

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.153 of 2019 and

Crl.M.P.No.4154 of 2019

Vignesh

... Appellant/Accused

Vs

State by

The Inspector of Police,
Pappireddipatti Police Station,
Pappireddipatti,
Dharmapuri District.

Cr.No.144 of 2016

... Respondent/Claimant

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, to set aside the order passed in Spl.S.C.No.29 of 2017, dated 30.01.2019 on the file of the Fast Track Mahila Court, Dharmapuri, Dharmapuri District.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.R.RAvichandran

Government Advocate (Criminal side)

O R D E R

This Criminal Appeal has been filed seeking to set aside the order passed in Spl.S.C.No.29 of 2017, dated 30.01.2019 on the file of the Fast Track Mahila Court, Dharmapuri.

2. The case of the prosecution is that the age of the victim girl is 16 years and she was born on 18.05.2000. Three years before, on 20.04.2016, while the victim girl was studying in XI standard, the appellant took her to Erode without her will and there he had sexual intercourse with her. After investigation, charge sheet has been filed by the Inspector of Police, against the accused for offence under Section 366(A), 376 and Section 5L r/w 6 of POCSO Act.

3. After completion of legal procedural formalities, charges were framed for offence under Section 366(A), 376 and Section 5L r/w 6 of POCSO Act. In order to prove the case of the prosecution, before the trial Court, they have examined P.W.1 to P.W.13 and have marked Ex.P1 to Ex.P16.

No material object was produced. After completing the prosecution evidence when the incriminating materials culled out from the prosecution witnesses were put before the appellant/accused he denied as false evidence. The Sessions Court, after completing the trial and hearing the arguments and considering the materials, found the appellant/accused guilty and convicted him for offence under Section 363 and sentenced him to undergo 3 years rigorous imprisonment and to pay a fine of Rs.1,000/- in default, to undergo 3 months simple imprisonment. Aggrieved by the judgment passed by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri. Since, the victim herself has admitted that she attained the majority and she got married the appellant. Therefore, the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, did not award any compensation for victim. Dated 30.01.2019, the appellant/accused has preferred the present Criminal Appeal before this Court.

4. The learned counsel for the appellant would argue that subsequent to the offence and also during the trial, the accused has married the victim girl and they are living together. All the witnesses have turned hostile and the prosecution has failed to establish the case as projected by the prosecution and the charges framed against the appellant were not proved. Though, the learned Magistrate, Fast Track Mahila Court, Dharmapuri, acquitted the appellant for the offence under Sections 376, 366(A) and 5Lr/w 6 of POCSO Act, and wrongly convicted the appellant under Section 363. Therefore it warrants interference.

5. The learned Government Advocate (Criminal Side) would strongly oppose the contention raised by the learned counsel for the appellant. The prosecution has proved the guilt of the accused for charge under Section 376, 366(A) and 5Lr/w 6 of POCSO Act. Therefore, the learned Government Advocate prays for dismissing the appeal.

6. Heard the learned counsel appearing for the appellant and the learned Government Advocate (Crl.Side) appearing for the respondent police and perused the materials placed on record.

7. Considering the facts and circumstances of the case, as against the acquittal of the appellant for the offence under Sections 376, 366(A) and 5L r/w 6 of POCSO Act. Neither the prosecution nor the victim have filed any appeal. Only the accused alone filed the appeal against the conviction for the offence under Section 363. This Court cannot go beyond the scope of the appeal. On reading of the

evidence, the victim girl stand hostile but the she gave a statement under Section 164 of Cr.P.C., before the Judicial Magistrate the same cannot be ignored and also the prosecution has produced a letter given by the victim and the same was marked as Ex.P14 and also the accused has given a confession statement.

8. This court finds that the accused has committed the offence, at the time of the offence the victim girl was aged below 18 years. Subsequently, the accused married the victim girl. Since because the victim has turned hostile during examination before the Court an witness the earlier statement given before the learned Magistrate under Section 164 of Cr.P.C., cannot be simply ignored. This Court does not accept the contention raised by the learned counsel for the appellant. Since, the appellate Court is a final court and fact finding it can re-appreciate the evidence and come to the conclusion independently. Merely because the accused married victim girl subsequent to the occurrence. The offence cannot be taken away and he cannot escape from the clutches of law. The judgment of conviction and sentence passed by the learned Sessions Judge is confirmed.

9. For the above said reasons, this Court finds that the present Criminal Appeal has absolutely no merits and therefore the same is dismissed. Consequently, the connected miscellaneous petition is also closed. Trial Court is directed to take effective steps to secure the appellant to undergo remaining period of sentence.

Sd/-

Assistant Registrar(CJ Conf)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judge, Fast Track Mahila Court, Dharmapuri, Dharmapuri District.
- 2.The Inspector of Police, Pappireddipatti Police Station, Pappireddipatti, Dharmapuri District.
- 3.The Public Prosecutor, High Court of Madras.

CrI.A.No.153 of 2019
and

CrI.M.P.No.4154 of 2019

A.SK(16/10/2019)