



Crl.A.No.240 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.10.2022

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

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Mohan Raj

... Appellant

Vs.

State by Inspector of Police,
Anaicut Police Station,
Vellore District
(Cr.No.96 of 2016)

...Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the judgment of the learned Sessions Judge, Magalir Neethi Mandram(Fast Track Mahila Court), Vellore in Special Sessions Case No.28 of 2016 dated 31.01.2018 and to acquit the appellant herein from the said charges.

For Appellant : Mr.K.S.Rajagopalan

For Respondent : Mr.A.Gopinath,
Government Advocate(crl.side)

J U D G M E N T

This criminal appeal is directed as against the judgment passed in Spl.SC.No.28 of 2016 dated 31.01.2018 on the file of the learned Sessions Judge, Magalir Neethi Mandram(Fast Track Mahila Court), Vellore, thereby



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convicted the appellant for the offence punishable under Sections 363, 366 of IPC, Section 6 r/w 5(1) and 17 of POCSO Act.

2. The case of the prosecution is that the first accused is aged about 34 years and he is a married man. He fell in love with the victim child Bavya aged about 15 years i.e. the daughter of the defacto complainant. Her cousin sister is another victim child i.e. Devika. She lost her mother five years back and now she is living under the guardianship of the first victim's father i.e. the defacto complainant. While being so, the second accused fell in love with the victim Devika. The first accused with intention to have illicit intimacy with the victim Bavya and the second accused with intention to marry the victim Devika, on 14.05.2016 at about 9 p.m., the first and second accused kidnapped both the victims and had taken them to Veladumalai, Mooligaigate, Anaicut, in the temple called Jalagandeeswarar Temple at Vellore, the first accused married the victim Bavya and the second accused tied 'thali' on the second victim i.e. Devika. They stayed at Veladumalai in Anaicut and in Maraimalainagar, Chennai till 19.05.2016. The first accused repeatedly committed penetrative sexual assault on the victim Bavya and the second accused had committed penetrative sexual assault on the victim girl Devika. On the complaint lodged by



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the defacto complainant, initially a girl missing complaint was registered in crime No.96 of 2016.

2.1 The first accused along with his wife is living in the first floor of the defacto complainant's house. Hence, the wife of the first accused suspected him that he eloped with the victim Bavya and she furnished the address at Maraimalainagar, Chennai. Thereafter, the respondent along with the defacto complainant and others visited Maraimalainagar, Chennai and secured the victim girls. Thereafter, FIR was altered into offences under Sections 362, 366 of IPC and Section 5(1) of POCSO Act, Section 10 of Prohibition of Child Marriage Act r/w Section 34 of IPC as against the first accused and for the offence under Sections 362, 366 of IPC, 9 of Prohibition of Child Marriage Act and Section 17 of POCSO Act as against the second accused. After completion of investigation, final report was filed and the same was taken cognizance by the trial court and framed charges for the offences under Sections 363, 366, 376(2)(n) of IPC, Section 6 r/w 5(1), 17 of POCSO Act and Sections 9 and 10 of Prohibition of Child Marriage Act as against both the accused.

3. In order to bring the charges to home, the prosecution examined PW1 to PW12 and marked Ex.P1 to Ex.P19. The prosecution also produced a



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material object i.e. MO.1. On the side of the accused, they examined DW1 and DW2 and no documents were marked. On perusal of oral and documentary documents, the trial court found the appellant/ A2 as guilty for the offence under Sections 363, 366 of IPC and Sections 6 r/w 5(1), 17 of POCSO Act and he was sentenced to undergo two years rigorous imprisonment with fine of Rs.12,500/-, in default to undergo one month simple imprisonment for the offence under Section 363 of IPC, three years rigorous imprisonment with fine of Rs.12,500/-, in default to undergo one month simple imprisonment for the offence under Section 366 of IPC, ten years rigorous imprisonment with fine of Rs.12,500/-, in default to undergo one month simple imprisonment for the offence under Section 6 of POCSO Act and ten years rigorous imprisonment with fine of Rs.12,500/-, in default to undergo one month simple imprisonment for the offence under Section 17 of POCSO Act. However, all the sentences were ordered to run concurrently. Aggrieved by the same, the present appeal has been filed.

4. The learned counsel for the appellant would submit that the Headmaster who assessed the age of the victims had given certificates which were marked as Ex.P5 and Ex.P6 and they were handwritten and without any authentication. Though they were marked through Headmaster who was



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examined as PW4 without marking any transfer certificate ledger. Therefore, the age of the victim girls is not proved by the prosecution. Hence, the offence under POCSO Act would not attract as against the appellant herein.

5. Heard, Mr.K.S.Rajagopalan, the learned counsel for the appellant and Mr.A.Gopinath, Government Advocate(crl.side) appearing for the respondent / police.

6. On perusal of records, revealed that the victim Bavya was examined as PW7 and she deposed that she was living with her mother, grandmother and brother and second victim as joint family. Her date of birth was 04.11.2000. She knows both the accused. A2 is her own cousin brother. A1 is a mason worker and he was a tenant on the first floor of her house. He has two children. During the month of January 2015, when her family members went to Bangalore, the first accused told her with sugar coated words and also induced her to go to temple. He also instigated the second accused who is the niece of the first victim to love the second victim i.e. Devika. The first accused also threatened her not to disclose to her parents. While being so, on 13.05.2016, the second accused instigated the first victim to come along with the second victim to Chennai. On 14.05.2016, the second accused came to her



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home and compelled her and also compelled another victim to go to Perumal Temple, where the first accused was waiting for them and all have gone to Rathnagiri. They stayed there for a while and they left to Vellore Fort, where the second accused married Devika and A1 married the first victim. Thereafter, A1 continuously had sexual intercourse with the first victim i.e. PW7. Simultaneously, the second accused also had penetrative sexual assault on the victim Devika. Thereafter, all were gone to Chennai. On the complaint, they were rescued and their statements were recorded under Section 164 of Cr.P.C. It is corroborated by PW8 i.e. another victim.

7. The father of PW7 was examined as PW1 who lodged complaint. He also reiterated the evidence of PW7 and PW8. PW6 who was on duty at emergency ward of Government Hospital, Vellore referred PW7 and PW8 to a gynaecologist who examined further about their virginity. PW11 who examined PW7 and PW8 had deposed that on examination of PW8, she found no external injury over the victims' body including her private parts. Her hymen was torn out and her vagina admits two fingers easily. However, she was not pregnant. She also examined PW7 and no injury was found over the body including private parts. Her hymen was torn out and her vagina admits two fingers easily. To that effect, she issued medical certificates which were marked as Ex.P14 and



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Ex.P15 for two victim girls. Therefore, the prosecution proved the case beyond any doubt.

8. The only ground raised by the appellant is that, Ex.P5 and Ex.P6 which were issued by PW4 are handwritten. On perusal of records, revealed that only on verification of ledger maintained in the School, PW4 who was Headmaster at the time of victims' studies, issued certificates with regard to her date of birth as 04.11.2000 and 17.06.2002 in respect of both the victims i.e. PW7 and PW8. It is corroborated by the evidence of PW7 and PW8 and as such there is absolutely no flaw in issuing Ex.P5 and Ex.P6 by handwritten. Therefore, the trial court rightly convicted the appellant for the offence under Sections 363, 366 of IPC and Sections 6 r/w 5(1), 17 of POCSO Act and this Court finds no infirmity or illegality in the order passed by the court below.

9. Accordingly, this criminal appeal is dismissed and the judgment of conviction and sentence passed by the Court below is hereby confirmed. The trial Court is directed to take steps to secure the petitioner for the purpose of sentencing him to undergo the conviction. It is also directed that the period of sentence already undergone by the petitioner, if any, shall be given set off, as required under Section 428 Cr.P.C.



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Speaking/Non-speaking order

Index: Yes / No

Internet: Yes

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To

- 1.The learned Sessions Judge,
Magalir Neethi Mandram(Fast Track Mahila Court),
Vellore
- 2.The Inspector of Police,



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Anaicut Police Station,
Vellore District

3. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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