



WEB COPY



Crl.A.No.1337 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.1337 of 2022

K.Ajith

... Appellant

Vs.

The Inspector of Police,
All Women Police Station,
Ariyalur District.
Cr.No.09/2020.

... Respondent

PRAYER: Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to call for the records relating to the judgment of conviction and sentence dated 15-09-2022 in Spl.S.C.No.46 of 2020 on the file of Fast Track Mahila Court (District & Sessions Judge), Ariyalur and set aside the same and allow the appeal.

For Appellant : Mr.R.Venkatesulu

For Respondent : Mr.Leonard Arul Joseph Selvam,
Additional Public Prosecutor assisted by
Ms.Harshana.T



JUDGMENT

Challenging the impugned judgment dated 15.09.2022 in Special S.C.No.46 of 2020 passed by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur, this Criminal Appeal is filed.

2.The conviction and sentence of the trial Court are as follows:

- For offence under Section 6 of Protection of Children from Sexual Offences Act, 2012, the appellant was convicted and sentenced to undergo 20 years Rigorous Imprisonment and to pay a fine of Rs.50,000/-, in default to undergo 2 years Simple Imprisonment.
- For offence under Section 366 IPC, the appellant was convicted and sentenced to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default to undergo 3 months Simple Imprisonment.
- For offence under Section 9 of Prohibition of Child Marriage Act, 2006, the appellant was convicted and sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default to undergo one month Simple Imprisonment.
- For offence under Section 366(A) IPC, the appellant was convicted



and sentenced to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default to undergo 3 months Simple Imprisonment.

- A2 was acquitted from the charges under Section 366(A) IPC and Section 6 r/w 17 of Protection of Children from Sexual Offences Act, 2012.

3. Brief facts of the case is that the victim studied 8th to 10th std in Raj Vignesh School as hosteller and studied 11th & 12th in Joseph Girls Higher Secondary School at Vadugarpet. During COVID-19 period, the victim was staying with parents/PW2 & PW3 and attending classes through online. The victim/PW1, a minor and appellant were in love relationship for the past two years. The love affair between the victim and appellant objected by the parents of victim, thereafter made arrangements for marriage of the victim with another person secretly which was informed by A2 to the victim on 18.08.2020. Immediately, the victim in her teens repelled and sought way out from forceful marriage and to join the appellant. A2 advised the victim to come out from her house and she would join the victim with the appellant. As arranged, on 20.08.2020, after midnight, the victim came out



from the custody of her parents, A2 took the victim to Ayyanar Temple, thereafter, the victim and the appellant eloped and stayed near Mariyamman Temple, a far-off place, stayed together for three days from 21.08.2020 to 23.08.2020. In the meanwhile, on 21.08.2020, the mother of the victim/PW2 lodged a complaint (Ex.P1) to PW13/Sub Inspector of Police finding her daughter found missing and FIR in Crime No.9 of 2020 (Ex.P10) registered for “Girl Missing” on the same day and PW13 handed over the FIR to PW14/Inspector of Police.

4.PW14 took up investigation, visited the scene of occurrence, examined the parents of victim and others, recorded their statements, prepared Observation Mahazar (Ex.P3) and Rough Sketch (Ex.P11). On coming to know about lodging of complaint (Ex.P1), on 24.08.2020 both victim and appellant appeared before the respondent Police. The victim sent along with her parents and PW14 arrested the appellant, recorded the confession statement (Ex.P2), based on which, PW14 visited another scene of occurrence viz., Kadukoor, prepared Observation Mahazar (Ex.P12), Rough Sketch (Ex.P13), sent the victim to Ariyalur Government Hospital



for medical examination, altered the Sections to 366(A), 376 & 376(2)(n)

IPC r/w Sections 5(l) and 6 of Protection of Children from Sexual Offences Act, 2012 *vide* alteration report (Ex.P14) and handed over the investigation to PW15, another Inspector of Police. On 04.09.2020, PW15 took up investigation, produced the victim girl before the Magistrate on 07.09.2020 to record 164 statement (Ex.C1), produced the appellant before the Doctor/PW8 for potency test on 08.09.2020, collected the medical records of the victim and appellant (Exs.P5, P8 & P9), examined Ottakovil Village Administrative Officer and obtained a report (Ex.P6) for date of birth of victim and on conclusion of investigation, filed charge sheet before the trial Court.

5.During trial, on the side of the prosecution, PW1 to PW15 examined and Exs.P1 to P14 marked. On side of the defence, no witness examined and no document marked. The statement of the victim under Section 164 Cr.P.C marked as Ex.C1. On conclusion of trial, the trial Court convicted the appellant and acquitted A2 as stated above.

6.The learned counsel for the appellant submitted that in this case,



PW2/mother of the victim lodged a complaint (Ex.P1) complaining that her daughter found missing after midnight on 20.08.2020. In the complaint (Ex.P1), PW2 not made any reference to the appellant as the person who kidnapped the victim and committed penetrative sexual assault. Further PW2 and PW3, mother and father of the victim categorically stated that a written complaint was handed over by them to PW13. In the FIR (Ex.P10), it is recorded the complaint (Ex.P1) is a written one. On the contrary, the complaint (Ex.P1) is a typed one. Thus, earlier earlier complaint withheld and suppressed. Since the appellant and victim were in love relationship, PW2 and PW3 opposed the same and concocted a story as though the victim and appellant eloped and the appellant committed penetrative sexual assault. In support of his contention, the learned counsel for the appellant referred to the statement of victim recorded at the earliest point on 24.08.2020 at the time of 313 Cr.P.C which confirms the love relationship between the appellant and victim and further conversations between them recorded in the mobile phone and submitted through pen drive. In the earliest statement, the victim confirmed her love affair with the appellant opposed by her parents, thereafter, she was sent to her Aunt's house Revathy wife of



Jayapal at Manakudi village. The victim was forced to speak against the appellant otherwise she would be sent to reformatory home. On such condition, the victim was let to go with her parents on 24.08.2020. In her 164 statement (Ex.C1) recorded on 07.09.2020, the victim not stated about any penetrative sexual assault except she being compelled the appellant to take her otherwise she will end her life since her parents made arrangements for forcible marriage against her wish. The victim only states about be together in a field near Mariyamman Temple for three days. Nothing more was stated at the earliest period. But on compulsion of PW2 & PW3, parents of the victim, the victim deposed against the appellant. The earliest statement recorded on 24.08.2020, but the same sent to the Court on 28.10.2020 along with final report.

7.The learned counsel further submitted that the prosecution case is that the victim was a minor and a school student but no steps taken to prove the date of birth of the victim as 06.01.2004 by producing any birth certificate or school certificate. In the absence of the same, the Investigating Officer ought to have sent the victim for medical examination



for fixing age by way of ossification test or any other age determination test.

The procedure contemplated under Section 94 of Juvenile Justice (Care and Protection of Children) Act, 2015 and Section 34 of Protection of Children from Sexual Offences Act, 2012, Act, not followed. On the contrary, it is projected that PW9/VAO gave age certificate (Ex.P6) wherein it is recorded the victim was born in Government Hospital, Ariyalur, but no hospital records or any contemporaneous certificate produced to confirm the age. It is the duty of the prosecution to produce the school certificate or birth certificate or any records from the appropriate authority to prove the victim was a minor on the date of occurrence. In this case, the prosecution failed to take any steps to produce the said certificates, hence, the age of the victim not proved in the manner known to law.

8.He further submitted that in this case, PW12 is the Doctor who examined the victim on the same day of her appearance on 24.08.2020 at 10.20 p.m and gave medical reports (Exs.P8 & P9). In Ex.P8, it is recorded that on examination, found no internal and no external injuries over genitalia/thigh, breast or other parts of the body and final opinion is that



there is no injuries, she is not pregnant and her hymen found absent. PW12 further confirmed that while playing or riding bicycle, a rupture in hymen is possible. Even in 164 Cr.P.C statement, there is no mention of any penetrative sexual assault by the appellant. Thus, in this case, there is no evidence or material to show any forcible abduction or forcible penetrative sexual assault committed by the appellant. On the contrary, there is positive evidence let-in by the appellant at the time of questioning under Section 313 Cr.P.C by producing earliest statement of the victim to the respondent Police on 24.08.2020 which is confirmed by the Investigating Officer, but withheld and not produced as a document before the Court. Added to it, a pendrive was produced by the appellant to prove the telephonic conversation as to how the victim forced the appellant to save her from the forcible marriage of her parents. The trial Court not considered these materials citing technical reasons is not proper.

9.He further submitted that merely because the appellant and victim were in love relationship, the parents of the victim/PW2 & PW3 kept the victim under the custody, forced and compelled the victim to depose against



the appellant. The learned trial Judge failed to consider the attendant surrounding facts and convicted the appellant by observing that the appellant's explanation and materials produced during questioning under Section 313 Cr.P.C cannot be considered in evidence, failing to look into the fact the explanation during 313 Cr.P.C questioning has to be considered along with other evidence to find out whether the explanation given is probable. In this case, the appellant probablized his defence and also proved that the victim was forced by her family members to implicate the appellant which is contrary to the medical and other evidence, hence, he prayed for acquittal.

10.The learned Additional Public Prosecutor appearing for the respondent Police strongly opposed the appellant's submissions and submitted that in this case, PW2 is the mother of the victim who lodged a complaint (Ex.P1) on 21.08.2020, initially, FIR (Ex.P10) in Crime No.9 of 2020 for “Girl Missing” registered by the Sub Inspector of Police/PW13. At the time of occurrence, the victim was a minor, school going child, aged about 16 years and her date of birth is 06.01.2004. Since it was COVID-19



lock down, the victim was staying at home and attending classes through online for the past five months. Velmurugan, a neighbour is the brother of victim's father and the appellant is a friend of Velmurugan. The appellant used to visit Velmurugan's house, developed a love relationship with victim which was opposed by her parents (PW2 & PW3). Thereafter, with the help of A2, the appellant ensured that the victim is brought out from the legal custody of her parents, thereafter, the appellant took the victim forcibly to Mariyamman Temple located in an isolated place where they stayed for three days, during that time, the appellant tied Thali projecting it is a real marriage, thereafter, forcibly committed penetrative sexual assault on the victim for three days from 21.08.2020 to 23.08.2020. On 24.08.2020, the appellant contacted his uncle who informed about the Police complaint (Ex.P1), hence, the appellant and the victim came to the Police Station on 24.08.2020 morning. The victim secured and sent for medical examination, thereafter, produced before the Magistrate, 164 statement (Ex.C1) recorded which confirms forcible abduction and penetrative sexual assault committed by the appellant. The appellant was arrested and sent for medical examination. PW14 visited the scene of occurrence, examined the victim,



her parents/PW2 & PW3, relatives and neighbours, recorded their statements and in presence of witnesses, prepared Observation Mahazar, Rough Sketch near the victim's house as well as near Mariyamman Temple where they stayed. The victim's age certificate (Ex.P6) collected from PW9/VAO confirmed that the victim was a minor and her date of birth was 06.01.2004, thereafter, Section Alteration Report (Ex.P14) filed. On collection of materials including the medical records (Exs.P8 & P9), charge sheet filed before the trial Court. During trial, PW1 to PW15 examined and Exs.P1 to P14 marked. On conclusion of trial, the trial Court convicted the appellant and acquitted A2.

11.He further submitted that the victim in her 164 Cr.P.C (Ex.C1) statement and in her evidence before the trial Court deposed about appellant's forcible abduction and committing penetrative sexual assault during the elopement period. On the date of occurrence, the victim was a minor and her date of birth if 06.01.2004 is proved by PW9, Village Administrative Officer and his report (Ex.P6). Though the appellant contented that the victim was forced and compelled to depose against the



appellant by her parents (PW2 & PW3), the trial Court rightly rejected the same and convicted the appellant. Hence, the conviction of the appellant to be confirmed.

12.This Court considered the rival submissions and perused the materials available on record.

13.It is clear that there was love relationship between appellant and victim prior to their elopement. Both are in teens having physical and psychological changes during that age. The parents of the victim (PW2 & PW3) objected and made arrangements for the marriage of the victim with another person against victim's wish. In this case, the victim's date of birth projected is 06.01.2004 aged about 17 years, to prove the same, the prosecution produced Age Certificate (Ex.P6) issued by the Village Administrative Officer/PW9. This certificate was issued based on the Birth Certificate Register maintained in the Government Hospital, Ariyalur where the victim was born. Neither the hospital records of Government Hospital, Ariyalur nor extract of Birth Certificate Register maintained in Panchayat



Taluk Office produced in this case. Admittedly, no such records are maintained by the Village Administrative Officer/PW9. The prosecution case is that the victim studied 8th to 10th in Raj Vignesh School as hosteller and studied 11th & 12th in Joseph Girls Higher Secondary School at Vadugurpet. In the cases of offences against the children, the birth certificate of child or school certificate are required to be produced as per Section 94 of Juvenile Justice (Care and Protection of Children) Act, 2015 and Section 34 of Protection of Children from Sexual Offences Act, 2012. Neither of them followed in this case. In the absence of any such certificates, the Investigating Officer ought to have sent the victim for medical examination for fixing the age by way of ossification test or any other latest medical age determination test. This exercise not carried out by the Investigating Officer is fatal to the prosecution case. Even in the complaint (Ex.P1), there is no mention of victim's date of birth, hence, the victim was a minor at the time of occurrence not proved in the manner known to law.

14.The victim and appellant were in love with each other for more



than two years prior to their elopement is admitted by the victim in her 164 statement (Ex.C1) and before the trial Court in her evidence. The statement and letter dated 24.08.2020 taken from the case records and produced during 313 Cr.P.C questioning confirms that the victim and appellant were in love with each other and they had good relationship. On coming to know about the love relationship, the victim's parents were in search of bridegroom for her daughter against her wish. Since the victim was not willing for forcible marriage, she ran away from the house and it is the victim who called the appellant to take her away from the legal custody of her parents. Even in 164 Cr.P.C statement (Ex.C1), the victim confirms the same. In her earliest statement *i.e.*, when she appeared on 24.08.2020 before the respondent Police and in Ex.C1, there is no mention or any reference about the appellant forcibly kidnapping her and committing penetrative sexual assault. On compulsion of PW2 & PW3 the victim deposed against the appellant as could be seen from the attendant circumstances. In the letter produced by the appellant, the victim gives an undertaking that she would go along with her Aunt Revathy and not interested to stay in reformatory home. The force and compulsion are



deceivable. Such being the position, the prosecution case against the appellant gets magnified as could be seen from 164 statement (Ex.C1) and the earliest statement recorded on 24.08.2020. Thus, the statement of the victim dated 24.08.2020 and Ex.C1 gives importance and reveals true relationship between the appellant and victim.

15.From the narration, it is clear that the victim forced to depose against the appellant and later, neither in the earliest statement dated 24.08.2020 nor in 164 Cr.P.C statement (Ex.C1), the victim stated anything about appellant abducting her and forcibly committing any penetrative sexual assault. The implication of the appellant is at a later stage on the compulsion of her parents (PW2 & PW3) which is fortified by the evidence of the Doctor/PW12 who examined the victim on 24.08.2020 and issued medical records (Exs.P8 & P9), wherein it is clearly recorded no external injuries over external genitalia/thigh, breast or any other parts of the body, hymen found absent. The Doctor/PW12 admits that this can be for various reasons due to physical activities like playing and cycling, hence, it cannot be solely attributed that during the elopement period, the appellant



committed penetrative sexual assault.

WEB COPY

16.In this case, the complaint (Ex.P1) is highly doubtful. PW2 and her husband PW3 confirms it was a written complaint, on the other hand, Ex.P1 is a typed version. The suppression of earlier complaint gains importance coupled with the fact that the appellant produced the statement of the victim recorded on the day (24.08.2020) of her appearance before the respondent Police. The Investigating Officer admits that the victim gave a statement on 24.08.2020. PW2 and PW3 confirmed that the victim left a letter before elopement and the same handed over to the Police but the letter withheld and not produced. The trial Court rejecting to consider the statement, letter and the telephonic conversation between the appellant and victim on technicality, is not proper. The explanation of the appellant and the materials produced to be considered along with the attendant facts of the case. The parents of the victim (PW2 & PW3) confirmed the victim left a note before leaving the home that no one need to worry about her and to search of her, and she does not want to be a burden to anyone. This confirms that the victim was not happy with her parents in making



arrangement for a forcible marriage with another person.

WEB COPY

17.It is to be seen that the appellant himself was 19 years old at the time of alleged occurrence. Both the appellant and victim were in their prime teenage years having physical and psychological changes, got attracted to each other which was opposed by the victim's parents. The appellant was forced to be with the victim, otherwise the victim threatened she would end her life. Left with no other option, the appellant had to accompany the victim to save her from taking any drastic decision. In this case, the Investigating Officer admits there is no witnesses or materials to show there was any marriage between the appellant and victim during the elopement period. The medical records confirms there is no injury and rupture of hymen may be some other reason and it is not a recent one.

18.Considering the fact that the victim's age not proved in the manner known to law; the victim subjected to the penetrative sexual assault is not supported by the medical evidence; the earliest statement dated 24.08.2020 and withholding of the letter of victim handed over to the respondent Police,



Crl.A.No.1337 of 2022

causes serious doubt in the prosecution case, this Court finds the prosecution failed to prove its case beyond all reasonable doubt. Giving benefit of doubt, this Court is inclined to set aside the judgment conviction passed by the trial Court.

19.In the result, this Criminal Appeal stands allowed setting aside the impugned judgment dated 15.09.2022 in Special S.C.No.46 of 2020 passed by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur. Fine amount if any paid shall be refunded. Bail bond if any executed shall stand cancelled.

22.10.2025

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
vv2

M.NIRMAL KUMAR, J.



Crl.A.No.1337 of 2022

vv2

WEB COPY

- To
- 1.The Sessions Judge,
Cuddalore.
 - 2.The Inspector of Police,
Portonova Police Station,
Cuddalore District.
 - 3.The Central Prison,
Cuddalore.
 - 4.The Public Prosecutor,
Madras High Court.

Crl.A.No.1337 of 2022

22.10.2025