



BAIL SLIP in CrI.A.No.324/19

Munivel, S/o, Raman accused in Spl.C.C.No.25 of 2017 on the file of the Sessions Judge, Mahalir Neethi Mandram (Fast Track Mahila Court) Dharmapuri was enlarged on bail in and by the order of this court vide order dated 28/06/2019 in CrI.M.P.No.7324 of 2019 in CrI.A.No.324 of 2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CrI.A.No.324 of 2019

Munivel

..Appellant/Accused

-Vs-

The State represented by
The Inspector of Police,
Thoppur Police Station,
Dharmapuri District.
Crime No.351 of 2016

..Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, against the Judgment and conviction passed by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court) Dharmapuri dated 14.02.2019 in Spl.C.C.No.25 of 2017.

(i) for the offence under sections 366(A) IPC sentenced to undergo 3 years rigorous imprisonment and pay fine of Rs.1000/- in default to undergo 3 months simple imprisonment and for section 10 of Prohibition of Child Marriage Act 2006 sentenced to undergo 2 years rigorous imprisonment and pay fine of Rs.1,000/- in default to undergo 3 months simple imprisonment and 17 r/w.16 of the Protection of Children Sexual Offences Act 2012 and 5(1) r/w. 6 of Protection of Children from Sexual Offences Act 2012 (POCSO ACT-2012). The appellant was sentenced to undergo 10 years of rigorous imprisonment and pay fine of Rs.1,000/- in default to undergo 3 months simple imprisonment. The above sentences are ordered to run concurrently by the accused/appellant. Further the learned trial Court ordered



compensation of Rs.1,00,000/- to the victim child, the same shall be paid within one month, in default, the victim's guardian can take steps under section 7 (2) of the Protection of Children Sexual Offences Act 2012.

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For Appellants : Mr.L.Baskaran

For Respondent : Mr.R.Surya Prakash
Government Advocate (Crl.Side)

JUDGMENT

This Criminal Appeal is filed against the Judgment of conviction and sentence passed by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court) Dharmapuri dated 14.02.2019 in Spl.C.C.No.25 of 2017.

2. The respondent police registered the case against the appellant in Crime No.351/2016 for the offence under Section 366A of IPC and Section 11 of Prohibition of Child Marriage Act. After investigation, police laid the charge sheet before the Special Judge, Mahila Court, Dharmapuri. Since the offence is against women, especially child, it falls within the meaning of POCSO Act, the learned Special Judge taken the charge sheet on file in Spl.S.C.No.25 of 2017 and after completing formalities, framed the charge for the offence u/s.366A IPC, Section 10 of Prohibition of Child Marriage Act and Section 17 r/w.16 of POCSO Act.

3. After framing charges, during the trial, in order to prove the case of the prosecution, on the side of the prosecution, as many as 20 witnesses were examined as P.Ws.1 to 20, 19 documents were marked as Ex.P.1 to Ex.P.19. But no material object was exhibited. After completing the prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the accused. He denied it as false and pleaded not guilty. No oral or documentary evidence is produced by the defence.

4. After completing trial and hearing the arguments advanced on either side, the learned Special Judge has come to the conclusion that the appellant has committed the charged offences and convicted him for the offence u/s.366A IPC and sentenced him to undergo Rigorous Imprisonment for three years and pay a fine of Rs.1000/-, in default, to undergo 3 months Simple Imprisonment and also convicted u/s.10 of Prohibition of Child Marriage Act and sentenced him to undergo two years R.I., and pay a fine of Rs.1000/-, in default 3 months Simple Imprisonment and also convicted u/s.17 r/w.16 of POCSO Act and sentenced him to undergo 10 years Rigorous imprisonment and to



pay fine of Rs.1000/-, in default to undergo three months simple imprisonment. Challenging the said judgment of conviction and sentence, the accused has filed the present appeal.

5. The learned counsel for the appellant would submit that the appellant is no way connected with the offence. Actually the victim girl had fall on love with Tamilarasan a juvenile. The victim girl eloped with the said Tamilarasan and this appellant is no way connected with the offence. Actually, the parents of the victim girl proposed to give the elder sister of the victim girl to the said juvenile. However, the juvenile fell in love with the victim. No eye witnesses have been examined in this case to show that the appellant kidnapped the victim girl and made arrangement for marriage between Tamilarasan and the victim girl. There is no documentary evidence to show that he arranged marriage between Tamilarasan and the victim girl and there is no evidence to show that he arranged a house to make them to stay separately. There is no evidence to show that the victim girl was subjected to sexual intercourse. Since the prosecution failed to prove its case and to link the role played by the appellant, the trial court failed to consider that only Tamilarasan and the victim girl are the close relatives from the childhood, both fell in love with each other and the victim girl eloped with Tamilarasan. Subsequently, they got married and living together happily. However, the appellant has not committed any offence either under Section 376 A IPC or under 10 of Prohibition of Child Marriage Act or under Section 17 r/w.16 of POCSO Act. The trial court failed to appreciate the evidence and simply convicted only based on the evidence of the victim. Accordingly, there is no corroboration. Therefore, it is unsafe to convict the appellant without any corroborative evidence. In this case, there is no evidence to connect the appellant for the said offences. He has not committed any offence.

6. The learned Government Advocate [Criminal Side] would submit that victim is aged about 12 years and Tamilarasan is aged about 17 years and the appellant only induced the victim girl, took the victim girl from the custody of the natural guardian without their consent, he arranged marriage for two juveniles and also supported Tamilarasan to have a sexual intercourse and thus the appellant abetted the crime u/s.17 r/w.16 of POCSO Act. Since the age of the victim and Tamilarasan are below 18 and 21 years respectively, the appellant who has taken away the custody of the victim girl from her parents without their consent, has committed the offence punishable u/s.10 of The Prohibition of Child Marriage Act. The doctor examined the victim girl and opined that the victim girl was subjected to sexual intercourse and her hymen was not intact and the victim girl's age was only 12 years. Therefore, the prosecution has proved the case beyond reasonable doubt. The

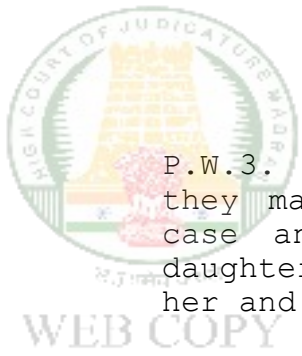


medical examination of the victim girl as well as Tamilarasan proved that the victim girl is only aged 12 years and Tamilarasaran is aged about 17 years and the appellant took both victim and Tamilarasan and arranged for their marriage and made them to stay separately. Therefore, he has committed the offences under Section 366A IPC and Sections 16 read with 17 of POCSO Act and the prosecution has proved its case beyond all reasonable doubt. There is no merit in the appeal and it has to be dismissed.

7. Heard and perused the records.

8. The case of the prosecution is that the appellant induced the victim girl, took the victim girl from the custody of the natural as well as lawful guardian and without their consent, arranged marriage for two juveniles and also supported Tamalarasan who is a juvenile to have sexual intercourse with the victim girl who was aged 12 years and thus case has been registered against the appellant for the offence u/s.366 IPC and u/s.10 of Prohibition of Child Marriage Act and u/s.17 read with 16 of POCSO Act. After investigation, police laid the charge sheet before the Special Judge, Mahila Court, Dharmapuri. The learned Special Judge taken the case on file in Spl.S.C.No.25 of 2017 and after framing charges against the appellant/accused, after examining prosecution side witnesses, incriminating circumstances culled from the evidence of the prosecution witnesses were put before the appellant who denied it as false and pleaded not guilty. On the side of defence, no oral and documentary evidence was marked.

9. During the trial, in order to prove the case of the prosecution, the victim girl was examined as P.W.2. She has clearly narrated the events. Even though she has stated that she knows Tamilarasan and he is a close relative, only the appellant took her from the house of her parents and arranged for marriage with Tamilarasan. Subsequently appellant made arrangement for residence and thereafter Tamilarasan had sexual intercourse with her. She was produced before the doctor. Doctor also examined the victim girl. The doctor who was examined as P.W.10, in her evidence has clearly stated that she examined the victim girl and her hymen was not intact and subjected to penetrative sexual assault. The parents of the victim girl was examined as P.W.1 and P.W.3. P.W.1 has clearly deposed that the victim girl was a minor and after coming to know the occurrence, she has given the complaint and after that police secured the victim girl and Tamilarasan and victim girl informed to her that the appellant only took the victim girl and thereafter she was married to Tamilarasan. The father of the victim girl was also examined as



P.W.3. He has also stated that the victim girl was a minor and they made complaint to the Police. The Police registered the case and the victim girl was produced before Home and her daughter was enquired. She has narrated that the appellant took her and she was married to Tamilarasan.

10. From the evidence of the victim girl, it is very clear that the victim girl was produced before the Judicial Magistrate for recording her statement u/s.164 Cr.P.C. A reading of the statement recorded u/s.164 Cr.P.C., which was marked as Ex.P.2, would go to show that the victim girl has clearly stated in her statement that the appellant took the victim girl from the lawful guardian without their consent and made Tamilarasan to marry her. Subsequently, the Police secured them and father of victim girl gave complaint and she was produced before the doctor. The doctor examined the victim girl.

11. Further in order to prove the case of the prosecution and that the victim girl was minor at the time of occurrence, age certificate of the victim girl and transfer certificate of the victim girl was marked as Ex.P.7 and Ex.P.8 which clearly show that the date of birth of the victim girl is 17.06.2003. The date of occurrence is 05.11.2016. Therefore, at the time of occurrence, the victim girl was aged 12 years and Tamilarasan was a juvenile. Therefore, it is proved beyond reasonable doubt that the victim girl is a child under definition of Section 2(1) (d) of POCSO Act. From Ex.P.8 School Certificate of the victim girl, the prosecution has proved that victim girl was a minor aged 12 years at the time of occurrence.

12. Therefore, a reading of the evidence of P.Ws.1 to 3 and P.W.10 doctor one who examined the victim girl and issued certificates which were marked as Ex.P.6 and Ex.P.7 would clearly prove that the victim girl was aged 12 years and from the evidence of the victim girl, it is proved that the appellant took the victim girl from the lawful as well as natural guardian without their consent and therefore, he has committed offence u/s.366 IPC. After kidnapping the victim girl, he made arrangement to get her married to Tamilarasan and the evidence of the victim girl is that Tamilarasan had sexual intercourse with the victim and therefore the appellant knowing fully well that he kidnapped the victim girl, also induced the victim girl and also facilitated Tamilarasan to have sexual intercourse. Therefore, appellant committed offence u/s.366A IPC. As far as marriage is concerned, though the victim girl has stated that both got married, there is no proof for marriage and therefore, this court is of the view that the prosecution has not proved



the case in the manner known to law that the victim girl got married to Tamilarasan. Therefore, the offence said to have been committed by the appellant u/s.10 of the Prohibition of Child Marriage Act is not proved.

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13. As far as offence under Section 17 read with Section 16 of POCSO Act is concerned, the evidence of the victim girl has clearly proved that the appellant took away the victim girl from the lawful guardian of the victim girl without their consent and forcibly took the victim girl to Tamilarasan for penetrative sexual assault. Therefore, the offence falls under section 17 read with 16 of POCSO Act. Therefore, this court is of the view that the appellant has committed the offence under Section 366 A IPC and u/s.17 read with 16 of POCSO Act. However, this court has found that the prosecution has not proved its case for the offence u/s.10 of Prohibition of Child Marriage Act, beyond all reasonable doubt.

14. Though the learned counsel for the appellant has stated that the victim girl and Tamilarasan got married and Tamilarasan is living with the victim girl now, no evidence is produced to show that the age of the victim girl is 18 years and the age of the said Tamilarasan is 21 years at the time of their marriage. Therefore, this court is of the view that the prosecution has failed to establish the marriage. Therefore, the offence punishable u/s.10 of Prohibition of Child Marriage Act for which the appellant has been convicted and awarded sentence, is set aside.

15. The conviction and sentence passed under Sections 366 A IPC and under Section 17 read with 16 of POCSO Act is confirmed. The trial court is directed to take appropriate steps to secure the presence of the appellant to undergo the remaining period of sentence.

16. With the above modification, this Criminal Appeal is dismissed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

nvsri



To

1. The Sessions Judge,
Magalir Neethi Mandram
(Fast Track Mahila Court)
Dharmapuri
2. The Inspector of Police,
Thoppur Police Station,
Dharmapuri District.
3. The Chairman,
Hon'ble POSCO Committee,
High Court of Madras
4. The Superintendent,
Central Prison, Salem.
5. The Public Prosecutor,
High Court, Madras.
6. The Section Officer,
Criminal Section,
High Court, Madras

+1cc to Mr. L. Baskaran, Advocate, S.R.No.11680

Cr1.A.No.324 of 2019

SS(CO)
RV(15/07/2021)