

BAIL SLIP

The Appellant/Accused viz Gowtham, S/o.R.Ravi, was released on bail, vide order of this court, dated 28.04.2015, made in MP 1/2014 in CrI.A.434/2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 15.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CRL.A.No.434 of 2014

Gowtham,
S/o.R.Ravi,
No.18, Kanchepuram
Sababathi Street,
Chennai-79.

...Appellant

Vs

The State rep. by
The Inspector of Police,
Seven Wells Police Station,
Chennai.
(Crime No.2410 of 2012)

...Respondent

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C., praying to set aside the judgment passed in S.C.No.298 of 2013 dated 30.07.2014 on the file of the Mahila Court, Chennai.

For Appellant : Mr.M.Shahjahan

For Respondent : Mr.S.Karthikeyan

Additional Public Prosecutor

सत्यमेव जयते
J U D G M E N T

The present appeal has been filed to set aside the judgment of conviction and sentence dated 30.07.2014 passed in S.C.No.298 of 2013 on the file of the learned Sessions Judge, Mahila Court, Chennai.

2. The appellant is the sole accused. He stood charged for the offences under Sections 366A and 376 of IPC. By the judgment dated 30.07.2014, the learned Session Judge, Mahila Court, Chennai, convicted the appellant under Section 366A of IPC and sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- in default to undergo

simple imprisonment for six months. He has been further convicted under Section 376 of IPC and sentenced to undergo rigorous imprisonment for seven years and to pay fine of Rs.5,000/- in default to undergo simple imprisonment of six months. Challenging the said conviction and sentence, the accused is before this Court by filing this present Criminal Appeal.

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

(i) P.W.4 Priyanka is the victim girl. P.W.1 Sathiyarayanan is the father of the victim girl and P.W.3 Sadharna is the mother of the victim girl. During the time of occurrence, the victim girl was going to catering work. On 25.08.2012, after completing regular work, when she was returned to her house, P.W.3 Sadharna, who is the mother of the victim girl did not permit her for entering into her house. During such time one Suganya, who is the friend of P.W.4 came there and invited P.W.4 to her house. P.W.4 also complied the said request made by the said Suganya and stayed in her house. Next day morning, the brother of P.W.4 informed that P.W.3 lodged complaint before the police. Immediately P.W.4 went to the Police Station and gave statement as she went to the house of Suganya.

(ii) At the same time, the appellant herein came there and after seeing him, P.W.4 requested to marry her. For the request made by P.W.4, the appellant herein replied that since the case has been registered against him, he has not in a position to comply the request. At the same time, P.W.3 demanded the appellant/accused to pay rupees three lakhs. However, due to the intervention of the elders, P.W.4 went along with the appellant. Subsequent to that, the appellant married the victim girl. In the mean time, P.W.3 took sleeping tablets and due to the same, she was admitted in the hospital.

(iii) Further in the enquiry made by the Police officers, P.W.4 has stated that she married the appellant and lived together as husband and wife. In respect of that, the victim girl was secured by the police and produced before the Court. She was produced before the doctor for medical examination. Further during the enquiry, she produced the school certificate, in which the date of birth of the victim girl was mention as 26.05.1999. The said certificate has been marked under Ex.P.2.

(iv) In the said circumstances, P.W.3 lodged complaint under Ex.P.1 before the Police. On receipt of the same P.W.12 Sundaram, the then Inspector of Police, Seven Wells Police Station, registered the FIR in Crime No.2410 of 2012 under Section 366A of IPC. The printed FIR has been marked as Ex.P.14.

After registration of FIR, P.W.12, took the same for investigation and visited the scene of occurrence. He prepared observation mahazar, which has been marked as Ex.P.3. He drawn rough sketch and the same was marked under Ex.P.15. He examined the witnesses and recorded their statements. On the same day, he arrested the accused and secured the victim girl.

(v) During the interrogation, the accused gave voluntary confession statement and the same has been recorded by P.W.12. After recording the confession statement, the accused was sent to judicial custody. Similarly, the victim girl was also sent to Government home. In continuation of investigation, P.W.12, submitted the requisition letter under Ex.P.16 to the learned Judicial Magistrate, for medical examination of the victim girl as well as to the accused. In turn, upon the proceedings issued by the learned Judicial Magistrate, P.W.8 Dr.Anuradha, attached with R.S.R.M. Hospital examined the victim girl and found that "No evidence of recent sexual intercourse". In this regard, she issued Accident Register copy under Ex.P.6., medical report under Ex.P.7, medical certificate under Ex.P.8 and chemical examination report under Ex.P.9. According to her, no evidence is available for recent sexual intercourse.

(vi) Simultaneously, P.W.9 Dr.Balasubramanian, attached with Stanley Medical College Hospital examined the accused and issued certificate under Ex.P.11, stating that there was nothing to suggest that the accused is impotent. He also issued age certificate to the accused stating that the accused is above 20 but below 22 years under Ex.P.12. In the mean time, upon the requisition given by the investigating officer P.W.10, Dr.Murugesan, Medical Officer, examined victim girl and issued certificate under Ex.P.13, wherein he has stated that the age of the victim girl is above 14 years and below 15 years.

(vii) P.W.11 Radhika Balachandran, Assistant Director, Forensic Department analysed the nails and hairs of the victim girl and gave certificate that no tissue or blood found in the above samples. In this regard, she issued certificate under Ex.P.9. In continuation of the investigation, P.W.12 examined the Doctors and recorded their statements. At the end of the investigation, he came to the positive conclusion that the accused has committed the offence under Sections 366A @ 363, 366, 376 of IPC and Sections 3(A)(a) & 4 of POSCO Act, 2012 and filed final report accordingly.

4. Based on the above materials, the learned trial Judge framed charges under Sections 366A, 376 of IPC and Sections 3(A)(a) & 4 of POSCO Act, 2012 and the accused pleaded not guilty and claimed for trial. In order to prove their case, on the side

of the prosecution as many as 12 witnesses were examined and 16 documents were marked as Ex.P.1 to Ex.P16.

5. Out of the said witnesses P.W.1 Santhiyanarayanan is the father of the victim girl. Prior to the occurrence, he knows the accused. According to him, after knowing the missing of his daughter, his wife filed complaint before the Police. P.W.2 Velu is the neighbour of P.W.3. Only after the occurrence, he knows that both the accused and the victim girl fell in love with each other. P.W.3 Sadarna is the mother of the victim girl. She deposed that during the time of occurrence, due to the abuse made by her, her daughter went away from the house. In this regard, she lodged complaint before the Police and thereafter, the police informed to her that her daughter was available in the police station. But no where she stated that the grandmother and mother of the accused brought the victim girl to the police station. After the medical examination, she brought the victim girl to her house. Subsequent to the occurrence, P.W.4, ran away with the appellant as a second time. In this regard, after securing them, the victim girl informed to her that the appellant made sexual intercourse with her. Thereafter P.W.3 brought P.W.4 to Andrapradesh.

(i) P.W.4 Priya is the victim girl. She spoke about the occurrence as at the relevant point of time, due to the abuse made by her mother, she went to the house of Suganya and after knowing the lodgment of the complaint she surrender before the Police Station. She has further stated that after the occurrence, she married the appellant and joined together. P.W.5 Srinivasan is the auto driver. After the occurrence he heard the news. P.W.6 is the resident in the same locality in which, the victim girl was resided. He has been attested the observation mahazar prepared by the Investigating Officer. P.W.7 Mahesh speaks about the recording of confession statement by the Investigating Officer from the accused.

(ii) P.W.8 Anuradha is the doctor speaks about the examination of victim girl and also she gave opinion as there was no symptoms appeared in P.W.4 for recent sexual intercourse. P.W.9 Balasubramanian is the doctor, he examined the accused and issued certificate stating that nothing was suggested that the accused is impotent. P.W.10 Dr.Murugesan is the Radiologist, examined the victim girl and issued age certificate as the victim girl aged about more than 14 and below 15.

(iii) P.W.11 is the Deputy Director, Forensic Science Department, Chennai, speaks about the examination of nail clippings and hair. According to her, no semen or blood found in the samples. P.W.12 Sundaram, is the Inspector Of Police and he speaks about the receipt of complaint and registration of the

case, examination of witnesses and about the arrest of the accused. He has further stated about the securing of the victim girl and filing of final report against the accused.

6. When the above incriminating materials put to the accused, he denied the same as false. However he did not choose to examine any of the witnesses, never marked any documents on his side.

7. Having considered the materials placed before him and on considering the arguments advanced on either side, the learned Session Judge, Mahila Court, Chennai convicted the appellant and sentenced him as stated in paragraph No.2 of this judgement. Aggrieved over the said conviction and sentence, the appellant is before this Court with this appeal.

8. I have heard Mr.M.Shahjahan, learned counsel appearing for the appellant and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the State and also perused the records carefully.

9. The learned counsel appearing for the appellant would contend that the evidence put forth by the prosecution is no way related to the alleged occurrence committed by the accused. Nothing was stated by the victim girl in respect of the offence of kidnapping and for the offence of sexual intercourse. The learned Session Judge, Mahila Court, Chennai without knowing the principles of law, convicted the accused, which is erroneous in law. Therefore, he prayed to allow the appeal and set aside the conviction rendered by the Court below.

10. On the other side, the learned Additional Public Prosecutor appearing for the State would contend that evidence given by the prosecution witnesses are sufficient to prove that the accused committed the offence as alleged by the prosecution. Therefore, he prayed for dismissal of the present appeal.

11. I have considered the rival submission made on either side and perused the materials on record.

12. Here it is a case, while at the time of framing charges the offence under Section 366A, 376 of IPC has been framed as against the appellant. To establish the offence under Section 366A of IPC the prosecution is to prove that

- (a) the victim of the offence is a girl aged below 18
- (b) the accused induced the victim to go from one place to another or
- (c) to do an act

(d) this inducement aforesaid was made with the intent or knowing it to be likely that the victim might be forced or seduced to illicit sexual intercourse with another male person.

13. Simultaneously, for proving the offence under Section 376 of IPC, the prosecution has to necessarily prove the following ingredients:-

Any person

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with his or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person.

14. Now on going through the evidence put forth by the prosecution witnesses, the Doctor who examined the victim girl stated that there was no symptoms appeared for sexual intercourse to the victim girl. Further contrary to above, nothing was stated by the victim girl while at the time of examination as P.W.4. P.W.1 and P.W.3 who are the parents of the victim girls are also not stated anything about the inducement made by the appellant for kidnapping the P.W.4. The victim girl herself admitted that there was no such occurrence occurred as narrated in the charge. According to the victim girl, on the date of occurrence, she voluntarily went to her friends house and stayed there. In other words, she has not stated any adverse allegations against the appellant as he induced her to go other place, for the purpose of marriage. She fairly concedes that only due to the intervention of the elders she went along with the accused and married him.

15. Accordingly, the victim girl, who is the aggrieved party did not support the case of the prosecution before the trial Court and the charges framed against the appellant has not been proved. The trial Court without considering the same by believing the evidence of P.W.3, convicted the accused, which is nothing but erroneous in law.

16. In the light of the above discussion, I am of the considered opinion that only because of the reason that the accused is potent person, we cannot come to the conclusion that he committed the offence as narrated by the prosecution. Accordingly, the conviction and sentence awarded by the trial

Court is liable to be set aside. Therefore, this Court came to the conclusion that the prosecution has not proved its case beyond reasonable doubts and therefore, conviction and sentence awarded by the learned Session Judge, Mahila Court, Chennai is liable to be set aside.

17. Accordingly, this Criminal Appeal is allowed . The conviction and sentence imposed by the learned Session Judge, Mahila Court, Chennai in S.C.No.298 of 2013 dated 30.07.2014 is hereby set aside. The appellant/accused is acquitted of all charges. Fine amount, if any paid, shall be refunded to the appellant forthwith. Bail bonds, if any executed, shall stand cancelled.

Sd/-

Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Mahila Court, Chennai.
2. The Inspector of Police,
Seven Wells Police Station,
Chennai.
3. The Public Prosecutor,
High Court, Madras.
4. The Metropolitan Magistrate,VIII,
George Town, Chennai.
5. The Chief Metropolitan Magistrate, Egmore
6. The Superintendent, Central Prison, Puzhal, Chennai.
7. The Section Officer, Criminal Section, High Court, Madras.

+2cc to Mr.M.Shahjahan, Advocate SR.No.40499

CRL.A.No.434 OF 2014

SSV(CO)
KKV/05/03/2021