



Crl.A.No.399 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2022

CORAM:

THE HONOURABLE Mr.JUSTICE **V.SIVAGNANAM**

Criminal Appeal No.399 of 2022

Muniraj

.. Appellant

/versus/

The State by
Inspector of Police,
All Women Police Station,
Hosur,
Krishnagiri District.
Crime No.2/2020

.. Respondent

Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code praying to call for the entire records in connection with the Spl.S.C.No.27/2020, on the file of the learned Sessions Judge (Fast Track Magalir Neethimandram), Krishnagiri, Krishnagiri District and set aside the judgment dated 03.03.2022.

For Appellant : Mr.V.Parthiban
for M/s.E.Kannadasan

For Respondent : Mr.C.E.Pratap
Government Advocate (Crl.Side)



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JUDGMENT

This Criminal Appeal is filed against the judgment of conviction and sentence passed in Spl.S.C.No.27 of 2020 dated 03.03.2022, by the learned Sessions Judge (Fast Track Magalir Neethimandram), Krishnagiri, Krishnagiri District.

2. The case of the prosecution is that the appellant herein was arrested on 28.01.2020 based on the complaint given by the mother of the victim girl for girl missing. The victim girl was enticed by the accused and he has taken her to other places under the pretext of love and promise of marriage, he had intercourse with her.

3. The respondent police registered a case against the appellant/accused in Crime No.2 of 2020 on a complaint given by one Kobamma [PW.1] and prosecuted the accused for having committed the offence punishable under Sections 366 I.P.C., and Section 5(i) and 6 of POCSO Act, 2012.



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4. Before the trial Court, the prosecution examined sixteen (16) witnesses as PW.1 to PW.16 and filed nineteen (19) documents as Exhibits P.1 to P.19. No Material Object has been marked on the side of the accused and no witness was examined.

5. The trial Court after considering the prosecution evidence found the accused guilty for the offence under Section 366 I.P.C. and Section 5(i) and 6 of POCSO Act, 2012 and convicted him and ordered sentence to undergo 5 years Rigorous Imprisonment with a fine of Rs.1,000/-, in default to undergo a further period of six (6) months Rigorous Imprisonment for the offence under Section 366 IPC; to undergo 20 years Rigorous Imprisonment with a fine of Rs.1,000/- in default to undergo a further period of six months Rigorous Imprisonment for the offence under Sections 5(i) and 6 of POCSO Act, 2012 and to pay a sum of Rs.25,000/- as compensation to the victim girl. Aggrieved by the same, the present Criminal Appeal has been filed.



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6. The learned counsel for the appellant contended that the prosecution alleged that the victim girl [PW.2] was kidnapped by the accused and that the victim minor girl was sexually abused and the accused committed penetrative sexual assault on the minor victim girl. In order to establish the case, they have examined sixteen (16) witnesses as PW.1 to PW.16. PW.2, is the victim girl and her evidence is not reliable for the reason that while she has given statement before the Judicial Magistrate under Section 164 Cr.P.C., she did not disclose anything about the sexual intercourse committed by the accused and only during examination before the Court, she had stated that the accused had illegally committed penetrative sexual assault on her.

7. The learned counsel for the appellant further contended that according to the prosecution, the victim has been kidnapped by the accused on 27.11.2019 and according to the victim girl, she was kept in a hut near Salem till she was secured by the respondent police on 25.01.2020.. The Investigating Officer-Sasikala [PW.16] did not examine



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any witness nearby the resident of the alleged hut situated at Kalleripatti, Salem. In this regard, the Investigating Officer- Sasikala [PW.16] was cross examined. She has admitted that she did not prepare any Mahazar and not examined any witness to show that the accused and the victim have stayed there from the alleged date of occurrence. Further in the chief examination, the victim has stated that on 27.01.2020, the accused brought her to Krishnagiri bus stand on knowing the fact that the complaint has been lodged by the *de facto* complainant/the mother of the victim girl. The police and the mother of the victim came there and the police took her to Hosur police station and brought her to Hosur Court. In these circumstances, there is no evidence to show that what exactly had happened to the victim. PW.16 has stated that she had arrested the accused on 28.01.2020 at Soolagiri Krishna hotel and it is unbelievable. Further, apart from that Dr.Parvathy [PW.15] who have examined the victim girl PW.2, has given a report [Ex.P11] stating that the possibility of sexual assault could not be made out. In these circumstances, the charges against the accused are not made out. The trial Court without sufficient evidence, found the accused guilty and convicted him, which is



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contrary to the evidence on record under law. The sentence is unsustainable. Hence pleaded to acquit the accused.

8. The learned Government Advocate (Crl.Side) for the State submitted that the trial Court has rightly convicted the accused. Further contended that the accused is a known person to the victim girl and he forced her to give consent for his love when his proposal was refused by her. In these circumstances, the parents of the victim girl also made arrangement for the marriage to the victim girl. This accused went to the house of the victim on 27.11.2019 and forcibly taken the victim girl from her house to Kalleripatti, Salem and kept her in a hut till 27.01.2020. During that period, he forcibly had sexual intercourse with the victim girl. This fact is disclosed by the victim before the Court. Even though there was no physical assault on the victim girl, while recording the statement under Section 164 Cr.P.C., she had deposed what had happened to her. Further the doctor [PW.15] who examined her during the evidence, clearly stated that there is a possibility of sexual intercourse with the victim girl. In these circumstances, there is no reason to reject the



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evidence of PW.2. This is a sufficient proof to prosecute the accused and no merit found in the Criminal Appeal to allow.

9. I have considered the submissions made by the learned counsel for the appellant and the learned Government Advocate (Crl.Side) for the respondent. Perused the material records.

10. The specific case of the prosecution is that on 27.11.2019 at about 12.00 p.m., while the victim was in her house, the accused, who is the resident of the same village, has kidnapped the victim girl from her house and kept her in a hut in the village of Kalleripatti, Salem and he forcibly had sexual intercourse with her. Therefore, he was charged for the offence under Sections 366 I.P.C., and Section 5(i) and 6 of POCSO Act, 2012.

11. In order to establish the prosecution case, the prosecution has examined 16 witnesses. Besides filed 19 documents before the trial Court and also recorded the statement of the victim girl under Section 164



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Cr.P.C through the learned Magistrate. Except the evidence of victim girl [PW.2], no other eye witnesses are there to the occurrence. However, on considering the 164 Cr.P.C. statement of the victim before the learned Judicial Magistrate, though it is not a substantial evidence, the fact disclosed before the learned Magistrate assumes importance. In the statement of the victim, she did not state that the accused had sexual intercourse. This is the first Court to record the statement from the victim. In the first statement, the victim girl did not disclose the fact that she was sexually harassed and the accused had sexual intercourse with her. In these circumstances, the evidence before the Trial Court has to be carefully considered.

12. On a perusal of evidence of PW.2, she in her evidence has stated that on 27.01.2020 when the accused brought her to Krishnagiri bus stand, they have seen the victim's mother and police. The victim girl further stated that the police took her to the police station and thereafter produced her before the Court and she did not speak about what had happened to the accused. The Investigating Officer-Sasikala [PW.16] in



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her evidence stated that the accused was arrested on 28.01.2020, near Soolagiri, Krishna hotel. This evidence raised a doubt as to whether the accused and the victim girl were located by the police on 27.01.2020 at Krishnagiri bus stand. Further, during the cross examination PW.2 stated that she was standing in the Krishnagiri bus stand till 9.00 p.m and there is no explanation as to what the victim girl alone was doing from the morning 9.00 a.m. to 9.00 p.m, in the bus stand. According to the Investigating Officer, they found the victim after 9.00 p.m. at Krishnagiri bus stand. Apart from that, the evidence of the Investigating Officer also raises a doubt. In her evidence she has stated that on 26.01.2020, she got information that the victim and the accused are in Krishnagiri bus stand and after informing the mother of the victim, they went to the Krishnagiri bus stand. There the mother of the victim girl identified the victim and thereafter, they took her into their custody. If the said statement is true, there is no reason to state that the accused was arrested on 28.01.2020 before Soolagiri, Krishna hotel. The genuineness of the prosecution case becomes doubtful. Further the evidence of the victim girl is also doubtful. It requires corroboration even though not required to corroborate its



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contradiction, it needs to corroborate with the evidence of the victim girl on material point. It is unsafe to convict the accused on the evidence of PW.2 alone. The trial Court without considering the evidence properly had found the accused guilty, which is contrary to the evidence. Therefore, it is unsustainable and requires interference.

13. Accordingly, this *Criminal Appeal is allowed*. The judgment of the trial Court is set aside. The appellant is set at liberty. Fine amount, if any paid by the accused shall be refunded to him. Bail bond if any executed by the accused shall stand cancelled.

20.12.2022

Index : yes/no

Internet:yes/no

Speaking order/ Non speaking order

rpl

To

1.The Sessions Judge (Fast Track Magalir Neethimandram), Krishnagiri,
Krishnagiri District.

2.The Inspector of Police,
All Women Police Station,



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Hosur,
Krishnagiri District.

3.The Public Prosecutor,
High Court of Madras,
Chennai-104.



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