

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.03.2020

PRONOUNCED ON : 09.07.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

Crl.A.No.405 of 2014

P.Anbu

...

Appellant/Accused

Vs.

State rep.by
The Inspector of Police,
Virumgampakkam Police Station,
(L&O), Crime No.334 of 2009)

...

Respondent/Complainant

Prayer:- This Criminal Appeal has been filed under Section 374 (2) of the Criminal Procedure Code against the judgment dated 09.06.2014 passed in S.C.No.172 of 2013 on the file of the Mahila Sessions Judge, Chennai.

For Appellant : Mr.V.Kannadasan

For Respondent : Mr.R.Ravichandran (Crl.side)
Government Advocate

JUDGMENT

By judgment dated 09.06.2014, passed in S.C.No.172 of 2013, the Sessions Judge, Mahila Court, Chennai, convicted the appellant/accused under Section 366(A) IPC and sentenced him to undergo rigorous imprisonment for ten years and to pay a fine of Rs.10,000/- in default to undergo six months simple imprisonment, under Section 376 IPC and sentenced him to undergo rigorous imprisonment for ten years and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for six months and under Section 495 IPC sentenced him to undergo rigorous imprisonment for five years and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months and the sentences of imprisonment imposed on the appellant/accused are ordered to run concurrently. Challenging the same, the criminal appeal has been preferred by the appellant.

2. The final report has been laid against the appellant/accused by the respondent police alleging that on 09.04.2009 at 10.30 a.m. the accused had kidnapped the victim, the daughter of the complainant Balakrishnan from his custody by enticing his daughter and tied thaali to the victim at Chinnamalai Church and resided with the victim at No.14, Guindy Labour Colony and M.G.R.Nagar, Pazhavandhangal by renting a house and thereby against her

Will and consent committed rape on her and the accused has suppressed his earlier marriage and children to the victim and by enticing and luring her, contracted second marriage with the victim and thus, it is put forth that the accused has committed the offences punishable under Sections 366(A) IPC, 376 and 495 IPC.

3. The criminal law in the matter has been set in motion based on the complaint lodged by the victim's father Balakrishnan examined as PW1 and the complaint given by him has been marked as Ex.P1. On a reading of Ex.P1 which is said to have been lodged by the complainant on 10.04.2009, it is found that it only recites that the victim aged 16 years left the house for taking photo and did not return home and therefore, requested the police to trace her. That apart, nothing has been recited in the complaint incriminating the accused alleging that it is only the accused who had kidnapped the victim girl from the complainant's custody. Based on Ex.P1 complaint, it is found that the case has been registered under the section girl missing on 10.04.2009 at 9 p.m. and the registered FIR has been marked as Ex.P8. The complaint and the registered FIR are found to have been dispatched to the Court on 21.04.2009. It is found that PW9 Aruljothimurugan is the Sub Inspector of Police who had registered the FIR Ex.P8 and he would state that based on the complaint lodged by PW1,

he had prepared the printed FIR and during the course of cross examination, he has clearly admitted that the complaint lodged on 10.04.2009 had been received by the Court only on 21.04.2009 and for the delayed dispatch of the complaint to the Court there is no reason. However, as rightly argued by the accused counsel, obviously, there is enormous delay in the dispatch of the complaint to the jurisdictional Court and as rightly put forth by him, no plausible explanation is forthcoming on the side of the prosecution as to why the same had been belatedly sent to the jurisdictional Court. Therefore, a serious doubt arises as to the credibility of the prosecution case, particularly, based on the delayed dispatch of the FIR to the competent Court.

4. As above pointed out, it is only PW1, the victim girl's father who had preferred the complaint Ex.P1. According to PW1, on 09.04.2009, his daughter left the home for taking photo and did not return back and despite search she was unable to be traced and he lodged a complaint on 10.04.2009 marked as Ex.P1. Even during the course of cross examination, PW1 has admitted that he knew the accused and they are residing in the accused house and therefore, acquainted with the accused for several years and he would further state that on the same date, he had received a phone call at 4 to 5 p.m. and the accused after answering hello, gave the phone call to his daughter and

his daughter informed him that she had left with the accused and would further state that they were in search of the victim girl. Therefore, it is found that PW1, the complainant had been apprised of his daughter leaving home with the accused on 09.04.2009, much prior to 10.04.2009 itself and therefore, when PW1 is posted with the knowledge of his daughter leaving with the accused, if really, the accused had kidnapped the victim girl by enticing and luring her on the false promise of marrying her, definitely, the complaint would have been lodged by PW1 alleging that it is only the accused who had kidnapped his daughter from his lawful custody. PW2 is the mother of the victim girl and she would only state about the victim girl leaving the house to take photo and did not return back.

5. PW3 is the victim girl and she has deposed during the course of chief examination that she had developed contact and intimacy with the accused who is living in the same area and she had asked the accused to come to her friend's house and she had put the garland by herself and the accused had arranged a house at Guindy and he took her there and they had been living as husband and wife there for 4 to 5 months and even thereafter, at Pazhavandhangal, they were living as husband and wife and the accused went for job and she went for job in a different company and thereafter she was taken by the police.

6. Thus, as deposed by her during the course of chief examination, it is seen that on account of the love which the victim girl had developed with the accused, it is found that she had left the home on her own volition without any enticement on the part of the accused as such and PW3 has not deposed anything that the accused had kidnapped her from her parents custody by enticing her on the false promise of marrying her and on the other hand, it is found that the victim girl had left the home on her own accord and it is she who had asked the accused to come to her friends house and it is further seen that the victim girl had put the garland by herself and not stated that she was garlanded by the accused and would further state that she and the accused were living as husband and wife at Guindy and Pazhavandhangal for about 7 to 8 months and thereafter they were working in separate places and subsequently taken by the police. During the course of cross examination, the victim girl has reiterated that she and the accused were living as husband and wife and she had tied thali by herself and they were living as husband and wife. However, she would state that they had not engaged in physical relationship and subsequently, they were taken by the police and further stated that she had subsequently married another person and having a baby. Therefore, from the evidence as adduced by the victim girl during the course of cross examination,

it is found that the accused has not tied thali to her and on the other hand, the victim girl herself had tied thali and they were living as husband and wife and further, according to the victim girl, there is no physical relationship between them. The evidence of PW3 victim girl being above, based on the same, it cannot be held that the accused had kidnapped her from her parents custody by enticing her and had forcible sex with her against her Will and consent and also had contracted second marriage with her by suppressing the earlier marriage. When the victim girl has not whispered anything about the accused having married her by performing any of the rituals of the marriage by putting garland to her or by tying thali and on the other hand, as above pointed out, the victim girl has only deposed that she had herself put garland to her and herself tied thali, in such view of the matter, as rightly contended by the accused counsel, as the factum of the accused having contracted a second marriage with the victim girl is not made out and therefore, it is found that the alleged offences attributed against the accused under Section 495 IPC is not established in any manner.

7. PW9, the Sub Inspector of Police who had registered the FIR is found to have conducted the initial investigation in the matter and he would admit that despite search they were unable to trace the victim girl and further

admitted that for 8 months they were unable to collect any particulars of the accused. However, as above pointed out, when immediately, on the date of the occurrence, it is the victim girl who had apprised her father PW1 that she had left the home only with the accused, to say that the whereabouts of the victim girl and the accused were unable to be detected or found for 8 months is highly preposterous and unacceptable. As above pointed out, despite having knowledge about the victim girl leaving the house with the accused, PW1 had not endeavoured to lodge the complaint pointing the guilt against the accused and on the other hand, he would only state that the victim girl left the home and did not return back.

8. From the materials placed on record, it is found that nearly 8 months after the incident, the victim girl and the accused were traced and according to PW1, on the police bringing the victim girl and when he questioned her, she was crying and he had deposed in the chief examination that the accused had married her in a Church and further would state that his daughter and the accused were living as husband and wife at two or three places and the accused had brainwashed his daughter by promising to marry her. This is what he has stated during the course of chief examination. During the course of cross examination, he would admit that when his daughter was brought by the police,

when he questioned her, his daughter did not state anything to him. Similar is the evidence of PW2, the mother of the victim girl and she has admitted during the course of cross examination that when she questioned her daughter, her daughter did not inform anything to her and further, during the course of chief examination, she would only state that her daughter did not inform anything and only crying and she was wearing thali and therefore, when it is found that the victim girl had not apprised anything to her parents on returning back, particularly, complaining about the accused alleging that it is he who had kidnapped her from the home on the false promise of marrying and thereafter, he had forcible sex with her and also contracted second marriage with her suppressing his earlier marriage, in such view of the matter, the position is that the victim girl had not apprised anything incriminating against the accused to her parents on returning back. Accordingly, it is found that PWs 1 and 2 had admitted the same during the course of cross examination and hence their unreliable evidence without any basis as if the accused had brainwashed her daughter and kept her in his custody, as such, cannot be believed and accepted. As above pointed out, despite having knowledge that the victim girl left the home with the accused, the investigation officer Gnanasekar, examined as PW10, has admitted during the course of cross examination that only on

21.12.2009, he had traced the victim girl and the accused and the complainant for the past 8 months did not say that he had suspicion against the accused in the kidnapping of his girl. Therefore, the case of the prosecution that the accused had kidnapped the victim girl from the custody of her parents by way of enticing and luring her and thereafter, he had committed rape on her and contracted second marriage with her is not established with materials worth acceptance even prima facie. When as above pointed out, the victim girl herself has not made any statement about the second marriage of the accused with her and on the other hand, only asserted that she herself had put the garland and tied thali and with reference to their living together as husband and wife, she would also go to the extent of stating that there is no physical relationship between them, therefore, the offence of kidnap and rape alleged against the accused is also found to be not clearly made out by the prosecution.

9. On the tracing of the victim girl, it is found that she was subjected to medical examination and the Doctor who had examined her has been examined as PW8. PW8 Seethalakshmi had examined the victim girl on 24.12.2009 and she would state that on examining her, she noted no external injuries on her cheeks, chest, thighs and genitals and on examining her private parts, according to the medical officer, her vagina admitted one finger and hymen

was torn at 7O'clock position and the semen from vagina had been sent for chemical analysis and said that the victim girl had experienced sexual intercourse and the certificate issued by her has been marked as Ex.P6. From the evidence of PW8 Doctor, it is found that the victim girl had sexual intercourse and that apart, there is nothing found in the certificate issued by the Doctor to evidence that the victim girl had been subjected to forcible sex as sought to be made out by the prosecution. No doubt, the victim girl had been examined nearly 8 months after she had left home, however, the fact remains that the victim girl herself had admitted that she did not have any physical relationship with the accused and also not spoken anything about the accused forcing her for sex without her consent and Will and no external injuries are noted in her body, particularly, in private parts. Therefore, as rightly contended by the accused counsel, the evidence of the medical officer who had examined the victim girl and the certificate issued by her, in any manner, would not lend support to the prosecution case.

10. Further, as per the medical officer PW8, she had certified the age of the victim girl by physical and radiology examination and opined that she is aged about above 18 years and less than 20 years and the certificate issued by the medical officer has been marked as Ex.P7 and as per the certificate issued

by the Doctor, it is found that the victim girl is aged about above 18 years and less than 20 years.

11. To evidence that the victim girl and the accused had been living together at various places, particularly, at Pazhavandhangal, the prosecution has examined one Chinnaraj as PW5. PW5 would state that the accused took his house on rent and he brought one girl and introduced her as his wife and they were living in his house for one and half months. This is what he has stated during the course of chief examination. Therefore, it is seen that PW5 has not deposed in the chief examination that the accused has brought the victim girl and stayed in his house and during the course of cross examination, he has further admitted that they resided in the house about two years back and he does not know the details of the girl brought by the accused and even thereafter, the prosecution has not endeavoured to ascertain from PW5 as to whether the victim girl was brought by the accused and stayed in his house as put forth by them. Therefore, the position being that there is no material on the part of the prosecution worth acceptance that the accused and the victim girl had been living together as husband and wife at several places and therefore, the case projected by the prosecution through the evidence of PW3 victim girl that the accused and the victim girl had been living together as husband and

wife at several places is also not turned out by any acceptable and reliable materials. PWs 6 and 7 are only the witnesses who are alleged to have been attested the confession said to have been recorded by the accused. Therefore, their evidence would be of no use to sustain the prosecution case. PWs 10 and 11 are the investigation officers who had conducted investigation in the matter.

12. The prosecution case mainly rests upon the birth certificate pertaining to the victim girl which has come to be marked as Ex.P2. According to the prosecution, Ex.P2 is the school transfer certificate of the victim girl and as per Ex.P2, the victim girl is stated to be born on 14.03.1993. It is thus put forth that on the date of the occurrence, the victim girl was aged about 16 years and one month. However, as above pointed out, as per Ex.P7, the Doctor has ascertained the age of the victim girl as about 18 years and less than 20 years. The accused has challenged the truth and validity of the certificate projected by the prosecution. Ex.P2 certificate has come to be marked through PW1 by stating that the same pertains to his daughter's school transfer certificate and that her date of birth is 14.03.1993. To sustain the truth and validity of Ex.P2 certificate, the prosecution has examined PW4. PW4 is stated to be the retired Head Master of the school where the victim girl had studied. According to the Investigation Officer examined as PW10, he had collected the school transfer

certificate of the victim girl from the Head Master Kandhasamy during the course investigation. However, it is only PW1 who had produced the same which has been marked as Ex.P2. PW4 Kandhasamy would state during the course of chief examination that he was working as the Head Master of the Corporation Higher Secondary School, Virugambakkam and retired during May 2011 and the victim girl had studied in the school from 08.06.2004 to 08.04.2009 and her date of birth is 14.03.1993 and the transfer certificate issued to her is Ex.P2. However, during the course of cross examination, he has admitted that the transfer certificate Ex.P2 has not been certified by him or by any other Government official and further admitted that he has not tendered evidence in the matter by seeing the original certificate and also had not mentioned as to when the victim girl had secured the transfer certificate and he would state that he had verified the original on the receipt of the summon from the Court. However would admit that he had not submitted any application for verifying the original and further admitted that it is true to state that he had not deposed in the Court by seeing the original certificate and also by comparing the original with the certificate put to him marked as Ex.P2. Therefore, when it is found that Ex.P2 is only a Xerox copy and not an original certificate said to have been issued to the victim girl and when it is not clear as to when the

victim girl had secured the said certificate from the school and when PW4 is not the Head Master of the concern school at the time when he tendered evidence and when he had already retired from the school and further, when the prosecution has not established that the transfer certificate of the victim girl had been secured from PW4 and on the other hand, when Ex.P2, a Xerox copy has been projected only by PW1, the father of the victim girl and when Ex.P2 being a Xerox copy and not certified either by PW4 or by any Government official and when PW4 is found to have tendered evidence only based on the Xerox copy and though PW4 would claim that he had verified the original on the receipt of the summon from the Court, however, he has not presented the original for verification and he had not verified the original with the Xerox copy and when the Xerox copy has not been certified by him or by any other Government official and Ex.P2 being a Xerox copy and the original not secured by the prosecution in the manner known to law and as to why the prosecution has not endeavoured to summon and produce the transfer certificate and further examine the present school authority pertaining to the same, a series of doubts arise with reference to the credibility and genuineness of Ex.P2 certificate and particularly, when as per Ex.P7, the victim girl is found to be aged between 18 and 20 years, in the face of the abovesaid series

of doubts surrounding Ex.P2, I am of the considered opinion that no safe reliance could be attached to the same for holding that the victim girl was born on 14.03.1993 as put forth by the prosecution. Therefore, no reliance could be made on Ex.P2 for concluding that the victim girl was born on 14.03.1993. Resultantly, the position is that the prosecution has miserably failed to establish that the victim girl was a minor girl on the date of occurrence, particularly, when she left the home on 09.04.2009 and therefore, to allege that the accused had kidnapped the victim girl who is a minor, as such, cannot be countenanced in any manner.

13. In the light of the abovesaid discussions, when the prosecution has miserably failed to establish that the victim girl was a minor on the date of occurrence and further has also not established that it is only the accused who had kidnapped the victim girl by enticing on the false promise of marrying her and also not established that the accused has committed forcible sex on the victim girl against her Will and consent and further has not established that the accused had contracted second marriage with the victim girl suppressing his earlier marriage and in such view of the matter, when the prosecution case bristles with serious loopholes, lacunae, defects, suspicions and when with reference to the same no plausible explanation is forthcoming on the side of the

prosecution to dispel the same, in my considered opinion, the benefit of doubt emerging from the same should be extended in favour of the accused and I hold that the prosecution has miserably failed to establish the guilt of the accused put forth by them against the accused. Resultantly, the accused has to be acquitted of the offences put forth against him under Sections 366A, 375 and 495 IPC.

14. In conclusion, the judgment dated 09.06.2014, passed in S.C.No.172 of 2013, on the file of the Sessions Judge, Mahila Court, Chennai, convicting and sentencing the appellant/accused under Sections 366(A), 375 and 495 IPC are set aside and the accused is acquitted of the offences put forth against him under Sections 366(A), 375 and 495 IPC and accordingly, the criminal appeal preferred by the appellant is allowed. The bail bond executed by the appellant shall stand cancelled. The fine amount, if any, paid by the appellant shall be refunded to him.

Index : Yes / No
Internet : Yes / No
sli/sms

09.07.2020

WEB COPY

To

1.State rep.by
The Inspector of Police,
Virumgampakkam Police Station,
(L&O), Crime No.334 of 2009)

2.The Mahila Sessions Judge, Chennai.



WEB COPY

Crl.A.No.405 of 2014

T.RAVINDRAN, J.
sli/sms



Pre-delivery Judgment made
in Crl.A.No.405 of 2014

WEB COPY **09.07.2020**