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Crl.A(MD)No.517 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25/09/2024

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.A(MD)No.517 of 2019

M.Raja : Appellant/Sole Accused
Vs.

- 1.State rep. by
The Inspector of Police,
Sivakasi Town Police Station,
Sivakasi,
Virudhunagar District.
(Crime No.560 of 2009) : 1st Respondent/Complainant
- 2.M.Muneeswari : 2nd Respondent/Victim
(R2 is impleaded as per
the order of this court,
dated 22/08/2024 in
Crl.MP(MD)No.8535 of 2014
in Crl.A(MD)No.517 of 2019)

Prayer: This Criminal Appeal is filed under Section 378(2) of the Criminal Procedure Code, to call for the records pertaining to the judgment passed in Special SC No. 52 of 2013, dated 01/10/2019 by the Sessions Judge, Fast Track Mahila Court, Virudhunagar District, Srivilliputtur and set aside the same.

For Appellant : Mr.A.Alaguraja

For 1st Respondent : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)

For 2nd Respondent : Mr.M.Ashok Kumar



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J U D G M E N T

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This Criminal Appeal is filed seeking to set aside the judgment passed in Special SC No.52 of 2013 by the Sessions Judge, Fast Track Mahila Court, Virudhunagar District @ Srivilliputhur, dated 01/10/2019.

2.The case of the prosecution is that the de-facto complainant is the father of the victim girl. The victim girl was studying 9th standard in CMS Girls Higher Secondary School at Satchiapuram. She used to return the house around 5.30 pm regularly. On the particular day even after 6.00 pm, she did not return. He made enquiry and came to know that the accused kidnapped the victim girl in his bi-cycle. So he lodged a complaint. Based upon which, a case in Crime No.560 of 2009 was registered under 'girl missing'. After completing the investigation, final report was filed for the offences under sections 366(A) IPC and 376 IPC and it was taken cognizance in Special SC No.52 of 2013 by the Sessions Judge, Fast Track Mahila Court, Viridhunagar District @ Srivilliputtur. After completing 207 Cr.P.C proceedings framed the charges for the offences punishable under sections 366(A) and 376 of IPC.



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

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(i)On 09/09/2009 on the false promise of marriage, the accused kidnapped the victim girl and taken to various places; In Madurai, the accused tied tali and at that time night, they were staying in a lodge, where she was subjected to penetrative sexual assault and thereby he committed the offences punishable under section 363(A) and 376 IPC.

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

5.During trial, on the side of the prosecution, 12 witnesses were examined and 8 documents marked. On the side of the accused, one witness was examined and one document was marked.

6.PW1 has stated in his evidence that on the particular date of occurrence, as mentioned above, the victim girl did not return to the house even after 6.00 pm. So he lodged a complaint with the respondent police.



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7.On receipt of the complaint, PW10 who was working as Sub Inspector of Police, Sivakasi Town Police Station at the relevant time, registered a case in Crime No.569 of 2010 and prepared the printed FIR and submitted the original and copy to the concerned authorities.

8.PW11 conducted investigation and recorded the statement of the witnesses and collected birth extract of the victim girl.

9.Further investigation was undertaken by PW12 Inspector of Police on 14/06/2009. On that date, the accused person and the victim girl appeared before the police station. He recorded the statement of the accused and the victim girl and filed alternation report altering the offence under sections 366-A and 376 IPC, arrested the accused and sent him for judicial custody and made arrangements to subject the victim girl for medical examination.

10.PW6 was working as Headmaster in RC Primary School at Satchiapuram. He furnished the birth extract of the victim girl to the Investigating Officer. As per the birth extract, the date of birth of victim girl is mentioned as 27/07/1993 I.e., marked as Ex.P2.



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11.PW9 Medical Officer who was on duty on 15/06/2009 at Sivakasi Government Hospital, examined the victim girl, who is aged about 16 at about 07.10 am. On her examination, her private part admitted two fingers, vaginal smear was taken and sent for forensic lab. Those were examined by PW7, who was working as Additional Director of Forensic Lab, Madurai, on 23/12/2009. But no traces were found in the sample. Similarly the accused was also subjected to medical examination at the arrangement made by the Investigating Officer. He was examined by PW8 who was working as Medical Officer in Sivakasi Government Hospital on 17/06/2009. On his examination, he found that the accused was fit for sexual intercourse.

12.Further investigation was undertaken by PW12 and recorded the statement of the remaining witnesses and the statement of the Medical Officers. In the meantime, he was transferred. Later it was undertaken by one Inspector namely Parthiban. PW11 assisted him to complete the investigation and filed a final report.

13.PW2 is the brother of the victim girl and he has stated the missing of the victim girl and subsequent events.



14.PW3 is the mother of the victim girl. She has also corroborated PW1 over the missing and subsequent events. PW4 is the victim girl. PW5 is the friend of PW2 narrated the missing of the victim girl. With that, the prosecution side evidence was closed.

15.After completion of the prosecution side evidence, on the side of the accused, the Sub Registrar from Wathirairuppu Sub Registrar Office was examined. He has stated that as per the registration of death and birth of the victim girl was mentioned as 21/05/1992. It was marked as Ex.D1 on the side of the accused.

16.The accused was questioned under section 313(1) (b) of the Code of Criminal Procedure Code about the incriminating circumstances against him. He denied the evidence of the witnesses as false and stated that a false case has been foisted against him.

17.At the conclusion of the trial, the trial court found the accused guilty of the offence under section 363 IPC and sentenced him to undergo 7 years RI and to pay a fine of Rs.25,000/- in default to undergo 1 year SI.

18.Challenging the conviction and sentence this criminal appeal has been preferred.



19.Pending the appeal process, a joint compromise was filed by the accused and the victim girl. Wherein it has been stated that after the occurrence and the conviction and sentence, the victim girl now got married to some other boy and living with her family peacefully, so also the appellant got married and living with his family. At the intervention of the elders, they entered into a compromise and the victim girl has no objection to acquit the accused from the charges levelled.

20.Both were present before this court and made enquiry by me. But the offence under section 363 is a non-compoundable offence. So, the matter has to be decided on its own merits without being influenced by the compromise made between the victim girl and the appellant after judgment.

21.Now we will straightaway go to the first aspect of age of the victim girl on the date of the occurrence.

22.PW6 is the Headmaster of the school where the victim girl was studying. As per the evidence, the date of birth of the victim is 27/05/1993. Per contra, on the side of the accused, the birth extract registration of the birth and death namely DW1 was examined, wherein the date of birth of the victim is stated as 21/05/1992. Since already



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certificate is available, the birth extract relied by the prosecution may not have any value. So, we can take the date of birth of victim girl as 21/05/1992. Now the date of occurrence is stated to be 09/09/2009. On the date of the alleged occurrence, the age of the victim is 17 +.

23.Now we will go to the evidence of the victim girl. She has stated that she was taken to various places stating that he is going to marry her. That was also informed to the parents. In Madurai, the accused tied tali and at that time night, they were staying in a lodge, where she was subjected to penetrative sexual assault. In the meantime, a complaint was given by the parents. So, she was taken to the police station. So, it *prima facie* indicates that the accused kidnapped the victim girl to various places. Only on that account, the trial court recorded a finding under section 363 IPC instead of 366-A and 376 IPC. Against which, there was no cross appeal by the prosecution or by the victim. So, we need not enter into that above said issue.

24.Now the only point is whether the conviction and sentence recorded by the trial under section 363 IPC is legally sustainable or not. But from the evidence of the victim, it stands established that she was taken to various places by the accused.



25.Since the victim girl was a minor girl, section 366 IPC is attracted. Section 361 IPC is extracted hereunder:-

"361.Kidnapping from lawful guardianship.-Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation-The words "lawful guardian" in this section include an person lawfully entrusted with the care or custody of such minor other person."

26.The lawful guardian is the parents of the victim. So taking by enticement or inducement has been established. I find no reason to interfere into the conviction recorded by the trial court. It is nothing, but immoral act on the part of the victim girl as well as the appellant herein. Now they got settled in their life by performing separate marriage, no purpose is going to be served by once again sending the appellant to serve the remaining period sentence. The maximum sentence prescribed under section 363 IPC is seven years and fine amount.



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27.Considering the above said mitigating circumstances, I am of the considered view that the sentence period may be reduced to the period already undergone for the offence under section 363 IPC. The fine amount of Rs.25,000/- is reduced to **Rs.1,000/-** to be payable paid by the appellant within a month from the date of receipt of a copy of this order, failing which he shall undergo 30 days simple imprisonment.

28.With the above said modification, this criminal appeal is **partly allowed**.

25/09/2024

Index : Yes/No
Internet : Yes/No
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To,

- 1.The Sessions Judge,
Fast Track Mahila Court,
Virudhunagar District @
Srivilliputtur.
- 2.The Inspector of Police,
Sivakasi Town Police Station,
Sivakasi,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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