

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2017

C O R A M

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.705 of 2015

Babu

... Appellant/Sole Accused

-vs-

State represented by
The Inspector of Police,
Chithode Police Station,
Erode District.
Crime No.229 of 2014

... Respondent/Complainant

Criminal Appeal filed under Section 374 r/w 382 of the Code of Criminal Procedure against the judgment of learned Sessions Judge, Mahila Court (Fast Track Court), Erode, passed in Spl.S.C.No.4 of 2015 on 04.08.2015.

For Appellant : Mr.D.Selvaraj,
for Mr.C.S.Saravanan

For Respondent : Mr.M.Mohammed Riyaz
Government Advocate [Crl.side]

J U D G M E N T

This appeal arises against the judgment of learned Sessions Court, Mahila Court (Fast Track Court), Erode, passed in Spl.S.C.No.4 of 2015 on 04.08.2015, convicting appellant for offences u/s. 366 of IPC, Section 9 of Prohibition of Child Marriage Act, 2006 and Section 6 of Pocso Act and sentencing him as follows:

Sections of Law	Sentence
366 of IPC	10 Years Rigorous Imprisonment and fine of Rs.5,000/- i/d 2 years Simple Imprisonment.
9 of Prohibition of Child Marriage Act.	2 years Rigorous Imprisonment.
6 of Protection of Children from Sexual Offences Act, 2012	10 years Rigorous Imprisonment and fine of Rs.5,000/- i/d 2 years Simple Imprisonment.

2. The case of the prosecution is that on 04.07.2014, the accused abducted the victim PW-3, aged 17 years from Moolapalayam Bus Stop in Erode District, while she was waiting for the bus to go to College at 8.00.a.m., forcibly took her on a motor cycle to Gobichettipalayam thereafter, by public carrier bus to a place in Kerala in Vayanadu area, forcibly married her and physically assaulted her. PW-1, victim's father preferred Ex.P1, complaint, on 05.07.2014. PW-14, Special Sub Inspector, registered a case in Crime No.229 of 2014 on the file of respondent as Girl missing. First Information Report is Ex.P12. PW-15, Inspector of Police, took up investigation on 05.07.2014, prepared Ex.P14 - Observation Mahazar and Ex.P13 - Rough Sketch. He examined PWs.1, 2, 3 and others and recorded their statements. Upon obtaining information that the victim girl was at Kerala, PW-15 sent PWs-7, 14 and a Head Constable to Kerala towards securing the victim girl and the accused. They went to Kerala on 11.07.2014, secured the accused and the victim girl and reached Chithode Police Station on 12.07.2014. PW-15 arrested the accused on 12.07.2014 and recorded his statement. He altered the F.I.R. to reflect offences under sections 366 IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 and forwarded the same to learned Judicial Magistrate-III, Erode. The Alteration Report is Ex.P15. Thereafter, he forwarded the accused to judicial custody. He sent a requisition to Judicial Magistrate-III, Erode towards recording the statement of victim girl. He also sent requisitions towards sending the victim girl and accused for medical examination. The requisitions are Exs.P-16 and 17. He submitted an application towards obtaining report of the Assistant Director, Forensic Department regards material objects received from the victim girl and the accused. Such application is Ex.P-18. On 17.07.2014 he examined one Yesuraj and recorded his statement. Upon his transfer, PW-16 took up further investigation. On 07.10.2014, he took the accused and the victim girl to the Government Hospital, Erode towards conduct of medical examination. He examined PWs-7, 8 and another and recorded their statements. Thereafter, he examined doctors PWs-9, 12 and 13 and the Assistant Director, Forensic Department and recorded their statements. Upon completion of investigation, he preferred a charge sheet informing commission of offences under Sections 366 IPC, Section 9 of Prohibition of Child Marriage Act, 2006 and Section 6 of POCSO Act. On Committal, the case was tried in Spl. S.C.No.4 of 2015 on the file of learned Sessions Judge, Mahila Court (Fast Track Court), Erode.

3. To substantiate its case, prosecution examined PWs.1 to 16 and marked Exs.P1 to P18 and 1 material object. None were examined on behalf of the defence nor were any exhibits marked. On questioning u/s.313 Cr.P.C., the accused denied charges. Learned trial Judge, on appreciation of the evidence, under judgment dated 04.08.2015, convicted the accused and sentenced them as above.

4. Heard learned counsel for appellant and learned Government Advocate [Crl.side] as also perused the records.

5. The defence has challenged the evidence of PW-15, Inspector and PW-14, Special Sub-Inspector on securing both accused and the victim girl in each others company at a house in Kerala. It need not have. The present is a case where prosecution would want us to believe that PW-3, the victim girl, aged 17, was abducted by the accused, acting all on his own, on a motorcycle from a bus stand, in broad day light and unnoticed by anybody. We would not. The case clearly is one of elopement. Ex.P5, 12th standard mark sheet, informs the date of birth of victim girl as 30.07.97, which is indicative of her being below the age of 18 at the time of occurrence. In the face of evidence of PW-1, father, PW-2 mother as also PW-3, victim, that a false date of birth had been given at the time of the victim's admission to School towards enrolling her one year short of age, trial Court rightly has discarded Ex.P5 but erred in going by the evidence of PW-9 Doctor/Radiologist to the effect that PW-3 was below 18 years of age. The evidence of a Radiologist on age can never be certain and it is in the realm of 'there or thereabouts'. The benefit of doubt on the age of the victim would have to go in favour of the accused.

For the aforesaid reasons, the Criminal Appeal shall stand allowed. The judgment of learned Sessions Judge, Mahila Court (Fast Track Court), Erode, passed in Spl.S.C.No.4 of 2015 on 04.08.2015, shall stand set aside. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

kmi/gm

To

1.The Sessions Court,
Mahila Court (Fast Track Court),
Erode.

2.The Inspector of Police,
Chithode Police Station,
Erode District.

3.The Public Prosecutor,
High Court, Chennai.

4. The Principal Sessions Judge, Erode.

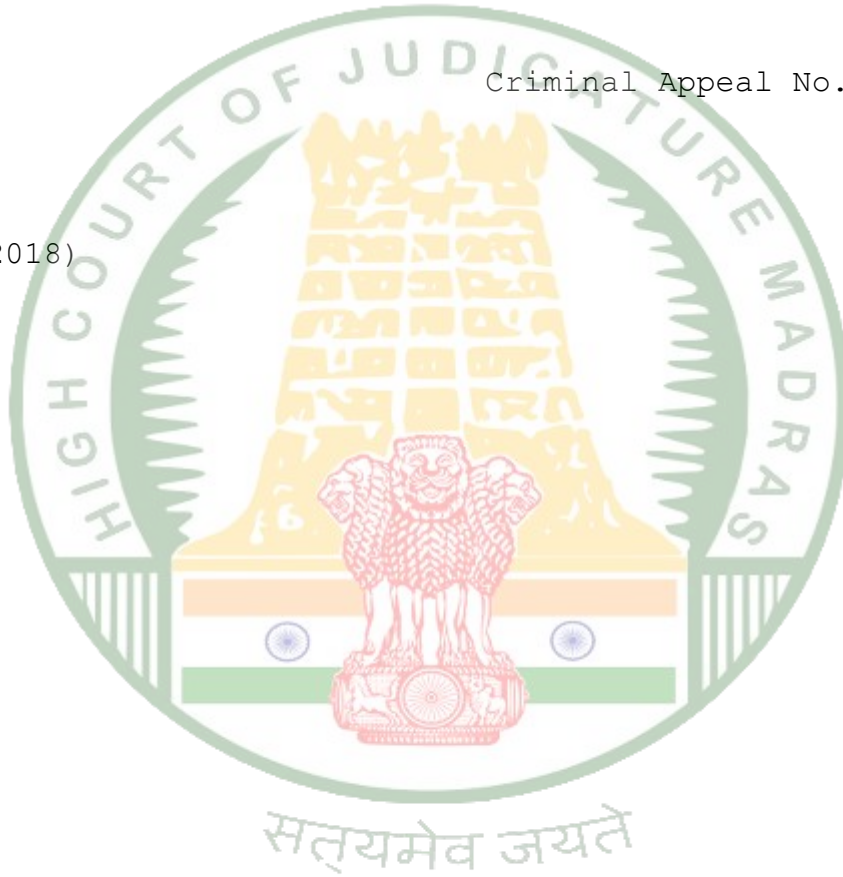
5. The Judicial Magistrate III, Erode.

6. The Superintendent, Central Prison, Coimbatore.

7. The Chief Judicial Magistrate Erode.

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RSK (CO)
EU (28/09/2018)



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