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Crl.A.No.439 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.09.2025
PRONOUNCED ON : 08.10.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.439 of 2022

Dharman

... Appellant

Vs.

State by
The Inspector of Police,
Theevatipatti Police Station,
Salem District.
(Crime No.590 of 2015)

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the judgment made in New.Spl.S.C.No.102 of 2019 (Old Spl.S.C.No.54 of 2018) on the file of the Sessions Judge for Exclusive Trial of Cases under POCSO Act, Salem dated 31.03.2022.

For Appellant : Mr.S.N.Arunkumar

For Respondent : Mr.L.Baskaran
Government Advocate (Crl. Side)



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JUDGMENT

This Criminal Appeal is filed to set aside the judgment made in Spl.S.C.No.102 of 2019 (Old Spl.S.C.No.54 of 2018) on the file of the Sessions Judge for Exclusive Trial of Cases under POCSO Act, Salem dated 31.03.2022.

2.The appellant/accused in Spl.S.C.No.102 of 2019 (Old Spl.S.C.No.54 of 2018) was convicted by the Trial Court by judgment dated 31.03.2022 and sentenced him to undergo three years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo three months simple imprisonment for the offence under Section 363 IPC, to undergo three years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo three months simple imprisonment for the offence under Section 366 IPC and to undergo ten years rigorous imprisonment and to pay a fine of Rs.25,000/-, in default to undergo six months simple imprisonment for the offence under Section 5(l) r/w. 6 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act).



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3.The contention of the learned counsel for the appellant is that the appellant and the victim girl/P.W.2 are relatives and were in love with each other. The appellant's parents approached P.W.1/father of the victim girl and his wife for the marriage of the appellant with the victim. Both families agreed, their love and bondage further got strengthened. In fact, there was exchange of horoscopes and both matched. Thereafter, P.W.1/father of the victim went to the temple and as per his belief to get Deity's approval by choosing flowers, according to P.W.1 Deity not approved the marriage proposal. Thereafter, P.W.1 arranged marriage for his daughter forcibly against her wish to some other person. Hence, P.W.2 called the appellant, informed him that she would end her life and forced the appellant to take her away. The appellant and the victim went to the appellant's grandfather's house in Ondikadai at Pennagaram, where they stayed for two days. This was arranged by the victim on the hope that thereafter her parents will agree to their marriage. On 29.10.2015, she went to her parents' house. Earlier, on 27.10.2025 P.W.1/defacto complainant lodged a complaint to the respondent police and a girl missing case in Crime No.590 of 2015 was



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registered. On the appearance of the victim, the defacto complainant got infuriated and insisted the Police to register FIR as though the appellant committed penetrative sexual assault. The victim girl was not agreeable to go along with her parents and she was sent to a reformatory home.

4.The learned counsel further submit that the victim girl was produced before the Magistrate and 164 statement recorded in which she clearly narrated the love affair between the appellant and exchange of horoscopes, initial approval of both parents for the marriage, thereafter P.W.1's refusal for the marriage, the victim girl hence called the appellant and forced him to take her away. To strengthen her claim and to ensure that the marriage between them have to be performed, she exaggerated and given a version that both of them had physical relationship. He further submitted that P.W.4/Doctor, who examined the victim girl on 30.10.2015 had given a medical report (Ex.P4 to Ex.P8). Ex.P4 is the Accident Register in which it is recorded that on 26.10.2015 at about 7.00 p.m., the victim girl went along with the appellant to Pennagaram by bus and thereafter reached the appellant's grandfather's house. In the medical investigation



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report/Ex.P5, it is recorded that on 28.10.2015 there was sexual intercourse in the house of the appellant and on 29.10.2015 the victim girl on her own returned to the Police Station. The medical examination report/Ex.P6 confirmed that there was no external injuries on the breast, cheek, lips, thighs and genitalia. No external injuries on external genitalia but hymen not intact. The Doctor in his report/Ex.P8 gave a final opinion that sexual intercourse possibly might have occurred, it is only a possibility and not a confirmed report. He further submitted that in this case, the evidence of P.W.1 and P.W.2 are quite contradictory. P.W.1 completely denies the relationship, marriage proposal, exchange of horoscopes and seeking of marriage by the appellant's family for his daughter. Thus it is clear that the defacto complainant had given a false and an exaggerated complaint to implicate the appellant. On the other hand, P.W.2/victim girl had given a statement confirming her relationship with the appellant but with a magnified version as though they had physical relationship for the reason, her parents will be compelled to give her in marriage to the appellant. The medical report does not confirm any recent penetrative sexual assault. The other witness in this case, namely, P.W.5/Assistant Headmaster produced



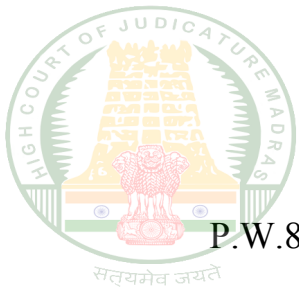
the school certificate which is not supported with birth certificate. Further, victim is only few months short of attaining majority. PW8 is the Investigating Officer who confirms that in the community of the appellant and the victim, it is common for marriages to take place at the age of 16 years onwards. Thus, a love affair between the two relatives of an acceptable relationship has been cut off since the victim's father felt the marriage proposal between the appellant and the victim was not approved by God, for which now the appellant is punished.

5.The learned Government Advocate (Crl. Side) filed his counter and submitted that in this case, P.W.2/victim girl is a minor, aged about 17 years. She was a school-going student studying 12th standard. Her age was proved by Ex.P9/School Certificate. On 26.10.2015, the victim was forcibly abducted by the appellant on the false promise that he would marry her. The defacto complainant, a mason with three daughters, came back after his work, found his daughter not at home. When enquired with his wife found his daughter not returned home. Since the victim not returned home for a long time, the defacto complainant searched for her and found his daughter



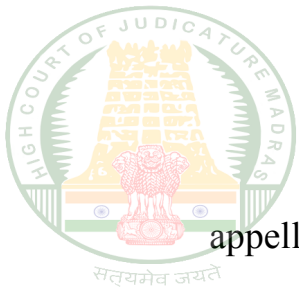
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missing. On the next day morning, he lodged a complaint to the respondent police. On 29.10.2015 the victim surfaced and appeared before the respondent police. On enquiry, it came to know that the appellant kidnapped and abducted the victim on the false promise of marriage. The appellant took her to his grandfather's house and they both stayed for two days in the agricultural pumpset shed. At that time, the appellant committed penetrative sexual assault on the victim. The victim was produced before the P.W.4/Doctor, who examined her on 30.10.2015, found hymen not intact and gave a report that the victim might have been subjected to penetrative sexual assault. The victim appeared before the Magistrate and confirmed the physical relationship between the victim and the appellant. The appellant was arrested and produced for potency examination. P.W.6/Doctor examined the appellant and gave potency report/Ex.P11. The complaint of the defacto complainant was received by P.W.7, who registered FIR/Ex.P13. Thereafter, P.W.8/Investigating officer took up the investigation, visited the scene of the occurrence, prepared observation mahazar/Ex.P3 and rough sketch/Ex.P14, examined the witnesses and recorded the statement of the victim and others. Thereafter, on transfer of



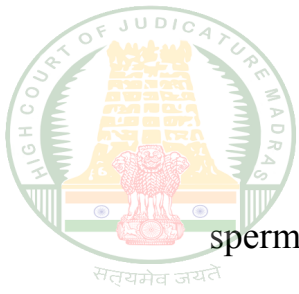
P.W.8, P.W.9 took up further investigation on 20.01.2016, re-examined the witnesses and after getting opinion, filed a charge sheet in this case. During trial, P.W.1 to P.W.9 examined and Ex.P1 to Ex.P17 marked. On conclusion of trial, the Trial Court convicted the appellant as stated above.

6.Considering the submissions and on perusal of the materials, it is seen that in this case, the date of birth of P.W.2/victim as per school certificate is 06.06.1998 and she is few months short of attaining majority. The victim and the appellant relatives were in a love relationship which was accepted by both the families. The appellant's parents requested for marriage and matching of horoscopes done. Thereafter, both were in love relationship. P.W.1/father of the victim went to a temple at Chinnatirupati and as per his belief, prayed for approval by choosing flower before the God. The priest informed that the marriage proposal between the appellant and the victim were not approved by the deity. Hence, P.W.1 made a turn around, by that time, love and bondage between the victim and the appellant became thick and strong. It was difficult for the victim to have a marriage with another person other than the appellant. Hence, the victim called the



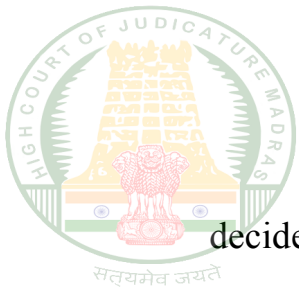
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appellant, informed him about her father/P.W.1 making arrangements for her marriage with another person, which she did not agree with and informed she would take extreme steps, even to end her life. Therefore, left with no other option, the appellant, to save the victim, took her to his grandfather's place at Pennagaram, where they stayed for three days from 26.10.2015 to 28.10.2015. On 29.10.2015 both of them appeared before the respondent police. The three days stay was only to make the victim's parents to know the intensity of this love relationship and both inclined to get married and live as husband and wife. But P.W.1 belief in the God refused for the marriage of the appellant and the victim. The victim was thereafter sent to a reformatory Home and the appellant was arrested. The victim, in her 164 statement/Ex.P2, clearly narrated her journey of love relationship with the appellant. In her 164 statement, her version of physical relationship appears to be magnified. The Doctor/P.W.4 who examined the victim on the same day of her appearance before the respondent police on 30.10.2015 in the report/Ex.P8 Doctor finds no injuries in the private parts and no external injuries and also gave a final opinion that "From the above clinical and chemical examination (as Hymen not intact and did not detect



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spermatozoa in the smear). I am of the opinion that, sexual intercourse possibility might have occurred". P.W.4 in his evidence confirms that hymen not intact can be for various reasons and not particular that it should be only due to physical relationship. Thus from PW2/victim in her 164 statement/Ex.P2 and from the evidence of Doctor and final opinion confirms that no recent penetrative sexual assault. The Doctor further confirms hymen found not intact might be for other reasons. The undisputed fact is that the appellant and the victim both relatives, interested with each other, marriage proposal made, horoscopes exchanged, family background, parents blessings and concurrence obtained, both were in serious love with each other, confident of marriage, both were in their teens and adolescent age, naturally infuriates their relationship further, but for the victim's father made a turn around due to his belief in God, the marriage between the appellant and the victim could not be performed. Had P.W.1/father of the victim agreed for marriage, there would have been no complaint against the appellant. The evidence of P.W.1 and P.W.2 are contradictory to each other. P.W.2/victim confirmed the love relationship and the victim few months short of for attaining majority. Now both of them



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decided to have their own way of life independent to each other, got separated and having their own family life. From the above, it is seen that there was no abduction, kidnapping or forcible penetrative sexual assault. In view of the above, this Court is inclined to set aside the conviction and sentence imposed by the Trial Court.

7.In the result, this Criminal Appeal stands allowed setting aside the judgment dated 31.03.2022 in New.Spl.S.C.No.102 of 2019 (Old Spl.S.C.No.54 of 2018) passed by the learned Sessions Judge for Exclusive Trial of Cases under POCSO Act, Salem. The appellant is acquitted. Bail bond if any executed shall stand cancelled. Fine amount if any paid shall be refunded.

08.10.2025

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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To

- 1.The Inspector of Police,
Theevatipatti Police Station,
Salem District.
- 2.The Sessions Judge for Exclusive Trial
of Cases under POCSO Act,
Salem.
- 3..The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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Pre-delivery judgment made in

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