



BAIL SLIP

- 1.Muniyappan S/o.Manikkam, aged about 39 years(2016) - Accused No.1
- 2.Nagarajan S/o.Radhakrishnan, aged about 30 years(2016) - Accused No.2
- 3.Sakthivel S/o.Chinnasamy, aged about 26 years(2016) - Accused No.3
- 4.Viswanathan S/o.Arumugam, aged about 39 years(2016) - Accused No.4

were released on Bail vide Order of this Court in Dated 19/05/2016, in Crl.M.P(MD)No.4011 of 2016 in Crl.A(MD)No.169 of 2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **16.08.2021**

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

Crl.A(MD)No.169 of 2016

- 1.Muniyappan
- 2.Nagarajan
- 3.Sakthivel
- 4.Viswanathan

: Appellants / Accused No.1 to 4

Vs.

State rep. by the
Inspector of Police,
Thogamalai Circle
(in Chinthamanipatti Police Station,
Cr.No.119 of 2011)
Karur District.

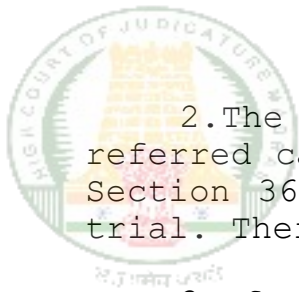
: Respondent/Complainant

PRAYER: The Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, to call for the records in S.C.No.02 of 2016 on the file of the Mahila Fast Track Court, Karur and set aside the conviction and sentence dated 28.04.2016 made in S.C.No.02 of 2016.

For appellants	: Ms.C.Arokia Selvi Legal Aid Counsel
For Respondent	: Mr.M.Muthumanikkam Counsel for Government of Tamil Nadu (crl.side)

JUDGMENT

The present appeal is directed against the conviction and sentence, dated 28.04.2016, made in S.C.No.02 of 2016, on the file of the Mahila Fast Track Court, Karur.



2.The appellants are arrayed as accused Nos.1 to 4 in the above referred case. They stood charged for the offence punishable under Section 366 of IPC. The accused denied the charges and opted for trial. Therefore, they were put on trial on the charges.

3.After full-fledged trial, the learned Sessions Judge, Mahila Fast Track Court, Karur, came to the conclusion that the appellants are guilty under Section 366 of IPC and accordingly, convicted them and sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.1000/-, in default, to undergo Simple Imprisonment for three months. Challenging the said conviction and sentence, the appellants are before this Court, by way of filing the present Criminal Appeal.

4.The relevant facts of the case, which gave rise to the filing of this appeal, are necessary to be recapitulated for the disposal of this appeal:-

(i) PW1-Vairamani is the father of PW3-Gomathi, who is the victim girl. While at the time of occurrence, PW3-Gomathi studied in the College at Karur. She has regularly travelled in a bus for attending the College. On 14.07.2011 around 5.20 p.m when at the time the victim girl was returned from the College, near to the School situated in the occurrence village by using the car bearing Registration No.TN-37-AB-1155 (M.O.1), all the accused herein kidnapped PW1 with an intention to compel her marriage. The said occurrence was witnessed by PW2 and PW6 and thereafter, the same was informed to PW1.

(ii)On receipt of the said information, around 10.00 p.m on the same day PW1 rushed to Chinthamanipatti Police Station and lodged the complaint under Ex.P1. On receipt of the said complaint, PW7-Manoharan, the then Special Sub Inspector of Police, Chinthamanipatti Police Station registered the case against the accused in Crime No.119 of 2011 under Section 366 of IPC. The printed FIR was marked as Ex.P4. After registration of the case, PW8-Vishwanathan, the then Inspector of Police, Thogamalai Circle took the same for investigation. On 15.07.2011 around 6.00 a.m., he visited the scene of occurrence and in the presence of PW5-Chandrasekar and one Viramalai, he prepared an Observation Mahazar under Ex.P3. He drew the Rough Sketch and the same has been marked as Ex.P8. He examined the witnesses and recorded their statements. Before that on 15.07.2011, around 3.30 am PW3-victim girl was returned to her house.

(iii) In continuation of investigation, on 15.07.2011 around 8.00 p.m near to Nathanpatti four lane road PW8 arrested all accused and recorded the confession statement from the second accused. Later, in view of the same, he recovered the TOYOTO car bearing registration No.TN-37-AB-1155(M.O.1) under the cover of seizure



for sending the accused to the judicial custody along with car. Ultimately, after concluding the investigation, PW8 came to the positive conclusion that the accused in this case are liable to be convicted under Section 366 r/w 149 of IPC. He filed the final report accordingly.

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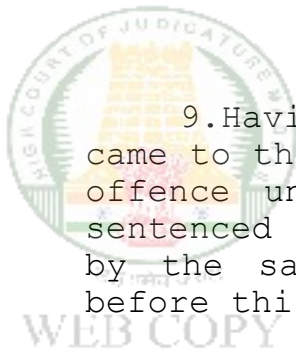
5. Based on the materials available on record, the trial Court framed the charge against the accused under Section 366 of IPC. The accused denied the charges and opted for trial. Therefore, the accused was put on trial.

6. During the course of trial proceedings, in order to prove their case, on the side of the prosecution, 8 witnesses were examined as PW1 to PW8 and 5 documents were exhibited as Ex.P1 to Ex.P5.

7. Out of the above said witnesses, PW1-Vairamani is the father of the victim girl. He speaks about the occurrence as during the relevant point of time, he has received the information from PW2 and PW6 as his daughter was kidnapped by the accused. He has further stated that immediately after getting information, he rushed to the Police Station and lodged the complaint. According to him, after lodging the complaint, on the same day night hours around 3.30 a.m her daughter was returned to his house. PW2-Manivel is the witness to the occurrence. Though he has cited as a occurrence witness, while at the time of giving evidence, he has not supported the case of the prosecution. Hence, after getting leave from the Court, he was treated as hostile witness. PW3-Gomathi is the victim girl, speaks about the occurrence as alleged by the prosecution. PW4-Shanmugam is the Village Administrative Officer, speaks about the recovery of the car alleged to be used for the purpose of kidnapping the victim girl. PW5-Chandrasekar is the resident of occurrence village, speaks about the preparation of Observation Mahazar and Rough Sketch.

(ii) PW6-Rajalingam is also the resident of the same village, claims that during the relevant point of time while at the time he was returned to his house, all the accused herein came in a car and kidnapped PW3. He has further states, after seeing the said occurrence, he informed the same to PW1. PW9 and PW8, who are Police Officers speaks about the receipt of complaint, registration of the case, examination of witnesses and also about the filing of final report.

8. In respect to the incriminating materials available in the evidence given by the prosecution, all the accused were examined under Section 313 of Cr.P.C, for which they are all claimed as false evidence. However, they did not choose to examine any witness nor mark any document on their side.



9.Having considered all the above, the learned Sessions Judge, came to the conclusion that the accused are all found guilty for the offence under Section 366 of IPC and accordingly, convicted and sentenced as stated in paragraph No.3 of this judgment. Aggrieved by the said conviction and sentence, the appellants/accused are before this Court with this appeal.

10.I have heard Ms.C.Arokia Selvi, learned counsel appearing for the appellants/accused and Mr.M.Muthumanikkam, learned Government Advocate (crl.side) appearing for the State and also perused the records carefully.

11.It is the contention raised by the learned counsel appearing for the appellants that during the time of occurrence, being the relative, A1 requested PW3 to marry him. In otherwise, it cannot be held that he compelled the victim girl to perform the marriage with him and therefore, the act committed by the accused is not constituted the offence under Section 366 of IPC.

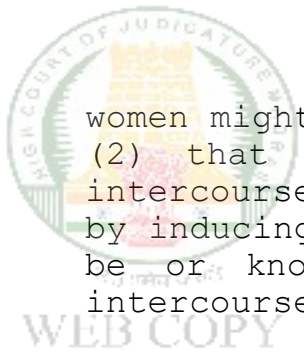
12.Per contra, the learned Government Advocate (Crl.side) would contend that the evidence given by PW3 and PW6 would sufficient to hold that during the time of occurrence, the accused herein were all forcibly kidnapped PW3 and therefore, the conviction rendered by the Court below cannot be disturbed.

13.I have considered the rival submissions made by the learned counsel appearing on either side.

14.It is not in dispute that after the occurrence within nine hours the victim girl was returned to her house, further it is also not in dispute that PW3 herself admitted that the first accused herein is his uncle. In the said circumstances, since the charge against the accused is under Section 366 of IPC, for deciding the issue raised in this appeal, it would relevant to see the evidence given by the victim girl with more care and caution.

15.Accordingly, on go through the evidence given by PW3 with care and caution, it seems that during the time after the occurrence when both the first accused and the victim were travelled in a car, the first accused requested her to marry him. In this regard, the repeated answer given by victim girl is no, hence, after knowing the non-willingness of the victim girl, the first accused herein by using the same vehicle, returned to the victim girl's village and dropped there. Therefore, the evidence given by PW3 in her cross examination is quite clear that during the time of occurrence, the accused herein did not use any force on the victim girl by means of criminal intimidation specifically for the purpose of her marriage with him or for illicit intercourse.

16.As far as the offence under Section 366 of IPC is concerned, <https://hcservices.punjabhighcourtnet.org/> said offence, the prosecution must shown (1) such



women might or would be forced to marry a person against her will or (2) that she might or would be forced or seduced to illicit intercourse, or (3) by means of criminal intimidation or otherwise by inducing a woman to go from any place with intention that she may be or knowing that she will be forced or seduced to illicit intercourse.

17.The said ingredients which required for proving the offence under Section 366 of IPC are very clear, for attracting the said offence the prosecution must shown that the person who committed the offence must be acted against victim girl's will. Further it is necessary to show that some force has to be used at the time of occurrence by the accused by way of compelling the victim. But in this case, nothing is found to show on the side of the prosecution as during the time of offence, all accused herein forced the victim girl to marry the first accused. Therefore, I am of the view that the said lapses found in the case of the prosecution is sufficient to hold that the intention of the accused is only to get the consent from PW3 in a casual manner and in otherwise it cannot be termed that during the time of occurrence all the accused herein kidnapped the victim girl for the purpose of marriage. Therefore, the Court below without understanding the said issue in a perspective manner, convicted the accused, which is liable to be set aside.

18.In fine, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellants/accused, by the learned Sessions Judge, Mahila Fast Track Court, Karur, in S.C.No.02 of 2016 dated 28.04.2016, is set aside and the appellants are acquitted from all the charges. The fine amount, if any, paid by them, shall be refunded to them. Bail bond, if any, executed by the appellants shall stand cancelled.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Sessions Judge,
Mahila Fast Track Court, Karur.

2.The Judicial Magistrate No.1,
Kulithalai.



3.The District Collector,
Karur District.

4.The Director General of Police,
Mylapore,
Chennai.

5.The Inspector of Police,
Thogamalai Circle
Chinthamanipatti Police Station,
Karur District.

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Section Officer,
Criminal Section Records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1CC to M/s.C.Arokia Selvi, Advocate (SR26471)

Cr1.A(MD)No.169 of 2016
16.08.2021

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