

Bail Slip

The Appellant/Accused No.1 namely R. Karthik S/o.Ravi who was ordered to be released on bail vide order dated 11.09.2014 made in M.P. No. 1/2014 in CrI.A.No.477 of 2014 passed by this Hon'ble High Court, Madras.

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED : 21.12.2020

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CrI.A.No.477 of 2014

R.Karthik,  
S/o.Ravi

... Appellant /Accused No.1

versus

The State represented by its  
Inspector of Police,  
Shankar Nagar Police Station,  
Chennai.

...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the judgment of conviction and sentence passed by the learned Sessions Judge [Mahila Court], Chengalpet dated 14.08.2014 in S.C.No.45 of 2013.

For Appellant : Dr.R.Sampathkumar  
For Respondent : Mr.S.Karthikeyan  
Additional Public Prosecutor

J U D G M E N T

The present Criminal Appeal has been filed by the appellant to set aside the judgment of conviction and sentence passed by the learned Sessions Judge [Mahila Court], Chengalpet dated 14.08.2014 in S.C.No.45 of 2013.

2. The appellant herein is the first accused/A-1 in the above referred case. He stood charged for the offences under Sections 363, 341 and 376 of IPC. By a judgment dated 14.08.2014, the learned Sessions Judge [Mahila Court], Chengalpet, convicted the appellant under Section 363 of IPC and sentenced to undergo Rigorous Imprisonment for three (3) years and to pay a fine of Rs.2,000/-, in default to undergo Rigorous Imprisonment for six(6) months, further acquitted the appellant for the offences under Sections 341 and 376 of IPC.

3. Challenging the said conviction and sentence, the appellant is before this Court, by way of filing the present Criminal Appeal.

4. The case of the prosecution, in brief, is as follows;

4.1. P.W.5-Shivaranjini is the victim girl. P.W.1-Selvi is her mother and P.W.2-Suresh is her brother. She was born on 27.06.1994. On 14.04.2011, at about 7.00p.m., the appellant herein came to her house and invited her by saying that his mother is calling her. By obeying the request made by the appellant, she went to Pallavaram wherein the other 4 accused (now acquitted) are assembled there. All the accused brought the P.W.5 to Thirunindravur and confined for a period of 20 days in the house which belongs to the aunt of the appellant. During the period of confinement, the appellant forced the P.W.5 for marrying him. Since P.W.5 refused for the marriage, the appellant and others harassed the victim girl by beating her.

4.2. In the meantime, P.W.1 after knowing that, her daughter was missing, lodged a complaint before the Shankar Nagar Police Station under Ex.P.1. Along with the complaint, P.W.1 enclosed a Birth Certificate of her daughter, which has been marked as Ex.P.2.

4.3. On receipt of the complaint, P.W.8-Lakshmi Narayanan, the then Inspector of Police, Shankar Nagar Police Station, registered a case in Crime No.316 of 2011 under the head of 'girl missing'. The printed First Information Report was marked as Ex.P.7. He examined the witnesses and recorded their statements. On 20.04.2011, at about 19.00 hours, he arrested A-5-Manoj (now acquitted) and sent him to remand. He altered the Section of Law from 'girl missing' to Sections 363 and 366(A) of IPC. The Alteration Report was marked as Ex.P.8.

4.4. On 05.05.2011, at about 7.30 hours, he arrested the appellant and in the presence of witnesses, he recorded the confession statement given by the appellant. In view of the confession, he recovered the dresses worn by the appellant under the cover of Seizure Mahazar (Ex.P.3). Similarly, on the same day, he secured the victim girl and recovered the dresses, which were worn by the victim girl, under the cover of Seizure Mahazar (Ex.P.4). He altered the Section of Law as Sections 363, 366(A) and Section 376 of IPC. The alteration Report has been marked as Ex.P.9. He submitted a requisition to the Judicial Magistrate for making arrangements to conduct the medical examination to the victim girl as well as to the accused.

4.5. In turn, upon the receipt of the proceedings issued by the Court, P.W.6-Dr.Narmada, attached with Government Kasturibai Gandhi Hospital, Chennai, examined the victim girl. She collected the vaginal smear and sent the same for chemical examination. In the examination, there is no semen detected. However, she would certify that there were symptoms which found in the body of the victim girl in respect to the sexual intercourse. Similarly, P.W.7-Dr.Vedhanayagam, examined the accused and issued a Certificate stating that there is nothing to suggest that the accused is an impotent.

4.6. In continuation of investigation, P.W.9-S.A.Srinivasan, the then Inspector of Police, Shankar Nagar Police Station, examined the Doctors and recorded their statements. He forwarded the dresses, which were collected from the accused and the victim girl for chemical examination and received a report under Ex.P.10 wherein, the Examiner has stated that there is no semen or blood found in the dresses. After receiving the said Report, P.W.9 completed the investigation and came to the positive conclusion that the present appellant and other 4 accused committed the offences under Sections 363, 366 (A) and 376 of IPC. He filed a Final Report accordingly.

5. Based on the above materials, the trial Court framed charges under Sections 363, 341 and 376 of IPC. The accused denied the same and opted for trial. In order to prove their case, on the side of the prosecution, as many as 9 witnesses were examined as P.W.1 to P.W.9 and 12 documents were exhibited as Exs.P.1 to P.12. Besides 8 material objects as M.O.1 to M.O.8.

6. Out of the said witnesses, P.W.1-Selvi is the mother of the victim girl. She speaks about the occurrence particularly in respect to the missing of her daughter and about the lodging of complaint before the Police Station.

7. P.W2-Suresh, is the brother of the victim girl. He has also speaks about the missing of her sister and about the lodging of complaint before the Police.

8. P.W.3-Mohan, is the resident of Thirunindravur. He deposed as during the relevant point of time, one Kala arranged a rental house in Thirunindravur to the appellant.

9. P.W.4-Velmurugan, is the resident of Pammal and further he is the relative of P.W.1. He speaks about the attestation made by him in the Seizure Mahazar prepared by P.W.9 for the purpose of recovering the dresses, worn by the accused as well as by the victim girl.

10. P.W.5-Shivaranjini, is the victim girl, speaks about the occurrence as during the relevant point of time, the appellant and others brought her to Thirunindravur and confined there for a period of 20 days.

11. P.W.6-Dr.Narmada, attached with Government Kasthuribai Gandhi Hospital, Chennai, speaks about the examination of the victim girl and about the issuing of the Certificate in respect to the virgin test.

12. P.W.7-Dr.Vedhanayagam, attached with Madras Medical College, Chennai, speaks about the examination of the accused. According to him, the accused is a potent man.

13. P.W.8-Lakshminarayanan and P.W.9-S.A.Srinivasan, are the Police Officers speaks about the receipt of the complaint, examination of witnesses, arrest of accused, securing the victim girl and about filing of the final report.

14. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor did he mark any documents on his side.

15. The learned Sessions Judge [Mahila Court], Chengalpet, 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 is before this Court with this appeal.

16. I have heard Dr.R.Sampathkumar, learned counsel appearing for the appellant and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the State. I have also perused the records carefully.

17. The learned counsel appearing for the appellant would contend that the evidence given by the victim girl is having lot of contradictions. In fact, during the relevant point of time, the victim girl has married the appellant and leads a happy married life. Only P.W.1 and P.W.2 separated the victim girl from the hands of the appellant and had given marriage with another person. Only due to the reason that the victim girl now becomes another man's wife, she was not in a position to tell the real story before the trial Court. The appellant herein has not committed any offence as alleged by the prosecution. Accordingly, he prayed to allow this appeal and set aside the conviction and sentence.

18. Per contra, the learned Additional Public Prosecutor appearing for the State would submit that the evidence given by the victim girl is sufficient to hold that she was kidnapped by the appellant with a view to marry her and therefore, interference of this Court is not necessary in the judgment rendered by the trial Court. He prays to dismiss the appeal.

19. I have considered the rival submissions made on either side and perused the records carefully.

20. Since the trial Court has convicted the appellant for the offence under Section 363 of IPC, to bring out the said offence the prosecution must establish the fact that during the relevant point of time, the accused has taken the victim girl under the age of 18 years, without the consent of a lawful guardian. In this regard, the Birth Certificate pertains to the victim girl has been marked as Ex.P.2. As per the said Certificate, the victim girl was born on 27.06.1994. On the other hand, the alleged occurrence had happened on 14.04.2011 and thereby, during the time of occurrence, the victim girl has not completed the age of 18 years.

21. Secondly, it is an admitted fact that P.W.1-Selvi is the mother of the victim girl and thereby, both P.W.1 and her husband are the lawful guardian to the victim girl. In the said circumstances, for affirming the findings of the trial Court, it is necessary to find out whether the accused kidnapped the victim girl from the lawful custody of her lawful guardian.

22. In this regard, P.W.1 gave evidence before the trial Court as after knowing the fact that her daughter was missing, she lodged a complaint before the Police. The brother of the victim girl, who has been examined as P.W.2 has also gave a similar evidence that immediately after knowing the occurrence, P.W.1 lodged a complaint before the Police.

23. Therefore, the above said evidence is made clear that during the relevant point of time, P.W.5 was kidnapped from the custody of her parents, without getting any consent from them. In the said circumstances, on going through the evidence in respect to the involvement of the accused in the occurrence, P.W.5, who is the victim girl gave evidence as on 14.04.2011, when at the time she was studying 12<sup>th</sup> Standard, all the accused herein brought her to Thirunindravur and confined there for a period of 20 days. After recording as above, in the chief examination for the reason best known, the learned Additional Public Prosecutor in the trial Court treated her as a hostile witness.

24. In a case of Jagdir Singh v. State of Punjab and also in various decisions, it is a well settled position of law that the evidence given by the witness cannot be thrown away entirely for the simple reason that he becomes a hostile witness. Applying the said principle with the case in our hand, here it is a case, before treating the victim girl as a hostile witness, she has narrated the entire occurrence particularly in respect to the confinement made by the appellant. During the time of cross examination on the side of the accused, one letter alleged to be written by the victim girl has been marked as exhibit D.1. Of course, the contention of the said letter is in favour of the accused but in respect to the drafting of letter, the victim girl has stated that the said letter was obtained by the appellant by coercion. Therefore, the said letter also cannot be taken into account for considering the case of the appellant in his favour.

25. Accordingly, I am of the considered opinion that the evidence given by P.W.5-victim girl is sufficient to hold that during the relevant point of time, without getting consent from the parents of the victim girl, the appellant kidnapped the victim girl and confined her for a period of 20 days. Therefore, the grounds raised by the appellant is not at all sufficient to hold that the findings arrived at by the trial Court is erroneous in law.

26. Now coming to the quantum of punishment, the trial Court has awarded three (3) years of Rigorous Imprisonment and to pay a fine of Rs.2,000/-, in default to undergo Rigorous Imprisonment for six(6) months. In this regard, the learned counsel appearing for the appellant/accused would contend that due to the reason, that during the time when the victim girl gave evidence before the trial Court, she becomes another man's wife, in order to save her life, she gave evidence in support of prosecution. In otherwise, it is a fact that she married the appellant and leads a happy married life for a considerable period.

27. In order to substantiate the said contention, he has produced the copies of the marriage photographs pertain to the victim girl. The said photographs shows that the victim girl married the accused at the earlier point of time. However, the said photographs are not shown to the victim girl at the time of recording evidence from her and not marked as exhibits. So, without marking the said document as exhibits, this Court is not in a position to consider the said document in favour of the appellant. In otherwise, it is admitted on either side at the time of occurrence, the appellant was aged about 19 years.

28. Therefore, considering the facts and circumstances of the case, I am of the considered opinion that sentencing the accused for a period of 18 months, is sufficient to meet the ends of justice and hence, this Court is inclined to modify the sentence awarded by the trial Court as above.

29. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed upon the appellant/accused for the offence under Section 363 of IPC, by the learned Sessions Judge [Mahila Court], Chengalpet, dated 14.08.2014 in S.C.No.45 of 2013, is modified as follows:

"(i) the sentence of three years of Rigorous Imprisonment is reduced to that of 18 months of Rigorous Imprisonment.

(ii) the fine imposed by the trial Court i.e. Rs.2,000/- and in default to undergo Rigorous Imprisonment for six months, is confirmed.

(iii) Since the appellant/accused is on bail, the trial Court shall take steps to secure the appellant/accused, to commit him in prison to serve out the remaining period of sentence. The period of sentence already undergone by the appellant/accused, shall be set off under Section 428 of the Code of Criminal Procedure.

-s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

sri

To

1.The Sessions Judge [Mahila Court],  
Chengalpet.

2.The Inspector of Police,  
Shankar Nagar Police Station,  
Chennai.

3.The Public Prosecutor,  
High Court, Madras.

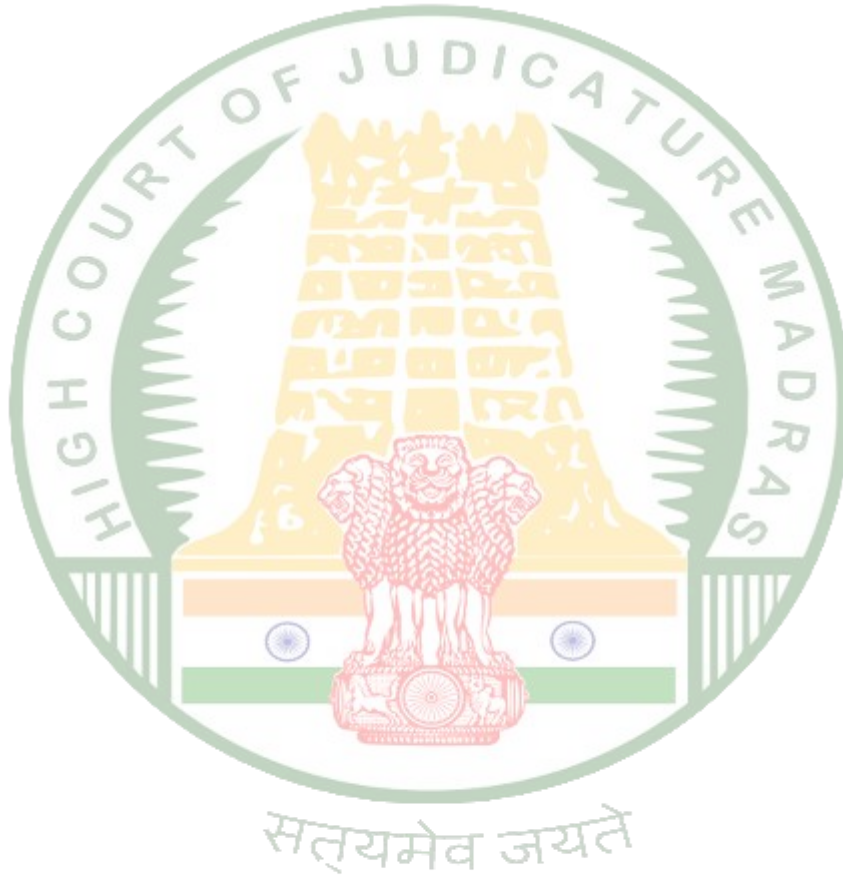
4.The Judicial Magistrate  
Tambaram

5.The Chief Judicial Magistrate  
Chengalpattu(for information)

+1 CC to Mr.R. Sampath Kumar, Advocate sr 42516.

Crl.A.No.477 of 2014

CP(CO)  
SP(29/01/2021)



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