



Crl.A.No.621 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	17.10.2022
Pronounced on	:	18.11.2022

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Appeal No.621 of 2021

Dharmaraj

... Appellant

Vs.

The State by
The Inspector of Police,
All Women Police Station,
Bhavani,
Crime No.15 of 2019,
Erode District.

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records relating to the judgment dated 04.09.2021 made in Spl.S.C.No.36 of 2020 on the file of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode and set aside the same by allowing this Criminal appeal.

For Appellant : Mr.N.Manokaran

For Respondent : Mr. S.Sugendran,
Additional Public Prosecutor



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JUDGMENT

This Criminal Appeal has been filed to set aside the judgment passed by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode made in Spl.S.C.No.36 of 2020 dated 04.09.2021.

2. The respondent police registered a case against the appellant and 7 others in Crime No. 15 of 2019 for the offences punishable under Sections 9, 10 of Prohibition of Child Marriage Act, 2006, Section 7 punishable under Section 8 of Protection of Children from sexual offences Act, 2012 and Section 366, 342, 506(i) of IPC. During investigation, the offences were altered into Section 9 of Prohibition of Child Marriage Act, 2006 and under Section 7 punishable under Section 8 of POCSO Act, 2012 against A1 and under Section 10 of Prohibition of Child Marriage Act, 2006 against A2 to A7. Subsequently, after investigation, the respondent police laid a charge sheet for the offences punishable under Section 9 & 10 of Prohibition of Child Marriage Act, 2006 and under Section 7 punishable under Section 8 of Protection of Children from



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Sexual Offences Act, 2012 before the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode.

3. The learned Special Judge after completing formalities, had framed charges against the accused 1 to 7 for the offences punishable under Sections 9 of Prohibition of Child Marriage Act, 2006 and Section 7 punishable under Section 8 of POCSO Act, 2012 against A1 and Section 10 of Prohibition of Child Marriage Act, 2006 against A2 to A7.

4. After framing of charges and completion of formalities, in order to substantiate the charges framed against the appellant during the trial on the side of the prosecution, 19 witnesses were examined as Pw1 to 19 and 29 documents were marked as Exs.P1 to 29 and 2 material objects were exhibited as M.O.1 & 2.

5. After completing the examination of prosecution witnesses, when the incriminating circumstances culled out from the evidence of prosecution witnesses were put to the appellant by questioning under Section 313 of CrPc, wherein he denied the same as false and pleaded not



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guilty. On the side of the defense, no oral and documentary evidence was produced.

6. On conclusion of trial, hearing the arguments advanced on either side and considering the materials, the trial court found the accused 2 to 7 not guilty for the offence punishable under Section 10 of Prohibition of Child Marriage Act, 2006 and acquitted from the said charge. However the trial court found guilt of the first accused for the offence under Section 9 of the Prohibition of Child Marriage Act, 2006 and Section 7 punishable under Section 8 of Protection of Children from Sexual Offences Act, 2012 and the accused was convicted and sentenced to undergo 2 years of rigorous imprisonment and pay fine of Rs.1,00,000/- in default to undergo three months of simple imprisonment for the offenses punishable under Section 9 of the Prohibition of Child Marriage Act, 2006. Further, the accused was convicted and sentenced to undergo 3 years of rigorous imprisonment and pay fine of Rs.3000/- in default to undergo three months of simple imprisonment for the offenses punishable under Section 8 of POCSO Act, 2012.

7. Challenging the said judgment of conviction and sentence passed



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by the trial court, the first accused has filed the present appeal. However, neither the victim nor the prosecution has filed any appeal challenging the Judgment of the trial court with regard to the acquittal for the offences punishable under Section 10 of the Prohibition of Child Marriage Act, 2006 against other accused.

8. The case of the prosecution is that the victim child was aged 13 years, A5 & A6 are parents of the victim, A7 is the marriage broker and A1 is the appellant herein, who married the victim girl. The other accused are the relatives of the appellant. On 11.04.2017, the appellant married the victim by tying thali. Then, all the accused arranged marriage to the victim girl with the appellant. After marriage, both of them stayed at appellant's home. Thereafter, the appellant compelled the victim and committed sexual assault by hugging her and pressing her breast. Therefore, the victim girl consumed poison and the mother of the victim girl lodged a complaint against the appellant before the respondent police. Thereafter, a case was registered for the offences punishable under Section 10 of the Prohibition of Child Marriage Act, 2006 and Section 7 punishable under Section 8 of Protection of Children from Sexual



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offences Act, 2012 and also Section 366, 342, 506(i) of IPC.

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9. After investigation, the respondent police has also registered a case against the mother of the victim stating that she also compelled the minor girl to marry the appellant. Subsequently, after investigation, they laid the charge sheet for the offences under Section 9 of Prohibition of Child Marriage Act, 2006 and Section 7 punishable under Section 8 of Protection of Children from Sexual Offences Act, 2012 against A1 and Section 10 of Prohibition of Child Marriage Act, 2006 against A2 to A7.

10. The learned counsel appearing for the appellant would submit that a false case has been foisted against the appellant. He would submit that from the same evidence and materials, the Trial Court had acquitted all other accused viz., A2 to A7 stating that the prosecution has not proved the case beyond all reasonable doubts for the offence under Section 10 of Prohibition of Child Marriage Act, 2006, whereas, from the same material, the Trial Court had erroneously convicted the appellant alone, which is against the fundamental principles of criminal jurisprudence.



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11. The learned counsel for the appellant would further submit that the Trial Court failed to consider the fact that the very same prosecution version was disbelieved to acquit A2 to A7 on the ground that there was no evidence to prove the abetment, at the same time, from the same materials, erroneously convicted the appellant alone. He would further submit that the appellant was falsely implicated at the instigation of A7, who had refused to pay the charges for hiring tractor of the appellant to plough his land. Infact, A7 had demanded Rs.5 Lakhs by projecting the daughter of A5 and virutally, the present case is the out come of the blackmailing attitude. Further, the appellant has neither approached A5 to A7 nor used force to marry PW1. The appellant has been falsely implicated with assistance of PW19.

12. The learned counsel for the appellant would submit that the learned Trial Judge has miserably failed to consider the material contradictions and omissions elicited by the appellant. PW1 has completely improved and developed her case in the evidence, which were



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not stated at the earliest. Therefore, it clearly shows that the evidence of the victim is not trustworthy. PW1 allegedly raised hue and cry and also consumed poison, but, neither the accused 5 to 7 nor the parents of the victim have chosen to report the same to the police between 11.04.2019 and 29.07.2019.

13. The learned counsel for the appellant would further content that the Doctor, who treated PW1/victim girl at Veena Nursing Home was not examined. The accused 5 to 7 have formed a syndicate to extract undeserving monetary claim from the appellant illegally by implicating him in this case. To prove the age of the victim, Pw13 was examined and he has not produced the birth registration extract before the Court and he has only produced Ex.P5 in which, different ink has been used at different places. Therefore, the evidence of PW13 is not trust worthy and he has not proved the age of the victim as if she is below 16 years.

14. The learned counsel for the appellant would submit that the Doctor/PW15 had conducted medical examination of PW1/victim girl for ascertaining her age through ossification test. According to the Doctor,



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the age of PW1 was between 17 and 18. From the ossification test, the age of the victim may be above or less of two years may be possible.

Therefore, neither offence under Section 9 of the Prohibition of Child Marriage Act, 2006 nor the offence under Section 7 punishable under Section 8 of POCSO Act, 2012 would attract, since the victim has completed 18 years. There is no oral and documentary evidence to prove the version of PW1/victim girl. The Trial Court without applying its mind, invoked presumptions under Sections 29 & 30 of POCSO Act, which is against the law. When the other accused were acquitted on the ground that the prosecution has not proved its case beyond all reasonable doubts, from the very same materials, the Trial Court has erroneously convicted the appellant by invoking presumptions under Sections 29 & 30 of POCSO Act.

15. He would further submit that the Trial Court failed to appreciate the fact that at the instigation of A7, the mother of the victim, gave complaint against the appellant. Therefore, the evidence of PW10 is not trustworthy. There is no corroborative evidence and the other witnesses were turned hostile and there is no independent witness to



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show that the victim girl and the appellant were residing under one roof as husband and wife. Therefore, judgment of the Trial Court is liable to be set aside.

16. The learned Additional Public Prosecutor appearing for the respondent police would submit that the age of the victim is only 13 years at the time of occurrence. Ex.P8 is the age certificate of the victim and PW13 has spoken about issuance of Ex.P5, which is the birth certificate of the victim. In Ex.P5/ birth certificate, the Date of Birth of Victim is mentioned as 06.11.2004 and date of occurrence is 11.04.2017 and hence, at the time of occurrence, the age of the victim is 13 years. Therefore, the victim is a child under the definition of 2(1)(d) of the POCSO Act.

17. The learned Additional Public Prosecutor would further submit that the victim was previously examined by the learned Judicial Magistrate and recorded statement under Section 164 of Cr.P.C., wherein, she has stated that the appellant married the victim by tying thali and further in order to ascertain the age of the Victim, ossification test also conducted, wherein, the age of the victim is stated as between 17 and 18



years. The report also marked as Ex.P8.

18. A combined reading of Ex.P5 to P8 and Section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015, would clearly shows that the victim is a minor and she is a child under the definition of 2(1)(d) of the POCSO Act. Therefore from Exs.P5, P8 & P26, the prosecution has proved that the victim is a child. As far as the commission of offence is concerned, the evidence of the victim is very clear that the appellant tied thali to the victim. Since, the victim is a minor and not completed the age of 18 years, the act committed by the appellant falls under Section 9 of Prohibition of Child Marriage Act, 2006 and further evidence of PW1, clearly shows that the appellant has committed sexual assault on her by hugging her and pressing her breast. Therefore, the prosecution has proved its case beyond all reasonable doubts and the prosecution has proved the foundational fact that the appellant married the victim girl against her will and has committed sexual assault on her. Since the victim has not attained majority, the marriage between the appellant and the victim falls under Section 9 of the Prohibition of Child Marriage Act, 2006 and also the act committed by the appellant on the



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victim, falls under Section 7 punishable under Section 8 of POCSO Act.

Therefore, the Trial Court has rightly appreciated the evidence and convicted the appellant and acquitted the other accused. There is no merit in this appeal and the appeal is liable to be dismissed.

19. Heard the learned counsel on either side and perused the materials available on record.

20. A perusal of records, reveal that the victim has not completed the age of 18 years at the time of occurrence and she was a child under the definition of Section 2(1)(d) of the POCSO Act. The appellant married the victim being a minor girl and also committed sexual assault on her. Therefore, the case was registered against the appellant, even though the other accused were charged for abetment, the Trial Court finds that there was no sufficient materials to convict the other accused. However, the appellant was convicted for the offence under Section 9 of Prohibition of Child Marriage Act, 2006 and for the offence under Section 7 punishable under Section 8 of Protection of Children from Sexual offences Act, 2012.



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21. In order to substantiate the charges leveled against the appellant, on the side of the prosecution, totally 19 witnesses were examined and 29 documents were marked. Out of 19 witnesses, the victim was examined as PW1.

22. A careful reading of evidence of PW1, clearly shows that the appellant married the victim girl and they stayed in the house of the appellant as husband and wife for sometime. During that time, the appellant hugged her and pressed her breast and due to which, the victim girl consumed poison. Therefore, the mother of the victim set the law into motion by filing a complaint before the respondent police. The victim was also produced before the learned Judicial Magistrate for recording her statement under Section 164 of Cr.P.C. The said statement was marked as Ex.P1 and from the evidence of PW1, at the time of occurrence, the victim was aged only 13 years and not even completed 17 years. In order to prove the age of the victim, birth certificate was marked as Ex.P5 through PW13. As per the ossification test, the victim girl has not completed 18 years.



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23. A careful reading of the evidence of PW13 and Ex.P5 and also other related documents especially, the previous statement of PW1/ the victim, it is proved that the victim has not completed the age of 18 years. Therefore, from Ex.P5/Birth Certificate and the P26/school certificate, it is proved that the date of birth of the victim is only 06.11.2004. Though there is discrepancy, there is no dispute with regard to date of birth of the victim and at the time of occurrence, the age of the victim is 13 years. Section 94(2) of Juvenile Justice (Care and Protection of Children) Act, 2015, clearly shows that if any certificate produced by the local authority or school authority with regard to the age of the victim, which presume that the age mentioned in the certificate is genuine. The appellant has not rebutted the presumption and they have not produced any contrary document to disprove the age of the victim, except pointing out some discrepancy in the documents. There is no discrepancy from the documents regarding the Date of Birth of the victim. Thereby, invoking Section 94(2) of Juvenile Justice (Care and Protection of Children) Act, 2015, this Court presumes the age of the victim mentioned in Ex.P5 & 26 is genuine.



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24. As far as the commission of offence under Section 9 of Prohibition of Child Marriage Act, 2006 is concerned, even though PW5 to PW7 turned hostile and they have not supported the case of the prosecution, the statement of victim under Section 164 of Cr.P.C., and also M.O.2, shows that the marriage was performed to appellant and the victim.

25. From M.O.2 and the evidence of PW1, this Court finds that the marriage was solemnized between the appellant and the victim girl and at the time of marriage, the victim was only 13 years and not completed the age of 18 years. Therefore, as per Section 9 of Prohibition of Child Marriage Act, if it is proved that the victim is a child and the marriage is also proved, the appellant is liable to be punished under Section 9 of Prohibition of Child Marriage Act. Further, M.O.2 clearly shows that the appellant tied thali to the victim. Therefore from the evidence PW1, Ex.P1 and M.O.2, this Court also finds that the appellant has married the victim at the age of 13 years. Therefore, the act committed by the appellant falls under Section 9 of Prohibition of Child Marriage Act, 2006.



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26. In order to substantiate the offence of sexual assault said to have committed by the appellant on the victim is concerned, as already stated that the victim was examined as PW1 and previously victim was produced before the learned Judicial Magistrate and her statement has also been recorded under Section 164 of Cr.P.C., the said previous statement was marked as Ex.P1, wherein, she has stated that the appellant married her by tying thali and also committed sexual assault on her by hugging and pressing her breast. Though there is no independent witness, to corroborate the evidence of PW1, the evidence of victim is natural, cogent and consistent. Once the Court feels that the evidence of the victim is cogent, consistent and inspires confidence of the Court, there is no reason to discord the evidence of victim, the Court can record conviction against the accused.

27. In this case, even though all other the witnesses turned hostile and the other accused were acquitted, a combined reading of the oral and documentary evidence, this Court finds that the appellant has committed offences under Section 9 of Prohibition of Child Marriage Act, 2006 and



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Section 7 punishable under Section 8 of POCSO Act, 2012. Both the charges were proved by the prosecution. Therefore, this Court does not find any perversity in the Judgment passed by the learned Sessions Judge, Mahila Court, Chennai in Spl.S.C.No.36 of 2020 dated 04.09.2021 and there is no merit in the appeal and therefore, the appeal is liable to be dismissed.



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P.VELMURUGAN, J

shk

28. Accordingly, this Criminal Appeal is dismissed.

18.11.2022

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To

1. The Sessions Judge, Magalir Neethi Mandram,
(Fast Track Mahila Court), Erode.
2. The Inspector of Police,
All Women Police Station,
Bhavani,
Erode District.
3. The Public Prosecutor Officer, High Court, Madras
4. The Section Officer, Criminal Section, High Court, Madras.

**Pre-Deliver Order in
Criminal Appeal No. 621 of 2021**