

[2011] 5 S.C.R. 1189

MURUGAN @ SETTU
v.
STATE OF TAMIL NADU
(Criminal Appeal No. 455 of 2004)

MAY 06, 2011

[P. SATHASIVAM AND DR. B. S. CHAUHAN, JJ.]

Penal Code, 1860 – ss. 366, 376 and s. 363 r/w s. 109 – Punishment for kidnapping and rape – A1 allegedly kidnapped PW 4, compelled her to marry him and raped her – A2 and A3 were allegedly involved in compelling PW 4 to get married to A1 – Concurrent findings by the courts below that PW 4 was minor on the date of the incident – Trial court convicted A1 u/ss. 366 and 376 and sentenced him to rigorous imprisonment for 3 and 7 years; and A2 and A3 u/s. 366/109 and sentenced them to 3 years rigorous imprisonment each – High Court upheld conviction and sentence of A1, however, modified that of A2 and A3 to s. 363/109 and sentenced them to two years imprisonment each – Plea of appellants (A1, A2 and A3) before Supreme Court that PW 4 was major at the relevant time and that she married A1 voluntarily and not under compulsion – On appeal, held: School certificate issued by the Headmaster on basis of the entry made in the school register corroborates the contents of the birth certificate issued by Municipality that prosecutrix was minor on the date of the incident – Thus, no other issue required to be considered – Order of conviction and sentence passed by the High Court does not call for interference – Evidence Act, 1872 – s. 35

According to the prosecution, appellant (A1) kidnapped PW-4, compelled her to marry him and raped her. A2 and A3 were allegedly involved in compelling PW-4 to get married with the appellant. The trial court holding

A that PW-4 was minor on the date of the incident, convicted the appellant under Sections 366 and 376 IPC and awarded the sentence of rigorous imprisonment for 3 and 7 years; and A2 and A3 under Sections 366/109 IPC and were sentenced for 3 years rigorous imprisonment each.

B The High Court upheld the order of conviction and sentence of A 1. The conviction of A2 and A3 under Sections 366/109 IPC was modified to one under Sections 363/109 IPC and imposed punishment of two years each. Therefore, the appellants filed the instant appeals.

C Dismissing the appeals, the Court

HELD: 1. Documents made *ante litem motam* can be relied upon safely, when such documents are admissible under Section 35 of the Evidence Act, 1872. [Para 11]

D [1199-D-E]

Umesh Chandra v. State of Rajasthan AIR 1982 SC 1057; *State of Bihar and Ors. v. Sri Radha Krishna Singh and Ors.* AIR 1983 SC 684 – relied on.

E *Mohd. Ikram Hussain v. State of U.P. and Ors.* AIR 1964 SC 1625; *Madan Mohan Singh and Ors. v. Rajni Kant and Anr.* AIR 2010 SC 2933; *Brij Mohan Singh v. Priya Brat Narain Sinha and Ors.* AIR 1965 SC 282; *Birad Mal Singhvi v. Anand Purohit* AIR 1988 SC 1796; *Updesh Kumar and Ors. v. Prithvi Singh and Ors.* AIR 2001 SC 703; *State of Punjab v. Mohinder Singh* AIR 2005 SC 1868; *Vishnu @ Undrya v. State of Maharashtra* AIR 2006 SC 508; *Satpal Singh v. State of Haryana* (2010) 8 SCC 714 – referred to.

G 2.1. PW-1, father of the prosecutrix (PW-4) in his examination-in-chief did not say anything about the age of the prosecutrix. Thus, the defence did not cross-examine him on this issue. However, no suggestion were put to him by the defence that the prosecutrix was major and had developed a liking/love affair with A.1 and had

H

voluntarily gone with him. PW-15, mother of the prosecutrix had deposed that the date of birth of the prosecutrix was 30.3.1984. At the relevant time, the prosecutrix was studying in 8th standard and was 14 years of age. Suggestion put to her that she was deposing about the age of her younger daughter and not of the prosecutrix was denied. She also denied that she was deposing falsely. PW-11, Head Mistress of the School proved the certificate and stated that in the school register the date of birth of the prosecutrix had been recorded as 30.3.1984. [Paras 5 and 7] [1196-D-E; 1197-F-H; 1198-A-B]

2.2. It is evident from a letter written by the prosecutrix to the police officer that she had developed a love affair with A 1, but there is nothing on record on the basis of which she had written that her hospital age was 17 years. No reliance can be placed on such a letter in view of the certificates issued by the Municipality and the School. It is a matter of common knowledge that the birth certificate issued by the Municipality generally does not contain the name of the child, for the reason, that it is recorded on the basis of the information furnished either by the hospital or parents just after the birth of the child and by that time the child is not named. [Para 9] [1198-F-G]

2.3. In the instant case, in the birth certificate issued by the Municipality, the birth was shown to be as on 30.3.1984; registration was made on 5.4.1984; registration number has also been shown; and names of the parents and their address have correctly been mentioned. Thus, there is no reason to doubt the veracity of the said certificate. More so, the school certificate has been issued by the Head Master on the basis of the entry made in the school register which corroborates the contents of the certificate of birth issued by the

A Municipality. Both these entries in the school register as well, as in the Municipality came much before the criminal prosecution started and those entries stand fully supported and corroborated by the evidence of PW.15, the mother of the prosecutrix. She had been cross examined at length but nothing could be elicited to doubt her testimony. Her deposition remained un-shaken and is fully reliable. [Para 13] [1200-B-E]

C 2.4 There is no reason to hold that the prosecutrix was major on the date of incident and in view thereof, no other issue is required to be considered. There is no reason to interfere with the quantum of punishment in either of these appeals. [Para 14] [1200-F]

Case Law Reference:

D	AIR 1964 SC 1625	Referred to.	Para 10
	AIR 1982 SC 1057	Relied on.	Para 11
	AIR 1983 SC 684	Relied on.	Para 11
E	AIR 2010 SC 2933	Referred to.	Para 12
	AIR 1965 SC 282	Referred to.	Para 12
	AIR 1988 SC 1796	Referred to.	Para 12
F	AIR 2001 SC 703	Referred to.	Para 12
	AIR 2005 SC 1868	Referred to.	Para 12
	AIR 2006 SC 508	Referred to.	Para 12
	(2010) 8 SCC 714	Referred to.	Para 12

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 455 of 2004.

H From the Judgment & Order dated 14.7.2003 of the High Court of Judicature at Madras in Criminal Appeal No. 981 of 2002.

WITH

A

Crl. A.Nos. 456 & 457 of 2004.

G. Sivabalamurugan, Anis Mohd, L.K. Pandey, Rakesh K. Sharma, S. Thananjayan for the appearing parties.

The Judgment of the Court was delivered by

B

DR. B.S. CHAUHAN, J. 1. All the three appeals have been preferred against the common judgment and order dated 14.7.2003 passed by the High Court of Judicature at Madras in Criminal Appeal Nos. 981 and 986 of 2002, by which the High Court had disposed of the said appeals preferred by the appellants against the judgment and order of the trial court dated 24.6.2002, in Sessions Case No. 30 of 2000, by which appellant Murugan @ Settu (A.1) had been convicted under Sections 366 and 376 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and awarded the sentence of rigorous imprisonment for 3 and 7 years on those counts respectively. Other appellants stood convicted under Sections 366 r/w 109 IPC and were sentenced for 3 years rigorous imprisonment.

C

D

2. FACTS :

E

(A) The prosecution case reveals that on 11.2.1998 at 9.00 A.M., Murugan @ Settu (A.1) with an intention to marry the minor girl Shankari (PW.4), aged 14 years studying in 8th standard, kidnapped her from S.S.K.V. School, Kancheepuram, by stating that her mother, Parimala (PW.15) was seriously ill and had been admitted to hospital. Shankari (PW.4) took permission to leave the school from her teacher, Rajeshwari (PW.5) and also informed about the said fact to her classmate P. Megala (PW.6).

F

G

(B) Shankari (PW.4) was taken by A.1 in an auto bearing No. TN 21 B 6582 to Kamatchi Amman Temple, where Shiva (A.2) also came and both of them took Shankari (PW.4) to Orikkai road stating that they were going to the hospital.

H

A (C) On being questioned by Shankari (PW.4), she was threatened by A.1 and A.2 that if she made noise they would spoil her life. She was taken to the house of Smt. Logammal (PW.7), the grand-mother of A.2 at Kaliampoondi, at about 1.00 P.M. They stayed there at night. On 12.2.1998, M.P. B Ekambaram (PW.1), father of Shankari (PW.4) lodged an FIR in Crime No. 209 of 1998 that his daughter had gone to attend the school on 11.2.1998 and did not return. Thus, she was missing.

C (D) On the same day, i.e. 12.2.1998, Ramalingam @ Ramu (A.3) came from Kancheepuram. All the accused compelled Shankari (PW.4) to get married with A.1 and, accordingly, A.1 tied 'Thali' in Shankari's neck. A.1 and A.3 took Shankari (PW.4) to Bangalore leaving A.2 at Vellore. They went to New Lingapuram, Bangalore, to the house of D Rajeshwari (PW.9), sister of A.3 and stayed there upto 24.2.1998. During this period, A.1 raped the prosecutrix Shankari (PW.4) many times. They reached Chennai and stayed in the house of Vijayalakshmi (PW.12).

E (E) As there had been an FIR in respect to the fact that Shankari (PW.4) had been missing, Pugazhendhi (PW.19), Inspector of Police, Kanchi Taluk Police Station after receiving the information that A.1 and prosecutrix Shankari (PW.4) would appear before the court at Kancheepuram reached there, and made a written application before the Judicial Magistrate, F Kancheepuram for sending A.1 and Shankari (PW.4) for medical examination. The application was accepted.

G (F) Dr. Parasakthi (PW.18) examined Shankari (PW.4) and issued a medical certificate, Ex.P-10 to the effect that she had been sexually assaulted. Dr. K. Gururaj (PW.20) examined A.1 on 26.3.1998 and issued certificate Exs.P-14 and P-15 to the effect that he was not impotent. He also examined Shankari (PW.4) and issued certificates including Ex.P-16 giving his opinion that she was about 18 years of age.

H (G) After completing the investigation, charge sheet was

MURUGAN @ SETTU v. STATE OF TAMIL NADU 1195
[DR. B. S. CHAUHAN, J.]

submitted. Subsequently, the trial court framed the charges against A.1 under Sections 366 and 376 IPC and so far as A.2 and A.3 were concerned, they were charged under Sections 366 r/w 109 IPC and Sections 376 r/w 109 IPC. As all the three appellants denied the charges and claimed trial, they were proceeded with trial.

(H) In support of its case, the prosecution examined 21 witnesses and 12 documents were exhibited and marked. Five properties were also marked. In defence, the appellants examined a photographer as DW.1. Three documents i.e. D1 to D3 were also exhibited and marked. After concluding the trial, the Sessions Court convicted all the appellants and imposed punishment as aforesaid.

(I) Being aggrieved, all the three appellants preferred Criminal Appeals before the High Court which have been disposed of by the common judgment and order impugned herein with certain modifications in the conviction and sentence so far as A.2 and A.3 are concerned. It set aside their conviction under Sections 366 r/w 109 IPC and convicted them under Sections 363 r/w 109 IPC and imposed punishment of two years. Hence, these appeals.

3. Shri G. Sivabalamurugan, learned counsel appearing for the appellants, has challenged the concurrent findings recorded by the courts below mainly on the grounds that the courts failed to appreciate that Shankari (PW.4) had gone voluntarily with A.1 as she was in love with him and wanted to marry him and not under compulsion of any one else. A.2 and A.3 had played no role in their affair or marriage. All independent witnesses i.e. Smt. Logammal (PW.7); Rajeshwari (PW.9) and Vijayalakshmi (PW.12) turned hostile. Shankari (PW.4) was major as opined by Dr. K. Gururaj (PW.20) who issued certificate to the effect that she was about 18 years of age. The courts erred in placing reliance upon the birth certificate of Shankari (PW.4) either given by the Municipality or by the School on the basis of the School Register. In the birth certificate issued by the Municipality, the name of the prosecutrix was not mentioned. Neither M.P.

A Ekambaram (PW.1), father nor Parimala (PW.15), mother of the prosecutrix, was able to state the correct age and they were not sure about the date of birth and age of Shankari (PW.4). In such a fact-situation, conviction of the appellants is liable to be set aside.

B 4. On the other hand, Shri S. Thananjayan, learned counsel appearing for the State has vehemently opposed the appeals contending that there are concurrent findings of fact recorded by the courts below, particularly on the most material issue i.e. regarding the age of the prosecutrix Shankari (PW.4), to the effect that she was minor. The school register and birth certificate issued by the Municipality are admissible pieces of evidence under the Indian Evidence Act, 1872 and have rightly been relied upon. In case the finding on the issue of age of the prosecutrix is not disturbed, the question of entertaining any other issue does not arise. The appeals are devoid of any merit and are liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

E We are in full agreement with the learned counsel appearing for the State that in case the finding recorded by the courts below on minority of the prosecutrix remains undisturbed, no other issue is required to be examined.

6. Age as per the documents :

F I. Relevant part of the FIR lodged by M.P. Ekambaram (PW.1) father of the prosecutrix reads as under:

G "My daughter's name is Shankari, aged about 14 years and studying in 8th Std. at S.S.K.V. School. She went on 11.2.1998 at 9 A.M. and did not return home. I came to know that she is missing."

H II. Relevant part of the certificate of birth issued by the Department of Public Health, under Section 17 of the Registration of Birth and Deaths Act, 1969, issued by the

MURUGAN @ SETTU v. STATE OF TAMIL NADU 1197
[DR. B. S. CHAUHAN, J.]

Commissioner, Kancheepuram Municipality reads as under: A

Name -
Date of Birth - 30.3.1984
Date of Registration - 5.4.1984
Sex - Female
Registration No. - 140
Name of father - M.P. Ekambaram
Name of Mother - Parimala

III. The date of birth certificate issued by the Head Master, S.S.K.V. Higher Secondary School, Kancheepuram reads as under:

"Certified that E. Shankari D/o M.P. Ekambaram was a student of this school in Eighth Std. during 1997-98 and her date of birth as per our school record (Admn.No.13714 (n.c.) is 30.3.1984 (Thirtieth March Nineteen Eighty Four)."

IV. Dr. K. Gururaj (PW.20) examined prosecutrix Shankari (PW.4) and on the basis of Radiological Test Report (Ex.P.16) opined that she was aged about 18 years.

7. Evidence of the witnesses in respect of age :

I. M.P. Ekambaram (PW.1) in his examination-in-chief does not say anything about the age of the prosecutrix. Thus, the defence did not cross-examine him on this issue. However, no suggestion had been put to him by the defence that she was major and had developed a liking/love affair with A.1 and had voluntarily gone with him.

II. Parimala (PW.15), mother of the prosecutrix had deposed that the date of birth of the prosecutrix was 30.3.1984. At the relevant time, prosecutrix was studying in 8th standard and was 14 years of age. Suggestion put to her that she was

A deposing about the age of her younger daughter and not of Shankari (PW.4) was denied. She also denied that she was deposing falsely.

B III. Mrs. Gayathri (PW.11), Head Mistress, SSKV School, proved the certificate and stated that in the school register the date of birth of Shankari (PW.4) had been recorded as 30.3.1984.

8. The defence has placed reliance on Ex. D-1, a letter written by the prosecutrix to the police officer which reads:

C "I am in love with Murugan for the past 1 ½ years. My school age is 15 years. My hospital age is 17 years. My father and mother would go by caste. I talked with him without knowledge of my father and mother. When my parents came to know about our affair they tortured me for 4 months. My lover told me that he was going to die by consuming 'poison'. I insisted that if I live, I can live with him otherwise I will die. He did not take me out. I only took him out. I am requesting the police and my relatives to put us together, otherwise if they try to separate us, my parents and police would be responsible.

E Sd/- Shankari"

F 9. It is evident from the aforesaid documents that prosecutrix Shankari (PW.4) had developed a love affair with A.1, but there is nothing on record on the basis of which she had written that her hospital age was 17 years. No reliance can be placed on such a letter in view of the certificates issued by the Municipality and the School. It is a matter of common knowledge that the birth certificate issued by the Municipality generally does not contain the name of the child, for the reason, that it is recorded on the basis of the information furnished either by the hospital or parents just after the birth of the child and by that time the child is not named.

G 10. In *Mohd. Ikram Hussain v. State of U.P. & Ors.*, AIR H 1964 SC 1625, this Court had an occasion to examine a similar

issue and held as under:

"In the present case Kaniz Fatima was stated to be under the age of 18. There were two certified copies from school registers which showed that on June 20, 1960 she was under 17 years of age. There was also the affidavit of the father stating the date of her birth and the statement of Kaniz Fatima to the police with regard to her own age. These amounted to evidence under the Indian Evidence Act and the entries in the school registers were made *ante litem motam*. As against this the learned Judges apparently held that Kaniz Fatima was over 18 years of age. They relied upon what was said to have been mentioned in a report of the Doctor who examined Kaniz Fatima,.....The High Court thus reached the conclusion about the majority without any evidence before it in support of it and in the face of direct evidence against it."

11. Documents made *ante litem motam* can be relied upon safely, when such documents are admissible under Section 35 of the Indian Evidence Act, 1872. (Vide: *Umesh Chandra v. State of Rajasthan*, AIR 1982 SC 1057; and *State of Bihar & Ors. v. Sri Radha Krishna Singh & Ors.*, AIR 1983 SC 684).

12. This Court in *Madan Mohan Singh & Ors. v. Rajni Kant & Anr.*, AIR 2010 SC 2933, considered a large number of judgments including : *Brij Mohan Singh v. Priya Brat Narain Sinha & Ors.* AIR 1965 SC 282; *Birad Mal Singhvi v. Anand Purohit* AIR 1988 SC 1796; *Updesh Kumar & Ors. v. Prithvi Singh & Ors.*, AIR 2001 SC 703; *State of Punjab v. Mohinder Singh*, AIR 2005 SC 1868; *Vishnu @ Undrya v. State of Maharashtra*, AIR 2006 SC 508; *Satpal Singh v. State of Haryana* (2010) 8 SCC 714, and came to the conclusion that while considering such an issue and documents admissible under Section 35 of the Evidence Act, the court has a right to examine the probative value of the contents of the document. Authenticity of entries may also depend on whose information

A such entry stood recorded and what was his source of information, meaning thereby, that such document may also require corroboration in some cases.

B 13. In the instant case, in the birth certificate issued by the Municipality, the birth was shown to be as on 30.3.1984; registration was made on 5.4.1984; registration number has also been shown; and names of the parents and their address have correctly been mentioned. Thus, there is no reason to doubt the veracity of the said certificate. More so, the school certificate has been issued by the Head Master on the basis of the entry made in the school register which corroborates the contents of the certificate of birth issued by the Municipality. Both these entries in the school register as well, as in the Municipality came much before the criminal prosecution started and those entries stand fully supported and corroborated by the evidence of Parimala (PW.15), the mother of the prosecutrix. She had been cross examined at length but nothing could be elicited to doubt her testimony. The defence put a suggestion to her that she was talking about the age of her younger daughter and not of Shankari (PW.4), which she flatly denied. Her deposition remained un-shaken and is fully reliable.

F 14. In view of the above, we do not see any reason to hold that prosecutrix, Shankari (PW.4) was major on the date of incident and in view thereof, no other issue is required to be considered. We also see no reason to interfere with the quantum of punishment in either of these appeals. Thus, appeals fail and are accordingly dismissed.

G 15. The appellants are on bail. Their bail bonds are cancelled. appellants must surrender within 30 days from today to serve the remaining part of the sentences, failing which the Chief Judicial Magistrate, Kancheepuram, Tamil Nadu, shall apprehend the appellants and send them to jail. Copy of the judgment and order be sent to the court concerned for information and compliance.

H N.J. Appeals dismissed.