up his love for "X" (P.W.2), took a bribe of Rs.30,000/-

from him and foisted a case.

27. Thus, the accused had taken a stand that "X" (P.W.2) and Manikandan (A1) were in love with each other and it is not their case that "X" (P.W.2) eloped with Manikandan (A1) on 07.07.2009. Of course, the accused can take conflicting defence, but cannot take mutually destructive defences. Even on his own showing, Manikandan (A1) was 30 years old when he examined himself as D.W.3 on 20.11.2012 and "X" (P.W.2) was 18 years old when she gave evidence. This can be seen in the preamble portion of their depositions. However, the medical evidence (Exs.P16 and P17) show that Manikandan (A1) was 22-24 years old and "X" (P.W.2) was 16-18 years old at the time of occurrence. Admittedly, Manikandan (A1) was related to the family of "X" (P.W.2). Jyothi (D.W.1) was there along with the accused on 09.07.2009, a little before the police party rescued "X" (P.W.2), which has been clearly stated by "X" (P.W.2) in her evidence. The names of A1 to A3, the colour and Registration Number of the Maruti Omni Van (M.O.1) have been mentioned by Kandasamy (P.W.1) in his complaint (Ex.P1) itself. The Maruti Omni Van (M.O.1) was recovered after the arrest of Shankar (A5) and Prakasam, the owner of the Maruti Omni Van (M.O.1), was examined as P.W.13. This shows that the Maruti Omni Van (M.O.1) did not belong to the accused, but was taken by them on hire from Prakasam (P.W.13), who filed an application under Section 451 Cr.P.C., took custody of the Maruti Omni Van (M.O.1) and agreed to produce it during trial.

28. The defence theory that Kandasamy (P.W.1) had used his daughter "X" as a pawn to settle political rivalries between DMK and ADMK Parties appears too large a pill for this Court to swallow. The evidence of "X" (P.W.2) shows that Manikandan (A1) was madly in love with her and since she did not reciprocate, he was perhaps adventurous enough to kidnap her and force her for marriage. The evidence of Thiruneelakandan (P.W.18), Investigating Officer, is to the effect that, after registration of the F.I.R., a search was conducted for rescuing "X" (P.W.2) and it fructified only on 09.07.2009 when A1 to A4 were arrested along with "X" (P.W.2) in Salem Bus Stand. There is no reason for Kandasamy (P.W.1) and the police to create a whole lot of evidence to implicate seven persons in one stroke in the absence of any previous motive. If the accused had taken a stand that "X" (P.W.2) and Manikandan (A1) were in love with each other, and that, "X" (P.W.2) went on her own with Manikandan (A1) for marrying him, and when Manikandan (A1) came to know that the police were behind them, they surrendered and gave custody of "X" (P.W.2) to the police, the issue could be viewed by this Court differently. On the contrary, the accused had taken a consistent defence that Manikandan (A1) was in love with "X" (P.W.2), but no incident of kidnap had taken place on

07.07.2009. Just because the three friends of "X" (P.W.2), namely, Sathyapriya (P.W.3), Meena (P.W.7) and Geetha (P.W.8) turned hostile, it cannot be held that no such incident had ever taken place. The names of Meena (P.W.7) and Geetha (P.W.8) figure in the complaint (Ex.P1) given by Kandasamy (P.W.1). If Kandasamy (P.W.1) had wanted to foist a case on the accused, he would have not been so credulous to involve the Watchman of the school (P.W.4) and the names of Meena (P.W.7) and Geetha (P.W.8) in his complaint (Ex.P1).

29."X" (P.W.2), in her evidence, has identified A1 to A7 in the dock and was also perspicuous in attributing the overt acts of each one of them. She has stated that Manikandan (A1) and Mani (A2) alighted from the car and pushed her inside the car; Allimuthu (A6) was inside the car, who threatened her that she should marry Manikandan (A1) or else, he will ruin her family; Mani (A7) brought a vehicle and took her from Sendhamangalam to Periakombai; Ramasamy (A4), Shankar (A5), and Allimuthu (A6) had taken the Maruti Omni Van (M.O.1) on the next day; A1 to A3 took her to a house in Salem. The recovery of the Maruti Omni Van (M.O.1) was pursuant to the arrest of Shankar (A5).

30.In view of the above discussion, the conviction of Manikandan (A1) of the offence under Section 366 IPC and the other accused (A2 to A7) of the offence under Section 366 r/w. 109 IPC stands confirmed.

31.Mr.R.C.Paul Kanagaraj and Mr.R.Nalliyappan, learned counsel for the appellants/accused contended that Manikandan (A1) had not sexually abused "X" (P.W.2) and he had only wanted to marry her and therefore, pleaded for leniency in the sentence.

32.In the opinion of this Court, if Manikandan (A1) was intensely in love with "X" and had wanted to marry her, he should have waited for her to reach the marriageable age and should not have kidnapped her and taken her to various places. That child ("X") would have been in a state of trauma. Fortunately, the Protection of Children from Sexual Offences Act, 2012 was not in force when the incident occurred and the accused were prosecuted only under the Indian Penal Code. However, this Court is of the view that interests of justice will be served, if the substantive sentence of imprisonment imposed on Manikandan (A1) and the other accused (A2 to A7) is reduced to four years rigorous imprisonment.

33. In view of the above discussion, the convictions of the appellants are confirmed, but, the substantive sentence of 7 years rigorous imprisonment is reduced to 4 years rigorous imprisonment. Fine and default sentence imposed by the trial Court shall remain the same.

In fine, these criminal appeals are partly allowed. The trial Court is directed to secure all the accused and commit them to prison to undergo the remaining sentence.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mkn

To

- 1.The Sessions Judge,  
Mahila Court,  
Salem.
- 2.The Judicial Magistrate No.1  
Salem.
- 3.The Chief Judicial Magistrate,  
Salem(For Information)
- 4.The Superintendent,  
Central Jail,  
Coimbatore.
- 5.The Inspector of Police,  
Panamarathupatti Police Station,  
Salem District.
- 6.The Public Prosecutor,  
High Court,Madras.
- 7.The Deputy Registrar | with a direction to send back the  
(Criminal Section), | original records to the trial Court  
High Court,Madras. |

+1cc to Mr.R.Nalliappan, Advocate, S.R.No.23646

+1cc to Mr.I.C.Vasudevan, Advocate, S.R.No.23645

Pre-delivery Common Judgment in  
Crl.A.Nos.104 and 105 of 2013

NR(CO)  
RN(29/05/2020)