

Bail Slip

The Petitioners/Accused viz., Kannan @ Kannadasan, was directed to be released on bail as per order of this Court dated 12.12.2013 and made in MP.No.1 of 2013 in CrI.R.C.No.1558 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.R.C.No.1558 of 2013

Kannan @ Kannadasan ...Petitioner/Appellant/Accused

Vs.

State represented by
The Inspector of Police,
Vikravandi Police Station,
Villupuram District.

... Respondent/Respondent/
Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 31.10.2011 passed in S.C.No.304 of 2008 on the file of the Chief Judicial Magistrate-cum-Assistant Sessions Court, Villupuram, confirmed by the judgment and order dated 20.11.2013 passed in C.A.No.62 of 2011 on the file of the Principal Sessions Court, Villupuram.

For Petitioner : Mr.A.N.Rajan

For Respondent : Mr.R.Surya Prakash
Government Advocate
(CrI.Side)

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 31.10.2011 passed in S.C.No.304 of 2008 on the file of the Chief Judicial Magistrate-cum-Assistant Sessions Court, Villupuram, confirmed by the judgment and order dated 20.11.2013 passed in C.A.No.62 of 2011 on the file of the Principal Sessions Court, Villupuram.

2. The concentrated facts of the case that are distilled from the records flow as under:

2.1 The victim girl "X" (PW1) (name not divulged for the sake of anonymity) is the daughter of Chandra (PW2) and Dhayalan (PW3) and was born on 09.12.1989 vide birth certificate (Ex-P6). At the time of the incident i.e. in June 2009, she was studying in XI standard.

2.2 The petitioner was already an accused in an acid attack case, in connection with which, he was taking refuge in the house of his sister, which was two houses away from the house of "X" (PW1). The petitioner and his sister approached Dhayalan (PW3), father of "X" (PW1), to help him come out of the acid attack case and thereby, the petitioner got acquainted with the family of "X" (PW1). Thereafter, whenever "X" (PW1) went to school, the petitioner started stalking her and proposing to her. Initially, "X" (PW1) spurned his offer by saying that she wants to earnestly prosecute her studies. However, the petitioner started emotionally blackmailing her by saying that he would die if she does not positively respond to his love or inter alia, he would even throw acid on her. At a certain point of time, "X" (PW1) responded positively. Taking advantage of this, he promised that he will marry her and deflowered her. "X" (PW1) became pregnant. The family of "X" (PW1) came to know of it and when the petitioner was approached, he reneged.

2.3 On the complaint (Ex-P1) given by "X" (PW1), the police registered a case in Crime No.366 of 2007 and after completing the investigation, filed a final report in P.R.C.No.32 of 2008 before the Judicial Magistrate Court No.II, Villupuram, for the offences under Sections 417 and 376 IPC, against the petitioner.

2.4 The case was committed to the Court of Session in S.C.No.304 of 2008 and was made over to the Chief Judicial Magistrate-cum-Assistant Sessions Court, Villupuram, for trial.

2.5 The trial Court framed charges for the offences under Sections 417 and 376 IPC and when questioned, the petitioner pleaded "not guilty".

2.6 To prove the case, the prosecution examined eleven witnesses and marked eight exhibits.

2.7 When the petitioner was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. From the side of the petitioner, no witness was examined nor any document marked.

2.8 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 31.10.2011 in S.C.No.304 of 2008, convicted and sentenced the petitioner as follows:

Provision under which convicted	Sentence
Section 376 IPC	Three years rigorous imprisonment and fine of Rs.10,000/-, in default to undergo six months simple imprisonment, out of which, Rs.8,000/- shall be given to the victim girl "X" (PW1).
Section 417 IPC	Fine of Rs.1,000/-, in default to undergo three months simple imprisonment.

2.9 The appeal in C.A.No.62 of 2011 filed by the petitioner was dismissed by the Principal Sessions Court, Villupuram, on 20.11.2013.

2.10 Aggrieved by the concurrent findings of fact arrived at by the Courts below, the petitioner has preferred the present criminal revision invoking Section 397 r/w 401 Cr.P.C.

3. Heard Mr.A.N.Rajan, learned counsel for the petitioner and Mr.R.Surya Prakash, learned Government Advocate (Crl.Side) for the respondent/State.

4. Before advertng to the rival submissions, it may be necessary to state here that while exercising revisional jurisdiction in a case involving concurrent findings of fact arrived at by the two Courts below, the High Court cannot act as a second appellate Court [See State of Maharashtra vs. Jagmohan Singh Kuldip Singh Anand and Others, etc.¹]. Very recently, in Bir Singh vs. Mukesh Kumar², the Supreme Court has held as under:

"17. As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457], it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error..... (emphasis supplied)"

1(2004) 7 SCC 659

2(2019) 4 SCC 197

5. The learned counsel for the petitioner submitted that "X" (PW1) was more than eighteen years at the time of incident, which fact was overlooked by the Courts below. He further submitted that "X" (PW1) had consensual sex with the petitioner and was not raped.

6. Per contra, the learned Government Advocate (Crl.Side) refuted the submissions made by the learned counsel for the petitioner.

7. This Court gave its anxious consideration to the rival submissions.

8. With regard to the age of "X" (PW1), both the Courts below have given a clear-cut finding that her date of birth is 09.12.1989. Dr.Veeramuthu (PW11), who conducted age determination test, has also stated that "X" (PW1) was between sixteen and eighteen years of age on the date of her examination viz., 03.07.2007. The age certificate issued by Dr.Veeramuthu (PW11) was marked as Ex-P8. Apart from that, the transfer certificate (Ex-P7) shows that "X" (PW1) was born on 09.12.1989 and was studying in school.

9. Therefore, this Court is of the opinion that there is no perversity in the findings of the trial Court that, "X" had not attained the age of eighteen at the time of incident. Now, we are left with the solitary evidence of "X" (PW1). This Court carefully perused the testimony of "X" (PW1).

10. "X" (PW1), in her evidence, has graphically stated as to how she came into contact with the petitioner, as to how the petitioner started following her to school, proposing to her by saying that he would marry her, seducing her on the promise of marriage, impregnating her and thereafter reneging. The defence was not able to make any serious dent in the evidence of "X" (PW1).

11. In view of the foregoing discussion, this Court does not find any infirmity in the judgments and orders passed by the Courts below, warranting interference. In fact, the trial Court should have sentenced the petitioner to seven years rigorous imprisonment for the offence under Section 376 IPC, as the law stood then. The trial Court has not given any reason for reducing the sentence to three years rigorous imprisonment. The State also has not chosen to challenge the sentence imposed on the petitioner by the trial Court.

Resultantly, this criminal revision is dismissed as being devoid of merits. The trial Court is directed to secure the accused and commit him to prison to serve out the remaining period of sentence.

Sd/-

Assistant Registrar (C.S.VIII)

/True Copy/

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate
-cum-Assistant Sessions Judge,
Villupuram.
2. The Principal Sessions Judge,
Villupuram.
3. The Inspector of Police,
Vikravandi Police Station,
Villupuram District.
4. The Deputy Registrar,
(Crl.Side) with a direction to return the
original records to the Courts
below concerned
Madras High Court,
Chennai - 104.

AKM/11.03.2020/5P- 5C /

Crl.R.C.No.1558 of 2013

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