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Crl. A. No.348 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2024

CORAM

MR.JUSTICE N.SESHASAYEE

Criminal Appeal No.348 of 2018

1.Murugan
2.Masi
3.Mathan

... Appellants

Vs.

State through,
The Inspector of Police
H-1, All Women Police Station
Washermenpet Police Station
Chennai
[Crime No.227 of 2017]

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code to call for the records in S.C. No.196 of 2016 on the file of Special Court for cases under POCSO Act 2012/Mahila Court, Chennai and allow the appeal, set aside the judgment and order of conviction dated 07.06.2018 and acquit the appellants.

For Appellants : Mr.R.Ganesh Kumar

For Respondent : Dr.C.E.Pratap
Govt. Advocate (Crl.Side)
Assisted by Ms.J.R.Archana



JUDGMENT

The appellants herein were arrayed as A1 to A3 in S.C. No.198 of 2016 on the file of Sessions Judge, Mahila Court, Chennai. While A1 was accused of committing an offence under Section 366 IPC and Section 6 of the POCSO Act, A2 and A3 were charged with an offence under Section 366 r/w 109 IPC and Section 6 r/w 16 of the POCSO Act. Post trial, the learned trial Judge acquitted all the accused of offences under Section 6 and/or r/w 16 of POCSO Act, as the case may be, but convicted A1 under Section 366 of IPC and proceeded to convict A2 and A3 for offences under Section 366 r/w 109 IPC. The sentence imposed on them read as below:

<i>Accused</i>	<i>Offence</i>	<i>Sentence imposed</i>
A1	U/s.366 I.P.C.	S.I. for 3 years and a fine of Rs.5,000/- in default to undergo S.I. for 6 months.
A2 & A3	U/s.366 r/w 109 I.P.C.	S.I. for 3 years and a fine of Rs.5,000/- each, in default to undergo S.I. for 6 months.

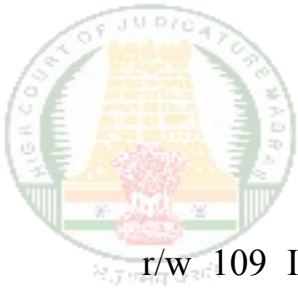
2. The case of the prosecution commenced with registration of Ext.P12, FIR which was based on Ext.P4, complaint lodged by PW4, the brother of the victim of the offence and the case was registered as girl missing.



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3. The accusation of the prosecution version is that couple of months prior to 8.12.2014, A2 along with some of his relatives approached PW2 requesting her to give her daughter, the victim to be, in marriage for A1. PW2 as well as PW4, brother of the victim, declined their request on the ground that the victim girl was of tender years. The victim was 16 years and 5 months old at the relevant time and had passed her school finals and was employed in a private concern. It was in this setting, on 08.12.2014, the victim girl did not return home from her workplace. Both PW2 and her son PW4 (brother of the victim) searched for the girl and as they could not trace the girl, on 09.12.2014, PW4, preferred the complaint.

4. Upon registration of the FIR, PW10, the investigating officer took up the investigation. On 10.12.2014, he arrested A1 and secured the girl and the girl was subjected to medical examination by PW7, who has given both Ext.P6, accident register as well as Ext.P7, her examination report. The report does not indicate any external injuries on the person of the victim. PW10 took up the investigation and after securing the girl, he filed an alteration memo before the jurisdictional magistrate and began investigation for offences under Section 366



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r/w 109 IPC and Section 4 of the POCSO Act. The girl has also given a statement under Section 164 Cr.P.C, marked as Ext.P2, before the Magistrate. As per the statement of PW1, on the date of occurrence, A1 invited her to join for his birthday celebration, and that they came to Parry's Corner, from where, they went to Vandalur Zoo and as it turned dark, they chose to stay in A1's sister's house. After recording the statements of the witnesses, PW10 laid his final report. The matter was committed to Sessions court and the learned Sessions Judge has framed charges as outlined in the opening paragraph.

5. The matter went to trial during which prosecution examined PW1 to PW10 and produced Exts.P1 to P13 and for the defence, they examined DW1 and DW2. After trial, the trial court found all the three accused guilty of charges framed against them under Section 366 or 366 r/w 109 IPC, as the case may be, but acquitted them of Section 6 r/w 16 of POCSO Act. This is now under challenge in this appeal.

6. Heard the learned counsel for the appellant as well as the learned prosecutor and perused the records. The victim girl, admittedly as a girl aged 16 years and on the date of occurrence, she has joined A1 only upon latter's invitation. Upto a



point it can even be considered that the victim girl met and joined A1 for his birthday party might not have captured as two friends belonging to opposite gender going together for some celebrations. Whether criminal intent perhaps commenced the moment A1 failed to inform PW2, the mother of the victim about the whereabouts of PW1. While this may be as a broad statement, when this court examined evidence on record, this court finds PW1 supporting the case of the prosecution essentially in her cross-examination. She says that when it became dark on the date of occurrence she was bit afraid and nervous, that when she was taken to the house of A3, who is sister's husband of A1, that on the following day, A3 took both of them to certain temple for A1 to marry PW1, but the said temple refused to do, that hence they had gone to yet another temple where A1 forced marriage upon PW1. Indeed PW1 narrates that she cried when it happened.

7. The learned counsel for the appellants would submit that in her previous statement under 164 Cr.P.C (Ext.P2), PW1 did not even whisper anything to indicate that there was a marriage as claimed but has later improved the same. What is required to be noted here is that most of the incriminating statements were made by A1 only upon suggestions put to her which indicates that defence



has literally given up its defence during trial.

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8. Moving further, as this court examined the evidence there is nothing to indicate the involvement of A2 at any stage of crime. It may be that A2, as the father of A1 might have approached PW2 and requested her to give her daughter PW1, in marriage for his son. There is nothing culpable about a father formally asking a girl from the neighbourhood for marriage with his son and once the FIR was registered, the police said to have taken custody of A2 and beyond informing A3 that the police is searching for A1 cellphonically A2 has not played any role therefore to hold that A2 is guilty of charges levelled against him cannot be sustained.

9. Turning to A3, the learned counsel for the appellants submitted that Section 366 IPC has two parts and the charge if at all any against A2 falls within the first part. So far as the first part is concerned, a girl or a woman must have been kidnapped or abducted for marriage with him or to somebody else. So far as the first part is concerned, there is no evidence to indicate that A3 has actively abetted to engage either in kidnapping or abduction of PW1. Even going by PW1's version, she voluntarily joined A1 on the date of occurrence and spent



some time at Parry's Corner as well as at Vandaloor Zoo and A3 has only provided them accommodation for their night stay. When A3 has not participated at any stage in the allegation of kidnapping of PW1 he cannot be said to have abetted it. A3 must be at the point when the crime takes place not at a later point.

10. With both A2 and A3 having been found not guilty by this court, this court now turns to A1 as to whether A1 has committed any offence under Section 366 of IPC. PW1 is the victim girl and going by the testimony of PW2, her mother, she was born on 16.07.1998 (Ext.P1, birth certificate) and when the offence had taken place, the victim girl was barely about 16 years and 5 months and if the testimony of PW1 and PW2 are taken together, they indicate that the accused resides right opposite to the house of PW1 and that the parents of A1 approached the parents of the victim girl and requested them at least twice earlier requiring the parents of the victim girl to give her in marriage to A1. Since the girl was of tender age, her parents had declined and according to PW1, after this request for marriage, she began to talk with A1 and was moving friendly with him and indeed has come out in her evidence that on the date of occurrence, she had voluntarily gone with A1 for his birthday party near Parry's Corner from where they both went to Vandalur Zoo. As night set in, they did stay in the house of



A3. According to her, there was a marriage on the following day. But this statement was not made by PW1 in her statement before the Magistrate under Section 164 of Cr.P.C. The charge against A1 is only under Section 366 IPC and not under Section 366-A IPC. The sequence of events as narrated by PW1 indicates that till the following morning after the date of occurrence she did not have any trouble staying in the company of A1. In other words, PW1 was not removed from her lawful custody against her will or under any duress or coercion. It was essentially a voluntary act. However, inasmuch as the girl was barely 16 years and 5 months old at that time and offence indeed has been committed, therefore, A1 cannot escape from the criminal liability under Section 366 of IPC.

11. This court, therefore, confirms the judgment of the trial court holding the first accused guilty of the offence under Section 366 IPC. However, given the factual scenario as explained earlier, but for the age of the victim girl, it could not even be said an offence indeed has been committed. And very fortunately there has been no sexual assault on the girl. Taking the circumstances into consideration and since A1 did not have any previous bad behaviour or criminal track record, this court chooses to reduce the sentence from three years to six



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months simple imprisonment and the period during which he was in prison is directed to be adjusted under Section 428 Cr.P.C. This court confirms the fine amount imposed on the first accused. This court is informed that the fine amount has already been paid.

12. This appeal is partially allowed in the manner indicated above. First accused, namely Murugan s/o.Masi is required to surrender before the trial court on or before 17.09.2024 to undergo the remaining part of the sentence.

02.09.2024

Asr

Index : Yes / No

Neutral Citation : Yes/No

To

1.The Special Court for cases under POCSO Act, 2012/Mahila Court,
Chennai

2.The Public Prosecutor, High Court, Madras.



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N.SESHASAYEE, J.
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