

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 03.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.128 of 2019

and

Crl.M.P.No.3358 of 2019

1.Ashwin
2.Vinodh @ Karimusai

...Appellants/Accused 1 and 2

-Vs-

The State represented by
The Inspector of Police,
All Women Police Station Tiruvannamalai,
Tiruvannamalai Town & District,
Crime No. 21 of 2014

...Respondent/Complainant

PRAYER This Criminal Appeal is filed under Section 374(2) of Cr.P.C., against the Judgment of conviction by the learned Sessions Judge (Full Additional charge), Fast Track Mahila Court - Tiruvannamalai dated 12.01.2018 in Special S.C.No.36 of 2016.

सत्यमेव जयते

For Appellants : Mrs.A.Jayanthi
For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.Side)

J U D G M E N T

The present Criminal Appeal has been filed seeking to set aside the judgment of conviction dated 12.01.2018 passed by the learned Sessions Judge (Full Additional charge), for cases under POCSO Act/Fast Track Mahila Court - Tiruvannamalai in Special S.C.No.36 of 2016.

2 The case of the prosecution is that the age of the victim girl is 14 years. Five years before, on 29.12.2014, while the victim girl returning from tuition, the appellants took her by auto and went near Aqua Sure Water Company, Tiruvannamalai, Vettavalam and on compulsion, had sexual intercourse with her. Based on the complaint preferred by the victim girl, the respondent registered a case in Crime No.21 of 2014. After investigation, charge sheet was filed by the Inspector of Police, against the accused A1 and A2 for offence under Sections 366(A), 341, 323, 376, 506(ii) r/w 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (in short, 'the Act').

3 After completion of legal procedure and formalities, charges were framed for offence under Sections 366(A), 341, 323, 376, 506(ii) r/w 4 and 6 of the Protection of Children from Sexual Offences Act, 2012. In order to prove the case of the prosecution, before the trial Court, they have examined P.W.1 to P.W.30 and have marked Ex.P1 to Ex.P43 and have marked M.O.1 to M.O.15. After completing the prosecution evidence, when incriminating materials put before A1 and A2 they denied as false. On the side of the appellants, no oral and documentary evidence was produced.

4 The Sessions Court, after completing the trial and hearing the arguments and perusal of the materials, found the appellants/accused A1 and A2 guilty and convicted them for the offence under Sections 366(A), 341, 323, 376, 506 (ii) r/w 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 and accused A1 and A2 have been convicted and sentenced as follows:-

Appellants	Conviction
1. Ashwin 2. Vinodh @ Karimusai	• Sentenced to undergo Simple Imprisonment for the period of 1 month each for the offence under Section 341 IPC. • Sentenced to undergo Rigorous Imprisonment for 10 years each with a fine of Rs.1,000/- in default to undergo further period of 2 years RI for the offence under Section 366(A) IPC. • Sentenced to undergo Rigorous Imprisonment for 10 years each with fine of Rs.1,000/- In default to undergo RI for 2 years for the offence under Section 4 of the Protection of Children from Sexual Offences Act, 2012 • Sentenced them to undergo Rigorous Imprisonment for 7 years each with fine of Rs.2,000/- ID RI for 1 year for the offence under Section 9(g) of the Protection of Children from Sexual Offences Act, 2012 • Sentenced them to undergo Rigorous Imprisonment for 2 years without fine, for the offence under Section 506(i) IPC • Sentenced them to undergo simple Imprisonment for 1 year without fine for the offence under Section 323 IPC.

Aggrieved by the judgment dated 12.01.2018 passed by the learned Session Judge (Full Additional charge), for cases under POCSO Act/Fast Track Mahila Court - Tiruvannamalai in Special S.C.No.36 of 2016, the appellant/accused A1 and A2 have been preferred the present Criminal Appeal before this Court.

5 The learned counsel for the appellant would Submit that there are material contradictions regarding lodging the complaint and also arresting the accused A1 and A2. The accused were arrested by the police before giving a complaint and they were kept in the police station. The complainant have seen the accused at the time of giving the complaint. P.W.1 to P.W.5 are close relatives to the victim girl and P.W.2 and P.W.3 are the parents of the Victim girl. The trial Court ought to have appreciated their evidence with due caution. Further he would submit that the victim girl did raise any alarm since there was bus strike no one was around, further, the place was dark. It is pertinent to see that though the victim girl claims that she did not sustain any injury while she was pulled down from the cycle and was forced into the auto. The prosecution has state that the victim girl went for tuition by bicycle at that time only the appellants have taken the victim girl, but the said cycle was not recovered. Therefore, the prosecution has failed to establish its case beyond reasonable doubt. Considering the benefit of doubt the judgment of the learned Sessions Judge is liable to be set aside and accused are entitled for acquittal.

6 The learned Government Advocate (Criminal Side) would strongly oppose the contention raised by the learned counsel for the appellants. The prosecution has proved the guilt of the appellants/accused for charges punishable under Sections 366(A), 341, 323, 376, 506(ii) r/w 4 and 6 of the Protection of Children from Sexual Offences Act, 2012. Therefore, the learned Government Advocate prays for dismissing the appeal. Evidences of P.W.2/mother of the victim, P.W.15, P.W.16 and P.W.18/Doctors have clearly proved the case of the prosecution.

7 Heard the learned counsel appearing for the appellants and the learned Government Advocate (Crl.Side) appearing for the respondent police and perused the materials placed on record.

8 Before the trial Court, the victim girl was examined as P.W.1 and her statement recorded under 164 Cr.P.C. reveals that at the time of occurrence, she was aged about 14 years. At that time, she was studying in 10th std. On 29.02.2014 while she was returning from tuition the appellants had taken her by auto and forcefully had sexual intercourse with her by force without her consent. Subsequently, P.W.2/mother of the victim girl has stated that while the victim girl was returning from tuition, at that time P.W.2 was in kitchen, she heard the noise from out side of her house. Suddenly, she came out from the house and asked the victim girl, one boy namely Sankar came there and told P.W.2 that two persons had threatened the victim girl. Thereafter, P.W.2 enquire the victim girl and the victim girl reveals about the occurrence. P.W.15 the Doctor one who has examined victim girl has clearly spoken about the injuries sustained by the victim girl. Statement recorded under Section 164 Cr.P.C. by the learned Magistrate from the victim girl, P.W.16 the doctor one who has examined the victim girl for ascertaining age has clearly stated that at that time of occurrence, she was below 16 years. P.W.18 the doctor one who has examined the accused regarding potency of the appellants. The evidence of P.W.1 and P.W.2 it is clear that the victim was below 16 years at the time of occurrence and she was taken from the custody of her lawful guardians. The evidence of the doctor, she sustained injuries and also possibilities of subjected to sexual intercourse and also threatened by the appellants. Therefore, the prosecution has proved its case beyond any reasonable doubt. The appellants have committed the offence under Sections 366(A), 341, 323, 376, 506(ii) r/w 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 and the trial Court has also found from the evidence of P.W.1, the victim girl and P.W.15, P.W.16 and P.W.18/Doctors who have examined the victim at different occasions, and the medical evidence would show that she was minor at that time of occurrence.

9 On a reading of the entire evidence of P.W.1 to P.W.30, this Court also finds that the appellants have committed the offence under Sections 366(A), 341, 323, 376, 506(ii) r/w 4 and 6 of the Protection of Children from Sexual Offences Act, 2012. This Court does not accept the contention raised by the learned counsel for the appellants. The judgment of conviction and sentence passed by the learned Sessions Judge is confirmed.

10 For the above said reasons, this Court finds that absolutely there is no merit in the appeal and therefore the same is dismissed. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

sbn

To

1. The Sessions Judge (Full Additional Charge)
Fast Trck Mahila Court,
Tiruvannamalai.
- 2.The Inspector of Police,
All Women Police Station Tiruvannamalai,
Tiruvannamalai Town & District,
3. The Public Prosecutor,
High Court of Madras.
- 4.The Superintendent,
Central Prison,Vellore.

+1cc to M/s.A.Jayanthi, Advocate SR.No. 32638

nrl (CO)
A.SK(21/08/2019)

Crl.A.No.128 of 2019
and
Crl.M.P.No.3358 of 2019

WEB COPY