

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.A.No.295 of 2017

Manoj ... Appellant/Accused

Vs

State by Inspector of Police,
Rural B1 Police Station,
Uthagamandalam. ...Respondent/Complainant
(Crime No.699/2015)

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C.,
against the Judgment of the learned Fast Track Mahila Court,
Uthagamandalam in S.C.C.No.5 of 2016 dated 24.10.2016.

For Appellant : Mr.J.Franklin

For Respondent : Mrs.T.P.Savitha

Government Advocate (Crl.Side)

JUDGMENT

This criminal appeal is preferred by the appellant/accused against the judgment of the learned Fast Track Mahila Court, Uthagamandalam in S.C.No.5 of 2016 dated 24.10.2016, wherein the learned Judge convicted the appellant/accused for the offences under section 363 of IPC an section 9 of the prevention of Child Marriage Act and section 5(L) r/w section 6 of Protection of children from sexual offences act 2012 and sentence him one year rigorous imprisonment and fine of Rs.5,000/- in default to undergo 3 months simple imprisonment under section 363 of IPC; 10 years rigorous imprisonment and fine of Rs.5,000/- in default to undergo one year simple imprisonment for the offence under

section 9 of the prevention of Child marriage act and section 5 (1) r/w 6 of the protection of children from sexual offences Act 2012.

2. Brief case of the appellant /accused is that:

The prosecution case is that on 9.2.2015 at 7.30 p.m. the appellant/accused herein induced and abducted the minor Kasthuri (PW6) to Mariyamman temple and tied a Thali and illegally confined her in his sister's house and sexually assaulted the minor. PW1, the mother of PW 6 preferred complaint on 12.10.2015 and the same was registered in Crime No.699 of 2015 on the file of the B1 Police Station, Uthagamandalam. The printed FIR is Exhibit-P3 and the complaint is Exhibit-P1. PW14, Inspector of Police took over the investigation and forwarded PW6 to the PW10 Doctor and recorded her statement. PW10 Doctor, who examined PW6, issued the accident register Exhibit P6 and opined that there is no external and internal injuries and hymen not intact. The vaginal smears were taken and sent for chemical examination through Exhibit-P7. PW14 produced PW6 before the Judicial Magistrate and recorded her 164 statement which is marked as Exhibit P4 and sent to the house of PW3. PW13 Doctor opined in Exhibit P12 that the victim would be within 15 to 17 years. PW14 arrested the appellant/accused and produced before the doctor PW 10 for examining his potent. The doctor issued his opinion in Exhibit P10 opined that the appellant/accused is not impotent. PW 14 on his further investigation examined the witnesses and the relatives of the PW6 namely PW4, PW7, PW8, PW9 and recorded their statements. The investigation officer inspected the house of PW6 and drawn observation mahazar and rough sketch Exhibit P5 and P6 before the mahazar witnesses PW4 and PW7. On completing the investigation, PW 14 filed the final report against the appellant /accused under section 363 of IPC, section 9 of the prevention of Child Marriage Act and under section 5(1) r/w section 6 under POSCO Act.

3. During the trial, the prosecution examined PWs 1 to 14 and marked Exhibits-P1 to P18. No witness examined on the side of the accused.

4. On completion of the trial, the learned Judge, Fast Track Mahila Court, Uthagamandalam convicted the accused under section 363 of IPC and section 9 of the prevention of Child Marriage Act and section 5(L) r/w section 6 of Protection of children from sexual offences act 2012 and sentenced him one year rigorous imprisonment and fine of Rs.5,000/- in default to undergo 3

months simple imprisonment under section 363 of IPC; 10 years rigorous imprisonment and fine of Rs.5000/- in default to undergo one year simple imprisonment for the offence under section 9 of the prevention of Child marriage act and section 5 (1) r/w 6 of the protection of children from sexual offences Act 2012. Aggrieved over the conviction, the appellant/accused preferred this criminal appeal.

5.The learned counsel for the appellant/accused submits that the learned trial Judge failed to note that PW1 mother of the victim girl and PW4 maternal aunt of victim girl turned hostile, further PW1 and PW4 has not deposed anything about the appellant/accused.

6.The learned counsel for the appellant/accused submits that the learned trial judge failed to note that section 366 of IPC will not attract since the victim girl voluntarily eloped with the appellant/accused.

7.The learned counsel for the appellant/accused submits that the learned trial judge imposed harsher punishment and fine of Rs.5,000/- which is illegal and unwarranted.

8.The learned counsel for the appellant/accused submits that the learned trial Judge failed to note that the PW6 herself deposed in her cross examination that as per the Police instruction she has given her statement and voluntarily went along with the appellant/accused.

9.The learned counsel for the respondent vehemently opposed the submissions made on behalf of the appellant and supported the findings of the trial Court.

10.I have given my careful consideration to the respective submission made by the learned counsel for the parties.

11.In this case, the victim girl PW6 deposed in her evidence that as per the inducement and threat made by her father and police, she deposed false statement against the appellant/accused. Further PW6 in her cross examination categorically admitted that the entire episode was tutored by her father and the marriage between her and the appellant was held only with the consent of her parents and other prosecution witnesses who were arrayed in this case.

12.It is pertinent to note that the prosecution maintained their case firstly under section 366 (A) and later after appreciating the statements made by the witnesses, the learned trial Court framed charges against the appellant/accused under section 363 of IPC and section 9 of the prevention of Child marriage act and section 5(1) r/w 6 of the protection of children from sexual offences Act 2012. But the entire witnesses deposed in this case withdraw their earlier statements and made contra statement against the prosecution. PW1, the mother of the PW6 and PW4, the maternal aunt of the victim turned hostile and deposed against the case of the prosecution. Further PWs-1 and 4 has not deposed anything about the appellant/accused as alleged by the prosecution.

13.In the result:

(a) This criminal appeal is allowed and thereby the conviction and sentence imposed on the appellant by the learned Fast Track Mahila Court, Uthagamandalam in S.C.No.5 of 2016 dated 24.10.2016 is set aside;

(b) The appellant/accused is acquitted from all the charges and the fine amount if any paid by the appellant/accused shall be refunded by the trial Court;

(c) The bail bond if any executed by the appellant/accused is stands cancelled.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

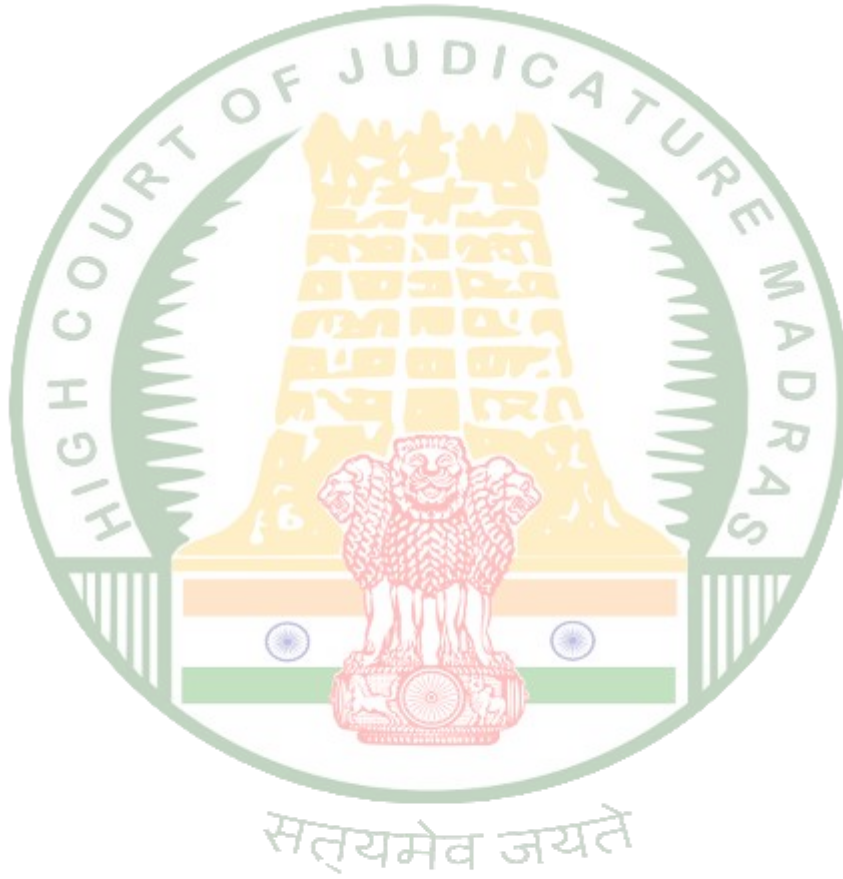
1. The Judge, Fast Track Mahila Court,
Uthakamandalam.
2. The Suprintendent,
Central Prison, Coimbatore.

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3. The Public Prosecutor,
High Court, Madras.
4. The Inspector of Police,
Rural B1 Police Station, Uthagamandalam.

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