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Crl.A.No.441 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2023

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.A.No.441 of 2014

Sundarraaj

.. Appellant/Accused No.1

.Vs.

The State rep.by
The Inspector of Police
Neyveli Thermal Police Station
Neyveli.

.... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, to allow the above appeal and to set aside the conviction and sentence imposed by the Sessions Judge, Magalir Neethi mandram, Mahila Court, Cuddalore in S.C.No.218 of 2013 in Crime No.129 of 2012 dated 11.08.2014.

For Appellant Mr.B.Ganesha Moorthy

For Respondent Mr.L.Baskaran
Government Advocate (Crl Side)

**JUDGMENT**

This Criminal Appeal has been filed against the judgment and order passed by the Sessions Judge, Magalir Neethi Mandram at Cuddalore, made in S.C.No.218 of 2013, dated 11.08.2014, convicting and sentencing the appellant in the following manner:

Sl. No.	Offence	Sentence/Punishment
1.	Section 366 IPC	Three years rigorous imprisonment and to pay a fine of Rs.3,000/-, in default, to undergo six months rigorous imprisonment.
2.	Section 376 IPC	Seven years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo one year rigorous imprisonment.

2.The case of the prosecution is that the appellant and the victim girl [PW-3] were having a love affair. At the relevant point of time, the victim girl was studying in the 10th standard. On 02.05.2012, the appellant is said to have kidnapped the victim girl and taken her to Tiruppur. Thereafter, they married and the victim girl was taken to the appellant's uncles house. The appellant had sexual intercourse with the victim girl repeatedly.



3.The further case of the prosecution is that PW-1, who is the father of the victim girl found that his daughter was missing and hence, he gave a complaint [Ex.P-1] on 05.05.2012 at about 9.30 am., to PW-10, who was the Inspector of Police at Neyveli Thermal Police Station. Based on the complaint, an FIR [Ex.P-8] came to be registered in Crime No.129 of 2012.

4.The investigation was taken over by PW-10 and he went to the house of PW-1 and prepared the Observation Mahazar [Ex.P-2]. He also prepared the Rough Sketch [Ex.P-9]. PW-10 recorded the statement of witnesses under Section 161(3) Cr.PC. On 05.05.2012 at about 4.00 pm., the appellant was arrested and he was remanded to Judicial custody. He also recorded the statement of the victim girl.

5.The Investigation Officer thereafter made a requisition to the Judicial Magistrate, Neyveli for sending the victim girl for medical examination and accordingly, the victim girl was sent to Mundiampakkam Government College and Hospital. The girl was examined by the doctor PW-8 on 08.05.2012. The report given by PW-8 was marked as Ex.P-5 and it was opined in the report that the hymen was



not intact, p/v introitus admits 2 fingers and there is no sign of any injury or bruises. It was further opined that the victim girl was fit to have sexual intercourse and there is no evidence of recent intercourse.

6.The appellant was sent for medical examination to the doctor (PW-7), who examined him on 10.05.2012. Ex.P-4 report was marked through PW-7 and it was opined that there is nothing to suggest that the appellant was impotent or that he cannot perform sexual intercourse.

7.The Investigation Officer thereafter collected the medical reports and the scientific reports. He also prepared an alteration report marked as Ex.P-10 and the offence was altered to Sections 366, 376 and 363 IPC.

8.The investigation was thereafter taken over by PW-11 and he completed the other formalities and filed Final Report on 17.09.2012.

9.The Court below framed charges against the appellant and another accused Anand (A.2). As against the appellant, the Court below



framed charges for offence under Sections 376 and 366 IPC. As against A2, the charge was framed under Section 366 r/w Section 109 IPC.

10.The prosecution examined PW-1 to PW-11 and marked Exs.P-1 to P-10. The incriminating materials collected during the course of trial was put to the appellant when he was questioned under Section 313(1)(b) Cr.PC., and he denied the same as false. Ex.D-1 was marked on the side of the defense.

11.The Court below on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a conclusion that the prosecution has proved the case beyond reasonable doubts as against the appellant and accordingly, convicted and sentenced him in the manner stated supra. A.2 was acquitted from the charge framed against him. Aggrieved by the same, the present criminal appeal has been filed before this Court.

12.This Court has carefully considered the submissions made on either side and the materials available on record.



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13.It is very clear from the evidence of the victim girl that she had a love affair with the appellant. She had voluntarily eloped with the appellant and they seem to have married and thereafter, they had involved in sexual intercourse. This fact has not been seriously denied even by the defense. The medical evidence also proves that the appellant and the victim girl were capable of having physical intercourse.

14.The Court below had proceeded to convict the appellant mainly on the ground that the victim girl was a minor at the relevant point of time and hence, even the consent given by her will not come to the aid of the appellant.

15.The only issue to be considered by this Court is as to whether the victim girl was a minor at the time of the incident. The prosecution has relied upon the report of the radiologist, who was examined as PW-9 and through whom the report was marked as Ex.P-7. It is clear from this evidence that the radiologist had assessed that the victim girl has completed 17 years but not completed 18 years. It is now too well settled insofar as radiologist report is concerned that it is always subject



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to the margin of (+) or (-) two years. Hence, this Court cannot come to a conclusive decision that the victim girl was a minor at the time of incident.

16. Apart from the above, the prosecution also relied upon the evidence of PW-6 through whom the certificate was marked as Ex.P-3. PW-3 has given a certificate to the effect that the date of birth of the victim girl is 28.07.1997. It is not known from where PW-6 ascertained this date of birth. In the entire evidence, PW-6 does not speak about the basic document from which this date of birth was ascertained. It is now a settled law that the entry regarding the age in the school register, does not attach a higher evidential value to prove the age in the absence of any material based on which the age was recorded in the school records.

17. In the light of the above discussion, there is no clinching evidence before the Court to show that the victim girl was below 18 years at the time of the incident.



18. Apart from the above fact, during the pendency of this criminal appeal, the victim girl has filed an affidavit before this Court and the relevant portions in the affidavit are extracted hereunder:

I state that I and the petitioner were loved each other and we both were belonged to different communities, therefore, my parents did not accept our love. In this situation I and the petitioner both have decided and eloped from the house and married at Tiruppur. But it is unfortunate to state that my parents did not allowed both of us to live together and in the Neyveli Police Station, we were separated and the petitioner was sent to jail.

I respectfully state that thereafter, I have married to one Mr. Sivaraj on 06.02.2014 and living happily. Due to our happy wedded life I am having two children namely Kayalvizhi and Ragul at the age of 7 years and 1 year 2 months respectively. My husband is doing catering business and I am living happily without any hindrance.

I respectfully submit that the petitioner also married a Widow namely Latha on 12.03.2016 and having three children namely Balan, Mekul Benson and Kamalika at the age of 13, 5 and 4 years respectively and living with his family. I respectfully state I have no problem thereafter when we separated and after my marriage the petitioner did not create any problem in my life.

I state that the petitioner and myself have been loving each other and I did not have any intention to prosecute the petitioner, since we both have loved each other and now we



were living with our family separately having no problem. If the petitioner is punished then his present life will be in problem and his family will be scatted.

I state that I have no intention to prosecute the petitioner considering the present and future lives of myself and the petitioner.

Therefore, I pray that this Hon'ble court may record this affidavit of mine and show mercy to the petitioner and not to prosecute him, since he had already suffered a lot and lost his life because of me.

19.This Court directed the respondent Police to ascertain from the victim girl and accordingly, a separate report has been filed before this Court by the Inspector of Police reiterating whatever has been stated by the victim girl in the affidavit filed before this Court.

20.In the light of the above discussion and based on the affidavit filed by the victim girl, this Court is inclined to interfere with the judgment and order passed by the Court below in S.C.No.218 of 2013, dated 11.08.2014 and accordingly, the same is hereby set aside. The appellant was enlarged on bail by this Court by an order dated 17.06.2015, pending the appeal. Since the order passed by the Court below is set aside, the bail bond stands cancelled and the fine amount, if



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N.ANAND VENKATESH,J.

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21.In the result, this Criminal Appeal stands allowed.

27.02.2023

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Internet : Yes/No

Index : Yes/No

Speaking Order :Yes/No

Neutral Judgment :Yes/No

To

1. Sessions Judge
Magalir Neethim Mandram
Mahila Court, Cuddalore.
- 2.The Inspector of Police
Neyveli Thermal Police Station
Neyveli.
- 3.The Superintendent
Central Prison
Cuddalore.
- 4.The Public Prosecutor
High Court, Madras.



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