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CRL A No.590 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2022

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Appeal No.590 of 2021

M.Palani

... Appellant

Vs.

The State, represented by
Inspector of Police,
All Women Police Station, Pennagaram,
Dharmapuri District,
(Crime No.8 of 2016)

... Respondent

Prayer : Criminal Appeal filed under Sections 374(2) of Criminal Procedure Code, praying to set aside the conviction, sentence and compensation passed against the appellant in Spl.S.C.No.16 of 2017 dated 20.09.2021 on the file of the Sessions Judge, Fast Track Mahila Court, Dharmapuri and allow the appeal and consequently acquit the appellant from all the charges.

For Appellant	: Mr.V.Murali Legal Aid Counsel
For Respondent	: Mr.S.Sugendran Additional Public Prosecutor



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J U D G M E N T

This Criminal Appeal has been filed to set aside the conviction, sentence and compensation passed against the appellant in Spl.S.C.No.16 of 2017 dated 20.09.2021 on the file of the Sessions Judge, Fast Track Mahila Court, Dharmapuri.

2. The respondent police registered the case in Crime No.8 of 2016 for the offences under Sections 363 of IPC and Sections 7 punishable under Section 8 of POCSO Act. After completing the investigation, the respondent police have filed the charge sheet before the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, since the offences are against woman. The learned Sessions Judge taken the charge sheet on file in Spl.S.C No.16 of 2017.

3. The learned Sessions Judge after completing the formalities framed the charges against the appellant for the offences under Sections 363 of IPC, 7 punishable under Section 8 of POCSO Act and 3(1)(w)(i) of SC/ST Act, 2015.



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4. After framing the charges, in order to substantiate the charges framed against the appellant, during the trial on the side of the prosecution as many as 21 witnesses were examined as PW 1 to PW 21 and 18 documents were marked as Ex. P1 to P18. No material object was marked on the side of the prosecution.

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

6. Hearing the arguments advanced on either side and considering the materials, the trial court found not guilty for the offence under Section 3(1)(w)(i) of SC/ST Act, 2015 and acquitted from the said charge. However the trial court found guilt of the accused for the offence



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under Sections 363 of IPC, 7 punishable under Section 8 of POCSO Act and the accused was convicted and sentenced to undergo 2 years of rigorous imprisonment and pay fine of Rs.1000/- in default to undergo further period of three months simple imprisonment for the offence under Section 363 of IPC and sentenced to undergo 3 years of rigorous imprisonment and pay fine of Rs.3000/- in default to undergo further period of six months simple imprisonment for the offence punishable under Section 7 r/w 8 of POCSO Act.

7. Challenging the said judgment of conviction and sentence passed by the trial court, the accused has filed the present appeal.

8. The specific case of the prosecution is that the victim is a 13 years girl child belonging to Schedule caste community. On 13.11.2016, when the victim was sleeping in front of her house along with her family members, the appellant at 11.30 p.m came and lifted the victim to some extent. When the victim girl raised her voice, the family members of the victim namely father, mother, sister and her uncle woke up and followed



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them. On seeing them, the appellant threw the victim on the floor and ran away. The mother, sister and uncle of the victim girl chased the appellant along with the public. Subsequently, the police registered the complaint and after investigation the final report was laid before the trial Court. After completion of the trial, the accused was convicted with two charges and acquitted with one of the charge.

9. The learned counsel for the appellant would submit that the accused was not aware of the community of the victim and the occurrence said to have taken place on 13.11.2016 at about 11.30 p.m and it is not possible for anyone to identify the appellant. However, the prosecution has not stated, how they identified the appellant. Even in the previous statement given under Section 164 by the victim before the learned Jurisdictional Magistrate, the name of the appellant was not mentioned. It is further stated that none of the witnesses have stated that the appellant came on the date of occurrence and lifted the girl. Admittedly, in this case, there was no injury and hence, there was no medical evidence. The AR entry, exhibit P10 and medical report, exhibit



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P11 show that the victim has not mentioned the name of the accused. She had only stated that a known person lifted her. Therefore, no one identified the accused was the appellant. All the witnesses are family members of the victim and no independent witnesses were examined to corroborate with the evidence of the victim. Therefore, the prosecution has failed to prove its case in a fair manner. Even prior to preferring the complaint, the accused was found in the police station. In the absence of identification, the appellant was called for enquiry on the ground of suspicion. In order to close the investigation, they have registered and laid charge sheet against the appellant. He would further submit that the appellant has not committed any such offence and no ingredients of offence punishable under Section 363 would attract. There are no materials to prove the sexual intention of the appellant, as she was sleeping with her family members and therefore, the prosecution has failed to prove its case beyond reasonable doubt and the trial Court has passed the judgment and decree without any substance and it is liable to be set aside.



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10. The learned Additional Public Prosecutor would submit that the age of the victim was 13 years at the time of occurrence. On 13.11.2016, while the victim girl was sleeping in front of her house with her family members, the appellant lifted the victim to commit sexual assault. When the victim girl raised her voice, her family members woke up and followed the appellant. On seeing them, the appellant threw the victim on the floor and ran away. However, her family members chased the appellant and registered a case against him. The prosecution examined 21 witnesses and 18 documents were marked. Exhibit P1 is the complaint given by the victim girl PW1. In the said complaint, the victim girl clearly stated that she was abducted by the appellant and on seeing the same, her family members chased him and preferred a complaint against him. When the victim was produced before the learned Jurisdictional Magistrate to record the statement under Section 164 of Cr.P.C, she has clearly narrated the incident. The father of the victim was examined as PW2. PW3 is the mother of the victim. PW4 and PW5 are the sister and uncle of the victim respectively. All the above witnesses narrated the incident which corroborates with the evidence of the victim.



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Even in the AR entry of the hospital, the history of the victim was stated as, on 13.11.2016, the appellant abducted her and when she raised her voice, her family members woke up and followed the appellant. On seeing them, the appellant threw her on the floor and ran away. No clinical examination was conducted to ascertain as to whether the victim was subjected to penetrative sexual assault. Therefore, from the evidence, it is clear that the victim who is aged 13 years was lifted by the appellant while she was sleeping with her family members. Hence it is evident that the appellant tried to kidnap the victim from her lawful guardians without their consent with a sexual intention. Further, it is clear from the evidence of PW1 to PW5 that the appellant has committed offence punishable under Section 363 of IPC and 7 r/w 8 of POCSO Act. Since, the appellant committed the assault without knowing that the victim is a member of SC/ST community, the trial Court acquitted him from Section 3(1)(w)(i) SC/ST (Prevention of Atrocities) Act. Therefore, the trial Court has rightly appreciated the materials and convicted the appellant under Sections 363 of IPC and 7 r/w 8 of POCSO Act and there is no merit in the case and this appeal is liable to be set aside.



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11. Heard the learned counsel for both sides and perused the materials available on record.

12. Admittedly, the case of the prosecution is that victim is a 13 years girl child belonging to Schedule caste community. On 13.11.2016, when the victim was sleeping in front of her house along with her family members, the appellant at 11.30 p.m came and lifted the victim and carried her to some extent. When the victim girl raised her voice, the family members of the victim namely father, mother, sister and her uncle woke up and followed them. On seeing them, the appellant threw the victim on the floor and ran away. The mother, sister and uncle of the victim girl chased the appellant and the public gathered. Subsequently, the police registered the complaint and after investigation, they laid charge sheet before the trial Court.

13. On the side of the prosecution as many as 21 witnesses were examined as PW 1 to PW 21 and 18 documents were marked as Ex. P1 to



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P18. No material object was marked on the side of the prosecution. PW1 to PW5 have clearly stated the incident. PW2, who is the father of the victim stated that since, it was night hours, he could not see the accused. But subsequently, came to know the accused is the appellant who lifted her daughter. However, PW3 to PW5 clearly stated that they identified the appellant and chased him. Even during the 164 statement, the victim stated that she could not remember the name of the appellant, however clearly identified him during the evidence. In the case of this nature, it is difficult to identify the accused, if the person is a stranger. Admittedly, the appellant herein also belonged to the very same village and he was known to the prosecution witnesses. Therefore, it is not difficult for them to identify the accused. It was stated by the defence side that there was a quarrel between the father of the victim who is from the same village of the appellant and due to that a false case was foisted on the appellant. But the same was denied on the side of the prosecution. The evidence of PW1 to PW5 corroborated with the previous statement of the victim and therefore, the prosecution has proved its case beyond reasonable doubt. Since, the appellant removed the minor child from the custody of the



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lawful guardian without their consent, the appellant has committed the offence under Section 363 of IPC. It is also evident that the appellant lifted the female child to some extent, while she was sleeping with her family members with a sexual intention and when her family members woke up and followed him, he threw her on the floor and ran away. Therefore, it is clear that the appellant committed offence punishable under Section 7 which is punishable under Section 8 of POCSO Act. Once the physical contact of the appellant is proved that he lifted the victim with a sexual intention, it is for the appellant to rebut the perspective under Section 29 of POCSO Act that there was no sexual intention.

14. This Court as an appellate court, while re-appreciating the entire evidence, as final Court of fact findings, it finds that the appellant has committed the charged offences. Therefore, this Court does not find any perversity in the Judgment passed by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri and there is no merit in the appeal and therefore, the appeal is liable to be dismissed.



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15. Accordingly, this Criminal Appeal is dismissed.

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Index: Yes/No

To

1. The Sessions Judge, Fast Track Mahila Court, Dharmapuri
2. The Inspector of Police,
All Women Police Station, Pennagaram,
Dharmapuri District,
3. The Public Prosecutor Officer, High Court, Madras
4. The Section Officer, Criminal Section, High Court, Madras.



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P.VELMURUGAN, J

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