



CrI.A.No.112 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 27.06.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CrI.A.No.112 of 2023

Raman

...Appellant

Vs.

The State, rep. By
Inspector of Police,
All Women Police Station,
Omalur, Salem District.
(Crime No. 23/2018)

...Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C to call for the records and set aside the judgment passed in Old. Spl.S.C.No. 143 of 2018 in New Spl.S.C.No. 176 of 2019 on the file of the Sessions Judge, Special Court for POCSO Act cases, Salem by judgment dated 10.08.2021.

For Appellant : Mr.B.Vasudevan

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor

ORDER

This Criminal Appeal has been preferred against the judgment passed in Old Spl.S.C. No.143 of 2018 in New Spl.S.C.No.176 of 2019 on the file of the Sessions Judge, Special Court for POCSO Act Cases, Salem dated 10.08.2021, whereby the appellant was convicted for the offences punishable under

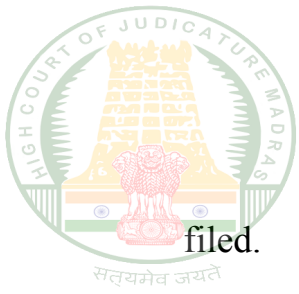


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Sections 363 and 366 of Indian Penal Code, Section 5(l) r/w Section 6 of the POCSO Act, and Section 9 of the Prohibition of Child Marriage Act, 2006.

2. The case of the prosecution is that the minor victim, aged about 15 years, was kidnapped by the accused under the pretext of a love affair and marriage and he married her by tying a 'thali'. Thereafter, he committed aggravated penetrative sexual assaults on the victim on several times. Initially, the father of the victim lodged a complaint, which was registered as a girl missing and has subsequently altered the offences under Section 363, 366 of IPC and under Section 9 of the Prohibition of Child Marriage Act, 2006 and under Section 5(l) r/w Section 6 of the POCSO Act. After completion of the investigation, the final report was filed and the same was taken cognizance of by the Trial Court.

3. In order to bring home the charges, the prosecution examined P.W.1 to P.W.9 and marked documents as Ex.P1 to Ex.P30. The prosecution also produced Material Object No. 1. On the side of the accused, no witnesses were examined and no documentary evidence was marked. Upon perusal of the oral and documentary evidence, the Trial Court found the appellant guilty of the above offences. Aggrieved by the same, the present Criminal Appeal has been

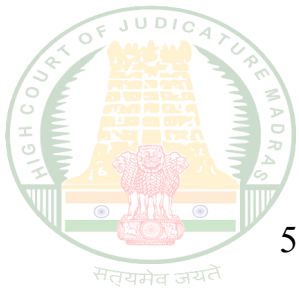


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4. The learned counsel appearing for the appellant would submit that the prosecution has miserably failed to prove any of the charges as alleged in the charge sheet. According to the charge, the appellant kidnapped the victim to Erode and thereafter to Tirupur and married her on 18.09.2018 at Eswaran Kovil, Omalur. However, this allegation was not substantiated by any witness or documentary evidence. Furthermore, the victim did not whisper anything about the alleged marriage in her statement recorded under Section 164 of the Criminal Procedure Code. According to the victim, she went to her friend's house at Salem. She did not even whisper that the appellant kidnapped her to Erode and subsequently to Tiruppur. The father of the victim was examined as P.W.1, and he deposed that the appellant kidnapped her to Trichy and stayed there. Further, according to the case of the prosecution, the appellant had taken the victim to Tirupur and stayed in a house owned by one Palanisamy. However, the prosecution failed to examine the said Palanisamy to prove that the victim and the appellant stayed together. Therefore, the prosecution has not proved any of the charges against the appellant. Despite this, the Trial Court has mechanically convicted the appellant.



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5. Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that, due to a love affair, the appellant kidnapped the minor victim, who was aged about 15 years on the date of occurrence, and took her to Erode and thereafter to Tirupur. They stayed there for some time, and thereafter, on 18.09.2018, they returned to Omalur in order to get married at the Eswaran Temple. Thereafter, once again, they went to Tirupur and stayed in a rented house. During their stay, the appellant committed aggravated penetrative sexual assault on the victim girl several times, due to which she became pregnant. Subsequently, the appellant and the victim were rescued, and the victim girl was subjected to medical examination. The doctor who examined the victim was examined as P.W.8. She deposed that there was a possibility of sexual intercourse and that the victim was six weeks pregnant as of 12.11.2018. Therefore, the prosecution has categorically proved all the charges and the Trial Court has rightly convicted the appellant. Hence, the conviction does not warrant any interference by this Court.

6. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing on behalf of the respondent.

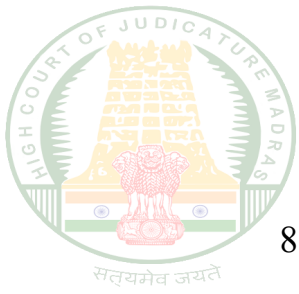
7. Admittedly, the victim was only about 15 years old at the time of the alleged occurrence. She had been in love with the appellant for the past three



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years prior to their elopement. The victim was examined as P.W.2. She deposed that, on the pretext of marriage, she eloped with the appellant on 13.09.2018 to Erode and thereafter proceeded to Tiruppur. While they were staying in a hut at Erode, the appellant tied a 'thali' on her. Thereafter, they went to Tirupur and stayed in a house belonging to Shanthi. There, they had sexual intercourse. Thereafter, they also stayed at Erode. On 12.11.2018, they voluntarily went to the Police Station at Omalur. Thereafter, they came to understand that a complaint had already been lodged by the victim's father as a girl missing case. Subsequently, the victim was taken to the hospital for medical examination. A perusal of the statement recorded under Section 164 of the Cr.P.C. from the victim reveals that she did not even whisper about eloping with the appellant. According to her statement, on 13.09.2018, she went to her friend Shalini's house at Salem. She stayed there because her parents were compelling her to study well. She also requested her friend Shalini not to disclose her whereabouts to her parents. Therefore, the deposition of P.W.2 is not corroborated by any other evidence. The father of the victim was examined as P.W.1. He deposed that the victim had been missing since 13.09.2018 from 7:00 p.m., and upon enquiry, he came to understand that the appellant had kidnapped her.



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8. Therefore, on 15.09.2018, P.W.1 lodged a complaint, and the same was marked as Ex.P1. Thereafter, he came to know that the victim and the appellant had appeared at the Omalur Police Station on 12.11.2018. He, along with his family members, went to the police station. The victim informed them that they had gotten married on 13.09.2018 and thereafter went to Trichy, where they stayed in a rented house. She further stated that they had sexual intercourse there. This version is completely contradictory to the evidence of P.W.2. The place of stay, the place of marriage, and the date of marriage, as stated by P.W.1, differ entirely from the testimony of P.W.2. After recording the statements, the respondent framed charges against the appellant, alleging that on 13.09.2018 at about 9:00 p.m., the appellant kidnapped the victim on the pretext of marriage. Hence, the charge under Section 363 of IPC.

9. On 13.09.2018, at about 9:00 p.m., the appellant kidnapped the victim and took her to Salem, and thereafter proceeded to Erode and Coimbatore. From Coimbatore, he further took her to Trichy. On the way to Trichy, on 18.09.2018, he married the victim at Eswaran Temple in Omalur by tying a 'thali'. Thereafter, they went to Tiruppur and stayed in a house belonging to one Palaniswamy. Hence, the charge under Section 366 of IPC. Since the appellant married the victim by tying the 'thali' on 18.09.2018 despite knowing



that she was only 15 years old at the time, he was also charged under Section 9 of the Prohibition of Child Marriage Act, 2006

10. Further, the appellant and the victim had stayed at Palaniswamy's house at Tiruppur, where the appellant had sexual intercourse with the victim when she was only 15 years old. Therefore, the appellant committed an offence punishable under Section 6 of the POCSO Act. According to P.W.2, she stayed in a house owned by one Shanthi at Tiruppur. However, the charge states that the appellant and the victim stayed in a house belonging to one Shanthi at Erode. P.W.1, on the other hand, deposed that they had stayed at Trichy. The maternal aunt of the victim was examined as P.W.3, but she is only a hearsay witness. The prosecution failed to examine the said Shanthi and Palaniswamy, who were alleged to be the owners of the houses at Tiruppur where the appellant and the victim stayed together and allegedly had sexual intercourse.

11. After surrendering, the victim girl was subjected to medical examination and inquiry by P.W.8. She deposed that the victim was produced before her on 12.11.2018, and upon examination, she found no injury on the victim's genitalia. She also observed that the victim was approximately six



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weeks pregnant and that her hymen was not intact. The medical report was submitted and marked as Ex.P9 to P12. Though the report revealed that the victim had sexual intercourse and was six weeks pregnant, the prosecution failed to prove the charges that the appellant stayed with the victim and committed aggravated penetrative sexual assault on her. Further, the pregnancy was subsequently aborted and no DNA test was conducted to establish that the appellant was responsible for the pregnancy. Therefore, the prosecution has failed to prove the charges against the appellant beyond reasonable doubt. Hence, the conviction and sentence imposed on the appellant by the Trial Court cannot be sustained and is liable to be set aside.

12. Accordingly, the Criminal Appeal is allowed. The conviction and sentence imposed by the judgment dated 10.08.2021 in Old Spl.S.C. No.143 of 2018 in New Spl.S.C.No.176 of 2019 on the file of the Sessions Judge, Special Court for POCSO Act Cases, Salem shall stand set aside.

27.06.2025

Neutral Citation: Yes/No
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G.K.ILANTHIRAIYAN, J.



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To

1. The Inspector of Police,
All Women Police Station,
Omalur, Salem District.
2. The Additional Public Prosecutor,
High Court of Madras.

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