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Crl.A.No.365 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2025

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

**Crl.A.No.365 of 2023 &
Crl.MP.No.4720 of 2023**

Vinoth @ Vinoth Kumar

... Appellant

Vs.

State Rep. By
The Inspector of Police,
All Women Police Station,
Jayangkondam,
Ariyalur District

... Respondent

PRAYER: Criminal Appeal filed under Sections 374, 380 & 401 Cr.P.C., praying to call for the records in Special CC.No.69 of 2021 on the file of the learned Fast Track Mahila Court, Ariyalur and set aside the impugned judgment dated 24.01.2023 in Special SC.No.69 of 2021 passed by the learned Fast Track Mahila Court, Ariyalur and allow this appeal filed by the appellant.

For Appellant : Mr.C.Manishankar,
Senior Counsel
for Mr.I.Syed Sibghatulla

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



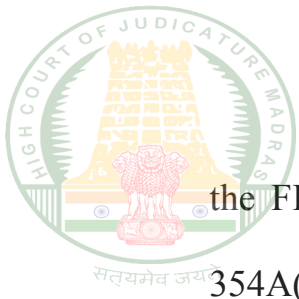
JUDGMENT

This criminal appeal has been filed against the judgment dated

24.01.2023 passed in Special SC.No.69 of 2021 by the learned Fast Track

Mahila Court, Ariyalur, thereby convicting the appellant for the offence punishable under SectionS 342 & 376(3) of IPC and Section 6(1) of POCSO Act.

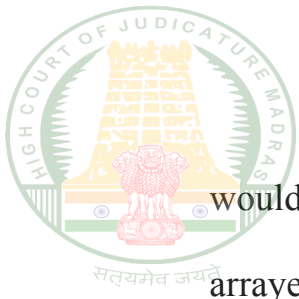
2. The case of the prosecution is that the first accused is a relative of the second accused. A1 and A2 had illicit relationship and as such, the victim girl, who is none other than a daughter of the second accused, objected the same. Therefore, the second accused had forced the minor victim to have relationship with A1. When it was objected by the victim, the second accused stated that 'she was anyways going to be married to the first accused in due course of time'. While being so, on 20.01.2021, at about 1.30 hours, the first accused came to the house of the second accused and had committed penetrative sexual assault on the victim girl. The second accused had objected the same. On the complaint lodged by the father of the victim girl, the respondent registered FIR in crime No.34 of 2021 for the offence punishable under Sections 342, 354A(1)(i), 376(3), 376(2)(f) of IPC r/w Sections 9(l) & 5(n) r/w 10, 6 of POCSO Act against the first accused. In respect of the second accused,



the FIR was registered for the offence punishable under Sections 342, 354A(1)(i), 376(3), 376(2)(f) r/w 109 of IPC and Sections 9(l), 5(n) r/w 17 of POCSO Act. After completion of investigation, final report was filed and the same was taken cognizance by the trial court.

3. The prosecution had examined PW1 to PW18 and marked Ex.P1 to Ex.P17. The prosecution had produced two material objects as MO.1 and MO.2. The court had marked Ex.C1. On the side of the accused, no one was examined and no documents were produced. On perusal of oral and documentary evidences, the trial court found the first accused alone guilty and convicted him for the offence under Section 342 of IPC and sentenced to undergo one year rigorous imprisonment with of Rs.1,000/-, in default, to undergo one month simple imprisonment. He was also convicted under Section 6(1) of POCSO Act and sentenced to undergo 20 years rigorous imprisonment with fine of Rs.2,00,000/-, in default, to undergo one year simple imprisonment. Aggrieved by the said judgment, the present criminal appeal has been filed.

4. The learned Senior Counsel appearing for the appellant



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would submit that there are totally two accused, in which the appellant is arrayed as A1. The second accused is none other than the mother of the victim girl and the wife of PW2. Though the victim and other witnesses categorically stated in their statements that the second accused abetted the crime, they turned hostile before the trial court and as such, the second accused alone was acquitted. The same yardstick has to be applied against the appellant and the appellant ought to have been acquitted. The victim girl was examined as PW1. She did not even whisper that her mother abetted the crime, though she stated it in the statement recorded under Section 164 of Cr.P.C., which was marked as Ex.C1. Even according to the case of the prosecution, the alleged occurrence took place on 20.01.2021. But the complaint was lodged only on 20.10.2021. There is absolutely no explanation for the huge delay in lodging the complaint. In fact, after the alleged occurrence, PW1 and the second accused went to a relative's function where the first and the second accused were also present. However, the victim did not whisper to any other relative about the alleged sexual assault. Just two days before 20.10.2021, ie, on 18.10.2021, the victim had informed about the alleged occurrence to PW6 and the same was informed to Child Welfare Committee by PW2(father of the victim). On their instruction, next day, i.e. on 20.10.2021, PW2



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lodged complaint which was marked as Ex.P1. The second accused had illegal intimacy with the first accused. Therefore, their relatives warned her. The second accused forced the victim girl to marry the first accused. But the victim girl refused. In order to pacify her, they were taken to cinema theatre. Even then, the victim girl did not accept the relationship. In fact, after the date of the alleged occurrence, the victim girl normally went to school and did not whisper to anybody about the alleged occurrence.

5. The learned Senior Counsel further submitted that conveniently PW1 to PW7 turned hostile. Insofar as the allegation against A1 is concerned, they deposed about the alleged occurrence. Therefore, without considering the same, the trial court mechanically convicted the appellant alone and acquitted the second accused. In fact, after the alleged occurrence, during the month of May, PW2 was transferred to Jeyankondam. Even then, the entire family i.e. PW1, the second accused and the younger sister of PW1 i.e. PW4 were staying together and no complaint was lodged as against the appellant. After receipt of the information from PW2, the Child Welfare Committee conducted enquiry and directed them to lodge complaint. Therefore, on 20.10.2021, the



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victim and PW2 went to the respondent police station and lodged complaint. However, it was denied by the victim girl. Therefore, the lodgement of the complaint itself cannot be considered legitimate. Though the victim categorically stated that A1 and A2 had illicit relationship, during her statement recorded under Section 161 Cr.P.C. and the deposition made before the trial court, she did not even whisper about their relationship and she deposed that PW2 and the second accused used to fight often. Therefore, the prosecution miserably failed to prove the charges. Even then, the trial court convicted the appellant.

6. Per contra, the learned Additional Public Prosecutor submitted that there are two accused, in which the first accused was convicted for the offence under Section 342 of IPC and Section 6(1) of POCSO Act. Though there were allegations as against A2, the prosecution witnesses turned hostile in respect of A2. However, there are evidences and specific allegations against the first accused to bring the charges under the aforesaid sections. The victim was examined as PW1. She categorically deposed that the first accused had committed penetrative sexual assault on her. Though there was delay in lodgement of complaint, it is immaterial for the offence under POCSO Act. Therefore,



the conviction and sentence imposed by the trial court do not warrant any interference by this Court.

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7. Heard, the learned counsel appearing on either side and perused, all the materials placed before this Court.

8. There are totally two accused, in which the appellant is arrayed as A1. The alleged occurrence happened on 20.01.2021 during mid night at 1.30 a.m.. It is alleged that the appellant came to the victim's house and had committed penetrative sexual assault on her. However, the complaint was lodged only on 20.10.2021 by the father of the victim. The complaint was marked as Ex.P1. On perusal of the complaint, it is revealed that PW2 got married the second accused and gave birth to two daughters. The victim is the elder one. While being so, the second accused had illegal intimacy with the first accused. When it came to knowledge of PW2 and all relatives, they all warned the first accused and the second accused and as such the victim went to her mother's sister's house for schooling. That apart, PW2 was transferred to Trichy. Thereafter, in the end of January 2021, the second accused, PW2 and the victim went for marriage of their relative. The victim disclosed that she



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was compelled to marry the first accused by her mother i.e. the second accused. The second accused was warned by all the relatives and thereafter PW2 was once again transferred to Jeyankondam and the victim stayed with them. On 18.10.2021, the victim informed PW2 that when PW2 was in Trichy, the first accused very often visited their house and had illegal intimacy with the second accused, which came to the knowledge of the victim. Therefore, the second accused insisted the victim to marry the first accused so that they can have illegal intimacy without any problem and hence the second accused used to compel the first accused to take the victim to cinema theatre and near tourist places.

9. While being so on 20.01.2021, the first accused came to her room and had penetrative sexual assault on her. When the victim tried to come out of the room, it was locked from outside by the second accused. After seeing that the door lock was opened, she came and informed the second accused. However, the second accused told that 'anyway the first accused was going to marry her, therefore there is nothing wrong'. She also compelled her not to disclose it to anybody. Immediately after the knowledge of the said occurrence, PW2 contacted the Child Welfare Committee. After enquiry, both were asked by the Child Welfare



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Committee to lodge complaint before the jurisdictional police. Thereafter, PW2 lodged complaint on 20.10.2021. After registration of FIR, the victim was subjected to medical examination. The report was marked as Ex.P5. Accordingly, the doctor opined that there was no injury, no external injury, uterus cavity empty, upt negative, sperm not seen in vaginal swab. However there is possibility of sexual intercourse. Accordingly, the doctor who had examined the victim girl deposed as PW12. Thereafter, the victim's statement was recorded under Section 164 of Cr.P.C. It was marked as Ex.C1. On perusal of the same, it is revealed that the second accused was having illicit relationship with the first accused. While the victim was in her house, she had seen the first accused and the second accused having sexual intercourse. Therefore, immediately the second accused insisted the victim to marry the first accused. However, she also deposed that after one day, the first accused had committed penetrative sexual assault on her. But it was not even whispered to anybody till 18.10.2021.

10. In fact, the victim, the second accused and PW2 went for marriage along with all relatives, during the last week of January 2021



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i.e. next week from the week of the alleged occurrence. Even then, the victim or the second accused did not even whisper about the occurrence to anybody. According to the victim, on the date of the alleged occurrence, A2 was very much available in the same house and in fact, she only locked the door of the room. Further, though PW2 lodged complaint, he made specific allegation against A2. He deposed as PW2 before the trial court and failed to support the case of the prosecution as against the second accused alone. Likewise, the victim was examined as PW1 and other relatives were examined as PW3 to PW7 and they also turned hostile insofar as the allegations against the second accused in order to save her. Therefore, there was absolutely no explanation for the huge delay in lodgment of complaint. Therefore, the complaint and the entire allegation is nothing but after thought and that too, in order to wreak vengeance against both the accused for their illegal intimacy.

11. On perusal of the deposition of the victim, who was examined as PW1, it is also revealed that she did not whisper about the illegal intimacy between the first accused and the second accused. Further, she completely turned around and deposed that the first accused had committed penetrative sexual assault on her without the knowledge



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of the second accused. Therefore, her deposition was partly treated as hostile and the prosecution had cross examined her. Likewise, the witnesses turned hostile insofar as the allegations against the second accused alone. Unfortunately, the trial court considering the same, acquitted the second accused alone, but without considering the above facts and circumstances, the trial court convicted the first accused. In fact, after the conviction of the first accused / the appellant, PW2 i.e. the father of the victim filed divorce petition in HMOP.No.34 of 2024 on the file of the Family Court, Ariyalur for divorce against the second accused on the ground of adultery with the first accused i.e. the appellant herein. In fact, the appellant was also added as party to the divorce petition by PW2. It shows that the entire story was that in order to wreak vengeance against both A1 and A2 for their illegal intimacy, PW2 and the victim added further allegations to the effect that the first accused committed penetrative sexual assault on the victim. Therefore, the prosecution miserably failed to prove the charges against the first accused. As such, the impugned judgment is liable to be set aside.

12. In view of the above discussion, the impugned judgment dated 24.01.2023 passed in Special SC.No.69 of 2021 on the file of the



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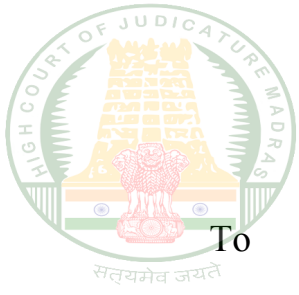
learned Fast Track Mahila Court, Ariyalur, is set aside. The appellant is acquitted of all charges under Section 342 of IPC and Section 6(1) of The Protection of Children from Sexual Offences Act. The appellant/A1 is directed to be set at liberty forthwith unless his custody is otherwise required in connection with any other case. Fine amount, if any paid, shall be refunded to the appellant forthwith. Bail bond, if any executed, shall stand cancelled.

13. In the result, this Criminal Appeal stands allowed. Consequently, connected miscellaneous petition is closed.

19.06.2025

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Crl.A.No.365 of 2023



To

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- 1.The learned Fast Track Mahila Court, Ariyalur
- 2.The Inspector of Police,
All Women Police Station,
Jayangkondam,
Ariyalur District
- 3.The Public Prosecutor,
High Court, Madras.



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Crl.A.No.365 of 2023



G.K.ILANTHIRAIYAN, J.

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