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Cr1.A(MD)No.96 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 11/09/2024

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Cr1.A(MD)No.96 of 2024

and

Cr1.MP(MD)No.7587 of 2024

Elangovan	: Appellant/Sole Accused
Vs.	
The State, through The Inspector of Police, Nilakottai Police Station, Dindigul District. (Crime No.213 of 2018)	: Respondent/De-facto Complainant

Prayer: This Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to call for the records and to set aside the sentence and conviction in Special Sessions Case No.6 of 2023 (Old Special Sessions Case No.61 of 2018), dated 04/08/2023 on the file of the Fast Track Mahila Court, Dindigul.

For Appellant	: Mr.A.Haja Mohideen
For Respondent	: Mr.R.Meenakshi Sundaram Additional Pubic Prosecutor

J U D G M E N T

This Criminal Appeal is filed against the judgement of conviction and sentence passed in Special Sessions Case No.6 of 2023 (Old Special Sessions Case No.61 of 2018), dated 04/08/2023 by the Fast Track Mahila Court, Dindigul.



2.The case of the prosecution in brief:-

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The de-facto complainant is the mother of the victim girl. The victim girl was aged about 17 years at the time of occurrence. In 2018, the victim girl was left under the care of her relatives. Later, she was found missing. On search, it came to know that only the accused kidnaped the victim girl. So, she lodged a complaint and during the course of investigation, it was found that the victim girl was kidnapped by the accused to Trichy where she was subjected to forcible sexual intercourse. Later, it continued in several places. On the basis of the statement and information from the victim, she lodged a complaint and during the course of the investigation, the victim girl committed suicide by consuming poison. Upon the occurrence, a case in Crime No.213 of 2018 was registered by the respondent police for the offence under sections 366(A)IPC. After completing the investigation, final report was filed for the offences under sections 366(A) IPC and section 5(1) and 6 of POCSO Act and it was taken cognizance in Special SC No.6 of 2023 (Old No.61 of 2013) by the Fast Track Mahila Court, Dindigul. After completing 207 Cr.P.C proceedings framed the charges for the offences punishable under section 363 IPC and section 5(1) r/w 6 of POCSO Act.



3.The following charges were framed against the accused:-

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(i)The de-complainant's daughter namely the victim girl is aged about 17 years at the time of occurrence; She is studying +2 in HNUPR Girls Higher Secondary School, Nilakottai; The accused fell in love with the victim girl for about 3 years; On 27/08/2018 at about 12.00 pm, on the promise of marriage, the accused abducted the victim girl to Trichy and committed penetrative sexual assault and thereby he committed an offence punishable under section 363 IPC.

(ii)In pursuance of the above said occurrence, the accused abducted the minor victim girl to his aunt house and committed penetrative sexual assault for several times and thereby committed an offence punishable under section 5(1) r/w 6 of the POCSO Act.

4.To that charges, the accused pleaded not guilty and claimed to be tried.

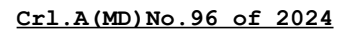


5. During trial, on the side of the prosecution, 10 witnesses were examined and 24 documents marked. On the side of the accused, no oral and documentary evidence was adduced.

6. After closure of the prosecution evidence, When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same.

7. On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established its case beyond reasonable doubt and held the appellant guilty of offences under sections 363 IPC and section 6 of POCSO Act and sentenced him to undergo 3 years RI and to pay a fine of Rs.2,000/- in default to undergo 3 months SI for the offence under section 363 IPC and sentenced to undergo 10 years RI and to pay a fine of Rs.3,000/- in default to undergo 6 months for the offence under section 6 of the POCSO Act. The sentences were directed to run concurrently.

8. Against the judgment of conviction and sentence passed by the trial court, this criminal appeal is preferred.





Cr1.A(MD)No.96 of 2024

witnesses. After examination of some of the witnesses were over, the case was transferred to the Special Court under the POCSO Act and renumbered as Special SC No.6 of 2023 and further examination of the witnesses continued.

14.As mentioned above, only some of the witnesses were cross examined by the accused Advocate. After completing the prosecution witnesses, he was put to section 313(b) Cr.P.C question on 10/07/2023. For defence side evidence, the case was posted to 14/07/2023 and then to 19/07/2023. Noting that it is five years old matter, the defence side evidence was *suo muto* closed. It was posted on 26/07/2023. On that date, the appellant was present. The arguments of the learned Additional Public Prosecutor was heard. A direction was issued to the accused herein to file the written argument if any on or before 01/08/2023. The matter was posted to 04/08/2023 for judgment. On that date, judgment was pronounced. PW1 and PW2, the parents were not cross examined on the date of chief examination. It was recorded that there was no cross examination by the accused. PW3 to PW7 and PW9 were examined. It is recorded that even though the accused was present, the Advocate was not present. The same in respect of PW10. Only the accused was present not his Advocate.



15.Now let us go to the judgment of the trial court.

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16.No proper explanation was offered for the non-cross examination of the material witnesses by the accused. Worst is that even with regard to the direction to file written statement on the side of the appellant. As mentioned above, the appellant was directed to file the written argument on or before 01/06/2023. But perusal of the entire records does not indicate that the written arguments were filed by the accused in the meantime. Without examination of the material witnesses and without filing the defence argument, either oral or in writing, the trial court went on to make the following observation with regard to the defence.

17.Para Nos.30, 31 and 32 read as if the defence was taken. Where from the above said defence contentions were taken by the trial court is not clear on record.

18.Now coming to the issue whether fair justice has been rendered in this matter, I am of the considered view that it was not, in view of the development during the course of the trial. Importance of the cross examination of the witnesses that too material witnesses have been reiterated in the judgment reported in **Kartar Singh Vs.**



State of Punjab [(1994)3 SCC 569]. The relevant portion

runs like this:-

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"278. Section 137 of the Evidence Act defines what cross-examination means and Section 138 and 145 speak of the mode of cross-examination with reference to the documents as well as oral evidence. It is the jurisprudence of law that cross-examination is an acid-test of the truthfulness of the statement made by a witness on oath in examination-in-chief, the object of which are:

(1) to destroy or weaken the evidentiary value of the witness of his adversary:

(2) to elicit facts in favour of the cross-examining lawyer's client from the mouth of the witness of the adversary party;

(3) to show that the witness is unworthy of belief by impeaching the credit of the said witness;

and the questions to be addressed in the course of cross-examination are to test his veracity to discover who he is and what is his position in life; and to



shake his credit by injuring his character."

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19. So this important aspect was not considered by the trial court. Of course, as mentioned above, the appellant engaged the Advocate, but in some of the hearings was not present, some of the hearings was present. But failed to cross examine all the witnesses. For the mistake and lapse committed by the Advocate, the parties should not suffer.

20. A specific question was put to the learned counsel on record for the appellant as to the above said lapse, but he had no answer. But simply stated that the Advocate who appeared before the Trial court was not cooperating. But why it happened is not known.

21. Now whatever it may be, as mentioned above, a serious lapse was committed not only by the Advocate, who was appearing on behalf of the appellant, but also by the trial court itself. So, I am of the considered view that it is a fittest case to remand the matter back to the trial court for fresh consideration by granting liberty to the appellant herein to file application for cross examining the witnesses namely the material witnesses on his choice and advise.



Crl.A(MD)No.96 of 2024

22.In the result, this criminal appeal is **allowed**.

The conviction and sentence, dated 04/08/2023 passed in Special SC No.6 of 2023 (Old Special SC No.61 of 2018) by the Fast Track Court, Dindigul is set aside. The matter is remitted back to the trial court. Liberty is granted to the appellant to file recall petition for cross examining the witnesses at his advise. If such an application is filed, the trial court is directed to allow the same by imposing terms upon the appellant herein with regard to the costs to the witnesses.

23.Let the above process be taken up as expeditiously as possible and complete the same. Pending further trial process, the appellant is ordered to be released on bail on executing a bond for a sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the trial court by imposing the condition that he must appear before the the trial court. Consequently, connected Miscellaneous Petition is closed.

11/09/2024

Index : Yes/No
Internet : Yes/No
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Cr1.A(MD)No.96 of 2024

To,

- 1.The Sessions Judge,
Fast Mahila Court,
Dindigul.
- 2.The Inspector of Police,
Nilakottai Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Cr1.A(MD)No.96 of 2024

G. ILANGO VAN, J

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Cr1.A(MD)No.96 of 2024

11/09/2024