

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.650 of 2015

Selvam @ Ramasamy

.. Appellant

- Vs -

The State rep. by
The Inspector of Police,
Chithode Police Station,
Erode District.
(Cr.No.37 of 2015)

.. Respondent

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Sessions Judge (Fast Track Magalir Court), Erode in S.C.No.19 of 2015 dated 07.09.2015.

For Appellant : Mr.A.K.Kumarasamy

For Respondent : Mr.M.Maharaja
Additional Public

Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by S.Nagamuthu, J.)

The appellant is the sole accused in S.C.No.19 of 2015 on the file of the learned Sessions Judge (Fast Track Magalir Court), Erode. He stood charged for offence under Section 366 I.P.C., Section 9 of the Prohibition of Child Marriage Act, 2006 and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as "POCSO Act"). By judgment dated 07.09.2015, the trial Court convicted him under all the three charges and sentenced him to undergo rigorous imprisonment for 10 years and pay a fine of Rs.10,000/- in default to undergo simple imprisonment for two years for offence under Section 366 I.P.C.; to undergo rigorous imprisonment for two years for offence under Section 9 of the Prohibition of Child Marriage Act, 2006 and to

undergo imprisonment for life and pay a fine of Rs.10,000/- in default to under simple imprisonment for two years for offence under section 6 of the POCSO Act. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

2. The case of the prosecution in brief is as follows:

2.1. In this case, P.W.3 is the victim, a female child. Her date of birth is 30.12.2000. P.Ws.1 and 2 are her father and mother respectively. The occurrence in this case was on 23.12.2014. During the relevant time, P.W.3 was studying 9th standard at the Government Higher Secondary School, Bhavani. She was residing with P.Ws.1 and 2 at Chinnapuliyur village. P.W.3 used to go to her school at Bhavani everyday.

2.2. The accused hails from R.N.Pudur village in the same district. He was a Television Mechanic. He used to visit a temple at Moolapalayam, where P.Ws.1 and 2 also used to visit. In that process, the accused became acquainted with P.Ws.1 and 2. Then, he started visiting the house of P.Ws.1 and 2 at Chinnapuliyur village. In due course, the accused had requested permission from them to stay in their house on account of his work. P.Ws.1 and 2 out of compassion, allowed him to stay in their house. Like this, prior to the occurrence, for about two months, he was staying at the house of P.Ws.1 and 2.

2.3. On 23.12.2014, in the morning, P.W.3 was getting ready to go to school, but it had become already late. Therefore, P.Ws.1 and 2 requested the accused to take P.W.3 in his motorcycle and to drop her in her school. Accordingly, the accused took P.W.3 in his motorcycle.

2.4. The accused, instead of taking P.W.3 to the school at Bhavani, took her to Pollachi to the house of his uncle. He made her to stay at the house of his uncle. On 30.12.2014, he took P.W.3 to a local temple known as Karrupasamy temple and tied thali around her neck, thereby performing a void marriage. Then, he brought her back to the house of his uncle at Pollachi. Two days thereafter, the accused, started having sexual intercourse with her on many occasions.

2.5. P.W.1 on 23.12.2014, found that his daughter did not return from the school in the evening. He went in search of her in the school, at the house of the accused and her place. Neither the accused nor P.W.3 could be found. Therefore, on 10.02.2015, he made a complaint at Chithode Police Station. P.W.16, the then Special Sub Inspector of Police on receipt of the complaint registered a case in Crime No.37 of 2015 under Section 366-I, P.C. Ex.P1 is the complaint and Ex.P14 is the

F.I.R. He forwarded both the documents to Court and the same was received by the learned Magistrate at 08.00 p.m. on 15.02.2015.

2.6. P.W.20 the then Inspector of Police took up the case for investigation. He went to the house of P.W.3 and prepared an observation mahazar and a rough sketch in the presence of P.W.5 and another witness. He examined P.Ws.1 and 2 and recorded their statement.

2.7. When the investigation was in progress, information was passed on to the accused by one of his relatives that on the complaint made by P.W.1, case had been registered against him. The accused informed the same to P.W.3 and then on 14.02.2015, the accused took P.W.3 to an Advocate and after entrusting her to the said Advocate, he escaped. It is stated that the said Advocate produced her before the police.

2.8. According to P.W.20 on 16.02.2015 at 04.30 p.m. he arrested the accused at Chithode before Janani Bakery. He recovered from him, his T.V.S.50 motorcycle bearing registration No.TN 33 BC 3953 in the presence of P.W.7 and another witness. He forwarded him for medical examination and similarly he examined P.W.3 and forwarded her to the hospital for examination. On completing the investigation, he laid chargesheet against the accused.

2.9. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 20 witnesses were examined, 18 documents and 2 material objects were marked.

2.10. Out of the said witnesses, P.Ws.1 and 2 are the parents of P.W.3-the victim girl. They have stated that the accused was staying in their house and on 23.12.2014, at their request, the accused took the deceased in his T.V.S.50 motorcycle to the school, but she did not return from the school in the evening. They have further stated that they went in search of P.W.3 as well as the accused and they could not find them. Finally, according to P.W.1, he made a complaint to the police, upon which the present case has been registered. P.W.3 has vividly spoken about the entire occurrence. According to her on 23.12.2014, the accused took her in his motorcycle under the guise of taking her to her school at Bhavani. But instead of taking her to the school, he took her to Pollachi, made her to stay in the house of his uncle. She further stated that on 30.12.2014 he tied thali around her neck at Karuppusamy temple, thereby performing a void marriage. She further stated that he took her to the house of his uncle and had sexual intercourse with her

repeatedly for several days. She has further stated that on 14.02.2015, she was entrusted to an Advocate by the accused and then the accused escaped from there. She has further stated that the said Advocate produced her before the police. P.W.4, has turned hostile and he has not supported the case of the prosecution in any manner. P.W.5, has spoken about the preparation of the observation mahazar and rough sketch.

2.11. P.W.6 has spoken about the recovery of the motorcycle belonging to the accused bearing Registration No.TN 33 BC 3359. P.W.7 has also spoken about the same fact. P.W.8 the Headmaster of the Government Higher Secondary School, Bhavani where P.W.3 was studying. According to him, as per the school records, the date of birth of P.W.3 is 30.12.2000. Ex.P5 is the certificate issued by him. P.Ws.9 and 10 have turned hostile and they have not supported the case of the prosecution in any manner.

2.12. P.W.11 is the father of the accused and he has not stated anything incriminating against the accused. P.W.12 Dr.Saravana Kumar has stated that he examined the accused on 17.02.2015 at the Government Headquarters Hospital at Erode. He gave opinion that the accused is capable of performing pineal sexual intercourse with a woman. He was fully grown. Ex.P6 is the certificate issued by him. P.W.13 Dr. Thenmozhi has stated that she examined P.W.13 on 17.02.2015 and found that she had completed 14 years of age and not completed 17 years of age. P.W.14 the Constable attached to Chithode Police Station has stated that he took the accused from the jail and produced him before the doctor for examination. P.W.15 the Head Clerk of the Magistrate Court has stated that he forwarded the accused along with a letter as per the orders of the learned Magistrate for examination. He also sent the material objects to the forensic department for chemical examination.

2.13. P.W.16 has spoken about the registration of the case on the complaint of P.W.1. P.W.17 the constable attached to Bhavani Police Station has stated that she took P.W.3 to the doctor for examination. P.W.18 an Expert in forensic science has stated that he examined the vaginal smear and public hair taken from P.W.3. But the examination revealed that there were no spermatozoa found. He has further stated that he examined the blood samples of the accused and also sample semen. But the result was not favourable, at any rate, the opinion given by him has been proved in evidence. P.W.19 Dr.Kavitha has stated that she examined P.W.3 on 16.02.2015 and found that she had symptoms of sexual growth of a 12 year old girl. She found that she had been subjected to sexual intercourse. P.W.20 has spoken about the investigation done and the final report filed by him.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor mark any document on his side. His defence was a total denial. Having considered all the above, the trial Court convicted him as detailed in the first paragraph of this judgment and that is how, he is before this Court with this appeal.

4. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and also perused the records, carefully.

5. Admittedly, P.W.3 was doing 9th standard in the Government Higher Secondary School at Bhavani. According to the Headmaster of the school and according to Ex.P5, issued by the Headmaster, her date of birth is 30.12.2000. The Doctor who examined her to ascertain her age has also opined that she had completed 14 years of age and not completed 17 years of age. Thus, it has been clearly established by the prosecution that as on the date of alleged occurrence viz., 23.12.2014, P.W.3 had not attained 15 years of age and thus she was a child as defined in the POCSO Act.

6. P.Ws.1 and 2 have stated that the accused was allowed to stay in their house for about two months prior to the occurrence. They have further stated that on 23.12.2014, when P.W.3 was getting ready to go to school, since it was already late, they requested the accused to take P.W.3 to the school in his motorcycle. Accordingly, he took P.W.3 in the motorcycle. P.W.3 has also stated so. Thus, P.W.3 was in the custody of the accused on 23.12.2014 when he took her in his motorcycle under the guise of taking her to school. What happened thereafter is exclusively known to P.W.3. P.W.3 has narrated that instead of taking her to the school, the accused took her to Pollachi and made her to stay at the house of her uncle and then on 30.12.2014, he took her to the local temple and tied thali around her neck thereby performing a void marriage and thereafter for several days he had sexual intercourse with her. The evidence of P.W.3 that she was subjected to sexual intercourse is supported by the medical evidence also. The evidence of P.W.3 draws corroboration from the evidence of P.Ws.1 and 2 and the medical evidence. In our considered view, the prosecution has clearly established that the accused kidnapped the child (P.W.3), confined her, performed a marriage in violation of the Prohibition of Child Marriage Act, 2006 and then had aggravated penetrated sexual assault on her.

7. The learned counsel for the appellant would submit that there was inordinate delay in preferring complaint which

creates doubt in the case of the prosecution. It is true that P.W.1 had not made any complaint for more than a month. Complaint was made to the police on 10.02.2015, but on that score, we cannot doubt the case of the prosecution. Both P.Ws.1 and 2 are poor illiterate villagers. The deposition of P.W.1 shows that he has affixed only his left hand thumb impression in the deposition, that means, he does not know to read and write. These poor people who are illiterates would have gone in search of the child desperately. They would have also believed that going to the police may make unnecessary publicity to the incident thereby spoiling the future of the girl. Having searched for such a long time, since they could not find any other alternative, they gave Ex.P.1 complaint on 10.02.2015. Therefore, on the ground of delay in preferring the complaint, we cannot disbelieve the case of the prosecution. Apart from that, there is no other reason to doubt the case of the prosecution.

8. Now turning to the quantum of punishment, the learned counsel would submit that imprisonment for life imposed under Section 6 of the POCSO Act is highly disproportionate to the gravity of the offence. But we find it difficult to accept the said contention. This is a case where a young girl who had not even completed 15 years of age was taken by the accused who was aged 33 years old at the time of occurrence. It is also brought to our notice that the accused is already married. Such an old man had committed this heinous crime of sexually exploiting a child aged 14 years continuously for more than a month. He does not deserve any sympathy from this Court. The punishment imposed on the appellant may be a deterrence for anyone who have any inclination to attempt such kind of heinous crime in future.

9. In the statement of objects and reasons of the POCSO Act itself, the Legislature has stated that sexual exploitation and sexual abuse of children are heinous crimes and need to be effectively addressed. It further stated that the accused in large number are not adequately penalised. It was felt by the Legislature that offence against children need to be explicitly and countered through commensurate penalties as an effective deterrence. To take forward the said object of the POCSO Act, as a measure of deterrence, in our considered view, the trial Court was right in imposing imprisonment for life for the offence under Section 6 of the POCSO Act. Thus, we do not find any reason to interfere with the quantum of punishment imposed on the appellant.

10. In the result, the appeal fails and the same is accordingly dismissed. The conviction and sentence imposed on

the appellant by the learned Sessions Judge (Fast Track Magalir Court), Erode in S.C.No.19 of 2015 dated 07.09.2015 are hereby confirmed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Dixit/kk

To

1. The Judicial Magistrate III,
Erode.
 2. Do Thge Chief Judicial Magistrate
Erode.
 - 3.The Sessions Judge,
(Fast Track Magalir Court), Erode .
 - 4.Do The Principal District Sessions Judge,
Erode.
 5. The The Inspector of Police,
Chithode Police Station,
Erode District.
 - 6.The Superintendent
Central Prison, Coimbatore.
 7. The Public Prosecutor,
Madras High Court.
 8. The District Collector
Erode.
 9. The Director General of Police,
Mylapore, Chennai.
- 1 cc to Mr.A.K.Kumarasamy, Advocate, sr.38591

Cr1.A.No.650 of 2015

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