

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.175 of 2019 and
Crl.M.P.No.4622 of 2019

Vadivelan

...Appellant

-Vs-

State Rep. by
The Inspector of Police,
Anaicut Police Station,
Vellore District.
(Crime No.96/2016)

....Respondent

This Criminal Appeal is filed under Section 374(2) of Cr.P.C. praying to set aside the judgment passed by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Vellore, made in Special S.C.No.28 of 2016 dated 31.01.2018 and to acquit the appellant.

For Appellant : Mr.C.Prabakaran

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

JUDGMENT

This criminal appeal has been filed against the judgment of conviction dated 31.01.2018 made in Special S.C.No.28 of 2016 by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Vellore, for the offence under POCSO Act and also IPC.

2 Originally a case was registered against the appellant (A1) and one another namely Mohanraj (A2) for the offence under Sections 362, 366 of IPC and r/w 5(1), 10 of Prohibition of Child Marriage Act r/w 34 of IPC against the appellant (A1) and 362, 366 of IPC and Section 9 of Prohibition of Child Marriage Act, Section 17 of Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') r/w 34 of IPC against A2. based on the complaint given by P.W.1 father of the victim/P.W.7 and in this case two victims i.e. P.W.7 and P.W.8. After investigation, prosecution had filed a charge sheet before the learned Sessions Judge, Mahalia Neethimandram (Fast Track Mahila

Court), Vellore, which was taken on file in Spl.S.C.No.28 of 2016.

3 In order to prove the case of the prosecution, before the trial Court P.W.1 to P.W.12 were examined and Ex.P1 to Ex.P19 were marked and M.O.1 was exhibited. On the side of the defense, D.W.1 and D.W.2 were examined and no document was marked.

4 The learned Sessions Judge, after advertng to the materials placed on record and after hearing both the parties, by judgment dated 31.01.2018 convicted both the accused for the offence under Sections 363 & 366 of IPC and Sections 6 r/w 5(1) and 17 of POCSO Act and sentenced them to undergo rigorous imprisonment for 2 years each with fine of Rs.12,500/- each, in default, to undergo simple imprisonment for one month for the offence under Section 363 of IPC, to undergo rigorous imprisonment for 3 years each with fine of Rs.12,500/- each, in default, to undergo simple imprisonment for one month for the offence under Section 366 of IPC, to undergo rigorous imprisonment for 10 years each with fine of Rs.12,500/- each, in default, to undergo simple imprisonment for one month for the offence under Section 6 of POCSO Act, and sentenced to undergo rigorous imprisonment for 10 years each with fine of Rs.12,500/- each, in default, to undergo simple imprisonment for one month for the offence under Section 17 of POCSO Act.

5 Aggrieved against the said judgment of conviction, A1 has preferred the present criminal appeal.

6 According to learned counsel for the appellant/A1, the appellant has not committed any offence as alleged by the prosecution and there was a love affair between the victim and the appellant and they both eloped and with the consent of the victim only they had sexual intercourse. Further, there was enmity between the family of the victim and the appellant and therefore false case has been foisted against the appellant. In the present case on hand, there is no eye witness and most of the witnesses are interested witnesses, who would naturally support the case of the prosecution. Doctor's opinion does not reveal anything that the victim sustained external injuries. Under these circumstances, the Court below ought to have acquitted the appellant.

7 According to the learned Government Advocate (Crl.Side) appearing for the respondent that the victim, who is 15 years old at the time of occurrence and she has clearly identified the accused and has spoken about the offence committed by the appellant/A1 which would attract offence under the POCSO Act. P.W.9 & 11, who have examined the appellant/A1 and the victims

had given opinion that there was a symptoms for sexual intercourse and P.W.11 stated that 'hymen not intact'. The appellant/A1 had made A1 and the victim girls to go along with him. The trial Court after examining all the witnesses and after hearing both the parties, had come to the conclusion that the appellant/A1 found guilty for the offence punishable under the IPC and POCSO Act. There is no reason to interfere with the judgment of conviction, when it is well founded.

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

9 On reading of the entire allegations made against the appellant, it would reveal that cases of this nature under the POCSO Act, the Court cannot expect any eye witness and the evidence of the victim itself would suffice to convict the accused. The victim, who is aged about 15 years at the time of occurrence, has clearly narrated the incident and the involvement of the accused in the offence, which would clearly attract offence under the POCSO Act. In the case on hand, there is no reason to discard the evidence of the victim. Further the evidence of P.W.9 & P.W.11 clearly shows that the victim was subjected to sexual intercourse more than three times. Furthermore, the appellant/A1, being a married person and a father of two children, had misguided the victim, who is only 15 years and the wife of the appellant/A1 also warned him for his misbehaviour with the victim. Therefore the offence committed by the appellant/A1 has been clearly proved by the prosecution. This Court does not find any special circumstances to take a different view in the present case on hand. For the offence under the POCSO Act, the accused should be punished with heavy terms of imprisonment, in order to give effective implementation to the Act.

10 There is no iota of merit and substance in the present criminal appeal and hence the appeal is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1.The Sessions Judge,
Magalir Neethi Mandram,
(Fast Track Mahalir Court), Vellore.

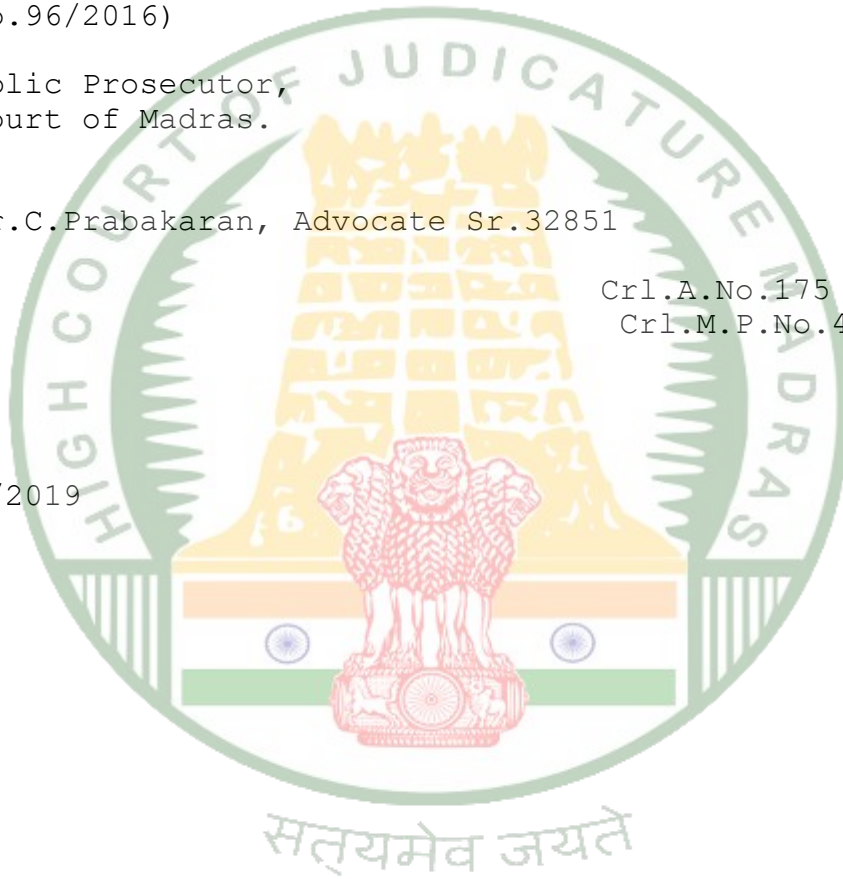
2.The Inspector of Police,
Anaicut Police Station,
Vellore District.
(Crime No.96/2016)

3. The Public Prosecutor,
High Court of Madras.

+lcc to Mr.C.Prabakaran, Advocate Sr.32851

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