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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 20.08.2025

CORAM:

THE HONOURABLE Dr.JUSTICE R.N.MANJULA

Crl.A.(MD)No.401 of 2018

Prabakaran

... Appellant

VS.

State rep. by
The Inspector of Police,
Thiruppanandal Police Station,
Thanjavur District.
(Crime No.195/2016)

...Respondent

PRAYER : This Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code against the Judgement of the learned Sessions Judge (Full Additional Charge), Fast Track Mahila Court, Thanjavur, dated 14.08.2018 in S.S.C.No.16 of 2017.

For Appellant : Mr.S.Deenadhayan

For Respondent : Mr.K.Gnanasekaran
Government Advocate (Crl. Side)

J U D G E M E N T

This appeal has been filed challenging the Judgement of the learned Sessions Judge (Full Additional Charge), Fast Track Mahila Court, Thanjavur, dated 14.08.2018 in S.S.C.No.16 of 2017.

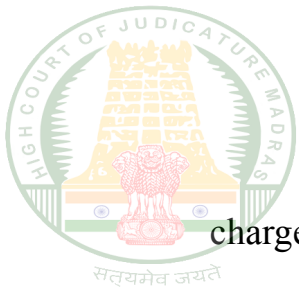


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2. The appellant is the sole accused who has been found guilty by the learned trial Judge for the offence under Section 363 IPC, convicted and sentenced to undergo 5 years RI and to pay a fine of Rs.3,000/-, in default to undergo 3 months SI.

3. The case of the prosecution as per the records is that the victim girl who used to go to School by Tavera Car bearing Registration No.TN 50 Y 8951 driven by the accused did not return from School on 16.07.2016. The accused had kidnapped her with an intention to seduce her to have illicit intercourse with him. She was taken to Ramnad, Thiruchendur and Madurai, made to stay in various hotels, wherein the accused had committed forcible penetrative sexual assault on her.

4. On the complaint given by the father of the victim girl (PW1), a 'girl missing' case has been registered on 17.07.2016 in Crime No.195 of 2016 on the file of the Thiruppanandal Police Station, Thanjavur. Investigation revealed that the accused had kidnapped the victim girl and hence, charges have been altered to Sections 363 and 366 IPC and Section 5(l) r/w 6 of POCSO Act. After conclusion of the investigation, charge sheet has been filed against the accused and after completing the legal mandates of furnishing copies and all other legal formalities,



charges have been framed against the accused for the offence under Sections 363 and 366 IPC and Section 5(l) r/w 6 of POCSO Act. When the accused was questioned, he denied his involvement and claimed to be tried.

5. Before the Trial Court, on the side of the prosecution PW1 to PW18 have been examined and Exs.P1 to P14 have been marked. Material Objects have been marked as M.O.1 and M.O.2. On the side of the accused, no oral or documentary evidence has been marked.

6. After the conclusion of trial, the learned trial Judge found the accused not guilty for the offences under Section 366 IPC and Section 5(l) r/w 6 of POCSO Act and found him guilty for the offence under Section 363 IPC and convicted and sentenced him as mentioned *supra*. Aggrieved over that, the appellant / accused has preferred this appeal.

7. Mr.S.Deenadhayalan, learned counsel appearing for the appellant submitted that the victim girl who was examined as PW13 has not given any incriminating evidence against the appellant, but the trial Court has not considered the same and found the appellant guilty; the learned trial Judge has relied on the evidence of PW6, who is only a

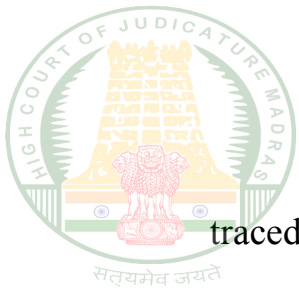


witness for Seizure Mahazar and Confession and convicted the appellant basing upon the same.

8. Mr.K.Gnanasekaran, learned Government Advocate (Crl. Side) appearing for the respondent submitted that the learned trial Judge had considered the evidence in a holistic manner and convicted the appellant rightly; evidence on record shows that it was the appellant who had kidnapped the victim girl and hence, the Judgement of the trial Court needs no interference.

9. The date of birth of the victim girl is 12.09.1999 as per her School records and it is not in dispute. So, the age of the victim girl at the time of the occurrence was 16 years and 10 months and hence, she comes under the definition of 'child' within the purview of Section 2(d) of POCSO Act.

10. The defacto complainant (PW1) who is the father of the victim girl has stated in his evidence that the victim girl was missing on 16.07.2016 evening and he searched in several places and thereafter gave a complaint on the next day. He has further stated that on 23.07.2016, at about 12.00 noon, he was informed by his brother that the victim girl was



traced out. On information, he went to the Police Station and brought the victim girl back. Except the above fact, he has not stated anything as to what he learnt from the Police, about what happened to the victim girl and why she was missing.

11. The mother of the victim girl who has been examined as PW2 has also stated the same facts spoken by PW1. She has further stated that she learnt from her daughter that she travelled with the appellant in a car and stayed in a woman's home and thereafter, they had gone to Thiruchendur Temple.

12. PW3 is an another school girl who used to travel with the victim girl in the same vehicle. PW4 is a hearsay witness. The evidence of PW3 and PW4 has nothing incriminating against the appellant. PW5 is a witness for Observation Mahazar and his evidence cannot have anything about the occurrence.

13. PW6 is a person who stood as a witness for the Confession and Seizure Mahazar. He has stated in his evidence that he heard from PW1 that his daughter was kidnapped and that he had given a complaint. On knowing that the victim girl was at Madakudi, he went there along with



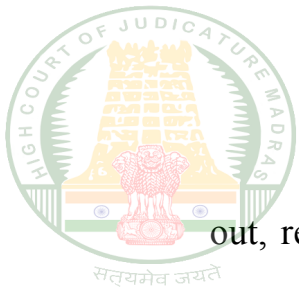
one Muthukumar and identified the victim girl along with the appellant.

But, he has stated in his evidence that no enquiry was made to the appellant in his presence and he has simply affixed his signatures.

14. PW7 is an another witness for the Confession and Seizure Mahazar. He has also stated in his evidence that he along with PW6 have seen the victim and the appellant. Both PW6 and PW7 were treated hostile and their signatures alone have been marked as Exhibits. Though their evidence is corroborated with other materials, their evidence alone is not sufficient to hold the appellant guilty.

15. PW8 is the wife of the appellant and her evidence is also not supportive as she is also a hearsay witness. PW9 Doctor who had examined the victim girl has stated in her evidence that the victim girl has told that she had gone with the van driver on her own volition. The Medical Evidence is not supportive to the allegation of penetrative sexual assault.

16. PW13 is the victim and she has stated in her evidence that on the day of occurrence, she had gone to Melmaruvathur Temple as she was angry with her mother. After the complaint was given, she was traced



out, rescued and handed over to her parents. The cross examination of the victim has not been properly typed and it had omitted the conjunctions in each suggestion.

17. At this juncture, the learned counsel appearing for the appellant submitted that the typographical error cannot be held against the appellant. In fact, when the Court has put certain questions, the victim girl has stated that she was instructed to give statement as prepared by the Police. Even in the statement under Section 164 Cr.P.C. Ex.P11, the victim girl has stated that her statement before the Police is as instructed by the Police. Though in the statement under Section 164 Cr.P.C., the victim girl has stated about various facts involving the appellant, the same were not stated by her in the evidence. Even in the statement under Section 164 Cr.P.C., she was assertive that there was no such penetrative sexual assault had taken place. Whatever may be the case, her evidence does not disclose anything against the appellant. When the material witnesses have turned hostile and did not support the case of the prosecution, it is not possible to convict the appellant only based upon the evidence of the witnesses who are supposed to corroborate and cannot act as material witnesses.



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18. Though it is stated by PW18 Investigation Officer that on obtaining information about the victim girl and her whereabouts, he went and recovered her, the person who had informed was not examined as a witness. The victim is said to have been sent to the School in the van of the appellant and there appears to be no force in taking her. She herself has stated in her evidence that she did not travel with the appellant and she had gone to Melmaruvathur as she was angry with her mother. When the foundational facts are not proved with the evidence of the material witnesses, the Court cannot base its reasoning on mere presumptions and surmises, however strong it might be and hold the accused guilty. As there is no direct evidence available on record to incriminate the appellant, the Court is not expected to act on the weak evidence of other witnesses who themselves have turned hostile. As the prosecution has failed to prove the guilt of the appellant beyond reasonable doubt, the appellant ought to have been acquitted. As the learned trial Judge has not properly appreciated the evidence on record, the Judgement of the trial Court is liable to be set aside.

19. In the result, this Criminal Appeal is **allowed** and the Judgement of the learned Sessions Judge (Full Additional Charge), Fast Track Mahila Court, Thanjavur, dated 14.08.2018 in S.S.C.No.16 of 2017



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is set aside. The appellant / sole accused is not found guilty for the offences under Sections 363 and 366 IPC and Section 5(l) r/w 6 of POCSO Act and acquitted of the charges framed against him. The bail bond, if any, shall stand cancelled and sureties, if any, shall be discharged. The fine amount, if already paid, shall be refunded to the appellant / sole accused. If any compensation awarded by the Trial Court under Section 357 Cr.P.C. or other provision has been paid, the same shall also be refunded.

20.08.2025

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To

1.The Sessions Judge (Full Additional Charge),
Fast Track Mahila Court, Thanjavur.

2.The Inspector of Police,
Thiruppanandal Police Station,
Thanjavur District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Dr.R.N.MANJULA, J.

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