



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.218 of 2019

Boopathy

... Appellant

.Vs.

State rep. by  
The Inspector of Police,  
Namagiripet Police Station,  
Namagiripet, Rasipuram Taluk,  
Namakkal District.

... Respondent

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure to set aside the judgment and sentence dated 29.08.2018 passed in Spl.C.C.No.3 of 2017 by the Sessions Judge (Fast Track Mahila Court) Namakkal by allowing the Criminal Appeal.

For Appellant : Mr.P.Rathanavel

Legal Aid Counsel  
for the appellant : Ms.Shaik Mehrunisa

For Respondent : Ms.T.P.Savitha  
Government Advocate (Crl.Side)

#### J U D G M E N T

This Criminal Appeal has been filed against the Judgment dated 29.08.2018 passed in Spl.C.C.No.3 of 2017 by the learned Sessions Judge (Fast Track Mahila Court) Namakkal.

2.The case of the prosecution is that the accused/appellant is a married man having two children. The victim girl was aged about 16 years at the time of occurrence. After completion of +2 examinations, the victim girl used to go for construction work along with her mother, where the appellant was working as a Maistry and the appellant used to contact the victim girl and proposed her to marry him, but, she has refused. However, the appellant regularly followed her and persisted his request for marriage. On 16.08.2016 at about 4.30 p.m., when the victim girl was standing at the bus stop, the appellant for the purpose of marriage enticed and kidnapped her from the lawful guardianship of natural guardians and took her in a motor cycle to Velampalayam and



kept her in a rented house owned by one Murugesan (P.W.7). Thereafter, on 17.08.2016 the appellant married the victim girl and thereby, the accused has committed sexual intercourse with the victim girl from 17.08.2016 to 31.10.2016. Hence, a complaint has been lodged against the appellant.

3.The respondent police registered a case in Crime No.322 of 2016 for 'girl missing'. After investigation, the respondent police filed a charge sheet before the learned Sessions Judge (Fast Track Mahila Court), Namakkal and the same was taken on file in Spl.C.C.No.3 of 2017. Since the offence is against a girl child, it falls under the definition of 2(1)(d) of POCSO Act.

4.After completing the formalities, the trial Court framed the charges against the appellant for the offence under Section 366(A) IPC, Section 9 of Prohibition of Child Marriage Act and Section 5(1) r/w 6 of The Protection of Children from Sexual Offences Act, 2012 [hereafter referred to as 'POCSO Act' for the sake of convenience].

5.In order to prove the case of the prosecution before the trial Court, on the side of the prosecution as many as 16 witnesses were examined as P.W.1 to P.W.16 and also 16 documents were marked as Exs.P1 to P16, besides that two material objects were marked as M.O.1 and M.O.2. After completion of the prosecution side evidence, the incriminating circumstances culled out from the evidence of the prosecution witnesses were put to the appellant/accused by examining the appellant/accused under Section 313 of Cr.P.C and he has denied the same as false. On the side of the defence, no oral and documentary evidence was produced.

6.The Court below, after hearing the arguments advanced on either side and also considering the materials available on record, found that the accused/appellant is guilty for the following offences and imposed sentences as follows :

(i) For the offence under Section 366 (A) IPC, the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for a period of three months ;

(ii) For the offence under Section 5(1) r/w 6 of POCSO Act, the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for a period of three months;

(iii) For the offence under Section 9 of Prohibition of Child Marriage Act, the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of one year and the sentences would run concurrently.



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9.1 The learned Government Advocate (CrI.Side) would submit that soon after the occurrence, the father of the victim girl (P.W.1) lodged a complaint before the respondent police for 'girl missing'. After investigation, the victim girl was secured and handed over to her parents, since she was a minor. During the investigation, the victim girl was produced before the learned Magistrate for recording statement under Section 164 Cr.P.C and she has clearly narrated the said incident, which was marked as Ex.P14. Thereafter, she was produced before the Doctor (P.W.10) for clinical examination and the Doctor has opined that there was no external injuries



on the body of the victim girl and her hymen was not intact and she was subjected to sexual intercourse and also gave a medical report, which was marked as Ex.P7. The evidence of the victim girl (P.W.2), Doctor (P.W.10) and medical report (Ex.P7) clearly show that the victim girl was subjected to penetrative sexual assault. Further, the prosecution has examined the Head Master of the school (P.W.9), in which the victim girl was studied and he gave a letter to the Inspector of Police annexed with the Transfer Certificate, which was marked as Ex.P6, clearly shows that the date of birth of the victim girl is 19.07.1999. Whereas, the date of occurrence is 16.08.2016, therefore, at the time of occurrence, the age of the victim girl is 17 years. Since she is a minor and a child under the definition of 2(1)(d) of POCSO Act.

9.2 The learned Government Advocate (Crl.Side) would further submit that without consent of the natural/lawful guardians of the victim girl, the appellant forcibly taken the custody of the victim girl and married her and had sexual intercourse with her. Since the age of the victim girl is 17 years, the appellant has committed the offence under Section 366(A) IPC, Section 9 of Prohibition of Child Marriage Act and also Section 5(1) r/w 6 of POCSO Act. Hence, the prosecution has established its case beyond all reasonable doubt. The trial Court has rightly appreciated the entire evidence and convicted the appellant for the charged offences and hence, there is no merit in this appeal and the same is liable to be dismissed.

10.Heard the learned counsel for the appellant and the learned Government Advocate (Crl.Side) for the respondent and also perused the materials available on record.

11.This Court, being an Appellate Court, is a fact finding Court, which has to necessarily re-appreciate the entire evidence and give an independent finding.

12.Initially, the respondent police registered a case under the caption for 'girl missing'. After investigation, they came to the conclusion that the victim girl's mother was working as a sithal, in which the appellant was working as a Maistry, as such, when the victim girl goes to the said place, the appellant used to contact her. On 16.08.2016, when the parents of the victim girl were not in the house, the appellant convinced the victim girl and took away her from the custody of her lawful guardians without their consent and tied Thali. Thereafter, the appellant and the victim girl stayed in a rented house for two months and she was subjected to sexual intercourse. Subsequently, the appellant took the victim girl to his house, since the appellant is a married man, having two children, at that time, the respondent police secured the victim girl and arrested the appellant and filed a charge sheet against the appellant.



13. During the investigation, after securing, the victim girl was produced before the Doctor P.W.10 on 31.10.2016. She has clearly deposed that the victim girl was subjected to sexual intercourse and her hymen was not intact and she has also stated that the age of the victim girl was only 17 years. On 24.11.2016 the victim girl was produced before the learned Judicial Magistrate for recording statement under Section 164 Cr.P.C. (Ex.P14) and before him she has clearly narrated the said incident. On a careful reading of the statement of the victim girl, it reveals that on the date of occurrence, when she was alone in her house, the appellant took her and tied Thali and they had stayed two months in the house of P.W.7, who is the owner of the house and had sexual intercourse repeatedly with her for several times. Thereafter, he took the victim to his house, when the appellant's first wife objected, later he informed to her parents and the respondent police secured the victim girl and arrested the appellant. During the trial, the victim girl was examined as P.W.2 and she has clearly deposed the said incident and she also stated before the learned Judicial Magistrate, who recorded her statement under Section 164 Cr.P.C.

14. The prosecution examined the father of the victim girl as P.W.1 and he has spoken about the complaint lodged before the respondent police. P.W.3 mother of the victim girl has also spoken about relationship between the appellant and the victim girl and she has further deposed that at the time of getting admission in the school, she gave approximate age of the child and she does not know the original date of birth of the victim girl. However, the Doctor (P.W.10) has clearly stated that the age of the victim girl was 17 years. Therefore, there was no contradictory evidence produced by the appellant that the victim girl has completed 18 years. In the absence of any other contradictory evidence, Ex.P6 Transfer Certificate produced by the prosecution is taken into consideration and the medical report (Ex.P7) also supported the case of the prosecution.

15. In the present case, the appellant has not contrarily proved the entries made in the public documents Ex.P6-Transfer Certificate and the Medical report of the victim girl Ex.P7 as false. Further to strengthen the case of the prosecution, P.W.10 the Doctor also supported the case of the prosecution that the victim girl has not completed 18 years. P.W.9 the Head Master of the School in which the victim girl has studied stated that as per the entries made in the School records, the date of the birth of the victim girl is 19.07.1999 and he has given the Transfer Certificate (Ex.P6) of the victim girl.

16. Under these circumstances, this Court comes to the conclusion that the prosecution has proved its case that the victim girl has not completed the age of 18 years, since she is a child under the definition of Section 2(1) (d) of POCSO Act. As per the prosecution, the appellant kidnapped the



victim girl from the lawful custody of her parents without their consent and married her and she was subjected to sexual intercourse by the appellant for two months and hence, Section 366 (A) IPC would attract against the appellant.

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17.As far as Section 9 of Prohibition of Child Marriage Act is concerned, P.W.2 the victim girl has clearly stated that the appellant took her to the temple and tied Thali and subsequently, they stayed in the house of P.W.7 for two months and she was subjected to sexual intercourse by the appellant. P.W.6 has clearly deposed that on 31.10.2016, the respondent police secured the victim girl and arrested the appellant at Namagiripettai Bus Stop and at that time, the victim girl was wearing yellow thread and the same was recovered by the Investigating Officer, which was marked as M.O.1. From the evidence of P.W.2, P.W.6, the prosecution has proved its case that the appellant married the victim girl, since the age of the victim girl is below 18 years and hence, the commission of offence punishable under Section 9 Prohibition of Child Marriage Act is attracted.

18.As far as Section 5(1) r/w 6 of POCSO Act is concerned, the victim girl was not completed the age of 18 years, the appellant is a married man and got two children, the appellant forcibly took the victim girl from the lawful custody of her parents without their consent and tied Thali and took her to the house of P.W.7 and had committed repeated sexual intercourse on her, therefore, the appellant committed the above said offence.

19.Based on the oral and documentary evidence, the prosecution has proved its case that the appellant has committed the charged offences as stated above and the trial Court has rightly appreciated the entire evidence and convicted and sentenced the appellant. This Court also independently going through the entire evidence finds that the appellant has committed the charged offence and therefore, there is no need to interfere with the judgment of the trial Court.

20.Since the appellant is a married man and having two children and the victim girl is below the age of 18 years, there is no mitigating circumstances to reduce the period of sentence imposed by the trial Court. The conviction and sentences passed in Spl.C.C.No.3 of 2017 by the Sessions Judge (Fast Track Mahila Court) Namakkal are confirmed.

21.In fine, this Criminal Appeal deserves to be dismissed and accordingly dismissed. Consequently, connected miscellaneous petition is closed. If the appellant/accused is not in duress, the trial Court is directed to take appropriate steps to secure the presence of the appellant to undergo the remaining period of sentence.



22.The Legal Aid counsel appointed by this Court is entitled to legal fees as per Rules.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sessions Judge  
Fast Track Mahila Court,  
Namakkal.
- 2.The Superintendent,  
Central Prison,  
Coimbatore Town.
- 3.The Superintendent,  
Central prison,  
Salem.
- 4.The Inspector of Police,  
Namagiripet Police Station,  
Namagiripet,Rasipuram Taluk,  
Namakkal District.
- 5.The Chairman,  
POCSO Committee,  
High Court, Madras.
- 6.The Public Prosecutor,  
High Court, Madras.
- 7.The Deputy Registrar | with a direction to send back the  
(Criminal Section), | original records, if any, to the  
High Court, Madras. | trial Court

CRL.A.No.218 of 2019

UM(CO)  
GN(16/07/2021)