

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.08.2019

Pronounced on : 04.11.2019

CORAM:

THE HON'BLE **MR.JUSTICE M.NIRMAL KUMAR**

Crl.A.No.265 of 2016

Sambasivam

... Appellant

Vs.

The State Represented by
The Deputy Superintendent of Police
Thiruvarur Division
Koradacherry Police Station
Thiruvarur District

... Respondent

PRAYER: Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code, 1973 to set aside the order of conviction and sentences passed by the Judgment dated 30.12.2015 made in Special S.C.No.6 of 2015 on the file of the Magalir Needhimandram (Fast Track Mahila Court), Thiruvarur and allow the above Criminal Appeal.

For Appellant : Mr.C.Prabakaran

For Respondent : Mrs.P.Kritika Kamal
Government Advocate (Crl. Side)

J U D G M E N T

This Criminal Appeal filed by the appellant to set aside the order of conviction and sentences passed by Judgment dated 30.12.2015 in Special S.C.No.6 of 2015 by the Magalir Needhimandram (Fast Track Mahila Court), Thiruvavarur and allow the above Criminal Appeal.

2.The learned Trial Judge taken cognizance of the case and upon completion of the trial convicted the petitioner under Section 10 r/w 9(m) of POCSO Act and imposed a sentence of 5 years Rigorous Imprisonment with a fine of Rs.10,000/- in default six months Rigorous Imprisonment and Section 354 of IPC no separate punishment was imposed as the sentence imposed in the major offence and as regard Section 323 of IPC and Section 3(1)(XI) of SC/ST Act the petitioner was acquitted under Section 235(1) of Cr.P.C. by a judgment dated 30.12.2015, against which, the present Criminal Appeal has been preferred.

3.For the sake of convenience, the parties are hereinafter referred to in this judgment as they are arrayed before the Trial Court.

4.The brief facts of the case is that on 18.03.2014 at about 5.00 p.m. PW1 / victim girl, aged about 11 years went to the Valavaikkal river bank to bring back their grazing cow, at that time, the Appellant forcibly held her hand with an intention to outrage her modesty and made sexual assault against the victim girl, who belongs to Schedule Caste.

5.PW1 / the minor girl stated that on 18.03.2014, at about 5.00 p.m., she went to the river bank to graze their cattle. On returning, the Appellant / accused told her, "shall we play mummy daddy game". The accused also forcibly held her hand and he misbehaved with her. She made alarm. On hearing her alarm, her father PW2 and others reached the place and rescued his daughter, she was taken back to home. On enquiry, the victim girl confirmed the misbehaviour of the Appellant.

6.Thereafter, the Appellant was caught hold and he was taken to the police station. On the complaint of PW2, case came to be registered. The victim girl was sent to the hospital, the Accident Register Ex.P2 was recorded, Registered F.I.R., on completion of

investigation, charge sheet came to be filed against the accused.

7.The victim girl / PW1 was 11 years at the time of medical examination and she was born on 14.12.2004. She had stated that on 18.03.2014 at about 5.00 p.m. when she had gone for grazing their cattle, the appellant called her for play and pulled her by hand and attempted to misbehave. When she raised alarm, at that time her father along with others rushed to the place. Thereafter, the victim girl fainted and she was taken to the hospital. PW2, the father of the victim girl went to the police station and lodged a complaint.

8.PW2, the father of the victim girl stated that on 18.03.2014 around 4.45 to 5.00 p.m. he was standing near the village, when his daughter PW1 had gone out to the river bank to find out their grazing cattle. Thereafter in 10 minutes, he heard the alarm and cry of his daughter, he rushed to the spot along with others and found that his daughter was being pulled and hugged by the appellant. When PW1's father and the village people rushed to the spot, the appellant / accused had attempted to run, he fell down in the stream and other villagers who had come along with PW2 caught hold of the appellant

and he was taken to the police station and PW2 lodged a complaint, which is marked as Ex.P1.

9.PW3 is mother of PW1, she was in the Agricultural field and after coming back from her work, she came to know about the occurrence that the minor victim girl was attempted to be outraged her modesty by the appellant/ accused. Thereafter, she had taken the victim / her daughter for the medical examination before the Doctor.

10.PW4 is the casualty medical doctor attached to the Government Medical and College Hospital, Thiruvavarur. She examined the victim girl on 18.03.2014 at about 7.25 pm. and during her examination, no external injuries were found and issued Ex.P2, the accident register.

11.PW5 is the younger brother and junior father of PW1. He has stated that at about 5.00 p.m. he along with PW2 heard the cry of the victim girl. Thereafter, she was rescued and was sent back home along with her mother. The appellant / accused was caught hold by them and he was produced before the police station.

12.PW6 is residing in the same village of PW1 and he is the witness to the Observation Magazar / Ex.P3.

13.PW7 is the Tahsildhar, Kodavasal, who had issued the Community certificate to the victim girl, which has been marked as Ex.P5.

14.PW8 is the Sub Inspector of Police who received the complaint from PW2 and registered the FIR / Ex.P6 and forwarded the same to the Higher officials.

15.PW9 Deputy Superintendent of Police, Thiruvarur. On receipt of F.I.R. in crime No.85/2014 took up investigation, visited the scene of occurrence on 19.03.2014, arrested the accused at about 9.30 am. Examined the doctor on 01.04.2014 and the Tahsildhar on 02.04.2014. Thereafter, on completion of Investigation, filed charge sheet in this case. Authorization given to PW9 for conducting investigation under SC/ST Act has been marked as Ex.P7.

16.PW10 is the Head Master of the Panchayat Union School, who

issued certificate from the school record, wherein, the date of birth of the victim girl has been entered as 14.06.2003 and stated that the victim girl has discontinued her studies from 12.06.2013.

17.The contention of the Appellant is that except PW1 none has seen the occurrence in proper. PW2 and PW5 stated that they heard the cry of their daughter, reached the scene of occurrence. PW3 is the mother who had seen PW1 only after she came back home. The other witnesses present in the scene of occurrence, have not been examined before the Trial court.

18.The further contention of the petitioner is that in Ex.P1, there is nothing to show that this appellant had made any sexual advancement towards the victim. Further as in Ex.P2, the accident register, there are insertion, which is admitted by PW4 as well as the Investigation Officer. The victim girl was not produced before the learned Magistrate to record any statement. No women police officer had carried on the investigation. On the other hand, the charge sheet for the offence under Section POCSO & SC / ST Act came to be filed. The trial Court had disbelieved and acquitted the appellant for offence

u/s.323 and for offence u/s.3(i)(xi) of SC / ST Act, 1989 on the same set of facts, the appellant was convicted by the Trial Court which is not proper. When disbelieving the evidence of witness as regards for the offence under section SC / ST Act on the same set of facts, the appellant cannot be convicted.

19.His further contention is that from the medical examination, Ex.P2, it is seen that the victim girl had no injuries. The doctor had recorded that at that time of examination, the patient had no external injuries, hence, wound certificate is not necessary to the patient. In view of the same, it is proved that there is no injury in any manner on the victim. In the absence of psychological examination of the victim girl and non recording of 164 statement of the victim girl, the victim girl cannot be said to be free from tutoring. Further, there is no material as against the appellant. The Trial Court found the appellant guilty under Section 10 r/w 9(m) of POCSO Act and sentenced to 5 years R.I. And fine of Rs.10,000/- in default six months R.I. and under Section 354 IPC, this cannot be sustained.

20.The learned Government Advocate submits that in this case,

the minor girl, age is less than 12 years have been sexually assaulted by the Appellant, when the girl was alone grazing their cattle, taking advantage of the loneliness, the appellant had attempted to misbehave with her. The victim raised alarm and was rescued by her father PW2 and other villagers rushed to the scene of occurrence and rescued her. Immediately she was taken to the hospital. Doctor examined PW1 and issued Ex.P2, the accident register. PW10, Head Master of the Panchayat Union School issued school certificate Ex.P9, the extract from the Admission Register. The school records reveals that the date of birth of the victim girl is 14.06.2003 on the date of occurrence i.e. on 18.03.2014 she was less than 12 years. The Trial Court on the evidence of PW1, the victim girl, PW2 and PW3, the parents. PW5 & PW6, the neighbours and on the evidence of the Doctor and the Tahsildhar and on a perusal of exhibits and reports convicted the appellant, which needs no interference.

21.Heard the learned counsel appearing for the appellant / accused and the learned Government Advocate (Criminal Side).

22.Considering the rival submissions and on a perusal of

materials, this Court finds that PW1 is a minor and the same has been proved by the evidence of PW10 and Ex.P9. When she was alone in grazing the cattle, the accused took advantage of the situation and attempted to outrage her modesty, which was seen by PW2 and PW5, who reached the scene of occurrence saved the victim girl along with other villagers. There is no motive for them to implicate the appellant/accused in this case. The doctor's evidence is the conformity to the evidence of the victim girl.

23. In the absence of any motive, there is nothing to doubt the evidence of victim / PW1. It is seen from the school records the victim is aged less than 12 years, who was sexually assaulted by the Appellant. PW1 was alone grazing her cattle, had raised alarm, hearing the same PW2, PW5 and others rushed to the scene of occurrence, caught hold of Appellant / Accused who fell down while attempting to flee, thereafter he was taken to Police Station. PW1 victim was taken to Hospital by PW3 her mother. PW4 doctor examined PW1 on the same day. Without any time lag, the happenings were recorded and the witnesses have deposed, statutory presumption has not been discharged by the appellant. In view of the same, this

court finds no reasons to interfere with the findings of the Trial Court. The appeal is dismissed confirming the conviction and sentence of the Trial Court.

24.In the result, this Criminal Appeal stands dismissed. The Judgment dated 30.12.2015 made in Special S.C.No.6 of 2015 on the file of the Megalir Needhimandram (Fast Track Mahila Court), Thiruvarur stands confirmed. Consequently, connected miscellaneous petition if any is also dismissed.

04.11.2019

kas

Index:yes/no

Internet:yes

Speaking / Non Speaking order

To

1.The Megalir Needhimandram
(Fast Track Mahila Court), Thiruvarur
Special S.C.No.6 of 2015

2.The Deputy Superintendent of Police
Thiruvarur Division
Koradacherry Police Station
Thiruvarur District

11/12

M.NIRMAL KUMAR, J.

kas

3.The Public Prosecutor
High Court of Madras

4.The Section Officer
Criminal Section
High Court of Madras



Pre delivery Judgment made in

Crl.A.No.265 of 2016

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