



Crl.A.No.171 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2024

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.171 of 2018

Yuvaraj ... Appellant/Sole Accused

vs.

State Rep. by
The Inspector of Police,
W16, All Women Police Station,
Pulianthope, Chennai. ... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, to call for the entire records in connection with the S.C.No.377 of 2014 on the file of the learned Sessions Judge, Mahila Court (Mahalir Neethimandram), Chennai, and set aside the Judgment dated 21.02.2018.

For Appellant : Mr.C.S.S.Pillai

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor



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JUDGMENT

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This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him vide judgment dated 21.02.2018 in S.C.No.377 of 2014 on the file of the learned Sessions Judge, Mahila Court (Mahalir Neethimandram), Chennai.

2. For the sake of convenience, the parties are hereinafter referred to as per their ranking before the trial Court.

3(i) It is the case of the prosecution that the victim who was aged about 17 years at the relevant point of time and the accused were neighbours; that from October 2011, they were in a romantic relationship and the accused had repeated sexual intercourse with the victim on the promise that he would marry her; that during December 2012, the victim became pregnant; and that PW2 gave a complaint [Ex.P1] to PW12 the Sub Inspector of Police, who registered the FIR [Ex.P14] in Cr.No.5 of 2013 for the offences under Sections 417, 376, 294(b) and 506(ii) of the IPC.



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(ii) PW13, the Inspector of Police, took up the investigation, examined all the relevant witnesses and subjected the victim to medical examination by the Doctor [PW10]. Thereafter, PW13 handed over the investigation to PW14, who continued the investigation and filed a final report against the accused for the offences under Sections 417, 294(b), 506(ii) of the IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012, [hereinafter referred to as 'POCSO Act'] before the learned Sessions Judge, Mahila Court (Mahalir Neethimandram), Chennai.

(iii) The case was numbered as S.C.No.377 of 2014 on the file of the learned Sessions Judge, Mahila Court (Mahalir Neethimandram), Chennai. On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with. The trial Court framed charges under Section 6 of the POCSO Act, against the accused and when questioned, the appellant pleaded 'not guilty'.



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(iv) To prove the case, the prosecution examined 14 witnesses as P.W.1 to P.W.14 and marked 16 exhibits as Exs.P1 to P16. When the accused was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The accused neither examined any witnesses, nor marked any documents.

(v) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt and held the accused guilty of the offence under Section 6 of the POCSO Act and sentenced him to undergo 10 years simple imprisonment and to pay a fine of Rs.10,000/- in default to undergo further period of six months simple imprisonment. Hence, the accused has preferred the appeal challenging the said conviction and sentence.

4. Heard, Mr.C.S.S.Pillai, learned counsel appearing for the appellant/accused, and Mr.E.Raj Thilak learned Additional Public Prosecutor appearing for the respondent/State.



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5. Mr.C.S.S.Pillai, learned counsel for the accused/appellant submitted that though according to the prosecution, the victim was born on 20.03.1996, she stated before the Doctor and in her complaint that she was 19 years old; that the prosecution has not marked the original school leaving certificate and had not examined the Headmistress who had allegedly issued the Transfer Certificate and hence, the age of the victim has not been conclusively established by the prosecution.

(ii) The learned counsel further submitted that PW1 mother of the victim and the PW2 victim herself had stated that the complaint was given only because the accused refused to marry the victim. Subsequently, the victim married the accused. Hence, the learned counsel prayed for acquittal of the accused/appellant.

6(i). Learned Additional Public Prosecutor *per contra* submitted that though it is a fact that PW2 married the accused, that by itself would not absolve the accused of the offences committed by him under the POCSO Act. The prosecution has established the age of the victim by marking the



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Transfer Certificate issued by Government Adi Dravidar Welfare Girls' Higher Secondary School, Kannigapuram, Chennai -12 and the Secondary School Leaving Certificate (SSLC), which were marked as Ex.P2 series.

(ii) The learned Additional Public Prosecutor therefore submitted that the charge that the victim was subjected to sexual intercourse has been conclusively established by the prosecution from the evidence of the Doctor and other records, besides the evidence of the victim. Hence, he prayed for dismissal of the appeal.

7. We have carefully considered the rival submissions and perused all the relevant materials available on record.

8. Admittedly, the victim and the accused were in a romantic relationship. The fact that the victim had sexual intercourse with the accused has not been seriously disputed by the defence. In order to attract the offence under Section 6 of the POCSO Act, the prosecution has to establish that the victim was less than 18 years old.



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9. We find that the prosecution had marked Ex.P2 series through the victim which consists of Transfer Certificate issued by Government Adi Dravidar Welfare Girls' Higher Secondary School, Kannigapuram, Chennai -12 and the Secondary School Leaving Certificate (SSLC). However, this Court finds that only a photocopy of these two documents have been marked. Further, the Headmistress of the said School, who had made entries in the Transfer Certificate has not been examined to establish the source of the information relating to the Date of Birth. We may also note that in the complaint as stated earlier, the victim herself has stated that she is aged 19 years and also the Doctor [PW10] has recorded the age of the victim as 19 years in the Accident Register [Ex.P8].

10. PW1 the mother of the victim has stated in the cross examination that she had given the complaint against the accused only because, the accused wanted to delay the marriage stating that his elder brother had to get married first. The relevant portion reads as follows:

“என் மகளுக்கும் எதிரிக்கும் திருமணம் பேச்சுவார்த்தை நடந்த போது



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எதிரியின் வீட்டார் எதிரியுடைய அண்ணனுக்கு திருமணம் நடந்து முடிந்தவுடன் என் மகளது திருமணத்தை வைத்து கொள்ளலாம் என்று சொல்லியதால் பிரச்சனை ஏற்பட்டுவிட்டது என்றும் அதனால் தான் நான் மேற்படியான புகார் கொடுத்தேன் என்றால் சரிதான். மேற்படி பிரச்சனையால் தான் நான் எதிரி மீது பொய்யான புகார் கொடுத்தேன் என்றால் சரிதான்.”

11. Further, PW2, the victim had stated in her cross-examination as follows:

“இந்த புகார் கொடுத்த பிறகு நானும் எதிரியும் திருமணம் செய்து கொண்டோம் என்றால் சரிதான். எனக்கும் எதிரிக்கும் ஒரு குழந்தை பிறந்து இறந்துவிட்டது என்றால் சரிதான். எனக்கும் எதிரிக்கும் திருமணம் பேச்சுவார்த்தை நடந்த போது எதிரியின் வீட்டார் எதிரியுடைய அண்ணனுக்கு திருமணம் நடந்து முடிந்தவுடன் எங்களது திருமணத்தை வைத்து கொள்ளலாம் என்று சொல்லியதால் பிரச்சனை ஏற்பட்டுவிட்டது என்றும் அதனால் தான் என் அம்மாவிடம் சொல்லி மேற்படியான புகார் கொடுத்தோம் என்றால் சரிதான்.”

Therefore from the deposition of PW2, it is clear that she had married the accused and initially the complaint was lodged for the reason that the accused had earlier refused to marry her.

12. We are conscious of the fact that the subsequent marriage between the victim and the accused by itself cannot exonerate the accused for the alleged offences. As stated earlier, the victim had throughout claimed that she was 19 years old and the prosecution has failed to establish the age of



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the victim by marking the original certificates and by examining the Headmistress who had issued the Transfer Certificate, to prove the basis on which the Date of Birth was recorded. Strangely PW1, the mother of the victim in her deposition has not stated the date of birth of the victim. Further, the prosecution has not established that the accused had sexual intercourse with the knowledge that the victim was a minor.

13. In such circumstances this Court is of the view that the prosecution has failed to establish the offence under Section 6 of the POCSO Act and in any event in light of the admission of PW1 and PW2, this judgment of conviction and sentence, is liable to be set aside.

14. Accordingly, the Criminal Appeal is allowed. The conviction and sentence imposed upon the accused/appellant in S.C. No.377 of 2014 dated 21.02.2018, on the file of the learned Sessions Judge, Mahila Court (Mahalir Neethimandram), Chennai, are set aside. The appellant is acquitted of the charge and is directed to be released forthwith, unless his presence is required in connection with any other case. The fine amount, if



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any, paid by the accused/appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

Index : yes/no
Neutral citation : yes/no
Speaking/Non-speaking order
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SUNDER MOHAN,J.

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Copy to:

- 1.The Sessions Judge,
Mahila Court,
(Mahalir Neethimandram), Chennai
- 2.The Inspector of Police Circle,
W16, All Women Police Station,
Pulianthope, Chennai.
3. The Superintendent of Prisons,
Central Prison, Puzhal, Chennai.
- 4.The Public Prosecutor
High Court of Madras,
Chennai – 600 101.

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