



Crl.A.No.49 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2025

CORAM

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

Crl.A.No.49 of 2023

Sonukumar

... Appellant

Versus

State represented by,

1. The Inspector of Police,
W4, All Women Police Station,
Kilpauk, Chennai -600 010.
(Crime No.07/2018)

2. J. Thangaraj

...Respondents

(R2 impleaded as defacto-complainant as per order dated 20.01.2023 in Crl.A.No.49 of 2023 and Crl.M.P.No.535 of 2023)

PRAYER : Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code, to set aside a judgment passed in Special Sessions Case No.44 of 2022 dated 20.12.2022 passed by the Additional Special Court for Exclusive Trial of Cases under POCSO Act (Mahalir Neethimandram), Allikulam, Chennai.

For Appellant : Mr. S. Suresh,
for Mr. G. Anbuchezeiyan

For Respondent : Mr. S. Raja Kumar (for R1)
Additional Public Prosecutor
: No Appearance.
Notice Served (For R2)

JUDGMENT



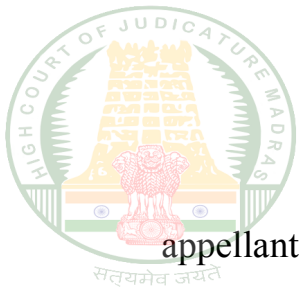
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This Criminal Appeal has been preferred as against the Judgment passed in Spl.S.C.No.44 of 2022, dated 20.12.2022, by the learned Additional Special Court for Exclusive Trial of Cases under POCSO Act, (Mahalir Neethimandram) Allikulam, Chennai – 3, thereby convicting the appellant for the offence under Section 366 of IPC and Section 10 of the POCSO Act, 2012.

2. The case of the prosecution is that on 02.01.2018, the appellant kidnapped the minor victim girl and committed aggravated penetrative sexual assault on her. On the complaint, the first respondent registered the First Information Report in Crime No.07 of 2018 for the offence under Section 366 of IPC and Section 6 of the POCSO Act, 2012. After completion of investigation, the first respondent filed charge sheet against the appellant for the offence under Section 366 of IPC and Section 10 of the POCSO Act, and the case was taken cognizance by the Principal POCSO Court in Spl.S.C.No.247 of 2018 and thereafter, transferred to the Additional Special Court for Exclusive Trial of Cases under POCSO Act, (Mahalir Neethimandram) Allikulam, Chennai – 3, and re-numbered as Spl.S.C.No.44 of 2022.

3. In order to prove the charges, on the side of the prosecution, P.W.1 to P.W.9 were examined and Exs.P1 to P11 were marked. On the side of the



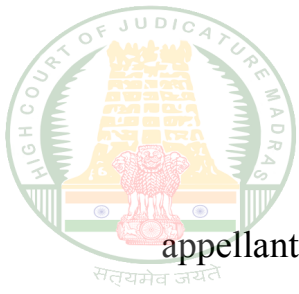
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appellant, D.W.1 to D.W.3 were examined and Ex.D1 to D5 were marked. No

material objects have been marked.

4. The Trial Court after considering the evidence of P.W.1 to P.W.9 and the exhibits marked and upon hearing arguments of both sides, found guilty of the appellant for the offence under Section 366 of IPC and Section 10 of the POCSO Act and convicted and sentenced him to undergo rigorous imprisonment for five years along with fine amount of Rs.5,000/-, in default to undergo three months simple imprisonment and to undergo rigorous imprisonment for five years along with fine amount of Rs.5,000/-, and in default to undergo three months simple imprisonment, respectively, and both sentences shall run concurrently. Aggrieved by the same, the appellant filed the present appeal before this Court.

5. Learned counsel for the appellant submits that there was a love affair between the appellant and the minor victim girl. The appellant did not kidnap the victim girl at any point of time and even on the date of alleged occurrence, he went to Villupuram and stayed there in D.W.1's house and did road laying work. Due to the love affair, the victim, on her own volition, came to the appellant and stayed with him for sometime. While staying there, the



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appellant had only removed her dress and touched her private part and breast.

However, he did not commit aggravated penetrative sexual assault on her as alleged by the prosecution. When she was subjected to a medical examination, it was found that her hymen was intact, and no injury was found in her body or private parts. The Doctor, who examined the victim girl, was examined as P.W.7 and the certificate issued by her was marked as Ex.P5. Therefore, the prosecution failed to prove the charge of aggravated penetrative sexual assault on the victim girl.

6. Further, he submitted that the father of the victim girl was examined as P.W.5. He also deposed that the victim herself went to the house of the appellant and the victim girl has called her father over phone and informed and had asked him not to search for her and had cut the phone call. Therefore, it would clearly prove that the victim, on her own volition, left the house and stayed in the appellant's house. Even in this context, the prosecution failed to prove that the victim girl was kidnapped by the appellant.

7. Per contra, the learned Additional Public Prosecutor appearing for the first respondent submitted that the victim girl was examined as P.W.1, and she deposed that she had a love affair with the appellant and under compulsion, the appellant took the victim girl to Villupuram and committed aggravated

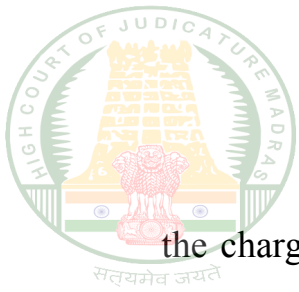


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penetrative sexual assault on her. In order to prove the age of the victim girl, the birth certificate of the victim girl was marked as Ex.P11, which shows that she was born on 18.07.2002. Therefore, she was a minor at the time of occurrence. Therefore, the Trial Court has rightly convicted the appellant, and it does not require any interference by this Court.

8. Heard both sides and perused the materials available on record.

9. After considering the submissions and records, it is seen that the prosecution failed to prove the charge of aggravated penetrative sexual assault. The victim girl's statement recorded under Section 164 Cr.P.C., was marked as Ex.P2 and her deposition before the court reveals contradictions. The medical certificate/Ex.P5 also does not support the case of the prosecution. At the time of staying at Villupuram, the appellant used to touch her breast and private part but he did not commit any sexual intercourse. In the deposition of the victim girl, she herself deposed that while she was staying at Villupuram, one lady and two children were staying along with them and at least four to five times, the appellant had sexual intercourse with her while staying there. As stated supra, when it is proved that the hymen is intact, the above statement of the victim cannot be considered legitimate. Therefore, the prosecution has failed to prove



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the charge for the offence punishable under Section 10 of the POCSO Act on the appellant.

10. It is also seen that the victim was subjected to medical examination and the doctor/P.W.7 deposed that the victim girl's hymen was intact, no injury was found on her body or private part during the vaginal and swab test; however, semen was found. Therefore, the certificate issued by the doctor/P.W.7 shows that there is no evidence of aggravated penetrative sexual assault. The certificate was marked as Ex.P5. Though charge sheet was filed for the offence under Section 6 of the POCSO Act, and though Section 9 r/w 10 of the POCSO Act is said to be applicable, there is no evidence to prove that the appellant had committed aggravated penetrative sexual assault on the victim girl. At worst, the appellant committed an offence under Section 7 r/w 8 of the POCSO Act.

11. Insofar as the charge under Section 366 of IPC is concerned, D.W.1 and D.W.2, deposed that the victim was staying in Villupuram, but it does not mean that the victim herself went to the house of the appellant. Their evidence categorically shows that the appellant had taken the victim girl under the pretext of love affair and solemnization of marriage. However, the victim had gone with the appellant on her own. Though the victim consented to go



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along with the appellant, she was a minor at the time of occurrence. The consent of the victim is not proved by the appellant's side. Therefore, the charge under Section 366 of IPC is attracted and the conviction of the appellant for the offence punishable under Section 366 of IPC is not interfered with. However, this Court is inclined to modify the sentence imposed for the alleged offence under Section 366 of IPC.

12. In view of the above, the conviction of the appellant for the offence punishable under Section 10 of the POCSO Act, is set aside, and the appellant is hereby convicted for the offence under Section 7 read with Section 8 of the POCSO Act, and is sentenced him to undergo 3 years rigorous imprisonment. Insofar as the offence under Section 366 of IPC, is concerned, the conviction is confirmed; however, the sentence alone is hereby modified as 3 years rigorous imprisonment. The appellant shall undergo both sentences concurrently. The fine amount as well as the default sentence imposed by the Trial Court is maintained.

13. Accordingly, the Criminal Appeal is partly allowed. The first respondent is directed to secure the appellant to undergo remaining period of sentences.



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Speaking order/Non-speaking order

Index : Yes/No

Internet : Yes/No

klt

To

1. The Additional Special Court for Exclusive Trial of Cases under POCSO Act (Mahalir Neethimandram), Allikulam, Chennai – 600 003.
2. The Superintendent of Police, Central Prison, Puzhal, Chennai.
3. The Inspector of Police, W4, All Women Police Station, Kilpauk, Chennai -600 010.
4. The Public Prosecutor, High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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