

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.309 of 2019 and

Crl.M.P.No.14592 of 2019

Raman @ Ramar

.. Appellant

.Vs.

The State represented by,
Inspector of Police,
Mahendramangalam Police Station,
Dharmapuri,
Crime No.104/2017

.. Respondent

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure to set aside the conviction, sentence and compensation passed against the appellant in S.S.C.No.48 of 2017 dated 08.02.2019 on the file of the Sessions Judge, Fast Track Mahila Court, Dharmapuri and allow the Appeal and consequently acquit the appellant from all charges.

For Appellant : Mr.P.G.Perumal Pandian,
Legal Aid Counsel

For Respondent : Mr.R.Suryaprakash
Government Advocate

J U D G M E N T

This Criminal Appeal has been filed challenging the Judgment of conviction, sentence and compensation passed against the appellant in S.S.C.No.48 of 2017 dated 08.02.2019 on the file of the Sessions Judge, Fast Track Mahila Court, Dharmapuri.

2. The respondent police registered a case against the appellant in Crime No.104 of 2017 for the offences punishable under Sections 366(A) IPC, Sections 5(1) r/w. 6 of the Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO') Act and Sections 9 and 10 of the Prohibition of Child Marriage Act, 2006. After investigation, charge sheet was laid and taken on file in Spl.S.C.No.48 of 2017, by the Fast Track Mahila Court, Dharmapuri.

3. After completing the formalities, the learned Judge framed charges against the accused for the offence punishable under Sections 363 & 366 IPC, Section 9 and 10 of Prohibition of Child Marriage Act and Section 5 (1) r/w 6 of POCSO Act, 2012 and after trial, found the appellant guilty of the offences punishable under Section 363 of I.P.C., Section 9 of Prohibition of Child Marriage Act, 2006 and Section 3 r/w 4 of Protection of Children from Sexual Offences Act, 2012 and convicted and sentenced the appellant as under:

Sl.No	Conviction	Sentence
1	U/s. 363 I.P.C..	3 years R.I and fine of Rs.1,000/- in default to undergo S.I. for 3 months.
2	U/s.9 of Prohibition of Child Marriage Act, 2006	2 years R.I and fine of Rs.1,000/- in default to undergo S.I. for 3 months.
3	U/s.3 r/w 4 of POCSO Act, 2012	7 years R.I and fine of Rs.1,000/- in default to undergo S.I. for 3 months.

The above sentences were ordered to run concurrently. Aggrieved against the same, the appellant is before this Court by filing this Appeal.

2. The learned counsel for the appellant would submit that there is inordinate delay in lodging the complaint and the prosecution has not explained the reason for delay in lodging the complaint. He would further submit that Section 9 of Prevention of Child Marriage Act would not apply, as there is no reliable evidence against the accused, but the trial Court failed to consider the same. He would further submit that the victim voluntarily went along with the accused and therefore offence under Section 363 of I.P.C. would not apply. He would further submit that there are contradictions in the evidence of the victim as she has stated before the trial Court that the appellant married her and tied thali and also had sexual intercourse forcefully whereas in the statement recorded by the learned Judicial Magistrate under Section 164 Cr.P.C., the victim has not stated so. He would further submit that P.W.8-the Doctor who examined the victim girl has stated that there are no external injuries, though the hymen is not intact which may not be only due to sexual intercourse and therefore Section 3 r/w 4 of POCSO Act 2012 would not stand attracted. He would further submit that the learned Sessions Judge failed to appreciate the

evidence and based on presumption and surmises, convicted the accused.

3. The learned Government Advocate (Crl.side) would submit that at the time of occurrence the age of the victim was only 14 years and the appellant kept the victim girl under his custody for more than 10 days and also married her knowing fully well that she is a minor and had forcible intercourse with her. Subsequently the father of the victim girl lodged a complaint before the respondent police and thereafter the respondent police secured the victim girl. He would further submit that the victim girl was examined as P.W.1 and she has clearly stated that accused kidnapped her from the custody of her parents and made her to stay with him for 10 days and it is well settled proposition of law that once the minor girl was taken away or kidnapped by the accused, without the consent of the parents or legal guardian, Section 363 of I.P.C. would stand attracted and therefore the prosecution has established its case beyond reasonable doubt. He would further submit that the victim girl deposed that the accused married her by tying thali around her neck and at the time of marriage, the age of the victim girl was only 14 years and therefore the offence under Section 9 of Prohibition of Child Marriage Act would stand attracted. He would further submit that the victim girl in her evidence has stated that the appellant had forcible sexual intercourse with her and as per Ex.P12- Age certificate of the victim, it is clear that the victim girl was 14 years at the time of occurrence and therefore Section 3 r/w 4 of POCSO Act 2012 would stand attracted. He would further submit that the evidence of P.W.8-the Doctor who examined the victim girl has stated that the hymen was not intact, which corroborates with the evidence of the victim girl. He would further submit that the father of the victim girl was examined as P.W.2 and he deposed that the victim girl was found missing from the house from 06.06.2016 and from that day, the parents searched for the victim girl and since they could not find her, P.W.2 lodged a complaint before the respondent police and hence the delay has occurred. He would further submit that the prosecution has established its case beyond reasonable doubt in all aspects. He would further submit that the trial Court rightly appreciated both oral and documentary evidence and convicted the accused and there is no merit in the Appeal and the same is liable to be dismissed.

4. Heard both sides. Perused the records.

5. The case of the prosecution is that on 06.06.2017 at about 2.00 P.M. the accused kidnapped the victim girl from the custody of her parents from her house and on 08.06.2017, he married the victim girl by tying thali around her neck and on the same day committed penetrative sexual assault on the victim

girl repeatedly by having sexual intercourse with her till 17.06.2017. Hence, the case was registered against the Appellant.

6. After investigation, the respondent police laid a charge-sheet before the Sessions Judge, Fast Track Mahila Court, Dharmapuri, and the Sessions Judge, after completing the formalities, framed the charges against the appellant under Sections 363 and 366 IPC, Sections 9 and 10 of the Prohibition of Child Marriage Act, 2006 and Sections 5(1) r/w. 6 of the Protection of Children from Sexual Offences Act, 2012.

7. In order to prove the case the prosecution, before the trial Court, examined as many as 18 witnesses as P.W.1 to P.W.18 and 16 documents were marked as Exs.P1 to P16 and five material objects were marked as M.O.'s 1 to 5.

8. After completing the prosecution evidence, the incriminating circumstances culled out from the prosecution witnesses were put before the appellant and the appellant denied it as false. However, on the side of the appellant, no witness was examined or documentary evidence was produced.

9. After considering the evidence on record, hearing the arguments advanced on either side, the learned Fast Track Mahila Court, Dharmapuri vide judgment dated 08.02.2019 in Spl.S.C.No.48 of 2017, convicted and sentenced the appellant as stated above.

10. Challenging the judgment of conviction and sentence, the present appeal has been preferred by the appellant.

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. The case of the prosecution is that the appellant kidnapped the victim girl, took her and married her without her consent and further had penetrative sexual intercourse with the victim girl. To prove the case of the prosecution, the victim girl was examined as P.W.1 and a reading of the evidence the P.W.1 clearly shows that victim girl has clearly narrated that she was forcibly taken by the accused and he had forcible sexual intercourse with her. The Doctor who examined the victim girl and issued certificate Exp7 was examined as P.W.8, who deposed that hymen was not intact, which corroborates the evidence of P.W.1. Though the learned counsel for the appellant submitted that no birth certificate was marked, however, Ex.P12- Age certificate of the victim, clearly reveals that the victim girl is below 14 years and therefore it is clear that the victim is a child as defined under the POCSO Act. Therefore, the offence

under Sections 3 r/w 4 of the POCSO Act stands attracted to the case on hand.

13. Further, the victim had stated that the appellant had forcibly taken her and tied thali around her neck and further P.W.2-the father of the victim child had in his Statement under Section 164 Cr.P.C. made that after the alleged occurrence, he saw his daughter with thali and metti. Therefore, the offence under Section 9 of the Prohibition of Child Marriage Act also has been made out.

14. Though the learned counsel for the appellant contended that the victim girl has stated before the trial Court that the appellant married her and tied thali and also had sexual intercourse forcefully, whereas in the statement recorded by the learned Judicial Magistrate under Section 164 Cr.P.C., the victim child has not stated so, the above omission in the statement of the victim before the Magistrate by itself cannot be a ground to totally disbelieve the statement of the victim. A careful reading of the entire deposition of the victim clearly shows that the victim was kidnapped by the accused from the custody of her parents and made her to stay with him for 10 days and it is well settled proposition of law that once the minor girl is taken away or kidnapped from the custody of natural or legal guardian, Section 363 of I.P.C. would stand attracted.

15. Hence, this Court finds that the prosecution has proved its case beyond reasonable doubt. A careful perusal of the entire materials on record, this Court feels that there is no perversity in appreciation of evidence by Court below. There is no perversity in the Judgment passed by the trial Court.

16. Hence, this Criminal Appeal is dismissed confirming the judgment of conviction and sentence passed by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri dated 08.02.2019 in SPL.S.C.No.48 of 2017. The legal aid counsel appointed by this Court is entitled for legal fees as per rules. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Magalir Neethimandram (Fast Track Mahila Court),
Dharmapuri.
2. The Inspector of Police,
Mahendramangalam Police Station,
Dharmapuri
3. The Public Prosecutor,
High Court, Madras.
4. The Deputy Registrar (Criminal Section),
High Court, Madras. | with a direction to send back the
| original records, if any, to the
| trial Court
5. The Secretary,
Legal Aid Services Authority,
High Court, Madras.
6. The Assistant Registrar,
Juvenile Justice Section,
High Court, Madras.
7. The Superintendent,
Central Jail, Vellore.

CRL.A.No.309 of 2019

SS(CO)
SRG (12/07/2021)

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