

BAIL SLIP

The Petitioner/Accused Viz., Krishnamoorthy S/o.Ramajayam was released on bail as per Order of this Court dated 30/04/2014 in Crl.MP.No.1/2014 in Crl.OP.No.33/2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 10.11.2020

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CRL.A.No.33 of 2014

Krishnamoorthy,
S/o. Ramajayam,
No.247, Mariamman Koil Street,
Moonangkaradu,
Thadhagapatty,
Salem District. Appellant

Vs

The State rep. by
The Inspector of Police,
Salem Town All Women Police Station,
Salem District. Respondent

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C., against the judgment dated 27.11.2013 in S.C.No.108 of 2011 on the file of the learned Sessions Judge, Mahila Court, Salem convicting the appellant/accused for six years rigorous imprisonment, under Section 366 of IPC.

For Appellant : Mr.A.S.Balaji

For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

J U D G M E N T

The present appeal has been filed to set aside the judgment of conviction and sentence dated 27.11.2013 in S.C.No.108 of 2011 passed by the learned Sessions Judge, Mahila Court, Salem.

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2. The appellant herein is the first accused in the above referred case. He stood charged for the offence under Section 366 of IPC. By judgment dated 27.11.2013, the learned Sessions Judge, Mahila Court, Salem, convicted the appellant under Section 366 of IPC and sentenced him to undergo six years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for three months. Challenging the said conviction and sentence, the accused is before this Court by filing the present criminal appeal.

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

(i) P.W.5 Kokila is the daughter of P.W.1 Pattappan. P.W.2 is the wife of P.W.1 as well as the mother of P.W.5. On 15.05.2010 at about 3.00 p.m., when P.W.3 Priya and P.W.5 Kokila were standing near the public tap, the appellant herein made hindrance and threatened P.W.5 by showing knife and asked the P.W.5 to come with him. When the same was questioned by P.W.3, the accused threatened her by showing knife. Thereafter, P.W.3 and P.W.5 returned to their houses.

(ii) Immediately on the next day morning, when P.W.5 was in her house, the first and second accused came there and wrongfully entered into her house. Thereafter the first and second accused forcibly lifted the victim girl and brought her to Pallipalayam. When at the time, the victim girl was travelled with the accused, the second accused made threatening and took the ring owned by the victim girl. Further both the accused made a threat that if the victim girl attempted to run away from the said place, they will take her kidney.

(iii) In the meanwhile, on 18.05.2010, P.W.1 found that his daughter was missing. Immediately he lodged a complaint before the Police station under Ex.P.1. On receipt of the complaint given by P.W.1, P.W.12 Premavathi, the then Sub Inspector of Police, Salem Town All Women Police Station, registered a case in Crime No.32 of 2010 under Section "Girl Missing". The printed FIR is marked as Ex.P.12. Thereafter she rushed to the scene of occurrence and in the presence of witnesses P.W.7 and P.W.8, she prepared the observation mahazar under Ex.P.4. She had also drawn the rough sketch under Ex.P.13. She examined the witnesses and recorded their statements. On the same day, at about 23.30 p.m., she arrested the accused and brought to the police station. Upon information, she rushed to Pallipalayam and secured the victim girl.

(iv) In continuation of investigation, she altered the Section of law from "Girl missing" to Sections 366A & 109 of

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IPC. After securing the victim girl, she submitted requisition before the jurisdictional Magistrate for examination of the victim girl as well as the accused. On receipt of requisition given by P.W.12, the learned Judicial Magistrate No.IV, Salem issued direction for the production of the victim girl and the accused before the Doctor.

(v) On receipt of the proceedings issued by the learned Judicial Magistrate No.IV, Salem under Ex.P.9, P.W.10 Dr.Aruna Rani, examined the victim girl and found that there was no external injuries on the body of the victim girl. She gave opinion that there was no symptoms of sexual assault. In this regard, she issued certificate under Ex.P.10. Before that she collected vaginal smear and sent the same for medical examination. In the medical examination report, it was found that in the whitish smear did not detect spermatozoa. In this regard, the Chemical Examiner issued certificate under Ex.P.11.

(vi) Simultaneously, P.W.9 Dr.Paneerselvam, upon the proceedings issued by the learned Magistrate, examined the accused and issued potentiality certificate under Ex.P.6. Further he issued age certificate to the accused under Ex.P.7 stating that the accused is aged about 18 to 22 years. He also examined the victim girl and issued her age certificate under Ex.P.8 stating that the victim girl is aged about 12 to 15 years.

(vii) In continuation of the investigation, P.W.12 examined the Doctors and recorded their statements. She collected the certificates from P.W.9 and after completing the above formalities, she handed over the case records to P.W.13 for further investigation, in turn again the same was handed over to P.W.14 for further investigation. P.W.14 after completion of investigation, came to the positive conclusion that the appellant herein committed the offence under Section 366 of IPC and accordingly, filed final report before the learned Judicial Magistrate No.4, Salem. सत्यमेव जयते

4. Based on the above materials, charge under Section 366 of IPC has been framed against the appellant and the same was denied by the appellant along with accused No.2. In order to prove their case on the side of the prosecution, as many as 14 witnesses have been examined as P.W.1 to P.W.14 and 16 documents were marked as Ex.P.1 to Ex.P.16.

(i) Out of the said witnesses, P.W.1 Pattappan is the father of the victim girl. He has deposed that on the date of occurrence, after knowing the fact that his daughter was

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missing, he lodged complaint before the All Women Police Station, Salem. P.W.2 is the mother of the victim girl and she has also stated about the missing of her minor girl and about statement given before the Police Officers. P.W.3 Priya is the friend of P.W.5 who is the victim girl. She has narrated the occurrence happened on 15.05.2010 as when at the time of she and P.W.5 Kokila were standing near the public tap, the appellant herein came and made threat. She has further stated that on the next day morning, P.W.5 was missing.

(ii) P.W.4 Chandra is the sister of P.W.2. She has stated the details of occurrence that was informed to her by P.W.2. P.W.5 Kokila is the victim girl, she has stated about the alleged occurrence happened on 15.05.2010 as narrated by P.W.3. Further she stated that on the date of occurrence, first and second accused came to her residence and lifted her to Pallipalayam. Further when at the time, she was travelled along with the accused, the second accused made threat and took the ring owned by her. According to her, on 19.05.2010, the police attached with the Salem Town All Women Police Station, came and secured her.

(iii) P.W.6 Rajamani is the neighbour of the second accused, but she has not supported the case of the prosecution. P.W.7 and P.W.8 are the witnesses who attested the observation mahazar prepared by P.W.12. P.W.8 alone stated about the preparation of Observation mahazar and rough sketch. P.W.9 Panneerselvam is the Doctor attached with Salem Government Medical College Hospital. He speaks about the fixation of age to the accused as well as to the victim girl.

(iv) P.W.10 Dr.Aruna Rani, Doctor who is attached with the Government Hospital Salem has spoken about the examination of victim girl and about the issuance of certificate. P.W.11, Bharathi, the then Head Constable attached with Salem Town All Women Police Station deposed about the production of victim girl before the Doctor and about the handing over of smear for chemical examination. P.W.12 to P.W.14 are the Police officers speak about the investigation conducted by them and about the filing of final report.

5. When the above incriminating materials were put to the accused, under Section 313 Cr.P.C., both the accused have denied the same as false. However they did not choose to examine any of the witness and not marked any of the document on their side. The learned Sessions Judge, Mahila Court, Salem after perusing all the materials and also considering the arguments advanced on either side, convicted and sentenced the appellant

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as stated supra. Aggrieved over the said conviction and sentence, the appellant is before this Court with the present appeal.

6. I have heard Mr.A.S.Baalaji, learned counsel appearing for the appellant and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the respondent and perused the records carefully.

7. The learned counsel appearing for the appellant would contend that the evidence given by the prosecution witnesses are having lot of contradictions. The evidence put forth by the victim girl is that P.W.1 and PW2, who are her parents, are present at the time of occurrence. But contra to the said evidence, PW1 and PW2 did not say anything about their presence at the time of occurrence. Though some important discrepancies are found in the evidence of prosecution witnesses, without considering the same, the learned Sessions Judge, Mahila Court, convicted the appellant which is erroneous in law. Further, he would contend that the prosecution has not proved that the accused herein having intention to marry the victim girl at the time of occurrence. Accordingly, he prayed to allow the appeal and to set aside the conviction awarded by the trial Court.

8. On the other hand, the learned Additional Public Prosecutor appearing for the respondent police would contend that the evidence given by the victim girl [P.W.5] is clearly established the case of the prosecution as well as about the intention had by the accused. If really the accused had no intention to marry the victim girl, there is no necessity for threatening the victim girl and also asking her to come with him. Therefore, he submits that the interference of this Court is not necessary in the order passed by the trial Court.

9. I have considered the rival submissions made on either side and perused the documents on record carefully.

10. Initially, since the offence under Section 366 of IPC is naturally linked with the offence under Sections 361 and 362 of IPC, before entering into the merits of this case, it is necessary to decide the age of the victim girl, at the time of occurrence. Before the trial Court, in order to prove the age of the victim girl, the prosecution has produced age certificate of the victim girl as Ex.P.8. In respect of the said certificate P.W.9 Dr. Panneerselvam, Radiologist, has stated about the details of radiological examination conducted to victim girl. According to him, the age of the victim girl is between 12 and 15. In respect to the said evidence given by P.W.9, during his

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cross examination, nothing was suggested on the side of accused, by denying the age of the victim girl. Accordingly, the prosecution proved the age of the victim girl as above.

11. Further, in order to bring home an offence under Section 366 of IPC, the prosecution has to prove -

(a) that the accused kidnapped as understood in Section 360 or 361 I.P.C. or abducted the victim as understood in Section 362 I.P.C;

(b) that the victim of the aforesaid kidnapping or abduction was a female;

(c) that the accused during the kidnapping or abduction had intention or knew it likely that

(1) such a woman might or would be forced to marry a person against her will, or

(2) that she might or would be forced or seduced to illicit intercourse, or

(3) by means of criminal intimidation or otherwise by including a woman to go from any place with intent that she may be or knowing that she will be forced or seduced to illicit intercourse.

12. Secondly, in respect of the offence of kidnapping, P.W.5 the victim girl has narrated the occurrence as during the relevant point of time both the accused came to her house and thereafter the appellant/first accused asked her to come with him. Further only after making threat, he lifted her to Pallipalayam. In respect of the said evidence, the learned counsel appearing for the appellant would submit that in the statement given before the Investigating Officer, the victim girl narrated a different story and therefore, the evidence given by the victim girl before the trial Court cannot be accepted.

13. In this regard, on considering the said submission with relevant records, during the time of cross examination of P.W.5, nothing was suggested as to the statement given before the Investigating Officer. Further in respect to show contradiction, nothing was placed before the Investigating Officer in respect to the statement given by the P.W.5 under Section 161 of Cr.P.C. Therefore, by placing reliance under Section 145 of the Indian Evidence Act, if the improved or contradicted evidence given by the witnesses is not brought before the investigation officer the same cannot be looked into as there are contradictions. Therefore, the submission made by the learned counsel appearing for the appellant is not having any force.

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14. In respect of the evidence given by the victim girl, the learned counsel appearing for the appellant would submit that the entire occurrence narrated by P.W.5 revealed the fact that during time of the occurrence both P.W.1 and P.W.2 are found inside the house. But contra to the same, PW1 lodged the complaint before the police as his daughter was missing.

15. On considering the said evidence with the relevant records, if the evidence given by the PW5 is found genuine, then lifting the minor girl from her house, in the presence of two elder people, is a difficult task to the accused. Apart from that on going through the entire evidence given by the prosecution witnesses, it reveals that after two days from the date of occurrence, both the victim girl and the accused are secured by the Police in Pallipalayam and produced before the Magistrate. In respect of the same, there are some minor contradictions found in the evidence given by P.W.1, P.W.2 and P.W.4. However, the said evidence given by the prosecution witnesses, is not to the extent that the same affects the very root of the prosecution case. At this juncture, in the decision of our Hon'ble Apex Court reported in (2019) 8 SCC 371 in the case of Sachin Kumar Singhraha Vs. State of Madhya Pradesh it was held as the minor contradiction arisen in the evidence given by the prosecution witnesses is not a material in find out the truth.

16. Further in respect of the intention having by the accused, the victim girl has narrated the previous day occurrence, as when at the time she was in public Tap along with PW3, the accused came and told as "நான் உன்னை காதலிக்கிறேன் என்றும், உன்னை கல்யாணம் பண்ணிக்கொள்கிறேன் என்றும் என்னை மிரட்டினார்". In respect of the said evidence, on the side of the accused nothing was suggested that the accused herein did not say anything as stated by the victim girl. Further, the said evidence is corroborated through the evidence of PW3, who is the friend of victim girl. Therefore, the said evidence is very clear that before the occurrence, the appellant/first accused herein intended to marry the victim girl, who is aged about 13 years.

17. Accordingly, though the evidence given by P.W.5 is not corroborated through the independent eye witnesses, considering the fact and circumstances of the case that the alleged occurrence happened in the early hours of the day, it is not possible for the public to see the said occurrence. Therefore, the evidence given by P.W.5 is sufficient to hold that at the relevant point of time, the appellant along with another accused came to her house and remove her from her lawful guardian. Accordingly, the appellant committed the offence under Section 366 of IPC.

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18. As far as the quantum of punishment is concerned, the trial Court convicted and sentenced the accused for the period of six years. In this regard, the learned counsel appearing for the appellant would submit that immediately after the occurrence, and after pronouncing of judgment, the accused was under judicial custody for considerable period. Therefore he prayed some leniency from this Court in respect of the punishment awarded by the trial Court.

19. Considering the above circumstances, it is not in dispute that the alleged occurrence has happened in the year 2010. Subsequently, for the past 10 years the accused is facing the trial. Therefore, I am of the considered opinion that facing the trial for the period of 10 years is also a pain to the appellant. Accordingly, considering the facts and evidences of the case, I am inclined to modify the sentence awarded to the accused.

20. Thus in the light of the above discussion, this Criminal Appeal is partly-allowed and the conviction and sentence imposed upon the appellant/Accused, by the learned Sessions Judge, Mahila Court, Salem, in S.C.No.108 of 2011 dated 27.11.2013, is modified as follows:

"(i) Conviction and sentence awarded by the trial Court for the offence under Section 366 of IPC, is confirmed.

(ii) The sentence imposed by the trial Court will stand reduced to rigorous imprisonment of three years and to pay a fine of Rs.1,000/- in default to undergo one month rigorous imprisonment.

(iii) The respondent is directed to secure the appellant for the purpose of sentencing him to undergo the reduced/modified period of sentence. It is also directed that the period of sentence already undergone by the appellant, if any, shall be set off, as required under Section 428 Cr.P.C. (iv) The fine amount, if any, already paid by the appellant/accused, has to be adjusted, for the sentence now provided."

Sd/-

Assistant Registrar (CCC)

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Sub Assistant Registrar

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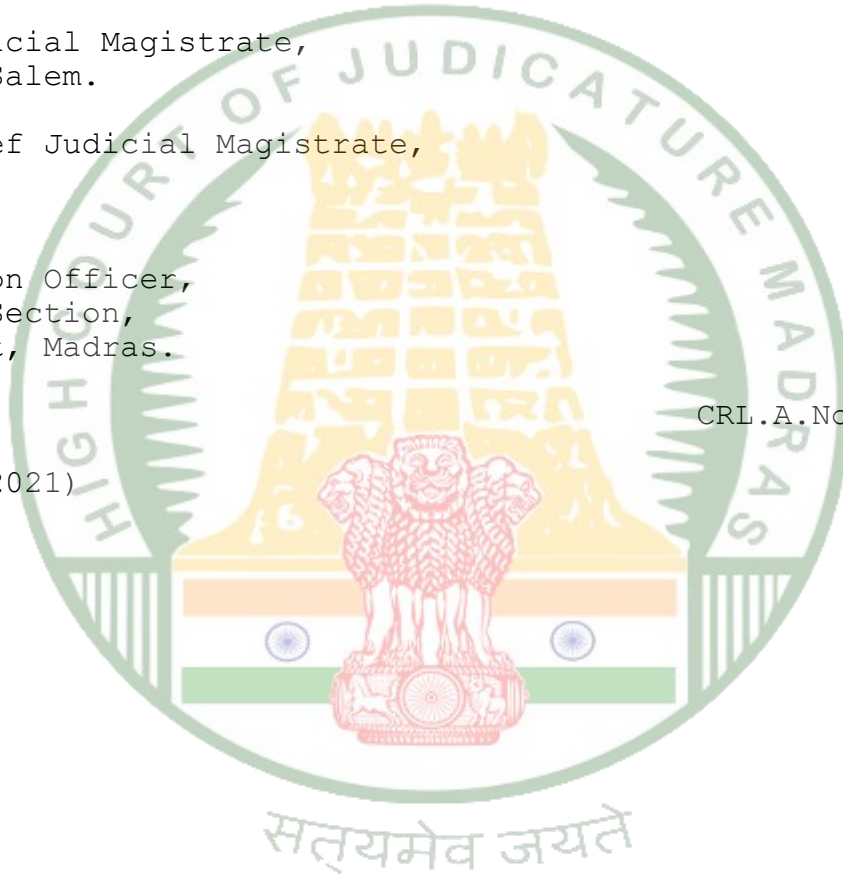
To

- 1.The Sessions Judge,
Mahila Court, Salem
- 2.The Inspector of Police,
Salem Town All Women Police Station,
Salem District.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Judicial Magistrate,
No.4, Salem.
- 5.The Chief Judicial Magistrate,
Salem.

Copy to:
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Criminal Section,
High Court, Madras.

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