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Crl.A.No.694 of 2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 29.09.2022**

**CORAM:**

**THE HON'BLE Mr. JUSTICE P.VELMURUGAN**

**Crl.A.No.694 of 2021**  
**and**  
**Crl.M.P.No.14012 of 2021**

Sakthivel  
Appellant

...

Vs.

State represented by  
The Inspector of Police,  
Edappadi Police Station,  
Salem.

...

Respondent

**Prayer:** Criminal Appeal filed under Section 374(2) of Cr.P.C, to set aside the judgment dated 11.10.2021 in Old Spl.S.C.No.32 of 2015 in New Spl.S.C.No.06 of 2019 on the file of the Special Court for POCSO Act at Salem.

For Appellant : Mr.K.Thenrajan  
For Respondent : Mr.S.Sugendran  
Additional Public Prosecutor

**JUDGEMENT**

This Criminal Appeal has been filed against the judgment dated 11.10.2021 passed in Old Spl.S.C.No.32 of 2015 in New Spl.S.C.No.06 of



Crl.A.No.694 of 2021

2019 on the file of the Special Court for POCSO Act at Salem.

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2. The respondent police registered a case in Crime No.141 of 2015 against the appellant for the offence under Sections 363 and 366 IPC and also for the offence under Section 3 which is punishable under Section 4 of POCSO Act. After investigation, laid a charge sheet before the Mahila Court, Salem and the same was taken on file in S.C.No.32 of 2015. Later the same was transferred to Special Court for POCSO Cases, Salem and re-assigned as Spl.S.C.No.06 of 2019. During trial, on the side of the prosecution, totally 15 witnesses were examined as P.Ws.1 to 15 and 22 documents were marked as Exs.P1 to P22. Besides, two material objects were also exhibited as M.O.1 and M.O.2. After completing the examination of the prosecution witnesses, incriminating circumstances were culled out from the prosecution witnesses, put before the accused, by questioning under Section 313 Cr.P.C., and the same was denied by the accused as false and pleaded not guilty. On the side of the defence, one witness was examined as D.W.1 and one document has been marked as Ex.D1.

3. On completion of trial and hearing the arguments advanced on



Crl.A.No.694 of 2021

either side, the Special Court found the accused guilty for the offence under Section 363 IPC, convicted the appellant and sentenced him to undergo three years Rigorous Imprisonment and to pay fine of Rs.5,000/-, in default to undergo three months Simple Imprisonment. Further, sentenced him to undergo three years Rigorous Imprisonment for the offence under Section 366 IPC and to pay fine of Rs.5000/-, in default to undergo three months Simple Imprisonment. He was also sentenced to undergo 10 years Rigorous Imprisonment for the offence under Section 3 which is punishable under Section 4 of POCSO Act and to pay fine of Rs.10,000/-, in default to undergo six months simple imprisonment and all the sentences are ordered to be run concurrently. Aggrieved over the judgment of conviction and sentence passed by the Special Court for POCSO Act, Salem in Spl.S.C.No.6 of 2019, the accused has preferred the present Criminal Appeal before this Court.

4. Learned counsel for the appellant would submit that P.W.3 is the victim girl has not whispered anything about sexual assault said to have been made by the appellant in her statement recorded under Section 164



Crl.A.No.694 of 2021

Cr.P.C., before the Magistrate. However, she deposed in her chief examination that she was sexually assaulted by the appellant. The statements made by the victim girl are contrary to each other. The victim was cross examined after four years and at that time, she was married to another man and having a child. Therefore, the evidence of P.W.3 could not be relayed on by the trial court. Further he would submit that P.W.1, who is the mother of the victim girl stated that her daughter has not stated anything about abduction and sexual assault. It shows that allegation was planted by the prosecution. Marriage between the victim girl and the appellant and the alleged sexual assault have not been proved by the prosecution. The trial court failed to appreciate the evidence of P.Ws.1 and 3. The case of the prosecution is that she was kidnapped by the appellant when she is in school, whereas, the victim was not attended the school on that date and the same was proved by way of Ex.D1. The trial court failed to appreciate the same. Further, the victim girl has not stated about her menstrual period dates to the Investigating Officer and the doctor P.W.10. Therefore, the evidence of P.W.3 could not be considered as evidence. The evidences were not corroborated to prove the case of the prosecution. Therefore, the



Crl.A.No.694 of 2021

judgment of conviction and sentence were not sustainable either in law on or facts. Therefore, judgment of the trial court is liable to be set aside and the appeal may be allowed.

5. Learned Additional Public Prosecutor appearing for the respondent would submit that the victim is a minor girl and she is a child under the definition of Section 2(1)(d) of POCSO Act. While the victim girl was studying in the school, the appellant took the victim girl forcibly without the consent of her parents/natural guardian and forcibly married her and had sexual intercourse with her. Hence, the appellant charged for the offence under Sections 363 and 366 IPC and also for the offence under Section 3 which is punishable under Section 4 of POCSO Act. The trial court, rightly convicted the appellant and sentenced him as stated above. In order to substantiate the case, the victim was examined as P.W.3. Parents of victim were examined as P.W.1 and P.W.4. The evidence of the victim girl is very clear that the appellant took her to his sister's house and relatives house, had sexual intercourse with her and subsequently took the victim girl to Murugan Temple and married her. Then the appellant took her to various



Crl.A.No.694 of 2021

places. After receipt of the complaint, the respondent police searched them and thereafter victim girl was rescued from the appellant and handed over to her parents. Evidence of the doctor clearly shows that the victim was subjected to penetrative sexual assault. Therefore, from the evidence of victim, her parents and the doctor, prosecution proved its case beyond reasonable doubt that the victim girl is a child and she was subjected to penetrative sexual assault, which was committed by the appellant. The trial court rightly appreciated the entire evidence and there is no merit in the appeal and the same is liable to be dismissed.

6. Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

7. Case of the prosecution is that on 18.03.2015, the appellant kidnapped the victim girl and took her to his sister's house and on 19.03.2015, again the appellant took the victim girl to Murugan temple at Salem, tied tali and on the same day, had penetrative sexual assault on her.



Crl.A.No.694 of 2021

Hence the complaint.

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8. In order to substantiate the charges levelled against the accused, on the side of the prosecution, 15 witnesses were examined as P.Ws.1 to 15 and 22 documents have been marked. Besides, two materials objects were also exhibited. On the side of the defence, one witness was examined and one document has been marked.

9. The victim was examined as P.W.3. P.W.1 is the mother of the victim girl, who has given the complaint before the respondent police. The victim girl was studying in IX standard in Chettimangurichi Government Higher Secondary School. P.W.1 and P.W.4 are mother and father of the victim girl respectively. While the victim girl was playing in the school, the appellant took the victim girl to his sister's house at Salem and stayed there. Then, they left to the appellant's relatives house at Edappadi. Thereafter, the appellant married the victim girl at Murugan temple. While staying in his sister's house, the appellant had sexual intercourse with the victim girl. When P.W.1 and P.W.4 returning to home after their work, they found that



Crl.A.No.694 of 2021

their daughter was missing. Since they could not trace out their daughter, her mother made a complaint before the respondent police after three days.

The respondent police rescued the victim girl from the appellant and handed over to P.W.1. Subsequently, the victim girl was produced before the doctor and the Magistrate for recording statement under Section 164 Cr.P.C. The respondent police recovered thali from the victim girl.

10. P.W.3, the victim girl has clearly stated that the appellant took her to his sister's house at Salem and thereafter they left to the appellant's relatives house at Edappadi. Then, the appellant married the victim girl at Murugan temple, which is situated at Salem and while they were staying in his sister's house, the appellant had sexual intercourse with her. Though the victim girl has not stated specifically before the Judicial Magistrate while recording statement under Section 164 Cr.P.C., regarding the sexual intercourse made by the appellant with her, but during the examination as witness, she has clearly deposed that the the appellant had sexual intercourse with her. Though the learned counsel for the appellant vehemently contended that there are material contradictions between the



Crl.A.No.694 of 2021

statement recorded under Section 164 Cr.P.C., and the deposition made by the victim girl during examination as P.W.3, the victim is a minor girl and she would feel shame to reveal all the facts before the stranger and in the cases of this nature, the victim will never reveal the entire facts about the incident especially before the stranger and their parents. From the evidence of P.W.10, doctor who conducted medical examination on the victim girl, it is found that the victim girl was subjected to penetrative sexual assault and it is reported that her hymen was not intact. From the evidence of P.W.1 and P.W.4, the prosecution proved that the victim was not in the house for three days. From the evidence of P.W.3, the victim girl, it is found that the appellant is the one who has removed the custody of the victim girl from the natural guardian, who is a child under the definition of section 2(1)(d) of POCSO Act and the appellant took her to various places and also married her and had sexual intercourse with her. Therefore, from the evidence of P.Ws.1,3,4 and the evidence of Doctor, P.W.10 it is found that the appellant kidnapped the victim girl and had sexual intercourse with her. From the evidence of P.W.7, who is the Headmistress of the School in which the victim girl was studied, and Ex.P.6, it is found that the date of birth of the



Crl.A.No.694 of 2021

girl is 15.05.2001. The victim has not completed the age of 18 years and she is a child under the definition of Section 2(1)(d) of POCSO Act. Since the victim is a child and she was removed from the custody of the natural guardian, and she was subjected to penetrative sexual assault by the appellant, the appellant has committed the offence under Sections 363 and 366 of IPC and also the offence under section 3 which is punishable under Section 4 of POCSO Act. Non revealing of all the facts by the victim before the Magistrate while recording statement under Section 164 Cr.P.C., will not affect the case of the prosecution. When the victim girl was examined as witness before the trial court, has clearly narrated all the incident, which was corroborated by the medical evidence P.W.10. Ex.P.10 is the medical certificate issued by the doctor, which clearly shows that the the victim girl was subjected to penetrative sexual assault. Therefore, the Trial Court rightly appreciated both the oral and documentary evidence and convicted the appellant and sentenced him as stated above. Cases of this nature, the Court cannot go deeply about the technicalities and minor contradictions with the evidence of the witnesses. The Court has carefully considered the evidence of victim coupled with medical evidence which were corroborated



Crl.A.No.694 of 2021

each other. The victim girl clearly identified the accused and he is the one who had sexual assault on her. Hence the Court has no reason to disbelieve or discard the evidence of the victim girl.

11. On a reading of the entire materials, this Court finds that the prosecution proved its case with cogent evidence that the appellant is the one who has kidnapped the victim under the guise of marrying her, had sexual intercourse with her. Therefore, prosecution proved all the charges levelled against the appellant. The Trial Court also rightly appreciated the evidence, convicted the appellant and sentenced him as stated above.

12. This Court does not find any perversity in the appreciation of the evidence and there is no merit in the appeal and the same is liable to be dismissed. Accordingly the Criminal Appeal is dismissed. Consequently, connected miscellaneous petition is closed.

**29.09.2022**

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11/12



Crl.A.No.694 of 2021

Index:yes/No  
Internet:yes/No

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**P.VELMURUGAN, J.**

mfa

**To**

1. The Sessions Judge,  
Special Court for POCSO Act at Salem.
2. The Inspector of Police,  
Edappadi Police Station,  
Salem.
3. The Public Prosecutor  
High Court of Madras.

**Crl.A.No.694 of 2021**  
**and**  
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**29.09.2022**

12/12