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Crl.A.No.613 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.613 of 2017

Raguvaran

...Appellant / Accused

vs.

The Inspector of Police,
All Women Police Station,
Ariyalur.
(Cr. No.2/2017)

...Respondent / Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, 1973, against the judgment and orders dated 28.08.2017 passed in Spl.S.C.No.05/2017 by the Fast Track Mahila Court, Ariyalur.

For Appellant : Mr.V.Perarasu,
Legal Aid Counsel

For Respondent : Mr.S.Rajakumar
Additional Public Prosecutor.

JUDGMENT

This Criminal Appeal is filed against the judgment and orders dated 28.08.2017, passed by the Fast Track Mahila Court, Ariyalur, in Spl.S.C.No.05/2017.



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2. The appellant is the accused in Spl.S.C.No.05/2017 and is convicted and sentenced as detailed hereunder:

<i>Accused</i>	<i>Conviction</i>	<i>Sentence</i>
Raguvaran	Section 366 I.P.C	Rigorous Imprisonment for ten years and a fine of Rs.1000/-, in default to undergo Rigorous Imprisonment for three months.
	Section 4 of the Protection of Children from Sexual Offences Act, 2012	Rigorous Imprisonment for ten years and a fine of Rs.1000/-, in default to undergo Rigorous Imprisonment for six months.
The sentences shall run concurrently. The period of sentence already undergone by him is set off under Section 428 Cr.P.C.		

3. The case of the prosecution in a condensed form is as follows :

3.1. The victim (P.W.1) was studying 9th Standard in a Government Higher Secondary School, Ambapoor village, Ariyalur, and her date of birth is 16.09.1999. The appellant viz., Raguvaran was also studying in the same School in IX Standard. Both of them fell in love with each other and on knowing this, the parents of the victim (P.W.1) sent her to Tiruppur where she started working for a private concern.



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WEB COPY 3.2. On 21.01.2017, the appellant called the victim (P.W.1) over phone and both of them went to Nachiyarpur where the paternal uncle of the appellant is residing. According to the victim (P.W.1), the appellant married her by tying a Thali and both of them came down to Tirupur. Subsequently, the victim was taken back by her parents. The victim's contention was that the appellant Raguvaran though married her, did not take her back to his parental home and therefore, she lodged a complaint (Ex.P1) with the All Women Police Station, Ariyalur.

3.3. Tmt.Vani (P.W.20), the then Inspector of Police, All Women Police Station, Ariyalur, received the complaint (Ex.P1) from P.W.1, and registered an FIR (Ex.P16) in Crime No.2/2017 of All Women Police Station, Ariyalur, against the appellant for the offences punishable under Sections 366 I.P.C., r/w. Section 4 of Protection of Children from Sexual Offences Act, 2012 (in short POCSO Act, 2012). She took up investigation, went to various places where the couple used to meet each other and also the house where their marriage was solemnized. She prepared Observation Mahazars (Ex.P4, Ex.P5, Ex.P7 and Ex.P8) in the presence of the witnesses Nadhiya (P.W.11), Poongodi (P.W.12),



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Kolangi (P.W.13) and Chitra (not examined) and a rough sketch (Ex.P6).

Thereafter, she arrested the appellant on 04.02.2017 near V.Kaikatti Bus stop at about 3 P.M., Since he was aged below 20 years, he was sent to Borstal School. Thereafter, she sent both the victim and the appellant to Government hospital, Ariyalur for medical examination.

3.4. Dr.P.Priya sharan (P.W.16) Assistant Medical Officer attached to the Government Hospital, Ariyalur examined the victim. According to the doctor, the victim's hymen was absent and there were no injuries over the external genitalia, breast, Abdomen, thighs or anyother parts of the body. The Accident Register issued by her was marked as Ex.P13.

3.5. The victim was also examined by Dr.Alatexander (P.W.15), to determine her age. According to P.W.15, the victim was aged 15-17 and the certificate issued by him was marked as Ex.P12.

3.6. Dr.Rajarajan (P.W.14), Assistant Medical Officer examined the appellant and opined that there is nothing to suggest that the appellant is incapable of having sexual intercourse. The certificate issued



by P.W.14 was marked as Ex.P11.

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3.7. Thiru.Rajendran (P.W17), the Head Master of Government Higher Secondary School, Ambapoor, filed a copy of Transfer Certificate (Ex.P15) of the victim and deposed that the date of birth of the victim was 16.09.1999.

3.8. Thiru.Shekar (P.W.3) father of the victim and Tmt.Chithra (P.W.4) paternal aunt of the victim, deposed that the appellant and the victim were in a relationship and that both of them eloped since their parents were not agreeable for a marriage between them. Tmt.Saroja, (P.W.2) the mother of the victim did not support the case of the prosecution and therefore, she was treated as hostile. Similarly, the other relatives of the victim and the appellant (P.W.6 to P.W.10) also turned hostile to the prosecution.

3.9. Tmt.Vani (P.W.20), Inspector of Police, All Women Police Station, Ariyalur recorded the statements of the witnesses including the victim under Section 161 (3) Cr.P.C., and after completing investigation laid a final report before the Fast Track Mahila Court, Ariyalur in



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Spl.S.C.No.05/2017 against the appellant for the offences punishable under Sections 366 I.P.C., r/w. Section 4 of POCSO Act, 2012.

3.10. The learned Sessions Judge, Fast Track Mahila Court, Ariyalur, took up the case on file in Spl.S.C.No.05/2017 and issued summons to the appellant and on his appearance, furnished copies of records to him under Section 207 Cr.P.C. Charges were framed for the offences punishable under sections 366 IPC and section 4 of the Protection of Children from Sexual Offences Act, 2012

3.11. In order to bring home the guilt of the accused, the prosecution examined 20 Witnesses and marked 16 Exhibits. When the appellant was questioned with regard to the circumstances appearing in evidence against him under Section 313 of Cr.PC, he denied of having committed any offence. The appellant examined one Venkatachalam as D.W.1.

3.12. The evidence of D.W.1 was that there was a dispute between the family of the appellant and the victim and hence, a false case has been foisted against the appellant.



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3.13. The learned trial Court Judge, after analyzing the oral and documentary evidence on record, convicted and sentenced the accused as stated in paragraph No.2 vide his Judgement dated 28.08.2017. Aggrieved over the same, the present Criminal Appeal is filed by the appellant / accused.

4. Heard Mr.V.Perarasu, learned Counsel for the appellant (Legal Aid) and Mr.S. Rajakumar, learned Additional Public Prosecutor for the respondent/state.

5. Mr.V.Perarasu, would contend that the victim was aged more than 18 years on the date of occurrence and that the prosecution failed to adduce the Matriculation or any other equivalent certificate to show the actual date of birth of the victim and in the absence of the same, the trial Court has wrongly concluded that the victim is less than 18 years of age. He also contended that even the victim (P.W.1) admitted that she was in



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relationship with the appellant for about two years and that the appellant was aged just 19 years during the relevant period. In the circumstances, he prayed for setting aside the conviction and sentence passed by the trial Court Judge.

6. Per contra, Mr.S.Raja Kumar, learned Additional Public Prosecutor would contend that the trial court had, after analysing the oral/documentary evidence, rightly convicted and sentenced the accused and therefore, no interference is called for by this court and prayed for dismissal of the Criminal Appeal. His specific contention is that when the Transfer Certificate is marked through the competent authority viz., the Head Master of the Higher Secondary School, Ambapoor, Ariyalur, there cannot be any doubt with regard to the age of the victim.

7. The appellant, in the instant case, was just 19 years old at the time of occurrence. According to the prosecution, the victim was aged 17 years and 4 months. Though in the Transfer Certificate her date of birth is indicated as 16.09.1999, the prosecution did not file any other records like birth certificate to show that her actual date of birth is 16.09.1999.



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School leaving certificate has no independent evidentiary value and the same cannot be solely relied upon to prove the date of birth of a victim especially when the victim is closer to the age of eighteen. Moreover, the school leaving certificate (Ex.P15) shows that the victim got admitted in the Government Higher Secondary School, Ambapor in VI Standard on 07.06.2010. The prosecution did not take steps to file the birth certificate of the victim or the school records where P.W.1 was admitted in I Standard. In the absence of the same, the conviction and sentence passed by the trial Court cannot be sustained. Moreover, it is in evidence that P.W.1 went with the appellant to many places and she gave consent to have sexual intercourse with him. It is not also her case that the Appellant falsely promised her to marry and had sex with her. In fact, it is her evidence that the appellant married her by tying a thali. Therefore, no offence is made out as against the appellant.

8. In the result,

- i. This Criminal Appeal is allowed.
- ii. The Judgment and Orders dated 28.08.2017 in Spl.S.C.No.05/2017 passed by the Family Court, Fast Track Court, Ariyalur is set aside.



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- iii. The appellant / accused is acquitted from the offence punishable under Section 366 I.P.C., r/w. Section 4 of POCSO Act, 2012. Bail bonds, if any, shall stand cancelled. Fine amount, if already paid, shall be refunded.
- iv. This Court places on record its appreciation to Mr.V.Perarasu, learned Legal Aid counsel, for his valuable assistance in deciding this case. The High Court Legal Services Committee shall pay a sum of Rs.10,000/- to the said counsel towards his fee.

25.04.2024

vum

Index : yes/no

Speaking /Non speaking Order

Neutral Citation : Yes / No



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To

1. The Inspector of Police,
All Women Police Station,
Ariyalur.
(Cr. No05/2017)
2. The Family Court, Fast Track Court, Ariyalur.
3. The Public Prosecutor, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras.

Copy to :

The Secretary,
High Court Legal Services Committee,
High Court Campus, Chennai - 104.



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R.HEMALATHA, J.

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