



Crl.A(MD)No.538 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.08.2023

Pronounced on : 17.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A(MD)No.538 of 2022

Murugan @ Murugananth

... Appellant/Sole Accused

Vs.

The State rep by,
The Inspector of Police,
All Women Police Station.
Nanguneri,
Tirunelveli District.
(Crime No.501/2019).

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the records from the lower Court namely Special Court for Exclusive trial of Cases under the POCSO Act, Tirunelveli in Spl.Case No.260 of 2019 and to set aside the judgment dated 11.08.2022 and acquit the appellant from the charges.

For Petitioner : Mr.KA.Ramakrishnan

For Respondent : Mr.M.Muthumanikkam
Government Advocate (Criminal side)



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JUDGMENT

The appellant is the sole accused in Spl.Case No.260 of 2019 on the file of the Special Court for Exclusive trial of Cases under the POCSO Act, Tirunelveli. The learned Special Judge by judgment dated 11.08.2012 convicted the appellant for the offence under Section 363 IPC and sentenced him to undergo 3 years Rigorous Imprisonment and to pay fine of Rs.5,000/-, in default, to undergo 3 months Rigorous Imprisonment. Challenging the same, the appellant filed this appeal.

2. Case of the prosecution:

P.W3-victim girl was said to have been kidnapped by the appellant on 08.01.2019. Consequently, on 10.01.2019, he is said to have married with the victim girl and both lived in a rental house at Kovilpatti. In the meantime, the victim girl's parents gave a complaint before the jurisdictional respondent police. The respondent police registered a case under the caption 'girl missing' and traced the victim girl. At the time, the victim girl expressed her consent to live with the appellant. On account of her age below 18 years, the respondent police advised her to go with the P.W1-mother of the victim girl. Thereafter, the jurisdictional police



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altered the offence for the offence under Section 363 and 376 (2 counts)

IPC and Section 5(l) r/w 6 of the POCSO Act.

3. After registration of the case, the appellant was arrested and the investigation was completed by collecting all the materials and examination of the relevant witnesses. The respondent police filed final report before the Special Court for the alleged offence under Section 363 and 376 (2 counts) IPC and Section 5(l) r/w 6 of the POCSO Act. The learned trial Judge, after taking the final report on file in Special C.C.No. 260 of 2019 framed the charges and questioned accused and the accused pleaded not guilty and stood for trial.

4. On the side of the prosecution P.W1 to P.W14 were examined. Ex.P1 to Ex.P22 were marked and no material object was marked. On the basis of the evidence of prosecution witnesses and documents, the learned trial Judge put the incriminating materials available against the appellant under Section 313 Cr.P.C and the appellant denied his involvement in the offence and also stated as false. On the side of the appellant, no one was examined and no document was marked.



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5. The learned trial Judge, after considering the evidence, acquitted the accused from all the offence except the offence under Section 363 IPC. The learned trial Judge passed the conviction under Section 363 IPC and sentenced him to undergo 3 years Rigorous Imprisonment and to pay fine of Rs.5,000/-, in default, to undergo 3 months Rigorous Imprisonment. Challenging the same, the appellant filed this appeal.

6. The learned counsel for the appellant submitted that the victim girl turned hostile and she specifically stated that she did not know the case particulars and she also totally denied the occurrence. She specifically deposed that she went to her friend's house and stayed in her friend's house. Without ascertaining the same, her parents made a complaint as if she was kidnapped by the appellant. The learned counsel for the appellant further submitted that on the date of the alleged occurrence, ie., 06.03.2019, she was above the age of 17 years and pursuing her second year B.Sc. Zoology degree course. She fell in love with the appellant and married him and is living happily with two children. The prosecution case is that the appellant kidnapped the victim



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girl and married the said victim and committed aggravated penetrative sexual assault. The learned trial Judge acquitted the appellant under Section 6 of the POCSO Act and held that the appellant never committed the aggravated penetrative sexual assault. But, convicted the appellant under Section 363 IPC. The same was not maintainable on the ground that the victim girl herself turned hostile. Hence, the learned counsel seeks for acquittal. He placed reliance of the judgment of the Hon'ble Supreme Court, reported in **2022(6)SCC 589**.

7. The learned Additional Public Prosecutor submitted that even though the victim girl turned hostile, it is admitted fact that she was kidnapped by the appellant and hence the learned trial Judge correctly passed the conviction. The judgement relied by the learned counsel for the appellant is not applicable to the present case where the victim girl as well as the appellant were of the same age and the victim girl left on her own volition and lived happily after entering into marriage and hence, he seeks for dismissal of this appeal.



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8. This Court has considered the rival submissions made by both side and perused the records.

9. According to the prosecution, on 08.01.2019, the victim girl was kidnapped by the appellant. Hence, P.W1 gave a complaint to the jurisdictional police. The jurisdictional police registered the case and found the victim girl along with the appellant. The victim girl refused to go with P.W1 when she was at the police station. Subsequently, she married the appellant and she got two children. But P.W3-victim girl and her sister-P.W4 deposed that the appellant never kidnapped the victim girl. In view of the above evidence of the victim girl and the subsequent development that she married the appellant and got two children, this Court is not inclined to concur with the finding of the learned trial Judge that the appellant committed offence under Section 363 IPC. In this case, P.W1 and P.W2 are examined to corroborate the statement of the victim girl. They have no direct knowledge about the kidnapping and consequential penetrative aggravated sexual assault committed by the appellant. When the victim girl herself turned hostile, the evidence of P.W1 and P.W2 is not worthwhile, who got the information of kidnapping



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from P.W1. PW.1 and P.W2 have no personal information regarding the kidnapping said to have been committed by the appellant. There is only a suspicion against the appellant. In view of the above circumstances, the conviction and sentence passed against the appellant under Section 363 IPC on the basis of the evidence of P.W1 and P.W2 is not sustainable and hence, this Court is inclined to allow this appeal.

10. In the result, this Criminal Appeal stands allowed. The judgement of conviction and sentence dated 11.08.2022 in Spl.Case No. 260 of 2019 passed by the learned Special Judge, Special Court for Exclusive trial of Cases under the POCSO Act, Tirunelveli is hereby set aside. The fine amount, if any, paid by the appellant/sole accused shall be refunded to him. The bail bond, if any, executed by the appellant/sole accused shall stand cancelled.

17.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PJJ



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To

1.The Special Judge,
Special Court for Exclusive trial
of Cases under the POCSO Act,
Tirunelveli.

2.The Inspector of Police,
All Women Police Station.
Nanguneri,
Tirunelveli District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

PJL

**Predelivery Judgment made in
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17.11.2023