



Bail Slip

Appellant state whether the accused namely Veeramani, S/o.Murugesan, male, was released on bail as ordered dated 07.01.2019 made in Crl.M.P.No.17448 of 2018 in Crl.A.No.839 of 2018 on the file of the High Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.839 of 2018

Veeramani

... Appellant / Accused

Vs.

State by
The Inspector of Police,
Tiruchengode Rural Police Station,
Namakkal District.
[Crime No.163 of 2016]

... Respondent / Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the judgment and conviction passed in Special C.C.No.18 of 2016 dated 03.12.2018 by the learned Sessions [Fast Track Mahila] Judge, Namakkal.

For Appellant : Mr.K.Thenrajan

For Respondent : Mr.R.Kishore Kumar
Government Advocate

JUDGMENT

The petitioner/accused in Spl.C.C.No.18 of 2016 was convicted by the learned Sessions [Fast Track Mahila] Judge, Namakkal on 03.12.2018 for the offence under Section 366A IPC and sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo six months rigorous imprisonment, for the offence under Section 9 of Prevention of Child Marriage Act and sentenced to undergo two



years rigorous imprisonment and for the offence under Section 5 r/w.6 of POCSO Act and sentenced to undergo ten years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo six months rigorous imprisonment. Against which, the present appeal is filed.

2. In this case, the prosecution examined P.W.1 to P.W.25 and marked Ex.P1 to P16. On the side of defence, no witnesses examined and no documents marked.

3. The facts of the case is that the victim/P.W.2, when she was studying 11th Standard, aged about 17 years had love affair with the appellant for four years. Since there was opposition from her parents, she eloped with the appellant on 20.05.2016. On 20.05.2016, the pretext of visiting School to find out her results she left her home, she joined the appellant and thereafter, both of them eloped, left to Erode by bike and from there, by train they went to Bangalore, Hospet wherein the appellant's relative was residing. They stayed there for 3 to 4 days, the appellant tied thali in a temple, thereafter they had physical relationship. The appellant called his parents, informed about the same, the appellant's mother informed that the victim's father lodged a complaint and they are in search of them. Thereafter, they left Bangalore, came back to their native. P.W.2 appeared before the respondent police on 31.05.2016, thereafter she was sent with her parents and the appellant was arrested on 01.06.2016. Earlier for missing of the girl, the victim's father P.W.1 lodged a complaint with the respondent on 21.05.2016. On appearance of the victim, she was sent for medical examination, accordingly case was altered for the above offences and thereafter statement under Section 164 Cr.P.C. was recorded from the victim. The accused was sent for medical examination. The witnesses, namely, P.W.1/father, P.W.2/victim, P.W.3/mother, the neighbours and relatives of the victim were examined in this case, observation mahazar and rough sketch prepared in the presence of the witnesses and after getting medical opinion and forensic report, charge sheet filed. On conclusion of the Trial Court, the Trial Court convicted the appellant as stated above.

4. The contention of the appellant is that P.W.2/victim not supported the case of the prosecution. When she appeared before the respondent police, she disclosed the fact that she was in love with the appellant, they both loved each other for the past four years. When she was studying 8th Standard puberty function was held, at that time, the appellant came there as a drum beater, thereafter friendship blossomed between them and they were in love affair for the past four years. Their love affair was objected by her, who were planning to give P.W.2 in marriage to someone against her wish, hence she forced the appellant to



take her away and marry her, otherwise she would end her life. To save her life, the appellant had no other way except to accompany the victim. P.W.2 in certain terms stated before the Police as well as in her 164 Statement that it was she who forced the appellant to take her away and to marry her. P.W.1 and P.W.3, the parents of the victim not approved the love affair of their daughter. Earlier P.W.1 lodged a complaint for the love affair, the appellant was called and warned. P.W.2/victim girl continued her love relationship with the appellant. The other witnesses, namely, P.W.4 to P.W.16 are the villagers who are in the nature of hear say witnesses, further almost all the villagers not supported the case of the prosecution. It is further submitted that in this case the age certificate of the victim not marked and proved. It is admitted, in this case neither the age certificate nor the School certificate of the victim marked. P.W.25/Investigating Officer admits that he had not taken any steps to collect the age certificate. P.W.24/Doctor who examined the victim was not requested to confirm the age of the victim on the other hand, P.W.19 who examined the appellant for potency examined the accused and given the age certificate. P.W.25/Investigating Officer admits that he had neither visited Hospet, Bangalore nor examined any witness to prove that the appellant and P.W.2 stayed in Bangalore together and they had physical relationship during that period.

5.It is further submitted that the observation mahazar/Ex.P13 and rough sketch/Ex.P14 pertains to the house of the victim which is not required. Though the signature of P.W.14 to P.W.16 found in confession statement, was marked as Ex.P.3 and Ex.P4, nothing lead to recovery from the alleged confession. The Lower Court without any evidence and materials given a finding that appellant and victim were staying together in Karnataka for sometime and at that time, the appellant tied Thali to the victim. Further, there is no material or document to show that the victim was a minor, the victim herself admit that she only forced the appellant to join her and both of them went to various places. In view of the same, the Lower Court convicting the appellant for child marriage, kidnapping of minor girl is not proper. The Lower Court placing reliance on the evidence of P.W.1 and P.W.3/parents of victim and the evidence of Doctor/P.W.24 and on the 164 statement, convicted the appellant is not sustainable when P.W.2/victim girl categorically state that she was never kidnapped and physical relationship was also not under force. In this case, admittedly the age of the victim not proved. In view of the same, the conviction of the appellant under the POCSO Act is also not sustainable. In this case, both the appellant and the victim belong to the same community, hail from the lower strata of the society equal in both social and economical background, now they



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got married with the concurrence of both parents. The victim/defacto complainant filed an affidavit confirming the marriage and the registration certificate of their marriage produced. In view of the same, it is submitted that confirming the conviction would do more harm than good to the victim.

6.The learned Additional Public Prosecutor submits that P.W.1/father of the victim lodged a complaint/Ex.P1 for girl missing on 21.05.2016 and thereafter FIR/Ex.P10 was registered on 21.05.2016. On 31.05.2016, the victim appeared before the respondent police, thereafter section was altered from girl missing to kidnapping, child marriage and POCSO Act by Ex.P15. Thereafter, the victim girl was sent for medical examination, her statement was recorded under Section 164 Cr.P.C., accused was arrested, gave a confession admitting that he took the victim girl to Hospet, Bangalore where he tied Thali to the victim girl and thereafter had physical relationship with her knowing very well that she is a minor. The medical examination confirms that the victim was subjected to physical sexual assault, Accident Register/Ex.P 11 as well as the evidence of P.W.24/Doctor confirms that there is tear in hymen and the possibility of victim subjected to sexual assault confirmed. The potency of the accused was proved by medical report Ex.P5. Though swab test was conducted, nothing was detected as could be seen from the Forensic report/Ex.P9. In 164 Cr.P.C. statement/EX.P8, the victim categorically stated that she was a minor and she was having physical relationship with the appellant in Hospet, Bangalore as well as near Tiruchengode from 23.05.2016 to 28.05.2016. The Trial Court on the evidence of P.W.1 and P.W.3/parents of the victim, 164 statement and the medical records found that the victim was minor, who was kidnapped and sexual assault committed by the appellant, convicted the appellant by a well reasoned judgment which needs no interference. The learned Additional Public Prosecutor fairly submitted that now the victim and the appellant got married with the concurrence of both the family and they are living happily as husband and wife. Their social and economic status are identical. There is no opposition for their marriage. The victim is very much dependent on the income of the appellant, who is the bread winner.

7.Considering the submissions and on perusal of the materials placed before this Court, it is seen that P.W.2/victim girl right from the beginning not supported the case of the prosecution, she admits in categorical terms that she and the appellant were in love affair for the past four years and it was she who compelled the appellant to take her away since her parents were objecting for their love affair and contemplating a marriage to her against her wish. From her statement, it is seen that she has been constantly pressurizing the appellant to



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take her away. Unable to further withstand, the appellant was forced to accompany the victim and both of them eloped to Bangalore. Thereafter, they came back to Tiruchengode, appeared before the respondent police. The Investigating Officer/P.W.25 admit that he had not visited Hospet, Bangalore to confirm whether the appellant and the victim got married and stayed in their relative's house at Hospet, Bangalore P.W.25 admits that he had not taken any steps to collect the age certificate and School certificate of the victim to prove that she is a minor. P.W.1 and P.W.3, parents of the victim not produced any age certificate of the victim. The parents of the victim P.W.1 and P.W.3 are uneducated villagers. They confirm that birth of victim not registered. Further the School authorities registered the age as required for School admission, which is not the correct age. The victim was born earlier, got admitted in the School belatedly. The School authorities to overcome the loss of age registered the age in the school records on their own. Be that as it may. Admittedly, no school certificate of the victim produced. The Investigating Officer admits the same. In this case, admittedly the age of the victim not proved. No school authorities and no school certificates produced to confirm the age of the victim. From the evidence of P.W.24/Doctor and the Accident Register/Ex.P11, it is seen that there is no injuries to prove any force made on her. The swab confirm sperm or spermatozoa not found. When the Investigating Officer was so diligent to get the age of the appellant confirmed, it is equally important for him to prove, the victim is a minor. P.W.1 and P.W.3 admit the love affair between the victim and the appellant which they had opposed at that time. None of the villagers, neighbours and relatives have supported the case of the prosecution, almost all of them are in the nature of hear say witnesses.

8. From the above it is seen that the prosecution had miserably failed to prove that the victim was a minor. The victim herself admit that she had love affair with the appellant for the past four years and it was on her compulsion, the appellant had accompanied her. Thus, from the evidence and materials produced it cannot be conclusively held that the charges against the appellant proved. The Lower Court convicted the appellant primarily on the presumption under Section 29 of the POCSO Act. When the appellant disputed the same by way of cross examination with regard to the age and other aspects, it is for the prosecution thereafter to prove the case. In this case, the prosecution miserably failed to prove the case against the appellant. Added to it, it is seen that both the appellant and the victim/P.W.2 hail from the same community with same social and economical background, now both of them got married with the concurrence of their parents and living happily. Hence, this Court set aside the conviction and sentence imposed



on the appellant and the appellant is acquitted from all the charges.

9. Accordingly, the conviction and sentence imposed on the appellant in Special C.C.No.18 of 2016 by the learned Sessions [Fast Track Mahila] Judge, Namakkal dated 03.12.2018 is hereby set aside.

10. In the result, the Criminal Appeal stands allowed.

Sd/-

Assistant Registrar(CS III)

/True Copy//

Sub Assistant Registrar

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To

1. The Sessions [Fast Track Mahila] Judge,
Namakkal.
2. The Superintendent,
Central Prison, Coimbatore.
3. The Inspector of Police,
Tiruchengode Rural Police Station,
Namakkal District.
4. The Public Prosecutor,
High Court, Madras.

Copy to

The Section Officer,
Criminal Side Record,
High Court, Madras - 104.

Crl.A.No.839 of 2018

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NSK/02/06/2022