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Crl.RC.No.431 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2022

CORAM:

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

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1.Elangovan

2.Santhose

3.Senthil

... Petitioners/A1,6 & 7

Versus

The State Rep by
The Inspector of Police,
Puzhal Police Station,
Chennai
(crime No.307 of 2003)

... Respondent

PRAYER: Criminal Revision has been filed under Section 397 r/w 401 of the Code of Criminal Procedure to call for the records of the order in CA.No.96 of 2013 dated 19.03.2018 passed by the learned I Additional District and Sessions Judge, Thiruvallur District confirming the judgment of the learned Assistant Sessions Court, Ponneri in SC.No.112 of 2006 dated 17.09.2013 and to set aside the same.



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For Petitioners : Ms.S.Vinodha
for Mr.P.Sampath

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

ORDER

This criminal revision is arising out of the judgment passed in CA.No.96 of 2013 dated 19.03.2018 by the learned I Additional District and Sessions Judge, Thiruvallur District, thereby confirming the sentence passed by the learned Assistant Sessions Court, Ponneri in SC.No.112 of 2006 dated 17.09.2013, thereby convicted the petitioners for the offences under Sections 366, 376 of IPC r/w 34 of IPC.

2. The case of the prosecution is that the victim was missing from 26.08.2003. Therefore, her father lodged complaint before the respondent. FIR was registered in crime No.307 of 2003 under girl missing. Thereafter, her father filed habeas corpus writ petition before this Court. In the said writ petition, the victim was rescued and produced before the Magistrate concerned. Thereafter, the respondent altered the offences into Sections 366, 376 and r/w 34 of IPC. There are totally seven accused. On



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26.08.2003, the victim was in school studying tenth standard. While being so at 12.00 noon, the sixth accused went inside the classroom and requested to send her with him. However, the school authorities refused to send her out. Therefore when she returned from school at about 4.25 p.m. to the bus stop, A6 and A7 asked her to come to the house of one, Elango i.e. the first accused for the reason there was some issue. They compelled the victim and got into auto. They proceeded to the house of Elango, where the said Elango and his parents were present. Thereafter, the first accused had taken her to Ranipet. Next day morning, he tied 'thali' on the victim and went to Bangalore. Thereafter, they went to Hugli and there, they stayed for 2 ½ months. During their stay, the first accused on compulsion, committed rape on her repeatedly.

2.1 The further case of the prosecution is that after the complaint made by her parents, she was rescued from the hands of the first accused and produced before the court below. She was taken to medical examination and found that she was raped by the first accused. Therefore, on the alteration report, the respondent altered the offences into Sections 366, 376



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of IPC and r/w 34 of IPC. After completion of investigation, the first accused was charged for the offence under Sections 366, 376 of IPC and A6 and A7 were charged for the offences under Sections 366 r/w 34 of IPC.

3. The prosecution had examined PW1 to PW11 and marked Ex.P1 to Ex.P10. On the side of the accused persons, no one was examined and no documents were marked. On perusal of the oral and documentary evidence, the trial court found the first accused guilty for the offence under Sections 366 and 376 of IPC and sentenced him to undergo three years rigorous imprisonment for the offence under Section 366 of IPC and sentenced him to undergo seven years rigorous imprisonment for the offence under Section 376 of IPC and also imposed fine of Rs.5,000/-. Insofar as A6 and A7, they were convicted for the offences under Section 366 r/w 34 of IPC and sentenced them to undergo three years rigorous imprisonment and also fine of Rs.5,000/- Aggrieved by the same, the petitioners preferred appeal and the same was also dismissed and confirmed the conviction and sentenced imposed by the trial court.



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4. The petitioner raised grounds that the investigation officer failed to examine the victim girl and to record her statement under Section 164 of CrPC immediately after securing her. The petitioners never used any force or threatened the victim to come along with them. She fell in love with the first petitioner herein and on her own, she came there and eloped to Bangalore. No one has kidnapped her and no one compelled her to come with them. She was never abducted or restrained from her movements. On her own, she stayed with the first petitioner for the period of 2 ½ months and they lived together as husband and wife. Only on the complaint lodged by the father of the victim, the victim was secured from the first accused. Insofar the second and third petitioners, they were charged for the offences under Section 366 r/w 34 of IPC. Only on the instruction given by the first accused and the victim, they brought her to the house of the first accused. Except the said allegation, no other overt acts as against petitioners 2 & 3 to convict them for the offences under Section 366 r/w 34 of IPC.

5. Heard, the learned counsel for the petitioners and the learned Government Advocate(crl.side) appearing for the respondent / police.



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6. On perusal of the records, revealed that nowhere stated that the first petitioner and the victim fell in love and the victim eloped with him to Bangalore and thereafter to Hugli. The petitioners never took that stand and as well as failed to bring any witness to that effect to disprove the case of the prosecution. The victim's evidence is the best evidence and it may not be corroborated with other witnesses. Though stated that she was kidnapped by the petitioners and stayed for 2 ½ months with the first petitioner, she never stated that she fell in love with him and she lived with the first accused happily. Only on threatening and compulsion, she was abducted by the first accused and on compulsion and also threatening her, he committed rape on her. At the time of occurrence, the victim was only aged about 16 years and she was studying tenth standard. In order to prove her age, PW10 was examined and marked transfer certificate as Ex.P8 and the register of tenth standard. PW1 and PW2 are her parents and they deposed that on 26.08.2003, she was missing and immediately they lodged complaint. The same was registered under girl missing in crime No.307 of 2003. They further deposed that thereafter they filed habeas corpus petition before this



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Court and thereafter, the respondent rescued the victim girl from the hands of the first petitioner herein.

7. Though the victim's statement was not recorded under Section 164 of Cr.P.C., she categorically deposed before the trial court and the same was also corroborated with PW1 and PW2. Thereafter, she was subjected to medical examination and the doctor who examined the victim was examined as PW9. She deposed that the victim was subjected to rape and hymen is not intact. Therefore, the prosecution by clinching and cogent evidence, proved the case beyond any reasonable doubt. Therefore, the trial court rightly convicted the petitioners herein and confirmed by the first appellate court. As such, there is absolutely no circumstances warranting to interfere with the orders passed by the courts below.

8. Accordingly, this criminal revision is dismissed.

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Internet:Yes
Index:Yes/No
Speaking/Non speaking order
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G.K.ILANTHIRAIYAN. J,

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To

- 1.The learned I Additional District and Sessions Judge,
Thiruvallur District
- 2.The learned Assistant Sessions Court,
Ponneri
- 3.The Inspector of Police,
Puzhal Police Station,
Chennai
- 4.The Public Prosecutor,
High Court of Madras

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