



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 15.06.2023

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CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.A.(MD)No.354 of 2016

Valamalai

... Appellant/Sole Accused

vs.

State through,
The Inspector of Police,
Keelavalavu Police Station,
Melur, Madurai District.
Crime No.200 of 2001.

... Respondent/Complainant

PRAYER : Criminal Appeal has been filed under Section 374 (2) of Cr.P.C., to call for the entire records connected to the judgment dated 30.05.2016 in S.C.No.105 of 2005 on the file of the Mahila Court/District and Sessions Court, Madurai, and set aside the conviction and sentence imposed against the appellant and acquit the appellant.

For Appellant : Mr.S.Malaikani

For Respondent : Mr.K.Sanjai Gandhi
Government Advocate (Crl.Side)



JUDGMENT

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This Criminal Appeal has been preferred as against the order passed in S.C.No.105 of 2005, dated 30.05.2016, on the file of the Mahila Court/District and Sessions Court, Madurai, thereby convicted the appellant for the offences under Sections 366A, 342 and 376 of IPC.

2.The case of the prosecution is that on 21.11.2001, at about 07.00 a.m, while the victim girl was standing in the bus stop at Tiruppathur main road to go to school, the accused kidnapped her with intention to rape her and confined her in a house for a period of 5 days and committed sexual assault on her.

3.Based on the complaint, the respondent registered the F.I.R in Crime No.200 of 2001 for the offences under Sections 109 and 366A of I.P.C. After completion of the investigation, the respondent filed a final report for the offences under Sections 366A, 342 and 376 of IPC, and the same has been taken cognizance in S.C.No.105 of 2005 on the file the Mahila Court/District and Sessions Court, Madurai.



4.On the side of the prosecution, they had examined P.W.1 to P.W.10 and marked Exs.P.1 to P.11 and on the side of the accused, no one was examined and no documents were marked.

5.On perusal of both the oral and documentary evidence, the trial Court found the accused guilty for the offences punishable under Sections 366A, 342 and 376 of IPC. For the offence under Section 366A of IPC, the petitioner was sentenced to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs. 5,000/-, in default to undergo 6 months Simple Imprisonment, for the offence under Section 342 of IPC, he was sentenced to undergo 1 year Rigorous Imprisonment and to pay a fine of Rs.500/-, in default to undergo 1 month Simple Imprisonment and for the offence under Section 376 of IPC, he was sentenced to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default to undergo 6 months Simple Imprisonment. The sentences shall run concurrently. Aggrieved by the same, the present appeal has been filed.

6.The learned counsel appearing for the appellant submitted that the prosecution failed to prove the case beyond any reasonable doubt in order to maintain the conviction and sentence. Though, the respondent recorded the statement under Section 161



of Cr.P.C from 16 witnesses, in the trial, only 10 witnesses have been examined as prosecution witnesses. No proper reasons have been assigned by the prosecution for having left 6 persons from the list of witnesses. He further submitted that as per the evidence of P.W.7, the Headmistress, the age of the victim girl was 14 at the time of occurrence. Per contra, as per the evidence of P.W.9, the Doctor, the age of the victim girl was above 17 years and below 18 years at the time of occurrence. Therefore, the age of the victim girl was not proved by the prosecution in the proper manner.

7. Even according to the victim girl, she fell in love with the appellant and she eloped with him. They stayed together for 5 days and with her consent, they had physical relationship. She was aged about 17-1/2 years at the time of their relationship. Therefore, the offence under Section 376 of I.P.C is not at all attracted as against the appellant. It is also corroborated by the Doctor who examined the victim. P.W.5 deposed that while examining the victim, she stated that she got married with the appellant and thereafter they had physical relationship. Her monthly cycle is also normal and she attained puberty at the age of 14. Therefore, at the time of the alleged occurrence, she was aged about 17 – 18 years and with her consent, she had physical relationship with the appellant. Therefore, the prosecution failed to prove the charge



under Section 376 of I.P.C. Therefore, he prays for the acquittal of the appellant herein.

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8.Per contra, the learned Government Advocate (Crl.Side) appearing for the respondent submitted that the accused kidnapped the victim and wrongly confined her for a period of 5 days in a house and committed sexual assault on her. On the complaint lodged by P.W.1, she was secured from the accused and the appellant was arrested and remanded to judicial custody. The prosecution also proved the age of the victim girl as 14 years at the time of the occurrence. The Head Mistress of the School (P.W.7) issued a certificate, which was marked as Ex.P.5 to prove the age of the victim girl. In fact, the appellant failed to cross-examine the other witnesses. Therefore, the prosecution proved its case beyond any doubt and the trial Court rightly convicted the appellant and prayed for dismissal of the appeal.

9.Heard the learned counsel appearing on either side and perused the materials available on record.

10.According to the case of the prosecution, the victim girl was aged about 14 years and she was kidnapped by six accused persons on 21.11.2001, when the victim was standing at the bus-



stop to go to her School at about 07.00a.m., Thereafter, she was wrongfully confined for 5 days and the appellant committed rape on her. On the complaint, the respondent registered the F.I.R, which was marked as Ex.P.7 in Crime No.200 of 2001 as against six accused persons.

11.On perusal of the F.I.R revealed that the defacto complainant suspected six accused persons, namely, the family members of the appellant and they kidnapped the victim girl along with 10 sovereigns of jewels. After completion of the investigation, the respondent filed a final report only as against the appellant for the offences under Sections 366A, 342 and 376 of I.P.C. The father of the victim girl was examined as P.W.1. He deposed that other persons informed him that the victim girl was compelled by the accused persons and boarded in the bus. Further, the victim's date of birth was not known to him and no date of birth certificate was produced at the time of admitting her in the School. The victim was examined as P.W.2. She categorically admitted that she had acquaintance with the appellant and in order to visit his relative, she along with appellant went out of her native. She was taken to the relative house of the appellant and she stayed there for 5 days. All five days, she had physical relationship with the appellant. On came to knowledge about the complaint lodged by P.W.1, she was brought



to the Police Station by the appellant. Therefore, it is clear that she fell in love with the appellant and eloped with him.

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12. Admittedly, the victim's age was not proved by the prosecution in a proper manner and in accordance with law. The Headmistress of the victim girl was examined as P.W.7. She issued a certificate which was marked as Ex.P.5 and certified that the victim was born on 18.12.1986 and the victim had studied in her School in the year 2001-2002. It is a handwritten certificate issued by the Headmistress of the Government Girls Higher Secondary School, Melur. It is also pertinent to note that the said certificate was not issued at the time of examination of P.W.7. As requested by the Investigating Officer, the said certificate was issued and the same was marked as Ex.P.5. P.W.7 also deposed that at the time of admission of the victim, no documents were produced by P.W.1 to substantiate the date of birth of the victim as 18.12.1986. On perusal of Ex.P.9/the Radiologist of Government Rajaji Hospital, Madurai opined that the victim is aged above 17 years and below 18 years at the time of examination. She was subjected to radiology examination on 27.11.2001, namely, within a period of six days from the date of the alleged occurrence. She had crossed 17 years at the time of the alleged occurrence. Hence, the charge under Section 376 of I.P.C would not at all attract as against the appellant



herein. The Doctor who was examined as P.W.5 also deposed that on examination, she did not find injury on her breast and her vagina. Her hymen was not intact and there was no spermatozoa found on her vagina. Therefore, even according to the victim girl, she fell in love with the appellant and eloped with him. She completed the age of 17 years at the time of occurrence and she got married to the appellant and thereafter, she had physical relationship. In fact, the appellant only had taken her to the Police Station, after the complaint lodged by P.W.1. If at all any kidnap was happened, the respondent would have charged the other accused persons also along with the appellant. Further, the victim girl categorically admitted that she along with the appellant stayed in the relative house of the appellant for 5 days and they had physical relationship after their marriage. Therefore, there was no wrongful confinement and kidnap. Hence, the charges under Sections 366A and 342 of I.P.C were not proved by the prosecution beyond any doubt. Therefore, the entire conviction for the offences under Sections 366A, 342 and 376 of I.P.C cannot be sustained as against the appellant.

13. Accordingly, the order passed in S.C.No.105 of 2005, dated 30.05.2016, on the file of the Mahila Court/District and Sessions Court, Madurai is set aside and the Criminal Appeal is



allowed. The appellant/Accused is acquitted. Bail bond if any executed by the appellant/Accused shall stand cancelled and a fine amount if paid is ordered to be refunded to the appellant/Accused forthwith.

15.06.2023

dss/ps

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

To

- 1.The Mahila Court/District and Sessions Court,
Madurai.
- 2.The Inspector of Police,
Keelavalavu Police Station,
Melur, Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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