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Crl.A.No.33 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.A.No.33 of 2017

K.Parthiban

...Appellant / Sole Accused

-Vs-

The State rep by
The Inspector of Police,
Nalloor Police Station,
Namakkal District.
Cr.No.62 of 2016

...Respondent / Complainant

Prayer:- Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, 1973, to set aside the conviction and sentence passed by the learned Mahila Fast Track Judge (Sessions Cadre) at Namakkal in Spl.C.C.No.27 of 2016 dated 28.11.2016 and acquit him from all the charges.

For Appellant : Mr.G.Magesh Kumar

For Respondent : Mrs.G.V.Kasthuri
Additional Public Prosecutor

J U D G M E N T

The Appellant is the Sole Accused in Spl.C.C.No.27 of 2016 on the



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file of the learned Sessions Judge, Fast Track Mahila Court, Namakkal.

The Appellant / Accused stood charged and convicted for the offences under Section 366(A) of IPC and Section 5(1) r/w 6 of Protection of Children from Sexual Offences Act, 2012.

2. The Trial Court, vide impugned judgment dated 28.11.2016, has convicted the Appellant / Accused as follows : -

Conviction under section	Sentence Awarded
366(A) IPC	To undergo ten years of rigorous imprisonment and to pay a fine of Rs.1,000/- and in default, to undergo six months of rigorous imprisonment.
5(1) r/w 6 of Protection of Children from Sexual Offences Act, 2012	To undergo ten years of rigorous imprisonment and to pay a fine of Rs.1,000/- and in default, to undergo six months of rigorous imprisonment.

The learned Sessions Judge, Fast Track Mahila Court, Namakkal, had acquitted the Accused from the charge under Section 9 of the Prohibition of Child Marriage Act. The Trial Court further ordered the sentences to run concurrently and also granted set-off under Section 428 Cr.P.C.



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3. The Accused / Appellant challenging the legality of the conviction and sentence awarded by the learned Sessions Judge, Fast Track Mahila Court, Namakkal, in Spl.C.C.No.27 of 2016 vide impugned judgment dated 28.11.2016, has filed this Criminal Appeal.

4. On the date of the alleged occurrence, the victim was aged 17 years, and the Accused was aged 26 years. As per the complaint itself, they were lovers on the date of arrest, and they were already married.

5. Learned Counsel for the Appellant submits that now they are living as husband and wife. The elders in the family had performed the marriage after the victim attained the age of majority. Now they are blessed with a child aged 5 years.

6. The Appellant had produced documents regarding the status of the Accused and the victim, the marriage certificate and the birth certificate of the minor child born to the Appellant/Accused and the victim.



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7. On perusal of the judgment of the Trial Court, it is found that the parents of the victim and the victim herself had not supported the Prosecution case. The learned Sessions Judge had convicted the Accused based on the evidence of the official witnesses. The Doctor who had examined the victim and the Headmaster of the School where the victim studied, based on the presumptions, he had convicted the Accused. After the judgment of the Trial Court, during the pendency of the Appeal, the victim and the Accused had married. The elders had performed the marriage of the victim with the Accused.

8. Therefore, as rightly observed in the reported judgment of this Court in ***2019 SCC Online Mad 18850 Sabari Vs. Inspector of Police and Others***, which is held as follows:

“38. Apart from the above, this Court is of the view that as per the 3rd respondent's report, majority of cases are due to relationship between adolescent boys and girls. Though under Section 2(d) of the Act, ‘Child’ is defined as a person below the age of 18 years and in case of any love affair between a girl and a boy, where the girl happened to be 16 or 17 years old, either in the school final or entering



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the college, the relationship invariably assumes the penal character by subjecting the boy to the rigours of POCSO Act. Once the age of the girl is established in such relationship as below 18 years, the boy involved in the relationship is sure to be sentenced 7 years or 10 years as minimum imprisonment, as the case may be.

39. When the girl below 18 years is involved in a relationship with the teen age boy or little over the teen age, it is always a question mark as to how such relationship could be defined, though such relationship would be the result of mutual innocence and biological attraction. Such relationship cannot be construed as an unnatural one or alien to between relationship of opposite sexes. But in such cases where the age of the girl is below 18 years, even though she was capable of giving consent for relationship, being mentally matured, unfortunately, the provisions of the POCSO Act get attracted if such relationship transcends beyond platonic limits, attracting strong arm of law sanctioned by the provisions of POCSO Act, catching up with the so called offender of sexual assault, warranting a severe imprisonment of 7/10 years.”

9. In this case, the Accused on the date of the alleged occurrence, was aged 26 years and the victim was aged 17 years. They were in love relationship. Subsequent to the conviction, the Appeal is filed. During the



pendency of the Appeal, the victim and the Accused were married after the victim attained the age of majority. Therefore, the observation in the reported decision in paragraphs 38 and 39 is applicable to the facts of this case.

10. Now they are blessed with a child aged about 5 years. If this Appeal is dismissed and the Accused is convicted, it amounts to travesty of justice, thereby denying the wife's love, affection, and moral support of the husband, thereby denying the minor child's love, affection, moral, and economic support for the well-being of the minor child. Therefore, in the light of the reported judgment in ***(2019 SCC Online Mad 18850) Sabari Vs. Inspector of Police and Others***, the observation of this Court in paragraphs 38 and 39 is applicable to the facts of this case.

11. Also, the reported decision of this Court in ***(2021) 2 CTC 191 Vijayalakshmi and Another Vs. State rep. by the Inspector of Police and Another***, is applicable to the facts of this case.

12. Under those circumstances, if the Appeal is dismissed, it will



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result in miscarriage of justice by victimising the minor child born to the Accused and the victim.

13. In the light of the developments and considering the observation of the learned Single Judge of this Court in the reported decision in **(2019 SCC Online Mad 18850) Sabari Vs. Inspector of Police and Others**, the Criminal Appeal is allowed. The judgment and conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Namakkal, in Spl.C.C.No.27 of 2016 dated 28.11.2016 is hereby set aside.

The bail bond, if any executed by the Accused, shall stand cancelled.

The fine amount already deposited before the learned Sessions Judge, Fast Track Mahila Court, Namakkal, if any, is also ordered to be refunded to the Appellant. The Accused is set at liberty.

19.12.2023

cda
Index : Yes/No
Speaking/Non-speaking order

NOTE: Issue order copy on 20.12.2023



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SATHI KUMAR SUKUMARA KURUP, J.,

cda

To

- 1.The Sessions Judge,
Fast Track Mahila Court,
Namakkal.
- 2.The Inspector of Police,
Nalloor Police Station,
Namakkal District.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Section Officer, VR Records,
High Court, Chennai.

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