

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.169 of 2016

Kumaresan

...Appellant/1st Accused

-Vs-

State through the Inspector of Police,
Namagiripettai Police Station,
Namakkal District.

...Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C. praying to set aside the judgment made in Spl.C.C.No.3 of 2013 on the file of the Fast Track Mahila Court, Namakkal, dated 13.08.2015.

For Appellant : Mr.K.S.Karthik Raja

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.Side)

JUDGMENT

This criminal appeal has been filed against the judgment of conviction dated 13.08.2015 made in Spl.C.C.No.3 of 2013 by the learned Sessions Judge, Fast Track Mahila Court, Namakkal.

2 The respondent police registered a case against the appellant and another in Cr.No.03 of 2013 for the offence under Section 362 of IPC Section 4 of the Protection of Children from Sexual Offences Act, 2012 (in short "POCSO Act") against A1/appellant and Section 362 of IPC and Section 4 r/w 17 of POCSO Act against A2. Since A2 was minor, the case against him was conducted separately. Case of the prosecution is that the appellant/A1 and A2, on 31.12.2012 at about 12.00 a.m. had knocked the door, where the victim and her father had been sleeping and when the victim girl opened the door, A1 and A2 kidnapped her from the legal custodian and the appellant/A1 had sexual intercourse and thereby committed offence punishable under Sections stated supra. The respondent police, after investigation laid charge sheet and the same was taken on file in Spl.C.C.No.03 of 2013 by the learned Sessions Judge, Fast Track Mahalir Court, Namakkal.

3 Before the trial Court, in order to prove the case of the prosecution P.W.1 to P.W.17 were examined and Ex.P1 to Ex.P33 were marked and M.Os.1 to 5 were exhibited. On the side of the defence, no one was examined and no document was marked.

4 The learned Sessions Judge, after trial found the appellant guilty of offence punishable under Section 362 of IPC and Section 4 of POCSO Act and by judgment dated 13.08.2015 has convicted the appellant and sentenced him to undergo rigorous imprisonment for seven years with fine of Rs.1,000/- for each of the offence, in default, to undergo simple imprisonment for six months for each of the default. Aggrieved against the said judgment of conviction, the accused has preferred the present criminal appeal before this Court.

5 According to learned counsel appearing for the appellant, there are many material contradiction between the prosecution witnesses. P.W.2 father of the victim has stated that he and his daughter/victim girl were sleeping in the same room, whereas, the victim girl has stated that she and her father were sleeping in separate room, which is totally contradictory. The evidence of victim girl is entirely contradictory from 161 statement and chief examination. When the victim girl heard the knocking sound at midnight, she should have informed to her father, the victim instead of doing that, she herself opened the door, which is not believable. Further, the place of occurrence is very busy and new year celebrations were going on, there must be crowd in and around the place of occurrence and therefore, it is not possible for the appellant to abduct the victim and commit the offence as alleged by prosecution. P.W.8, the Doctor, who examined the victim, had stated that there was no injury and hymen intact, which is against the case of the prosecution. If the appellant committed offence as alleged by the prosecution, there must be some injury on the body of the victim, but, there was no injury, which is fatal to the case of the prosecution. There is many contradictions in the evidence of P.W.1 to P.W.4. A2, has been acquitted by the Juvenile Justice Board. The learned Sessions Judge, has failed to consider the above facts and erroneously convicted the appellant, which warrants serious interference.

6 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that the victim girl/P.W.1 has clearly narrated the occurrence before the Court below, which could not be discarded. To convict a accused under

POCSO Act, age of the victim should be below 18 and there must be penetrative sexual assault. In the present case on hand, age of the the victim child is not disputed and the victim even though had not stated entire occurrence in 161 statement, had clearly stated the entire occurrence, before the Court, during examination, which would sufficient to convict the accused. The Doctor, who was examined as P.W.8, has opined that there is possibility of sexual intercourse. P.W.2 father of the victim had deposed that at about 12.30 a.m. when he opened the door, P.W.3 and P.W.4 had brought his daughter to the house and stated the incident. P.W.3 and P.W.4 had corroborated the evidence of P.W.2. Therefore, prosecution has clearly proved its case beyond reasonable doubt and the learned Sessions Judge has rightly appreciated the evidence and convicted the appellant/accused, which does not call for any interference.

7 Heard the learned counsel appearing on either side and perused the materials available on record.

8 The victim child, who is aged about 16 years at the time of occurrence, has clearly narrated the incident and the involvement of the accused in the offence before the Court below in examination, which would clearly attract offence under Section 4 of the POCSO Act. It is contended by the learned counsel for the appellant that the Doctor opined that there was no injury and hymen intact. Cases under POCSO Act, it is not necessary that in every cases there must be injury and hymen should be not intact, touching of body of the child with bad intention is also an offence punishable under POCSO Act. The contradictions as stated by the learned counsel for the appellant, will not defeat the entire case of the prosecution. Once offence has been proved, minor contradictions will not take away the case of the prosecution. Further it was contended that there was no proof to show that the appellant committed offence as alleged by the respondent police. In the cases of this nature, the evidence of victim child has to be given more weightage and in the case on hand, the victim child, who is 16 years old at the time of occurrence, has clearly narrated the incident. The other defence taken by the appellant/accused would not suffice to rebut the presumption under the POCSO Act. For the offence under POCSO Act, the accused should be punished with heavy terms of imprisonment, in order to give effective implementation to the Act. This Court does not find any reason to interfere with the judgment of conviction made by the Court below.

9 In the result, the criminal appeal is dismissed and judgment of conviction and sentence dated 13.08.2015 made in Spl.C.C.No.3 of 2013 by the learned Sessions Judge, Fast Track Mahila Court, Namakkal, is hereby confirmed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

cgi

To

- 1.The Sessions Judge, Fast Track Mahila Court, Namakkal.
- 2.The Inspector of Police, Namagiripettai Police Station, Namakkal District.
- 3.The Public Prosecutor, High Court of Madras.
4. The Superintendent, Central Prison, Coimbatore

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.K.S.Karthik Raja, Advocate SR.No.42321

Crl.A.No.169 of 2016

SJ(CO)
GMY(04/12/2019)

सत्यमेव जयते

WEB COPY