



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 26.06.2019

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.A.No.308 of 2019

A.Rajkumar

... Appellant / Accused

Vs.

State Rep. by

The Inspector of Police,
Namakkal Police Station,
Namakkal District.

(Crime No.394 of 2016)

... Respondent / Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. to set aside the order of conviction passed by the learned Judge in Special C.C.No.41 of 2016 dated 7.2.2019 passed by the Sessions (Fast Track Mahila) Judge, Namakkal.

For Petitioner

: Mr.K.A.Mariappan

For Respondent

: Mrs.P.Krithika Kamal

Government Advocate (Crl side)

O R D E R

This criminal appeal has been filed to set aside the order of conviction passed by the learned Judge in Special C.C.No.41 of 2016 dated 7.2.2019 passed by the Sessions (Fast Track Mahila) Judge, Namakkal.

2. It is the case of the prosecution that the appellant, aged 22 years, was in love with the victim girl, who was around 17 years old, her date of birth being 22.06.1999, during May 2016. It is further alleged that he kidnapped her and deflowered her on 05.06.2016 and later got married to her on 06.06.2016. On the complaint, Ex.P1 lodged by Latha P.W.1, mother of the victim, the police registered a case in Crime No.394 of 2016 on 06.06.2016 under Section 366(A) IPC against the appellant. The police arrested the appellant and produced the victim girl before the learned Judicial Magistrate II, Namakkal for recording her statement under Section 164 Cr.P.C. Medical examination of the appellant and the victim girl was conducted and the reports were obtained. After completing the



investigation, the police filed a final report in Special C.C.No.41 of 2016 before the Mahila Court, Namakkal, for the offences under Section 3 read with 4 of POSCO Act, 366 (A) IPC and Section 9 of the Prevention of Child Marriage Act. When questioned, the appellant pleaded not guilty.

3. To prove the case, the prosecution examined 18 witnesses and marked 16 exhibits. When the appellant was questioned under Section 313 Cr.P.C., he denied the allegations.

4. After considering the evidence on record, the trial Court by judgment dated 07.02.2019 in Special C.C.No.41 of 2016, has convicted and sentenced the appellant as under:

Provision of law under which convicted	Sentence
366(A) IPC	Ten years RI along with fine of Rs.1,000/- in default of payment of fine, four more months RI.
3 r/w 4 of POSCO Act 2012	Ten years RI along with fine of Rs.1,000/- in default of payment of fine, four more months RI.
9 of PCM Act	one year RI

The sentences were ordered to run concurrently. Challenging the conviction and sentence, the appellant is before this Court.

5. Heard Mr.K.A.Mariappan, learned counsel for the appellant and Mrs.P.Krithika Kamal, learned Government Advocate (Criminal side) appearing for the respondent.

6. When the matter was taken up for hearing, the victim girl X and her parents appeared before this Court and stated that the appellant got married with the victim girl on 03.07.2017 and thereafter, a male child was born to them on 16.01.2018. The appellant is in prison undergoing sentence and on his behalf, his parents viz., Anbalagan, father and Vairamani, mother are also present.

7. The victim girl in her affidavit dated 26.06.2016, has stated as follows:

"1. I am the victim in the above case and I am well acquainted with the facts of the case and I submit as follows:



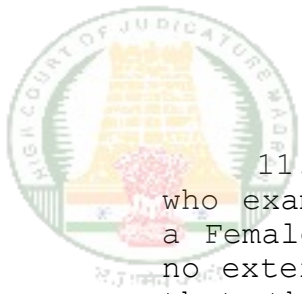
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2. I state that I love married my husband Mr.A.Rajkumar and my mother, who is the defacto complainant preferred the above case and I was examined as PW2 in the above case. It is submitted that after recording evidence but before passing final order in the case in Spl.C.C. No.41/2016, both the family members viz. my parents as well as the parents of my husband compromised and accordingly, with the consent of elders of both the family, the marriage of myself with my husband Mr.A.Rajkumar was solemnized on 3.7.2017 at Arulmighu Balathandayuda Swamy Thirukoil, Mohanur Road, Namakkal according to Hindu rites and customs."

8. The parents of the appellant, the parents of the victim girl and the victim girl filed individual affidavits dated 26.06.2019, wherein they stated that the marriage of the appellant with the victim girl was solemnized on 03.07.2017 at Arulmighu Balathandauda Swamy temple, Namakkal and a son was born to them thereafter. Therefore, they pleaded for releasing the appellant from incarceration.

9. In the opinion of this Court, an offence under the POSCO Act is not compoundable. Therefore, the appellant cannot be released on the ground that he had got married to the victim girl and has a child through her. Hence, this Court proceeded to decide the case on merits.

10. As stated above, the police have recorded the 164 Cr.P.C. statement of the victim girl before the learned Judicial Magistrate No.2, Namakkal and the same has been marked as Ex.P14. In the said statement, she has clearly stated that she is a resident of Kumaragoundanur and living with her parents, who are daily wage earners; she has two brothers, viz., Jeeva and Praveen; she is studying diploma in EEE; she did not have money to pay the fees and so she went to the house of her friend Srividhya and stayed there; she approached her friend Srividhya's father for paying college fees; this was misconstrued by her parents as if she was eloped with the appellant and hurriedly gave a complaint against the appellant. This Court is aware of the fact that a statement under Section 164 Cr.P.C. cannot be treated as substantive evidence. Before the trial Court also, she was confronted with Section 164 Cr.P.C. as required under Section 157 of the Indian Evidence Act. She admitted that she had gone to Srividhya's house for arranging college fees and that her parents had given a false complaint against the appellant.



11. The victim girl was examined by Dr.Sasirekha, P.W.16, who examined as well as in the report on Medical Examination of a Female Victim of Sex Offence, Ex.P9, has stated that there is no external injuries in the genetalia and there is a possibility that the victim girl would have had sexual intercourse, since the vagina admits one finger and the hymen is not intact. Thus, there is no scientific evidence like presence of sperms, etc., taken from the vagina to arrive at the conclusion that the appellant had sex with the victim girl. The evidence of Dr.Sasirekha, is only substantive in nature and not certain that she was subjected to penetrate to sexual assault. In such a view of the matter, this Criminal Appeal deserves to be allowed and the conviction and sentence imposed on the appellant by the Court below is set aside. The appellant shall be released from the custody forthwith, if not required in any other case.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Namakkal Police Station,
Namakkal District.
2. The Sessions (Fast Track Mahila) Judge,
Namakkal.
3. The Superintendent,
Central Prison,
Coimbatore.
4. The Judicial Magistrate No.III,
Namakkal.
5. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.K.A.Mariappan, Advocate, S.R.No.53390

CRL.A.NO.308 OF 2019

AD(CO)
SSM(02/08/2019) .