

BAIL SLIP

The Appellant/Accused, namely A.Srinivasan S/o. Annamalai was directed to be released on bail as per order dated 25.03.2014 made in MP.NO.1/09 IN CRL MP.1/2014 IN CRL A.NO.792/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.792 of 2013

A.Srinivasan,
S/o. Annamalai .. Appellant/Accused

Vs.

State of Tamil Nadu Represented by
Inspector of Police,
Muthandikuppam Police Station,
Cuddalore. ...Respondent/Complainant

PRAYER : The Criminal Appeal filed under Section 374(2) r/w. 382 of the Criminal Procedure Code, to set aside the judgment dated 28.11.2013 passed by the District and Sessions Judge, Mahila Court, Cuddalore in SC.No.307/2012.

For Appellant : Mr.R.Muralidharan
For Respondent : Mrs.Saradha Devi
G.A. (Criminal Side)

JUDGMENT

(The case has been heard through video conference)

This Criminal Appeal has been filed, against the judgment of conviction and sentence passed by the learned District and Sessions Judge, Mahila Court, Cuddalore in S.C.No.307 of 2012, finding the Appellant/accused guilty for the offences under Sections 376, 365 and 366 IPC, and convicting and sentencing him to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default to undergo One Year Rigorous Imprisonment for the offence under Section 376 IPC and to undergo three years rigorous imprisonment and to pay a fine of Rs.3,000/- in default to undergo Six Months Rigorous Imprisonment for the offence under Section 365 IPC and to undergo three years rigorous imprisonment and to pay a fine of Rs.3,000/- in default to

undergo Six Months Rigorous Imprisonment for the offence under Section 366 IPC and ordering the sentences to run concurrently.

2. Brief facts of the case: The criminal law in this matter has been set in motion based on the complaint lodged by the victim girl aged 21 years on 23.08.2011, the complaint was registered by the respondent police for the offence under Section 361, 365 & 376 IPC. The complaint which has been marked as Ex.P1. As per Ex.P1/Complaint, the father of the victim was working at NLC as a labourer and that she was undergoing 2nd year BCA course at Jawahar College of Arts and Science and that the Appellant/Accused was working as a contract labourer in NLC and that the Appellant/Accused has already been married and having two sons aged about 16 years and 11 years respectively and that the Appellant/Accused was a close relative to the victim girl viz. the son of her elder paternal uncle. The accused has been harassing the victim girl for about six months to have sexual intercourse with him and that she had informed the same to her sister-in-law/Amsavalli and that her sister in law assured the victim that she will enquire the same with the Appellant/Accused. While so, on 28.07.2011, the Appellant/Accused informed over phone to the victim girl that they are giving scholarship in her college and asked her to go and receive the same from the college. Believing the same, the victim girl informed it to her sister-in-law and gone to the college to collect it. On the same day at around 3.30 p.m., while she was returning back from college, the Appellant/Accused had waylaid her and taken her to the nearby cashew grove and compelled her to marry him. The victim had informed him that the relationship between them is a prohibited one and that she cannot marry him. While so, he had taken her into the cashew grove and compelled her and had sexual intercourse with her. Later, she had informed him that she was feeling thirsty and the Appellant/Accused offered her Maaza (Cool drink) to drink and after drinking the same the victim fell down unconsciously and she was not aware of anything after drinking the same. On the next day i.e., on 29.7.2011, at about 10.00 a.m., when she had woken up, she came to understand that she was in a hotel room in Chennai and the accused kept her in the hotel room for 11 days and had sexual intercourse with her for two times. On 08.08.2011 at around 11.00 p.m., the Appellant/Accused had taken her to Koyambedu bus stand and took her back to the native village in Kollukarankuttai in a bus and thereafter, dropped her near the Muthandikuppam Police station. The victim had not given any complaint on the same day. After few days, the victim had informed her parents about the occurrence and thereafter, she had given a complaint to the respondent and requested them to take action against the Appellant/Accused for having abducted her and committed rape on her.

3. Based on the complaint, a case was registered by the
<https://hcservices.ecourts.gov.in/hcservices/>
PW6/Sub Inspector of Police in Crime No.296 of 2011.

Thereafter, the case was taken up for investigation by PW7/Inspector of police, and after completing the investigation, he filed charge sheet against the Appellant/Accused for the offences under Sections 376, 365, 366 IPC and the same was taken on the file of the learned Judicial Magistrate-I, Panruti.

4. After complying with the formalities and furnishing copies to the Appellant/Accused under Section 207 Cr.P.C., the Judicial Magistrate No.I, Panruti committed the case to the Sessions Court for trial. After questioning the accused, the trial Court framed the charges against the accused for the offences under Sections 365, 366 and 376 of IPC.

5. In order to establish the case of the prosecution, the prosecution has examined seven witness viz. P.W.1 to P.W.7 and marked seven documents viz. EX.P1 to Ex.P7.

6. After completion of evidence on the side of the prosecution, the Trial Court questioned the Appellant/Accused, under Section 313(1)(b) Cr.P.C., in respect of incriminating circumstances found in the evidence of the prosecution and the Appellant/Accused had denied the charges and stated that he was present at Neyveli from 28.07.2011 and was working as a contract labourer in N.L.C., and that his wife was aware of the same and he had denied having abducted and committed sexual intercourse on the victim.

7. To substantiate his defence, his wife Kaviyarasi was examined as D.W.1 and no documentary evidence was marked.

8. After hearing the arguments on both sides and on a perusal of the evidence and materials placed before the trial Court, the trial Court found the Appellant/accused guilty and convicted the Appellant/Accused as stated above.

9. Aggrieved against the said judgement of conviction and sentence passed by the learned District and Sessions Judge, Mahila Court, Cuddalore in S.C.No.307 of 2012, dated 28.11.2013, the accused preferred the present appeal before this Court.

10. The learned Counsel for the Appellant/Accused while assailing of the judgment of conviction and sentence raised the following grounds;

1. Though there could be no iota of doubt that the conviction can be passed on the sole testimony of the prosecutrix even without corroboration, the testimony should be credible and be of un-impeachable character. The evidence of prosecutrix does not inspire confidence and there is absolutely no evidence to show that there was absence of consent.

There is absolutely no evidence of resistance and the medical evidence does not prove that there was a rape on the victim.

2. Though alibi has been pleaded by the Appellant/Accused, even assuming the case of the prosecution to be true, a case of misguided relationship, elopement and consensual sex has been falsely projected as a case of rape.

3. Admittedly, the victim is aged 21 years. Though it is the case of the prosecution that the victim was abducted from her native place and was taken to Chennai, which is 200 k.m. away and kept her in confinement in a hotel room for 11 days and raped twice, no evidence has been let in by the prosecution to prove the charges for the offence under Section 365, 366 and 376 IPC.

4. The testimony of the victim is not only unimaginable, it is also unbelievable. It is highly suspicious and un-reliable.

5. The delay in lodging F.I.R. creates doubt and suspicion in the case of the prosecution.

6. The conduct of the victim and her family members is not of normal human conduct. The conduct of the family members of the victim in not giving complaint to the police for 11 days after her missing from home and the conduct of the victim in not giving complaint for 4 days after returning from Chennai is not only fatal to the case of the prosecution, it also makes the case of the prosecution highly doubtful.

7. Though injury on the body of the person of the victim is not a sine qua non to prove the charge of rape, the medical evidence belies the case of the prosecution with regard to rape since, no evidence of injury or as to resistance by the victim is established.

8. Admittedly, there was dispute between the family of the victim and the family of the Appellant/accused and as per PW.4, the complaint has been given only after consultation and much deliberation and the victim had been compelled and persuaded to give the complaint.

Counsel for the Appellant/Accused relied on the judgment of the Hon'ble Apex Court reported in 1.) Radhu v. State of MP reported in (2008) 2 SCC (Cri) 207 and in 2.) Mohd. Ali Alias Guddu Vs. State of Uttar Pradesh in 2015 7SCC 272 wherein, the Hon'ble Apex Court in a case of similar set of facts had acquitted the accused.

12. Per Contra, Ms.Saradha Devi, learned Government Advocate (Crl. Side) appearing for the Respondent would submit that the prosecution has proved its case by adducing clear and cogent evidence. It is the case where a girl was abducted from her home town and kept in a hotel room at Chennai for 11 days and the family members fearing loss of reputation to the family, had not given the complaint and thereby, much significance cannot be attached to the delay in lodging of the complaint. She would further submit that the injuries on the body of the victim is not a sine qua non for deciding whether rape has been committed and that the trial Court finding that there had been no consent by the victim had rightly convicted the Appellant/Accused and thereby, prays for confirming the judgement of conviction and sentence.

13. Heard the learned Counsels on either side and perused the materials placed on record.

14. Now while looking into the evidence on record, P.W.1/Victim has deposed that she is aged 24 years and she was born on 02.06.1989 and that she knows the Appellant/Accused and that she had gone to the college to receive the scholarship and the staff of her college had informed her that they were not giving scholarship on that day. Thereafter, she was returning home in her bicycle through the cashew groves. At that time, the Appellant/Accused had stopped her and called her to come with him to cashew grove to speak and that he had taken her bicycle and she had followed him inside the cashew grove and they were conversing for some time and that he had induced her saying that he would marry her. While conversing, he had compelled her and had sexual intercourse with her. After that, she had told him that she was feeling thirsty and he had given her Maaza and when she drank it, she became unconscious and she was not aware what had happened. On the same day at 11.00 p.m., they were at Chennai and that they were together in a hotel room for 11 days and the Appellant/Accused used to come in the night and that during that time he had sexual intercourse with her twice. On 08.08.2011, at 11.00 p.m., the Appellant/Accused along with his friend had taken her to Koyambedu Bus stand to return back to their native village and on the next day morning, he dropped her near Muthandikuppam Police Station and thereafter, she had given a complaint before Muthandikuppam Police Station and since they did not accept the complaint, she had once again gone to the police station along with her parents even then, the respondent had refused to accept the complaint. Thereafter, they have given a complaint to the Superintendent of Police, Cuddalore and based on the

direction, the complaint was taken at Muthandikuppam Police Station. The complaint was marked as Ex.P1.

15. PW2/ Dr.Lavanya had deposed that on 03.11.2011 at 2.00p.m., the victim was brought before her for examination and she had informed that she lastly had sexual intercourse on 06.08.2011, and that a one month old scar was found on the left side of her breast. She had further stated that apart from that injury no other injury was found on the body of the victim and that since the victim was brought after a month no spermatozoa was found in the private part. She had opined that the victim had completed 21 years and she is fit to undergo sexual intercourse and that she might have had sexual intercourse. Report of Medical Examination of the victim was marked as Ex.P2 and the opinion of P.W.2 was marked as Ex.P3.

16. PW3/ Dr.Senthil Kumar had deposed that on 24.09.2011, he had examined the Appellant/Accused and that no injuries were found on the body or the private part of the Appellant/Accused. Further, he had opined that there was nothing to suggest that the Appellant/Accused was impotent. The opinion of P.W.3 was marked as Ex.P4.

17. P.W.4/ Jaya, the mother of the victim had deposed that she knows the Appellant/Accused and he is not related to her. Two years back her daughter had gone to her college at around 1.00 p.m., to receive the scholarship and she did not return home and she had given a complaint to the Muthandikuppam Police station, whereas, they have refused to accept the complaint. Thereafter, her daughter had returned home after 11 days and she was not spoken to her for 3 days. Later, she had disclosed that the Appellant/Accused had raped her and thereafter, they have gone and given a complaint at the Superintendent of Police, Cuddalore and since, no case was registered, they have approached the High Court.

18. P.W.5/ Ganesan had deposed that on 23.08.2011 at 5.00 p.m., the police have taken him to the cashew grove belonging to the Appellant/Accused and prepared the Observation Mazahar/Ex.P5 in which, he and one Kodisundaram had attested as witnesses.

19. P.W.6/ Arun Kumar, Sub Inspector of Police had deposed that on 23.08.2011 at 3.30 p.m., P.W.1/Victim had appeared before him and given a complaint and he had received and registered a case in Crime No.296 of 2011 for the offence under Section 344, 366 and 376 IPC and handed over the case to PW7 for investigation. The F.I.R. was marked as Ex.P6.

20. P.W.7/ Suyambu, Inspector of Police had deposed that he had taken the case for investigation on 23.08.2011 and on the same day at 5.00 p.m., he went to the place of occurrence and prepared the Observation Mahazar/Ex.P7 in the presence of the witnesses viz., Ganesan and Kodisundaram. Thereafter, he had examined the witnesses viz., the victim,

Kuppusamy, Jaya, Amsavalli, Ranjani, Ganesan and Kodisundaram and recorded their statements. Thereafter, on 02.09.2011, he had sent the victim for medical examination. On 24.09.2011, he had enquired the Appellant/Accused and he did not co-operate for the investigation. Thereafter, he had sent the Appellant/Accused for medical examination through one Rajendran/Special Sub Inspector of Police. Thereafter, he had enquired the Doctor Lavanya/P.W.2 who conducted medical examination on the victim and Doctor Senthil Kumar/P.W.3, who conducted medical examination of the Appellant/Accused and recorded their statements and obtained certificates from them. Thereafter, he had examined the Special Sub Inspector/Rajendran, Arun Kumar and Head Constable and recorded their statements and after completing the investigation, filed the final report against the Appellant/Accused on 27.06.2012, for the offences under Sections 365, 366, 376 IPC.

21. On the side of the defence, D.W.1/Kalaiyarasi, the wife of the Appellant/Accused was examined and she had deposed that her husband viz., the Appellant/Accused had helped the victim for her education and that she is known to her and that there was a civil dispute between the family of her husband and the family of the victim. She had further deposed that between 28.07.2011 to 07.08.2011, her husband was working as a contract labour at the Mines in NLC., and during such time, she had heard that the victim has quarrelled with her mother and had gone away from her home and thereafter, 10 days later, the family of the victim had given a complaint before the Muthandikuppam Police Station. Since, it was a false complaint the police had not registered the case.

22. With regard to the judgments relied on by the counsel for the appellant in Radhu v. State of MP reported in (2008) 2 SCC (Cri) 207, the Hon'ble Apex court, while holding that the finding of guilt in a case of rape can be based on the uncorroborated evidence of the Prosecutrix and that her testimony should not be rejected on the basis of minor discrepancies and contradictions, had held that the absence of injuries on the private parts of the victim will not by itself falsify the case of rape, nor can be construed as evidence of consent, however, at the same time, the Courts should bear in mind that false charges of rape are not uncommon and that there are rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. The Hon'ble Supreme Court had further held that whether there was rape or not would depend ultimately on the facts and circumstances of each case.

23. Further in Mohd. Ali Alias Guddu Vs. State of Uttar Pradesh reported in 2015 7SCC 272 the Hon'ble Apex Court has held

"21. It is apt to mention here that in rape cases the delay in filing the FIR by the

prosecutrix or by the parents in all circumstance is not of significance. The authorities of this Court have granted adequate protection/allowance in that aspect regard being had to the trauma suffered, the agony and anguish that creates the turbulence in the mind of the victim, to muster the courage to expose oneself in a conservative social milieu. Sometimes the fear of social stigma and on occasions the availability of medical treatment to gain normalcy and above all the psychological inner strength to undertake such a legal battle. But, a pregnant one, applying all these allowances, in this context, it is apt to refer to the pronouncement in *Rajesh Patel v. State of Jharkhand* 2013 3 SCC 791 wherein in the facts and circumstances of the said case, delay of 11 days in lodging the FIR with the jurisdictional police was treated as fatal as the explanation offered was regarded as totally untenable. This Court did not accept the reasoning ascribed by the High Court in accepting the explanation as the same was fundamentally erroneous.

22.

23. In *Kamlesh Prabhudas Tanna v. State of Gujarat* 2013 15 SCC 263 dealing with the duty of the appellate court, this Court observed: (SCC p. 267, para 9)

"9. At this juncture, we are obliged to state that though it may be difficult to state that the judgment suffers from sans reasons, yet it is not at all difficult to say that the reasons ascribed are really apology for reasons. If we allow ourselves to say so, one may ascribe certain reasons which seem to be reasons but the litmus test is to give seemly and condign reasons either to sustain or overturn the judgment. The filament of reasoning must logically flow from requisite analysis, but, unfortunately, the said exercise has not been carried out. In this context, we may refer with profit to the decision in *Padam Singh v. State Of U.P.* 2000 1 SCC 621, wherein a two-Judge Bench, while dealing with the duty of the appellate court, has expressed thus: (SCC p. 625, para 2)

'2. ... It is the duty of an appellate court to look into the evidence adduced in the case and arrive at an independent conclusion as to whether the said evidence can be relied upon

or not and even if it can be relied upon, then whether the prosecution can be said to have been proved beyond reasonable doubt on the said evidence. The credibility of a witness has to be adjudged by the appellate court in drawing inference from proved and admitted facts. It must be remembered that the appellate court, like the trial court, has to be satisfied affirmatively that the prosecution case is substantially true and the guilt of the accused has been proved beyond all reasonable doubt as the presumption of innocence with which the accused starts, continues right through until he is held guilty by the final court of appeal and that presumption is neither strengthened by an acquittal nor weakened by a conviction in the trial court.'"

(emphasis in original)

24. In *Rama v. State of Rajasthan* 2002 4 SCC 571 the Court has expressed about the duty of the appellate court thus: (SCC p. 572, para 4)

"4. ... It is well settled that in a criminal appeal, a duty is enjoined upon the appellate court to reappraise the evidence itself and it cannot proceed to dispose of the appeal upon appraisal of evidence by the trial court alone especially when the appeal has been already admitted and placed for final hearing. Upholding such a procedure would amount to negation of valuable right of appeal of an accused, which cannot be permitted under law."

Similar principles have been reiterated in *Iqbal Abdul Samiya Malek v. State Of Gujarat* 2012 11 SCC 312, *Padam Singh v. State Of U.P.* and *Bani Singh v. State of U.P.*

25. A three-Judge Bench in *Majjal v. State Of Haryana* 2013 6 SCC 798 has ruled thus: (SCC p. 800, para 7)

"7. It was necessary for the High Court to consider whether the trial court's assessment of the evidence and its opinion that the appellant must be convicted deserve to be confirmed. This exercise is necessary because the personal liberty of an accused is curtailed because of the conviction. The High Court must state its reasons why it is

accepting the evidence on record. The High Court's concurrence with the trial court's view would be acceptable only if it is supported by reasons. In such appeals it is a court of first appeal. Reasons cannot be cryptic. By this, we do not mean that the High Court is expected to write an unduly long treatise. The judgment may be short but must reflect proper application of mind to vital evidence and important submissions which go to the root of the matter."

26. The obtaining factual matrix has to be appreciated on the touchstone of the aforesaid parameters.

27. Be it clearly stated here that delay in lodging FIR in cases under Section 376 IPC would depend upon facts of each case and this Court has given immense allowance to such delay, regard being had to the trauma suffered by the prosecutrix and various other factors, but a significant one, in the present case, it has to be appreciated from a different perspective. The prosecutrix was missing from home. In such a situation, it was a normal expectation that either the mother or the brother would have lodged a missing report at the police station. The same was not done. This action of PW 2 really throws a great challenge to common sense. No explanation has been offered for such delay. The learned trial Judge has adverted to this facet on an unacceptable backdrop by referring to the principle that prosecutrix suffered from trauma and the constraint of the social stigma. The prosecutrix at that time was nowhere on the scene. It is the mother who was required to inform the police about missing of her grown-up daughter. In the absence of any explanation, it gives rise to a sense of doubt.

28. That apart, the factum that the appellant informed the mother of the victim that he had left the prosecutrix at the door of her house also does not command acceptance. The recovery of the prosecutrix by the brother and his friends also creates a cloud of suspicion. We

are not inclined to believe the prosecution version as has been projected that one Arif had informed the brother of the prosecutrix that his sister was at his place but for reasons best known to the prosecution, Arif has not been examined. That apart, the persons who were accompanying the brother have also not been examined by the prosecution. Thus, the manner of recovery of the prosecutrix from the house of Arif remains a mystery.

29. Be it noted, there can be no iota of doubt that on the basis of the sole testimony of the prosecutrix, if it is unimpeachable and beyond reproach, a conviction can be based. In the case at hand, the learned trial Judge as well as the High Court have persuaded themselves away with this principle without appreciating the acceptability and reliability of the testimony of the witness. In fact, it would not be inappropriate to say that whatever the analysis in the impugned judgment, it would only indicate an impropriety of approach. The prosecutrix has deposed that she was taken from one place to the other and remained at various houses for almost two months. The only explanation given by her is that she was threatened by the accused persons. It is not in her testimony that she was confined to one place. In fact, it has been borne out from the material on record that she had travelled from place to place and she was ravished a number of times. Under these circumstances, the medical evidence gains significance, for the examining doctor has categorically deposed that there are no injuries on the private parts. The delay in FIR, the non-examination of the witnesses, the testimony of the prosecutrix, the associated circumstances and the medical evidence, leave a mark of doubt to treat the testimony of the prosecutrix as so natural and truthful to inspire confidence. It can be stated with certitude that the evidence of the prosecutrix is not of such quality which can be placed reliance upon.

30. True it is, the grammar of law permits that the testimony of a prosecutrix can be accepted without any corroboration without material particulars, for she has to be placed on a higher pedestal than an injured witness, but, a pregnant one, when a court, on studied

accept the version of the prosecutrix, because it is not unrepachable, there is requirement for search of such direct or circumstantial evidence which would lend assurance to her testimony. As the present case would show, her testimony does not inspire confidence, and the circumstantial evidence remotely does not lend any support to the same. In the absence of both, we are compelled to hold that the learned trial Judge has erroneously convicted the appellant-accused for the alleged offences and the High Court has fallen into error, without re appreciating the material on record, by giving the stamp of approval to the same.

31. Resultantly, the appeals are allowed, the judgment of conviction and order of sentence are set aside and as the appellants are on bail, they be discharged of their bail bonds."

24. Now going through the evidence on record in consonance with the judgment referred above, it is the case of the victim that she is aged 21 years and studying 2nd year BCA Course in a College at Neyveli. The Appellant/Accused is related to her being her cousin and it is her further case that on 28.07.2011, while she was returning home from her college in her bicycle, the Appellant/Accused stopped her near his cashew grove and in the guise of chatting with her had taken her inside the cashew grove where, he had subjected her to sexual intercourse by force. Thereafter, she had stated that she was thirsty and asked for drink and he had offered Maaza to her and that she had drunk it and fell unconscious. It is her further case that on the next day morning when she woke up, she was found in a lodge at Koyambedu, Chennai, which is 200 k.m. away from her home town. It is her case that she was not aware how she was brought from her home town to Chennai and thereafter, she was kept inside a hotel room for 11 days and was subjected to rape inside the hotel room. When confronted during cross examination that the Appellant/Accused was working at NLC during the relevant period the victim had stated that he used to come to the room in the night. The further case of the victim is that on 08.08.2011, at around 11.00p.m., the Appellant/Accused had taken her from the hotel room to Koyambedu Bus stand and both of them travelled back to their native village in Kollukarankuttai. Thereafter, he had dropped her near Muthandikuppam Police Station. However, she did not give any complaint on the same day and did not inform her parents and after 4 days only she had informed her parents and thereafter, based on the complaint given by her, a case was registered.

25. The statement of the victim that she fell unconscious and that she is not aware as to how she was taken to Chennai and how she was taken inside a hotel room is highly suspicious. Absolutely, nothing has been stated by the victim that she either resisted or raised a hue & cry when the Appellant/Accused subjected her to forcible rape at the cashew grove in her village. She has also not stated anything of having raised any hue and cry when she was subjected to rape inside the hotel room or that she made any attempt to escape from the hotel room where she was confined for 11 days and nothing has been stated as if, she either made any complaint to the persons in the hotel at Chennai. Further she had accompanied the Appellant/Accused back to the village in a public transport and though the Appellant/Accused left her near a police station, she had not given any complaint to the police for several days after her return to the village from Chennai.

26. It is the case of the PW.4, the mother of the victim that the victim did not speak to them for 3 days and only after three days she disclosed about the abduction and rape and only thereafter, they have given the complaint to the respondent police. The conduct of the parents of the prosecutrix in not giving the complaint for 25 days is against normal natural human conduct and the delay in filing the F.I.R. has not been properly explained and that no explanation has been given by the prosecution for the delay. Further no observation has been made and no opinion has been expressed by the learned trial Judge with regard to the same. As per evidence of PW.4, the complaint has been given only after deliberation and consultation with the Advocate. Even As per, PW.2, the Doctor who had conducted the medical examination on the victim, she had only stated that the victim is fit to have sexual intercourse and there is chance that she could have had sexual intercourse few days earlier and the Doctor has not given any conclusive opinion with regard to the victim having been subjected to rape or forcible intercourse. Further, though it is the case of the prosecution that she was taken from her home town to Chennai, which is 200 k.m. away and kept in a hotel room at Chennai, the prosecution has not let in any evidence to prove that the victim was abducted and kept in confinement at Chennai. Absolutely, no investigation has done with regard to the illegal confinement at the hotel room in Chennai. Further, though the Appellant/Accused and the victim are stated to have returned to the village on 09.08.2011, the complaint had been given to the respondent police only on 23.08.2011 at 3.30 p.m.

27. Having carefully scrutinized the materials on record with the above judgements, the infirmities and the discrepancies pointed above and the circumstances in this case, cast a doubt over the case of the prosecution and this Court is of the opinion that the testimony of the victim and

her mother is not credible and trustworthy and it does not inspire confidence and is not sufficient to sustain an order of conviction. This Court arrives at a conclusion that the prosecution has not proved the charges for the offence under Sections 365 and 366 of IPC beyond all reasonable doubt and the trial judge had without properly appreciating the evidence on record had erroneously convicted the appellant/accused. Consequently, the Appellant/Accused is entitled to benefit of doubt and the impugned judgement of conviction and sentence, is un-sustainable in law and liable to be set aside.

28. In the result, the Appeal is allowed and the impugned judgement of conviction and sentence is set aside. The Appellant/Accused is acquitted of all charges levelled against him. The bail bond if any executed by the Appellant/Accused, shall stand cancelled and the fine amount, if any paid by the Appellant/Accused, shall be refunded to him.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssi

To :

- 1.The District Sessions Judge,
Mahila Court, Cuddalore.
2. The Inspector of Police,
Muthandikuppam Police Station,
Caddalore.
- 3.The Special Mahila Judge,
Cuddalore.
- 4.The Superintendent,
Central prison, Cuddalore.
5. The Public Prosecutor
High Court of Madras

copy to:

The Section Officer,
Criminal Section,
High Court,Madras

Cr1.A.No.792 of 2013

VG II

A.SK(10.03.2021)