

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 11.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.89 of 2019
and
Crl.M.P.No.2229 of 2019

G. Rajasekar

...Appellant/Accused

-Vs-

The State represented by
The Inspector of Police,
W-13, All Women Police Station,
Old Washermanpet,
Chennai-600 021.

...Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C. praying to set aside the judgment of conviction dated 12.12.2018 passed by the learned Special Judge for cases under POCSO Act/Mahila Court, Chennai in S.C.No.120 of 2018.

For Petitioner : Mr.J.Venkatesa Perumal

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 12.12.2018 passed by the learned Special Judge for cases under POCSO Act/Mahila Court, Chennai in S.C.No.120 of 2018.

2. The case of the prosecution is that the age of the victim girl is 15 years and she was born on 16.12.1998. Two years before, on 27.03.2014, while the victim girl was studying in IX standard, the appellant took her to his house at No.2/1, Kalingarayan 2nd street, Old Washermanpet and on compulsion, had sexual relationship with her. Again on 01.04.2014, the appellant/accused took her to the same place and had sexual relationship with her. Due to that, the victim girl got conceived. On 06.08.2018 while she was taking the water pot, she

fell down and the child got aborted. Based on the complaint preferred by the victim girl, the respondent registered a case in Crime No.11 of 2014. After investigation, charge sheet has been filed by the Inspector of Police, against the accused for offence under Section 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 Section 6 of the Act. In order to prove the case of the prosecution, before the trial Court, they have examined P.W.1 to P.W.7 and have marked Ex.P1 to Ex.P9. When the incriminating materials put before the appellant, he denied as false. On the side of the appellant, no evidence was examined and no document was marked. The Sessions Court, after completing the trial and hearing the arguments and on perusal of the materials, found the appellant/accused guilty and convicted him for offence under Section 6 of the Act and sentenced him to undergo 10 years rigorous imprisonment and to pay a fine of Rs.5,000/- in default, to undergo 6 months rigorous imprisonment. Aggrieved by the judgment passed by the learned Sessions Judge, Mahila Court, dated 12.12.2018, the appellant/accused has preferred the present Criminal Appeal before this Court.

4. The learned counsel for the appellant would submit that subsequent to the offence and also during the trial, even before the conviction, the accused has married the victim girl and they were living together. It is contended that there are contradictions in the material particulars between the evidence of the prosecution witnesses. Considering the welfare of the victim girl, this Court may set aside the judgment of the learned Sessions Judge and acquit the appellant.

5. The learned Government Advocate (Criminal Side) would strongly oppose the contention raised by the learned counsel for the appellant. The prosecution has proved the guilt of the accused for charge under Section 6 of the Act. Therefore, the learned Government Advocate prays for dismissing the appeal. Evidences of P.W.2/mother of the victim, P.W.3 and P.W.4/Doctors have clearly stated that about the overtact against the accused, her pregnancy and subsequent abortion.

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

7. Before the trial Court, the victim girl was examined as P.W.1 and her statement under Section 164 Cr.P.C. reveal that at the time of occurrence, she was aged about 13 years. Even at that time, she had a love affair with the accused. On compulsion

of the appellant, she had sexual relationship with him. Due to that, she got conceived and when she took water pot and fell down, she got aborted. Subsequently, P.W.2/mother of the victim girl has stated that the accused himself came and told that he was in love with her daughter and he used to take the victim girl to several places. P.W.4 /Doctor has clearly explained in her statement that the victim was pregnant with gestational age corresponding to 16-17 weeks. P.W.5/Doctor deposed that the victim girl got aborted. Statement recorded under Section 164 Cr.P.C. by the learned Magistrate from the victim girl. Doctor has examined the victim girl and has clearly deposed that at that time, she was below 16 years. Therefore, the prosecution has proved its case beyond all reasonable doubt. The appellant has committed the offence under Section 6 of the Act and the trial Court has also found from the evidence of P.W.1, the victim girl and P.W.4,5,6, Doctors who examined the victim at different occasions, and the medical evidence that she was minor at that time of occurrence.

8. On a reading of the entire evidence of P.W.1 to P.W.7, this Court has also found that the accused has committed the offence under Section 6 of the Act. The learned counsel for the appellant would submit that subsequently the appellant married the victim girl and at that time of occurrence, the victim girl was minor. Once it is proved, while she was minor, the appellant had sexual intercourse with the minor girl, it attracts section 6 of the Act. Subsequently, if the appellant married her that itself will not take away the offence committed by him. This Court does not accept the contention raised by the learned counsel for the appellant. The judgment of conviction and sentence passed by the learned Sessions Judge is confirmed.

9. For the above said reasons, this Court finds that the present Criminal Appeal has absolutely no merits and therefore the same is dismissed at the admission stage itself. Consequently, the connected miscellaneous petition is also closed.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

1.The Sessions Judge, Mahila Court,
Chennai.

2.The Inspector of Police,
W-6, All Women Police Station,
Ayanavaram, Chennai - 600 023

3.The Public Prosecutor,
High Court of Madras.

Crl.A.No.89 of 2019
and
Crl.M.P.No.2229 of 2019

NMI (CO)
SP(10/12/2019)



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