

Bail Slip

The Appellant/ Accused, namely Karthik Kannan, S/o. Maruthamuthu, was released on bail as per order dated 29.08.2013 in MP.NO.1/13 IN CRL A.NO.32/2013 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2020

CORAM:

THE HONOURABLE Mr. JUSTICE P.N. PRAKASH

Crl.A.No.32 of 2013

Karthik Kannan,
S/o. Maruthamuthu,
North Street,
Melavanam,
Ariyalur District. ... Appellant/Accused

Vs.

State represented by
The Inspector of Police,
All Women Police Station,
Ariyalur District,
Ariyalur. ... Respondent/Complainant

Criminal Appeal filed under Section 374 Cr.P.C. against the judgment and order dated 13.12.2012 passed in S.C.No.86 of 2012 on the file of the Additional District and Sessions Court, Ariyalur.

For Appellant : Mr.A.Sivakumar

For Respondent : Mrs.P.Kritika Kamal
Government Advocate
(Crl.Side)

JUDGMENT

Challenge in this criminal appeal is to the judgment and order dated 13.12.2012 passed in S.C.No.86 of 2012 on the file of the Additional District and Sessions Court, Ariyalur.

3. The long and short of the facts leading to the filing of this case are as under:

3.1 It is the case of the prosecution that on 12.11.2002, around 9.30 p.m., the appellant (A1) deflowered the victim girl "X" (PW1) (name not disclosed for the sake of anonymity), who was less than sixteen years, on the promise of

marrying her and thereafter reneged. When the parents of "X" (PW1) approached the family of the appellant (A1) on 13.11.2010, the latter criminally intimidated and threatened the former saying that they would liquidate their entire family.

3.2 On the complaint (Ex-P1) given by "X" (PW1), Vani (PW10), Sub-Inspector of Police, registered a case in Crime No.13 of 2010 on 25.12.2010 for the offences under Sections 376, 417 and 506 (I) IPC against four accused and prepared the printed FIR (Ex-P7).

3.3 The investigation of the case was taken over by Ramasamy (PW12), Inspector of Police, who went to the place of occurrence and prepared the observation mahazar (Ex-P3) and rough sketch (Ex-P9) in the presence of witnesses Karuppaiah (PW4) and Chinnu (PW5).

3.4 On 31.12.2010, Dr.R.Revathi (PW7) medically examined "X" (PW1) and issued a medical report (Ex-P4). Dr.M.Radhika Mani (PW8), B.D.S., medically examined "X" (PW1) on 03.01.2011 and determined her age based on dental examination as fifteen to seventeen years (below eighteen years) vide age certificate (Ex-P5).

3.5 On 31.12.2010, Dr.M.Venkatasubbu (PW11) medically examined the appellant (A1) and opined that the appellant (A1) is not impotent vide medical report (Ex-P8). Dr.M.Radhika Mani (PW8), B.D.S., medically examined the appellant (A1) on 03.01.2011 and determined his age based on dental examination as above eighteen years vide age certificate (Ex-P6).

3.6 After examining witnesses and collecting various reports, the police completed the investigation and filed a final report in P.R.C.No.20 of 2012 before the Judicial Magistrate Court, Ariyalur, for the offences under Sections 376, 417 and 506 (I) IPC, against Karthik Kannan (A1), Marudhamuthu (A2), Anjammal (A3) and Soundar (A4).

3.7 On appearance of the appellant (A1), 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.86 of 2012 and was made over to the Court of the Additional District and Sessions Court, Ariyalur, for trial.

3.8 The trial Court framed charges for the offences under Sections 376, 417 and 506 (I) IPC against the appellant (A1) and Section 506 (I) IPC against other accused. When questioned, the accused pleaded "not guilty".

3.9 To prove the case, the prosecution examined thirteen witnesses and marked nine exhibits.

3.10 When the accused were questioned under Section 313

Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. From the side of the accused, no witness was examined nor any document marked.

3.11 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 13.12.2012 in S.C.No.86 of 2012, acquitted Marudhamuthu (A2), Anjammal (A3) and Soundar (A4) of all the charges and acquitted Karthik Kannan (A1) of the offence under Section 506 (I) IPC, but, convicted and sentenced him as under:

Provision under which convicted	Sentence
Section 376 (i) IPC	Seven years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo one year rigorous imprisonment.
Section 417 IPC	One year rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo three months rigorous imprisonment.

The aforesaid sentences were ordered to run concurrently.

3.12 Challenging the above conviction and sentences, the appellant (A1) is before this Court.

4. Heard Mr.A.Sivakumar, learned counsel for the appellant (A1) and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) for the respondent/State.

5. It appears that since the appellant (A1) was less than twenty three years at the time of conviction, he was admitted to the Borstal School, Pudukottai, where, he was lodged from 14.12.2012 to 20.06.2015 until he attained the age of twenty three years and thereafter, he was released.

6. The prosecution case rests mainly on the evidence of "X" (PW1) and the medical reports.

7. "X" (PW1), in her evidence, has stated that she was studying in XI standard; the appellant (A1) was studying in MRC College in Thathanur; they both were in love with each other for about two years; on 12.11.2011, around 9.30 p.m., the appellant (A1) called her by saying that he will marry her and took her to the fields of one Murugesan and seduced her; they both were together throughout the night and her parents started searching for her; on the next day, she returned home and did not divulge anything to her parents, but, later when they started making grilling enquiries, she spilled the beans and told them everything; therefore, her parents and uncle went to the house of the appellant (A1) and spoke to his parents; however, the parents of the appellant (A1) refused to accept her and instead, started threatening her family of dire

consequences. hence, she lodged a complaint (Ex-P1) to the police. Her school certificate was marked as Ex-P2, which shows her date of birth as 26.05.1995, which means that as on 12.11.2010, she was fifteen years and five months.

8. In the cross-examination of "X" (PW1), she admitted that she was in love with the appellant (A1) and she had gone on her own volition with the appellant when he called her out. It was suggested to her ("X") that the appellant (A1) had not ravished her, which she denied. It was further suggested to "X" (PW1) that the parents of the appellant (A1) were agreeable for the marriage after she came of age, which suggestion, she denied.

9. The learned counsel for the appellant (A1) submitted that the age certificate (Ex-P5) shows that "X" (PW1) was between fifteen and seventeen years, and therefore, the appellant (A1) cannot be convicted as they have had consensual sex.

10. In this case, we have the evidence of "X" (PW1), who has clearly stated that she was born on 26.05.1995 and her school certificate was marked as Ex-P2. Of course, the medical examination shows that her age would have been between fifteen and seventeen years. Admittedly, "X" (PW1) was studying in XI standard at the relevant point of time and the incident had taken place in the month of November 2010. The prosecution examined Anbucheziyan (PW9), Headmaster of the school, to prove the date of birth of "X" (PW1) from the school records viz., (Ex-P2).

11. On a conspectus of the evidence on record, it can be seen that "X" (PW1) was less than sixteen years, when she was seduced by the appellant (A1) and therefore, the question of she having consensual sex with the appellant (A1) cannot arise, as consent is irrelevant, where, the victim is less than sixteen years in terms of Section 375 IPC as it stood then.

Resultantly, this criminal appeal is dismissed as being devoid of merits. The trial Court is directed to secure the appellant (A1) and commit him to prison to serve out the remaining period of sentence, if any.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Inspector of Police,
All Women Police Station,
Ariyalur District,
Ariyalur.

2. The Additional District
and Sessions Judge,
Ariyalur.

3. The Deputy Registrar,
(Crl.Side)
Madras High Court,
Chennai - 104.

with a direction to return
the original records to the
Court below concerned

4.The XIII Metropolitan Magistrate, Egmore, chennai

5.The Superintendent,Central prison, Trichy

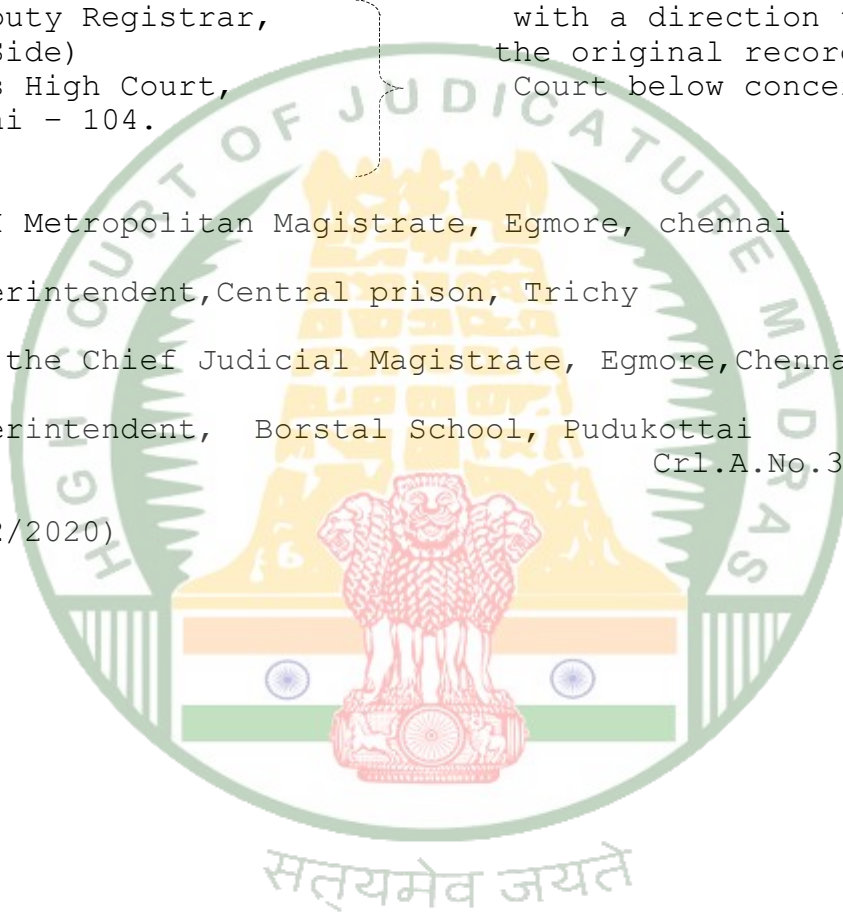
6.Do thro the Chief Judicial Magistrate, Egmore,Chennai

7.The Superintendent, Borstal School, Pudukottai

Crl.A.No.32 of 2013

NRL

A.SK(18/02/2020)



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