

BAIL SLIP

The Petitioner/Accused Viz,. Velu S/o Murugan was released on bail as per Order of this Court dated 05/02/2014 in Crl.M.P.No.1 of 2014 in Crl.A.2/2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2020

CORAM

THE HON'BLE MR. JUSTICE R. PONGIAPPAN

Crl.A.No.2 of 2014

Velu

...Appellant

-vs-

State rep. by Inspector of Police,
Krishnagiri Town Police Station,
Krishnagiri District.
(Cr.No.415/2012)

....Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code praying to set aside the Judgment dated 19.11.2013 in S.C.No.56 of 2013, passed by the Mahila Court, Krishnagiri.

For Appellant : Mr.L.Baskaran.

For Respondent : Mr.S.Karthikeyan,
Additional Public Prosecutor

J U D G M E N T
(through video conference)

The present Criminal Appeal has been filed to set aside the judgment of conviction and sentence dated 19.11.2013 passed in S.C. No. 56 of 2013 by the learned Sessions Judge, Mahila Court, Krishnagiri.

2.The Appellant is the sole accused. He stood charged for the offence under Sections 363, 417 and 376 of the Indian Penal Code, 1860. By judgment dated 19.11.2013, the learned Sessions Judge, Mahila Court, Krishnagiri convicted the Appellant/Accused under Section 363 of the Indian Penal Code and sentenced to

undergo three years of rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo six month rigorous imprisonment and further, convicted the Appellant/Accused under Section 417 of the Indian Penal Code and sentenced to undergo one year rigorous imprisonment. He is acquitted for the charge under Section 376 of the Indian Penal Code. Challenging the said conviction and sentence, the Appellant/Accused is before this Court by filing the present Criminal Appeal.

3.The case of the prosecution in brief is as follows:-

(i) PW7 Ilakkiya is the victim in this case. She is residing at Paris Nagar behind the Tamil Nadu Hotel, Krishnagiri. On 11th day of 2012, she was returning home after finishing Exams. On the same day at 5.00 p.m., the Appellant Velu and three other persons along with the victim girl travelled in an Auto and the Appellant stopped it near Tamil Nadu Hotel and thereafter, three other persons who were accompanying with them have gone out. Immediately, thereafter the Appellant had told her that he need an amount of Rs.2,000/- for paying the chit and since her father and mother are working, he had asked her to give that amount and threatened her that if she refuses, he will murder her family members. Because of the said threatening, the victim girl took an amount of Rs.820/- from Hundial and gave it to the Appellant. After one week, one day at 8.00 p.m., she had gone to Francis Shop to buy shampoo and when she was in the Francis Shop, the Appellant Velu came to that Shop along with one Prabhu. Since the Appellant had told to her that he would give money by drawing from ATM, she went with the Appellant through Auto and the said Prabhu also accompanied them. Subsequently, Prabhu was left at Tamil Nadu Hotel and she was taken to Tandekuppan Cementary place by the Appellant. On reaching the said place, the Appellant pulled her Dupatta and tied her two hands backside with that Dupatta for which she shouted and the Appellant shut her mouth. The Appellant was fully under intoxication and tried to behave improperly. Thereby, nail injuries occurred at the moment. Ultimately, she knocked the Appellant and hide herself in the Cementary place. The said incident happened at about 8.30 p.m. After the occurrence, she went to her house. But at the same time, she heard about the lodging of complaint before the Police.

(ii) In the meantime, PW1, viz., Madeshwari, mother of the PW7 lodged complaint before the Police under Ex.P.1, wherein she had made allegations against the Appellant that he kidnapped her daughter. On receipt of the complaint given by PW1, PW12, viz., Vasantha, the then Sub-Inspector of Police, Krishnagiri registered a case in Crime No. 415 of 2012 under Section 366 of the Indian Penal Code. The printed FIR has been marked as Ex.P.8. After the registration of the case, she visited the

scene of occurrence and in the presence of one Tamilventhan, she prepared observation mahazar and rough sketch, which have been marked as Ex.P.9 and Ex.P.10 respectively. She examined the witnesses and recorded their statements.

(iii) On the same day, at about 12.00 p.m., she found the victim girl near to Madras Road and after enquiry, she brought the victim girl to the Police Station. Further, she recovered the dresses, which were worn by the victim girl under the cover of mahazar, Ex.P.3 and the seized cloths have been marked as M.O.1 to M.O.4. Next day, she made arrangements for producing the victim girl before the Doctor for medical examination.

(iv) PW9 Doctor attached with Government Hospital, Krishnagiri, on 14.05.2012, medically examined the victim girl and found that she had attended puberty before three years. She had attended her periods 15 days before. Nail mark injuries were found at 3 places. It was 2 cm x 2 cm on her right side breast and four nail mark injuries on her left sight breast. No such injuries were found in her thighs and her outer vaginal part, hymen, was found to be teared. Later, the Doctor collected the vaginal smear sample and sent the same for lab analysis. Her nails were also sent for examination. On examination, it was seen that no semen was deducted and blood was not found in the nails. The medical opinion given by the Doctor is marked as Ex.P.6.

(v) In continuance of investigation, on 13.05.2012, PW12 arrested the Appellant at Thandakuppam Junction Road and recorded confession statement in the presence of PW6, viz., Charles and one Durai. Based on the confession statement, PW12 seized the Auto under the cover of mahazar, which have been marked as Ex.P.4. However, admitted portion of the confession statement given by the Appellant was not exhibited. Immediately, after securing the Appellant, PW12 produced him before the Judicial Magistrate and gave a requisition for conducting medical examination.

(vi) In this regard, PW10, viz., Doctor Thunder Chief, working as Assistant Professor in Krishnagiri Government Hospital, on 25.05.2012, as per the requisition received from the Judicial Magistrate Court examined the Appellant and given a report under Ex.P.7 as nothing to suggest that the individual is incapable of performing sexual intercourse.

(vii) On 08.06.2012, again the Appellant was sent to Government Hospital for collecting the semen sample along with letter by the Police Constable. After the completion of the above formalities, PW12 handed over the case records to PW13, viz., the then Inspector of Police. PW13, on receipt of the case

records from PW12, examined the witnesses. However, he had not recorded the statements from the witnesses separately since the statements submitted by PW12 was sufficient. After seeing the report received from the Doctor and Forensic Department, he came to the positive conclusion that the Appellant has committed the offence under Sections 363, 417 and 376 of the Indian Penal Code and accordingly, filed final report.

4. Based on the above materials, the Trial Court framed charges for the offence under Sections 363, 417 and 376 of the Indian Penal Code. In order to prove their case on the side of the prosecution, as many as thirteen witnesses have been examined as PW1 to PW13 and ten documents have been marked as Ex.P.1 to Ex.P.10 besides five material objects (M.O.1 to M.O.5).

5. Out of the said witnesses, PW1, viz., Madeshwari, is the mother of the victim girl. She speaks about the missing of her daughter and about the lodging of complaint before the Police Officer.

6. PW2, viz., Francies, is the Petty Shop Owner having the shop for the past 15 years near Tamil Nadu Hotel. Though he was cited as an eye-witness to the occurrence, he has not stated any thing before the Trial Court in respect of the manner of occurrence as alleged by the prosecution. Therefore, he was treated as hostile witness.

7. PW3, viz., Jothilakshmi, is the relative of PW1. She had deposed that she had seen the victim girl in the Police Station and on enquiry, she told that the Accused Velu only had kidnapped her.

8. PW4, viz., Natarajan, is also the relative of PW1. He deposed that prior to five months from the date of occurrence, PW1 telephoned to him and told that her daughter was kidnapped and he does not know who had kidnapped. In this regard, along with PW1, he went to Police Station and lodged complaint.

9. PW5, viz., Gangappan, is the resident of same locality in which the alleged occurrence has happened. He has stated before the Trial Court in respect of preparation of observation mahazar and rough sketch by the investigation officer.

10. PW6, viz., Charles, had deposed that he is the painter and residing in Palayapettai. On the date of occurrence, he seen the victim girl in the Police Station. Further, he has stated that in his presence, PW12 has seized the dresses, viz., Dupatta, Chudithar, Chudithar Pants from the victim girl under the cover of mahazar.

11.PW7, viz., Ilakkiya, is the minor girl. She had narrated the occurrence before the Trial Court.

12.PW8, viz., Prabhu, is the resident of Pochampalli. He speaks about the incident that at the time of occurrence, he saw the victim girl aged about 13 to 14 years near to the Krishnagiri Bye-Pass Road. On enquiry, she told that there was a problem in her house and thereafter the Accused herein came in Auto and taken the girl.

13.PW9 and PW10, viz., Dr. Bharathi and Dr. Thunder Chief, are working in Government Hospital, Krishnagiri. They had stated about the examination of the victim girl and the Accused and also about the issuing of certificate in respect of potency of the Accused and also about the injuries sustained by the victim girl.

14.PW11, viz., Gopal, is the resident of Raniamman Pattu Village, Dharmapuri District. He has stated that on 04.07.2012, when his daughter-in-law had come to his village, the victim girl also travelled along with her in the same bus. Further, the victim girl told to his daughter-in-law that she had come out from her house and therefore, the daughter-in-law brought her to his house and only on the next day, he gave information to the Police Officer. Thereafter, the Respondent/Police came along with PW1 and took the victim girl.

15.PW12 and PW13, viz., Vasantha and Thangarasu, are the Police Officers, who speak about the receipt of complaint from PW1, examination of witnesses, securing the victim girl and the Accused and about the filing of final report.

16.When the above incriminating materials were put to the Accused under Section 313 of the Criminal Procedure Code, 1973, he denied the same as false. However, he did not chose to examine any witnesses on his side nor marked any documents.

17.The learned Sessions Judge, Mahila Court, Krishnagiri after perusing all the above materials and on considering the arguments advanced by either side, convicted and sentenced the Appellant as stated supra. Aggrieved over the said conviction and sentence, the Appellant/Accused is before this Court with this Appeal.

18.I have heard Mr.L.Baskaran, learned Counsel for the Appellant/Accused and Mr. S.Karthikeyan, learned Additional Public Prosecutor appearing for the Respondent.

19.The learned Counsel for the Appellant would contend that evidence given by PW1 and PW7 are having lot of contradictions

in respect of registration of case and also about the securing of the victim girl. Though there was an allegation against the Appellant that he kidnapped the victim girl against her will, evidence given by PW7 is not in support of the prosecution. Further, he would submit that in respect of securing the victim girl, PW11 introduced the new case. Therefore, the said discrepancies found in the case of prosecution creates a doubt whether the alleged occurrence had happened as stated by the prosecution or not. But the learned Sessions Judge, Mahila Court, Krishnagiri without considering the same, convicted the Appellant, which is erroneous in law.

20. On the other hand, the learned Additional Public Prosecutor would contend that the evidence given by the prosecution witnesses clearly establishes the case of prosecution as well as the intention of the Appellant and prayed to dismiss the appeal.

21. I have considered the rival submissions made on either side and carefully perused the materials placed on record.

22. First and foremost contention raised by the learned Counsel for the Appellant is that case has not been registered as per the narration made by PW1. In this regard, now on going through the evidence of PW12, who is the Police Officer, who registered the case, it was stated that on the date of occurrence, at about 9.30, PW1 came to the Police Station and lodged complaint. Further, it is stated that only upon the complaint given by PW1, the case has been registered under Section 366 of the Indian Penal Code. In this regard, PW1, who is the author of the complaint, has stated in her cross-examination that the alleged occurrence had happened on 11.05.2012 for which complaint has been given before PW12 on 12.05.2012 at about 9.30 p.m. Further, she had stated that on that day, complaint in respect of the occurrence had been suo motu written by one Thangaraj. Further, she made allegations against the said Thangaraj that he has threatened her for altering the complaint. More than that, she had stated that complaint was altered as per the wishes of the said Thangaraj.

23. Now on considering the said evidence with the original FIR and the complaint, it seems that there was no correction found in the said document. Therefore, the evidence given by PW1 in respect to preparation of complaint and also in respect of lodging of complaint before the Police, created doubt as to whether case has been registered according to the evidence given

by PW12. Secondly, in respect of securing the victim girl, while at the time of giving evidence, PW1 mother of the victim girl has stated that immediately after the occurrence, she found her daughter in an Auto, which was parked near to Tamil Nadu Hotel, Krishnagiri. On the other hand, PW12 has stated that after registering the case, on the same day, at about 12 noon, she secured the victim girl in Old Madras Road in the presence of her mother. In this regard, PW7, who is the victim girl narrated the entire incident as when at the time she attempted to inform the occurrence to her sister, the Police Officers have secured her and brought to the Police Station. On the other hand, PW11 introduces new case that on the date of occurrence, the victim girl has stayed in his house.

24. Therefore, culling out the entire evidence put forth by the prosecution witness, it seems that the prosecution has produced three set of evidences in respect of securing the victim girl. Hence, in respect of securing the victim girl also evidence given by the prosecution witnesses is not in order and therefore, the prosecution has failed to show a clear picture in respect of securing the victim girl.

25. Further, on comparing the evidence of victim girl with the evidence given by the Doctor who examined her, it has created contradiction in respect of the injuries sustained by the victim girl. In fact, in chief-examination, nothing was mentioned by the victim girl in respect of the injuries sustained during the time of occurrence. She has not given any explanation in respect of the abrasions sustained in the occurrence. On the other hand, evidence given by the Doctor is very clear that there are lot of external injuries found in the body of the victim girl. Therefore, in all aspects, the evidence given by the victim girl is not in support of the case of prosecution.

26. Accordingly, I am of the considered opinion that the evidences given by prosecution witnesses in respect of registration of case and about securing of victim girl does not inspire the confidence and therefore, the said evidence given by prosecution witnesses are unbelievable. In this regard, the Trial Court when at the time of convicting the Appellant has not perspectively analyzed the above evidences. Hence, I am of the considered view that prosecution fails in its attempt to prove the case beyond reasonable doubt.

27.In the result, the appeal is allowed and the conviction and sentence imposed on the appellant/accused by the Trial court are set aside and he is acquitted of all the charges. Fine amount, if any, paid, shall be refunded to the appellant/accused.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ay

To

- 1.Inspector of Police,
Krishnagiri Town Police Station,
Krishnagiri District.
- 2.The Public Prosecutor,
High Court of madras,
Chennai.
- 3.The Sessions Judge,
Mahila Court,
Krishnagiri.
- 4.The Judicial Magistrate,
No.1, krishnagiri
- 5.The Chief Judicial Magistrate,
Krishnagiri.

Crl. A. No. 2 of 2014

NRL (CO)
KKV/31/12/2020

सत्यमेव जयते

WEB COPY