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CrI.A.No.455 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2023

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CrI.A.No.455 of 2016

Paranthaman

... Appellant/Accused

-Vs-

State Rep by,
The Inspector of Police,
Dharmapuri Town Police Station,
Dharmapuri District.

... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence with fine imposed against the appellant/accused on 07.04.2016 in S.C. No.39 of 2015 by the learned Fast Track, Mahila Court, Dharmapuri and acquit the accused from all the charges.

For Petitioner : Mr.K.Ethirajulu

For Respondent : Mr.V.Meganathan
Government Advocate (CrI.Side)



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ORDER

When the case came up for hearing on 04.07.2023, the learned Counsel for the Appellant did not appear before this Court. Therefore, the case was adjourned to 11.07.2023 under the caption 'for dismissal'.

2. On 11.07.2023, again when the case came up for hearing, there is no representation. Therefore, on perusal of the records, it is found that the Appeal is filed against the judgment of conviction passed by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, convicting the accused for the offence under Section 363 of IPC, whereby, the accused was sentenced to undergo Rigorous Imprisonment for two years along with a fine of Rs.5,000/- in default to undergo Simple Imprisonment for six months. This Court had directed the Inspector of Police, who was present in Court, to secure the accused to undergo imprisonment as per the Judgment in SC.No.39 of 2015 dated 07.04.2016. The Inspector of Police, Dharmapuri Town Police Station was directed to obtain warrant of conviction from the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri in compliance of the order of this Court. Also, this Court had



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directed the Tamil Nadu Legal Aid Committee to nominate a Counsel to proceed with the appeal and to remove the name of the Counsel on record and print the name of the accused. Accordingly, the case was adjourned to 25.07.2023.

3. Today, 25.07.2023, the learned Counsel nominated by the Tamil Nadu Legal Aid Committee, Thiru. K.Ethirajulu, Advocate, Mobile No: 9840147498, Enrollment No.515/1980, had filed a memo of appearance for the Appellant and submitted his arguments.

4. Also, the learned Government Advocate (Crl.Side) submitted that the accused was secured as per the direction of this Court that the warrant issued by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, in continuation of the judgment of conviction and sentence dated 07.04.2016, the accused was also produced before this Court. In the presence of the accused, Mr.K.Ethirajulu, the learned Counsel nominated by the Legal Aid Committee, submitted his arguments.

5. The learned Counsel for the Appellant invited the attention of this



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Court to the charges framed by the learned Sessions Judge, Fast Track Mahila Court, Dharmपुरi under Sections 363 and 366 of IPC.

6. It is the case of the prosecution that, on 05.09.2009, the accused 1 & 2 had forcibly taken away the victim by ranging up from the residence and also putting cloth on her mouth to prevent her from shouting and thereby the accused 1 and 2 alleged to have been taken away the victim from the lawful custody of her guardian. Therefore, the learned Sessions Judge, Fast Track Mahila Court, Dharmपुरi, had framed charges under Sections 363 and 366 of IPC against the accused 1. Accused No.2 died before framing of the charges.

7. The learned Counsel for the Appellant invited the attention of this Court to the deposition of the witnesses of P.W.1 to P.W.10 and the documents marked during Trial, under Ex.P.1 to Ex.P.6. PW.1 is the father of the victim, PW.2 is the uncle of the victim. PW.3 is also the uncle of the victim. PW.4 is the mother of the victim. PW.5 is the husband of the elder sister of the victim, PW.6, the victim, PW.7 is the elder sister of the victim. Therefore all the witnesses are related to each other. There are no



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independent witnesses except the mahazar witnesses P.W.8 and P.W.9.

PW.10 is the Investigating Officer.



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8. The learned Counsel for the Appellant submitted that there are materials available before the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, that there were two complaints. The earlier complaint was preferred with the Pennagaram Police Station based on which, Pennagaram Police had secured the accused and the victim / PW.6. For the reasons best known to the prosecution, PW.6, claimed by the Prosecution to be a minor girl at the time of alleged occurrence was not subjected to medical examination, which is mandatory procedure, which has not been adopted in this case. Subsequently, there was another complaint to the Dharmapuri Town Police Station.

9. The learned Counsel for the Appellant invited the attention of this Court to the documents marked during Trial. In cases of this nature, the age of the victim is of prime consideration, preferred, but there is no document material on the side of the prosecution to establish the fact that the victim is a minor. It is the case of the prosecution that on the alleged date of occurrence, the victim had not completed 18 years and she was aged about 17 years and four months.



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10. The learned Counsel for the Appellant invited the attention of this Court to the contradictions in the evidences of PWs.1, 2, 3, 4, 5, 6. The learned Sessions Judge failed to appreciate the contradictions in the evidence of the Prosecution witnesses.

11. The learned Counsel for the Appellant invited the attention of this Court to the deposition of the witnesses PW.7, the elder sister of the victim/PW.6. She had in her evidence stated that the victim had completed 18 years on the date of alleged kidnap. The victim was not interested in getting married to her cousin, son of the paternal aunt, which was fixed on the date on which the alleged kidnapped had taken place. After this incident, she had attempted suicide by consuming poison. Therefore, there are the sufficient materials before the Trial Court that the victim/PW.6 on her own volition accompanied the accused on the date of marriage prior to the date of the alleged occurrence and PW.2, in his evidence stated that PW.1 informed PW.2, his brother that PW.1's daughter PW.6, was seen accompanied the accused, that the accused is not a stranger there is the deposition of witnesses that the accused is a friend of PW.5 husband of PW.7 and therefore there had been relationship between the accused and



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the victim girl. The suggestions put to the victim girl/PW.6 was denied by them. But the elder sister of PW.6, PW.7 had clearly stated the cause of the origin of the case. Therefore, the learned Sessions Judge, failed to appreciate the evidence under material available in the course of the Trial through the deposition of the witnesses.

12. For reasons best known to the prosecution there was no evidence regarding medical examination of the victim after securing the victim. The prosecution had failed to explain why there was two complaints. Based on the earlier complaint, Pennagaram Police had secured the victim and subsequently they were produced before the Dharmapuri Town Police Station. The victim was not subjected to medical examination. There is no document filed by the prosecution to establish the fact that the victim was a minor girl on the date of alleged occurrence. Under those circumstances, the Trial Court had mechanically convicted the accused based on the evidence of the chief examination of the witnesses. Also, the learned Trial Judge had failed to consider the fact that all the witnesses are relatives. Therefore the learned Counsel for the Appellant seeks to set aside the judgment of conviction recorded by the learned Sessions Judge.



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13. The learned Government Advocate (Crl.Side) vehemently objects to the submissions of the learned Counsel for the Appellant stating that there are sufficient materials available before the Court to convict the accused. The fact is that the accused 1 & 2 took the victim forcibly from the lawful custody of her guardian and it was established by securing the maruti omni van used in this case, the van was secured and produced before the learned Judicial Magistrate and as per para-34 of the judgment, the learned Judge stated that the Maruthi Van belongs to second accused and the same was handed over to him, since the second accused died before framing of charges, the vehicle was not produced before the Court. Further, the learned Government Advocate (Crl.Side) submitted that the evidence of prosecution witnesses clearly established the fact that the accused had forcibly taken away the victim from the lawful custody of her guardian and based on the assessment of evidence, the learned Sessions Judge had rightly convicted the accused for the offence under Section 366 and acquitted the accused under Section 363 IPC.

14. The learned Government Advocate (Crl.Side) submitted that it is



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a well reasoned judgment and it does not warrant any interference by this Court and hence, the appeal may be dismissed.

Point for consideration

Whether the judgment of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri in S.C. No.39/2015 dated 07.04.2016 is to be set aside as perverse?

15. Perused the charge framed by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri. Perused the deposition of the witnesses of PWs.1 to PW.10. Exhibits P.1 to P.16 and the judgment of the learned Sessions Judge.

16. On perusal of the judgment of the learned Sessions Judge was found, that as rightly pointed out by the learned Counsel for the Appellant that there are contradictions in the examination-in-chief of Pws.1, 2 and 3. The learned Sessions Judge failed to appreciate those materials in the deposition of witnesses P.W.1 to P.W.3. Further it is the mandatory procedure that when there are cases attracting the offences under Section 363 or 366 IPC, the girl or minor girl, the victim is to be subjected to



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medical examination. Here, for reasons, best known to the Prosecution, the minor girl PW.6, as per the Prosecution was not subjected to medical examination. Also before proceeding with the investigation after registering the FIR, the first stage of the investigation proceeds with the securing the proof of age of the victim. Here, there is no documentary proof regarding the age of the victim to consider or to arrive at the conclusion that the victim was a minor at the time of alleged occurrence. In the absence of these two materials along with the evidence of PW.7 elder sister of the victim PW.6 on the date of marriage, the PW.6 had completed 18 years. Prior to the date of marriage the date on which, she was alleged to have kidnapped by A1 and A2. Subsequently after having secured the victim within three days, she is alleged to have consumed poison and attempted to commit suicide.

17. This fact clearly established the defense of the accused that the parents of the victim/PW.6 had arranged a forced marriage of P.W.6 (victim) with the paternal aunt's son. Prior to the date of marriage on which the alleged occurrence had taken place. She was forcibly taken away by the accused 1 and 2. As per the charge it is not the case. It is to



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be presumed that she went along with the accused on her own volition.

Even though, she had denied the same, the evidence of PW.7, the elder sister does not support the prosecution case.

18. In the light of the fact that proof of age was not produced as the material before the Trial Court and the fact that the victim after being secured not produced before the learned Judicial Magistrate and not subjected to medical examination and on orders of the learned Judicial Magistrate creates doubts in the prosecution case. This fact was not considered by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri. In the light of these circumstances, the submissions made by the learned Counsel for the Appellant is accepted and in the light of the said submission, the vehement objection of the learned Government Advocate (Crl.Side) is rejected. The point for consideration answered in favour of the Appellant / Accused and against the Prosecution. The judgment of the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri in SC.No.39 of 2015 dated 07.04.2016, is set aside as perverse. The accused is acquitted. The services of Thiru Ethirajulu, Learned Counsel nominated by the Legal Aid Committee attached to this



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Hon'ble High Court to proceed with the Appeal is very much appreciated.

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19. In the result, this Criminal Appeal is allowed.

25.07.2023

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Index : Yes/No

Speaking/Non-speaking order

SATHI KUMAR SUKUMARA KURUP, J.,

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