



Crl.A(MD)No.365 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.03.2025

Pronounced on : 28.03.2025

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

Crl.A(MD)No.365 of 2021

Vinoth

... Appellant/Sole Accused

Vs.

The State rep. by
The Inspector of Police,
Muthaiahpuram Police Station,
Thoothukudi District.
(Cr.No.116 of 2016)

...Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of the Criminal Procedure Code to call for the entire records connected to the Judgment in Spl.S.C.No.186 of 2019 on the file of the Special Court for Exclusive Trial of cases under POCSO Act, Thoothukudi dated 17.03.2021 and set aside the conviction and sentence imposed against the appellant.



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Crl.A(MD)No.365 of 2021

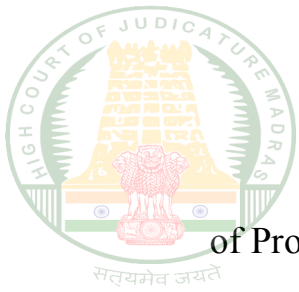
For Appellant : Mr.S.Srikanth
Legal Aid Counsel

For Respondent : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor

JUDGMENT

(Judgment of this Court was delivered by **R.POORNIMA, J.**)

This Criminal Appeal is filed against the conviction and sentence passed against the appellant/Sole Accused in the judgment dated 17.03.2021 passed by the Special Court for Exclusive Trial of Cases under POCSO Act, Thoothukudi in Spl.S.C.No186 of 2019 by convicting and sentencing the appellant for the offence punishable under Section 366(A), 493 of IPC and Under Section 5(1) r/w.6 of Protection of Children from Sexual Offences Act, 2012 and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs.3,000/- in default to undergo rigorous imprisonment for three months for the offences punishable under Section 366(A) of IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.3,000/- in default to undergo rigorous imprisonment for three months for the offence U/s.493 of IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- in default to undergo rigorous imprisonment for one year for the offence u/s.5(1) r/w.6



of Protection of Children from Sexual Offences Act, 2012.

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2. The case of the prosecution in brief is as follows:

(a) The complainant is a resident of Muthaiapuram, Kumaraswamy Nagar, Thoothukudi District. The victim girl 'V' is the second daughter of the complainant. At the time of occurrence, she was 16 years old and studying 12th Standard in M.Thangammalpuram Government Higher Secondary School at Muthaiapuram.

(b) Ten days before the incident, he had received intimation that his daughter was speaking with a boy in front of her school. Therefore, he informed the same to his wife and then stopped her daughter from school.

(c) On 01.03.2016, he and his wife went to work, while his mother and his daughter (victim girl) stayed at home. At about 9.00 a.m., his daughter was about to leave the house with her laptop, when his mother asked where she was going. In response, his daughter said she was going to her friend's house to download songs into her laptop and left the house. But, she did not turn back till 2.00 p.m. Immediately, the complainant's mother informed him over the phone. He returned from Tenaksi and enquired at nearby houses, but his daughter was missing. He



Crl.A(MD)No.365 of 2021

complained with a prayer to trace out his daughter.

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(d) The complaint Ex.P.1 was received by P.W.13 Mr.Chettainathan, Sub Inspector of Police, Muthaiapuram Police Station, Thoothukudi District and he registered the FIR under Ex.P.9 in Crime No.116 of 2016 for “Girl Missing” and sent the original FIR to the learned Judicial Magistrate No.2, Thoothukudi and placed a copy to the Inspector of Police for reference and other copies were sent to the higher officials for further action.

(e) P.W.16 Thiru.Sundar Raju, Inspector of Police, after receipt of the FIR took up the case for investigation. On 02.03.2016, at about 00.30 hours, he went to the place of occurrence and prepared Observation Mahazar-Ex.P.4, Rough Sketch-Ex.P.5, examined witnesses Mr.Sekar, Mr.Kasi and other witnesses and recorded their statements.

(f) To trace out the minor girl, a team was formed under the leadership of Mrs.Jothilakshmi, Sub Inspector of Police. On 06.03.2016 at about 05.00p.m., she brought the victim and the accused from Thoothukudi Bus Stand. The statement of the minor victim girl was recorded and altered the section of law from “Girl Missing” to under section 366(A) of IPC and Section 4 of the POCSO Act, 2012 and prepared the Section Alteration Report under Ex.P.11.



Crl.A(MD)No.365 of 2021

(g) Thereafter, the victim girl was kept in the All Women

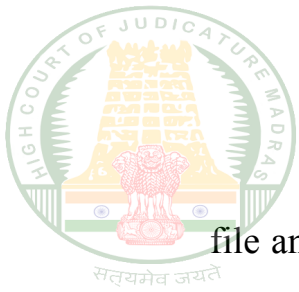
Police Station along with her mother. She was produced before the Fast Track Mahila Court, Thoothukudi on 07.03.2016. The accused was arrested on 06.03.2016 at about 07.00p.m. and sent for remand.

(h) P.W.6 Mrs.Sagayarani, Women Constable-603, produced the victim girl before the Fast Track Manila Court and she was placed in a Children's Home on 07.03.2016.

(i) On 08.03.2016, the victim girl was taken from the children's home and produced before P.W.11, Dr.Muthulakshmi for medical examination.

(j) P.W.11, Dr.Muthulakshmi examined the victim girl. On enquiry, the victim girl informed her that she had sexual contact with a known person. On examination, she found no evidence of external injuries or internal injuries over the genitals. Hymen ruptured Vagina not intact, admits two fingers. Upon urine test, found that she was not pregnant, and she was not affected with HIV or any other disease. The Medical examination report was received on 09.03.2016 under Ex.P.7.

(k) P.W.16, Thiru. Sundarraj, Inspector of Police, on 10.03.2016 sent the case files for further investigation to the All Women Police Station. P.W.17 Tmt.Prema, the Inspector of Police received the



Crl.A(MD)No.365 of 2021

file and took up the case for further investigation. She went to the house of the complainant and examined the witnesses, police officials and Dr Mutulakshmi and recorded their statements.

(l) On 25.05.2016, she sent the accused for medical examination. The accused was examined by Dr.Mathanpandian, P.W.12 on 28.03.2016 at about 10.15 a.m. On examination, he opined that there is nothing to state that he is impotent.

(m) P.W.17 examined Dr.Mathanpandian and Dr.Gajendra Varathan, Assistant Director of the Forensic Department. The smear of the victim girl was sent to the chemical analysis and after receipt of the report, she examined the Assistant Director and recorded his statement. She also received a birth certificate of the victim girl under Ex.P.10 issued by the Sub-Registrar in which her date of birth was mentioned as 06.06.1999. She also examined the PW 15, Thiru. Dhaneshkumar, the registrar recorded his statement.

(n) After completing the investigation, she filed a final report against the accused on 23.06.2016 for the offence under Sections 366 and 493 of IPC and Section 5(1) r/w. 6 of the POCSO Act.

3. On receipt of the records, the Special Court for Exclusive



Crl.A(MD)No.365 of 2021

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Trial of cases under the POCSO Act, Thoothukudi, took up the case in Spl. S.C.No.186 of 2019 and issued summons to the accused. After the appearance of the accused, copies of the entire records were furnished to him free of cost under Section 207 Cr.P.C.

4. After hearing the public prosecutor and the defence counsel, the learned Session Judge framed charges against the accused under Sections 366 and 493 of IPC and Section 5(1) r/w. 6 of the POCSO Act. The charges were read over and explained to the accused. The accused denied the charges and claimed to be tried. Therefore, the case was posted for trial.

5. On the side of the prosecution, P.W.1 to P.W.17 were examined and Ex.P1 to Ex.P.12 were marked. No Material Objects were produced. On the side of the accused, no witness was examined and no document was marked.

6. After a full trial, the trial Court convicted the accused for the offence punishable under Sections 366(A), 493 of IPC and under Section 5(1) r/w.6 of Protection of Children from Sexual Offences Act,

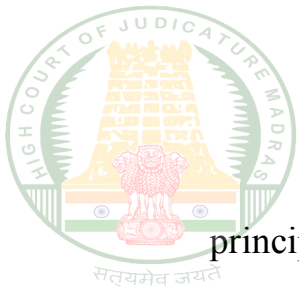


Crl.A(MD)No.365 of 2021

2012 and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs.3,000/- in default to undergo rigorous imprisonment for three months for the offences punishable under Section 366(A) of IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.3,000/- in default to undergo rigorous imprisonment for three months for the offence U/s.493 of IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- in default to undergo rigorous imprisonment for one year for the offence u/s.5(1) r/w.6 of Protection of Children from Sexual Offences Act, 2012, against which, the present Criminal Appeal has been filed on the following among other grounds:-

a) That the trial Court failed to consider the facts and the circumstances of the case wherein the petitioner has been falsely implicated in this case.

b) That the trial Court failed to note that the facts and circumstances of this case convicting the appellant under Sections 366 (A), 493 of IPC. and Section 5 (1) r/w. 6 of Protection of Children From Sexual Offences Act, 2012 is not at all acceptable one and the trial Court had not properly appreciated the evidence of prosecution as well as the defence side witnesses and convicting the appellant on violating the



Crl.A(MD)No.365 of 2021

principles of natural justice.

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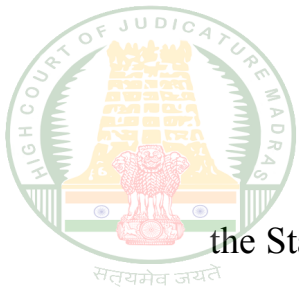
c) That the trial Court failed to note that P.W.2 is none other than the daughter of P.W.1 and P.W.4. The alleged occurrence is shown to have taken place on 01.03.2016 and subsequent dates, but in the F.I.R Ex.P9 would show that there was not mentioned the averments of aggravated penetrative sexual offence, which had been alleged to have committed by the accused. Because of the above-mentioned case, enormous doubt concerning the prosecution case.

d) That the trial Court failed to note that the cross-examination of PW1 mentioned that the appellant and the victim girl had an affair and consent of the victim girl, she went along with the appellant. Even now, the victim girl got married and the appellant was also married. Hence, the facts and circumstances of the case that the conviction against the appellant is disproportionate.

e) That the trial Court failed to note that the prosecution had not proved the offences against the appellant without any reasonable doubt and the benefit of the doubt was not granted in favour of the accused.

Hence, he prayed to set aside the judgement of the trial Court and to acquit the accused from all charges.

7. The learned Additional Public Prosecutor appearing for



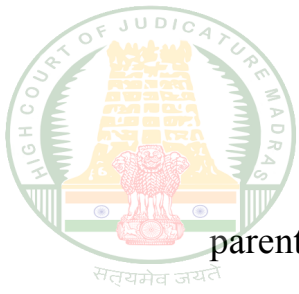
Crl.A(MD)No.365 of 2021

the State argued that the victim girl who is a minor was kidnapped by the accused. He tied thali in a Temple after knowing that the marriage was not a valid one, made the child believe that it was a lawful wedlock and had sexual intercourse with her. He also took her to various places and continuously had sexual contact. The victim spoke about the same before the learned Judicial Magistrate when her statement was recorded under Section 164 of Cr.P.C and also before the Court. The victim's evidence was supported by medical evidence and other witnesses. The judgement of the trial court is proper, and there is no valid ground in this Criminal Appeal, and pray to dismiss the Criminal Appeal.

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

9. Now this court has to decide whether the judgement rendered by the trial Court is proper or liable to be set aside.

10. The learned counsel for the appellant argued that the Victim in her statement before the trial Court stated that she had a love affair with the accused for the past six months, it was known to her



Crl.A(MD)No.365 of 2021

parents. Parents want to stop her education. Therefore, she eloped with the accused on her own accord. He has not kidnapped her, against her wish. The allegations made in the complaint are false and baseless. A false case has been foisted against him and hence, the judgment is liable to be set aside.

11. As per the birth certificate of the victim girl issued by the Sub-Registrar, Thisayanvizhai dated 22.07.2016, at the time of occurrence, the age of the minor girl was 16 years, eight months and 24 days.

12. In her evidence before the trial Court, she categorically stated that on 01.03.2016 at about 9.00 a.m., the accused called her over the phone and asked her to come to Nahar bus stand. She left the house and went with him to Tirunelveli and Madurai. He took her to Meenakshi Temple and tied a thali. Thereafter, they went to Theni and stayed at his uncle's house. On that day, he had sexual intercourse with her. They stayed for four days, the accused continuously had sexual intercourse with her.



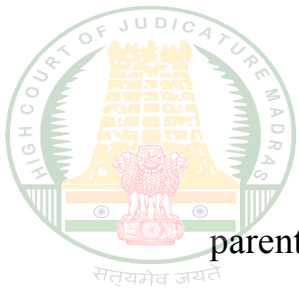
Crl.A(MD)No.365 of 2021

13. Her evidence was supported by medical evidence

Dr.Muthulakshmi who had examined the victim girl on 08.03.2016, issued an accident register under Ex.P7. In the certificate, it was mentioned that the victim girl informed her that she had sexual contact with a known person. Her hymen ruptured, and Vagina was not intact. The accused did not seriously deny the offence but put forth the argument that sexual activity with a minor by the accused is consensual sexual intercourse and does not fall under Section 5 (l) of the Protection of Children from Sexual Offences Act.

14. To protect minor children from exploitation, abuse, and potential harm in India Protection of Children from Sexual offences Act, 2012 was introduced. The Act set the age for consent at 18 years. One should understand that consent for a minor girl's sexual intercourse under the age of 18 years is considered statutory rape and is punishable under law. Therefore, the argument advanced by the learned counsel for the appellant is unsustainable.

15. It is proved that the accused, who was aged about 20 years, at the time of occurrence, took her from the lawful custody of her



Crl.A(MD)No.365 of 2021

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parents to Tirunelveli, Madurai and Theni and thereby, committed the offence under section 366 IPC. He tied a thali made her believe that it was a valid marriage after knowing fully well that she had not attained the legal age of marriage and continuously had sexual intercourse with her, and thereby committed the offence under Section 493 IPC and section 5(1) read with Section 6 of Protection of Children From Sexual Offences Act, 2012. The prosecution therefore, proved the guilt of the accused beyond reasonable doubt.

16. The Trial Court convicted the accused and sentenced him to undergo rigorous imprisonment for life and to pay a sum of Rs.10,000/- in default to undergo rigorous for one year for the offence under section 5(1) r/w. 6 of POCSO Act.

17. Certain amendments were introduced in the Protection of Children from Sexual Offences Act, 2012 during the year 2019. Before the amendment Section 6 the above Act reads as under :

“6. Punishment for aggravated penetrative sexual assault.—

Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous



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Crl.A(MD)No.365 of 2021

imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.”

which was substituted by Act 25 of 2019; w.e.f 16.8,2019 and reads as under :

“6. Punishment for aggravated penetrative sexual assault.—

(1) Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death.”

18. In the case at hand, the occurrence took place on 01.03.2016, before the amendment. The learned trial Court convicted the accused under Section 6 of the post amended Act, however, the accused ought to have been convicted under Section 6 of the old Act.

19. In the amended Act, it is not stated that the amendment introduced operates as retrospective. The general principle of criminal law is that unless explicitly stated, penal provisions are not applied retrospectively.



Crl.A(MD)No.365 of 2021

20. This Court after giving anxious consideration to the above submission and taking into consideration the age of the accused and his family situation, we modify the sentence imposed by the Trial Court as below :

(i) The sentence imposed by the trial Court stands modified from life imprisonment to rigorous imprisonment for a term of ten years with a fine of Rs.10,000/- in default to pay the fine amount, to undergo 6 months rigorous imprisonment for the offence under Section 5(1) r/w. 6 of the Protection of Children From Sexual Offences Act, 2012. For other offences, the punishment imposed by the trial Court is hereby confirmed.

21. In the result,

(i) this Criminal Appeal is partly allowed;

(ii) the conviction under Sections 366(A), 493 IPC and Section 5(1) r/w.6 of POCSO Act, 2012 passed by the learned Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Thoothukudi , dated 17.03.2021, in Spl.S.C.No.186 of 2019 is confirmed but the sentence in Section 5(1) r/w.6 of POCSO Act, 2012 is modified;

(iii) Accordingly, the sentence of Life Imprisonment passed by the Court below is set aside and the appellant is sentenced to undergo



Crl.A(MD)No.365 of 2021

Rigorous Imprisonment for ten (10) years and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) and in default to pay the fine amount, to undergo rigorous imprisonment for six months;

(iv) Insofar as the conviction and sentence for the offence under Sections 366(A), 493 I.P.C. is concerned, the order of the Trial stands confirmed.

(v) Both the sentences shall run concurrently.

(vi) Suspension of sentence granted by this Court, on 22.09.2021 in Crl.M.P.(MD) No.6431 of 2021, stands cancelled.

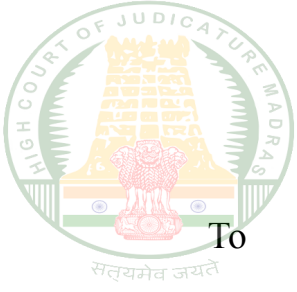
(vii) Since the appellant / accused is on bail, it is directed that the trial Court is directed to secure the appellant/accused and commit him to the prison to undergo the remaining period of sentence.

(viii) The period of sentence already undergone by the appellant / accused shall be set off under Section 428 Cr.P.C.

**(G.J., J.) & (R.P., J.)
28.03.2025**

Index : Yes / No
Internet : Yes / No
NCC : Yes / No

GVN/RM



Crl.A(MD)No.365 of 2021

To

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- 1.The Sessions Judge,
Special Court for Exclusive Trial of cases under POCSO Act,
Thoothukudi.
- 2.The Inspector of Police,
Muthaiahpuram Police Station,
Thoothukudi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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Crl.A(MD)No.365 of 2021

G.JAYACHANDRAN J.
AND
R.POORNIMA, J.

RM

Judgment in
Crl.A(MD)No.365 of 2021

28.03.2025