



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1.A.(MD)No.350 of 2015

Boominathan

... Appellant/Sole Accused

Vs.

State rep. By
The Inspector of Police,
Dindigul All Women Police Station,
Dindigul District
Crime No.10 of 2014

... Respondent/Complainant

Prayer: This Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the judgment dated 15.07.2015 passed in Special Sessions Case No.6 of 2014 on the file of the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Dindigul.

For Appellant : Mr.C.Chirstopher

For Respondent : Mr.C.Mohan,
Additional Public Prosecutor

J U D G M E N T

This criminal appeal has been filed by the appellant, challenging the judgment dated 15.07.2015 in Special Sessions Case No.6 of 2014 on the file of the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Dindigul, holding him guilty of the offence under Section 8 of POCSO Act and sentencing him to 5 years rigorous imprisonment and levying a fine of Rs.50,000/-. The appellant has also been given a default sentence of one year simple imprisonment in the event of his failure to remit the fine. This judgment was rendered on 15.07.2015 and the appellant is in custody ever since.

2.The charge against the appellant is that he committed rape on a 12 year old girl child on 23.04.2014 at around 12 p.m. The appellant was charged under Section 376(2)(i) of I.P.C. and Section 6 of POCSO Act, 2012. In support of the charges, the prosecution examined P.Ws.1 to 15 and marked Exs.P1 to 17. Material objects M.Os.1 to 5 were also marked. On the side of the defence, no witnesses were examined and no exhibits were marked. The court acquitted the appellant of the charge under Section 376(2)(i) of I.P.C.

3. Heard the learned counsel for the appellant as well as the learned Additional Public Prosecutor.

4. The prosecution examined the victim child as well as P.W.4, but for whose timely intervention the situation could have aggravated further. The testimony of the child is natural and convincing. Immediately after the occurrence, the child had narrated the facts to her parents as well as her aunt. P.W.1 father and P.W.7 aunt were examined. That the victim is a child is evident from Ex.P7 certificate issued by P.W.9 Headmistress of the school, in which the victim was studying. The Radiologist P.W.13 also issued Ex.P10 certificate, which indicates that the age of the victim could be between 11 and 14. P.W.15 is the investigating officer. There is no prior enmity between the family of the victim and the appellant. There is absolutely no possibility of any false accusation or implication.

5. After carefully going through the entire evidence on record, I am satisfied that the reasoning adopted by the Court below for convicting the appellant under Section 8 of POSCO Act is correct. The said finding does not call for any interference. However, the issue regarding the quantum of sentence remains to be gone into. The Statute imposes a minimum sentence of 3 years. The maximum sentence is 5 years. The question is whether the appellant should be given the maximum sentence.

6. It is seen that immediately after the occurrence, the accused was severely beaten up by the family of the victim. He was also driven out from the native place. It is submitted by the learned counsel for the appellant that wife of the appellant has suffered paralytic stroke. The appellant has three daughters and one son. The son of the appellant is studying in 7th standard. Even according to the prosecution, there is no other bad antecedent.

7. Admittedly, the appellant was acquitted of the charge of rape. There is no external injury on the body of the victim. There has been no detection of blood or seminal stains on the clothes of the victim. These are the mitigating circumstances for not imposing the maximum punishment. I therefore reduce the sentence of 5 years imposed on the appellant to 3 years. The appellant is virtually without any means. Therefore, if the sentence of fine is maintained as such, he will have to spend one more year as a default sentence. I therefore reduce the quantum of fine from Rs.50,000/- to Rs.1,000/-. The conviction imposed on the appellant is confirmed. Sentence is modified and reduced as indicated above. This appeal is partly allowed.

Sd/-

Assistant Registrar (CSIII)

/True Copy/



TO
WEB COPY

- 1.The Sessions Judge, Mahalir Neethimandram
(Fast Track Mahila Court), Dindigul.
- 2.The Superintendent of Central Prison, Madurai
- 3.The Inspector of Police, Dindigul All Women Police Station,
Dindigul District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+One cc to Mr.C.Christopher, Advocate, SR.No.82497

Copy to:-

The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai

Arul
RL/7C/3P/JC/SAR1/26/10/2017

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