



Crl.A.No.519 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.08.2025

CORAM

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

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Velu

..... Appellant

Vs

The State by
Inspector of Police,
Mallur Police Station,
Salem District.
Crime No.129/2012

..... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, praying to set aside the conviction and sentence imposed on the appellant by the judgment dated 30.01.2023 passed in S.C.No.45 of 2014 on the file of the Sessions Judge, Mahalir Neethi Mandram (Mahila Court), Salem.

For Appellant : Mr.M.Karthik

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



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JUDGMENT

This Criminal Appeal has been preferred as against the Judgment dated 30.01.2023 passed in S.C.No.45 of 2014 on the file of the Sessions Judge, Mahalir Neethi Mandram (Mahila Court), Salem, thereby convicted the appellant for the offence punishable under Sections 366 and 376(1) of IPC.

2. The case of the prosecution is that on 25.03.2012, at about 4.00 p.m., when the minor victim girl went to a shop, both the accused approached the victim girl and forcibly kidnapped her with intention that the first accused would marry her. The first accused tied Thali at Samayapuram Mariamman Temple, Trichy and thereafter, took her to Namakkal, where he committed sexual intercourse with her. Subsequently, the victim girl contacted her father over phone and she was rescued from the custody of the accused.

3. Based on the complaint lodged by P.W.1, the respondent Police registered an FIR in Crime No.129 of 2012 for the offences punishable under Section 366(A) of IPC. During the course of



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investigation, the offences were altered and a final report was filed. The Trial Court took cognizance of the case for the offences under Sections 366 and 376(1) of IPC as against both the accused persons.

4. In order to bring home the charges, the prosecution had examined P.Ws.1 to 13 and marked Exs.P1 to P14. On the side of the accused, no witness was examined and no document was marked.

5. On perusal of the oral and documentary evidence, the Trial Court found the appellant guilty of the offence punishable under Sections 366 and 376(1) of IPC. Accordingly, the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for one year. He was further convicted and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for a period of one year, for the offence under Section 376(1) of IPC. Aggrieved by the same, the appellant has preferred the present Criminal Appeal.



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6. The learned counsel appearing for the appellant submitted that the prosecution failed to prove the age of the victim girl except the certificate issued by the Headmaster, which was not supported by any contemporaneous records. In support of his contention, he relied upon the Judgment reported in **2023 SCC Online SC 846** in case of ***P.Yuvaprakash Vs. State Rep. by Inspector of Police***. He further submitted that the complainant, who was examined as P.W.1, is none other than the husband of the victim's sister. The persons who had allegedly informed P.W.1 about the kidnapping were not examined by the prosecution. He further submitted that there was a previous enmity between the family of the victim's sister and the family of the appellant's sister, which fact was admitted by the victim girl herself. Therefore, due to previous enmity, a false case has been foisted as against the appellant. He also submitted that there was a delay of three days in lodging the complaint, which renders the prosecution case doubtful. Further, the when the victim was subjected to medical examination, the Doctor found no injury on any part of her body and opined that there was no possibility of rape. Hence, the entire case of the prosecution is unreliable and not



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7. According to the case of the prosecution, the victim was allegedly kidnapped by a motorcycle. However, the prosecution failed to recover the motorcycle to substantiate the offence under Section 366 of IPC. Further, the charge under Section 366 of IPC was not proved as against the second accused and accordingly, the Trial Court acquitted the second accused while convicting the appellant for the offence under Sections 366 and 376(1) of IPC. When the charge of kidnapping has not been proved as against the second accused, the appellant is also entitled to the same benefit. When the prosecution failed to prove the age of the victim girl, the question of rape does not arise, as the sexual intercourse between the appellant and the victim was consensual. He further submitted that so far the appellant has already undergone incarceration for more than two and a half years.

8. Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that the victim girl was examined as P.W.2. The age of the victim girl was categorically proved through the age certificate issued by the Headmaster, and the school certificate, both

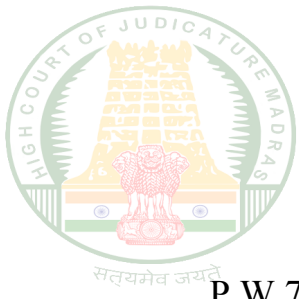


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of which were marked as Exs.P12 & P13. Accordingly, it stood established that the victim was a minor, aged about 15 years, at the time of occurrence. While the victim was staying in her sister's house, she was kidnapped by both the accused on a two-wheeler. Thereafter, they went to the Samayapuram Mariamman Temple, where a Thali was tied on her under coercion. Immediately, thereafter the victim was taken to Namakkal, where the appellant committed rape on the victim girl under coercion and compulsion. Fortunately, the victim managed to contact her father over phone and pursuant to the said phone call, she was rescued from the custody of the appellant. In fact P.W.1 had also filed a Habeas Corpus Petition before this Court seeking production of the victim.

9. Even assuming that there was love affair between the appellant and the victim. The victim was only aged about 15 years at the time of occurrence. There is absolutely no evidence to show that the victim fell in love with the appellant herein. The minor discrepancies are not fatal to the case of the prosecution, since the victim has categorically deposed that she was kidnapped by the appellant and committed sexual assault on her. Thereafter, the victim was subjected to medical examination. The Doctor, who treated the victim girl, was examined as



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P.W.7 . The Doctor deposed that the victim may be subjected sexual intercourse and her hymen was not intact. Accordingly, the Doctor issued a certificate, which was marked as Ex.P5 and a medical report was marked as Ex.P6. Therefore, the Trial Court convicted the appellant and such conviction does not warrant any interference by this Court.

10. Heard the learned counsel appearing on either side and perused the materials available on record.

11. There are totally two accused in this case, in which the appellant is arrayed as A1. The second accused was acquitted of the charge on the ground that the prosecution failed to prove his presence at the time of occurrence. Though the victim girl deposed that the second accused was also present along with the first accused, there was no other evidence to corroborate his presence or to connect him with the incident. Therefore, the Trial Court acquitted the second accused solely on the ground that the prosecution had failed to prove his presence when the Thali was tied and the subsequent acts occurred. Hence, the benefit of such acquittal cannot be extended to the appellant herein.



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12. The victim was kidnapped by the appellant and taken to a temple at Samayapuram, Trichy, where he died Thali on her under compulsion. Thereafter, they went to Namakkal and stayed in a rented house. From there, the victim managed to contact her father over phone and by tracing the call, she was rescued from the custody of the appellant herein. Initially, the victim was stayed in her sister's house and thereafter, her sister's husband lodged a complaint, who was examined as P.W.1. Further, the victim was examined as P.W.2. In her deposition she stated that the appellant also assaulted her with an iron measuring cup, causing injury on her forehead. After their marriage, they stayed in a house at Karur Vengamedu, where the appellant committed rape on her. Subsequently, she was taken to Namakkal and kept in another house, where against the appellant committed rape on her. After her rescue P.W.2 was subjected to medical examination by P.W.7, the Doctor, who opined that she might have been subjected to sexual intercourse and her hymen was not intact, though no external injuries were found on her genitalia.



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13. In order to prove the age of the victim, the prosecution examined P.W.11, who is the Headmaster of the school where the victim was studying. He issued a certificate which revealed that the victim's date of birth was 25.07.1996, and the same was marked as Ex.P13. He categorically deposed that on the basis of the records furnished at the time of admission, the said date of birth was entered in the school registered and certified accordingly. That apart, the victim was subjected to medical examination by the Department of Forensic Medicine to ascertain her age. The Department of Forensic Medicine certified that the victim was above 16 years and below 18 years of age at the time of occurrence and the certificate was marked as Ex.P12. Therefore, the prosecution has categorically proved that the victim was a minor at the time of occurrence. Hence, the Judgment cited by the appellant is not helpful to the case on hand. Thus, the Trial Court rightly convicted the appellant.

14. In view of the above, this Court finds no infirmity or illegality in the Judgment dated 30.01.2023 passed in S.C.No.45 of 2014 on the file of the Sessions Judge, Mahalir Neethi Mandram (Mahila Court), Salem. Accordingly, this Criminal Appeal stands dismissed.



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Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
Lpp

To

1. The Sessions Judge,
Mahalir Neethi Mandram (Mahila Court),
Salem.

2. The Inspector of Police,
Mallur Police Station,
Salem District.

3. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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