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Crl.A.No.159 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.04.2025

DELIVERED ON : 28.04.2025

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.159 of 2022

Thangarasu

... Appellant/Accused

Versus

The State by

The Inspector of Police,

Tiruchengode Town Police Station,

Crime No.219 of 2016,

Namakkal District.

... Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 374 (2) of Cr.P.C. praying to call for the records relating to the judgment dated 23.11.2021 made in Special C.C.No.7 of 2017 on the file of the learned Sessions Judge, Fast Track Mahila Court, Namakkal and set aside the same by allowing this Criminal Appeal.

For Petitioner : Mr.N.Manoharan

For Respondent : Mr.L.Baskaran

Government Advocate (Crl. Side)



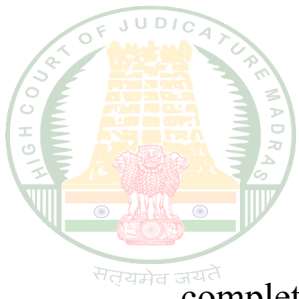
Crl.A.No.159 of 2022

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## **JUDGMENT**

The appellant/accused in Spl.C.C.No.7 of 2017 was convicted by the trial Court by the judgment dated 23.11.2021 and sentenced him to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months simple imprisonment, for the offence under Section 366(A) of I.P.C., sentenced to undergo 20 years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo six months simple imprisonment, for the offence under Section 6 of POCSO Act for committing offence under Section 5(l) of POCSO Act and sentenced to undergo two years rigorous imprisonment for the offence under Section 9 of Prohibition of Child Marriage Act, 2006. All sentences were directed to be run concurrently, against which, the present appeal is filed.

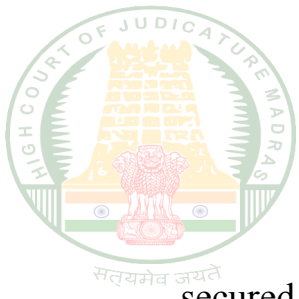
2.The case of the prosecution is that the victim/PW2 was minor aged about 17 years 6 months at the time of occurrence. She was at home after



Crl.A.No.159 of 2022

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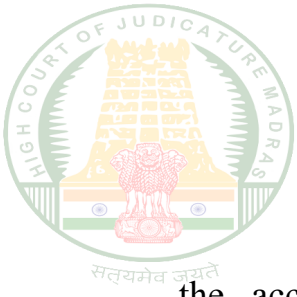
completing her 12<sup>th</sup> standard examination and was waiting for the results. On 28.05.2016 at about 11.00 p.m., the appellant took her in his bike to various places and on 29.05.2016, he tied a Thali in Vinayagar Temple at Kattuputhur. Thereafter, he took the victim to Ooty on the same day and rented a house in Ooty and both stayed there. During the period from 29.05.2016 to 14.06.2016, the appellant informed the victim that she is his wife and committed penetrative sexual assault. In the meanwhile, the victim's father/PW1/de-facto complainant and his family members were searching for the victim. Simultaneously, the appellant's mother informed that her son is also found missing. Thereafter, complaint lodged on 09.06.2016 and F.I.R. registered in Crime No.219 of 2016 by PW14. PW16/Investigating Officer on receipt of F.I.R. visited the house of accused, prepared observation mahazar/Ex.P3, Rough sketch/Ex.P13, recorded the statement of parents of the victim, neighbours and the witnesses to the mahazar. On 14.06.2016, the victim left Ooty and reached Tiruchengode bus stand, where the police



Crl.A.No.159 of 2022

WEB COPY

secured her and took her to the police station and enquired her. On enquiry, the victim informed about the forcible abduction, marriage thereafter appellant committing sexual assault on her, parents of PW2 came to the police station and enquired her. On 15.06.2016, the victim's statement recorded by the respondent and she was produced for medical examination. PW10/Doctor, examined the victim girl and gave opinion/Exs.P7 and P8. The victim's school certificate/Ex.P6 obtained from PW9/Head Mistress, who confirmed that victim was minor and her date of birth as per school record is 25.01.1999. The victim was produced before the learned Judicial Magistrate, Rasipuram, who recorded the statement of the victim/Ex.P15 on 24.06.2016. The appellant/accused was arrested on 17.09.2016. On his arrest, he admitted the commission of offence and thereafter he was produced before PW15 and Potency Certificate/Ex.P10 and his age certificate/Ex.P11 collected. On completion of investigation, charge sheet filed. During trial, on the side of the prosecution, PW1 to PW18 examined, Exs.P1 to P19 marked. On the side of



Crl.A.No.159 of 2022

WEB COPY

the accused, no witnesses examined and no documents marked. On conclusion of trial, the trial Court convicted the petitioner as stated above.

3.The contention of the learned counsel for petitioner is that in this case the appellant and the victim had a love affair, they were interested in each other. Even the appellant's parents approached PW1 and PW3/parents of the victim and sought for marriage of their daughter/PW2 to the appellant. PW1 and PW3 informed that the victim is to continue her studies and they were not agreeable for the marriage. Further the appellant and victim belong to different community, but the love affair between the appellant and victim continued. In fact, the victim was sent to her grandmother's place of Boothapadi near Mettur in Salem District and she was forcibly made to stay there. Thereafter, the victim informed the appellant and he was forced to take her, otherwise she would end her life. Left with no other option, the appellant took the victim in his bike and went to Ooty. There, they were staying together in a rented house, the appellant attended work to make a earning and

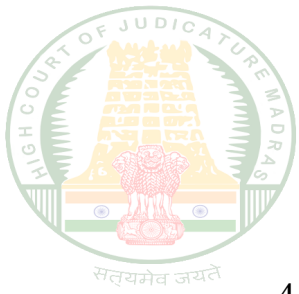
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Crl.A.No.159 of 2022

WEB COPY

the victim was staying alone moving freely in the rented house. There was no forcible abduction or marriage as projected by the prosecution. The victim in her statement admits that on 28.05.2016 night, she went along with the appellant, she travelled the whole night in his bike. The next day morning they went to the appellant's uncle's house, who refused to entertain them. Thereafter, both travelled in appellant's bike to Ooty. In Ooty, they took a house for rent and stayed there together. Throughout the journey and her stay at Ooty, the victim had a free movement and in-fact she visited the house owner, talking with the owner's wife and neighbours. In view of her own admission, it is seen that there is no forcible abduction. With regard to the other allegation that on 29.05.2016 at about 6.00 a.m. the petitioner tied Thali in a Vinayagar Temple at Kattuputhur is highly artificial. No witness from the temple or nearby, examined, no Thali, metti collected in this case and there is no marriage. Thus, in this case, the question of kidnapping and marriage, there is no evidence but the trial Court convicted the petitioner.



Crl.A.No.159 of 2022

WEB COPY

4. The learned counsel further submitted that in this case there are only three witnesses PW1 and PW3/father and mother of the victim and PW2, the victim. The evidence of PW1 and PW3 are contradictory to each other. PW1 and PW3 had given an exaggerated version and forced the victim /PW2 to toe their line. Now with regard to the offence under Section 5(1) of POCSO Act, whether the victim is minor or not, is doubtful. To prove the fact that victim was a minor and her date of birth is 25.01.1999 the prosecution examined PW9 and marked Ex.P6. PW9 is the Head Mistress of Government School, who states that she had not seen the Birth Certificate of the victim and from the school records she issued Ex.P6. She further confirms the age of the victim recorded in the school register is not by her. The learned counsel submitted that at the time of admission the victim already completed 18 years. The school authorities at the time of admission for convenience recorded the date of birth. Hence, the victim is not a minor. He further submitted that the victim/PW2 in her evidence states that she had gone along



CrL.A.No.159 of 2022

WEB COPY

with the petitioner on compulsion and staying with him from 28.05.2019 to 14.06.2019 and on 15.06.2019 she came back to Tiruchengode bus stand and went to her house. Thereafter, she along with her parents went to the police station, where she was enquired and statement recorded. Thereafter, she appeared before the Magistrate and statement under Section 164 Cr.P.C. (Ex.P15) recorded. In her earliest statement, she admits the love affair between the appellant and victim and she voluntarily accompany appellant and their stay together in Ooty, and she was allowed to move freely. Further the appellant was attended work, made earnings. PW2/victim thought of her parents disturbed her, she called them and parents came to Ooty and took her. Nowhere she stated anything about forceful penetrative sexual assault committed by the appellant. Thereafter, improved her statement on the compulsion of her parents, who wanted to ensure that victim who was short of few months to attain majority to separate the appellant and victim permanently.



Crl.A.No.159 of 2022

WEB COPY

5.He further submitted that Ex.P14 is projected as though it is recorded on 15.06.2016, with improvements, projecting physical relationship to show appellant and victim living as husband and wife. This statement reaches the Court only on 18.07.2016 with delay. According to the appellant, it is a back dated statement. The parents of the victim/PW1 and PW3 forced the victim to give improvised statement at each stage. PW1/father of the victim confirms that on 15.06.2016, when the victim was secured and at that time the appellant was along with her, both secured, taken to police station. Further PW1 and PW3 though deny the love affair, confirm parents of the appellant had come and sought for marriage. The appellant and the victim were in love with each other, which was not accepted by the parents of the victim, hence, victim forced the appellant to take her away and now he is in trouble facing the case. According to the appellant, the victim informed the appellant, she attained majority. He further submitted that the Doctor/PW10 issued Medical Report/Ex.P7 and Accident Register/Ex.P8. A specific question asked by the



Crl.A.No.159 of 2022

WEB COPY

Investigating Officer, about condition of hymen, whether penetrative sexual assault committed on the victim and whether any injuries found in the private parts of the victim. The Doctor/PW10 examined the victim, gave his opinion that the victim was not subjected to any forcible sexual assault and there is no injuries found but gave an opinion that there is a possibility of sexual assault, since one finger is admitted, which Doctor clarifies that it might be for various other reasons and not as alleged of any penetrative sexual assault by the appellant. Thus the victim is not a minor, the medical records confirms that there is no forcible penetrative sexual assault and the victim voluntarily accompanied the appellant. The victim in her earliest statement under Section 164 Cr.P.C. not stated anything about forcible penetrative sexual assault. The victim at each stage on the compulsion of her parents, improving her statement and Ex.P14 statement recorded by the police and in her evidence she gives a different version. In this case the missing of PW1's daughter was on mid-night of 28.05.2016 but the complaint lodged with a delay of 12 days



Crl.A.No.159 of 2022

1.e., on 09.06.2016 and victim appeared voluntarily on 15.06.2016. No reason given for the delay and different versions given at each stage as regards the place of securing the victim and arrest of the accused. There is no evidence produced to show that the appellant and victim were staying in Ooty for more than two weeks, no witness examined and the place of occurrence recorded in the rough sketch, it is the house of the accused in Karuvayalkadu.

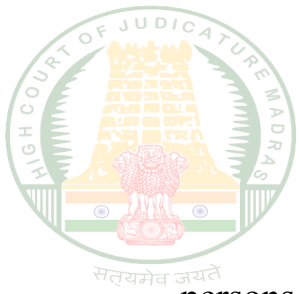
6.He further submitted that in this case apart from PW1, PW2 and PW3 the witnesses PW4, PW5, PW7 and PW8 not supported the case of the prosecution. PW6/observation mahazar witness confirms that he does not know what is written in the mahazar. The other witnesses are the police personnel, Doctor and the investigating officers. Thus, from the above evidence it is clear that there is no offence committed by the appellant. The trial Court invoking Section 29 of POCSO Act, convicted the petitioner failing to look into the fact that when the foundational is doubtful and



Crl.A.No.159 of 2022

shaking, the entire case built on it falls and it is for the prosecution to prove the case beyond all reasonable doubt. In this case it is not done so.

7. In support of his contention the learned counsel relied upon the judgment of this Court in the case of *Sivakumar @ Ramesh vs. State* reported in *2018 (1) MWM (Cr.) 484*, wherein this Court held that the delay in lodging the complaint and including the appellant's mother, brother and friend as accused in this case, would prove that there was animosity between the appellant and victim's family, to wreak vengeance complaint lodged against the appellant. Further, merely because hymen was not intact it cannot be presumed that penetrative sexual assault committed, it might be for various other reasons. He further relied upon the decision of Hon'ble Apex Court in the case of *Digamber Vaishnav and Another vs. State of Chhattisgarh* reported in *(2019) 4 SCC 522*, wherein Full Bench of the Apex Court held that Section 118 of the Evidence Act governs competence of the

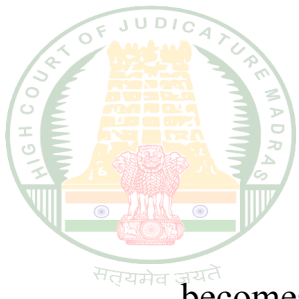


Crl.A.No.159 of 2022

WEB COPY

persons to testify which also includes a child witness. Further held that there is no rule of practice that in every case the evidence of a child witness has to be corroborated by other evidence before a conviction can be allowed to stand but as a prudence, the Court always finds it desirable to seek corroboration to such evidence from other reliable evidence placed on record. Only precaution which the Court has to bear in mind while assessing the evidence of a child witness is that witness must be a reliable one. Further held that evidence of a child witness must be evaluated carefully as the child may be swayed by what others tell him and he is an easy prey to tutoring.

8. Further, he relied upon the judgment of this Court in Crl.A.(MD) No.321 of 2015 in the case of *Wesly Lazar vs. State* reported in **2020 (3) MLJ (Crl) 641**, wherein it is held that fixing the age of the victim based on the Secondary School Leaving Certificate may not be proper, where there is some doubt over the same. Further when the genesis of the complaint



Crl.A.No.159 of 2022

WEB COPY

becomes doubtful, the entire case has to fall. Further in the case of ***Suresh vs.***

***State*** reported in ***2022-2-LW(Crl) 260*** in Crl.A.No.806 of 2016, wherein this

Court held that in a criminal trial, an accused person starts with the presumption of innocence in his favour and the presumption holds the field till the prosecution succeeds in establishing the guilt of the accused beyond all reasonable doubt. A moral conviction regarding the guilt of an individual has no place in criminal jurisprudence.

9.The respondent filed his counter and written submissions submitting that in this case the victim is aged about 17 years at the time of occurrence and completed her 12<sup>th</sup> standard. It was a summer vacation period and she was waiting for the results. The victim and the appellant were neighbours. The appellant used to talk with the victim regularly. Further the appellant wanted to marry the victim. Hence, along with his parents he approached the victim's parents seeking victim for marriage. The victim's parents refused



Crl.A.No.159 of 2022

WEB COPY

and sent the victim to her grandmother's house at Boothapadi near Mettur in Salem District. The appellant followed her, and went there on 25.05.2016 and when the victim came out for attending nature call, he forced and threatened her, that if she refuses to marry him he would commit suicide and compelled her to come with him. Thereafter, on 28.05.2016 at about 11.00 p.m., when the victim was in her parents house, the appellant came in his bike again threatened that he would commit suicide and leave a note that victim is the reason for his suicide and thereafter the victim was kidnapped from the lawful guardianship of her parents, he took the victim in his bike and on the next day morning at 6.00 p.m. he tied Thali at Vinayagar Temple, Kattuputhur. The marriage was a forced one. The victim is minor, not attained majority and he took her in his bike to Ooty. On 29.05.2016 at about 11.00 p.m., in the park near the race course at Coonur, Nilgiri Hills he committed sexual assault and following the same on many occasions at the rental house of Rangasamy at Coonur, where they stayed. Thus the appellant had



Crl.A.No.159 of 2022

WEB COPY

committed repeated penetrative sexual assault on the minor victim. On the complaint of victim's parents, the case was registered in Crime No.219 of 2016 for offences under Sections 366(A) of I.P.C. on 09.06.2016 by PW14, who registered the F.I.R./Ex.P9. Thereafter, PW16 took up investigation, visited the scene of occurrence, prepared observation mahazar and rough sketch, enquired the parents of the victim and others. The victim appeared on 15.06.2016 before the respondent-police, gave her statement/Ex.P14. Thereafter, on the same day, sections altered including offences under Section Prohibition of Child Marriage Act and POCSO Act by Ex.P16. The victim was produced for medical examination. PW10 examined the victim, issued Accident Register/Ex.P8 and Medical Report/Ex.P7. The victim was produced before the Magistrate and her statement under Section 164 Cr.P.C./Ex.P15 recorded on 24.06.2016. The appellant was arrested on 17.09.2016 and his confession statement recorded. The Age Certificate/Ex.P11 was collected confirming that victim was minor, thereafter



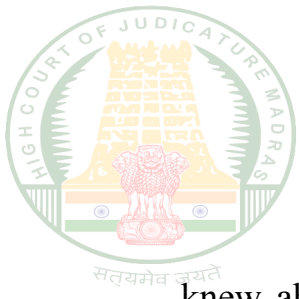
Crl.A.No.159 of 2022

WEB COPY

on collecting the documents and materials, charge sheet filed before the trial Court in Spl.C.C.No.7 of 2017. During trial, PW1 to PW18 examined, Exs.P1 to P19 marked. On conclusion of trial, the trial Court had convicted the petitioner for offence under Sections 366(A) of I.P.C. and 9 of Prevention of Child Marriage Act r/w 6 of POCSO Act for the offence committed under Section 5(l) of POCSO Act and sentenced the petitioner as stated above.

10.He further submitted that based on the evidence of the witnesses supported by documents and materials, the trial Court rightly convicted the petitioner. The prosecution proved each and every circumstances pointing to the guilt of the appellant. Hence, prayed for dismissal of the appeal.

11.Considering the submissions made and on perusal of the records, it is seen that the appellant and the victim/P.W.2 had love affair, P.W.2 admits that she used to speak with the appellant over phone and in person and no one



Crl.A.No.159 of 2022

WEB COPY

knew about their relationship. In this case, P.W.2 is the victim, who is the only person to speak about the forcible abduction, forcible marriage and penetrative sexual assault committed. P.W.1 and P.W.3, father and mother of the victim/P.W.2 were informed by P.W.2 about these facts. P.W.1 and P.W.3 utmost have direct knowledge only with regard to their daughter/victim found missing from 28.05.2016. P.W.4, P.W.5, P.W.7 and P.W.8 not supported the case of the prosecution and they were treated hostile. P.W.6 is the witness for observation mahazar/Ex.P3, who confirms that he is not aware as to what is written in Ex.P3. In this case, the observation mahazar and rough sketch/Ex.P13 denotes the place of occurrence as the house of the appellant. The admitted case of the prosecution is that the appellant abducted the victim girl and took her to Ooty and he never taken the victim girl to his house. Hence, Ex.P3 and Ex.P13 is of no value. P.W.9, Headmistress of Government Girls Higher Secondary School, Tiruchengode was examined and through her, Ex.P6/age certificate of the victim marked. In the said

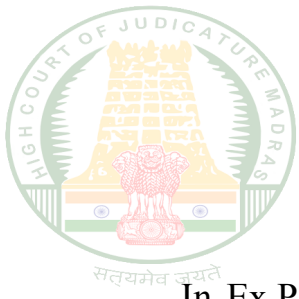


Crl.A.No.159 of 2022

WEB COPY

certificate, the date of birth of the victim was recorded as 25.01.1999 but

P.W.9 admits that there is no birth certificate available in the School and she is not the person who entered the School records. The contention of the appellant is that the victim attained majority and they dispute the minority of the victim. In such circumstances, in all prudence the Investigating Officer ought to have confirmed the age of the victim by medical records. In the case, the appellant's age was fixed by getting a medical report/Ex.P11 from the Doctor/P.W.15. P.W.2 in her evidence admits that she came from Ooty to Tiruchengode at the early hours of 15.06.2016, went to her parents house and in the morning hours, she went to the respondent Police Station along with her parents and disclosed the happenings between 28.05.2016 and 14.06.2016. The respondent police enquired P.W.2/victim and one P.Sowmya, Sub-Inspector of Police recorded her statement/Ex.P14 on 15.06.2016. Thereafter, the victim was produced before P.W.10, who examined her and issued Ex.P7/Medical Report and Ex.P8/Accident Register.



Crl.A.No.159 of 2022

In Ex.P8/Accident Register, the specific queries raised by the Investigating

Officer has been recorded which are as follows:

- (1) Whether any injuries found on the victim?
- (2) Whether the victim was raped?
- (3) Whether any injury found in the private parts of the victim?

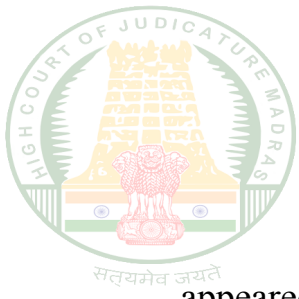
12.Following the same, the victim was examined and final opinion was given by P.W.10 stating “As per clinical examination and lab reports (O/E: vaginal introitus admits one finger), I am of the final opinion that there is possibility of sexual assault”. The forensic report confirms that there is no presence of semen and spermatozoa not deducted on the semen test. P.W.10/Doctor confirms no external injury on the victim but hymen not intact. In her evidence, she confirms that hymen condition may vary for various other reasons and not only for sexual penetration. Further, P.W.10 clarifies that there is nothing found to show that the victim was subjected to forcible sexual assault. The admission of one finger alone cannot confirm



Crl.A.No.159 of 2022

WEB COPY

that the victim was subjected to penetrative sexual assault. Hence, Ex.P7 and Ex.P8 are only suggestive not conclusive. In this backdrop, looking at the evidence of P.W.2 and her 164 Statement/Ex.P15, it is seen that P.W.2 in her earlier statement had not stated anything against the appellant of forcible kidnapping, forcible marriage and forcible penetrative sexual assault. In fact, the victim admits that she was moving freely staying with the appellant on her own volition and not by force. She also met the house owner Rangasamy and his wife Bhuvaneswari and she was also freely using the mobile phone. Since the thought of her parents arose, she contacted her parents and according to her earlier statement, her parents came and the victim left to Tiruchengode along with them. The evidence of P.W.1/father of the victim girl is in confirmity to the statement of P.W.2 stating that P.W.2 and the appellant were found together near Tiruchengode bus stand and both were taken to Police Station not in one occasion, he re-confirms it again and again. From the alteration report/Ex.P16, it is further confirmed that the victim

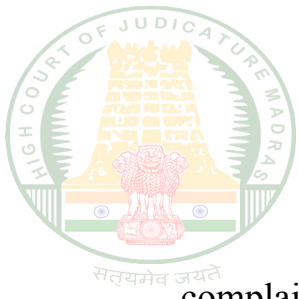


Crl.A.No.159 of 2022

WEB COPY

appeared before the Police along with her parents on 15.06.2016 at about 10.00 a.m. which were later modified to project that the victim was apprehended in the bus stand, thereafter she was taken to Police Station from where information was sent to her parents, P.W.1 and P.W.3 and the victim gave statement. Further, the appellant was arrested on 17.09.2016 which is quite contra to the available evidence. It is to be seen that though Ex.P14/statement of the victim is said to have been recorded on 15.06.2016, the same reaches the Court only on 18.07.2016. Likewise, the alteration report though prepared on 15.06.2016, it reaches the Court only on 18.07.2016 confirming that Ex.P14 and Ex.P16 are pre-dated documents. Hence, the genuineness of these documents become questionable. Further, the said P.Sowmya, Sub-Inspector of Police not examined as witness and it was marked through the Investigating Officer/P.W.17.

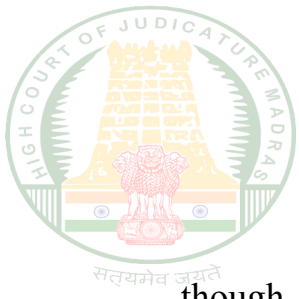
13.In this case, the victim was found missing from 28/29.05.2016 but



Crl.A.No.159 of 2022

WEB COPY

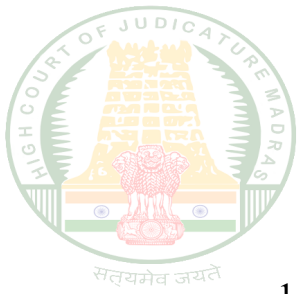
complaint lodged only on 09.06.2016 with a delay of 12 days and in Ex.P9/FIR, four persons shown as accused, namely, Thangarasu/appellant herein, Srini/brother of the appellant, Lakshmanan/friend of the appellant and Selvi/mother of the appellant. But no explanation given as to for what reason they were arrayed as accused and why they have been deleted. Hence, the foundational fact of the case becomes doubtful. Added to it, the FIR and complaint reached the Court only on 13.06.2016 with a delay. Further, P.W.2 in her evidence admits her love relationship with the appellant, her age is 17 years and 5 months, a few months short of attaining majority. The School Certificate/Ex.P6 is doubtful. Thus, it is clear that though P.W.1 and P.W.3 are the father and mother of the victim, both are not direct witnesses. P.W.2 is the only available witness and in her earlier statement, she does not state anything about forcible abduction, marriage and commission of penetrative sexual assault by the appellant. In fact, in this case, no materials produced to show whether there is tying of thali or wearing or metti. The prosecution



Crl.A.No.159 of 2022

WEB COPY

though states that the appellant and the victim were staying in the house of Rangasamy and Bhuvaneswari but neither the house owners nor any neighbours from Katteri, Coonoor, The Nilgiris District examined. The Trial Court by marking Ex.P19/VAO certificate and unserved summons cannot take it as a proof as no such person available in the address. The Investigating Officer confirms that he had not gone to Coonoor. Added to it, the observation mahazar/Ex.P3 and rough sketch/Ex.P13 points the place of offence to the house of the appellant in Ettimadaipudhur. Thus the evidence of P.W.2 does not inspire confidence in the absence of corroboration, relying on the evidence of P.W.2 is not proper. Added to it, the medical records and earlier statement of the victim confirms that there was love relationship between the appellant and the victim and there is no forcible relationship or conduct by the appellant. When the foundational fact becomes shaky and falls, naturally the entire case to fall.



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14.The Apex Court in the case of ***Alagupandi vs. State of Tamil Nadu*** reported in **(2012) 10 SCC 451**, wherein the Apex Court emphasised the need to accept the testimony of a child with caution after substantial corroboration before acting upon it.

15.Further, in the case of ***Digamber Vaishnav and another vs. State of Chhattisgarh*** reported in **(2019) 4 SCC 422**, the Hon'ble Supreme Court held as follows:

*“18.In Sujit Biswas v. State of Assam [(2013) 12 SCC 406 : (2014) 1 SCC (Cri) 677], this Court, while examining the distinction between “proof beyond reasonable doubt” and “suspicion” has held as under: (SCC p. 412, para 13)*

*“13.Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that “may be” proved, and something that “will be proved”. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between “may be” and “must be” is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or*



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Crl.A.No.159 of 2022

*suspicion do not take the place of legal proof. The large distance between “may be” true and “must be” true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between “may be” true and “must be” true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.”*

16. In the present case, the genesis of the case becomes doubtful. The prosecution must give satisfactory proof that the offence has been committed by the accused. In this case, the prosecution had miserably failed to prove the case beyond all reasonable doubt.



Crl.A.No.159 of 2022

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17.In the result, the Criminal Appeal is allowed setting aside the judgment of the trial Court, dated 23.11.2021 in C.C.No.7 of 2017. The appellant/accused is acquitted from all the charges levelled against him. The bail bond, if any, executed shall stand cancelled. Fine amount, if any, paid, shall be refunded to him.

28.04.2025

Index : Yes / No

Speaking / Non-speaking order  
rsi/cse

To

1. The Inspector of Police,  
Tiruchengode Town Police Station,  
Namakkal District.

2.The Sessions Judge,  
Fast Track Mahila Court,  
Namakkal.

3.The Public Prosecutor,  
High Court, Madras.

27/28



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Crl.A.No.159 of 2022

M.NIRMAL KUMAR, J.

*rsi/cse*

Pre-delivery judgment in

Crl.A.No.159 of 2022

28.04.2025