



CRL.A(MD).No.849 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 08.08.2023

Delivered on : 02.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).No.849 of 2022

C.Ayyar

: Appellant/Sole Accused

Vs.

State Rep. By
The Inspector of Police,
Sattur Town Police Station,
Virudhunagar District.
(Crime No.303 of 2020)

...Respondent/Complainant

Prayer : This Criminal Appeal is filed under Section 374(2) of Cr.P.C. to call for records and set aside Judgment dated 23.11.2022 passed by the learned Sessions Judge (Special Court for POCSO Act Cases), Virudhunagar District at Srivilliputtur, in Spl.S.C.No.57 of 2020 by allowing this Criminal Appeal.

For Appellant : Mr.Rajpal Singh

For Respondent : Mr.R.Sivakumar,
Government Advocate (Criminal Side)

JUDGMENT

This appeal has been filed to set aside the order passed by the Sessions Judge (Special Court for POCSO Act Cases), Virudhunagar District at Srivilliputtur, in Spl.S.C.No.57 of 2020, dated 23.11.2022.



CRL.A(MD).No.849 of 2022

2.The appellant is the accused in Spl.S.C.No.57 of 2020 on the file of the Sessions Judge (Special Court for POCSO Act Cases), Virudhunagar District at Srivilliputtur, filed this appeal challenging the conviction and sentence imposed for the offences under Sections 363 of IPC and 7, 8 of POCSO Act, 2012, by the impugned order dated 23.11.2022.

3. **Prosecution Case:-**

3.1.The victim girl (P.W.2) was aged about 14 years and studying 9th standard on the date of the occurrence. She had contact with the appellant 1 year prior to the occurrence. The appellant had contacted the victim girl and asked her to marry him. On 01.06.2020, he came to the victim's village and kidnapped her in his friend's two wheeler bearing Reg.No.TN-63-AW-5520 to the house of P.W.4 at Karaikal, Puducherry, and stayed at P.W.4's house. In the P.W.4's house, he was said to have committed the sexual assault upon her i.e., in the midnight, he kissed the victim. Immediately, she came out of the room and stayed with a woman, who was lying in the hall of the house of P.W.4. The next day morning, the victim girl telephoned to her aunt Mrs.Viji and informed the said occurrence. At that time, her aunt informed her that her mother consumed poison and admitted in the hospital. Immediately, she insisted the appellant



CRL.A(MD).No.849 of 2022

to take her to her village. Hence, the appellant took her and dropped her on the outskirts of the village. Thereafter, she went to her house and the respondent police was informed. In mean time, P.W.1, the mother of the victim lodged a complaint before the respondent police and the respondent police registered a case under 'Woman Missing'. Subsequently, the respondent police altered the offence under Sections 363 IPC r/w 7 & 8 of POCSO Act, 2012. Thereafter, the victim girl was subjected to medical test and the appellant was arrested and remanded to judicial custody. The Investigating Officer conducted investigation and filed final report before the Sessions Judge (Special Court for POCSO Act Cases), Virudhunagar District at Srivilliputtur and the same was taken on file in Spl.S.C.No.57 of 2020.

3.2.After taking cognizance, the learned trial Judge framed the charges against the appellant for the offences under Sections 363 IPC r/w 7 & 8 of POCSO Act, 2012. On the basis of charges, he questioned the accused/appellant and the appellant pleaded not guilty and hence, the trial was conducted and the prosecution adduced the evidence of P.W.1 to P.W.15 and marked the documents under Ex.P1 to Ex.P.25.



CRL.A(MD).No.849 of 2022

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3.3. The learned trial Judge, considered the same, examined the appellant under Section 313 Cr.P.C., by putting the incriminating material available against him, he denied the same and hence, the case was posted for examination for the defence witness. On the side of defence, no witness was examined and no document was marked.

3.4. The learned trial Judge after considering the oral and documentary evidence, convicted the accused under Sections 363 IPC r/w 7 & 8 of POCSO Act, 2012, by the impugned order dated 23.11.2022 and also sentenced him to undergo 1 year Rigorous Imprisonment and to pay a fine of Rs.1,000/- and in default, to undergo 3 months Simple Imprisonment for the offence under Section 363 IPC and sentenced him to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.3,000/- and in default, to undergo 6 months Simple Imprisonment for the offences under Sections 7 and 8 of POCSO Act, 2012.

4. Aggrieved over the same, the appellant filed this appeal on the grounds stated in the memorandum of grounds of appeal.



CRL.A(MD).No.849 of 2022

WEB COPY

5.1. The learned counsel for the appellant submitted that according to the prosecution, the victim girl left the village in order to go to School. At the time of occurrence, there was lock down due to Corona and movement of the public was totally restricted. The functioning of the Schools also was restricted. Hence, the version of the prosecution that the victim girl left the village in order to go to School is not believable one.

5.2. The learned counsel for the appellant submitted that the further case of the prosecution is that the appellant kidnapped the victim girl to Karaikal, Puducherry. The said place is far away from the village of the victim girl. During lock-down due to Covid-19 pandemic, number of check posts and number of restrictions were imposed through promulgation by the Government of Tamil Nadu. Therefore, it is unbelievable that the appellant kidnapped the victim girl from her village to Karaikal, Puducherry situated at more than 300 km away from the place of occurrence.

5.3. According to the prosecution, the victim girl was kidnapped by the appellant to Karaikal, Puducherry and he stayed with the victim girl in



CRL.A(MD).No.849 of 2022

the house of P.W.4 and committed the sexual assault upon her i.e., *he kissed the victim girl*. But, P.W.4 did not support the prosecution case and hence, the evidence of the victim girl that they stayed at Karaikal is not proved beyond reasonable doubt. As sequel, the question that the appellant committed the sexual assault upon the victim girl in the said house remains not proved.

5.4. The learned counsel for the appellant further submitted that according to the prosecution, there are three different versions regarding the travel of the victim girl to her native place. The first version is that the victim girl on her own volition reached her house. The second version is that the Investigating Officer secured the victim girl and produced her before the station. The third version is that the appellant brought the victim girl and dropped her in the nearby place of her house. In view of the above different versions, the benefit of doubt to be given to the accused and hence, the alleged act of kidnapping has not been proved by the prosecution.

5.5. The learned counsel for the appellant further submitted that the registration of FIR is concerned, there are number of discrepancies. He



CRL.A(MD).No.849 of 2022

further submitted that on the basis of 164 Cr.P.C., statement marked as a prosecution document, the mother of the victim consumed poison and the same was informed to the victim girl by her aunt. Another version is that the mother of the victim consumed poison and the same was informed by her friends. There is no evidence adduced by the prosecution to prove the fact that the victim's mother consumed poison. Therefore, the case of the prosecution that due to the said incident, the victim girl pressurised the appellant to take her to her native place and the appellant took her to her native place is not correct.

5.6. He further submitted that number of material witnesses have not been examined. According to the prosecution, early morning of the next day of the occurrence i.e., 02.06.2020, one Vijaya namely, the aunt of the victim girl was informed by the victim girl about the stay at Karaikal, Puducherry. At that time, the said Vijaya informed about P.W.1 that she consumed poison. Further, the victim girl left her village by informing her grand-mother that she was going to the School. Therefore, the grand-mother is the material witness to prove the said factum of leaving of the victim girl from the house.



CRL.A(MD).No.849 of 2022

5.7. The learned counsel for the appellant further submitted that in Karaikal, one Dharsan₂ who is the friend of the appellant has engaged the P.W.4's house for the stay of the appellant and the victim girl. The said witness was not examined.

5.8. The learned counsel for the appellant further submitted that according to the Investigating Officer, he conducted investigation on 12.08.2020 by starting from Sattur namely, the village of the victim girl to Karaikal, where the appellant along with the victim girl stayed. According to the Investigating Officer, on 12.08.2020, he conducted investigation at Sattur and also at Karaikal and prepared the observation mahazar etc., which is highly improbable one since he could not have travelled more than 200 kms from Sattur, to Karaikal, more particularly, during Covid-19 period. Therefore, the preparation of the documents by the Investigating Officer is highly doubtful.

5.9. In view of the above, the prosecution has not proved the case beyond reasonable doubt against the appellant for the alleged offence under Sections 363 IPC r/w 7 & 8 of POCSO Act. Hence, the conviction and sentence passed by the learned trial Judge is liable to be set aside and



CRL.A(MD).No.849 of 2022

acquit the appellant from all the charges by allowing this appeal.

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6.1. Per contra, the learned Government Advocate (Criminal Side) for the respondent submitted that the appellant committed the sexual assault upon the victim girl. The appellant has not produced any document regarding Covid-19 notification. Further, P.W.2, the victim girl clearly deposed about the kidnapping and the sexual assault made on her. Her evidence is unimpeachable and trustworthy and hence, the conviction and sentence passed by the learned trial Judge for the offence under Sections 7 & 8 of POCSO is well founded.

6.2. The learned Government Advocate (Criminal Side) for the respondent further submitted that P.W.4 even though turned hostile, there is sufficient materials available to prove kidnapping and sexual assault committed by the appellant.

6.3. The learned Government Advocate (Criminal Side) for the respondent further submitted that when the victim girl's evidence is trustworthy, examination of the remaining witnesses is not necessary.



CRL.A(MD).No.849 of 2022

6.4. The learned Government Advocate (Criminal Side) for the respondent further submitted that the other circumstances stated by the learned counsel for the appellant is not a material in sexual assault cases. All the witnesses are rustic witnesses and hence, the said discrepancies and the contradiction cannot be used. Hence, the learned Government Advocate (Crl.Side) prays for dismissal of this appeal by confirming the conviction and sentence imposed against him by the learned trial Judge.

7. This Court considered the rival submissions of both side counsels and perused the materials available on record and the precedents relied by both the counsels.

8. This Court is taking the judicial notice of the fact that during the first Corona Wave, first Covid Restriction was imposed by the Government of Tamil Nadu vide G.O.MS.No.152 dated 23.03.2020 and the same was periodically extended, more particularly, at the time of occurrence, the notification was issued by the Revenue and Disaster Management (DM-II) Department on 31.05.2020 vide G.O.MS.No.262. As per the notification, nobody was allowed travel without obtaining proper permission from the competent officers. If anybody travelled and the same amounted to offence



CRL.A(MD).No.849 of 2022

under the various Act. In the said circumstances, the case of the prosecution that the appellant kidnapped the victim girl to the faraway place namely, Karaikal, from Sattur Taluk, Virudunagar District, without any documents is not accepted.

9. Further, the prosecution case is that the appellant kidnapped the victim girl to Karaikal and stayed in the house of P.W.4 along with the victim girl and made sexual assault upon her. P.W.4 turned hostile and there was no evidence adduced to prove that the appellant and the victim girl stayed at Karaikal. In the said circumstances, the case of the prosecution that the appellant committed the sexual assault in the house of P.W.4 is not proved.

10. The case of the prosecution that the appellant kidnapped P.W.2, the victim girl is not proved beyond any doubt. As argued by the learned counsel for the appellant, during the Covid-19 pandemic, admittedly, there was no functioning of Schools. Hence, the initial version of the victim girl that she left her home after informing her grand-mother that she is going to School itself is false.



CRL.A(MD).No.849 of 2022

11. The prosecution also not proved through the evidence that the appellant kidnapped the victim in his friend's vehicle. The owner of the vehicle was not examined. No document was produced to prove the vehicle has due permission to enter into the Karaikal in the course of strict movement restriction during the first Covid Wave. The same also gets support from the different versions relating to the arrival of the victim girl to her native place i.e., according to the Investigating Officer, he went to the Karaikal and rescued the victim girl. According to the victim, the appellant dropped her in the place nearby her residence. According to the family members of the victim, the victim girl herself reached her house. In view of the three diametrically opposite versions, the suggestion of the appellant that he never kidnapped the victim girl in the car and took her to the Karaikal and stayed at P.W.4's house is probable one. To add further, it is the case of the victim that she voluntarily departed the company of the appellant on hearing the news from her aunt that her mother consumed poison. To prove the same, no evidence is adduced by the prosecution. Not even they examined her aunt. The victim girl was kidnapped in the vehicle of the friend of the appellant is also not proved. The owner of the vehicle was not examined as witness. Hence, in all circumstances, this Court finds that the case of the prosecution that the appellant kidnapped the victim girl



CRL.A(MD).No.849 of 2022

is not proved beyond reasonable doubt. Therefore, kidnapping of the victim girl is not also proved.

12. Considering the above all circumstances, this Court is inclined to allow this appeal.

13. In the result, the Criminal Appeal is allowed. The Judgment of conviction and sentence passed by the learned Sessions Judge (Special Court for POCSO Act Cases), Virudhunagar District at Srivilliputtur, in Spl.S.C.No.57 of 2020, dated 23.11.2022 is set aside. The appellant/accused is acquitted from the charges under Sections 363 IPC r/w 7 & 8 of POCSO Act. Bail bond if any executed by him, shall stand cancelled. Fine amount if any paid by him shall be refunded forthwith.

02.11.2023

NCC : Yes/No
Index : Yes / No
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CRL.A(MD).No.849 of 2022

To

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1. The Sessions Judge
(Special Court for POCSO Act Cases),
Virudhunagar District at Srivilliputtur
2. The Inspector of Police,
Sattur Town Police Station,
Virudhunagar 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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CRL.A(MD).No.849 of 2022

K.K.RAMAKRISHNAN,J.

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Order made in
CRL.A(MD).No.849 of 2022

02.11.2023