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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-11-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL.A.No.280 of 2022
CNR:{HCMA010300692022}

Case QR

C.Sathish
S/o.Chinnusamy

..Appellant(s)

Vs

State Rep By
Inspector of Police,
Pallipalayam Police Station,
Namakkal District,
Crime No.274 of 2016.

..Respondent(s)

Criminal Appeal filed under 374(2) of Cr.P.C., to call for the records in Spl.C.C.No.17 of 2017 from the file of the learned Sessions (Fast Track Mahila) Judge at Namakkal, Namakkal District and set aside the said judgment dated 16.02.2021.

For Appellant(s): Mr.A.Paranthaman
for Mr.K.Munusamy

For Respondent(s): Mr.R.Thirumoorthy,
Additional Public Prosecutor

J U D G M E N T

The appeal challenges the judgment passed in Spl.C.C.No.17 of 2017, by the learned Sessions Judge, Fast Track Mahila Court, Namakkal, holding the

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appellant guilty of the offence punishable under Section 366 IPC and sentencing him to undergo seven years rigorous imprisonment, and to pay a fine of Rs.1,000/-, and in default to undergo six months simple imprisonment.

2. It is the case of the prosecution that the appellant and the victim were in a romantic relationship; that, on the promise of marriage, the appellant took the victim to the house of his relatives at Bangalore and committed penetrative sexual assault on her; and that thereby, he had committed the offences punishable under Section 366 IPC, Section 9 of the Prohibition of Child Marriage Act, and Section 5(l) read with Section 6 of the POCSO Act.

3. P.W.1, the mother of the victim, lodged a complaint (Ex.P1) on 07.06.2016 stating that her daughter, who was aged about 17 years at the time of occurrence, had been kidnapped by the appellant. Hence, a case in Crime No.274 of 2016 was registered for the offence under Section 366(A) IPC by P.W.15, the Sub Inspector of Police. P.W.16, the Inspector of Police, took up the investigation and prepared the Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P10). He examined the parents and other relatives of the victim; and that thereafter, he handed over the investigation to P.W.17, the Inspector of Police. In the meantime, the victim was secured along with the appellant on 14.06.2016 at about 7.00 a.m., near a bus stand; that thereafter, P.W.17 recorded the statement of the victim and arrested the appellant. She made arrangements

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for recording the statement of the victim under Section 164 Cr.P.C. and subjected the victim to the medical examination. After examining all the witnesses, P.W.17 filed an alteration report (Ex.P12) altering the offence from Section 366(A) IPC to Section 366(A) IPC and Sections 3 and 4 of the POCSO Act. Thereafter, P.W.17 filed the final report against the appellant for the offences under Section 366(A) IPC, Section 9 of the Prohibition of Child Marriage Act and Section 5(l) read with Section 6 of the POCSO Act. The trial Court framed charges against the appellant for the aforesaid offences, and when questioned, he pleaded 'not guilty'.

4. Before the trial Court, the prosecution examined 17 witnesses as P.W.1 to P.W.17 and marked 15 documents as Ex.P1 to Ex.P15. When the appellant was questioned under Section 313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. On the side of the defence, the accused neither examined any witness nor marked any document.

5. The trial Court acquitted the appellant of the offences under Section 9 of the Prohibition of Child Marriage Act and Section 5(l) read with Section 6 of the POCSO Act. However, the trial Court found the appellant guilty of the offence punishable under Section 366 IPC, in lieu of Section 366(A) IPC and imposed the sentence referred to above.

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6. The learned counsel appearing for the appellant would submit that the prosecution has failed to prove the age of the victim in the manner known to law; that the evidence on record would disclose that the victim had voluntarily accompanied the appellant; that the prosecution has not examined the persons with whom the appellant and the victim allegedly stayed at Bangalore; that non examining of those witnesses would be fatal to the case of the prosecution; that there is no evidence to show that the appellant had kidnapped the victim girl; and that, when the trial Court had acquitted the appellant of the offences under Section 9 of the Prohibition of Child Marriage Act and Section 5(l) read with Section 6 of the POCSO Act, it ought not to have convicted him for the offence under Section 366 IPC; and that therefore, prayed for acquittal.

7. The learned Additional Public Prosecutor appearing for the respondent, *per contra*, submitted that the prosecution had established that the victim was a minor at the time of occurrence; that, once the age of the victim is proved, her consent is immaterial; and that therefore, the impugned judgment holding the appellant guilty of the offence under Section 366 IPC does not call for any interference by this Court.

8. I have carefully considered the rival submissions and perused all the relevant materials available on record.

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9. As stated above, the prosecution examined 17 witnesses. P.W.1 is the mother of the victim and the *de-facto* complainant; P.W.2 is the victim; P.W.3 is the sister of the victim; P.W.4 who is a relative of the appellant and a hearsay witness; P.W.5 is a witness to the Observation Mahazar (Ex.P2); P.W.6 is a relative of the victim and a hearsay witness; P.W.7 turned hostile; P.W.8 is a witness to the confession statement of the accused, and his signature in the confession statement was marked as Ex.P3; P.W.9 is the Doctor who examined the victim and made entries in the Accident Register (Ex.P4); P.W.10 is the Head Constable who took the victim before the Magistrate for recording her statement; P.W.11 is the Head Constable who took the victim for medical examination; P.W.12 is the Head Constable who escorted the accused from the prison for medical examination; P.W.13 is the Head Master of the School, who issued the School certificate of the victim (Ex.P5); P.W.14 is the Doctor who issued Ex.P6 Certificate, Ex.P7 Medical report and Ex.P8 Certificate relating to the age of the appellant; P.W.15 is the Sub Inspector of Police, who registered the F.I.R. (Ex.P9); and P.Ws.16 and 17 are the Investigating Officers.

10. The prosecution has proved the fact that the victim went missing from her house on 06.06.2016; and that the complaint was lodged by P.W.1 on 07.06.2016, specifically naming the appellant as the person who had taken her daughter. The fact that the victim had accompanied the appellant is admitted by

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the victim herself in her deposition. The evidence of P.Ws.3, 4 and 5, who are the relatives of the victim, also corroborates the testimonies of P.W.1 and P.W.2 to establish the fact that the victim went missing on 06.06.2016 and was secured only on 14.06.2016. The age of the victim has been established through Ex.P5, the School Certificate, and the evidence of P.W.13, the Head Master of the School. The appellant has not disputed the age of the victim. As per Ex.P5, the victim was born on 24.06.2000 and was aged about 16 years at the time of occurrence.

11. The trial Court acquitted the appellant of the offences under Section 9 of the Prohibition of Child Marriage Act and Section 5(l) read with Section 6 of the POCSO Act, as the victim, in her deposition, neither deposed that the appellant had married her nor alleged that he had committed penetrative sexual assault on her during their stay at his relatives' house at Bangalore. The prosecution has not preferred any appeal challenging the acquittal of the appellant in respect of the aforesaid offences.

12. Though the consent could be inferred from the evidence, such consent is immaterial, since the victim was a minor at the time of occurrence.

13. Section 361 IPC defines kidnapping from lawful guardianship and states that, if a female under 18 years of age is taken out of the keeping of her

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lawful guardian without the consent of such guardian, it amounts to kidnapping. Therefore, this Court finds that no interference is warranted in the finding of the trial Court holding the appellant guilty of the offence under Section 366 IPC. However, the fact that the victim, who was close to attaining 18 years of age, had consented to go and went along with the appellant is a mitigating circumstance. As seen from the judgment of the trial Court, the appellant was in custody from 14.06.2016 to 14.10.206 and thereafter from 17.12.2018 to 05.03.2020, pending trial. The impugned judgment was delivered on 16.02.2021; and that thereafter, the appellant was granted suspension of sentence by order dated 08.04.2022. Thus, the appellant has undergone incarceration for nearly three years in total.

14. Considering the aforesaid mitigating circumstances, this Court is of the view that the period of imprisonment already undergone by the appellant would meet the ends of justice. Accordingly, while confirming the conviction of the appellant for the offence punishable under Section 366 IPC, the substantive sentence of imprisonment imposed by the trial Court is modified to the period of sentence already undergone by him. The fine amount imposed by the trial Court is, however, confirmed. The bail bond, if any, executed by the appellant shall stand discharged.

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15. With the above modification this Criminal Appeal is partly allowed.

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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To

1. The Sessions (Fast Track Mahila) Judge,
   Namakkal, Namakkal District.

2. The Inspector of Police,
   Pallipalayam Police Station,
   Namakkal District.

3. The Public Prosecutor,
   High Court, Madras.

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