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Crl.A.No.566 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.08.2024

CORAM :

MR. JUSTICE N.SESHASAYEE

Crl.A.No.566 of 2017

Kannan

... Petitioner

Vs.

The State rep. by its
The Inspector of Police
Bhavani All Women Police Station
Erode District
(Crime No.8/2015)

... Respondent

Prayer: Criminal Appeal is filed under Section 374(2) Cr.P.C. to set aside the judgment passed against the appellant on 04.07.2017 in S.C.No.35 of 2015 on the file of the learned Sessions (Mahila Court), Salem, and acquit him from all charges.

For Petitioner : Mr.E.C.Ramesh

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



Crl.A.No.566 of 2017

WEB COPY

JUDGMENT

This appeal is preferred challenging the conviction and sentence imposed on the appellant for the offence punishable U/s.366, 312 I.P.C. and U/s.6 of POCSO Act, 2012. The maximum sentence imposed on him was 10 years R.I. plus fine for the offence U/s.6 of the POCSO Act, 2012. The sentence imposed for other offences were directed to run concurrently with the maximum sentence imposed.

2.The prosecution line of the case opens as below:

a) On 04.07.2015, the prosecutrix was admitted at the Government Hospital, Bhavani, for excessive bleeding. She was barely 16 years at the relevant time she had conceived and had aborted. Since the prosecutrix was a minor, PW8 prepared Ex.P8, A.R.Copy and intimated the respondent police. Immediately the investigating agency swung into action, visited the prosecutrix at the hospital and obtained Ex.P1, complaint statement on 04.07.2015, receiving which PW13, registered



Crl.A.No.566 of 2017

WEB COPY

Ex.P18, F.I.R.

b) As per the F.I.R., the appellant has enticed the prosecutrix and the girl has eloped with the appellant, that they were in multiple places for the next four days, during which period, the appellant had sexual intercourse multiple times with the prosecutrix. On return, the prosecutrix concealed the same from the mother, but later she conceived and aborted, whereupon she was admitted in the hospital. The allegation is that the appellant gave certain medicines to the prosecutrix for forcing miscarriage of her pregnancy.

3.The Investigator seized the unconsumed tablets and they were seized under Ex.P2, seizure mahazar. He also prepared Ex.P5 and Ex.P19 Observation Mahazar of places where the appellant is said to have taken the girl, and also prepared Ex.P20 and Ex.P23 rough sketches. The girl was also subjected to medical examination by PW7, who had opined that there was an incomplete abortion. After examining other witnesses, PW14, the Investigating Officer has laid his final report.



Crl.A.No.566 of 2017

WEB COPY

4.The trial Court framed charges against the appellant for offences U/s.366, 312 (part 2) I.P.C. and U/s.6 of the POCSO Act, 2012, and the appellant denied the charges. The matter went to trial, during which the prosecution examined PW1 to PW16 and produced Ex.P1 to Ex.P27 and M.O.1 and M.O.2, of which M.O.1 are the combo pack of mifepristone and misoprostol tablets. After trial, the learned Sessions Judge, Mahila Court, Salem found that the appellant was guilty of the charges U/s.366 I.P.C. and U/s.6 of POCSO Act, 2012. So far as charge U/s.312 (part 2) I.P.C. is concerned, the trial Court convicted him not for the charge framed but for charge U/s. 312(part 1). The sentence imposed on the appellant are as below:

<i>Accused</i>	<i>Offence</i>	<i>Sentence imposed</i>
Accused	U/s.366 I.P.C.	R.I. for 10 years and a fine of Rs.10,000/- in default to undergo S.I. for 3 months.
	U/s.6 of POCSO Act, 2012	R.I. for 10 years and a fine of Rs.10,000/- in default to undergo S.I. for 3 months.
	U/s.312 (part 1) I.P.C.	R.I. for 3 years and a fine of Rs.2,000/- in default to undergo S.I. for 3 months.

This is now under challenge.

5.The opening statement and perhaps the only statement the learned



Crl.A.No.566 of 2017

WEB COPY

counsel for the appellant made was that the appellant has 'married' PW2 and the couple had begotten a child on 01.11.2019 and the prosecutrix is again conceived. The learned counsel added that the girl was nearing adulthood and she loved the boy and today they are happily married.

6.Per contra, the learned Government Advocate (Crl. Side) submitted that initially the appellant did not cross examine critical witnesses, as a result of which the trial Court has convicted and sentenced him, challenging which, the appellant approached this Court in Crl.A.No.14 of 2017 and this Court vide its judgment dated 17.02.2017 allowed the appeal and remanded the matter back to the trial Court, granting the appellant the opportunity to cross examine both the prosecutrix (PW2) as well as her mother (PW1). During her cross examination, PW2, the prosecutrix turned hostile and admitted that the appellant has not procured her any tablets for aborting the child.

7. With little or no evidence, this Court is left with very little option than to grant benefit of doubt to the appellant. This appeal stands allowed accordingly. The impugned judgment of conviction and sentence



Crl.A.No.566 of 2017

WEB COPY

imposed on the appellant / accused by the trial Court in S.C.No.35 of 2015 on the file of the learned Sessions (Mahila Court), Salem, vide Judgment dated 04.07.2017 is hereby set aside. The appellant / accused is acquitted of all charges levelled against him. Fine amount, if any paid, shall be refunded to him.

13.08.2024

kas

Index : yes / no

Neutral Citation

To

1. The Sessions (Mahila Court)
Salem

2. The Inspector of Police
Bhavani All Women Police Station
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WEB COPY



Crl.A.No.566 of 2017

N.SESHASAYEE, J.

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Crl.A.No.566 of 2017

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