

CRL.A(MD).No.482 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	:	20.12.2024
Pronounced On	:	30.04.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).No.482 of 2016

S.L.Anish

... Appellant/Sole Accused

Vs.

State Rep. By
The Inspector of Police,
Eraniel Police Station,
Eraniel, Kanyakumari District.
(Crime No.119 of 2008)

... Respondent/Complainant

Prayer : This Criminal Appeal is filed under Section 374(2) of Cr.P.C., to allow this appeal and acquit the appellant from all the charges by setting aside the impugned judgment passed by the learned Sessions and Fast Track Mahila Judge, Kanyakumari at Nagercoil in S.C.No.10 of 2009, dated 21.11.2016.

For Appellant : Mr.M.Pitchai Muthu

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor



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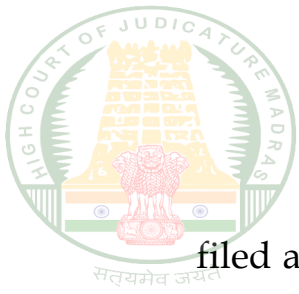
JUDGMENT

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The appellant who is the sole accused in S.C.No.10 of 2009 on the file of the learned Sessions Judge, Mahila Fast Track Court, Kanyakumari District, has filed this appeal challenging the conviction and sentence imposed on him for the offence under Section 366(A) of IPC, vide impugned Judgement dated 21.11.2016.

2. Prosecution Case:-

According to the prosecution, at the time of occurrence, the victim girl was a minor, and her age was about 17 years. On 02.02.2008 at about 08.00 am., when the victim, namely, Brinda, daughter of the complainant/P.W.1, went to study at a private computer center at Karangat, the accused took a bus bound for Nagercoil from the bus stop next to Beyankazi Bridge at 10.00 am. On that day the accused brought the victim to Nagercoil and from there they went to Chennai and stayed. Thereafter, on 18.02.2008, the accused surrendered at Iranial Police station along with the victim girl. Therefore, the Inspector of Police, Iranial Police Station,

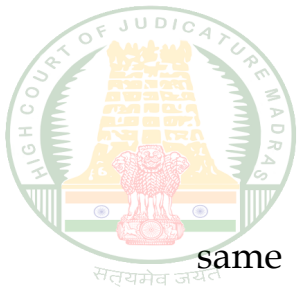


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filed a charge sheet against him for the offence under Section 366 A of IPC. Thereafter, the case in Crime No.119 of 2008 was registered for the offences under Section 366(A) of IPC. The investigating officer conducted the investigation, arrested the accused, collected the materials, and filed the final report before the learned Judge, Fast Track Mahila Court, Nagercoil, Kanyakumari District. The same was taken on file in Special S.C.No.10 of 2009.

2.1.After taking cognizance, the learned trial Judge framed the charges against the appellant for the offence under Sections 366(A) of IPC. On the basis of charges, the learned trial Judge questioned the appellant and the appellant pleaded not guilty and hence, the trial was conducted and the prosecution adduced the evidence of P.W.1 to P.W.9 and marked the documents under Ex.P1 to Ex.P.12.

2.2. The learned trial Judge, considered the same, examined the appellant under Section 313 Cr.P.C., by putting the incriminating materials available against him and he denied the

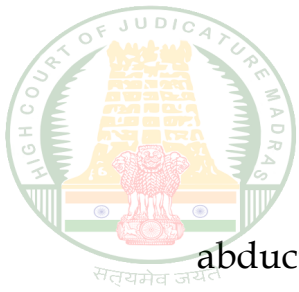


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same and hence, the case was posted for examination for the defence witness. On the side of defence, no witness was examined and no document was marked.

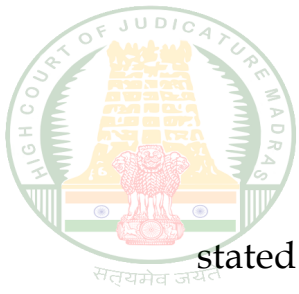
2.3. The learned trial Judge after considering the oral and documentary evidence, convicted the accused under Section 366(A) of IPC, by the impugned order dated 21.11.2016 and sentenced him to undergo 10 years rigorous imprisonment and to pay a fine of Rs. 15,000/- (Rupees Fifteen Thousand only) with one year rigorous imprisonment in case of default for the offence under Section 366(A) of IPC. Aggrieved over the same, the appellant filed this appeal on the grounds stated in the memorandum of grounds of appeal.

3. The learned counsel for the appellant submitted that the learned trial Judge had committed error by proceeding on the basis that the evidence let in by P.W.2 is believable, since she is the victim. In this regard, the learned trial Judge ought to have seen in the self contradictory statements of the victim with regard to the manner of



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abduction, place of abduction, etc. Further, the age of P.W.2 was not brought out clearly by the prosecution throughout the case; there was no mention of the victim's date of birth. P.W.1 and P.W.3 simply stated that the age of P.W.2 was 17. Even in P.W.2's statement recorded under Section 161(3) of Cr.P.C., it is stated that she was aged about 18 years. Further, P.W.8 categorically deposed that they had obtained a certificate showing the "Date of Birth" of P.W.2 from the Headmistress of the school, where P.W.2 studied. But the prosecution has not produced any certificate as a document. The certificates, like the mark sheet of SSLC and Transfer Certificate of P.W.2 were obtained by P.W.7 and P.W.8, the investigation officers, from the said Headmistress. They also were not marked. Therefore, there was no documentary evidence to prove the age of P.W.2, except Ex.P12, a doctor's certificate showing the age of P.W.2. He would further submit that P.W.1, in her complaint, categorically stated that P.W.2 had completed her Higher Secondary Course, and in her statement recorded under Section 161(3) of Cr.P.C., she also repeated the same. But P.W.1 in her evidence, has categorically



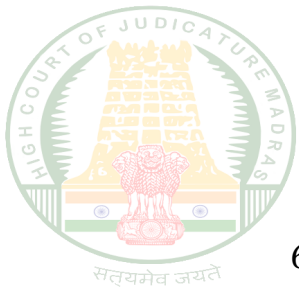
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stated that P.W.2 was studying her higher secondary course.

Thereby P.W.1 has tried to show the age of P.W.2 is below 18 in order to attract the offence under Section 366 (A) of IPC. Therefore, he seeks to allow this appeal.

4. The learned Additional Public Prosecutor submitted that it is true that the victim was abducted by the appellant and taken to various places. In view of the complaint made by P.W.1, the investigating agency arrested the father of the appellant. Therefore, the appellant produced the victim before the police station. He also submitted that the appellant committed the offence under Section 366(A) of IPC, and hence, he did not deserve any sympathy.

5. This Court considered the rival submissions made by the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent and also perused the materials available on record and the impugned order passed by the learned trial Judge.



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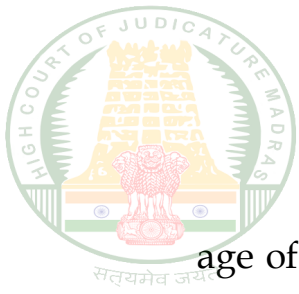
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6. Now the question in this case is whether the conviction and sentence passed against the appellant by the Court below under Section 366(A) of IPC, is in accordance with law?

7. P.W.2 deposed that before the date of occurrence on 02.02.2008, she did not know about the appellant, and the appellant had approached her on 02.02.2008 and expressed his intention to marry her and take her in a bus. She did not know the place. Her mother gave the complaint. The father of the appellant was confined in prison. Therefore, the appellant produced her before the police station. She further deposed that the appellant assured her that he would arrange for her further studies.

8.P.W.9 doctor examined the victim and approximated her age as 18-21, and he also subscribed his reason for the arrival of the said conclusion under Ex.P12.

9.From the reading of the above evidence, it is seen that the

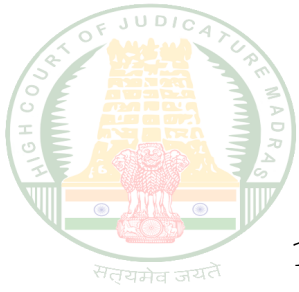


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age of the victim on the date of the occurrence is more than 18. The victim never deposed that he was subjected to any act of seduction to have intercourse with another person. In view of the above in the absence of the ingredients of 366(A) of IPC this Court is unable to concur with the finding of the learned trial Judge that the appellant has committed offence under Section 366(A) of IPC. In view of the above discussion, this Court inclines to allow the appeal and set aside the conviction and sentence passed against him.

10 .Accordingly, the appeal is allowed on the following terms:

10.1.The judgment passed by the learned Judge, Mahila Fast Track Court, Nagercoil, Kanyakumari District, in S.C.No.10 of 2009 dated 21.11.2016, is hereby set aside and the Superintendent of Police, Central Prison, Palayamkottai, is directed to release the appellant forthwith, unless his confinement is necessary in any other cases.



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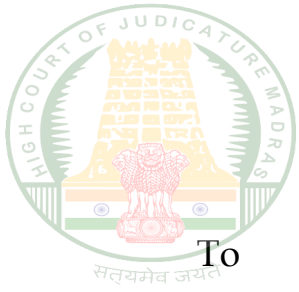
10.2.The appellant is acquitted from all the charges framed against him in S.C.No.10 of 2009, dated 21.11.2016 passed by the learned Judge, Mahila Fast Track Court, Nagercoil, Kanyakumari.

10.3.Fine amount paid by the appellant shall be refunded to the appellant forthwith.

10.4.Bail bond executed by the appellant shall stand cancelled.

30.04.2025

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



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To

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1. The Judge,
Mahila Fast Track Court, Nagercoil,
Kanyakumari District.
2. The Inspector of Police,
Eraniel Police Station,
Eraniel, Kanyakumari District.
3. The Superintendent,
Central Prison,
Palayamkottai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN,J.

sbn

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