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CrL.A.(MD)No.1 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.09.2023
PRONOUNCED ON : 12.01.2024

CORAM

**THE HONOURABLE MR.JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR**

CRL.A.(MD)No.1 of 2021

Ramani @ Ramanidharan

... Appellant

Vs.

The State represented by
The Inspector of Police,
Aranthangi All Women Police Station,
Aranthangi,
Pudukottai District.
(Cime No.356/2018)

... Respondent

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C., to call for the judgment dated 16.10.2019 made in Spl.S.C.No.32 of 2018 on the file of the learned Mahila Court [Sessions Judge], Pudukottai and set aside the same.

For Appellant : Mr.B.Jameel Arasu

For Respondent : Mr.A.Thiruvadikumar
Additional Public Prosecutor



JUDGMENT

M.NIRMAL KUMAR, J.

This appeal arises against the judgment of learned Sessions Judge, Mahila Court, Pudukottai passed in Spl.S.C.No.32 of 2018 on 16.10.2019 wherein the appellant was convicted and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.2,000/- in default to undergo one month simple imprisonment for the offence under Section 363 IPC, rigorous imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo one month simple imprisonment for the offence under Section 6 of Protection of Children from Sexual Offences Act, 2012 [POCSO], rigorous imprisonment for two years for the offence under Section 9 of Prohibition of Child Marriage Act, 2006. The sentences have been ordered to run concurrently.

2.1.The case of the prosecution is that the appellant/accused is the brother of P.W.2/victim girl's father, who died earlier. After the death of P.W.2's father, P.W.1/mother of the victim girl shifted to her father's house, along with her children. At the time of occurrence, P.W.2 was aged about 14 years and studying 10th standard in Government Higher Secondary



School, Rajendirapuram. Her date of birth is 29.02.2004. She was taken away from the legal custody of her mother/P.W.1 by the appellant, who is aged about 37 years.

2.2. On 03.09.2018, the victim as usual had gone to her school by cycle. P.W.1/mother of the victim received a phone call from the school that victim's cycle alone was found abandoned in the school and that she had not attended her class. Initially for three days, PW1 had made local enquiries and search of her daughter. She had gone to the school and enquired with the teachers and other students, where she was informed that her daughter went along with her father's brother/uncle, namely, the appellant herein.

2.3. On an earlier occasion, the victim was taken to Velankanni Temple by the appellant without informing her mother/P.W.1 and had stayed with her in a lodge for a day and later returned. Since the victim had gone along with her uncle, at that time, the de-facto complainant/P.W.1 did not make any complaint.



WEB COPY

2.4. PW1 contacted the appellant/accused over phone only to find that it was switched off. When PW1 called the appellant's son to find out the whereabouts of the appellant and he informed that the appellant was also missing. Thereafter, on 06.09.2018, PW1 lodged a complaint to the Aranthangi Police Station and a case in Crime No.356 of 2018 was registered for the offence under Section 363 of I.P.C.

2.5. A search was made and on getting information that the appellant had confined the victim in a house at Mettupalayam, PW7/Head Constable attached to the respondent police, along with a Woman Constable, had gone to Mettupalayam and enquired with PW4/Auto driver, a local resident, who confirmed that the appellant and the victim were staying in the opposite house. Thereafter the victim and the appellant were secured and brought to Aranthangi Police Station and produced before PW12/Inspector of Police, who on enquiry, confirmed that the victim was a minor.

2.6. Later, the victim had informed that she was taken by the appellant in his motor bike to Silattur Mariamman Temple, where he had tied a thali and informed her that a marriage was solemnized between them.



Thereafter, he took the victim to a rented house at Mettupalayam, where he committed penetrative sexual assault on her, on several occasions, till 25.09.2018. The victim/PW2 had also informed about the earlier incident, when the appellant had taken her to a lodge at Velankannai Temple and stayed for a night on 05.08.2018, at which point of time, the victim girl was subjected to penetrative sexual assault.

2.7. The victim was thereafter handed over to her mother/PW1. While the appellant/accused was arrested, the victim was produced before PW6/Doctor attached to Government Hospital, Aranthangi, who examined her on 26.09.2018 and found her hymen to be not intact, as per her certificate/Ex.P4. Thereafter, the offences were altered to Section 363 of IPC, Section 9 of Prohibition of Child Marriage Act, 2006, Sections 5(l), 5(n) r/w 6 of POCOS Act, 2012. Thereafter, on the orders of the Deputy Superintendent of Police, the case was transferred to the file of All Women Police Station, Aranthangi, who had conducted further investigation. The victim was produced before the learned Judicial Magistrate, Aranthangi, who had recorded the statement/Ex.P2 of the victim under Section 164 Cr.P.C. The victim confirmed that the appellant had committed penetrative



submitted that though the victim was found missing from 03.09.2018 but the complaint lodged only on 06.09.2018 and no reason has been assigned for the delay. Further, there was no complaint with regard to the Velankanni episode. The appellant being the brother of PW1's husband used to visit the PW1's house to enquire about his brother's children. Since there were some family dispute between them, the appellant has been falsely implicated. He further submitted that it is not in dispute that the victim girl uses bicycle to go to school. In such circumstances the possibility of hymen being not intact is possible, which fact was also spoken to by the Doctor/PW6. PW6 admitted that there is no internal / external injuries on the genital organ, as recorded in Ex.P4. He further submitted that though a case has been projected as though the appellant and victim were secured from Mettupalayam, the house owner Valliammal was not examined and no document or materials were produced to show that the appellant and victim had stayed together in Mettupalayam. He further submitted that PW4 is a Auto driver of Mettupalayam, who admitted that only few days before he came there as resident and therefore, his evidence cannot be considered as proof for appellant and victim's stay at Mettupalayam.



4.1. His further contention is that the appellant's brother and his family, namely, PW1, PW2 and a son were living in Coonoor till appellant's brother was alive, after his death, PW1 with her children moved to her native at Kurunthirakkottai, Pudukkottai District. PW1 admits that the appellant and his wife used to come and visit them and they were in talking terms earlier. Only due to some property dispute, the appellant has been falsely implicated. The Trial Court without proper appreciation of the evidence and the materials convicted the appellant. He further submitted that the Trial Court without any mitigating circumstances imposed the maximum punishment, which is not proper. In support of his contention, he relied upon the judgment of the Hon'ble Apex Court in the case of *Shiva Kumar @ Shiva @ Shivamurthy vs. State of Karnataka* reported in *AIR 2023 SC 1774*. Therefore, he prayed for allowing this petition.

5.The learned Additional Public Prosecutor refuted the contention of the appellant and submitted that in this case, the victim is a minor, whose date of birth is 29.02.2004. When she was 14 years and studying 10th standard in Government Higher Secondary School, Rajendirapuram, she was kidnapped by the appellant from the lawful custody of her mother. The



appellant took the victim to Silattur Mariamman Temple, tied a thali and thereafter took her to Mettupalayam. Prior to that he had rented a house at Mettupalayam and took the victim girl there. He was with the victim girl from 03.09.2018 to 25.09.2018. During this period, he committed penetrative sexual assault on her on several occasions. The victim being a minor girl is proved by her school certificate/Ex.P9. The victim and her mother had also confirmed the date of birth of the victim. The Trial Court had given a finding that victim is a minor. Further, the appellant is none other than the victim girl's father's brother, who had the knowledge that she is a minor and the relationship itself is a prohibitory relationship. The appellant, who stands in the place of a father, had committed penetrative sexual assault. PW1, being a helpless lady, was informed by the school authorities that the victim's bicycle alone was found abandoned in the school and that victim had not attended the school. Victim's mother had thereafter made a search for her daughter. She informed her brother, who was not helpful and thereafter informed her sister's husband/PW3, made local enquiry and search for her daughter. Finally she had lodged a complaint with the Aranthangi Police Station. PW9 had registered the complaint and thereafter the investigation commenced for the offence under



Section 363 IPC. During investigation, it was found that the appellant's phone was switched off and he was unable to be traced. Later, after strenuous effort, when he got information that the appellant had confined the victim girl at Mettupalayam, PW7 along with a Woman Constable had gone to Mettupalayam and enquired with PW4/Auto driver, who was a resident in the opposite house and who identified the house of the appellant and victim at Mettupalayam. Thereafter, the victim and the appellant were secured, brought to the Aranthangi Police Station, PW12 had then confirmed that the victim minor girl was subjected to penetrative sexual assault. The victim was thereafter sent to the welfare home and the case was transferred to All Women Police Station.

5.1. PW11 took up further investigation and filed alteration report. After enquiring the victim girl, she produced her and the appellant for medical examination. The victim was also produced before the Magistrate, who had recorded her statement/Ex.P2 under Section 164 Cr.P.C., confirming that the appellant had kidnapped victim from the lawful custody of her mother and subjected her to penetrative sexual assault. She also testified about the earlier occasion when she taken to Velankannai Temple



on 05.08.2018 and subjected to penetrative sexual assault. PW6-Doctor, who examined the victim, confirmed that her hymen was not intact and gave report/Ex.P4. The appellant was examined by PW5, who gave his report/Ex.P3. On conclusion of the investigation, the charge sheet was filed before the Trial Court. The Trial Court found the victim to be a minor and the appellant was a married man, having two children and that his relationship with the victim was prohibitory. The appellant, the brother of the victim's father had committed penetrative sexual assault, as confirmed by the evidence of PW1, PW2, PW6 and medical report/Ex.P4. The Trial court, by a well reasoned judgment, had rightly convicted the appellant and hence, sought for dismissal of the appeal.

6. Considering the submissions made and on perusal of the materials on record, it is seen that in this case PW1 is the mother of the victim girl/de-facto complainant. She had married one Kalimuthu and was staying with him in Ooty. Out of their marriage two children were born, namely PW2/daughter and one son. Her husband passed away 10 years back and thereafter, PW1 along with her two children came to her native place and were under the care of her father at Kurunthirakkottai, Pudukkottai District.



While her son was working in Chennai, her daughter/PW2, the victim who was aged about 14 years was studying 10th standard in Government Higher Secondary School, Rajendrapuram. Her date of birth is 29.02.2004, which is affirmed through the evidence of PW1, PW2 and Ex.P9/school certificate.

7. As per Section 34 of the Protection of Children from Sexual Offences Act and Section 12 of Juvenile Justice Act, the birth certificate/Ex.P9 of the victim was considered and victim's date of birth was determined as 29.02.2004. In accordance with the provisions of POCSO Act, the age of the victim has to be determined by the Special Court, which aspect was rightly determined and found her to be minor.

8. The victim girl was studying 10th standard and she normally goes to school by her bicycle. On 03.09.2018, PW1 received a call from the school informing that victim's bicycle was abandoned and that, PW2 had not attended the class. Thereafter PW1 searched for her daughter and finally on 06.09.2018 she lodged a complaint. PW9/Sub Inspector of Police on receiving the complaint, had registered F.I.R./Ex.P6 for the offence under Section 363 of I.P.C., and commenced the investigation. PW12 thereafter



took up investigation, made enquiries. Since the appellant was suspected to have kidnapped the victim girl, attempts to contact him was futile since his mobile phone was switched off. The appellant's son also confirmed that the appellant was found missing and his mobile was switched off. Finally on 25.09.2018, the appellant was located in Mettupalayam. PW4, residing in the opposite house of the appellant, confirmed that after 03.09.2018, the appellant and the victim were staying there. The appellant had informed PW4 that the victim is his wife. Thereafter the appellant and the victim were secured, brought before PW12, who on enquiry confirmed that the victim was minor and she was subjected to penetrative sexual assault and therefore prepared the alteration report. On the orders of his superior, he transferred the file to All Women Police Station, Aranthangi, who on further enquiry, found that the victim was minor and subjected to penetrative sexual assault. It was also found that the appellant had tied a thali on the minor in a Mariamman Temple. Thereafter the case was altered and the alteration report/Ex.P8 by including the offence of Prohibition of Child Marriage Act and POCSO Act was filed. The victim was thereafter produced before PW6/Doctor, who had examined the victim. The victim narrated the sequence and the Doctor recorded the same. On examination of the victim,



she had issued Ex.P4 by recording that her hymen was not intact.

Thereafter, the victim was produced before the Magistrate and 164 Cr.P.C. statement/Ex.P2 was recorded from the victim. The victim before the Doctor, Magistrate as well as before the Special Court, confirmed that the appellant had taken her from the school on 03.09.2018, tied a thali at Mariamman Temple and took her to Mettupalayam, where they stayed for 22 days, where the appellant committed penetrative sexual assault on several occasions. Prior to this incident, on 05.08.2018 the victim was taken to Velankannai temple by the appellant, where he committed penetrative sexual assault on her.

9. The appellant is none other than the victim's father's blood brother, who is also considered to be a father of the victim and inspite of the prohibited relationship, he had committed penetrative sexual assault on his brother's minor daughter. PW5 the Doctor, who examined the appellant issued Ex.P4/potency certificate. The defence of the appellant that there was a property dispute and for that reason he had been falsely implicated, is to be negatived, since PW1 had clearly stated that her husband neither owned any property nor there was any property dispute. In view of the same, the defense of a property dispute lacks merit.



CrI.A.(MD)No.1 of 2021

WEB COPY

10. The fact that the appellant is the brother of the victim's father is not in dispute. The Trial Court having found the victim to be a minor, had relied on the statements of PW1, PW2 and PW6 and confirmed that the victim was subjected to penetrative sexual assault, and thereby convicted the appellant.

11. On an overall analysis of the evidences of PW1, PW2/victim and PW6/Doctor, it is proved beyond reasonable doubt that the victim, being a minor, has been subjected to aggressive penetrative sexual assault by the appellant. The Trial Court had rightly convicted the appellant by a well reasoned judgment. Hence, the Criminal Appeal stands dismissed and the conviction and sentence imposed by the Trial Court, stands confirmed.

(M.S.R., J.)

(M.N.K., J.)

12.01.2024

Index: Yes

Internet: Yes

Speaking order

Neutral citation : Yes

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CrI.A.(MD)No.1 of 2021

To

- 1.The Inspector of Police,
Aranthangi All Women Police Station,
Aranthangi,
Pudukottai District.
- 2.The Sessions Judge,
Mahila Court,
Pudukottai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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**Pre-delivery judgment made in
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