



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :18.10.2016

CORAM

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THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.A (MD)No.215 of 2015

K.Manivel

.. Appellant/Sole Accused.

vs.

State
the Inspector of Police
All Women Police Station
Dindigul District
Crime No.35/2013

.. Respondent/Complainant.

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the judgment passed by the Mahalir Neethimandram, (Fast Track Mahila Court), Dindigul, in S.S.C.No.2 of 2014 dated 06.08.2015.

For Appellant :Mr.T.Senthilkumar
For Respondents :Mr.C.Mayilvahana Rajendran
Additional Public Prosecutor

JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY S.NAGAMUTHU, J)

The appellant is the sole accused in S.S.C.No.2 of 2014 on the file of the Sessions Judge, Mahalir Neethimandram, Fast Track Court, Dindigul. He stood charged for offences under Section 376 (2)(1) IPC read with Section 4 of Protection of Children from Sexual Offences Act, 2012 (in short POCSO Act). By judgment dated 06.08.2015, the trial Court convicted him under Section 4 of the POCSO Act and sentenced him to undergo imprisonment for life and to pay a fine of Rs.50,000/-, in default, to undergo simple imprisonment for two years. 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:

P.W.2 is a girl child aged 14 years and 5½ months. She is the daughter of P.Ws.1 and 3. They were all residing at Allakkuvarpatti Village in Dindigul District. During the year 2013, P.W.2 was studying 10th standard in a local School. The accused also belongs to the same village. It is alleged that on 17.12.2013 at 2.00 p.m., when P.W.2 alone was at her house, the accused came to her house, entered into her house, bolted the door from inside, undressed P.W.2 and himself and raped her. P.W.1, on



returning home, found the house bolted from inside. He knocked at the door. Since there was no response, he violently pushed the door. The door opened. When entering into the house, shockingly, he found P.W.2 and the accused standing and both were in nude condition. P.W.1 tried to catch hold the accused. This resulted in a scuffle between P.W.1 and the accused. The accused overpowered P.W.1 and ran away. P.W.1 did not disclose the occurrence to anybody out of shame. Since P.W.2 was inconsolably weeping for two days, according to P.W.1, he decided to make a complaint to the police. Accordingly, he made a complaint on 22.11.2013 at 4.00 p.m., to the Inspector of Police, All Women Police Station, Dindigul.

2.1. P.W.21 the then Inspector of Police, on receipt of the said complaint, registered a case in Crime No.35/2013 under Section 372(2)(h) IPC read with Section 4 of the Protection of Children from Sexual Offences Act, 2012. Ex.P1 is the complaint and Ex.P15 is the FIR. She forwarded both the documents to the Court. Taking up the case for investigation, she went to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of witnesses. She examined P.Ws.1 to 3 and recorded their statements. On 23.11.2013, she forwarded P.W.2 to the Doctor for medical examination.

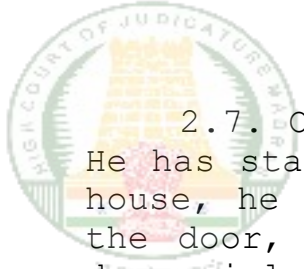
2.2. P.W.17 - Dr.Rama Latha conducted medical examination on P.W.2 on 23.11.2013. She opined that P.W.2 had completed 18 years of age and not completed 21 years of age. Ex.P10 is the Certificate issued by P.W.17.

2.3. P.W.18 - Dr.Balasundari conducted medical examination on P.W.2 on 23.11.2013, at 4.40 p.m. She found no external injuries on the body of P.W.2 including her private parts. She found rupture of hymen in her vaginal cavity. Initially, P.W.18 found from a urine Test that P.W.2 was pregnant. But, later on, ultrasound scan examination revealed that she was not pregnant and her uterus was intact. Ex.P.12 is the certificate issued by her.

2.4. P.W.21 arrested the accused and forwarded him for medical examination. On 29.11.2013, P.W.16 - Dr.Senthilkumar examined him and found that he was sexually potential and matured. Ex.P7 is the certificate issued by him. According to his opinion, the accused was capable of performing sexual intercourse with a woman.

2.5. P.W.21 collected the medical records and examined the Doctors. Finally, she laid chargesheet against the accused on 30.01.2014.

2.6. 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 21 witnesses were examined, 16 documents and 2 material objects were marked. The material objects, namely, M.Os.1 and 2 are the X-rays taken on P.W.2 and



2.7. Out of the said witnesses, P.W.1 is the father of P.W.2. He has stated that at the time of occurrence, when he came to his house, he found the house bolted from inside. When he knocked at the door, there was no response from inside. When he pushed the door violently, it opened. Then, he entered into the house and where, he found the accused as well as P.W.2 standing in nude condition. According to him, he tried to catch him hold, but the accused overpowered him and ran away. He has further spoken about the complaint made by him to the police. P.W.2 is the victim girl. She has vividly stated that on 17.11.2013 around 3.00 p.m, when she was at her house alone, the accused came to her house, bolted the door from inside, undressed her, then he removed his dress and then spoiled her. Then, her father came and knocked at the door. He did not open. P.W.1 himself opened the door and at that time, the accused as well as herself were in nude condition. P.W.3 is the mother of the deceased. She was not an eye witness to the occurrence. She has stated that she heard about the occurrence from P.W.1 as well as P.W.2. P.W.4 is a neighbour of P.W.2. He has stated that on the date of occurrence, there was a commotion at the house of P.W.1 around 3 p.m. When he rushed to the house of P.W.1, he found P.W.1 hitting the accused. Then the accused ran away. P.W.5 is the neighbour of P.W.1. He has also stated the same facts as spoken by P.W.4. P.W.6 is yet another neighbour of P.W.1. She has also spoken the same facts as spoken by P.W.5. P.W.7 is the sister of P.W.3. She has stated that she heard about the occurrence later. P.W.8 is another neighbour of P.W.1. She has stated that she heard about the occurrence from P.Ws.1 and 3. Then, he enquired P.W.2 and P.W.2 told her that she had acquaintance with the accused for about four months.

2.8. P.W.9 is a Police Contable, who took the accused to the hospital for medical examination. P.W.10 is yet another Constable, who took the accused to the Doctor for medical examination. P.W.11 is the Headmaster of the Government Higher Secondary School at Dindigul District, where P.W.2 was studying. According to him, as per the school records, the date of birth of P.W.2 is 02.06.1999. Ex.P3 is the certificate issued by him. P.W.12 has spoken about the observation mahazar and a rough sketch prepared at the place of occurrence. P.W.13 is the Headmaster of Angu Vilas Higher Secondary School, where the accused was studying. According to him, the date of birth of the accused as per the school record was 04.02.1993. Ex.P6 is the certificate issued by him. P.W.14 is a Constable, who took P.W.2 to the Doctor on 12.02.2013 for medical examination. P.W.15 -a Head Constable has stated that he took P.W.2 to the Court of the Judicial Magistrate for recording the statement under section 164 Cr.P.C. P.W.16 - Dr.Senthilkumar has spoken about the medical examination conducted on the accused. According to him, the accused was capable of sexual intercourse with a woman. P.W.17 - Dr.Rama Latha has stated that on examining P.W.2, she found that P.W.2 had completed 18 years of age and not completed 21 years of age.



P.W.18 - Dr.Balasundari has spoken about the medical examination conducted on P.W.2. According to her, there was no external injuries found on P.W.2. However, there was absence of hymen in her vaginal cavity. She has further stated that P.W.2 was not pregnant. P.W.19 has stated that she took P.W.2 to the hospital. P.W.20 is the Judicial Magistrate, No.2, Dindigul. He has stated that he recorded the statement of P.W.2 under Section 164 Cr.P.C. on 16.12.2013. Ex.P14 is the said statement. P.W.21 has spoken about the registration of the case, investigation of the case and the final report filed.

3. When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine any witnesses nor marked any documents on his side. His defence was a total denial. Having considered all the above, the trial Court convicted him under both the charges. That is how, he is before this Court with this appeal.

4. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the respondents and we have also perused the records.

5. In this case, in order to prove that the accused had penetrative sexual intercourse, the prosecution mainly relies on the evidence of P.W.2 - the alleged victim girl in the case. According to her, on the date of occurrence, when she was alone at her house, the accused came to her house, bolted the doors from inside, undressed himself and also undressed P.W.2. She has further stated that then, he spoiled her. She has not stated that the accused had sexual intercourse with her. Absolutely, there is no evidence that the accused had sexual intercourse. She has only stated that the accused spoiled her. Though it is true that the language of the victim is to be understood in such a way, to know as to what really she has conveyed. In the instant case, P.W.2 is not a very young child. She was aged 15 years and she was doing 10th standard in a Higher Secondary School. Had it been true that the accused had, in fact, sexual intercourse with her, she would not have omitted to say so in plain language. Apart from that, according to P.W.1, when he entered into the house on opening the door, he found the accused as well as the victim girl standing in nude condition. He had also not seen the accused and P.W.2 in compromising position. The neighbours, who have been examined, have stated that they heard a commotion from the house of P.W.1 and when they rushed to the house of P.W.1, they found the accused in the house of P.W.1 and P.W.1 was hitting him. Then the accused ran away from the scene of occurrence. From these evidences, it is crystal clear that the accused had entered into the house of P.W.2 to commit penetrative sexual assault. From the fact that he undressed P.W.2 and undressed himself would go to show that he had attempted to commit penetrative sexual assault, but, before actual penetrative sexual assault could happen, the said attempt failed, because of the arrival of P.W.1.



6. The medical evidence spoken by P.W.18 - Dr.Balasundari would go to show that there were no external injuries found on the body of P.W.2 including her private parts. There was no other sign for sexual intercourse. It is true that P.W.18 has stated that there was absence of hymen in the vaginal cavity of P.W.2. But the absence of hymen cannot be attributed only the sexual intercourse. It may be due to various other causes also. P.W.18 also did not find that there was positive evidence that the accused had sexual intercourse with P.W.2. Thus, there is no scope to convict the accused under Section 4 of the POCSO Act. At the same time, he cannot escape from the clutches of law for his act, which squarely falls within the scope of Section 18 of the Act, as an attempt to commit an offence of penetrative sexual assault. Thus, in our considered view, from the evidence available on record, the prosecution has succeeded in establishing the case beyond reasonable doubt that the accused had made an attempt to commit penetrative sexual assault, for which, he is liable to be punished under Section 18 of the POCSO Act.

7. Now, turning to the quantum of punishment, the accused, at the time of occurrence, was hardly aged 20 years. It is reported that he subsequently married another girl. P.W.2 has married to some one else. She has also settled down in her life. The accused has no bad antecedents.

8. From the records, it is also seen that the accused has already undergone imprisonment for more than one year and three months. Having regard to these mitigating as well as aggravating circumstances, we are of the view that reducing the substantive sentence of imprisonment to the period of sentence already undergone and enhancing the amount of fine to Rs.1,00,000/- would meet the ends of justice.

9. In the result, the criminal appeal is partly allowed in the following terms:

(i) The conviction and sentence for the offence under Section 4 of the POCSO Act is set aside, but, instead, he is convicted under Section 18 of the POCSO Act ; The period of sentence is reduced to the period of sentence already undergone by him and the fine amount is enhanced to Rs.1 lakh and in default to pay the fine, to undergo simple imprisonment for four months ;

(ii) It is reported that he has already paid a sum of Rs.50,000/-. Therefore, it is suffice that he pays the balance sum of Rs.50,000/- ; and

(iii) On realising the said fine amount, it is directed that the entire amount of Rs.1 lakh shall be paid as compensation to P.W.2 by the trial Court. If P.W.2 declines to receive the amount or fails to receive the amount within a period of six months from



the date of intimation, the said amount shall be added to the Government Exchequer.

Sd/

Assistant Registrar(T&P)

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Sub Assistant Registrar.

To

1.The Mahalir Neethimandram,
(Fast Track Mahila Court),
Dindigul

2.The Inspector of Police
All Women Police Station
Dindigul District

3. The Superintendent of Central Prison,
Madurai.

4. The District Collector, Dindigul.

5. The Commissioner of Police,Dindigul.

6. The Director General of Police, Chennai.

7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to: The Section Officer,
V.R.Section/Record,
Madurai Bench of Madras High court,
Madurai.

+1CC to M/S.P.Kalaiyarasi Bharathi,Advocate, SR.No. 61300

JUDGMENT MADE
CRIMINAL APPEAL No. (MD).No.215 of 2015
18.10.2016

RR

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