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CrI.A.No.182 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2025

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

CrI.A.No.182 of 2023

Manoj

... Appellant/Single Accused

Vs.

State Represented by
The Inspector of Police,
Rathinapuri Police Station,
Coimbatore City.
(Crime No.1054 of 2019)

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973, to call for the entire records in connection with the Spl.C.C.No. 24 of 2020 on the file of the learned Principal Special Court (for Exclusive Trial of Cases under POCSO Cases), Coimbatore District and set aside the judgment dated 26.12.2022.

For Appellant : Mr.E.Kannadasan

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



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JUDGMENT

The Appeal has been filed challenging the judgment of conviction and sentence imposed on the petitioner for the offence under Section 363 of Indian Penal Code, 1860 (*hereinafter referred to as IPC*).

2. It is the case of the prosecution that the petitioner had kidnapped the victim girl aged about 14 years at the time of the occurrence from the lawful guardianship and kept her in his house for three days and committed the offences of penetrative sexual assault, besides the offence of administering narcotic drugs to the victim girl.

3. Before the trial Court, the prosecution had examined sixteen (16) witnesses and marked Ex.P1 to Ex.P17 to prove its case. The trial Court found that the offences under Section 5(1) r/w 6 of the Protection of Children from Sexual Offences Act, 2012 (*hereinafter referred to as the POCSO Act*) and Section 8(c) r/w 20(b)(ii)(A) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*hereinafter referred to as the NDPS*



Act), were not proved by the prosecution since all the independent witnesses turned hostile to the prosecution. The trial Court, however found that the appellant guilty of the offence under Section 363 of IPC and sentenced him to undergo five years of Rigorous Imprisonment.

4. The learned counsel for the appellant submitted that the evidence of the witness P.W1 / victim and the other witnesses would show that the victim cannot be believed, even in respect of the offence under Section 363 IPC since none of the witness supported the prosecution case and that, it would be highly unsafe to convict the appellant only on the basis of the victim's evidence for the offence under Section 363 of IPC.

5. The learned Additional Public Prosecutor *per contra* submitted that the maxim *falsus in uno, falsus in omnibus* is not applicable to our country; that the learned Judge was justified in accepting a portion of the evidence of P.W1 to convict the appellant for the offences under Section 363 of IPC; that the consent of the minor is immaterial for the offences under Section 363 of IPC and that therefore, there is no infirmity in the judgment of the trial Court and prayed for dismissal.



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6. The prosecution had examined P.W1 to P.W4 who are the victim, mother of the victim, father of the victim and a close relative / uncle of the victim, to prove the charges under NPDS Act and under Section 6 of the POCSO Act. Admittedly, all the witnesses turned hostile to the prosecution. The trial Court, therefore, rejected their evidence insofar as the offences under POCSO Act and NDPS Act. P.W5 is the Head Mistress, who spoke about the date of birth of the victim. There is no dispute about the date of birth of the victim. P.W6 is the observation mahazar witness, who also turned hostile. P.W7 to P.W8 who were examined by the prosecution to prove that the victim, who was last seen with the appellant also turned hostile. P.W9 is the Doctor, who examined the appellant and issued a potency certificate. P.W10 is the Doctor, who examined the victim and had certified that there was no evidence of forcible sexual intercourse on the victim. P.W11 is the Head Constable, who had taken the victim to the hospital. P.W12 and P.W13 are the Sub Inspector of Police and Constable, who assisted the Investigating Officers. P.W14 to P.W16 are the Investigating Officers. P.W16 filed the Final Report. Thus, from the above description of the witnesses, it would be clear that the prosecution rests only



on the evidence of P.W.1 to P.W4 and the evidence of P.W10. As stated above, the Doctor (P.W10) had not found forcible sexual intercourse. P.W1 to P.W.4 had turned hostile.

7. P.W1 would state in her deposition that she knew the appellant / accused earlier; that she left her house on 11.11.2019; that since it was late in the evening, she did not want to return to her home and requested the appellant to give shelter and stayed with the appellant for three days. Though this witness had turned hostile as regards the other aspects, the appellant was unable to discredit this portion of the evidence of P.W.1. The consent of the victim is immaterial in the case of kidnapping from lawful guardianship. Admittedly, the victim was only 14 years old and therefore, this Court finds that there is no infirmity in the finding of the guilt of the appellant for the offence under Section 363 of IPC.

8. As regards the sentence, it is seen that the appellant was also young, and he was hardly 19 years old at the time of the occurrence.



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Though the consent is immaterial insofar as the guilt of the accused is concerned, it would have a bearing while awarding sentence.

9. It is seen that the appellant was in custody pending investigation from 16.11.2019 to 03.06.2020 and for the period from 26.12.2022 (date of judgment of the trial Court) to 24.02.2023, (i.e.) till the order granting suspension of sentence was passed by this Court.

10. Considering the fact that the petitioner was in custody for about ten months and facts and circumstances of the case, this Court is of the view that it would be just and reasonable to impose the sentence of the period undergone by the appellant for the offence under Section 363 IPC.

11. Hence, this Court while confirming the conviction of the appellant for the offence under Section 363 IPC reduces the sentence to period undergone as aforesaid. With the above observations, the Criminal Appeal stands partly allowed.

03.12.2025



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Index : Yes/No

Speaking Order/Non Speaking Order

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To

1. The Principal Special Court (for Exclusive Trial of Cases under POCSO Cases), Coimbatore District
2. The Inspector of Police,
Rathinapuri Police Station,
Coimbatore City.
3. The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN, J.

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