



Bail Slip

The Appellant/Sole Accused Viz., Duraisamy, S/o.Muthusamy, Aged 29 years was released on bail vide order of this Court dated 16.03.2017 in Crl.MP(MD)No.1328/2017 in Crl.A(MD)No.45/2017.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.06.2021

DELIVERED ON : 03.09.2021

CORAM

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

CRL.A. (MD)No.45 of 2017

Duraisamy

... Appellant/Sole Accused

Vs.

State represented by
The Inspector of Police,
Rajathani Police Station,
in Crime No.444 of 2010,
Theni District.

... 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.125 of 2014 dated 31.01.2017 on the file of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Theni and allow this appeal and acquit the appellant/accused from the charge levelled against him.

For Appellant : Mr.AK.Azagarsamy
For Respondent : Mr.T.Senthil Kumar
Government Advocate (Crl. side)

JUDGMENT

This Criminal Appeal is filed to set aside the conviction and sentence imposed appellant/accused by the learned Sessions Judge, Fast Track Mahila Court, Theni, in S.C.No.125 of 2014, dated 31.01.2017.

2.The brief facts that are necessary for the disposal of the case, as per the prosecution, are as follows:

2.1.P.W-1-Bharathidasan married P.W-4-Krishnaveni in the year 2008 and in the year 2010, they went to Tiruppur as P.W-4 worked in a mill in Tiruppur and resided in the house belonging to the accused Duraisamy as tenants. In the course of his employment, P.W-1-Bharathidasan used to have night shifts and in the course of such night shifts, P.W-4-Krishnaveni, wife of Bharathidasan and the landlord/the accused Duraisamy developed friendship and in due



course of time it developed into illicit relationship. While so, one day after his night shift when P.W-1 returned home early in the morning by 2.00 a.m., he was shocked to see his wife P.W-4 was in a compromising position with the accused Duraisamy. He had come to know about their relationship through rumours in the place of residence. P.W-1-Bharathidasan informed about the illicit relationship of his wife P.W-4-Krishnaveni with the landlord/accused Duraisamy to his parents. The parents of P.W.1 asked both of them to return to their native village. Therefore, P.W.1-Bharathidasan and his wife P.W-4-Krishnaveni along with their child returned to their native village in Kanniyappapillai Patti, Theni District. He had left his wife P.W-4-Krishnaveni at the house of her parents at Thoppaiyampatti till they set up their family in a separate rented house at Kanniyappapillai Patti. On 27.12.2010 by around 4.00 p.m. the father-in-law of P.W-1-Bharathidasan informed him that his wife P.W-1-Krishnaveni had left her parents house by around 1.30 noon informing her parents that she is visiting the hospital but did not return till 4.00 p.m. Therefore, P.W-1 and his father-in-law searched in the house of their relatives and acquaintances regarding the visit of P.W-4-Krishnaveni, however, they were unable to trace her whereabouts. Therefore on 29.12.2010, P.W-1-Bharathidasan went to Rajathani police station by around 2.00 p.m. and lodged a complaint under Ex.P1.

2.2.On receipt of the complaint under Ex.P1, P.W-7-Special Sub Inspector of Police, Rajathani Police Station registered First Information Report under Ex.P3 and forwarded the original complaint Ex.P.1 and original F.I.R. Ex.P3 to the Court of District Munsif-cum-Judicial Magistrate, Aundipatti and sent the copies of the same to the higher officials including P.W-9-Raja, Inspector of Police, Rajathani Police Station.

2.3.On receipt of the copy of FIR under Ex.P3 and the copy of the complaint under Ex.P1, P.W-9-Raja, Inspector of Police took up investigation. P.W-9-Inspector of Police went to the house of the father-in-law of P.W-1-Bharathidasan at Thoppaiyampatti and prepared observation mahazar under Ex.P2 and rough sketch under Ex.P5 in the presence of witnesses viz., Ilango and Perumal. P.W-9-Inspector of Police went to the school where the P.W.4-Krishnaveni had studied and obtained her age certificate as per the school register maintained in the school under Ex.P4. He had examined the witnesses viz., P.W-1-Bharathidasan, P.W-2-Nagaraj, P.W-3-Bharathi, P.W-4-Krishnaveni, P.W-5-Tmt.Ramuthai, P.W-6-Ilango, P.W-7-Ilango, Special Sub Inspector of Police, P.W-8-Premalatha, the school Headmistress. On receipt of medical examination report, he had altered the sections of offence from woman missing to offence under Section 366 and 498 of IPC and forwarded the original altered FIR under Ex.P6 to the Court of the District Munsif-cum-Judicial Magistrate, Aundipatti. On completion of the investigation, he had laid final report under Section 173 of Cr.P.C before the learned District



3.On perusal of the final report by the Investigation Officer P.W-9-Raja, Inspector of Police, the learned District Munsif-cum-Judicial Magistrate, Aundipatti had taken cognizance of the offence and numbered the case as PRC No.22 of 2011 and issued summons to the accused.

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4.On appearance of the accused Duraisamy copies were furnished to him under Section 207 Cr.P.C. and since the offences were triable by Court of Sessions, records were made over to the Court of Sessions/Learned Principal District and Sessions Judge, Theni and accused was bound over to the Court of learned Principal District and Sessions Judge, Theni, through committal proceedings.

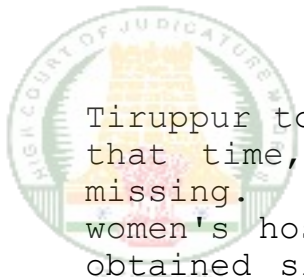
5.On receipt of the records in PRC No.22 of 2011, the learned Principal District and Sessions Judge, Theni had numbered the sessions case as S.C.No.125 of 2014 and made over the case to the Court of the Sessions/Fast Track Mahila Court, Theni and bound over the accused to the Court of the learned Sessions Judge, Fast Track Mahila Court, Theni.

6.On appearance of the accused before the learned Sessions Judge, Fast Track Mahila Court at Theni, charges were framed against the accused. On perusal of the records in S.C.No.125 of 2014 the charges were framed under Section 498 and 366 of IPC.

7.The charges were read over to the accused and explained to him in Tamizh. The accused denied the charges and claimed to be tried. Therefore, the learned Sessions Judge/Fast Track Mahila Court, Theni, had ordered trial.

8.During the trial, the prosecution had examined the witnesses as P.W-1 to P.W.9 and Ex.P1 to P6 to prove the charges under Section 498 and 366 of IPC.

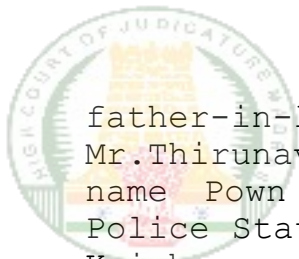
9.P.W-1-Bharathidasan had deposed regarding information received by him from his father-in-law on 27.12.2010 regarding missing of his wife viz., P.W-4-Krishnaveni and search conducted by them in the houses of their relatives and acquaintances. Since whereabouts were not known, P.W-1-Bharathidasan had lodged a complaint under Ex.P1 before the Rajathani Police Station. P.W-2-Nagaraj is the father of P.W-1 who had in his deposition corroborated the evidence of P.W-1-Bharathidasan. P.W-3-Bharathi is the mother of P.W-1 who had also in her deposition corroborated the evidence of P.W-1. P.W-4 is the wife of P.W-1 and as per her deposition, she was residing with her husband P.W-1 at Tiruppur. While residing at Tiruppur, P.W-1-Bharathidasan used to consume alcohol and beat her seeking additional dowry. Therefore, she had come down to her mother's place along with her child. Her parents expressed their helplessness to provide further dowry. P.W-1-Bharathidasan left her in the house of her parents till he gets a service and is going to set up a family. In the meanwhile, she had left to



Tiruppur to find a job and she was residing in a women's hostel. At that time, her husband had given a complaint as though she was missing. She was secured by the police officials from the working women's hostel at Tiruppur. On reaching police station, they had obtained signature of P.W-4 in a unwritten white sheet of papers. She was treated as hostile. She had denied the suggestions of the prosecution that she was residing along with the accused when the accused was arrested by the Investigation Officer and she was secured by the Investigation Officer. P.W-5-Ramuthai, mother of P.W-4-Krishnaveni had corroborated the evidence of P.W-1 regarding lodging of complaint along with her son-in-law with the Rajathani Police Station. After securing her daughter, P.W-1-Bharathidasan demanded Rs.2,00,000/- (Rupees Two Lakhs) for setting up a two wheeler workshop and they had expressed their helplessness to provide such huge money. P.W-1 had also filed a petition seeking divorce from her daughter. P.W-5 is the witness to the observation mahazer. P.W-6 is the brother of P.W-4-Krishnaveni and son of Ramuthai-P.W-5. P.W-7-Ilango, Special Sub Inspector of Police, Rajathani Police Station, who had in his evidence deposed regarding receipt of the complaint under Ex.P1 and registration of case in FIR under Ex.P3 and forwarding the same to the learned District Munsif-cum-Judicial Magistrate, Aundipatti. P.W-8-Premalatha is the Headmistress of the school where P.W-4 had studied, who issued the certificate under Ex.P4 regarding the date of birth of P.W-4-Krishnaveni as per the school documents.

10.P.W-9-Raja is the Investigation Officer who had deposed regarding receipt of FIR under Ex.P3 and proceeding to the house of the father-in-law of P.W-1-Bharathidasan and preparation of mahazar under Ex.P2 and rough sketch under Ex.P5 and examination of witnesses under P.W-1 to P.W-8 and recorded their statements. He had also deposed regarding arresting accused and securing P.W-4 from the custody of the accused at Tiruppur. On reaching Rajathani Police Station, the accused was forwarded to the Court of the learned District Munsif-cum-Judicial Magistrate, Aundipatti, seeking remand and also deposed regarding obtaining of certificate from the school where P.W-4 studied regarding her date of birth. After receiving Doctor's report, he had altered the provisions of law by giving alteration report under Ex.P6. On completion of the investigation he had laid final report and Ex.P3 before the Court of the learned District Munsif-cum-Judicial Magistrate, Aundipatti.

11.On 09.01.2011 the police officials at Rajathani Police Station informed P.W-1-Bharathidasan about the mobile phone number 9790056302 and sought from P.W-1 as to whose number it was. To this P.W-1-Bharathidasan informed the police officials of Rajathani Police Station that it was the mobile number of the landlord of the house where P.W-1 and P.W-4 resided at Tiruppur. His number was already saved in the mobile phone of P.W-1 and therefore, he informed the Rajathani Police officials about the same. On the



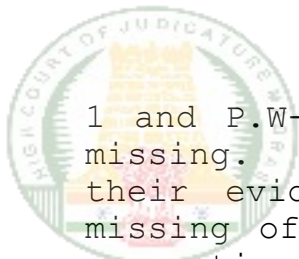
father-in-law and Panchayat President of Kanniyappapillai Patti Mr.Thirunavukkarasu and the Panchayat President of Narasingapuram by name Pown Murugan along with the police officials of Rajathani Police Station went to Tiruppur where P.W-1-Bharathidasan and P.W-4-Krishnaveni were residing. On reaching Tiruppur, they were informed by the neighbours that the landlord of the house Mr.Duraisamy along with P.W-4-Krishnaveni had set up a house at Poompuhar Nagar and residing as husband and wife. The police officials accompanied P.W-1-Bharathidasan knocked at the doors of the residence of accused Duraisamy at Poompuhar Nagar when he opened the door the visiting party found P.W-4-Krishnaveni in the company of Duraisamy. On enquiry by the Inspector of Police, Rajathani Police Station, the accused informed them that he had contacted P.W-4 on her mobile phone and requested her to join him at Tiruppur so that they can set up a family. The Inspector of Police, Rajathani Police Station arrested the accused Duraisamy, the landlord of the house wherein P.W-1-Bharathidasan and P.W.4-Krishnaveni were residing earlier and secured P.W-4 and they brought them to Rajathani Police Station. P.W-9-the Inspector of Police, Rajathani Police Station, sent requisition for remand to the District Munsif-cum-Judicial Magistrate, Aundipatti, requesting to remand the accused and to conduct medical examination on the accused.

12.On completion of the prosecution evidence, the accused was examined by the learned trial Judge, Fast Track Mahila Cort, regarding the incriminating evidence against him. The accused denied the incriminating evidence against him. The accused did not offer any explanation under Section 313 of Cr.P.C. After proceeding under 313 of Cr.P.C., the accused did not examine any witness as defence witness.

13.The learned Sessions Judge, Fast Track Mahila Court, Theni, on appreciation of evidence and on consideration of the arguments of the prosecution and the accused, had arrived at a conclusion whereby he had recorded the finding of guilt of the accused by his judgment dated 31.01.2017. The learned Sessions Judge, Fast Track Mahila Court, Theni had found the accused guilty to the charges under Section 498 and 366 of IPC. He had convicted the accused and sentenced him to undergo rigorous imprisonment for two years for the offence under Section 498 of IPC and sentenced the accused to undergo ten years of rigorous imprisonment and to pay fine of Rs.5,000/-, in default, to undergo simple imprisonment for one month for the offence under Section 366 of IPC.

14.Aggrieved by the conviction and sentence imposed under Sections 498 and 366 of IPC, the accused preferred this Criminal Appeal before this Court.

15.The learned Counsel for the appellant/accused had furnished written arguments. As per the written arguments submitted by the



1 and P.W-1 had only lodged a complaint stating that his wife is missing. P.W-2 and P.W-3 are the parents of P.W-1 and they had in their evidence supported the claim of lodging of the case for missing of P.W-4 but in the cross-examination they had denied the suggestion that their daughter-in-law P.W-4 was in an illicit relationship with the accused. P.W-4 had without informing her parents gone to Tiruppur and was residing in a working women's hostel from where she was secured by the police was admitted by P.W-2-father of P.W-1 and P.W-3-mother of P.W-1 and P.W-5-mother of P.W-4. Also they had admitted that P.W-1 had sought financial help from the parents of P.W-4 and they had expressed their inability to provide financial assistance of Rs.2,00,000/- immediately. Therefore, P.W-4 had handed over the custody of the child to her parents and left her house without informing them. Therefore, the case was registered. P.W-4 had turned hostile.

16.It is further stated in the written arguments that to prove the charges that the accused kidnapped a married woman, there is no evidence before the trial Court. The learned trial Judge had failed to appreciate the evidence in its proper perspective and had convicted the accused without any materials to prove the charge under Sections 498 and 366 of IPC.

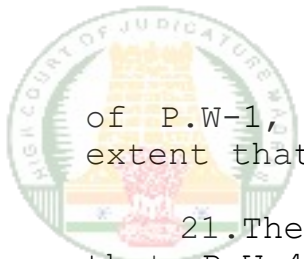
17.Mr.T.Senthilkumar, learned Government Advocate (Crl. Side) had submitted oral arguments by way of reply to the written arguments of the learned Counsel for the appellant/accused.

18.As per the submission of the learned Government Advocate (Crl. Side), the case of the appellant does not warrant any interference as the learned trial Judge, Fast Track Mahila Court, Theni had on proper appreciation of evidence and on assessment of evidence, arrived at a logical conclusion thereby the charges framed against the accused under Section 498 and 366 of IPC were found proved and the guilty of the accused was recorded. Hence, the appeal lacks merit and has to be dismissed.

19.The point for consideration:

Whether the judgment of conviction and sentence of imprisonment recorded against the accused by the learned Sessions Judge, Fast Track Mahila Court, Theni, is to be set aside and accused to be acquitted?

20.On perusal of the evidence of P.W-2, P.W-3 and P.W-5 it is found that they had not stated that the accused kidnapped P.W-4 or the accused had directly or indirectly instigated P.W-4 to accompany him or to come to his place. No such proof had been made available in the evidence. Therefore, it has to be presumed that the prosecution has not proved the charges against the accused beyond [beyond reasonable doubt](https://hcrs.cemilab.com/doi/10.1002/ce.12345). P.W-4 herself had turned hostile. The evidence



of P.W-1, P.W-2, P.W-3 and P.W-5 can be considered only to the extent that P.W-4 was missing from her residence.

21.The evidence of P.W-2, P.W-3 and P.W-5 would only go to show that P.W-4 had left on her own volition from her parents house without informing them. There is no evidence that she was secured from the company of the accused and P.W-4 herself says that she was in a working women's hostel. The evidence of P.W-1 states that P.W-1, his father and his father-in-law and two panchayat Presidents had accompanied the Inspector of Police P.W-9 and gone to the residence of accused where they were informed by the neighbours that the accused had set up a separate house at Poompohar Nagar in Tiruppur with P.W-4 and residing there. If that had been the true case, P.W-9-Investigation Officer should have arrested the accused then and there and should have recorded the statement of witnesses who have been the neighbours in that place. Those things are not available before this Court. The evidence of two Panchayat Presidents, the evidence of neighbours, who were residing at Poompohar Nagar where the accused is alleged to have been cohabiting with P.W-4, are not available before this Court. Therefore, the important ingredients regarding abetting P.W-4 to part with the company of P.W-1 and join the accused by the accused on his mobile messages is not available before the Court. Therefore, the ingredients of Section 366 and 498 of IPC had not been proved beyond reasonable doubt. If at all prosecution case is accepted, P.W-4 is a major and it should be treated that she had gone on her own volition from her parents' house without informing them. Therefore, the charges framed against the accused under Section 498 and 366 of IPC had not been proved beyond reasonable doubt. The point for consideration is answered against the prosecution and in favour of the appellant/accused.

22.In the result, the appeal is allowed and the finding of guilt recorded by the learned Sessions Judge, Fast Track Mahila Court, Theni, in S.C.No.125 of 2014 and the conviction and sentence imposed under Section 498 and 366 of IPC are set aside. The bail bond executed by the appellant, if any, shall stand discharged. Fine amount, if any paid, shall be refunded to the appellant.

Sd/-

Assistant Registrar (CS I)

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/ /2021

Sub Assistant Registrar(CS)



To

- 1.The Sessions Judge,
Fast Track Mahila Court,
Theni.
- 2.The Judicial Magistrate,
Aundipatti.
- 3.The Chief Judicial Magistrate,
Theni District.
- 4.The Superintendent,
Central Prison,
Madurai.
- 5.The Inspector of Police,
Rajathani Police Station,
Theni 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)

CRL.A. (MD) No.45 of 2017

30.09.2021

RS (28.09.2021) 8P 9C