



Bail Slip

The Petitioners / Appellants / Accused 1&2 namely
1.Annamalai, S/o.Pandiranga Mudaliyar aged about 45 years,
2.Thomas, S/o.Jebastine aged about 50 years were released on
bail dated 11.11.2019 made in CrI.MP.No.13167 of 2019 in
CrI.A.No.535 of 2019 on the file of this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.04.2022

Pronounced on : 28.04.2022

CORAM

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

CrI.A.No.535 of 2019

1.Annamalai

2.Thomas

... Appellants / Accused 1 & 2

Vs.

The State rep by its
Inspector of Police,
Avalurpettai Police Station,
Thiruvannamalai District
(Cr.No.222 of 2010)

... Respondent / Defacto Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the judgment of conviction and sentence imposed upon the appellants by the learned Special Sessions Judge for SC & ST Act cases, Villupuram in Spl.S.C.No.145 of 2015 dated 17.06.2019.

For Appellants : Mr.S.T.Raja
For M/s OM Sai Ram

For Respondent : Mr.Leonard Arul Joseph Selvam,
Government Advocate (crl.side)



J U D G M E N T

The present criminal appeal has been filed by the appellants to set aside the judgment of conviction and sentence imposed upon the appellants by the learned Special Sessions Judge, Special Court for SC/ST Act cases, Villupuram dated 17.06.2019 in Spl.SC.No.145 of 2015.

2. The appellants 1 and 2 are arrayed as accused 1 & 2 in Spl.SC.No.145 of 2015. They stood charged for the offence punishable under Sections 147, 365, 342, 376, 323 r/w 149 of IPC and Section 3(1)(x) of SC/ST (PoA) Act. The accused denied the charges and opted for trial. Therefore, they were put on trial on the charges. After a full fledged trial, by judgment dated 17.06.2019, the learned Special Sessions Judge, Special Court for SC/ST Act Cases found the appellants guilty under Sections 294(b), 366 and 342 of IPC and Section 3(1)(x) of SC/ST (PoA) Act, 1989. Accordingly, they were convicted and sentenced as follows:

S.No	Conviction	Sentence
1	Section 294(b) of IPC	Each to pay a fine of Rs.500/-, in default to undergo three months simple imprisonment
2	Section 366 of IPC	Each to undergo 10 years rigorous imprisonment and each to pay a fine of Rs.1,000/-, in default to undergo three months simple imprisonment
3	Section 342 of IPC	Each to pay a fine of Rs.1,000/-, in default to undergo three months simple imprisonment
4	Section 3(1)(x) of SC/ST (PoA) Act	Each to undergo one year rigorous imprisonment and each to pay a fine of Rs.1,000/-, in default to undergo three months simple imprisonment

Further, the trial Court ordered, the period of remand already undergone by the accused if any, to be set off against the sentence imposed. Further, the sentences were ordered to run concurrently. Challenging the said conviction and sentence, both the accused are before this Court by way of filing the present criminal appeal.

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



(i) P.W.1 Manimegalai belongs to the community of Irular. In the year 2010, along with her husband, she received Rs.15,000/- from the first accused as advance for doing work in brick chamber. After two years, her husband fell into sick and therefore, both of them returned to her native. Later, during the relevant point of time, both the accused came there and asked to return the advance amount. Since the husband of the PW1 refused to return the same by saying that already the advance amount was paid by working in the brick chamber. After hearing the same, the first accused got wild and attacked PW1's husband. Since at the time P.W.1 rushed to the said place, her husband ran away and later both the accused insisted her to repay the advance amount. Further, they made threatening as they will lodge a false complaint against PW1. Resultantly, both the accused brought the P.W.1, her brother P.W.2 along with the ten months old female child to Sevur, from where all of them were brought to Ranganathapuram. In Ranganathapuram, all of them were confined for a period of four days and afterwards, during the time of occurrence, the first accused came and after attacking P.W.1, also attacked P.W.2-Vadamalai. Thereafter, all of them were brought to the brick chamber, wherein around 10 unknown persons came there and threatened P.W.1. Further, they confined P.W.1 in a house belongs to one, Vennila and on the next day, they brought P.W.1 and P.W.2 to the police station. Since the Sub Inspector of Police advised the first accused as he committed a mistake, they again brought P.W.1 to Arani Bus stand, wherein the first accused misbehaved with P.W.1. When the same was questioned by P.W.2, the persons who are all found along with the first accused attacked P.W.2 and brought to some other place. In the meantime, the first accused forcibly committed an illicit intercourse with P.W.1 and thereafter at around 8.00 p.m., after giving money, advised P.W.1 to go to her native. Thereafter, as per the instructions given by one, Kalyani, the police registered a case as against the accused. The complaint lodged before the police was marked as Ex.P1.

(ii) On receipt of the complaint, P.W.31-Viswanathan, the then Head Constable attached with Valathi Police Station assigned the same with CSR.No.256 of 2010 and placed before the Sub Inspector for enquiry. He issued memo to the hospital for examining P.W.1. Thereafter, P.W.32, after seeing the complaint given by P.W.1, registered a case in crime No.222 of 2010 under Sections 147, 294(b), 323, 366, 342, 376, 506(ii) of IPC r/w Section 3(1)(x) of SC/ST (PoA) Act. The printed F.I.R. is marked as Ex.P9. Later, after registering the case, he placed the F.I.R. before the Deputy Superintendent of Police for investigation. P.W.33-Vinayagam, the then Deputy Superintendent of Police, Ginjee Division, on receipt of the said F.I.R., took up the same for investigation. In this regard, the



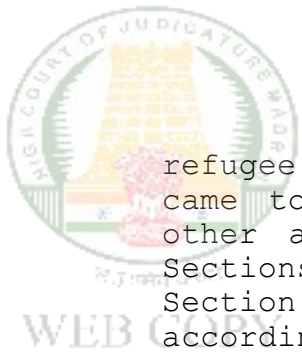
District Superintendent of Police, Villupuram passed an order directing P.W.33 to conduct investigation in this case. The proceedings issued by the District Superintendent of Police was marked as Ex.P10. Immediately after the receipt of the proceedings issued by the Deputy Superintendent of Police, P.W.33 rushed to the hospital, examined P.W.1 and P.W.2. On the same day, he visited the scene of occurrence at Thayanoor and prepared an observation mahazar under Ex.P11. He had drawn the rough sketch and the same is marked as Ex.P12. He examined the witnesses and recorded their statements.

(iii) In continuation of investigation, on 16.07.2020, he visited Arani and prepared observation mahazar under Ex.P13. Herein also, he had drawn the rough sketch and the same has been marked as Ex.P14. Further, on the same day at around 10.30 a.m., near Arani Town Robert Clive Memorial Column (thoon), he prepared one another observation mahazar under Ex.P15 and had drawn the rough sketch and the same was marked as Ex.P16. On 22.08.2010, he arrested the accused No.1 and 2 and recorded their confession statement. After recording the confession, he recovered 20 rupees stamp paper under the cover of mahazar. In this regard, the admitted portion of confession statement given by the first accused was marked as Ex.P17 and the stamp paper was marked as Ex.P18. After made recovery as above, he brought the accused to the police station and sent them to the remand. On 28.08.2010, he submitted an application before the Magistrate for sending the first accused for medical examination. In turn, as per the proceedings issued by the Magistrate, P.W.26-Dr.Balagopal examined the first accused and issued certificate under Ex.P7 stating that the first accused is a potent man. In the meantime, P.W.20-Dr.Padmini attached with Medical College Hospital, Villupuram, examined P.W.1 and found the following symptoms.

- (i) No external injuries found over the body anywhere
- (ii) No blood or seminal stains over the body or the clothes worn

She collected vaginal smear and later it was reported that there was no sperm is detected. In this regard, she issued certificate under Ex.P2.

(iv) In continuation of the investigation, P.W.33 submitted an application to the Tahsildar, Ginjee for issuing community certificate to P.W.1 and on receipt of the same, P.W.27-Rohini Ramadoss, Additional District Collector issued a certificate under Ex.P8 stating that P.W.1 belongs to Irular community, which is a recognised tribe. Similarly, as per the request made by the P.W.33, P.W.24-Annamalai issued certificates under Ex.P5 and Ex.P6 stating that the first accused belongs to Ahamudaiyar community and the second accused, is a Ceylon



refugee. Ultimately, after concluding the investigation, P.W.33 came to the positive conclusion that both the appellants and other accused in this case are liable to be convicted under Sections 147, 294(b), 323, 366, 342, 376 & 506(ii) of IPC r/w Section 3 (1)(x) of SC/ST (PoA) Act. He filed a final report accordingly.

4. Based on the above materials, the trial Court framed the charges under Sections 147, 365, 342, 376, 323 r/w 149 of IPC and Section 3(1)(x) of SC/ST (PoA) Act and the accused denied the same. Hence, they were put on trial. In order to prove their case, on the side of the prosecution, as many as 33 witnesses have been examined as P.W.1 to P.W.33 and 18 documents were exhibited as Ex.P1 to Ex.P18.

(i) Out of the said witnesses, PW1-Manimegalai is the victim in this case. She has spoken about the occurrence as during the relevant point of time, both the first and second accused came to her village and after attacking her husband, brought her to various places along with her brother and after indulging in a forcible sexual intercourse by the A1, she was let off free and then, she lodged the complaint before the police.

(ii) P.W.2-Vadamalai is the brother of P.W.1, he has stated about the occurrence as during the relevant point of time, both himself and his sister-P.W.1 were kidnapped by accused 1 & 2 and after confining in various places, attacked him and obtained a signature in the blank paper. Ultimately, A1 gave Rs.5,000/- and advised to go to his native place.

(iii) P.W.3-Chinnapaiyan is the father of P.W.1. He has spoken about the occurrence as during the relevant point of time, both the accused No.1 & 2 came to his village and demanded P.W.1 to return the advance amount which was received two years back. Since P.W.1 refused to repay same by saying that the amount was already paid, both the accused attacked P.W.1's husband and later kidnapped the P.W.1 and P.W.2. to various places. He has further stated that after three days from the date of occurrence, P.W.1 returned to his house saying that the first accused indulged in forcible sexual intercourse with her. Further, P.W.1 and P.W.2 informed that the first accused obtained signature in various blank papers and the stamp papers. Later, P.W.1 with the help of one, Kalyani, lodged complaint before the police station.

(iv) P.W.4-Andal is the mother of P.W.1. She heard the occurrence through P.W.1.



(v) P.W.5-Kumar is the husband of P.W.1. He has spoken about the occurrence as during the relevant point of time, he received Rs.15,000/- as an advance and later, he was working in the brick chamber run by the first accused. According to him, the entire amount was repaid to the accused by deducting the wages which was payable to them. Even after knowing the same, the accused No.1 & 2 came to his village and after attacking him, kidnapped P.W.1 and later a complaint has been lodged before the police station.

(vi) P.W.6-Annamalai is the neighbour to P.W.1 and P.W.7-Unnamalai is also a resident of P.W.1's village, they spoke about the occurrence as during the relevant point of time, the first accused, after attacking P.W.5, kidnapped P.W.1.

(vii) P.W.8-Ezhumalai is the resident of Kannalam village. He has spoken about the occurrence as before six years, P.W.1 and P.W.5 came to his village and sought help for lodging a complaint as against the accused 1 and 2.

(viii) P.W.9-Sundaram, P.W.10-Ramesh, P.W.11-Muniandi, P.W.12-Pichaimuthu, P.W.13-Ramesh, P.W.14-Tamilarasi are the alleged witnesses to the occurrence, did not support the case of the prosecution. Hence they were all treated as hostile witnesses.

(ix) P.W.15-Sankar, P.W.16-Ragu, P.W.17-Murthy, P.W.18-Mannu, P.W.19-Munivel are the witnesses who have attested in the observation mahazar and in the confession statement given by the accused. They have also not supported the case of the prosecution. Hence, they were also treated as hostile witnesses.

(x) P.W.20-Dr.Padmini speaks about the medical examination conducted on P.W.1.

(xi) P.W.21-Shanmugam is the Assistant Director working in the Forensic Department, who speaks about the examination of vaginal smear. According to him, no sperm is detected in the vaginal smear collected from the P.W.1.

(xii) P.W.22-Durai and P.W.23-Basheer have spoken about the occurrence as one day, the investigation officer in this case came to the Arani bus stand and prepared observation mahazar in their presence.

(xiii) P.W.24-Annamalai, the then Tahsildar has spoken about the issuance of community certificate to the first and second accused .



(xiv) P.W.25-Divakaran, the then Sub Inspector of Police, Arani Taluk Police Station has spoken about the occurrence as on 11.07.2010, one, Sundaram belongs to Arani village brought P.W.1 and P.W.2 to the police station and informed as there was a dispute between P.W.1 and the accused as to the receipt of advance. According to him, after advising P.W.1, instructed her to go to her native.

(xv) P.W.26-Dr.Balagopal attached with Government Hospital, Ginjee gave evidence in respect to medical examination of accused.

(xvi) P.W.27, RohiniRamadas, Additional District Collector has spoken about the issuance of community certificate to the P.W.1.

(xvii) P.W.28, Gopalakrishnan, P.W.29-Leema, P.W.30-Chandrasekaran, P.W.31-Viswanathan, P.W.32-Chellappan and P.W.33-Vinayagam are all the police officers spoken about the receipt of complaint, registration of the case, investigation of the same and about the filing of final report.

5. When the above incriminating materials were put to the accused, under Section 313 Cr.P.C., all the accused denied the same as false. However, in order to prove their case, none have been examined on their side as defence witness.

6. The learned Special Sessions Judge after perusing all the above materials and on considering the arguments advanced by either side, found the appellants guilty under Sections 294(b), 366, 342 of IPC and Section 3 (1) (x) of SC/ST (PoA) Act, convicted and sentenced the appellants as stated in paragraph 2 of the judgment. Aggrieved over the said conviction and sentence, the appellants are before this Court, with the present criminal appeal.

7. I have heard Mr.S.T.Raja, learned counsel appearing for the appellants and Mr.Leonard Arul Joseph Selvam, learned Government Advocate(crl.side) appearing for the respondent State. I have also perused the records carefully.

8. The learned counsel appearing for the appellants would contend that the trial court, without framing any charge for the offence punishable under Section 366 of IPC, convicted and sentenced the accused, which is erroneous in law. He would further submit that the whole case projected by the prosecution would go to show that in order to avoid repayment of advance amount to the first accused, P.W.1 lodged false complaint before the police station. He would further submit that though it was stated by P.W.1 that she was confined in various places, in



order to prove the same, none have been examined from the locality from where she was confined. The evidence given by the doctor is not in accordance with the evidence given by P.W.1 in respect to injury. According to him, in order to attract Section 3 (1) (x) of SC/ST (PoA) Act, there is no evidence from the prosecution witnesses as during the relevant point of time, both the accused abused P.W.1 by saying her caste name in a public place, further in public view. According to him, the court below, without considering those aspects, convicted the accused, which is erroneous in law.

9. Per contra, the learned Government Advocate (crl.side) appearing for the respondent police would submit that the minor contradictions found in the evidence given by the prosecution witnesses is not a material one to decide the case in favour of the appellants. According to him, the evidence given by the prosecution witnesses are all sufficient to accept the case of the prosecution beyond reasonable doubt. Accordingly, interference in the judgment rendered by the trial court is not required.

10. Submissions made by the learned counsels appearing on either side are considered.

11. On considering the first submission made by the learned counsel appearing for the appellants, it is true while at the time of framing charge, the trial court framed the charge as against the appellants for the offence under Section 365 of IPC and on the other hand, while at the time of disposing the case, found the accused guilty under Section 366 of IPC and sentenced them to undergo rigorous imprisonment for 10 years. In this regard, on going through the Sections 365 and 366 of IPC, the same reads as follows:

365. Kidnapping or abducting with intent secretly and wrongfully to confine person—Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

366. Kidnapping, abducting or inducing woman to compel her marriage, etc.—Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit



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intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; 1[and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid].

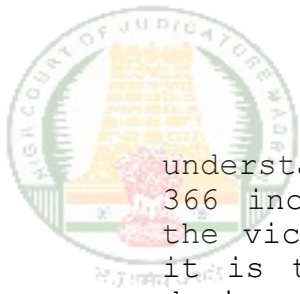
Accordingly, for proving the offence under Section 365 of IPC, it would be necessary for the prosecution to show the following ingredients:

- (i) That the accused kidnapped or abducted a person
- (ii) That the accused kept such person in his detention
- (iii) That the accused threatened to cause death or hurt to such person
- (iv) That the accused compelled to do or restrain from doing any act or to pay ransom.

12. On the other hand, for proving the offence under Section 366 of IPC, it would be necessary to the prosecution to show the following ingredients:

- (i) Kidnapping or abducting of any woman;
- (ii) Such Kidnapping or abducting must be -
 - (i) with intent that she may be compelled or knowing it to be likely that she will be compelled to marry any person against her will; or
 - (ii) in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse; or
 - (iii) by means of criminal intimidation or otherwise by inducing any woman to go from any place with intent that she may be, or knowing that she will be, forced or seduced to illicit intercourse.

13. Now on seeing the case of the prosecution, in fact, the respondent police filed a final report alleging that the appellants committed offence under Sections 147, 294(b), 323, 366, 376, 342, 506(i) of IPC. On the other hand, the offence under Section 366 of IPC has not been framed as a charge by the trial court. Though the charge under Section 376 of IPC has been framed as against the appellants, after concluding the trial, the learned trial judge, acquitted the accused for the charge under Section 376 and convicted him for Section 366 of IPC alone. It shows, the learned trial judge, without



understanding the basic structure that the offence under Section 366 includes allegation that the appellants, after kidnapping the victim, may be compelled for illicit intercourse. Of course it is the evidence given by P.W.1 before the trial court that during the relevant point of time, the first appellant forcibly compelled and committed illicit intercourse. Even after knowing the same, without altering the charge for the offence under Section 366 of IPC, that means without framing the charge for 366 of IPC, convicted and sentenced the appellants. In this occasion, it would be necessary to see the judgment of our Hon'ble Apex Court reported in the case of Gabbu Vs. State of Madhya Pradesh reported in (2006) 5 SC 740, wherein our Hon'ble Apex Court has held as follows:

Apart from this, to constitute an offence under Section 366, IPC, it is necessary for the prosecution to prove that the accused induced the complainant-woman or compelled by force to go from any place, that such inducement was by deceitful means, that such abduction took place with the intent that the complainant may be seduced to illicit intercourse and/or that the accused knew it to be likely that the complainant may be seduced to illicit intercourse as a result of her abduction. Mere abduction does not bring an accused under the ambit of this penal Section. So far as a charge under Section 366, IPC is concerned, mere finding that a woman was abducted is not enough, it must further be proved that the accused abducted the woman with intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse. Unless the prosecution proves that the abduction is for the purposes mentioned in Section 366, IPC, the Court cannot hold the accused guilty and punish him under Section 366, IPC.

14. Therefore in view of the said judgment, it would be necessary to show that there was a compulsion from the accused for illicit intercourse. But in this case, as already stated, on going through the evidence given by P.W.1, she has not stated about the compulsion made by the first accused for the purpose of illicit intercourse. According to her, during the relevant point of time, the first appellant forcibly committed the offence of rape, but the learned Sessions Judge, without considering the said evidence, for the reasons best known to her, acquitted the accused for the offence punishable under Section 376 of IPC.



15. In this regard, the only issue before this Court is that after framing the charge for the offence under Section 365 of IPC, whether the accused would be punished for the offence punishable under Section 366 of IPC.

16. In this connection, the learned counsel appearing for the appellants relied on the judgment in the case of Willie (William) Slaney Vs. The State of Madhya Pradesh reported in AIR 1956 SC 116, wherein our Hon'ble Apex Court has held as follows:

There may be cases where, a trial which proceeds without any kind of charge at the outset can be said to be a trial wholly contrary to what is prescribed by the Code. In such cases the trial would be illegal without the necessity of a positive finding of prejudice. By way of illustration the following classes of cases may be mentioned:- (a) Where there is no charge at all as required by the Code from start to finish—from the Committing Magistrate's court to the end of the Sessions trial; the Code contemplates in section 226 the possibility of a committal without any charge and it is not impossible to conceive of an extreme case where the Sessions trial also proceeds without any formal charge which has to be in writing and read out and explained to the accused (section 210 (2) and section 251 (A) (4) and section 227). The Code requires that there should be a charge and it should be in writing. A deliberate breach of this basic requirement cannot be cured by the assertion that everything was orally explained to the accused and the assessors or jurors, and there was no possible or probable prejudice. (b) Where the conviction is for a totally different offence from the one charged and not covered by sections 236 and 237 of the Code. On a charge for a minor offence, there can be no conviction for a major offence, e.g., grievous hurt or rioting and murder. The omission to frame a separate and-specific charge in such cases will be an incurable irregularity amounting to an illegality.

17. So applying the above said principles with the case in hand, being the reason that the ingredients which are necessary for committing the offence under Sections 365 and 366 of IPC are entirely different in nature, the deliberate breach for non framing the charge under Section 366 of IPC cannot be cured and therefore, this Court with great anguish acquit the accused for the offence under Section 366 of IPC.



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18. Similarly, in respect to offence under Section 3(1)(x) of SC/ST (PoA) Act, it would necessary for the prosecution to show the following ingredients:

- (i) The person who is accused of shall not be a member of the Scheduled Caste or Scheduled Tribe;
- (ii) The person who is aggrieved shall be a member of the Scheduled Caste or Scheduled Tribe;
- (iii) Criminal intention to insult or intimidate or to humiliate;
- (iv) The occurrence should have taken place in any place within public view.

19. Now on applying those ingredients with the case in hand, the whole evidence given by P.W.1 and P.W.2 would go to show that while at the time of occurrence, the appellants did not use the name of the community which belongs to P.W.1. Further, the case of the prosecution is that during the relevant point of time, the appellants / accused 1 & 2 with intend to receive the advance amount which was already given to the P.W.5, came to the occurrence village and after threatening the P.W.1 by using abusive words, kidnapped the P.W.1 and P.W.2 and confined in Valathi village. Therefore, the said offence committed by the accused is not comes under the category that the appellants with criminal intention to insult and humiliate the P.W.1, P.W.2 and P.W.5 by using their caste name, went to the place of occurrence and committed an offence. Further, the entire witnesses examined on the side of the prosecution would not reveal the fact that at the time of occurrence or in other circumstances, both the accused uses the name of the P.W.1's community.

20. Therefore, the ingredients which are all necessary for proving the offence under Section 3(1)(x) of SC/ST (PoA) Act, is not available in this case. On the other hand, the learned trial judge, without considering the said aspect in perspective manner, convicted the accused under Section 3(1)(x) of SC/ST (PoA) Act, which is liable to be set aside. Accordingly, the conviction and sentence awarded under Section 3(1)(x) of SC/ST (PoA) Act is also set aside.

21. As regards the other offences i.e. Sections 294(b) and 342 of IPC, as rightly pointed by the learned Government Advocate (crl.side) appearing for the respondent police, the whole evidence projected by the prosecution witnesses would go to show that during the time of occurrence, both the accused abused P.W.1 and after made abuse, took her along with P.W.2 and confined in various places. In this regard, the evidence given by P.W.1 is corroborated through the evidence of P.W.2, P.W.5



and P.W.25-Divakar who is the then Sub Inspector working in the Arani Police Station.

22. Therefore, the said evidence given by those witnesses are sufficient to accept the charge framed under Sections 294(b) and 342 of IPC.

23. It is the specific submission made by the counsel appearing for the appellants that as per the evidence given by P.W.1 and P.W.2, only at the instance of one, Kalyani, the respondent police registered a case, but she has not been examined as witness and the same would create a doubt over the case of the prosecution.

24. Now on considering the said submissions with the relevant records, it is true P.W.1, P.W.2, P.W.5 and other witnesses examined on the side of the prosecution gave evidence that only at the instance of one, Kalyani, the respondent police registered a case, but in this regard, the said Kalyani was not examined as a witness. However, being the reason that in respect to the wrongful confinement, the evidence given by P.W.1 and P.W.2 is natural and is wholly reliable one, it would not be necessary to see the evidence from the said Kalyani as whether this case has been registered at her instance. So in all, I am of the opinion that the conviction and sentence imposed under Sections 294(b) and 342 of IPC is within the ambit of law. In otherwise, in respect of conviction and sentence for offence under Section 366 of IPC and Section 3(1)(x) of SC/ST (PoA) Act, this criminal appeal is allowed.

25. In fine, the Criminal Appeal is partly allowed. The conviction and sentence imposed upon the accused by the learned Special Sessions Judge, Special Court for SC/ST Act cases, Villupuramvide judgment dated 17.06.2019, in Spl.S.C.No.145 of 2015, is modified as hereunder:

(i) The conviction and sentence imposed by the trial Court for the offence under Section 366 IPC and Section 3(1)(x) of SC/ST (PoA) Act is set aside and for the offence under Sections 294(b) and 342 of IPC, the same is confirmed.

(ii) The period of remand already undergone by the accused if any, is ordered to be set off against the sentences now imposed.



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(iii). The bail bond, if any executed by the accused, shall stand cancelled. The fine amount, if any paid, to be adjusted against the sentence imposed now.

Sd/-
Assistant Registrar(CS III)

/True Copy//

Sub Assistant Registrar

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To

1. The Special Sessions Judge,
SC & ST Act cases,
Villupuram.
2. The Judicial Magistrate,
Gingee.
3. The Chief Judicial Magistrate,
Villupuram.
4. The Inspector of Police,
Avalurpettai Police Station,
Thiruvannamalai District.
5. The Superintendent,
Central Prison, Vellore.
6. The Public Prosecutor,
High Court, Madras.

+1cc to M/s OM Sai Ram, Advocate, S.R.No.29280

Criminal Appeal No.535 of 2019

SR[co]
NSK 11/05/2022