



WEB COPY



CrI.A.No.851 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.12.2023

DELIVERED ON : 15.04.2024

CORAM:

THE HON'BLE **MR.JUSTICE M. NIRMAL KUMAR**

CrI.A.No.851 of 2023

S.Rajkumar

S/o.Sundar

... Appellant/Accused

Vs.

State Represented by

The Inspector of Police,

Arani All Women Police Station (AWPS).

(Crime No.1 of 2021)

... Respondent

PRAYER: Criminal Appeal filed under Sections 374(2) of Cr.P.C to call for the records relating to the order of conviction, sentence and fine passed in S.C.No.18 of 2021 dated 30.06.2023 on the file of the Principal District and Sessions Court, Tiruvannamalai and set aside and allow the appeal and acquit the appellant.

For appellant : Mr.S.Sagayanathan

For Respondent : Mr.A.Damodaran

Additional Public Prosecutor



Crl.A.No.851 of 2023

WEB COPY

J U D G M E N T

This Criminal Appeal has been filed challenging the order passed in S.C.No.18 of 2021 dated 30.06.2023 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of POCSO Act Cases, Tiruvannamalai and acquit the appellant.

2. The appellant/accused in Spl.S.C.No.18 of 2021 was convicted by the Trial Court and sentenced to undergo twenty years rigorous imprisonment for the offence under Section 376(2)(n) of IPC and Sections 5(1) 5(j)(ii) r/w 6 of Protection of Children from Sexual Offences Act, 2012 [POCSO Act] and to pay a fine of Rs.5,000/- in default to undergo one year simple imprisonment.

3. The case of the prosecution is that the victim's date of birth is 18.02.2005, she completed her X Standard and pursuing her XI Standard and also working as Salesgirl in a textile shop. The appellant used to follow her



Crl.A.No.851 of 2023

WEB COPY

when she was going for work, enticed her, got her mobile number and constantly speaking with her. Though initially the victim resisted, latter she started showing interest towards the appellant and both were in love relationship. On 25.09.2020 at about 7.30 p.m. when the appellant and the victim were alone in the backyard of her home in a secluded place, sitting and chatting, the appellant promised the victim that he would marry her and forcibly had physical relationship, again on 17.10.2023, the appellant had physical relationship with the victim near the river bed. Thereafter, victim fell unwell and she was taken to Arani Government Hospital on 29.01.2021 by her grandmother/PW2, where the Casualty Medical Doctor/P.W.6 examined the victim and found that the victim was three months pregnant. P.W.6 enquired the victim about the pregnancy and finding the victim a minor, she informed the respondent Police. PW1/victim, her grandmother/PW2 left the hospital without information. PW2/grandmother enquired PW1/victim, the reason for pregnancy, who informed her relationship with the appellant,



Crl.A.No.851 of 2023

WEB COPY

thereafter on 30.01.2021, PW1 and PW2 went to Government Medical College Hospital, Tiruvannamalai, where PW8/Doctor examined the victim, the respondent police came there, enquired the victim, her grandmother, her sister and others and found that the appellant is the reason for the victim's pregnancy. The appellant/accused was arrested and the victim was sent for medical examination. The victim's 164 Cr.P.C. statement recorded. The victim and appellant produced for medical examination, medical reports collected and Doctors' statement recorded. On completion of investigation charge sheet filed against the appellant/accused.

4. Before the Trial Court, on the side of the prosecution P.W.1 to P.W.12 examined and Ex.P1 to Ex.P13 marked. On the side of the appellant/accused, no witness examined and no documents marked. On conclusion of the trial, the Trial Court convicted the appellant as stated above.



Crl.A.No.851 of 2023

WEB COPY

5.The learned counsel for the appellant submitted that the victim girl/PW1 was residing with her maternal grandmother/PW2 during the lockdown period and at that time the appellant, who was studying 3rd year degree in a college, stayed in his relatives house in the same village. Both appellant and victim/PW1 developed love relationship, at the young age not knowing the seriousness and consequences elevated their relationship into physical relationship. Initially, the appellant was reluctant to admit the same, despite the medical evidence against him, the appellant contested the case and the trial Court convicted and sentenced him as stated above.

6.The learned counsel further submitted that both the appellant and victim were interested to continue their love relationship, get married, which was agreeable to both their family members, the parents and victim appeared and confirmed the same. Thereafter the appellant was granted bail by this Court on 10.11.2023, both the appellant and the victim/PW1 got married in



Crl.A.No.851 of 2023

Kumaragiri Sri Balamurugan Temple, Narikundru, Polur, Tiruvannamalai

WEB COPY

District on 16.11.2023 in the presence of family members. The said marriage was registered with Sub Registrar Office, Polur in marriage registration certificate No.TMR/Polur/94/2023 dated 24.11.2023. He produced the copy of temple receipt, marriage invitation, marriage photograph and marriage registration certificate. Hence, prays for allowing this appeal, thereby allowing both the appellant and victim to continue their matrimonial life, both are majors, had taken conscious decision to live as husband and wife with approval of both their families. Further submitted that pendency of the above case will be an hindrance and cause harm to their future matrimonial life.

7.The learned Additional Public Prosecutor submitted that in this case the victim was staying with her grandmother during the Corona period when the schools and colleges were closed. PW1/victim's date of birth is 18.03.2005. She studied in Government High School, Padavedu. The Head Master/PW5 produced the Educational certificate/Ex.P5. Thus the victim was



Crl.A.No.851 of 2023

WEB COPY

minor on the date of occurrence. The victim in the complaint dated 03.02.2021 had clearly narrated about the appellant following her whenever she was going and coming back from her work from Textile shop. The appellant constantly followed her and thereafter got her mobile number, spoke with her and developed love relationship. During September, 2020 he took her to the backyard of her house and they had physical relationship. Again the same was repeated during October, 2020 in the river bed and the victim became pregnant and PW2/maternal grandmother took her to the Arani Government Hospital, where PW6/Doctor examined her and confirmed that the victim was pregnant and issued Ex.P6/Accident Register. Thereafter without informing any one, they left the hospital. PW2 enquired the appellant, who refused to accept the relationship and pregnancy. Thereafter on 30.01.2021, the victim and her grandmother went to the Government Medical College Hospital, Tiruvannamalai, where PW8/Doctor examined her and issued Ex.P8/Accident Register and Ex.P9/Medical Report. Thereafter,



Crl.A.No.851 of 2023

WEB COPY

the fetus was collected and sent for DNA test, the victim's and appellant's blood samples were collected in FTA card and sent to PW9/Deputy Director, Forensic Science Department, who examined the same and issued DNA report/Ex.P10 confirming that the appellant is the reason for the fetus and victim's pregnancy. On conclusion of investigation, charge sheet filed. In this case, on the side of the prosecution, PW1 to PW12 examined and marked Exs.P1 to P13. On conclusion of the trial, the Trial Court convicted the appellant as stated above. He fairly submitted that now the appellant and victim/PW1 got married with parents and family members concurrence and living as husband and wife.

8.Considering the submissions made and on perusal of the materials, it is seen that the appellant and victim/PW1 were in love with each other, which is not denied. In continuation of their love relationship they were constantly talking with each other and regularly meeting. During such



Crl.A.No.851 of 2023

WEB COPY

meeting, once in the backyard of the victim's house and once near the river bed, they had physical relationship and victim became pregnant. The appellant a college final year student at the time of occurrence and the victim was XI standard student, who were aged 19 years and 15 years. Now both of them attained majority and both have similar social and economical background. The victim's grandmother and family members as well as the appellant's parents agreed for the marriage. Both the appellant and victim confirmed that they are still interested in each other and willing to marry and continue their matrimonial life. This Court, considering such submission on 10.11.2023 passed the following order:

“5. The contention of the learned counsel for the appellant is that the appellant and the victim were in love with each other. At the time of occurrence, the appellant was studying in Government Arts College, Cheyyar and the victim was studying in a School. During the Corona Pandemic period, the educational institutions were closed, both of them were idle in their respective houses, at that time they became friendly and they used to meet each



Crl.A.No.851 of 2023

WEB COPY

other regularly. This blossomed into a love affair, the victim girl employed in a textile shop and they continued their relationship. Since the parents of the victim forced her to get married to an elderly person, she refused the same and forced the appellant to take her along with him. He would submit that the victim had not complained that the love affair or the relationship was against her wish and it is during medical check up her pregnancy was found by P.W.6 and thereafter only, the victim girl informed her grandmother and her Aunt about the relationship. Now the victim had attained majority and the victim is still willing to marry the appellant. The appellant whose date of birth is 20.08.2002 is also willing to marry her. The father of the appellant, namely, Mr.Sundar, who is present before this Court confirms that he will conduct the marriage between the appellant and the victim which is also agreeable to the victim girl. It is seen that the victim's natural mother passed away when she was three months old, thereafter the victim's father married another lady and living separately. The victim's sister got married and settled in Tiruppur and the victim was under the care of her grandmother. The grandmother of the victim girl also given supporting affidavit agreeing that the marriage and now the appellant and the victim girl are in the marriageable age and there is no serious objection from either side.



Crl.A.No.851 of 2023

WEB COPY

6. *The learned Government Advocate [Crl. Side), on instructions from the respondent police confirms that there is no major difference of opinion between the appellant and the victim's family. The victim's grandmother confirms about the affidavit filed and the victim girl also given confirmation statement in this regard. He would also submit that the appellant's father agreed that if the appellant is enlarged on bail he will conduct the marriage between the appellant and the victim girl and bring them before this Court as husband and wife.*

7. *Considering the submissions made and on perusal of the materials, it is seen that the victim girl's date of birth is 18.02.2005, the appellant's date of birth is 20.08.2002, both of them attained majority and now they are at the marriageable age. The appellant is the first generation graduate who had completed his degree from Government Arts College, Cheyyar. The parents of the appellant have a cherished hope that the appellant's education would not be spoiled, he would get proper employment and their family status might get elevated due to the education imparted to the appellant and their hope is that the appellant's education should not go wasted. Further, the appellant's father had given an undertaking that as soon the appellant is enlarged on bail, he will conduct the*



Crl.A.No.851 of 2023

WEB COPY

marriage between the appellant and the victim. In view of the same, this Court finds that confining the appellant further would only be doing harm and injustice to the appellant and the victim. Hence, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the appeal.”

9. Though very many grounds raised by the appellant, now the appellant and victim/PW1 got married on 16.11.2023 at Kumaragiri Sri Balamurugan Temple, Narikundru, Polur, Tiruvannamalai District in the presence of family members and elders. Prior to it, invitation was distributed to the relatives, marriage performed in a temple, marriage registered in Sub Registrar Office, Polur in marriage registration certificate No.TMR/Polur/94/2023 dated 24.11.2023. The scanned copy of marriage invitation and marriage registration certificate are produced below:

[illegible]



Crl.A.No.851 of 2023

WEB COPY


GOVERNMENT OF TAMILNADU
FORM III
CERTIFICATE OF REGISTRATION OF MARRIAGE
(செருநில் சி(த))

Marriage SI.No. TMR/Polur94/2023 Date: 24/11/2023

Husband	Wife
	

This is to certify that Thiru RAJKUMAR S. Son of Thiru SUNDAR residing at NO.1822, PILLAIYAR KOVIL STREET, PADAVEDU, POLUR, TIRUVANNAMALAI, TAMIL NADU, INDIA, 606805. and Thir DEEPIKA P Daughter of Thiru POONGAN residing at NO., LINGAPURAM, PADAVEDU, POLUR, TIRUVANNAMALAI, TAMIL NADU, INDIA, 606805, have furnished the particulars in Memorandum declaring that their marriage has been solemnized on 16-NOV-2023 at KUMARAGIRI SRI BALAMURUGAN THIRUKOVIL, NARIKUNDRU, KUMARAGIRI SRI BALAMURUGAN THIRUKOVIL, NARIKUNDRU, POLUR, POLUR, TIRUVANNAMALAI, TAMIL NADU, INDIA, 606803 and that the same has been registered this 24TH day of NOVEMBER 2023 at Serial No. 94 of Register of Marriages maintained under the Taminadu Registration of Marriage Act, 2009.

Place: SRO POLUR Signature of  Sub-Registrar of Marriages
Date: 24/11/2023





Crl.A.No.851 of 2023

WEB COPY

10.The Hon'ble Apex Court in the case of ***K.Dhandapani vs. State by the Inspector of Police*** reported in ***2022 SCC OnLine SC 1056*** and ***Elumalai vs. 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.

11.In view of the above, the conviction and sentence imposed on the appellant in S.C.No.18 of 2021 passed by the learned Sessions Judge, Special Court for Exclusive Trial of POCSO Act Cases, Tiruvannamalai is hereby set aside. The appellant is acquitted from all the charges levelled against him. Fine amount, if any, paid shall be refunded. Bail bond, if any, executed shall stand cancelled.



Crl.A.No.851 of 2023

WEB COPY

12.In the result, the Criminal Appeal stands allowed. It is made

clear that the case primarily arose out of dispute in love affair between two individuals and now it got resolved. The appellant and the victim both are young at age, educated, who are seeking employment in Government and private sector. Now both of them got married, living in matrimonial relationship as husband and wife. The stigma of criminal case and conviction no longer exist. The above case cannot be quoted or referred as a disqualification or taken adverse notice against the appellant or the victim in their future endeavours.

15.04.2024

Index : Yes/No

Internet : Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes/No

rsi



Crl.A.No.851 of 2023

To
WEB COPY

- 1.The Inspector of Police,
Arani All Women Police Station (AWPS).
- 2.The Sessions Judge,
Special Court for Exclusive Trial of POCSO Act Cases,
Tiruvannamalai.
- 3.The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.A.No.851 of 2023

M. NIRMAL KUMAR, J.

rsi

**Pre-delivery order in
Crl.A.No.851 of 2023**

15.04.2024