



Crl.A.No.43 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.01.2023

**CORAM:
THE HONOURABLE MS JUSTICE R.N.MANJULA**

**Crl.A.No.43 of 2023 and
Crl.M.P.No.492 of 2023**

Yougaraj

...Appellant / Sole Accused

Vs.

State rep. by
the Inspector of Police,
Devala Police Station,
Devala Panthalur Taluk,
Nilgiris District.
(Crime No.136 of 2021)

...Respondent / Complainant

This Criminal Appeal is filed under Section 374 (2) of Cr.P.C. to allow this Appeal and call for the records of the Judgment of the learned Sessions Judge, Mahila Court FTMC, Udthagamandalam at Nilgiris in Spl.C.C.No.15 of 2022 and set aside the said conviction of the lower Court.

For Appellant : Mr.M.Dhamodharan

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

JUDGMENT



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This criminal appeal has been filed against the judgment of conviction and sentence made in Spl.C.C.No.15 of 2022, dated 30.11.2022 passed by the learned Sessions Judge, Mahila Court (FTMC), Udhagamandalam at Nilgiris.

2. The appellant is the sole accused and against whom PW2, the father of the victim girl had given a complaint that his daughter was missing and on the basis of which, a case has been registered in Crime No.136 of 2021 before the respondent Police. After investigation, charge sheet has been filed against the accused for the offences under Sections 366, 342 I.P.C. and Section 7 r/w 8 of the Protection of Child from Sexual Offences Act, 2012. After trial, the accused was found guilty for the offences under Sections 366 and 342 of IPC and not guilty for the offences under Section 7 r/w 8 of the POCSO Act. The trial Court convicted the accused and sentenced him to undergo two years simple imprisonment and to pay a fine of Rs.1000/- and in default to pay the fine, to undergo a further period of simple imprisonment for three months for the offence under section 366 I.P.C., and for the offence under Section 342 I.P.C. to pay a fine of



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Rs.1000/- and in default to pay the fine, to undergo a further period of simple imprisonment for three months.

3. Mr.C.E.Pratap, learned Government advocate (Crl. Side) takes notice for the respondent Police and submitted his arguments.

4. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent. By consent of both side, this Appeal is taken up for final disposal at the admission stage itself.

5. The brief case of the prosecution is that the accused kidnapped the victim girl, taken her to his sister's house at Tiruppur and committed sexual assault on her. The offence of sexual assault was not proved, the other offences were also alleged to have been committed during the same transaction.

6. The learned counsel for the appellant submitted that despite the



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victim girl did not adduce any evidence incriminating the accused, the learned trial Judge had chosen to convict the accused under Sections 366 and 342 I.P.C., The conviction has been made only basing upon the age of the victim girl and without considering any evidence including the evidence of other witnesses. Since the learned trial Judge has not appreciated the evidence on record and wrongly convicted the accused under Sections 366 and 342 I.P.C., the appeal should be allowed.

7. The learned Government Advocate (Crl. Side) appearing for the respondent submitted that the victim girl was minor at the time of commission of offence and taking away from the lawful custody of the parents would make out an offence under Section 366 I.P.C., The sister of the accused who was examined as P.W.7 is an interested witness and hence the trial Court has not placed any reliance on her evidence. Since the trial Court has rightly appreciated the evidence on record by applying the principle of law, the Judgment of the trial court does not require any interference by this Court. The charge sheet has been filed against the accused for the offence under POCSO Act also. In the charge sheet, the age



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of the victim girl at the time of occurrence is shown as 17 years. With the materials produced before the Court, the learned trial Judge has fixed the age of the victim as 17 years 7 months and 3 days at the time of the occurrence. The victim girl was shortage of just 5 months to become a major. The victim girl who was examined as PW1 has stated in her evidence at the first instance that she was subjected to sexual assault after she was taken away by the accused to his sister's place at Tiruppur. Subsequently, she had refuted her own earlier statement and stated that she was not subjected to any sexual assault. Though the prosecution had requested the Court to treat P.W.1 as a hostile witness, it has not chosen to cross examine P.W.1.

8. The records would show that the victim girl had developed love affair with the accused who was a tailor aged 24 years at the time of occurrence. The learned trial Judge appears to have primarily relied on the statement of P.W.1 and her age for convicting the accused. The fact remains that the victim girl had a love affair with the accused. Even though she was a minor technically, she was a girl of 17 years 7 months and 3 days. Hence she can be a person who is mature enough to take decisions. There is



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no quarrel on the point that PW1 had understood the consequences of her actions. Though it is right on the part of the learned trial Judge to state that the victim girl is a minor and she ought not to have been taken away from the lawful custody of her parents without her consent, the fact remains that the accused was not a stranger to the victim girl. The accused was well known to the victim girl even before the occurrence.

9. The learned trial Judge has not chosen to convict the accused for the offence for Sexual assault in view of the uncertain and self contradicting evidence. The learned trial Judge has not taken into consideration of the evidence of the sister of the accused who is P.W.7. It is not the case of the prosecution that the victim girl was recovered from the sister's house of the accused at Tiruppur based on the complaint given by the father of the victim. It is contended by the learned Government Advocate (Crl. Side) that the victim girl had appeared on her own before the Police Station and her statement was obtained and that would show that the victim girl was not confined anywhere against her Will. Hence, the offence under Section 342 I.P.C cannot be taken as proved. It is relevant to point out that PW7 who is



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the sister of the accused enquired the accused on 23.07.2022 about bringing the victim girl and the accused replied that he brought her for securing a college admission for her. The learned trial Judge without considering the above evidence had convicted the accused for the offence under Section 366 I.P.C., When a portion of the evidence of the victim was taken into consideration for acquitting the accused for the offence under POCSO Act, the other portion of her evidence ought not to have been ignored. Taking into consideration of the alleged love affair between the victim girl and the accused and the age of the victim girl which was more or less 18 years at the time of occurrence, I feel the benefit of doubt should be given to the accused and he should be acquitted under Sections 366 and 342 I.P.C.

10. In the result, the Criminal Appeal is allowed. The Judgment of conviction and the sentence passed by learned Sessions Judge, Mahila Court FTMC, Udthagamandalam at Nilgiris in Spl.C.C.No.15 of 2022, dated 30.11.2022 is set aside and the appellant is acquitted of all the charges levelled against him. The fine amount paid if any, shall be returned to the appellant/accused. Bail Bonds, if any shall stand terminated. Consequently,



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connected miscellaneous petition is closed.

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Index : Yes/No

Speaking order / Non speaking order

vum



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1. The Sessions Judge, Mahila Court FTMC, Udhagamandalam at Nilgiris.
2. The Inspector of Police, Devala Police Station, Devala Panthalur Taluk, Nilgiris District.
3. The Public Prosecutor, High Court of Madras.



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R.N.MANJULA, J.,

vum

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