

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.07.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.A.No.653/2015

Arunachalam

.. Appellant/sole accused

Vs

State Rep by
The Inspector of Police,
Eravancherry Police Station,
Tiruvavarur District.
(Cr.No.9/2014)

... Respondent/Complainant

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Sessions Judge, Magalir Neethimandram, Tiruvarur, made in Spl.S.C.No.5 of 2014 dated 21.07.2015.

For Appellant : Mr.D.Veerasekaran

For Respondent : Mr.M.Maharaja,
Addl. Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellant is the sole accused in S.C.No.5 of 2014 on the file of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruvarur. He stood charged for offences under Sections 450, 376(2)(i) IPC and Section 6 read with 5(j)(ii) of the Protection of Children from Sexual Offences Act, 2012, and Section 376(2)(n) of IPC, alternatively, under Section 6 read with 5(1) of POCSO Act, 2012 and 506(ii) of IPC. By judgment dated 21.07.2014, the trial court convicted the accused for offence under Section 6 read with 5(j)(ii) of POCSO Act, 2012 and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for six months. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

(a) P.W.1, the daughter of P.W.2 is the victim in this case. At the time of occurrence, she was hardly aged 15 years. It is the further case of the prosecution that 5 months prior to 24.01.2014 at 10.00 a.m., the accused trespassed into the house of P.W.2 and without her consent, forcibly, had sexual intercourse with her. On account of the same, according to the case of the prosecution, P.W.1 became pregnant. But, P.W.1 did not inform the same to anybody. P.W.1 was taken to the Government Medical College Hospital, Tiruvarur on 23.01.2014. On examination, P.W.4 Dr.Nithya found that P.W.1 was 26 weeks pregnant. Ex.P.1 is the Accident Register. P.W.1 told that the accused, had sexual intercourse with her 5 months prior to 23.01.2014.

(b) On getting information from the hospital, the then Sub-Inspector of Police, by name, Margret Mary, went to the hospital, recorded the statement of P.W.1, returned to the police station and registered a case at 7.00 a.m. on 24.01.2014 under Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 and Sections 376, 451 and 506(ii) of IPC. Ex.P.8 is the First Information Report. He forwarded both the documents to court which were received by the learned Magistrate at 06.20 p.m. on 24.01.2014.

(c) The case was then taken up for investigation by P.W.8. When the investigation was in progress, on 24.01.2014, P.W.1 delivered a dead female fetus weighing 500 gms. P.W.8 examined P.Ws.1 to 3 and recorded their statements. She has also examined the Doctors. The fetus was sent for DNA examination. But, she could not succeed. Finally, P.W.8 laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 8 witnesses were examined and 14 documents and one material object were also marked.

4. Out of the said witnesses, P.W.1, who is the child, has not stated anything incriminating against the accused. She has stated that she did not even know the accused. She was treated as hostile. P.Ws.2 and 3 have also turned hostile and they have not stated anything incriminating against the accused. P.W.4 Doctor Nithya has stated that on 23.01.2014, she examined P.W.1 and found that she was pregnant by 26 weeks. She has admitted her as inpatient. According to her, P.W.1 told that it was this accused who was responsible for her pregnancy. P.W.5 has stated that on 24.01.2014, P.W.1 delivered a dead female child weighing 500 gms. P.W.6 Doctor Jayakumar has stated that he examined P.W.1 and found that she was aged between 14 and 16 years. P.W.7 has stated that he examined the accused and he

is capable of performing sexual intercourse with a woman. P.W.8 has spoken about the investigation done and the final report.

5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. His defence was a total denial. However, he did not choose to examine any witness nor to mark any document on his side. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant is before this Court.

6. We have heard the learned Counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

7. As we have already pointed out, P.Ws.1 to 3 have turned hostile and they have not stated anything incriminating against the accused. It is true that P.W.1 was pregnant at the time, when she was examined by P.W.4. It is true that she delivered a female fetus on 24.01.2014. But, there is no proof that the appellant is the biological father of the fetus. The DNA examination failed, because, the fetus received by the Forensic Lab was highly decomposed. It is not known as to why it was not preserved properly for the said purpose. Thus, absolutely, there is no evidence at all to prove that the accused had sexual intercourse with P.W.1 and he was only responsible for the pregnancy of P.W.1. But the trial court convicted the accused on the basis of mere surmise. Though, it is true that under Section 29 of the POCSO Act, there can be a presumption that the accused has committed penetrative sexual assault on P.W.1, such presumption cannot be drawn on the basis of mere surmise. Here, absolutely, there is no fundamental facts even to draw the said presumption against the accused. In such view of the matter, we are of the view that the trial court has convicted the accused only on mere surmise. Therefore, he is entitled for acquittal.

8. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant by the accused are set aside and he is acquitted. The bail bond, if any, executed by the appellant, shall stand cancelled. The fine, if any, paid by the accused, shall be refunded to the accused.

Sd/-
Asst.Registrar

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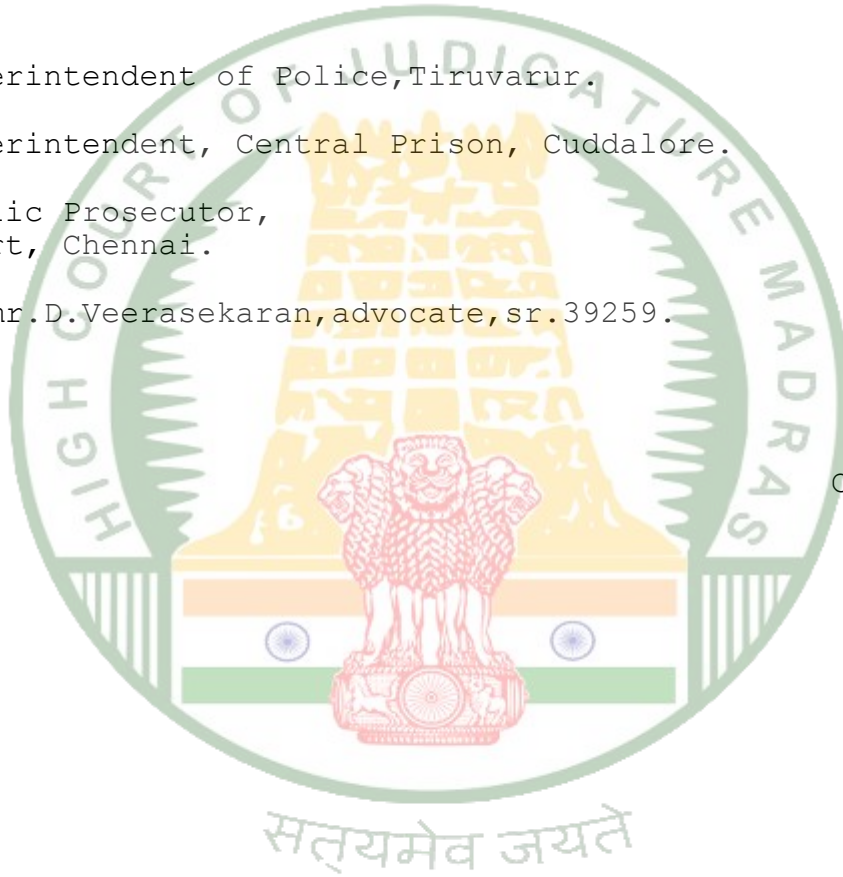
Sub Asst. Registrar

To

1. The Inspector of Police,
Eravancherry Police Station,
Tiruvavarur District.
 2. The Sessions Judge,
Magalir Neethimandram
(Fast Track Mahalir Court),
Thiruvavarur.
 - 3.The District Collector,
Tiruvavarur.
 - 4.The Superintendent of Police,Tiruvavarur.
 - 5.The Superintendent, Central Prison, Cuddalore.
 - 6.The Public Prosecutor,
High Court, Chennai.
- +1 cc to mr.D.Veerasekaran,advocate,sr.39259.

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Judgment in
Cr1.A.No.653/2015



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