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Crl.A.(MD).No.875 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

DATED: 22.09.2023

CORAM

THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A.(MD).No.875 of 2022

and

Crl.M.P(MD).No.15964 of 2022

Kannan @ Vijayakannan @ Gnanaguru

.. Appellant/Sole Accused

Vs.

The State rep. by
The Inspector of Police,
Virudhunagar Bazaar Police Station,
Virudhunagar District.

(Crime No.271 of 2006)

.. Respondent/ Complainant

PRAYER: Appeal filed under Section 374 of the Criminal Procedure Code, to call for the entire records connected to the judgment in Special Sessions Case No.62 of 2016 on the file of the Special Court for Exclusive Trial of Cases under Protection of Children from the Sexual Offences Act, 2012, Srivilliputhur, Virudhunagar District dated 24.02.2022 and set aside the conviction and sentence imposed against the appellant.



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For Appellant : Mr.S.Poornachandran for
Ms.P.Rajeswari
For Respondent : Mr.R.Sivakumar
Government Advocate (Crl.Side)

JUDGMENT

The accused in Spl.S.C.No.62 of 2016 on the file of the Special Court for Exclusive Trial of Cases under Protection of Children from the Sexual Offences Act, 2012, Virudhunagar District at Srivilliputhur, has filed this Criminal Appeal before this Court challenging the conviction and sentence imposed against him and the impugned judgment dated 24.02.2022.

2. The victim girl, is aged about 17 years. She has completed plus two examination and she got mark 1161/1200. The same was also published in the newspaper. The appellant is a habitual offender having number of previous cases and he escaped from the custody of the police and pretended before the parents of the victim girl that he was the reporter of the Pothigai Television. After making such false claim as a reporter of the Pothigai Television, he stated that since the victim girl, obtained first



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mark in the district level, he would arrange to obtain/get admission in Thiagarajar College situated at Madurai and also to receive a sum of Rs.55,000/- from the District Collector as she is entitled to receive the same on the ground that she acquired the third place in the state level plus two examination. Believing the words of the appellant, the victim girl and her parents accompanied him. The appellant in a clandestine manner dropped the father of the victim girl in Virudhunagar bus stand and stated that he would take the victim girl and her mother to take photograph. After disassociating the company of the father, the victim girl and the mother were taken to another place and from that place, he left the mother of the victim girl and took the victim girl alone. After taking the victim girl, he made false pretence as if he is taking the photograph. For that purpose, he asked her to remove her gold chain, stating that if she wore gold chain, she will not be eligible to get the cash reward, as it would show that she comes from considerably a rich family. In the said circumstances, he illegally obtained the chain from the victim girl. After taking the photograph she was taken to Thiruchendur and made her stay at a lodge in Tiruchendur with an intention to commit sexual assault on her. The victim girl was also taken to Madurai and in Madurai also he committed sexual assault on her.



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In the said circumstances, the complaint was given to the jurisdictional police and the same was received from the victim's father and thereafter, the victim girl was secured and the accused was arrested and the gold chain was recovered from the appellant. Then, the investigation was conducted and after the investigation, the final report was filed before the Special Court for Exclusive Trial of Cases Under Protection of Children from the Sexual Offences Act, 2012 and same was taken on file in Spl.S.C.No.62 of 2016. After furnishing copies of records to the appellant under Section 207 of the Code of Criminal Procedure, the learned trial Judge framed necessary charges and questioned the appellant under Section 235(2) Cr.P.C and he pleaded not guilty and denied the charges and his involvement in the offence and stood for trial.

3. The learned trial Judge conducted the trial by examining 23 witnesses on the side of the prosecution and marking Exhibits P.1 to P.18 and six material objects and questioned the appellant under Section 313 of the Code of Criminal Procedure, for which the appellant simply denied and neither examined any witness nor marked any document on his side.



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4. The learned Sessions Judge, Srivilliputtur, Virudhunagar District, after analyzing the oral and documentary evidence adduced on both sides, held that the prosecution had established the guilt of the appellant beyond reasonable doubt and convicted the appellant for the offence under Section 420 IPC and sentenced him to undergo Seven Years of imprisonment and pay a fine of Rs.1,000/- and for the offence under 366 of IPC sentenced him to undergo Ten Years of Imprisonment and a fine of Rs.1,000/-, in default of payment of the fine amount the appellant shall undergo Simple Imprisonment for six months and directed the sentences to run consecutively and acquitted the appellant from the charge under Section 419 of IPC and Section 8 of POCSO Act, 2012. Challenging the same, present appeal is filed by the appellant.

5.The learned counsel for the appellant made the following submissions:

There was no evidence on the side of the prosecution to prove the offense under section 420 and 366 of IPC. The learned trial Judge, after acquitting the appellant under section 419 of IPC and Section 8 of POCSO Act, 2012 passed the conviction under sections 420 and 366 IPC which is



not legally maintainable. The learned counsel also submitted that there was a delay in the registering the case and also the evidence of the victim girl and the parents are not believable one. The allegation that victim girl was taken by the appellant and severed the company of her parents in clandestine manner is not correct and also the false case was initiated by the police officers in order to confine the petitioner in jail. He also stated that the escape of appellant from the custody of the police officer during his initial remand is also not established. None of the witnesses are believable, and all are interested witnesses. The recovery of the gold chain of the victim girl is also not clearly proved and P.W.20's evidence is not believable one and hence, he seeks for acquittal.

6.The learned Additional Public Prosecutor, on perusal of the records and also on instructions submitted that the appellant took the victim girl on the occurrence date was clearly spoken by the victim girl and her father. Subsequently, he stayed with the girl at Thiruchendur lodge which was clearly deposed. The above sequence of events deposed by the victim girl are cogent and also trustworthy. There is no reason to disbelieve the same. Further, no motive was attributed against the victim



girl to falsely rope the appellant in this case. Apart from that, the appellant has 24 cases under Section 379 IPC and out of these cases except two cases all cases ended in conviction. Apart from that, the accused escaped from the custody of the police when he was under para-duty custody. In the said circumstances, the appellant deserves no reduction of sentence and seeks for dismissal of this appeal.

7.This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record and also the impugned judgment.

8.The appellant escaped from the para-duty custody of the police officers on 19.05.2016. After the escape from the para-duty custody of the police, he, approached the victim girl's father on 19.05.2016 at about 06.00a.m. The appellant met the parents of the victim girl and pretended as if he is reporter of the Pothigai Television. Thereafter, he made false statement that he would arrange for the payment of Rs.50,000/- from the Collectorate Virudhunagar. For that purpose, he took the parents along with the victim girl to Virudhunagar. In Virudhunagar, he dropped the



father of the victim in one place and also dropped the mother of the victim in another place. Thereafter, the accused, took the victim girl for taking photographs. The accused in a clandestine manner separated the custody of the victim from her parents. While, taking the photograph, he asked the victim girl to remove her gold chain by stating that if prize amount is needed she should show herself as an indigent girl and so saying, he asked the victim girl to remove the chain. After obtaining the chain, he had not returned the same to the victim girl and took the victim girl to Tiruchendur lodge and stayed there with an intention to commit sexual assault on her.

9. Thereafter, complaint was given and the respondent police arrested the accused and recovered the gold chain. The recovery also proved through the evidence of the witnesses. From the above narration of events, it is clear that the accused escaped from the custody of P.W.16 and 17 on 10.05.2016. The accused is involved in number of cases in various police stations. He was confined lastly in the Puzhal prison. In order to attend the case from the Mahila Sessions Court, Srivilliputhur, Virudhunagar District, he was brought from the Puzhal prison. Thereafter, he was to be produced back in the Puzhal prison. When they all boarded



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at Koyambedu bus stand, the appellant/accused jumped and escaped from the custody of the escort on 13.05.2016 at 04.30am. The same was clearly spoken by P.W.16 and P.W.17. Their evidence is cogent and there was no reason to disbelieve the same. After the escape from the said custody, he approached P.W.16 and P.W.17 and the victim on 18.05.2016 at about 06.00am. During such meeting, the victim and her parents believed the words of the appellant that he was the reporter of Pothigai Television. By making false pretense to the parents of the victim girl and pretending to help her to obtain Rs.50,000/- cash credit from the Collectorate of Virudhunagar and also to get admission in Madurai Thiyagarajar college he had taken the victim girl and her parents to Virudhunagar Collectorate. In Virudhunagar Collectorate, in a clandestine manner, he separated the custody from the father of the victim girl and from that place he took the mother and daughter to another place and the appellant separated the mother of the victim girl falsely stating he wanted to take photograph. Thereafter, he made her remove the gold chain in the guise of taking photograph. Upon believing the same, the victim girl handed over her gold chain and posed for the photograph. Thereafter, the victim girl was taken to the Thiruchendur lodge with an intention to have sexual assault. In the



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lodge, the appellant committed sexual assault on the victim girl. In the said circumstances, the above evidence of the victim girl is corroborated by the evidence of the parents of the victim girl and also lodge owner in Thiruchendur and further, the recovery of the gold jewel was made in the presence of the witness and the said witness clearly deposed about the recovery of the gold jewels.

10. In the said circumstances, when the recovery was made and further allegation that he took the victim girl under the false promise to get cash prize and getting admission in the Thiyagarajar college also is clearly proved through the above evidence. This Court, considering the circumstances and the above evidence, finds that the appellant made the false statement that he was a reporter and he falsely made the victim girl and her parents believe the words of the appellant that he was the reporter of the Pothigai Television and hence, on that false premise, took the victim girl to various places and finally got the jewels of the victim girl and also tried to appropriate the same. In the said circumstances, this Court finds no merit in the contention of the appellant and the evidence of the witnesses is cogent and hence the conviction passed against him under sections 420



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and 366 of IPC is confirmed. This Court consider the following previous antecedents of the appellant and is not inclined to modify the consecutive sentence of imprisonment into concurrent the sentence of imprisonment imposed on him:

<i>S. No.</i>	<i>Police Station</i>	<i>Crime No.</i>	<i>Section</i>	<i>Stage of the case</i>	<i>Date</i>
1	RJPM(N) PS	Cr.No.10/95	U/s.379 of IPC	Conviction	06.02.1995
2	RJPM(N) PS	Cr.No.13/95	U/s.379 of IPC	Conviction	06.02.1995
3	RJPM(N) PS	Cr.No.19/95	U/s.379 of IPC	Conviction	06.02.1995
4	RJPM(N) PS	Cr.No.23/95	U/s.379 of IPC	Conviction	06.02.1995
5	RJPM(N) PS	Cr.No.921/95	U/s.379 of IPC	Conviction	07.02.1996
6	RJPM(N) PS	Cr.No.922/95	U/s.379 of IPC	Conviction	07.02.1996
7	RJPM(N) PS	Cr.No.937/95	U/s.379 of IPC	Conviction	07.02.1996
8	RJPM(N) PS	Cr.No.939/95	U/s.379 of IPC	Conviction	07.02.1996
9	RJPM(N) PS	Cr.No.938/95	U/s.379 of IPC	Conviction	17.09.1996
10	RJPM(N) PS	Cr.No.240/96	U/s.379 of IPC	Conviction	17.09.1996
11	RJPM(N) PS	Cr.No.72/96	U/s.379 of IPC	Conviction	17.09.1996
12	RJPM(N) PS	Cr.No.76/96	U/s.379 of IPC	Conviction	17.09.1996
13	RJPM(N) PS	Cr.No.755/97	U/s.379 of IPC	Conviction	19.05.1998
14	RJPM(N) PS	Cr.No.83/98	U/s.379 of IPC	Conviction	19.05.1998
15	RJPM(N) PS	Cr.No.91/98	U/s.379 of IPC	Conviction	19.05.1998
16	RJPM(N) PS	Cr.No.95/98	U/s.379 of IPC	Conviction	19.05.1998
17	RJPM(N) PS	Cr.No.449/99	U/s.379 of IPC	Conviction	09.05.2000
18	RJPM(N) PS	Cr.No.703/99	U/s.379 of IPC	Conviction	09.05.2000
19	RJPM(N) PS	Cr.No.707/99	U/s.457, 380 of IPC	Conviction	09.05.2000
20	RJPM(N) PS	Cr.No.740/99	U/s.379 of IPC	Conviction	09.05.2000
21	RJPM(N) PS	Cr.No.764/99	U/s.379 of IPC	Conviction	09.05.2000
22	RJPM(N) PS	Cr.No.778/99	U/s.379 of IPC	Conviction	09.05.2000



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23	RJPM(N) PS	Cr.No.779/99	U/s.379 of IPC	Conviction	09.05.2000
24	RJPM(N) PS	Cr.No.781/99	U/s.379 of IPC	Conviction	09.05.2000
25	RJPM(N) PS	Cr.No.782/99	U/s.379 of IPC	Conviction	09.05.2000
26	RJPM(N) PS	Cr.No.431/01	U/s.379 of IPC	Conviction	07.11.2001
27	RJPM(N) PS	Cr.No.439/01	U/s.379 of IPC	Conviction	07.11.2001
28	RJPM(N) PS	Cr.No.462/01	U/s.379 of IPC	Conviction	07.11.2001
29	RJPM(N) PS	Cr.No.463/01	U/s.379 of IPC	Conviction	07.11.2001
30	RJPM(N) PS	Cr.No.467/01	U/s.379 of IPC	Conviction	07.11.2001
31	RJPM(N) PS	Cr.No.88/02	U/s.379 of IPC	Conviction	25.09.2005
32	SVPR Town PS	Cr.No.145/02	U/s.379 & 75 & 109 of IPC	Conviction	26.08.2002
33	RJPM(N) PS	Cr.No.130/04	U/s.379 of IPC	Conviction	02.08.2004
34	RJPM(N) PS	Cr.No.132/04	U/s.379 of IPC	Conviction	02.08.2004
35	THIRUTHANGAL PS	Cr.No.104/04	U/s.379 of IPC	Conviction	18.07.2005
36	SVK TOWN PS	Cr.No.104/04	U/s.379 of IPC	Conviction	18.07.2005
37	SVK TOWN PS	Cr.No.326/04	U/s.379 of IPC	Conviction	18.07.2005
38	SVK TOWN PS	Cr.No.327/04	U/s.379 of IPC	Conviction	18.07.2005
39	SVK TOWN PS	Cr.No.328/04	U/s.379 of IPC	Conviction	18.07.2005
40	RJPM (S) PS	Cr.No.752/05	U/s.379 of IPC	Conviction	20.02.2006
41	BALAMEDU PS	Cr.No.49/07	U/s.379 of IPC	UN	27.05.2010
42	ALNGA NALLOR PS	Cr.No.465/07	U/s.378, 506(ii) of IPC	Conviction	
43	RJPM (S) PS	Cr.No.752/07	U/s.379 of IPC	Conviction	07.03.2008
44	RJPM (S) PS	Cr.No.330/08	U/s.379 of IPC	Conviction	27.10.2009
45	RJPM (S) PS	Cr.No.744/09	U/s.379 of IPC	Conviction	14.02.2009
46	RJPM (S) PS	Cr.No.65/10	U/s.379 of IPC	Conviction	20.04.2010
47	RJPM (S) PS	Cr.No.67/10	U/s.379 of IPC	Conviction	20.04.2010
48	THALLAKULAM PS	Cr.No.1558/10	U/s.406, 420, 379 of IPC	PT	--
49	ALANGULAM PS	Cr.No.14/11	U/s.419, 420 of IPC	Conviction	26.05.2011



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50	K.R.K.R. PS	Cr.No.231/11	U/s.379 of IPC	Conviction	26.08.2011
51	K.R.K.R.PS	Cr.No.129/16	U/s.417, 420 of IPC	Conviction	04.08.2017
52	CMBT PS	Cr.No.369/16	U/s.224, 379 of IPC	Conviction	08.09.2017
53	BAZAAR PS	Cr.No.271/16	U/s.419, 366(A), 420, 406, 341 & 363 & 7 r/w 8, r/w 3, r/w4, r/w 18 of POCSO Act	Conviction	22.02.2022

11. The learned counsel submitted that at least the substantive sentences may be reduced to some extent under Section 366 of IPC. Considering the incarceration of the appellant and the submission made by the learned counsel appearing on behalf of him, this Court is inclined to reduce the sentence of imprisonment under Section 366 of IPC to seven years from ten years alone without interfering with the other aspects (including the fine with default sentence and direction to run all the sentence consecutively).

12. Accordingly, this Criminal Appeal is partly allowed in the following terms:

12.1. the conviction passed against the appellant for the offence under Sections 420 and 366 of IPC in Spl.S.C.No.No.62 of 2016, by the



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learned Sessions Judge, Srivilliputtur, Virudhunagar District, vide judgment dated 24.02.2022 is hereby confirmed.

12.2. The sentence of imprisonment modified as follows:

<i>Offence</i>	<i>Sentence of Imprisonment imposed by the learned trial Judge</i>	<i>Modified sentence of imprisonment imposed by this Court</i>
420 of IPC	“Seven” years of imprisonment	Seven years of imprisonment
366 of IPC	“Ten” years of Imprisonment	Seven years of imprisonment
Fine amount under Section 420 of IPC	Rs.1000 with default sentence of 6 months of imprisonment	-Do-
Fine amount under Section 366 of IPC	Rs.1000 with default sentence of 6 months of imprisonment	-Do-
	All the Sentences are run consecutively	All the Sentences are run consecutively

Consequently, connected Criminal Miscellaneous Petition is closed.

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Index : Yes/No

Internet : Yes/No

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Note: Issue Order copy on 05.11.2024

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To

- 1.The Sessions Court,
Special Court for Exclusive Trial of Cases under Protection of Children
from the Sexual Offences Act, 2012,
Srivilliputtur, Virudhunagar District.
- 2.The Inspector of Police,
Virudhunagar Bazaar Police Station,
Virudhunagar District.
- 3.The Superintendent of Prison,
Central Prison, Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 5.The Section Officer,
Criminal Section(Records)
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

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