

BAIL SLIP

The Appellant herein/Accused namely Mani @ Manikandan, S/o.Mani was directed to be released on bail as per the Order dated 07.04.2014 made in MP.No.1 of 2014 in Crl.A.No.92 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.11.2020

PRONOUNCED ON : 11.11.2020

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CRL.A.NO.92 OF 2014

Mani @ Manikandan

... Appellant/Accused

VS.

State Represented by
Inspector of Police,
B-4, Race Course Police Station
Coimbatore.

.... Respondent/Complainant

Prayer:-

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the conviction and judgment passed by the learned Sessions Judge - Magalir Neethimandram (Mahila Court), Coimbatore, in S.C.No.4 of 2013 dated 11.02.2014.

For Appellant : Mr.B.R.Shankaralingam

For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

JUDGMENT

The sole accused in SC No.4 of 2013, on the file of the learned Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore, is the appellant herein. He stood charged for the offence under Section 366(A) of IPC. The accused denied the charge and opted for trial. Therefore, he was put on trial of the charges. After full fledged trial, the learned Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore, found him guilty of offence under Section 366(A) of IPC. The accused

was accordingly, convicted and sentenced to undergo rigorous imprisonment for three years, with a fine of Rs.5,000/-, in default to undergo simple imprisonment for three months.

2. Challenging the conviction and sentence, the accused is before this Court with the present criminal appeal.

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

(i) The victim girl Pavithra (PW2) is the daughter of defacto complainant-(PW1). She was residing with her father Pushparaj, in Coimbatore. She was studying in Senkottaiah Higher Secondary School, Sundararapuram. On 25.06.2012, at 7.15am, when she was in a bus 908 which ran from Lakshmi Mills to Ukkadam, the accused came to Ukkadam bus stand and asked her to come with him. Since the victim girl refused to follow the directions given by the accused, the accused herein threatened the victim stating that unless she accommodate him, he would kill her parents. After made such a threat the accused had taken the victim in a bus to Pollachi. Further, he had taken the victim girl from Pollachi to Tiruppur bus stand and finally, to Tiruppur Railway Station. Further, from Tiruppur Railway Station, the accused has taken the victim girl to Chennai in a train. In fact, victim boarded the train without knowing the destiny. After getting down from the train only she knows that she was in Central Railway Station. Immediately, after knowing the same, she cried and requested the accused to take her to Coimbatore and thereafter, the accused caught one another train and travelled to Coimbatore along with the victim. In Coimbatore Railway Station, again, the victim was crying and thereby, the persons around her noticed them in a suspicious manner. When they came down from the stair case of the Railway Station, she found her parents, standing along with the police.

(ii) In the meanwhile, PW1-Pushparaj, who is the father of the victim girl, on 25.06.2012, after knowing the fact that his daughter was missing, he lodged a complaint before the respondent police under Ex.P1. PW4-Smt. Ananda Jothi, the then Sub Inspector of Police, Race Course Police Station, on the same date on receipt of the complaint from PW1, registered the case in Crime No.676 of 2012 under the head, 'girl missing'. The printed FIR is exhibited as Ex.P3. After registration of the said FIR, he handed over the same to the Inspector of Police, for investigation.

(iii) PW5, Thiru.T.H.Ganesh, the then Inspector of Police, Race Course Police Station, on receipt of FIR, rushed to the scene of occurrence and examined the witnesses Puspharaj, Vani, Kumar, Maheswari, Palanisamy and recorded their statements, separately. Upon the secret information, he secured the victim girl along with the accused in Coimbatore Railway Station and he

recorded the statement from the victim girl. Thereafter, in continuation of investigation, he collected the Study Certificate from PW3-Thiru.Palaniyandi, who is the Headmaster of Senkottaiah Higher Secondary School, under Ex.P2. He arrested the accused and sent him to judicial custody. After the completion of the investigation, he came to the positive conclusion that the accused committed an offence under Section 366(A) of IPC and filed a final report [Ex.P4], accordingly.

4. Based on the above materials, the trial Court framed the charge under Section 366(A) of IPC. The accused denied the charge and opted for trial. Therefore, the accused was put on trial.

5. During the time of trial, five witnesses have been examined as PW1 to PW5, for proving the case of the prosecution. Further, four documents were exhibited as Ex.P1 to Ex.P4.

6. Out of the above said witnesses, PW1, is the father of the victim girl. He has stated in his evidence that on the date of occurrence i.e., on 25.06.2012, at about 7.15am, he had sent his daughter Pavithra to school, in a bus which ran from Lakshmi Mills to Ukkadam, as usually. Thereafter, till 7.30pm, his daughter did not turn up and therefore, after making enquiry with the students, who are studying along with his daughter, he lodged a complaint before the police.

7. PW2, is the victim girl, Pavithra. Before the trial Court, she narrated the entire occurrence.

8. PW3, Thiru.Palaniyandi, is working as Headmaster in Senkottaiah Higher Secondary School. He had stated that on the request made by the Investigation Officer, he issued the Study Certificate, in which it was mentioned that the victim girl was born on 07.07.1998.

9. PW4 and PW5, are the police officers, they have stated in their evidence about the receiving of complaint from PW1, registration of FIR, examination of witnesses, securing the victim, arrest of the accused and about the filing of final report.

10. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, in order to prove his case, he neither produced any witness on his side nor marked any documents.

11. Having considered the above, the learned Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore, found the accused guilty for kidnapping the minor girl. Accordingly, the

accused was convicted under Section 366(A) of IPC and sentenced, as indicated in the 1st paragraph of this judgment. Aggrieved over the conviction and sentence, the accused has come up with the present appeal.

12. I have heard the learned counsel for the appellant/accused and the learned Additional Public Prosecutor for the respondent/State and also perused the records carefully.

13. Initially, in respect to the age of the victim girl, it is made clear that as per the certificate issued by PW3, the date of birth of the minor girl is 07.07.1998. On the other hand, the alleged occurrence had happened on 25.06.2012 and therefore, on the date of occurrence, the victim girl has not attained the majority.

14. Secondly, in the complaint given by PW1, he has stated only about the missing of his minor daughter. Further, during the time of giving evidence, he has stated about the missing of victim girl alone and therefore, in this case, apart from the evidence of PW2, none of the witnesses examined on the side of the prosecution have not stated the occurrence as per the version of the prosecution. Only PW2, narrated the occurrence in support of the case of the prosecution.

15. While at the time of disposing the case, the learned Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore, only by accepting the suggestion put forth by the accused, held that the accused is guilty for the offence under Section 366 (A) of IPC. Of course, while at the time of cross examination of PW2, on the side of the accused, it was suggested as follows:

“.....சம்பவ தேதியன்று நான் தான் எதிரியை வற்புறுத்தி அழைத்துக்
கொண்டுபோனேன் என்றும், ஏதரி பத்திமதி சொல்லி என்னை அழைத்துக்
கொண்டுவந்து என் பெற்றோரிடம் ஒப்படைத்தார் என்று சொன்னால் சரியல்ல...”

Thus, the said suggestion, prove the stand taken by the accused that the victim girl alone compelled the accused and thereby the accused took the victim girl from the custody of her lawful guardian.

16. In this regard, the learned counsel appearing for the appellant/accused would contend that though the said suggestion put forth by the accused is in support of the prosecution, before accepting the same, the Court can peruse the evidence given by PW1 and PW2, which is necessarily in the form of attracting the definition of 366(A) of IPC. He would further submit that for proving the offence under Section 366(A) of IPC, the prosecution must prove the inducement made towards the minor

girl and also prove the fact that the girl will be removed from the lawful custody with the intention that she should be used for sexual intercourse. But, here it is a case, the evidence given by the victim girl, did not disclose the factum of inducement and also about the intention having by the accused at the time of committing the offence.

17. Now, on considering the said submission, it is true, for proving the offence under Section 366(A) of IPC, the prosecution has to prove that the inducement was made with intent that the victim may be, or knowing it is likely that the victim might be forced or seduced to illicit sexual intercourse with another male person. But, here it is a case that at the request made by the victim girl, the appellant herein again brought her to Coimbatore, wherein both the accused and the victims are residing.

18. Therefore, the main ingredient, which is necessary for proving the offence under Section 366(A) of IPC is not found in the evidences given by the prosecution. But the trial Court concluded the case in favour of the prosecution only by accepting the suggestion put forth by the accused, which is erroneous in law.

19. Therefore, I am of the considered opinion that before the trial Court, the prosecution has not proved the case. Therefore, the conviction and sentence awarded by the trial Court is liable to be set aside.

20. Accordingly, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused by the learned Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore, in S.C.No.4 of 2013 dated 11.02.2014, are set aside and he is acquitted of the charge. Fine amount, if any, paid, shall be refunded to the appellant/accused. Bail bond, if any, executed by the appellant/accused, shall stand cancelled.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Magalir Neethimandram (Mahila Court),
Coimbatore,

2. Inspector of Police,
B-4, Race Course Police Station
Coimbatore.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.B.R.Shankaralingam, Advocate, S.R.No.36587

Criminal Appeal No.92 of 2014

BS (CO)
CS/03/02/2021



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