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Crl.A.No.38 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.11.2024

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.38 of 2023

R.Ashok Kumar

...Appellant/Accused No.1

Vs.

State Represented by,
The Inspector of Police,
AWPS – Virudhachalam Police Station,
Cuddalore District.
(Crime No.29/2019)

...Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, to call for the records and set aside the order of conviction passed in Judgment dated 28.02.2022 in Spl.S.C.No.143 of 2019 passed by the learned Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Cuddalore.

For Appellant

: Mr.R.Vivekananthan
for
Mr.C.Muruganandam



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For Respondent

: Dr.C.E.Pratap

Government Advocate (Crl.Side)

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JUDGMENT

This Criminal Appeal has been filed by the accused, challenging the conviction and sentence imposed upon him vide judgment dated 28.02.2022 in Spl.S.C.No.143 of 2019 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Cuddalore.

2 (a). The case of the prosecution is that the appellant who was married to A2, had developed a love affair with the victim, a minor girl; that the appellant/A1 and the victim were neighbours; that on 07.11.2019, that the appellant took the victim to a temple and in the temple had married the victim and thereafter had sexual intercourse with the victim; and that since the victim girl did not return home, a case was registered in Crime No.29 of 2019 by P.W.10/Inspector of Police, for the offences under Sections 294(b) and 366A of the Indian Penal Code, 1860, along with Sections 5(1), 6 and 17 of the Protection of Child From Sexual Offences Act, 2012 and for the offences under Sections 9 and 10 of the Prohibition of Child Marriage Act,



2006 against the appellant/A1 and the first wife of the appellant/A2, on the complaint given by the mother of the victim/P.W.1.

(b). After investigation by P.W.10, a Final Report was filed against the appellant/A1 for the alleged offences under Sections 323, 366, 342 and 506(i) of the IPC along with Section 5(l) r/w Section 6 of the POCSO Act, 2012 and Section 9 of the Prohibition of Child Marriage Act, 2006.

(c). On the appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with, and the case was committed to the Court of Session in Spl.S.C.No.143 of 2019 and was made over to the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Cuddalore, for trial. The trial Court framed charges u/s. 366, 342, 323 and 506(i) of the IPC, 1860, along with Sections 5(l) and 6 of the POCSO Act, 2012 and Section 9 of the Prohibition of Child Marriage Act, 2006 against the appellant/A1 and when questioned, the appellant pleaded 'not guilty'.



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(d). To prove the case, the prosecution examined eleven witnesses as P.W.1 to P.W.11, marked 14 exhibits as Exs.P1 to P14 and marked one material object as M.O.1. When the appellant was questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. The accused neither examined any witness nor marked any document.

(e). On appreciation of oral and documentary evidence, the Trial Court found that the appellant/A1 was not guilty of the offences under Sections 323 and 506(i) of the IPC and Section 9 of the Prohibition of Child Marriage Act and found him guilty of the offence under Sections 366 and 342 of the IPC and Section 5(l) and 6 of the POCSO Act and sentenced him as follows:

<i>Accused</i>	<i>Offence</i>	<i>Sentence imposed</i>
A1	366 of the IPC	To undergo rigorous imprisonment for 10 years and to pay a fine of Rs.2000/-, in default to undergo simple imprisonment for three months.
	342 of the IPC	To undergo rigorous



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		imprisonment for one year and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for one month.
	5(1) and 6 of the POCSO Act, 2012	To undergo rigorous imprisonment for ten years and to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for three months
The sentences are directed to run concurrently.		

The trial Court also acquitted A2/the first wife of the appellant. Hence, the appellant/A1 has preferred the appeal challenging the said conviction and sentence.

3. Heard Mr.R.Vivekananthan, learned counsel, appearing for the appellant/A1, and Dr.C.E.Pratap, the learned Government Advocate (Crl.Side) appearing for the respondent/State.

4(a). The learned counsel for the appellant/A1 would submit that the appellant and the victim girl were in a love affair; that the appellant had married her; that a child was born out of the wedlock, and now the appellant and the victim are leading a happy family life; that the victim is present in



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the Court along with a four-month-old child; that the victim is now aged about twenty-two years; and that the victim had confirmed the fact that the appellant had married her and both of them are living together as husband and wife for the past four years.

(b). The learned counsel also relied upon the Judgment of the Hon'ble Supreme Court in ***K.Dhandapani Vs. State*** reported in **2022 SC Online SC 1056**, and the Judgments of this Court in **Ajith Kumar vs State** reported in **2024 SCC OnLine Mad 610** and **Viji @ Vijay vs State in Crl.A.No.1006 of 2023 dated 28.11.2023** in support of his submission that this Court may take into consideration the subsequent events and not disturb the family life of the appellant and the victim; and hence prayed for setting aside the Judgment.

5. The learned Government Advocate (Crl.Side), appearing for the respondent, on instructions, would submit that the victim girl is married to the appellant and they are now living together as husband and wife for the past four years, and a child is also born out of the wedlock.



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6. Mrs. G.Manimekalai, the Sub Inspector of Police, attached to the respondent Police Station has identified the victim and the appellant and has also confirmed the said fact.

7. We have carefully considered the rival submissions and perused the materials on record.

8. This Court had examined the victim and when this Court had asked the victim as to whether she is married to the appellant, she answered in the affirmative. She would also plead that the conviction and the sentence imposed on the appellant may be set aside.

9. This Court in similar circumstances in ***Ajith Kumar's case*** where the accused therein had married the victim had observed as follows:

“6. Today [19.03.2024], the appellant and the victim girl were present before this Court and



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submitted that marriage between them was solemnized on 24.08.2022, invitation card and marriage registration certificate produced. Further, PW1 to PW3, during cross examination had clearly stated that marriage between the appellant and the victim girl already performed and they are living as husband and wife. But the Trial Court without considering the same, for the reason that cross examination was with delay, had convicted the appellant which is not proper. Further, the Hon'ble Apex Court in K. Dhandapani v. State by the Inspector of Police, 2022 SCC OnLine SC 1056 and Elumalai v. Inspector of Police, All Women Police Station, Vellore District, Tamil Nadu [Crl.A. No. 674 of 2018 dated 03.05.2018] had considered the subsequent events and observed that the Courts cannot shut its eyes to the ground reality and disturb the happy family life of the appellant as well as the victim girl even in POCSO cases.

7. The appellant has filed compounding petition along with affidavits before this Court in Crl.M.P. No. 4640 of 2024 in Crl.A.No.834 of 2024 to compound the offence considering the



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subsequent fact of marriage and petitioner and victim now living as husband and wife having happy matrimonial life, hence the same is ordered.”

Similarly, in ***Criminal Appeal No.1006 of 2023, dated 28.11.2023***, this Court had observed by quoting the Judgment of the Hon'ble Supreme Court in ***K.Dhandapani vs. State (cited supra)*** as follows:

*“16.The Hon-ble Apex Court in **K.Dhandapani-s case** had considered the subsequent events and observed that the Courts cannot shut its eyes to the ground reality and disturb the happy family life of the appellant as well as the victim girl. In view of the same, this Court is of the view that allowing the appellant and the victim girl to continue to have marriage and lead a happy family life would be the real justice. Further, the act of the appellant and the victim girl was due to the change of hormones and due to their innocence not knowing the seriousness and repercussion.”*

9. In view of the compromise arrived at between the appellant and the victim; and that the victim is now married to the appellant, the Court is of the view that in the facts and circumstances of the case, this Court cannot ignore the subsequent events and disturb the family life of the appellant and



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the victim; and therefore, the conviction and sentence imposed on the appellant have to be set aside to ensure that their family life is not disturbed.

This Court therefore is of the view that the above course adopted by this Court would subserve the interest of justice.

10. In view of the above, the conviction and sentence imposed on the appellant in Spl.S.C.No.143 of 2019, dated 28.02.2022, by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Cuddalore District are hereby set aside. The appellant/A1 is acquitted from all the charges levelled against him and he is directed to be released forthwith if he is not required in any other case. The fine amount, if any, paid shall be refunded. Bail bond, if any, executed shall stand cancelled.

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Index : yes/no
Neutral citation : yes/no
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- 1.The Sessions Judge,
Special Court for Exclusive Trial of cases under POCSO Act,
Cuddalore.
- 2.The Inspector of Police,
AWPS – Virudhachalam Police Station,
Cuddalore District.
- 3.The Public Prosecutor
High Court of Madras,
Chennai – 600 104.



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SUNDER MOHAN,J.

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WEB COURT SUNDER MOHAN, J.

Today, this matter is listed under the caption ‘for clarification.’

2.Though this Court had interacted with the *de-facto* complainant on 25.11.2024 and she had expressed that the appeal may be allowed since she is now married to the appellant and living with him, this Court had sought for an affidavit by the victim to that effect and today, the victim filed an affidavit which reads as follows:

“3.I further state that presently I am living happily with my husband and my child for past 3 years and pending litigation would affect our family lives. Thereby, I have no objection to allow the present appeal and acquit my husband/appellant from the criminal charges under Section 5(1) and 6 of the Protection of Children from Sexual Offences Act, 2012 and u/s 342, 366 of IPC by this Hon’ble Court.”



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SUNDER MOHAN, J.

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3.Hence this affidavit is taken on record and the “paragraphs 2 and 3 may be incorporated in the Judgment earlier dictated by this Court on 25.11.2024.

28.11.2024

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