

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No. 12 of 2019
and Crl.MP.No. 287 of 2019

K.Dhandapani

... Appellant

Vs.

The State by
The Inspector of Police,
All Women Police Station (North)
Tiruppur,
Cr.No.11 of 2017.

...Respondent

Prayer: This Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code to call for the records relating to the judgment dated 31.10.2018 made in Spl.SC.No.32 of 2017 on the file of the learned Magalir Neethimandram, Fast Track Mahila Court, Tiruppur.

For Appellant : Mr.N.Manokaran

For Respondents: Mr.R.Ravichandran,
Govt.Adv.(crl.side)

J U D G M E N T

This Criminal Appeal is filed to set aside the judgment dated 31.10.2018 made in Spl.SC.No.32 of 2017 on the file of the Sessions Judge, Fast Track Mahila Court, Tiruppur.

2. The case of the prosecution is as follows :-

The accused was charge sheeted for the offences under Sections 5(j)(ii), (l), (n) r/w.6 of the Protection of Children from Sexual Offences Act, 2012. The minor victim girl was aged about 14years at the time of occurrence, discontinued her studies from IXstd. The victim was residing with her parents. The accused is the uncle of the victim, five months prior to the date of giving statement before the police, the victim girl went to the accused house to fetch water. The accused took the victim inside his house and hugged the victim by enticing the victim that he would marry her and forcibly had sexual

intercourse and several times thereafter. The victim does not disclose about the occurrence to anybody as the accused is going to marry her. On 11.05.2017, the victim vomited and fainted, the mother of the victim immediately took her to a private hospital and the doctor who examined her reported that she was pregnant. Hence, the accused is prosecuted for the offences under Sections 5(j)(ii), (l), (n) r/w.6 of the Protection of Children from Sexual offences Act 2012.

3. After investigation charge sheet was filed in the Special Court on 12.10.2017 and the same was taken up on file in Spl.SC.No.32 of 2012 on the file of Magalir Neethimandram, Fast Track Mahila Court, Tiruppur. After completing all the formalities, the learned Special Judge framed the charges for the offence mentioned supra as against the appellant.

4. In order to prove the guilt of the accused, eight witnesses were examined on the side of the prosecution as PW1 to PW8 and Exs.P1 to P11 were marked and material objects were displayed as MO1 and MO2. No oral and documentary evidence were marked on the side of the accused.

5. After completion of trial and on considering the arguments put forth by the counsel on either side, the trial Court found guilty for the offences under Section 5(j)(ii) r/w.6, 5(l) r/w.6 and 5(n) r/w.(6) of Protection of Children from Sexual Offences Act, 2012, convicted and sentenced to undergo Rigorous imprisonment for a period of 10years along with fine of Rs.10,000/- for each of the above offences, in default of payment of fine the accused has to undergo additional rigorous imprisonment for a period of one year. Feeling aggrieved against the judgment passed by the learned Magalir Neethimandram, Fast Track Mahila Court, Tiruppur dated 31.10.2018 in Spl.SC.No.32 of 2017, the appellant is before this Court.

6. The learned counsel for the appellant would submit that subsequent to the occurrence, the accused married the victim girl itself and got two children. Considering the present situation and also in the interest and welfare of the children and the victim girl, the Court can show some leniency and acquit the accused. On merits, the learned counsel submits that Sections 24 and 25 has not been duly complied with, the non compliance of the mandatory provisions vitiates the case of the prosecution. If the statement of the victim was recorded as contemplated under Section 24, the truth would have come out. Further, the learned counsel submit that the CD has not been marked as Exhibit and it has been exhibited in M.O.1. The MO cannot be read, it can only be visualised, the non compliance of Section 65(B)(4) of the Indian Evidence Act, goes to the root of

the prosecution case. The prosecution failed to investigate the matter in accordance with law. The trial Court also failed to comply with the mandatory provisions and convicted the appellant. The learned counsel once again prayed leniency of this Court to set aside the judgment of conviction recorded by the trial Court.

7. The learned Government Advocate (crl. side) would submit that the prosecution has complied with all the mandatory provisions and there is no violations in the procedures adopted by the prosecution.

8. On a careful reading of entire proceedings and considering the serious nature of offence and Scope of POSCO Act, this Court is not inclined to adjourn or admit this appeal. Since, this Court finds that there is no arguable point in this appeal and this Court decides the appeal on merits at the admission stage itself.

9. In this case, the Magistrate has recorded 164 Cr.PC statement from the victim and the same is also marked as Ex.P10 which clearly shows that the accused has committed the offence as stated supra. At the time of occurrence, the victim is a minor girl and she got pregnant and subsequently, the accused married the victim girl.

10. Heard the learned counsel for the appellant and the learned Government Advocate (Crl.side) and perused the materials available on record.

11. At the time of occurrence, the age of the victim girl is 14years, the birth certificate of the victim has been marked as Ex.P1. The learned counsel for the appellant submits that the complaint has been preferred one year after the date of occurrence and Section 164 statement has been recorded six months thereafter, the mandatory provisions has not been complied with. It is well settled law that the victim girl is a minor girl and offence like this nature, the victim girl cannot come out immediately for the offences committed by the accused and she cannot face the society. In so many cases, it is noticed that the victim girls being minors they could not disclose the incident either to their parents or to their neighbours immediately. Unfortunately, the society has not been developed to the extent to help the victims by encouraging them to file the complaints of this nature. In this case also the victim being a minor and the accused committed the offence, after realising that there is a delay in lodging the complaint, mere delay is not sole ground to discard the evidence of the victim girl. PW2/mother of the victim also clearly stated that her daughter was admitted in the hospital and found to be

pregnant. Subsequently, the victim was enquired by her mother as to who is the reason for her pregnancy. The victim has pointed out the name of the accused, the Doctor who examined the victim has also clearly stated that the victim was admitted in the hospital at the pregnant stage. The evidence of PW1, PW2 and the evidence of PW3/Doctor who treated the minor girl would clearly show that at the time of occurrence the victim is a minor girl, the offence committed by the accused falls under the POSCO Act. The accused denied the offences and challenged the paternity of the child and subsequently, the evidence of PW2 has clearly stated that in the first instance, the accused refused to accept the offence and thereafter agreed to marry the victim girl, which itself clearly shows that he is not deserved for any leniency.

12. It is the duty of the prosecution to prove the case beyond reasonable doubt, the accused has committed the offence and the charges were framed against him. The Hon'ble Apex Court and this Court time and again clearly stated that eyewitnesses cannot be expected in the cases like this nature. The victim girl cannot be expect to come out immediately soon after the occurrence, considering the evidence of victim alone it is sufficient to record the conviction. On a reading of the evidence of PW1 before the Court and Section 164 Cr.PC statement recorded by the Magistrate, it is clear that the accused has committed the offence and has been a reason for pregnancy of the minor girl. There is no reason to discard the evidence of the victim. Under these circumstances, this Court finds that the prosecution has proved its case beyond reasonable doubt. Since, this Court is the first appellate Court/fact finding Court has reappreciated the evidences independently. On reading of the prosecution witnesses and other material documents produced by the prosecution, this Court also finds that the accused has committed the offence punishable under Section 5(j)(ii), (l), (n) r/w.6 of the Protection of Children from Sexual offences Act 2012, hence upholds the judgment of the Trial Court. The learned Special Judge has awarded minimum period of sentence to the accused, considering the facts and circumstances of the case, this Court does not find any sound reason or valid ground to interfere with the judgment rendered by the Special Judge and inclined to dismiss the appeal filed by the appellant.

13. It is pertinent to record that during the course of argument, the victim girl filed an affidavit stating that the the accused/appellant married her and got two children and prays the leniency of this Court to compound the offence by setting aside the conviction rendered by the learned Special Judge. On a careful consideration, this Court finds that the offence committed by the accused is punishable under POSCO Act, which is not a compoundable offence and this is an special Act enacted to

try the offenders involved in heinous crime of this nature and the plea of the victim before this Court is hereby rejected.

14. In the result, the criminal appeal stands dismissed by confirming the judgment of conviction and sentence recorded by the learned Special Judge dated 31.10.2018 made in Spl.SC.No.32 of 2017. Consequently, connected miscellaneous petition is closed. However, the appellant is at liberty to prefer special leave petition, if he desire so.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

tsh

To

- 1.The Magalir Neethimandram, Fast Track Court,
Tiruppur.
 - 2.The Superintendent,
Central Prison, Coimbatore.
 - 3.The I Additional District and Sessions Judge,
Tiruppur.
 - 4.The Principal Sessions Judge,
Tiruppur.
 - 5.The Inspector of Police,
All Women Police Station (North),
Tiruppur.
 - 6.The Public Prosecutor,
High Court, Madras.
- +1cc to Mr.N.Manokaran, Advocate sr.13163

Cr1.A.No.12 of 2019

nrl[co]
srg 22/04/2019