



BAIL SLIP

V.Murugan, Petitioner/Appellant was released on bail order of this Court dated 05.02.2016 made in CRL.MP(MD)No.426/2016 in CRL.A (MD) .No.14/2016.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.07.2021

DELIVERED ON : 26.11.2021

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.A. (MD) No.14 of 2016

V.Murugan

S/o. Vellaichamy

: Appellant/Accused No.1

Vs.

State Represented by

The Inspector of Police,
Sivagangai Town Police Station,
Sivagangai District.

(Crime No.206 of 2009)

: Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, to call for the records and set aside the order of conviction and sentence passed in S.C.No.77 of 2009 dated 31.12.2015 on the file of the learned Fast Track Mahila Court, Sivagangai.

For Appellant : Mr.G.Karuppasamy Pandian

For Respondent : Mr.T.Senthil Kumar

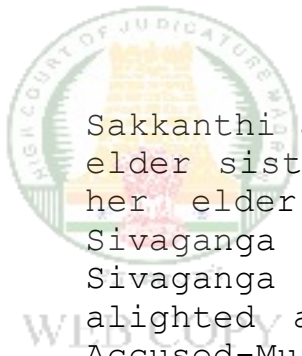
Government Advocate (Crl.side)

JUDGMENT

This Criminal Appeal has been filed against the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Sivagangai in S.C.No.77 of 2009 dated 31.12.2015.

2. The brief facts, as put forth by the Prosecution which are relevant for consideration in this appeal, are as follows:

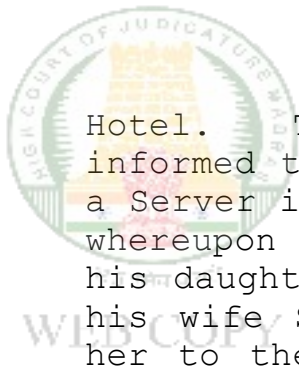
2.1. On 09.03.1999 at around 11.00 hrs, the victim had left home to visit the hospital at Sivaganga. She travelled by bus to Sivaganga from Sakkanthi where she was residing with her elder Sister-Sathya. Her parents were residing in Bangalore and she was born and brought up in Bangalore and she studied upto 7th Standard in Bangalore. Her elder Sister-Sathya was married and stayed at Sakkanthi. She delivered twins, therefore to assist her elder sister-Sathya and to look after the children, on request of her elder sister, the parents of the victim sent the victim to



Sakkanthi and for three years, she had been with the family of her elder sister-Sathya. On 09.03.1999, she left Sakkanthi informing her elder sister that she is going to Government Hospital, Sivaganga as she is not doing well. Therefore, she came to Sivaganga by bus from Sakkanthi. On reaching Sivaganga, she alighted at Marakkadai Bus Stop. At Marakkadai bus stop, the Accused-Murugan and his friend-Pounraj met her. The Accused directed his friend to get two bottles of soft drinks and insisted the victim to drink the soft drink. As per his request, the victim drank the soft drink. After drinking of the soft drink, she felt giddy. She was not aware what happened there. On opening her eyes, she found herself in a bed in a tiled house and the Accused sitting beside the cot. When she questioned him, he stated that she is at Salem and on the same day night, he forcibly had sexual intercourse with her. Even though she protested, he had intercourse with her. He also informed her that if she co-operated with him, he will take a photo as though she had been married and he will let her in her parents' house at Bangalore. He locked her inside the house and used to get food from outside. The dress worn by her was torn by him, therefore he had purchased a spare dress. He tied yellow thread on her neck and took a photo with her. He let her to stay in that same place for 80 days.

2.2. In the mean while, the elder sister of victim had informed her paternal grand father-Subramanian-P.W-1 who is residing at Sivaganga that her younger sister is missing from home after visiting hospital at Sivaganga. They searched in and around Sivaganga in their relatives' houses, but could not trace her. Therefore, P.W-1 had preferred a complaint under Ex.P-4 to P.W-15-Ponnambalam - Inspector of Police, Sivaganga Town Police Station. P.W-15 had registered an FIR under Ex.P-5 under Section 366 (A) of IPC dated 11.04.1999. The delay had been explained by P.W-1 as for one month they had been searching in the residence of relatives. The name of the suspects involved in kidnap of minor girl aged 16 years at that time was also mentioned as Murugan and Pounraj in the FIR. The FIR under Ex.P-5 and the complaint under Ex.P-4 were sent to the learned Judicial Magistrate, Sivaganga and the copies of the same were forwarded to the higher officials in the Police Department including P.W-16-Kannan-Superintendent of Police. On receipt of the FIR, he had proceeded with the investigation and he went to Sakkanthi to the house of P.W-3 and also near the Marakkadai bus stop.

2.3. In the mean while, the Accused was informed about the registration of the case by the Sivaganga Town Police Station by his relatives. Therefore, apprehending arrest, he had taken the victim along with him to Bangalore and dropped the victim in front of the Hotel Woodlands where the father of the victim-Ganapathy is employed as a Server. The Accused left the victim in front of the



Hotel. The victim contacted the security of the Hotel and informed that she is the daughter of Ganapathy who is employed as a Server in the same hotel. The security guard informed Ganapathy whereupon Ganapathy came to the entrance of the hotel and found his daughter who was missing and he took her home. Ganapathy and his wife Saroja accompanied the victim to Sivaganga and brought her to the Sivaganga Town Police Station to give information to the Investigation Officer. P.W-16-Investigation Officer had examined the victim and recorded her statement. Then, he arrested the Accused and produced him before the learned Judicial Magistrate, Sivaganga. He had addressed the requisition letter to the learned Judicial Magistrate, Sivaganga requesting to conduct the medical examination on the victim and the Accused by the duty Medical Officer at Government Medical College Hospital, Sivaganga. Based on his request, the learned Judicial Magistrate had addressed the Duty Medical Officer at Government Hospital attached to the Sivaganga Medical College to conduct the medical examination on the victim and Accused. The victim was produced by the Investigation Officer with Police escorts along with request for medical examination. Accordingly, P.W-17-Dr.G.Subbulakshmi, duty Medical Officer attached to the Government Hospital, Madurai had examined the victim and issued medical certificate under Ex.P-6. P.W-16-Investigation Officer had examined the witnesses and recorded their statements including the Medical Officer who had examined the victim. On completion of the investigation, the Investigation Officer had laid the final report under Section 173 Cr.P.C., against the Accused Murugan and Pounraj attracting the offences under Section 366 (A) of IPC and against the Accused Murugan under Section 376 r/w. 109 of IPC.

2.4. The learned Judicial Magistrate, Sivaganga had taken cognizance of the offences under Sections 366 (A) and 376 r/w. 109 of IPC against the Accused and taken the case on file as P.R.C.No.12 of 2009. He had issued summons to the Accused.

2.5. On appearance of the Accused, the learned Judicial Magistrate had furnished copies to the Accused under Section 207 of Cr.P.C., and committed the case to the Court of the learned Principal Sessions Judge, Fast Track Mahila Court and bound over the case to the learned Principal Sessions Judge, Fast Track Mahila Court, Sivaganga, since the offences alleged had been committed against the woman.

2.6. On receipt of records in P.R.C.No.12 of 2009 from the learned Judicial Magistrate, Sivaganga by the learned Principal Sessions Judge who took cognizance of the offence and numbered the case in S.C.No.77 of 2009 and made over the case to the Court of the learned Assistant Sessions Judge, Sivaganga and bound over the



2.7. On appearance of the Accused, the learned Assistant Sessions Judge after hearing the arguments of the Prosecution and defence, had framed charges against the Accused Murugan and Pounraj under Sections 366(A) and 376 r/w. 109 of IPC.

2.8. The Accused 1 and 2 pleaded not guilty to the charges and claimed to be tried. The Assistant Sessions Judge had ordered trial.

2.9. During the pendency of the trial, the offences against women were transferred to the Court specially Constituted for offences against women viz., the Sessions Court(Fast Track Mahila Court), Sivaganga. Therefore, pending trial, the case in S.C.No.77/2009 was transferred to the file of the learned Sessions Judge, Fast Track Mahila Court at Sivaganga. On appearance of the Accused 1 and 2, the learned Sessions Judge, Fast Track Mahila Court had ordered trial.

2.10. During trial, the Prosecution had examined witnesses P.W-1 to P.W-18 and marked documents Ex.P-1 to Ex.P-6.

2.11. From evidence of the Prosecution witnesses P.W-1 to P.W-18, the incriminating portion of the evidence were put to the Accused and they were examined under Section 313 of Cr.P.C., The Accused denied the incriminating evidence against them. After the proceedings under Section 313 Cr.P.C., the Prosecution had advanced the arguments and the defence had replied to the Prosecution arguments.

2.12. After hearing the arguments of the Prosecution and defence and on analysis of evidence through P.W-1 to P.W-18 and Ex.P-1 to Ex.P-6, the learned Sessions Judge had arrived at a conclusion that the charges framed against the Accused under Section 376 r/w. 109 Cr.P.C., had not been proved by the Prosecution and therefore acquitted the Accused from the charges under Section 376 r/w. 109 of IPC. Also, on appreciation of evidence, the learned Sessions Judge acquitted the Accused-Pounraj from the charges under Sections 366 and 376 r/w. 109 of IPC and convicted the Accused-Murugan alone for the offence under Section 363 of IPC and sentenced him to undergo Five Years of Rigorous Imprisonment and to pay a fine of Rs.3,000/- in default to undergo Six Months of Rigorous Imprisonment.

3. Aggrieved by the judgment of conviction and sentence of imprisonment, the Accused-Murugan had preferred this appeal before this Court.

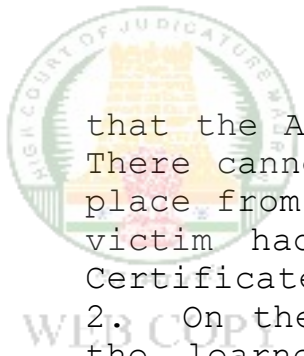
4. Mr. G. Karuppasamy Pandian, learned counsel for the



Appellant/Accused had submitted that based on the evidence available before the learned Sessions Judge, the learned Sessions Judge ought to have acquitted the Accused instead of convicting the Accused. There are evidence available in the cross examination of the witnesses that the Accused and the victim are related to each other. They were in love. As per the evidence, it can be gathered that the victim had gone along with the Accused on her own volition. The evidence of the victim as P.W-2 cannot at all be believed by any reasonable man. Not only that, the paternal grandfather/Complainant-P.W-1 and the elder sister of the victim-P.W-3 had doubt that the victim had eloped with Murugan. That is why, they had mentioned the name of Murugan in the complaint. The FIR also had the name of the suspects as that of Murugan. The case of the Prosecution based on the complaint is that the victim left for Sivaganga on the ground that she is going to Sivaganga Government Hospital. Had she been ill, she would have been accompanied by either her grand father who was available in Sivaganga or her sister or her sister's husband. It is not the case. The complaint under Ex.P-1 itself creates doubt in the mind of a normal human being that the complaint had been lodged as an after thought to register the case with the theory that she left for hospital.

5. The fact that she was in Salem for 80 days and she never raised alarm in the house seeking help from neighbours, itself goes to show that she had accompanied the Accused because of their love affair and consequently ending in cohabitation at Salem. The Accused cannot be convicted. There is ample evidence available in the cross examination of the witnesses. This is the case of elopement and cohabitation for which the Accused cannot be punished and the Accused is a relative of the victim. That had been admitted in the cross examination of all the witnesses. The theory that the Accused/Murugan brought soft drink and persuaded the victim to drink it. That after drinking, she became unconscious and she was taken to Salem from Sivaganga which is far away from Sivaganga, taking more than 5 hours to reach Salem, is unbelievable. Therefore, the conviction under Section 363 of IPC is perverse. The learned counsel for the Appellant/Accused relied on the ruling of this Court by another Single Judge in **Crl.A.No.522 of 2008** in the case of **Suresh @ Chandrasekaran Vs. State by Inspector of Police, Neiveli Township Police Station, Cuddalore District** in support of his contention.

6. Mr.T.Senthil Kumar, learned Government Advocate (Crl. Side) had vehemently objected to the arguments of the learned counsel for the Appellant/Accused and relied on the judgment of the learned Sessions Judge, Fast Track Mahila Court. Even though, the charges were framed under Sections 366 (A), 376 r/w. 109 of IPC, the learned Sessions Judge had on appreciation of evidence found



that the Accused-Murugan alone had taken the minor girl to Salem. There cannot be consent, as the minor girl is taken to an unknown place from the custody of the guardian. There is proof that the victim had not attained age of majority as per the Transfer Certificate of the victim furnished by the Prosecution under Ex.P-2. On the date of occurrence, she was not a major. Therefore, the learned Sessions Judge had convicted the Accused for the lesser offence under Section 363 of IPC. Even though the charge under Section 366 (A) of IPC is a major offence attracting punishment of 10 years of Imprisonment and to pay a fine, the learned Sessions Judge had convicted the Accused for a lesser offence and the charge had been framed as an alternative charge. Still, as per the judgments of the Hon'ble Supreme Court for a lesser offence even though charges had not been framed as an alternative charge, the Court is within its power to convict the Accused for a lesser offence. Therefore, the argument of the learned counsel for the Appellant/Accused has to be rejected. This appeal lacks merits and is to be dismissed.

7. Point for Consideration

Whether the judgement of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Sivagangai in S.C.No.77 of 2009, dated 31.12.2015 against the Accused under Section 363 of IPC is perverse warranting interference by this Court as Appellate Court?

8. Heard the argument of the learned counsel for the Appellant/Accused and the learned Government Advocate (Crl. Side), perused the evidence of Prosecution witnesses under P.W-1 to P.W-18 and documents marked under Ex.P-1 to Ex.P-6 and the judgment of the learned Sessions Judge, Fast Track Mahila Court, Sivagangai.

9. On perusal of the evidence of P.W-1/paternal grand father of the victim, P.W-2-victim, P.W-3-elder sister of the victim and the occurrence as narrated by P.W-3 does not inspire confidence of the Court warranting to believe that she was kidnapped thereby attracting offence under Section 363 of IPC. The reliance placed by the learned counsel for the Appellant/Accused in **Crl.A.No.522 of 2008** in the case of **Suresh @ Chandrasekaran Vs. State by Inspector of Police, Neiveli Township Police Station, Cuddalore District** and the argument of the learned Government Advocate (Crl. Side) regarding the judgment is well reasoned judgment and does not warrant interference is not found acceptable. Considering the unbelievable part of the evidence on the side of victim, P.W-1 of her grandfather, P.W-2, P.W-3-her elder sister and considering the relationship between the victim and the Accused being relatives is not found, in the strict sense to attract the term, "kidnap". Therefore, the conviction by the learned Sessions Judge, Fast

