

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.353 of 2015

Ganesan @ Ganapathy

... Appellant/Accused

Vs.

State represented by the
Inspector of Police,
Crime No.252/2013 of
D.Nagar Police Station,
Puducherry.

... Respondent/Complainant

PRAYER: This Criminal Appeal is filed under Section 374 of Cr.P.C. to set aside the Order passed in Special Sessions Case No.3 of 2014 dated 12.03.2015 passed by the Special Judge (under the POCSO Act 2012) Principal Sessions Judge, Puducherry.

For Appellant : Mr.E.Kannadasan

For Respondent : Mr.Balamurugan

Additional Public Prosecutor (Pudhucherry)

JUDGMENT

The sole accused is the Appellant before this Court who was convicted by the learned Trial Court in Special Sessions Case No.3 of 2014 on the file of the Special Judge, under the Posco Act, 2012 at Puducherry dated 12.03.2015 for the offence under section 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 376 of IPC. As the accused found guilty, the learned trial Court ordered that he has to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.5,000/- in default to undergo Rigorous Imprisonment for 1 year for the offence under section 6 of the Protection of Children from Sexual offences Act, 2012. Further he was also sentenced to undergo Rigorous imprisonment for a period of 10 years and to pay fine a sum of Rs.5,000/- in default to undergo rigorous imprisonment for 1 year, for the offence under section 376 of IPC. Feeling aggrieved over the conviction recorded by the learned Trial Court, the appellant has preferred the instant appeal.

2.The case of the prosecution is that on 04.12.2013, the Chair Person of Child Welfare Committee, Puducherry Region, Puducherry lodged a complaint with the Inspector of Police D-Nagar, Puducherry. The said complaint was registered in Crime No.252 of 2013 for the offence under section 376 of IPC and Section 6 of the Posco Act, 2014. The gist of the complaint was that PW-1 was molested by the accused and thereby he committed an offence punishable as stated as above. On receipt of the complaint, the concerned Inspector of Police PW-13 investigated the case and filed final report as against the Appellant/accused. At the conclusion of the trial, the learned Trial Court found the accused is guilty of the offence as stated above and recorded the conviction as stated in supra.

3.It is the specific case of the prosecution that PW-1 namely one Kavitha was aged about 13 years at the time of the alleged occurrence and she was residing along with her mother PW-3. Further, their residence was just opposite to the residence of the Appellant/Accused. As the PW-1 and PW-3 are neighbours to the appellant/accused, they had acquaintance with the appellant/accused. The further case of the prosecution is that the accused/appellant was residing alone as his wife and children were residing in Tirunelveli. He is the Palmira Juice Vendor and was provided food by PW-3 by considering the penury of the appellant/accused.

4.However, in March, 2013 PW-1 was in her house due to stomach pain without attending school. PW-3 was employed at Metupalayam Industrial estate in Puducherry. On the day of the occurrence, she was not in the house but the Appellant/Accused went to the residence of the PW-1 asked her as to why she did not attend the school. PW-1, replied that as she suffered with stomach pain, she was unable to go to school. So, the Appellant/Accused gave a tablet to PW-1 under the guise that her stomach pain would be cured if she takes that tablet. On taking the tablet PW-1 got fainted and when she gained consciousness she felt her body was painful. Thereafter in another day, when PW-1 was in front of her house, she was called by the accused but she refused to go to his house. As the Accused/Appellant threatened PW-1 that he would inform others about the taking of tablet unless she comes to the house of the appellant/accused. So, PW-1 went to the residence of Appellant/Accused and was she provided juice by him. The consumption of the juice led PW-1 to fell into unconsciousness. However, when she gained consciousness, she felt body pain and thereafter also the same thing was repeated by the Appellant/Accused for several times.

5.The further case of the prosecution is that one day PW-1 suffered with stomach pain and was taken to Government Hospital,

Kathirkamam. She was given tablets, but after few days she suffered with vomit and stomach pain and was again taken to the very same hospital. But this time on 25.11.2013, PW-1 was diagnosed that she was pregnant for 8 months. On enquiry with PW-1, it was found that the Appellant/Accused was the cause of the pregnancy. So, the matter was taken up to the Child Welfare Committee concerned and complaint was lodged. Subsequently, pw-1, gave birth of a female child at the hospital. Thereafter the Appellant was arrested and other legal proceedings are initiated and final report was filed against the Appellant/Accused.

6. In order to prove the case, prosecution examined PWs-1 to 13 marked exhibits P-1 to P-22 and produced Mos.1 to 5. The total appraisal of the facts and circumstances, oral and documentary evidence, the learned Trial Court found the Appellant/Accused guilty and imposed the sentenced as stated supra.

7. The learned Counsel for the Appellant/Accused heavily relied on the evidence of PWs -1,3 and 8, he has contended that according to the evidence of the prosecution witnesses, the pregnancy of PW-1 was found and confirmed when she was in her 8th month of pregnancy. So, it is not possible that up to 8 months the pregnancy did not came to light. Moreover, the mother of PW-1 is living with the PW-1 and if at all the PW-1 got pregnant the same could easily be identified by the mother within few months after the pregnancy. But the case on hand is consisted of ironical facts and the same would disprove the case of the persecution and the same would further disclose that the accused is made as a scapegoat and he is no way responsible for the pregnancy of the PW-1.

8. The case of the prosecution is that the Appellant/Accused is the cause for the pregnancy and he committed the offence punishable under section 6 of the Posco Act. Moreover, the evidence of the expert that is PW-12 would prove the guilt of the accused as the DNA samples collected from the PW-1 and the Appellant/Accused are matched with the baby born to the PW-1. So, the learned Advocate Criminal side would submit that the finding of the learned Trial judge is based on the available evidence and the judgment of convictions does not warrant any intervention.

9. I heard Mr.E.Kannadasan, learned counsel for the appellant and Mr.Balamurugan, learned Additional Public Prosecutor (Pudhucherry) for the respondent and the materials available on record are perused.

10. The counsel for the Appellant/Accused would submit that the case of the prosecution is totally unbelievable as the PW-3 mother of PW-1 was not aware about the pregnancy of PW-1 up to the 8 month of pregnancy which itself would clearly show that

the Appellant/Accused is roped into the instant case and he is no way responsible for the pregnancy of PW-1. Since Appellant/Accused is the native of Tirunelveli and was staying in view of employment opposite to resident of PW-1, he has been implicated into the case as no one was available to support him morally. Further, the person analyzed the DNA samples is not a competent person. Hence the DNA report Exhibit P-16, and 17 cannot be relied upon for the basis of conviction.

11. On the other hand the learned Additional Public Prosecutor (Puducherry) would submit that when the DNA samples of PW-1 and the Appellant are tallied with the baby born to the PW-1, then it is a conclusive proof that the Appellant/Accused alone is the cause for the pregnancy of PW-1. Moreover, the evidence of PW-1 is very natural and cogent and in any manner the same cannot be stated as unreliable. Apart from that the object of the Posco act is to safeguard the protection of the girl child, but the object of said act is flouted intentionally. So, the act of the accused is to be viewed seriously.

12. Though, it is contended by the Counsel for the Appellant that it is unbelievable that the PW-3 did not notice the pregnancy of PW-1 up to 8 months. So, the prosecution has come up with false case and the accused is innocent. Whereas the DNA report is not be assailed by the Appellant/Accused. Further, the overall investigation would point out the Appellant/Accused is the cause for the pregnancy along with scientific evidence; no strong point is adduced to discard the prosecution case.

13. Therefore, the appraisal of the total circumstances would no way warrant intervention on the judgment of conviction of the learned Trial Court in any manner. This Court finds no reasonable force in the arguments advanced by the learned counsel for the Appellant/Accused. Hence the appeal fails accordingly dismissed.

Sd/-

Assistant Registrar (CS IV)

//True copy//

Sub Assistant Registrar

vs

To

1. The Inspector of Police,
D. Nagar Police Station,
Puducherry.

2.The Special Judge (under the POCSO Act 2012)
Principal Sessions Judge, Puducherry.

3.The Superintendent,
Central Prison,
Kalapet, Puducherry.

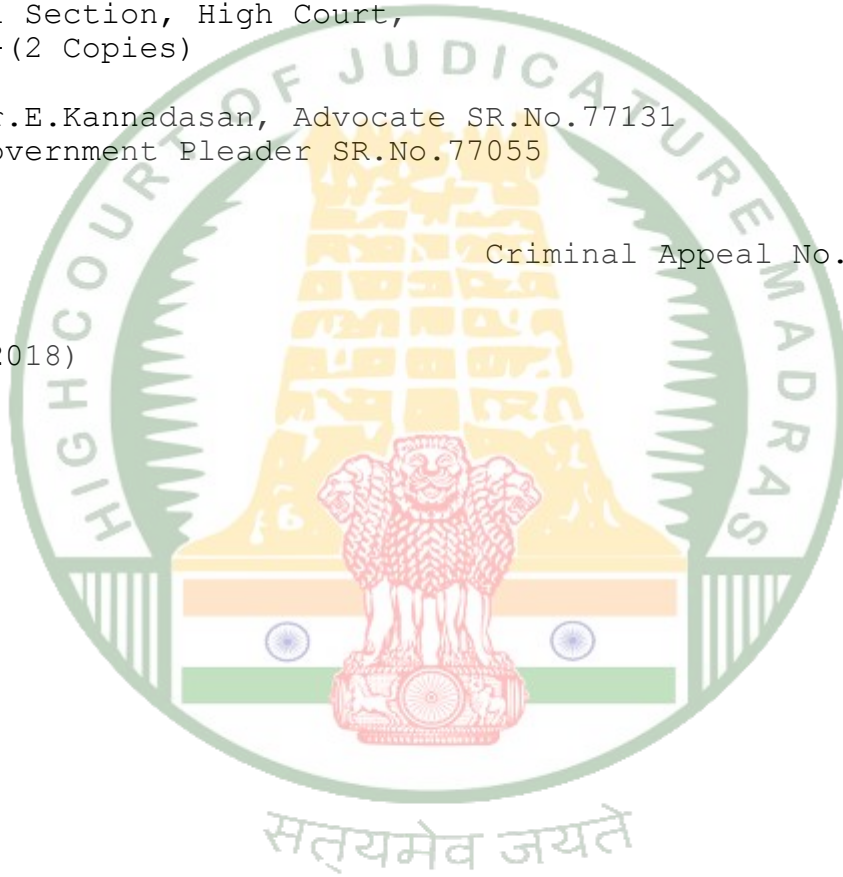
4.The Public Prosecutor, (Pondicherry)
High Court, Madras.

5.The Section Officer,
Criminal Section, High Court,
Madras.-(2 Copies)

+1cc to Mr.E.Kannadasan, Advocate SR.No.77131
+1cc to Government Pleader SR.No.77055

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GJ(CO)
GN(19/01/2018)



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