



WEB CTS

BAIL SLIP

The appellant/accused viz Sakthivel S/o Rayer, aged about 25 years in S.C.224 of 2011, dated 18/01/2013 on the file of the District Mahila Court, Cuddalore was released on bail as per the order of this Hon'ble court dated 1/8/2014 made in M.P.No 1 of 2014 in Crl.A.S.R.No. 30237/2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 16.03.2020
PRONOUNCED ON : 04.06.2020
CORAM
THE HONOURABLE MR.JUSTICE T.RAVINDRAN
Crl.A.No.449 of 2014

Sakthivel

...Appellant/Accused

Vs.

State of Tamil Nadu
Rep.by its
Inspector of Police,
Neyveli Thermal Police Station,
Neyveli T.S.

...Respondent/Complainant

Prayer:- This Criminal Appeal has been filed under Section 374 (2) of the Criminal Procedure Code against the judgment dated 18.01.2013 passed in S.C.No.224 of 2011 on the file of the District Mahila Court, Cuddalore.

For Appellant : Mr.V.Krishnamoorthy
for M/s.P.Paramasiva Doss
For Respondent : Mr.R.Ravichandran (Crl.side)
Government Advocate

JUDGMENT

The District Magalir Court, Cuddalore, by judgment dated 18.01.2013 passed in S.C.No.224 of 2011 has convicted the appellant/accused under Section 366 IPC and sentenced him to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for six months and acquitted him of the offence under Section 376 IPC. Impugning the conviction and sentence imposed on him, the appellant/accused has preferred the criminal appeal.

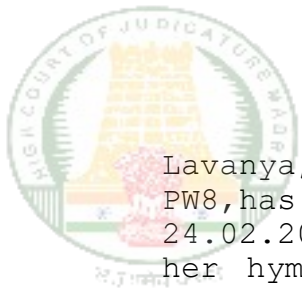
2.According to the prosecution case, the victim girl was studying 11th standard and the victim girl's brother Mohan and the accused are friends and the accused used to come to the



victim girl's house for meeting Mohan and as a result of which developed friendship with the victim girl and loved her and on hearing the same, the accused parents approached the victim girl's parents and requested to give the victim girl in marriage to the accused. However, the victim girl's parents refused to the same and consequentially, on 21.02.2011 at about 8.00 am, while the victim girl was proceeding to the school in her bicycle, the accused by luring her that he would marry her, abducted the victim girl to the Veludaiyanpatti temple and tied Thali in the temple and also had sexual intercourse with her and thus, the accused had committed the offences punishable under Sections 366 and 376 IPC.

3.To sustain the prosecution case, PWs 1 to 9 were examined and Exs.P1 to 9 were marked. No MO has been marked. On the closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C qua the incriminating evidence tendered against him by the prosecution witnesses and the accused had denied the same and according to the accused, he and the victim girl had been in love with each other and as the victim girl's parents were making arrangements to give her in marriage with another person and as the victim girl approached him complaining that she would commit suicide if the same were to be accomplished and accordingly, put forth the case that the victim girl on her own left her parents and came with him and thus, according to the accused, he has not committed the offences levelled against him. On the side of the accused, no oral and documentary evidence has been adduced. No MO has been marked.

4.As above pointed out, through the accused had been charged under Sections 366 & 376 IPC, he has been convicted and sentenced by the trial Court only under Section 366 IPC. The Victim girl has been examined as PW2. PW2 in her evidence during the course of chief examination would claim that she had informed to the police that the accused had sexual intercourse with her. Further, she has also deposed during the course of cross examination that she had informed to the police that she was not in love with the accused and subsequently, during the course of cross examination, she has admitted that the accused did not have sexual intercourse with her and further, admitted that she had also informed to the police during the course of investigation that the accused did not have sexual intercourse with her and also admitted that she and the accused came together to the police station on their own accord and it is correct to state that marriage had not taken place, however, Thali alone is available in her neck. In addition to the abovesaid evidence of the victim girl, the medical officer viz.,



Lavanya, who had examined the victim girl and examined as PW8, has deposed that she had examined the victim girl on 24.02.2011 and not found any external injuries on her body and her hymen was present (intact) and on chemical test, no sperm was seen from the liquid collected from the victim girl and further, the doctor has certified that though the victim girl is fit to undergo sexual intercourse, she might have not undergone sexual intercourse and furthermore, the doctor had also testified that the victim girl, who was ascertained through radiology test, was found to have completed 18 years and below 20 years of age and the certificate of age issued by the doctor is marked as Ex.P8 and the medical certificate issued by the doctor has been marked as Ex.P6.

5.Considering the abovesaid factors in toto, the trial Court proceeded to hold that the offence of rape put forth against the accused has not been made out and accordingly, acquitted him of the aforesaid offence. However, as above pointed out, the trial Court proceeded to convict and sentence the accused for the offence under Section 366 IPC by holding that the accused had abducted the victim girl from her parents' custody unlawfully by forcing her and by deceitful means for meeting his ends.

6.The prosecution has endeavored to point out that the victim girl was born on 03.06.1995 and her school certificate pointing to the same has been marked as Ex.P3 through PW5 Manimozhi. Manimozhi is the Headmistress of the school where the victim girl had studied. According to PW5, when the victim girl was admitted in her school, her date of birth was furnished as 03.06.1995, however, the same has been challenged by the accused. PW5 during the course of cross examination has admitted that at the time of admission in the school, they used to go by the date of birth furnished by the parents and further admitted that before admitting the victim girl in a school, the date of birth furnished by the parents will be taken into consideration at the time of the admission. Furthermore, while cross examining the investigation officer examined as PW9, the accused had put suggestion to him that the parents had not given correct age of the victim girl and given only a lesser age of the victim girl and also put the suggestion to the Investigation Officer that if the certificate issued to the victim girl at the time of her first joining the school is available, her correct age could be ascertained and accordingly, put forth the suggestion that the victim girl is not a minor and she was a major on the date of occurrence and further, the Investigation Officer has admitted that during the course of investigation, the victim girl's age had been determined above 18 years and below 20 years.



7. PW1 is the father of the victim girl. PW1 during the course of cross examination has admitted that he was married 30 - 35 years ago and he has two children, one son by name Mohan and one daughter the victim girl and his son was born 5 years after his marriage and two years thereafter his daughter was born and he had tendered evidence in the Court on 26.12.2012. Considering the abovesaid factors in toto, when it is found that PW1 was married 35 years prior to his deposition and 5 years after his marriage, his son had been born and two years thereafter his daughter had been born, all put together and considering the evidence given by the Doctor that the victim girl was aged above 18 years and below 20 years and when the prosecution had not endeavored to collect the school certificate of the victim girl at the first instance when she was admitted in the primary school, in all, it is found that no safe reliance could be attached to Ex.P3 for holding that the victim girl was born on 03.06.1995 and on a perusal of Ex.P3, it is seen that the year 1995 had been altered. Be that as it may, considering the above factors, the prosecution has miserably failed to establish that the victim girl was a minor on the date of occurrence.

8. Even as per the charge, the parents of the accused had approached the victim girl's parents for giving the victim girl in marriage to the accused, however, the same had been refused by the victim girl's parents. Consequent thereto, according to the prosecution, the accused had abducted the victim girl on 21.02.2011. In this connection, according to PW1, the father of the victim girl, he had lodged the complaint marked as Ex.P1. Ex.P1 is dated 23.02.2011. It is thus found that only 2 days after the incident, the complaint Ex.P1 is found to have been lodged. PW1 during the course of cross examination has admitted that he does not know the contents of Ex.P1 and he had only signed the same as he does not know to read and write. Be that as it may, Ex.P1, the complaint, has been lodged as if it is only the accused, who had abducted the victim girl. PW3 Shenbagavalli, the mother of the victim girl has admitted during the course of cross examination that she knew about the abduction of the victim girl on the date of occurrence and when she was questioned as to why the complaint was not lodged immediately, according to her, the accused mother had promised to return the girl and therefore, they did not lodge the complaint and as assured by them, they handed over the custody of the girl on Wednesday and further, would go to depose that the accused family had threatened them that they would abduct the victim girl in the event of not giving her in marriage to the accused and the same has also been tendered by the victim girl examined as PW2.



9. According to the charge, the victim girl was abducted while she was proceeding in a cycle to her school and taken to the temple. The victim girl during the course chief examination has deposed that while she was proceeding to the school, the accused came to her and informed that her brother had asked him to bring her and she went with the accused in a car and in the car, the accused brothers Gopal and Selvam were seated and they have threatened her to marry the accused and she had fainted in the car and on retaining consciousness, she was wearing a saree and Thali was tied in her neck. Thereafter, the complaint had been lodged by her father and she had informed the police that the accused had sexual intercourse with her. This is what the victim girl had testified about the occurrence. Therefore, as rightly contended by the accused counsel from the abovesaid evidence of the victim girl, it is found that there was no compulsion or force exercised by the accused in taking the victim girl in the car and on the other hand, it is found that the victim girl had on her own left with the accused in the car on his mentioning that her brother had asked him to bring her. With reference to the abovesaid incident, we have only the evidence of the victim girl. As such, as above pointed, PWs 1 and 3, the parents of the victim girl and the other witnesses examined had not spoken about the occurrence.

10. Now, according to the accused, he was in love with the victim girl and the victim girl was also in love with him and when the parents of the victim girl had planned to marry her with another person, the victim girl approached him that she would commit suicide, if the same were to be accomplished and accordingly, left with him and therefore, he has not committed the offence alleged against him. Though the victim girl in her evidence denied having any love affair with the accused and also testified that she had informed the police that she was not in love with the accused, the Investigation Officer examined as PW 9, during the course of cross examination, has admitted that the victim girl during the course of 161 statement has stated to him that she and the accused developed acquaintance and the same gradually blossomed into love and further stated that she had informed the accused that her parents are making arrangements to marry her to a third party and further stated that she had met the accused at Nagakanniamman temple and further stated that she went with the accused in the cycle to Veludaiyanpatti temple and not stated that the accused had abducted her and further deposed that PW 1 during the course of his 161 statement did not state that the accused parents threatened that they would abduct the victim girl in a car, if she is not given in marriage to the accused and the victim girl did not give statement that the accused had taken her in the car by stating that her brother had asked him to bring her and the accused brothers Gopal and Selvam



were in the car and they threatened her to marry the accused and she had fainted in the car and on regaining consciousness, she was wearing a Saree and Thali was tied in her neck and also deposed that PW3 has not stated to him that the accused parents had threatened that they would kidnap and abduct the victim girl, if she did not marry the accused and she had not given the statement that the accused brothers Gopal and Selvam had abducted her. The abovesaid statements offered by the victim girl PW2, the victim girl parents PW1 & 3 to the Investigation Officer during the course of investigation seen conjointly and when the victim girl has clearly admitted to the investigation officer that she was in love with the accused and that she had apprised the accused that her parents were making arrangements to give her in marriage to a third party and she had on her own accord left with the accused to the temple and the accused had not made any misrepresentation to her while taking her in the car as put forth by her and the accused brothers had not threatened her to marry their brother and that she had fainted in the car and on regaining consciousness, she was wearing a saree and Thali was in her neck all put together would only go to show that the victim girl has not come out with the true facts. Further, it is also brought home that the victim girl was in love with the accused and for one reason or the other, the victim girl was not given in marriage by her parents and when the parents had endeavored to give her in marriage to another person, the victim girl had approached the accused to help her from her situation and accordingly, it is found that the victim girl had left her parents on her own accord with the accused. The facts being above as pointed supra, particularly, considering the statement offered by the victim girl to the Investigation officer during the course of investigation as rightly put forth by the accused counsel, the victim girl's evidence cannot be wholly relied upon and she comes under the category of witnesses viz., neither wholly reliable nor wholly unreliable. In such view of the matter, when the evidence of the victim girl is not corroborated either by the other witnesses or by other acceptable documentary evidence, her evidence cannot be safely relied upon, particularly, when there is no material corroborating her testimony that the accused had abducted her against her will and consent by employing deceitful means or by exercising force or compulsion for attaining his objective/end and when it is further seen that the complaint had not been immediately lodged by the victim girl's parents and only two days after the incident, the complaint is found to have been preferred and when PW3 the girl's mother had deposed that the complaint had not been lodged immediately as the accused mother had assured to hand over the victim girl immediately and accordingly, handed over the victim girl immediately and furthermore, when no marriage is found to have been contracted between the victim girl and the accused as such other than the



evidence of the victim girl that she was wearing saree and having Thali in her neck and when it is found that the victim girl and the accused had come to the police station on their own accord and furthermore, when the prosecution has not endeavoured to prove that the accused had contracted marriage with the victim girl in the temple by examining the poosari of the temple or any other person associated with the temple and as above noted, the victim girl is found to have been not ravished or forced to have sexual intercourse by the accused and the victim girl had not been subjected to any ill-treatment or harassment in any manner and when the claim of the victim girl that she had lost her consciousness while travelling in the car is not acceptable and found to be a false version and as above pointed out, when the prosecution has miserably failed prove that the victim girl was a minor on the date of the incident, all put together, would go to show that the offence of abduction/kidnapping levelled against the accused has not been proved by the prosecution beyond reasonable doubt.

11.In this Connection, the counsel for the accused placed reliance upon the decisions reported in (2003) 2 Supreme Court Cases 401 (LalluManjhi and another Vs. State of Jharkhand) and AIR 1965 Supreme Court 942 (S.Varadarajan Vs. State of Madras). The principles of law outlined in the abovesaid decisions are taken into consideration and as applicable to the case at hand.

12.In view of the abovesaid discussions, when the prosecution has failed to bring home the guilt of the accused by adducing reasonable or reliable evidence and when as above pointed out, the evidence of the victim girl is found to be totally unreliable and also not corroborated by reliable materials, in such view of the matter, the prosecution case being surrounded with serious doubts, surmises, suspicions, and conjectures and when with reference to the same and to dispel the same, the prosecution having not projected convincing explanation, in such view of the matter, the benefit of doubt emerging from the same should be extended in favour of the accused and accordingly, I hold that the prosecution has miserably failed to prove the charge of kidnapping under Section 366 IPC levelled against the accused beyond reasonable doubt.

In conclusion, the impugned judgment dated 18.01.2013 passed in S.C.No.224 of 2011 on the file of the District Magalir Court, Cuddalore, convicting the appellant/accused under Section 366 IPC and sentencing him to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for six months are set aside and the



accused is acquitted of the offence under Section 366 IPC. Resultantly, the criminal appeal is allowed. Bail bond if any executed by the appellant/Accused shall stand cancelled and fine amount, if any, paid by the appellant/accused is ordered to be refunded to him.

Sd/-
Assistant Registrar(MD)

//True Copy//

Sub Assistant Registrar

sms

To

1. State of Tamil Nadu
Rep.by its
Inspector of Police,
Neyveli Thermal Police Station,
Neyveli T.S.
2. The District Mahila Court, Cuddalore.
3. The Judicial Magistrate,
Cuddalore.
4. The Superintendent,
Central Prison, Cuddalore.
5. The Public Prosecutor,
High Court, Madras.

Pre-delivery Judgment made
in CrI.A.No.449 of 2014

GP(CO)
KKV/13/07/2020