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CRL.A.No.302 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2024

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No. 302 of 2018

Dinesh @ Dineshkumar

.. Appellant

Versus

State Represented by
The Inspector of Police,
B-14, Kuniyamuthur Police Station,
in Crime No.493 of 2014,
Coimbatore District.

.. Respondent

Criminal Appeal is filed under Section 374 (2) of Criminal Procedure Code to call for the records and set aside the Judgment of conviction and sentence dated 27.03.2018 passed in S.C. No. 19 of 2015 on the file of the learned Sessions Judge, Fast Track Mahila Court, Coimbatore.

For Appellant	:	Mr. A.K. Azhagarsami
For Respondent	:	Mrs. G.V. Kasthuri
		Additional Public Prosecutor

JUDGMENT

This Criminal Appeal has been filed to set aside the Judgment of Conviction and Sentence passed by the learned Sessions Judge, Fast Track Mahila Court, Coimbatore, in S.C.No.19 of 2015, dated 27.03.2018.



2. The brief facts, which are necessary to decide this Criminal Appeal, are as follows:-

2.1. According to P.W-2, who is the father of the victim girl in this case, his daughter-P.W-1 was studying higher secondary (+2) in Kuniyamuthur Government Higher Secondary School. On 26.06.2014, from 12.00 noon onwards, the whereabouts of P.W-1 the daughter P.W-2 was unknown and he searched for her, but in vain. On enquiry, P.W-2 came to know that his daughter/P.W-1 used to converse with the Appellant/Accused herein and therefore, under suspicion, P.W-2 caused enquiry. During such enquiry, he came to know that his daughter/P.W-1 left the house by taking her clothes, 2 sovereigns of jewels as also the educational certificates with her. Therefore, he had given a complaint to B-14, Kuniyamuthur Police Station complaining that the whereabouts of his daughter is not known. On the basis of such complaint, a case in Crime No. 493 of 2014 was registered under the caption “girl missing” on 11.07.2014. On 24.07.2014, P.W-2 received a phone call from the Railway Police stating that his daughter/P.W-1 and her accomplice Dinesh Kumar/Appellant herein are in Katpadi Railway Station. Therefore, P.W-2 approached the Kuniyamuthur Police officials and intimated the phone call received by him. On the basis of such complaint, the Police officials attached to Kuniyamuthur Police Station along with P.W-2 went to Katpadi



and brought P.W-1 and the Appellant to Coimbatore. Later, when P.W-2 enquired his daughter/P.W-1, she has stated that the Appellant had taken her under compulsion and he did not feed her food and she was subjected to physical assault by the Appellant under the influence of alcohol. P.W-1 also complained to P.W-2 that she was subjected to sexual intercourse under compulsion and that the Appellant had also snatched the 2 sovereigns of gold chain from her.

2.2. P.W-22, the Inspector of Police enquired P.W-1 and recorded her statement. He also enquired the Appellant and secured the pawn broker receipt dated 18.07.2014 from him in the presence of witnesses. P.W-22 also sent an alteration report under Ex.P-20 to alter the case in Crime Number 493 of 2014 from “girl missing” to one under Section 366(A), 376 of IPC read with Section 3(a) read with Section 4 of the Protection of Children from Sexual Offences Act, 2012. After completing the investigation, P.W-22 filed final report of the investigation against the Appellant/Accused for the offences under Sections 366 (A), 376 of IPC and Section 3 (a) read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 before the learned Sessions Judge, Fast Track Mahila Court. The learned Sessions Judge, Fast Track Mahila Court took cognizance of the offences under Sections 366 (A), 376 of IPC and under Section 3 (a) read with Section 4 of the Protection of



CRL.A.No.302 of 2018

Children from Sexual Offences Act, 2012.

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2.3. The final report was taken on file as Special C.C. No. 19 of 2015 on 06.05.2015. On appearance of the Appellant/Accused, copies were served on him as per Section 207 of the Code of Criminal Procedure. After hearing the learned Public Prosecutor and the learned Counsel for the defence/Accused, the learned Sessions Judge, Fast Track Mahila Court framed charges against the Accused for the offences under Sections 366 (A) of Indian Penal Code and Section 3 (a) read with 4 of Protection of Children from Sexual Offences Act, 2012. The Accused denied the charges and claimed to be tried. Therefore, trial was ordered. During trial the Prosecution examined 24 witnesses as P.W-1 to P.W-24 and marked 25 documents as Ex.P-1 to Ex.P-25 and material objects as M.O-1. On behalf of the defence, Mr.Ramu, Sanitary Inspector of Coimbatore City Municipal Corporation was examined as D.W-1 and Ex.D-1, photo copy of birth certificate of victim was marked. The Prosecution also projected M.O-1, the Indica Car bearing Registration No. TN-59-P-4365.

2.4. The trial Court, on appreciation of the oral and documentary evidence, concluded that the Appellant/Accused is guilty of the offence under Section 366-A of Indian Penal Code and sentenced him to undergo 7 years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo



CRL.A.No.302 of 2018

one month simple imprisonment. For the offence under Section 3, read with 4 of Protection of Children from Sexual Offences Act, 2012 the Appellant/Accused was sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo one month simple imprisonment. The sentences were ordered to run concurrently and the period of sentence undergone before trial was ordered to be set off under Section 428 of Cr.P.C.

2.5. Assailing the Judgment of conviction dated 27.03.2018 passed in Special Calender Case No. 19 of 2015, the present Appeal is filed by the Appellant/Accused.

3. The learned Counsel appearing for the Appellant would submit that the Prosecution failed to prove the charges against the Accused for having allegedly committed the offence under the provisions under the Protection of Children from Sexual Offences Act, 2012. The learned Counsel for the Appellant invited the attention of this Court to the statement under Section 164 Cr.P.C., given by the victim at the earliest point of time, in which, she has not implicated the Appellant, without her consent, taken her to Madurai and then to Chennai. She herself had stated that the Accused married her in Thiruporur Murugan Temple, Chennai and lived together with her. Furthermore, the Appellant/Accused produced Ex.D-1, birth extract of the victim maintained by



Coimbatore City Municipal Corporation wherein her date of birth was indicated as 05.02.1998. Therefore, as on the date of the alleged occurrence, on 26.06.2014, she was 16 years and 10 months. The date of birth was not properly proved by the Prosecution.

4. The learned Counsel for the Appellant would vehemently contend that in cases of this nature, the evidence of the victim girl assumes importance. If the deposition of P.W-1 is examined, it would make abundantly clear that she, on her own, voluntarily accompanied the Appellant/Accused. She also stated that on 04.01.2017, without the consent of her parents, she married the Appellant/Accused at Chennai. Above all, when the victim was medically examined after she was secured by the Respondent Police, it was noticed that there was no sign of any injury in the private part of the victim/P.W-1. In this context, the Counsel for the Appellant referred to the deposition of Dr. Geetha, P.W-15 who had categorically admits that there is no injury in the private part of P.W-1. Above all, P.W-1 stayed with the Appellant for more than 10 days, but she has not given any complaint to any of the Police authorities against the Appellant/Accused. When the victim/P.W-1 voluntarily left the house of her parents and joined the Accused on her own, it cannot be said that the Appellant had kidnapped or relieved her from the lawful custody of her parents. But the



CRL.A.No.302 of 2018

learned Judge, convicted the Accused for the offence under the Protection of Children from Sexual Offences Act, 2012 and it calls for interference by this Court.

5. The learned Counsel for the Appellant had invited the attention of this Court to the evidence of the Prosecution Witnesses, particularly, the cross examination and the documents marked on the side of the Prosecution Witnesses under Ex.P-1 to Ex.P-25. The School Head Master was examined as P.W-7 and he had stated in his evidence that the victim's date of birth was 31.07.1997. However, he was unable to produce the document under which, the entries were made in the Register maintained by P.W-7/Head Master. The Sanitary Inspector of Coimbatore Corporation had been examined as D.W-1, who has produced the birth certificate of P.W-1 which shows that she was born on 05.02.1998. Therefore, as per Ex.D-1, date of birth given by D.W-1, on the date of the alleged occurrence, the victim was 16 years and 10 months old and she is capable of understanding the act of leaving her parents and joining the company of the Appellant/Accused. In spite of the same, the learned Judge convicted the Appellant/Accused for the offences punishable under Section 366A of Indian Penal Code and Sections 3 read with 4 of the Protection of Children from Sexual Offences Act, 2012. Above all, the learned Counsel for



the Appellant submitted that the victim/P.W-1 got re-married and living with her husband, however, the Appellant alone has been penalised. The learned Counsel for the Appellant therefore seeks to set aside the Judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Coimbatore.

6. Per contra, the learned Additional Public Prosecutor Mrs.G.V.Kasthuri appearing for the State submitted that there are sufficient materials made available to convict the Accused through the witnesses of the Prosecution, particularly, P.W-1 who had stated in her chief examination implicating the Accused. Further, there are evidence through the parents of the victim P.W-2 and P.W-3 regarding the act of the Accused, who had relieved the minor victim from the lawful custody of her parents. The learned Additional Public Prosecutor specifically invited the attention of this Court to the evidence of the Doctors regarding age under Ex.P-13, Ex.P-14, P.W-15 and P.W-16. On the basis of such evidence, in para 90 of the Judgment the learned trial Judge observed as follows:

"90.Further the girl was missing from 26.06.2014 and the complaint was given only on 11.07.2014. Hence, the learned Counsel for the defence seriously criticised the delay in lodging the FIR nearly after 15 days of the girl missing. However, this Court is of the considered view that the delay in lodging the FIR is not fatal to the case in hand for the reasons that, here in the case in hand the missing girl



was a minor one, and she was secured along with the Accused. Further in a cases like in hand considering the mental agony and anguish that created the turbulence in the mind of the parents of the minor victim, and fear of exposing their own daughter and for the fear of social stigma they would have lodged the FIR in a belated stage. Hence the delay in lodging the FIR itself is not enough to give a clean chit to the Accused"

7. Thus, it is an irresistible conclusion reached by the learned Trial Judge that the offence alleged against the Accused was made out. It is not the case of the Appellant/Accused that he did not have sexual intercourse with the minor victim girl. The Appellant stayed with the minor victim girl for more than 10 days at various places at Madurai, Chennai and at Katpadi. Ultimately, they were secured by the Railway Police at Katpadi and brought to Coimbatore. In any event, even as per Ex.D-1, the victim girl was less than 17 years and she was not a major. The consent, if any, given by the victim girl is immaterial and it cannot be a ground for acquitting the Appellant/Accused. Therefore, the learned Additional Public Prosecutor seeks to dismiss this Appeal as not maintainable.

Point for consideration:

Whether the Judgment passed by the learned Sessions Judge, Fast Track Mahila Court, Coimbatore in S.C. No. 19 of 2015 dated 27.03.2018 is to be set aside as perverse?



8. Heard the learned Counsel for the Appellant as well as the learned Additional Public Prosecutor for the State. Perused the depositions of the Prosecution witnesses P.W-1 to P.W-24, perused the documents under Ex.P-1 to Ex.P-25 and the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Coimbatore in S.C.No.19 of 2015, dated 27.03.2018.

9. On consideration of the rival submissions of the learned Counsel for the Appellant and the learned Additional Public Prosecutor and on perusal of the evidence of the Prosecution viz., P.W-1 to P.W-24 and Ex.P-1 to Ex.P-25 and Ex.D-1-Birth Certificate, it is found that on the date of alleged occurrence, the victim was aged about 16 years and 10 months as per Ex.D1-. There is evidence through Doctor/P.W-15 that P.W-1/victim was subjected to sexual intercourse. Ex.P-12-Radiologist Report issued by P.W-14 states that the age of the victim is above 16 and below 18. The deposition of the Prosecutrix/P.W-1 clearly indicates that she was subjected to sexual assault by the Accused. In cases of this nature, as per the Provisions of Section 29 of the Protection of Children from Sexual Offences Act, 2012 the deposition of the victim assumes significance and it shall form the the basis for conviction of the accused. As per Section 29 of the Protection of Children from Sexual



Offences Act, 2012 the statement of the victim is to be presumed to be true unless the contrary is proved on the basis of any other evidence. Thus, the Accused is duty bound to give rebuttal evidence, either by examining himself or by pointing out the evidence made available by the Prosecution.

10. In this case, parents of the victim viz., P.W-2 father of the victim and P.W-3 mother of the victim corroborated the evidence of the victim. P.W-2 father of the victim had given the complaint based on which, FIR under Ex.P-18 was registered by the Kuniyamuthur Police Station, Coimbatore District regarding 'girl missing'. Subsequently, the victim was secured along with the Accused at Katpadi Railway Station. In cases of this nature, the contradictions in the evidence of the Prosecution Witnesses other than the victim need not be considered by the trial Court. The evidence of the Head Master of the School also clearly indicates that the victim is a minor on the date of the alleged occurrence. The School Certificate marked as Ex.P-7, Hall ticket of the victim marked under Ex.P-8 and the Transfer Certificate of the victim was marked as Ex.P-9 discloses the age. Above all, the Radiologist Report indicates that the age of the victim is less than 18 years and more than 16 years. The learned Counsel for the Appellant contended that there are contradictions in the evidence of the Prosecution Witnesses, but those



contradictions does not affect the case projected by the Prosecution. It is an admitted fact that the Appellant eloped with the minor girl and relieved her from the lawful custody of her parents. The Appellant also had sexual intercourse with the minor girl who is incapable of giving her consent.

11. In this context, the deposition of P.W-1/minor girl requires a close scrutiny. First of all, she, on her own, left her house with her clothes, jewels and also educational testimonials. However, in her deposition, she has stated that due to threat or compulsion of the Appellant, she left her house. After joining the Appellant, evidently, the minor girl did not give any complaint with any of the police officials. The minor girl at first stayed in the relatives house of the Appellant at Madurai and then proceeded to Chennai where she got married in a temple. Subsequently, they went to Katpadi. Thus, for about 15 days, the victim girl was in the custody of the Appellant, but she has not given any complaint, complaining that she was unlawfully relieved from the custody of her parents by the Appellant. In the cross-examination of P.W-1, she has stated that even when the Railway Police Officials caused an enquiry, she has stated that she married the Appellant/Accused in a temple. When P.W-1 was asked as to whether she had contracted another marriage, she has deposed that since the Appellant/Accused subjected her to cruel treatment, she got married



with another man. Thus it is clear that the victim/P.W-1 voluntarily accompanied the Appellant/Accused and consented for sexual intercourse, though such consent is not valid under law.

12. In this context, this Court in the case of **Sabari vs. Inspector of Police**, reported in **2019 (3) MLJ Criminal 110** had an occasion to consider an identical case arising out of the provisions of Protection of Children from Sexual Offences Act, 2012. The relevant portion of the judgment reads thus:-

“11. There can be no second thought as to the seriousness of offences under the Protection of Children from Sexual Offences Act and the object it seeks to achieve. However, it is also imperative for this Court to draw the thin line that demarcates the nature of acts that should not be made to fall within the scope of the Act, for such is the severity of the sentences provided under the Act, justifiably so, that if acted upon hastily or irresponsibly it could lead to irreparable damage to the reputation and livelihood of youth whose actions would have been only innocuous. What came to be a law to protect and render justice to victims and survivors of child abuse, can become a tool in the hands of certain sections of the society to abuse the process of law.

12. As rightly recognised by the Learned Single Judge of this Court in *Sabari's case (cited supra)*, incidences where teenagers and young adults fall victim to offences under the Protection of Children from Sexual Offences Act being slapped against them without understanding the implication of the severity of the enactment is an issue that brings much concern to the conscience of this Court. A reading of the Statement of Object and Reasons of the Protection of Children from Sexual Offences Act would show that the Act was brought into force to protect children from offences of sexual assault, sexual harassment and pornography, pursuant to Article 15 of the Constitution of India, 1950 and the Convention on the Rights of the Child. However, a large array of cases filed under the Protection of Children from Sexual Offences Act seems to be



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those arising on the basis of complaints registered by the families of adolescents and teenagers who are involved in romantic relationships with each other. The scheme of the Act clearly shows that it did not intend to bring within its scope or ambit, cases of the nature where adolescents or teenagers involved in romantic relationships are concerned.”

13. Similarly, the Calcutta High Court in the case of ***Ranjit Rajbanshi vs. The State of West Bengal and others*** reported in ***2021 SCC Online Calcutta 2470*** while dealing with an Appeal filed by a convict, who was held guilty of penetrative sexual assault noted that the physical intimacy between the Accused and the victim and also referred to the meeting between the families to propose a marriage between the two, which however did not work out. In this background, it has to be decided as to whether the provisions of the Protection of Children from Sexual Offences Act, 2012 should be applied to 'a voluntary joint act of sexual union'. In that case, by examining the statement of victim that she was above 16 years but below 18 years, Justice Bhattacharya posed a moot question as to how consent shall be discarded when the girl is 17 years and 364 days, but on 17 years and 365 days, when she is capable of according the consent.

14. The Karnataka High Court, in the case of ***State of Karnataka vs. Basavaraj, Son of Yellappa Madar*** reported in ***2022 SCC Online Kar 1608***



observed as follows:-

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“29.7. The aim and objective of Protection of Children from Sexual Offences Act is to protect the minor children from sexual exploitation and it is made clear that a minor cannot provide consent, the minor under Protection of Children from Sexual Offences Act being a person under the age of 18 years.

29.8. Having come across several cases relating to minor girls above the age of 16 years having fallen in love and eloped and in the meantime, having had sexual intercourse with the boy, we are of the considered opinion that the Law Commission of India would have to rethink on the age criteria, so as to take into consideration the ground realities.

29.9. The aspect of consent even by a girl of 16 years and above would have to be considered if there is indeed an offence under the IPC and/or Protection of Children from Sexual Offences Act. Normally, when evidence is lead the victim is a major and the testimony given then of an act committed while being a minor would have to be given due value.

29.10. It is also seen that many of the above offences which are deemed offences are deemed to have been committed as a result of or on account of lack of knowledge on the part of the minor girl and the boy. Many a time the boy and girl are closely related and/or very well known to each other being class mates or otherwise. One thing leads to the other and being of an impressionable age, some things are done by a boy and girl, which ought not to have been done and done without knowing the applicability of Protection of Children from Sexual Offences Act or certain provisions of the IPC, which make them an offence. Though lack of knowledge of law is no excuse, can minors be presumed to have knowledge of the applicable law would be the question required to be asked in such a situation.”

15. The Bombay High Court in the Judgment dated 10.07.2023 in Criminal Appeal No. 1184 of 2019 (*Ashik Ramjan Ansari vs. The State of Maharashtra and another*) had dealt with an identical case and observed as follows:-



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“28. Turning to the facts before me, which involve a situation, where the accused and the prosecutrix were indulged in a love affair and in cross-examination, she specifically admitting about the same, is one another case, amongst many others coming before the Court, involving a romantic relationship. The girl on her own, left her house and accompanied the accused, where she travelled in distinct States and made no attempt to flee away and rather addressed letters to the concerned police stations about she willingly accompanying the accused and referring to “Nikah” being performed with the accused.

With the evidence on record, the learned Special Judge has rightly derived a conclusion that there is no evidence led by the prosecution establishing that the accused had taken away or enticed her, and therefore, an offence under Section 363 of IPC is not made out. However, with the evidence coming on record to the effect that she continued to stay with the accused and physical relationship was established between them, considering that she was aged 17 years and 5-6 months, a conclusion was derived that the act of the accused amounted to an offence of rape as, she being minor, sexual relationship maintained with her, either with or without consent, would amount to rape. The learned Special Judge, though derived a conclusion that it is a case of consensual sex, found the consent immaterial, since the prosecutrix was a minor. Left with no option to come out of the rigors of Section 375, since the consent of the minor girl in cases of sexual intercourse is immaterial, the learned Special Judge recorded a finding of guilt against the accused and found him guilty of committing the offence under Section 376 of IPC as well as Sections 4 and 6 of the Protection of Children from Sexual Offences Act.

This is a peculiar case, where the evidence on record has clearly made out a case for consensual sex, as no where in the examination-in-chief or her cross-examination the prosecutrix has alleged that sexual intercourse was forcible and without her consent and throughout her deposition, she is consistent on the said stand though state that she was informed that the accused was already married to some other woman.

29. In the wake of the clear case of consensual sex, emerging from the prosecution case, between a girl aged 17 years and 5 months and a man aged 25, merely because the statute provide punishment for an act of sexual indulgence, as the girl has not attained the age of maturity i.e., 18, when it can be specifically inferred from her conduct that she was capable of understanding the



consequences of her act, I am of the opinion that the learned Judge has erred in convicting the Appellant for committing the offence of rape under Section 36 of IPC as well as the offences under Sections 4 and 6 of the Protection of Children from Sexual Offences Act and awarded him the sentence in the impugned Judgment.

In the wake of the aforesaid discussion, since I am unable to concur with the conclusion derived by the learned Judge, merely on the ground that though the sexual intercourse was consensual, but the girl was minor and based on this aspect, the Appellant, in my considered opinion, cannot suffer the sentence, in case of a consensual sexual act.”

16. The Judgment of the Bombay High Court squarely applies to this case. In this case also, the sexual intercourse the Appellant had with P.W-1 is a consensual sexual act. In this case also, as per Ex.D-1, the victim/P.W-1 was aged 16 years and 10 months as on the date of her elopement with the Appellant. The victim girl must have been fully aware of the consequences of her elopement with the Appellant without the knowledge or consent of her parents and also marrying the Appellant in a temple and having sexual intercourse when they stay away from the normal place of their residence. Having known the above consequences, when the victim/P.W-1 had sexual intercourse, the Appellant alone cannot be blamed and brought within the rigors of the Protection of Children from Sexual Offences Act, 2012. In fact, the victim/P.W-1 had conveniently and comfortably stayed with the Appellant and when she was produced before the Coimbatore Police Station, for the fear of retaliation by her parents, she has stated that the Accused/Appellant had



subjected her to harassment without providing any food or other comforts under the influence of alcohol. This is the sum and substance of P.W-1/victim.

For the first time, such a statement was made by P.W-1/victim girl and it was not her case that she made attempts to flee from the company of the Appellant when they were travelling together. In this context, the Bombay High Court, in the very same judgment, mentioned supra, had made certain observations in Para No.21 and this Court, with full agreement to the said observations, extract the same hereinbelow:

“24. The United Nations Committee on the Rights of Child (CRC), in General Comment No.20, with respect to the minimum age of consent for sexual intercourse, has urged the States to strike a balance between protection of children from sexual exploitation and abuse and in respect for their evolving autonomy. It has recommended as under:-

"States parties should take into account the need to balance protection and evolving capacities and define an acceptable minimum age, when determining the legal age for sexual consent. States should avoid criminalizing adolescents of similar ages for factually consensual and non exploitative sexual activity."

25. Whilst all children are entitled to be protected from sexual violence, such protection should also enable young people to extend their boundaries, exercise choices and engage in necessary risk taking though not exposing them to inappropriate response, harm and danger. The penal approach towards adolescents' sexuality has impacted their life to a barrier free access to sexual and reproductive health services. The criminalization of romantic relationship has overburdened the criminal justice system by consuming significant time of the judiciary, police and the child protection system and M.M.Salgaonkar 28/31 APEAL 1184-19.odt ultimately when the victim turns hostile by not supporting the charge against the accused, in the wake of the romantic



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relationship she shared with him, it can only result in an acquittal. Though the POCSO Act cannot stop the natural feelings towards the opposite sex, particularly in the age which account for biological and psychological changes, punishing a minor boy, who entered into a relationship with a minor girl, who were in the grip of their hormones and biological changes would be against the best interest of child and though it is the duty of the State to safeguard the ability to take decisions and to protect the autonomy of the individual, the adolescents cannot be deprived of this right. The mere apprehension that adolescents would make an impulsive and bad decision, cannot classify them under one head and by ignoring their will and wishes. The age of consent necessarily has to be distinguished from the age of marriage as sexual acts do not happen only in the confines of marriage and not only the society, but the judicial system must take note of this important aspect.

26. A balance between the protection of vulnerable class and that, capable of exercising the power to decide, what is right for them, must be necessarily struck. As rightly observed by Their Lordship Dr.D.Y.Chandrachud in the case of Justice K. S.Puttaswamy (Retd). Vs. Union of India⁷, "the duty of the State is to safeguard the ability to take decisions- the autonomy of the individual - and not to dictate those decisions."

27. A provision which does not take into consideration our societal realities and proceed on an assumption, that every sexual indulgence with a minor, irrespective of whether she was capable of being an equal participant in the act, has definitely created a situation, resulting in acquittal of the accused in cases of consensual sexual relationship, where the gap in the age of accused and that of victim is small.

28. Turning to the facts before me, which involve a situation, where the accused and the prosecutrix were indulged in a love affair and in cross-examination, she specifically admitting about the same, is one another case, amongst many others coming before the Court, involving a romantic relationship. The girl on her own, left her house and accompanied the accused, where she travelled in distinct States and made no attempt to flee away and rather addressed letters to the concerned police stations about she willingly accompanying the accused and referring to "Nikah", being performed with the accused.

With the evidence on record, the learned Special Judge has rightly derived a conclusion that there is no evidence led by the prosecution, establishing that the accused had taken away or enticed her



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and, therefore, an offence under [Section 363](#) of IPC is not made out. However, with the evidence coming on record to the effect that she continued to stay with the accused and physical relationship was established between them, considering that she was aged 17 years and 5-6 months, a conclusion was derived that the act of the accused amounted to an offence of rape as, she being minor, sexual relationship M.M.Salgaonkar 30/31 APEAL 1184-19.odt maintained with her, either with or without consent, would amount to rape. The learned Special Judge, though derived a conclusion that it is a case of consensual sex, found the consent immaterial, since the prosecutrix was minor. Left with no option to come out of the rigors of Section 375, since the consent of the minor girl in cases of sexual intercourse is immaterial, the learned Special Judge recorded a finding of guilt against the accused and found him guilty of committing the offence under [Section 376](#) of IPC as well as [Sections 4](#) and [6](#) of the POCSO Act.

This is a peculiar case, where the evidence on record has clearly made out a case for consensual sex, as no where in the examination-in-chief or her cross-examination, the prosecutrix has alleged that sexual intercourse was forcible and without her consent and throughout her deposition, she is consistent on the said stand though state that she was informed that the accused was already married to some other woman.”

17. Thus, it is *sine quo non* in the Criminal Law Jurisprudence which the Law Commission of India has to take into account to arrest the burgeoning docket explosion recorded in the Country due to cases of this nature involving adolescents where the male alone gets punished. This was also the observation made by the Karnataka High Court, in the Judgment mentioned supra. Therefore, this Court is of the view that the provisions of the Protection of Children from Sexual Offences Act, 2012 requires a serious re-look with respect to consenting age of woman to have sexual intercourse.



CRL.A.No.302 of 2018

18. In the light of the above discussion, the point for consideration is answered in favour of the Appellant and against the Prosecution. The Judgment of the learned Sessions Judge, Fast Track Mahila Court, Coimbatore, in S.C.No.19 of 2015 dated 27.03.2018 is found perverse, as not having considered the facts and circumstances of the case regarding the love affair between the teenager and youth. Therefore, the conviction is to be set aside.

In the result, **this Criminal Appeal is allowed.** The Judgment of the learned Sessions Judge, Fast Track Mahila Court, Coimbatore, in S.C.No.19 of 2015 dated 27.03.2018 is set aside. The Appellant/Accused is acquitted from all the charges. The bail bond, if any executed by the Accused, shall stand cancelled. The fine amount, if any paid, before the learned Sessions Judge, Fast Track Mahila Court, Coimbatore, is ordered to be refunded to the Appellant.

08.03.2024

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

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CRL.A.No.302 of 2018

SATHI KUMAR SUKUMARA KURUP, J.

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To

1. The Sessions Judge,
Fast Track Mahila Court,
Coimbatore.
2. The Judicial Magistrate,
Coimbatore.
3. The Inspector of Police,
B-14, Kuniyamuthur Police Station,
Coimbatore District.
4. The Public Prosecutor,
High Court, Madras.

Judgment made in

CRL.A.No.302 of 2018

08.03.2024