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CRL.A.No.1258 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2026

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THE HON'BLE MR JUSTICE M.NIRMAL KUMAR

CRL.A.No.1258 of 2022

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..Appellant(s)

Vs

The Inspector of Police
AWPS,Denkanikottai,Krishnagiri district
Crime no.1/2019

..Respondent(s)

Prayer:- Criminal Revision Appeal is filed under Section 374 (2) of Cr.P.C.,
pleaded to call for the entire records in connection with the Spl.SC.No.23 of
2019 on the file of the Learned Sessions Judge, Fast Track Magalir
Neethimandram, Krishnagiri,Krishnagiri District and set aside the judgment
dated 28.09.2022.

For Appellant(s): Mr.E.Kannadasan

For Respondent(s): Mr.S.Udayakumar,
Government Advocate (Crl. Side)

JUDGMENT

The appellant / accused was convicted by the learned Sessions Judge,
Fast Track Mahila Court, Krishnagiri (Trial Court) in Spl.S.C.No.23 of 2019 by
judgment dated 28.09.2022 and sentenced to undergo four years rigorous



imprisonment and to pay a fine of Rs.1,000, in default, three months rigorous imprisonment for offence under Section 366 of I.P.C. and two years rigorous imprisonment and to pay a fine of Rs.2,000/- in default three months rigorous imprisonment for offence under Section 9 of Prohibition of Child Marriage Act, 2006 and ten years of rigorous imprisonment and to pay a fine of Rs.2,000/- in default six months rigorous imprisonment for offence under Section 5(1) r/w Section 6 of Protection of Children from Sexual offence Act. Challenging the same, the present Criminal Appeal is filed.

2.The case of the prosecution is that the victim in this case, who was aged about seventeen and half years, was studying B.A. English Literature, first year at Santhiya Government Girls College, at Krishnagiri and her date of birth is 28.07.2001. On 21.01.2019, after Pongal holidays she had gone to the college. The mother of the victim used to call the college professor and hostel warden to find out her daughter's safe travel and well being. Likewise, on 21.01.2019, she had called the school professor and she was informed that her daughter not came to college. Thereafter, made enquiry in the village and the mother of the victim was informed that appellant had come to the bus stand, got into the bus and followed the victim and thereafter the victim was unable to be traced. Since it is a village area, the minor victim girl missing was not known to anyone except for P.W.1's brother-in-law her sister's husband. Thereafter, P.W.3 college and hostelmate of the victim, who had gone along with her, was



enquired and she informed about the appellant coming there in the bus stand along with two others and thereafter victim went and spoke to the appellant. The appellant is two house next to the victim's house and appellant's brother was called, enquired and later warned to produce victim without delay and later complaint lodged to P.W.25 on 25.01.2019. On 26.01.2019 the victim and the appellant came in a bus from Ooty and reached Thenkanikottai bus stand where they were identified. Victim was secured and the accused arrested in presence of witness. Victim was thereafter referred to the casualty Doctor P.W.23 at Government Hospital. P.W.23 examined her and thereafter referred her to the Gynaecologist P.W.22, who examined and confirmed Hymen found not intact and gave opinion that penetrative sexual assault cannot be ruled out. After the arrest of the accused he was produced for medical examination, P.W.11 examined the appellant and issued potency certificate. P.W.21, Head Master of St.Joseph Higher Secondary School, Thenkanikottai examined who produced study certificate to confirm date of birth of the victim as 28.07.2001. P.W.1 mother of the victim and P.W.2 victim both produced before magistrate and 164 statement recorded. The investigating officer visited the scene of occurrence collected documents recording statement of witnesses and thereafter filed alteration report on 26.01.2019 altering the Sections from 366 I.P.C to 5(l) r/w 6 of POCSO Act, 2012 and another alteration report on 01.10.2019 to offence including Section 366 I.P.C, Section 9 of Prohibition of Child Marriage Act, 2006 and Section 5(l) r/w 6 of POCSO Act, 2012. On conclusion of

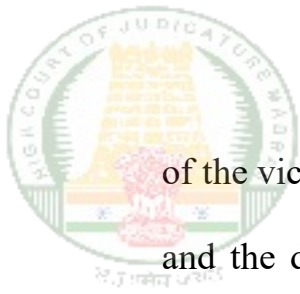


investigation charge sheet filed before the trial Court. P.W.1 to P.W.25 examined Ex.P.1 to Ex.P24 marked. On conclusion of investigation the trial Court convicted the appellant as above.

3.The learned counsel for the appellant submitted that in this case at the time of occurrence, the appellant was of 24 years age just completed his Engineering course. The appellant and the victim are neighbours. They were in love affair for quite sometime. The victim aged about seventeen and half years, was forced to have a marriage with the defacto-complainant's sister-in-law's brother against the wish and liking of the victim but she was forced. The victim informed the same to the appellant and it was the victim who forced the appellant to take her which appellant refused. The victim and appellant went to temple and to other places to have a change of place and mind which is now projected as though the appellant forcibly kidnapped the victim and took her to a Marudhamalai Murugan Temple and tied Thali and thereafter took her to Ooty and committed penetrative sexual assault during the period 22.01.2019 to 25.01.2019. He further submitted that in this case, the victim travelling and staying in Ooty, no evidence or materials produced. On the other hand, the prosecution examined P.W.16 lodge Manager and produced Ex.P10 receipt of entry register maintained at Murugan Lodge to confirm that the appellant and victim stayed together in that lodge and at that time the appellant committed penetrative sexual assault. The admitted facts of the prosecution is that on



21.01.2019, the victim and appellant stayed in Coimbatore Bus stand and next day morning they went to Maruthamalai Murugan Temple where the appellant tied Thali and thereafter they left to Ooty and stayed there from 21.01.2019 to 25.01.2019. In Ex.P10/Register it is recorded that on 21.01.2019 the appellant stayed in Sri Murugan Lodge in room No.109. How many days the appellant stayed with another person, nothing recorded. Further, Ex.P.10 pertains to Murugan Lodge at Maruthamalai Adivaram, None of the person stayed with appellant. On the other hand, the specific case is that they stayed in Ooty and no evidence produced. Thus the appellant and the victim never stayed in any lodge in Ooty and committed penetrative sexual assault. He further submitted that in this case, the date of birth of the victim shown as 28.07.2001. As per Ex.P14, P.W.1's contention is that her daughter was seventeen and half years few months short of attaining majority as per Ex.P1. Admittedly, the victim completed the school and thereafter joined college in Santhiya Government Girls College, at Krishnagiri and she was studying there. No witness from college and no documents produced from college to show the exact date of birth of the victim. On the other hand, in this case, the further investigating officer failed to produce the date of birth certificate issued by the Municipal / Revenue authorities. This questioned to the Investigating Officer who confirms that she had not collected any documents from the college or from Municipal authorities. The production of date of birth certificate from the appropriate authority would be necessary in this case for the reason that P.W.1, the mother



of the victim admits her two children born in the mother's house at Ramar Kovil and the delivery took place in the house. Hence, registration of the birth and production of birth certificate is imperative. On the contrary P.W.4, the brother of P.W.1, stated that P.W.1's daughter born in Anjetti Hospital.

4.The learned counsel further submitted that in this case, since the victim and appellant belong to two different communities there was objections and love affair between them magnified and projected as though the appellant kidnapped the victim, took her to Ooty and committed penetrative sexual assault. The victim, when appeared before the Police, immediately referred to the Government Hospital, Thenkanikottai. P.W.23 the casualty Doctor examined the victim and issued AR copy Ex.P16, but no external injuries recorded. P.W.21 Gynaecologist who examined the victim on the same day in her report Ex.P.17 and Ex.P18 gave opinion that though forensic informs negative spermatogonia but penetrative sexual assault cannot be ruled out. This is primarily on the finding that hymen not intact. In this case, all the witnesses are from one family and interested witnesses. The lodge Manager P.W.16 except for producing the ledger not identified the appellant. Thus, the prosecution miserably failed to prove that the victim was minor and further victim was kidnapped and taken to lodge where the appellant committed penetrative sexual assault, all not proved.



5.He further submitted that in this case, P.W.3, the college and hostelmate of the victim clearly stated in her evidence, it is the victim who informed her that she wanted to go and speak to the appellant and left the bus stand. This confirms that the victim and the appellant had a love affair which had been now turned against the appellant. But the trial Court not considered the above facts and wrongly convicted the appellant. In support of his submissions, the learned counsel for the appellant relied on the decision of this Court in the case of ***Vijayakumar v. The Inspector of Police, AWPS Jayankondam, Ariyalur District in Crl.A.No.384 of 2023 dated 02.02.2026*** wherein this Court on a similar circumstances found that the education certificate has been produced from the school where the victim studied and not from the college at the relevant point of time and the Headmaster in the school had admitted that he had not verified the birth certificate as recorded in the school register. Here in this case, when P.W.1 mother admits that the victim born in the house of grandmother and she is illiterate and not registered the birth, it is imperative to produce the age certificate from the college as recorded in the register. In view of the above, the conviction of the appellant is liable to be set aside.

6.The learned Government Advocate (Crl. Side) appearing for the respondent Police strongly opposed the appellant's contention and submitted that in this case, the defacto-complainant's daughter was studying B.A. English Literature, first year at Santhiya Government Girls College, at Krishnagiri, and



staying in hostel at Krishnagiri. After pongal holidays, the victim left to college on 21.01.2019 at about 5.30 a.m. Later, when the defacto-complainant called the college lecturer to speak to her daughter, the defacto-complainant was informed that her daughter had not come there. P.W.3 Pachiamma a collegemate and hostelmate, who travelled on the same day along with the defacto-complainant's daughter, on enquiry, informed that the victim went to appellant and left the place. The appellant was staying two houses next to the defacto-complainant and thereafter defacto-complainant made enquiries and found that the appellant was also missing. Since, at the time of missing the victim was seventeen and half years old, an immediate complaint would give adverse publicity to the victim's name. Hence, she searched for her daughter in various places and finally on 25.01.2019 lodged a complaint to the respondent. On receipt of the complaint registered, a case in Cr.No.1 of 2019 under Section 366 I.P.C. After registration of the case they searched for the appellant and the victim. In the meanwhile on getting information that the victim and the appellant returning back to Thenkanikottai, the respondent Police on 26.01.2019 were keeping watch in Thenkanikottai bus stand, found the victim and the appellant alighting from the bus. In the presence of witnesses, the victim was secured and appellant arrested. Appellant gave a confession stating that on 22.01.2019, he followed the victim to Hosur bus stand and called her and later took her in a bike on the promise to drop her in the college. But taken her to Coimbatore and on 21.01.2019 at about 4.30 a.m. he had taken the victim to



Maruthamalai Murugan Temple and tied Thali and they stayed in Coimbatore, then, taken her to Ooty. During this period the appellant committed penetrative sexual assault on the victim. Thereafter, the victim produced before the Doctor for medical examination. P.W.23 the casualty Doctor examined the victim and referred her to Gynaecologist P.W.22 who examined the victim. The accused produced for medical examination and P.W.11 examined the accused gave potency certificate. The Doctors gave Ex.P.16, Ex.P.17 and Ex.P.18 medical reports. The victim's statement was recorded. She was produced before the Magistrate and Section 164 statement Ex.P.3 collected. The Investigating Officer visited the scene of occurrence, prepared observation Mahazar and rough sketch in presence of witnesses, examined the victim's mother, uncle and uncle's relatives and the persons residing in the neighbourhood and recorded their statements. The statement of the Lodge Manager at Maruthamalai recorded and the extract of lodge entry register collected. The victim's medical certificate collected. The Head Master of St.Joseph Higher Secondary School, Thenkanikottai and age certificate of the victim confirmed her date of birth as 28.07.2001. At the time of occurrence victim's age was seventeen years six months, a minor. The medical examination confirmed penetrative sexual assault committed by the appellant and on conclusion of investigation charge sheet filed. During the trial, P.W.1 to P.W.25 were examined and Ex.P1 to Ex.P24 were marked. In this case all witnesses confirmed the prosecution case except for three witnesses P.W.13 to P.W.15 who declared hostile. The victim was



consistent in her statement from the initial stage throughout and she deposed the appellant forcibly taking her in a bike to Dharmapuri from there to Coimbatore and from Coimbatore to Maruthamalai Murugan Temple tied Thali and thereafter he forcibly took her to Ooty and made her to stay in a lodge for three days. During the stay appellant forcibly had physical relationship with the victim. The trial Court, on the evidence of the victim which is corroborated by medical evidence and evidence of other witnesses, had rightly convicted the appellant. Hence, the appeal is liable to be dismissed.

7.Considering the submissions and on perusal of the materials, it is seen that the victim was seventeen and half years studying B.A first year in Santhiya Government Women's College, at Krishnagiri, staying in a hostel. Her date of birth is 28.07.2001. To prove the same, P.W.21 Head Master of St.Joseph Higher Secondary School, examined and he produced Ex.P14, the study certificate. In this case at the time of the occurrence, the victim was studying in Santhiya Government Women's college, Krishnagiri, and she was staying in Government ladies hostel in Krishnagiri. No age certificate from the college produced in this case. The specific contention of the appellant is that the victim was a major and for the purpose of this case she is projected as a minor and admittedly in this case no Birth Certificate produced. P.W.1 the mother of the victim in her evidence confirms that P.W.2 was born in the house of her maternal grand mother at Ramar Kovil. P.W.4 the maternal uncle claims that



the victim was born in Anjetti Government Hospital. In this case, no age certificate have been produced. P.W.21 though produced Ex.P14 which is only

extract, neither the original register nor any other age proof certificate produced.

The further contention of the appellant is that the appellant was an Engineering Graduate aged about twenty-four years. The appellant and the victim living in the same area, two houses away and having love affair and having good relationship between them is not disputed. P.W.3 collegemate who travelled along with the victim confirms that victim informed PW2 that she needs to speak to appellant and she moved out from the bus stand, hence, there is no forcible threat or abduction. It is the victim who voluntarily went to meet the appellant. Thereafter, it has been projected that the victim was forcibly taken in a motor bike from Hosur bus stand, to Dharmapuri, thereafter to Coimbatore by bus and then to Maruthamalai and Ooty. It is specifically questioned with the victim that whether she had shown any restrain or informed anyone during this travel time about her forcible abduction, her answer is categorically no. Thus the victim voluntarily went with the appellant. The prosecution attempted to show that the victim and the appellant stayed in a lodge in Ooty, during that time, appellant committed penetrative sexual assault. But in this case, no document from any lodge in Ooty produced. On the other hand, Ex.P10 produced through P.W.16, the Manager of Sri Murugan lodge. From the extract of entry register, it is seen that in Murugan lodge, name of the appellant and room No.109 booked on 21.01.2019. Though in that register a mobile number



given whether mobile number belongs to appellant or any one, no investigation conducted in this regard. P.W.16 not identified the appellant is the person who took room and stayed with the victim in the lodge. The specific case of the prosecution through and through is that on 22.01.2019 the victim was taken to Marudhamalai Murugan temple and after tying Thali, took her to Coimbatore, and Ooty stayed together and now the appellant claiming to victim that she had become his wife and had physical relationship with the victim becomes doubtful.

8.Added to it, P.W.23 and P.W.22 are the Medical Doctor and Casualty Doctor who examined the victim on 26.01.2019 at about 1.00 p.m. In Ex.P16, it is clearly recorded no external injuries. Thereafter, the victim was medically examined at about 1.30 p.m. by the Gynaecologist PW22 and collected the Ex.P17. It is again confirmed that no external injuries noted and found that hymen not intact. In the final opinion Ex.P.18 the Doctor confirms that the forensic report proved negative for spermatogonia and gave opinion penetrative sexual assault could not be ruled out. P.W.22 was examined and in her evidence she admits the hymen found not intact can be for other reasons. The victim had not shown any resistance during her entire period of travel and stay together with the appellant will confirm that there has been no forcible abduction. In this case it had been projected that the appellant had tied Thali forcibly and committed child marriage. The investigating officer admits that no yellow



thread or anything depicting Thali was seized in this case. P.W.1 confirms that she had gone to the Police station, since she does not know to read and write, her cousin gave a written complaint and signed. But Ex.P1 is a computer typed one. Thereafter, P.W.4 gives an improvised version that initially complaint was written and thereafter it was taken to computer centre and typed. But the original written complaint not produced in this case. Further there had been a considerable delay in lodging the complaint. There are discrepancies in Ex.P1.

9.From the above it is seen that the victim age not conclusively proved and study certificate is not confirmed with other documents. Thus, the victim a college going student had love affair with the appellant. Since the appellant and the victim belong to different community, their family had objections. At the instance of her family members she made a turn around and gave exaggerated and magnified version which causes serious doubt in the evidence of the victim. In the absence of any contradiction, relying on PW2's evidence alone is not proper.

10.In view of the same, this Court set asides the judgment dated 28.09.2022 in Special S.C.No.23 of 2019 passed by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri and the appellant is acquitted from all the charges levelled against him. Bail bond if any executed shall stand cancelled. Fine amount if any paid shall be refunded.



11.In the result, this Criminal Appeal stands allowed.

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24.02.2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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To

1.The Sessions Judge, Fast Track Magalir
Neethimandram, Krishnagiri, Krishnagiri District.

2.The Inspector of Police
AWPS,Denkanikottai, Krishnagiri District.

3.The Public Prosecutor,
Madras High Court.



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M.NIRMAL KUMAR, J.

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24.02.2026