

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.554 of 2020 and
Crl.M.P.No.8004 of 2020

Vimalraj

.. Appellant

.Vs.

The State rep by its
The Inspector of Police,
Rasipuram Police Station
Namakkal District.
(Crime No.269 of 2017)

... Respondent

Criminal Appeal filed under Section 374 (1) of the Code of Criminal Procedure to set aside the Judgment passed by the Court of Sessions (Fast Track Mahila) Judge, Namakkal, in Special C.C.No.27 of 2017 dated 23.11.2020 and allow the appeal.

For Appellant : Mr.E.C.Ramesh
For Respondent : Mr.R.Suryaprakash
Government Advocate

JUDGMENT

This Appeal has been filed against the Judgment passed by the Court of Sessions (Fast Track Mahila) Judge, Namakkal in Special C.C.No.27 of 2020 dated 23.11.2020 and allow the appeal.

2. The respondent police registered a case against the appellant in Cr.No.269 of 2017 for the offences punishable under Section 11 (iv) r/w 12 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') and Section 363 of I.P.C. After investigation, the respondent police laid charge sheet before the Sessions (Fast Track Mahila) Court, Namakkal.

3. The learned Sessions Judge, after completing the formalities framed charges for the offence punishable under Section 11 (iv) of POCSO Act, 2012 and 363 I.P.C. and after trial, acquitted the appellant of the charges under Section 11 (iv) of POCSO Act, 2012, however, convicted the appellant for the offence punishable under Section 363 I.P.C. and sentenced him to undergo three years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo 6 months simple

imprisonment. Challenging the said conviction and sentence, the accused has filed the present Appeal before this Court.

4. The learned counsel for the appellant would submit that the age of the victim girl is 18 years and she voluntarily went along with the appellant and there is no question of kidnapping, which is evident from the deposition of P.W.2- victim girl and, therefore, Section 363 of I.P.C. is not attracted. He would further submit that victim has not stated either before the learned Magistrate or before the police that she was subjected to penetrated sexual intercourse with the appellant. The learned counsel would further submit that though the learned Sessions Judge accepted that the appellant has not committed the offence under Section 11 (iv) of the POCSO Act, but failed to appreciate evidence that the victim girl voluntarily went with the appellant.

5. It is the further contention of the appellant that even P.W.1, P.W.3 and P.W.4 did not support the case of the prosecution and they have not deposed against the appellant. He would further submit that even the victim girl P.W.2 deposed during cross examination that there was no sexual relationship between the appellant and herself. She further deposed that the appellant was in the relationship of a brother with her. He would further submit that there is no independent witness examined to prove the charge and, therefore, the Judgment of conviction and sentence passed by the trial court is liable to be set aside.

6. The learned Government Advocate (Crl.side) would submit that at the time of occurrence the victim girl was only 16 years and without consent of the parents who are the natural as well as lawful guardians, the appellant took away the minor girl and therefore, he has committed offence punishable under Section 363 I.P.C. He would further submit by taking note of the statement recorded under Section 164 Cr.P.C., the Doctor's evidence and the medical report, the trial Court disallowed the case of the prosecution for the offence under Section 11(iv) r/w Section 12 of POCSO Act, but however, from the evidence of victim girl and also the evidence of parents as well as statement recorded from the victim girl by the learned Judicial Magistrate, it is clearly seen that the appellant has removed the victim girl from the custody of lawful guardianship of her parents and, therefore, the appellant has committed an offence under Section 363 I.P.C. and the trial court has rightly convicted and sentenced the appellant as stated above and therefore there is no merit in the appeal and the same is liable to be dismissed.

7. Heard both sides. Perused the records.

8. The case of the prosecution is that on 12.04.2017 at about 8.00 A.M. at Mangalapuram Bus stand, when the victim was travelling in a bus to go to Athur from Rasipuram, by inducement the accused got her down from the bus and for the purpose of marriage kidnapped her from the lawful guardianship of her parents and took her in motorcycle to Singipuram in Salem District and also made her stay there for about 10 days and then shifted her to his house at Vanniyar Street, Singipuram and kept her for a day and thereby the accused committed the offence punishable under Section 363 I.P.C. Thereafter, a complaint has been preferred against the accused before the respondent police.

9. After investigation, the respondent police laid charge sheet before the Sessions (Fast Track Mahila) Judge, Namakkal and the learned Sessions (Fast Track Mahila) Judge, after completing the formalities the trial court framed the charges against the appellant for the offence under Section 11 (iv) r/w 12 of POCSO Act and 363 I.P.C.

10. In order to prove the case, during the trial, on the side of the prosecution, as many as 18 witnesses were examined as P.W.1 to 18 and 14 documents were marked as Exs.P1 to P14 and no material objects were exhibited.

11. After completing the examination of the prosecution witnesses, all the incriminating circumstances culled out from the evidence of the prosecution witnesses, were put before the appellant, but he denied the same as false. On the side of the defence, D.W.1 and D.W.2 were examined and Ex.D1 was marked.

12. After considering the evidence on record and hearing the arguments on either side, the learned Sessions Judge, disbelieved the case of the prosecution and found that the prosecution has not established its case beyond reasonable doubt, and vide judgment dated 23.11.2020 in Special C.C.No.27 of 2017, acquitted the appellant of the charge under Section 11 (iv) of the POCSO Act but convicted the appellant for the offence under Section 363 IPC and sentenced him as stated above.

13. Challenging the Judgment of conviction and sentence, the present appeal has been preferred by the appellant/accused.

14. Since the Appellate Court is a fact finding Court, in order to give a finding independently, it has to re-appreciate the entire evidence.

15. The main contention of the learned counsel for the appellant is that the victim girl is not a minor and she completed 18 years and she went voluntarily with the appellant and the appellant has also not kidnapped her and further even

the victim girl has clearly deposed that she was not forcibly taken from the custody of her parents and therefore the ingredients under Section 363 I.P.C. would not stand attracted in this case. However, a perusal of the order passed by the Sessions Judge, would go to show that the learned Sessions Judge discussed oral and documentary evidence and rightly came to the conclusion that Section 363 I.P.C would stand attracted in this case and convicted the accused. Further, as per Ex.P7, the Date of Birth of the victim is 24.10.2000 and the date of occurrence is 12.04.2017 and therefore at the time of occurrence the victim girl is aged about 16 years and the evidence of the victim girl is very clear that the appellant used to chat with the victim girl and he also expressed his love and also proposed her and also insisted the victim girl fall in love with him. He also asked the victim girl to come along with him otherwise he will commit suicide and took the victim girl to Singipuram and made her to stay in her grandmother's house for 11 days which clearly shows that the appellant removed the custody of the minor girl from the natural guardian and even Ex.P3- Statement recorded under Section 164 Cr.P.C. clearly shows that the appellant took the victim girl by motor cycle to Singipuram and stayed there for more than 10 days in different places. However, in the statement recorded under Section 164 Cr.P.C., the victim has clearly stated that she was not subjected to penetrative sexual intercourse and the Doctor opined that hymen was intact and there are no external injuries and, therefore, considering the age of the victim girl, statement recorded under 164 Cr.P.C, the trial Court has rightly acquitted the accused for the offence under Section 11 (iv) r/w. Section 12 of the POCSO Act. Considering the age of the victim girl and since he was taken by the appellant, even if she consents also, the consent of parents is very much necessary, and the minor girl has been removed from the custody of her parents by the appellant, which falls under Section 363 I.P.C., the trial Court has rightly convicted and sentenced the appellant and there is no merit in the Appeal and the same is liable to be dismissed.

Accordingly this Criminal Appeal is dismissed confirming the judgment dated 23.11.2020, passed in Spl.C.C.No.27 of 2017 by the learned Sessions (Fast Track Mahila) Judge, Namakkal. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ARR

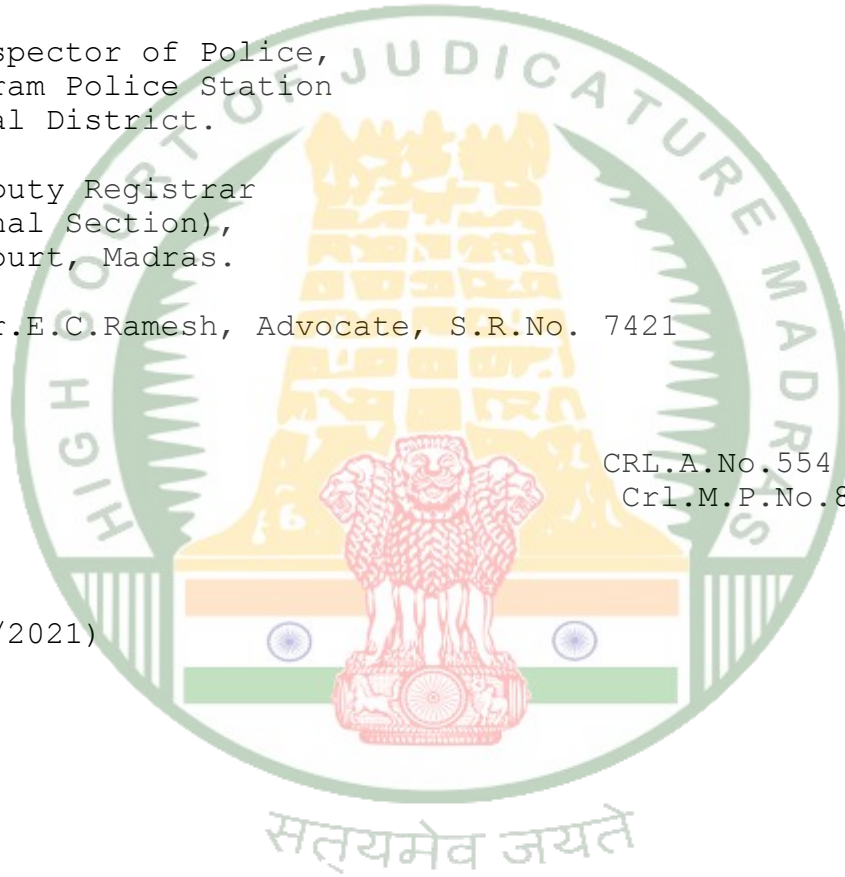
To

1. The Court of Sessions (Fast Track Mahila) Judge,
Namakkal.
2. The Public Prosecutor,
Madras High Court,
Madras.
3. The Inspector of Police,
Rasipuram Police Station
Namakkal District.
4. The Deputy Registrar
(Criminal Section),
High Court, Madras.

+1cc to Mr.E.C.Ramesh, Advocate, S.R.No. 7421

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