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CRL A No. 520 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13-02-2026

PRONOUNCED ON : 20-02-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No. 520 of 2023

Rekha Banu

.. Appellant/A2

Vs

State,
The Inspector of Police,
All Women Police Station,
Erode District.
[Crime No.10 of 2018]

.. Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to set aside the conviction and sentence imposed upon the appellant/A2 in Spl.SC.No.1 of 2019 dated 07.01.2021 on the file of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode.

For Appellant:

Mr.Deepan Uday

For Respondent:

Mr.S.Raja Kumar
Additional Public Prosecutor



Judgment

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The Criminal Appeal challenges the Judgement dated 07.01.2021 passed in Spl.S.C.No.1 of 2019 by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode, convicting the appellant/A2 for the offence under Section 366(A) of the IPC and sentencing her to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for three months.

2.(a) It is the case of the prosecution that the victim, a girl child aged 16 was found missing by her mother the defacto complainant and she lodged a complaint for 'girl missing'; that later the defacto complainant came to know that the first accused in this case had kidnapped the victim and on the promise of marriage, had sexual intercourse with her; that the second accused, the appellant herein had committed the offences under Section 366(A) of the IPC knowing that the victim child would be seduced to illicit sexual intercourse.

(b) On the complaint [Ex.P1] given by the mother of the victim girl [PW1], the Sub-Inspector of Police [not examined] registered an FIR [Ex.P14] in Crime No.10 of 2018, initially for 'girl missing'; that thereafter



the Inspector of Police [PW11] took up the investigation and after examining the witnesses and making arrangements to record the Section 164(5) Cr.P.C statement of the victim girl and subjecting her to medical examination, filed the final report against the first accused for the offences under Section 366(A) of the IPC, Section 6 of the POCSO Act, 2012 and Section 9 of the Prohibition of Child Marriage Act, 2006 and as against the second accused/appellant for the offences under Section 366 (A) of the IPC, before the learned Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode.

(c) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with and the case was taken on file as Spl.S.C.No.1 of 2019 by the learned Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode, for trial. The Trial Court had framed charges against the first accused for the offences under Section 366(A) of the IPC, Section 6 of the POCSO Act, 2012 and Section 9 of the Prohibition of Child Marriage Act, 2006 and as against the second accused/appellant for the offences under Section 366 (A) of the IPC and when questioned, the accused pleaded 'not guilty'.



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(d) To prove its case, the prosecution had examined 11 witnesses as P.W.1 to P.W.11 and marked 20 documents as Ex.P1 to Ex.P20, besides 1 material object as M.O.1. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The accused neither examined any witness nor marked any document on their side.

(e) On appreciation of oral and documentary evidence, the trial Court convicted and sentenced the accused/A2 as stated above. Hence, the accused/A2 has preferred the instant appeal challenging the said conviction and sentence.

3. The learned counsel for the appellant would submit that the evidence discloses that the appellant had not kidnapped the victim girl; that the evidence only suggests that the appellant and the victim were known to each other; that because of the appellant, the victim became acquainted with the first accused; that thereafter she developed her relationship with the first accused and voluntarily went with the first accused; that the cross-



examination of the victim would suggest that when the victim went with the first accused, the appellant was not present and submitted that in any case the sentence imposed on the appellant is disproportionate and prayed for leniency in the sentence.

4. The learned Additional Public Prosecutor, *per contra*, submitted that the appeal filed by the first accused was independently considered by this Court in Crl.A.No.553 of 2021; that the first accused was found guilty of the offence under Section 4(1) of the POCSO Act and sentenced to undergo rigorous imprisonment for twenty years and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for three months; that the evidence suggests that the appellant had introduced the first accused to the victim and that she was also present when the victim was kidnapped by the first accused and therefore, submitted that the impugned judgment is justified and prayed for dismissal of the appeal.

5. As stated earlier, the prosecution had examined 11 witnesses. PW1 is the mother of the victim and the defacto complainant. PW2 is the victim girl. PW3 is the neighbour of the victim girl and known to the defacto



complainant and she had advised the defacto complainant to give a complaint as some of the neighbours had seen the victim girl going with the first accused. PW4 is the Headmistress of the School where the victim studied and had issued the Education Certificate [Ex.P4] in which the date of birth of the victim was shown as 27.07.2002. PW5 is the Sanitary Inspector working in the Corporation, who had marked the birth certificate of the victim [Ex.P5], which also shows the date of birth as 27.07.2002. PW6 is the doctor who had taken x-ray of the victim girl and had marked M.O.1 series and issued the age certificate [Ex.P6]. PW7 is the doctor, who had examined the first accused and had made entries in the Accident Register [Ex.P7] and issued potency certificate [Ex.P8]. He had also made entries in respect of the victim in the Accident Register [Ex.P9]. PW8 is the neighbour of the victim and signed as witness in the observation mahazar [Ex.P10]. PW9 is another neighbour and he is a hearsay witness. PW10 is the doctor who had conducted the medical examination of the victim and had issued the certificate [Ex.P11] and the final opinion [Ex.P12] besides marking the chemical analysis report [Ex.P13]. PW11 is the Inspector of Police, who had conducted the investigation and filed the final report.



6. As stated above, the first accused has been convicted by this Court for the offences under Section 4(1) of the POCSO Act. It appears that thereafter the appellant had filed this appeal. The only allegation against the appellant is that she knew that the victim was a minor and had taken the victim and handed over the victim to the first accused after receiving Rs.10,000/- for the said purpose knowing that the victim would be lured or subjected to forcible sexual intercourse by the first accused.

7. The allegation against the appellant is sought to be established only through the evidence of PW2, the victim. As stated above, the complaint was lodged and was registered for 'girl missing'. The prosecution has not adduced any other evidence to establish that the appellant was seen with the victim girl on the day when she left the house. Therefore, as stated above, the prosecution case as against the appellant's case rests only on the victim's evidence.

8. It is the version of the victim that the victim was upset with her parents and used to be friendly with the appellant; that the victim used to stay sometimes in the house of the appellant; that on one occasion when the



victim went missing and it was found that she was staying with the appellant, the Inspector of Police on the complaint, had advised the victim not to be associated with the appellant; that the appellant was in the habit of talking to men through FaceBook, WhatsApp and other social media Apps; that on 28.04.2018 when the victim's mother had gone out of the house to attend a funeral, the appellant took her to Erode Bus stand and handed over her to the first accused; that the first accused thereafter told the victim that the appellant received Rs.10,000/- for the said purpose; that at that time the first accused had also given a gold ring to the victim; that the appellant had taken the said gold ring also. The cross-examination of the victim by the defence counsel is more in the nature of suggesting that the appellant was not instrumental for their relationship and the victim had independently come in contact with the first accused and went along with him.

9. The victim's evidence in so far as the role played by the appellant is found to be reliable and nothing has been elicited in the cross-examination to suggest that the appellant had not committed the offence under Section 366(A) of the IPC. Though it is suggested in the cross-examination that the victim was born on 27.07.2002, the victim had repeatedly asserted that she



was born only on 21.07.2000. However, the certificate filed by the prosecution only suggests that she was born on 27.07.2002. Even assuming that she was born on 27.07.2000, on the date of alleged occurrence, she was still a minor. Therefore, this Court is of the view that the judgment of conviction rendered by the trial Court, cannot be faulted.

10. However, considering the fact that according to the victim, she was three months short of 18 years and the evidence suggests that she had not only gone with the first accused at the instance of the appellant, but, she herself knew the first accused, this Court is of the view that interest of justice would be met if the sentenced imposed on the appellant is reduced to one year imprisonment.

11. Accordingly, the Criminal Appeal stands partly-allowed and it is ordered as follows:

(i) The conviction imposed upon the appellant/A2 by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode, vide judgment in Spl.S.C.No.1 of 2019 dated 07.01.2021, for the offence under Section 366(A) of the IPC, is confirmed.



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(ii) However, the sentence imposed by the trial Court for the said offence i.e., three years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months, is **reduced** to *one year rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months.*

(iii) The fine amount already paid, if any, shall be adjusted against the fine amount imposed now.

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

20-02-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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To

1. The Sessions Judge,
Magalir Neethi Mandram (Fast Track Mahila Court), Erode.

2. The Inspector of Police,
All Women Police Station,
Erode District.

3. The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN J.

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**PRE-DELIVERY JUDGMENT IN
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