

2022 LiveLaw (SC) 477

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
L. NAGESWARA RAO; B.R. GAVAI, JJ.**

9th May, 2022

**CRIMINAL APPEAL NO.796 OF 2022 (@ Special Leave Petition (Crl.) No. 9698 of 2019)
K DHANDAPANI Versus THE STATE BY THE INSPECTOR OF POLICE**

Protection of Child from Sexual Offences Act, 2012; Section 5,6 - Conviction of accused set aside after noticing that he married the victim and has two children - Court cannot shut its eyes to the ground reality and disturb the happy family life of the appellant and the prosecutrix. We have been informed about the custom in Tamilnadu of the marriage of a girl with the maternal uncle.

(Arising out of impugned final judgment and order dated 13-02-2019 in CRLA No. 12/2019 passed by the High Court Of Judicature At Madras)

For Petitioner(s) Mr. M.P. Parthiban, AOR Mr. A.S.Vairawan, Adv. Mr. R.Sudhakaran, Adv. Ms. Shalini Mishra, Adv. Mr. Vikash G.R., Adv.

For Respondent(s) Dr. Joseph Aristotle S., AOR Ms. Nupur Sharma, Adv. Mr. Shobhit Dwivedi, Adv. Mr. Sanjeev Kumar Mahara, Adv.

ORDER

Leave granted.

The appellant who is the maternal uncle of the prosecutrix belongs to Valayar community, which is a most backward community in the State of Tamilnadu. He works as a woodcutter on daily wages in a private factory. FIR was registered against him for committing rape under Sections 5(j)(ii) read with Section 6, 5(l) read with Section 6 and 5(n) read with Section 6 of Protection of Child from Sexual Offences (POCSO) Act, 2012. He was convicted after trial for committing the said offences and sentenced to undergo rigorous imprisonment for a period of 10 years by the Sessions Judge, Fast Track Mahila Court, Tiruppur on 31.10.2018. The High Court, by an order dated 13.02.2019, upheld the conviction and sentence. Aggrieved thereby, the appellant has filed this appeal.

Mr. M.P.Parthiban, learned counsel appearing for the appellant, submitted that allegation against him was that he had physical relations with the prosecutrix on the promise of marrying her. He stated that, in fact, he married the prosecutrix and they have two children.

The appellant submitted that this Court should exercise its power under Article 142 of the Constitution and ought to do complete justice and it could not be in the interest of justice to disturb the family life of the appellant and the prosecutrix.

After hearing the matter for some time on 08th March, 2022, we directed the District Judge to record the statement of the prosecutrix about her present status. The statement of the prosecutrix has been placed on record in which she has categorically stated that she has two children and they are being taken care of by the appellant and she is leading a happy married life.

Dr. Joseph Aristotle S., learned counsel appearing for the State, opposed the grant of any relief to the appellant on the ground that the prosecutrix was aged 14 years on the date of the offence and gave birth to the first child when she was 15 years and second child was born when she was 17 years. He argued that the marriage between the appellant and the prosecutrix is not legal. He expressed his apprehension that the said marriage might be only for the purpose of escaping punishment and there is no guarantee that the appellant will take care of the prosecutrix and the children after this Court grants relief to him.

In the peculiar facts and circumstances of this case, we are of the considered view that the conviction and sentence of the appellant who is maternal uncle of the prosecutrix deserves to be set aside in view of the subsequent events that have been brought to the notice of this Court. This Court cannot shut its eyes to the ground reality and disturb the happy family life of the appellant and the prosecutrix. We have been informed about the custom in Tamilnadu of the marriage of a girl with the maternal uncle.

For the aforesaid mentioned reasons, the conviction and sentence of the appellant is set aside in the peculiar facts of the case and shall not be treated as a precedent. The appeal is accordingly, disposed of. Pending application(s), if any, shall stand disposed of.

In case, the appellant does not take proper care of the prosecutrix, she or the State on behalf of the prosecutrix can move this Court for modification of this Order.

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