

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.585 of 2016

Murugan

...Appellant

-Vs-

The State Rep. by
The Inspector of Police,
All Women Police Station,
Coimbatore,
Crime No.36 of 2012.

...Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C. praying to call for the records pertaining to the order of conviction and sentence passed by the learned Sessions Mahalir Neethimandram (Mahila Court) Coimbatore in Special C.C.No.8 of 2013 dated 31.05.2016 and set aside the same.

For Appellant : Mr.K.Kannan

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

JUDGMENT

This Criminal Appeal has been filed to call for the records in Special C.C.No.8 of 2013, dated 31.05.2016 passed by the learned Sessions Mahalir Neethimandram (Mahila Court) Coimbatore and set

aside the same.

2. It is the case of the prosecution that the victim girl named Bharathi, aged about 14 years and she was residing with her mother P.W.2 Selvarani. Due to misunderstanding between the mother and father of the victim girl, he deserted P.W.2 and living separately. Thereafter, the accused Murugan married her mother and residing together with the mother and the victim girl. The brother of the victim girl has stayed in grand parents house. At the time of occurrence, the victim girl was studying in 9th standard. P.W.2/mother was working in the hospital on day and night shift basis. On 18.08.2012 when P.W.2 went to hospital for night shift, this Accused misbehaved with the victim girl. When P.W.1/victim girl screamed, he shut her mouth by pillow and removed his dresses also and raped the victim girl. Further, the accused threatened her, if she would disclosed the same to her mother, he would kill her and her mother also. As she is scaring about the threat of the accused, she did not disclose the same to her mother. Subsequently, the accused did the same for several occasions and he did the same even when her mother was with her. At the time, she made an alarm, her mother woke up and scolded the accused and sent him out from the house. When P.W.1 went to school, her teacher/P.W.5 enquired her as to why she was irregular in attending

the school and hence, she disclosed everything happened to her and in turn her teacher P.W.5 Banumathi instructed her to inform the same to the Child help line and accordingly she informed. on 04.09.2012, the Child help line officers came to the school and enquired her and sent her to Children home. On 08.09.2012, Suganthi and Senthil enquired the victim girl and she disclosed everything to them. They brought her to All Women Police Station, Gandhipuram, wherein she had given the statements about the occurrence under Ex.P.1 and the police recorded the same and as she was not willing to go to her house, she returned to Marayalaya Home. Thereafter, she was produced before the learned Judicial Magistrate, and recorded her statement.

3. The respondent police registered a case in Crime No.36 of 2012 under Sections 376, 506(i) IPC and they have filed a charge sheet for punishable offence under Sections 5(n) & (l) read with 6 of POCSO Act 2012 and 506(i) of IPC before the learned Sessions Judge, Magalir Neethimanram, Coimbatore, which was taken on file in S.C.No.8 of 2013. In order to prove the case of the prosecution, as many as 19 witnesses, P.W.1 to 19 were examined and 11 documents, Ex.P.1 to 11 were marked. After completion of prosecution evidence, the incriminating materials were put before the respondents. The

respondents denied all the evidences are false. After full-fledged trial, the learned Sessions Judge, found the accused guilty for offence under Section 5(n) & (1) read with 6 of POCSO Act and 506(i) and convicted and sentenced him for the offence under Section 5(n) & (1) read with 6 of the POCSO Act to undergo ten years RI and to pay a fine of Rs.5,000/- in default, to undergo three months SI and sentenced for offence under Section 506(i) IPC to undergo two years RI and to pay a fine of Rs.1000/- in default, sentenced to undergo three months SI. Both the sentences are ordered to be run concurrently.

4. Aggrieved against the said judgment of conviction, the accused has preferred the present criminal appeal.

5. According to the learned counsel for the appellant/accused, the accused has not committed any offence and in order to attract the charges levelled against the appellant, there should be physical relationship and the same should be proved by producing medical records. 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. Further the learned counsel for the accused would submit that the statement of the victim girl was

recorded after six months from the date of the complaint and therefore the case of the prosecution is false. P.W15 /Doctor deposed that the victim girl had no external and internal injuries on her vagina and there is no symptoms for sexual assault on her. Further he would submit that there are lot of material contradictions available in the evidence of prosecution. Therefore, the prosecution has failed to prove its case beyond reasonable doubt. Hence, the learned counsel prays this Court to set aside the revision and acquitted the appellant.

6. According to the learned Government Advocate (Crl.Side) appearing for the respondent that the victim is a girl aged about 14 years who was studying 9th standard at the time of occurrence and she has clearly spoken about the offence committed by the appellant/accused which would attract offence under the POCSO Act. When the accused made an attempt to commit sexual assault on the victim girl, he was caught red handedly by the P.W.2 and sent him out from her house. The Special Court after examining all the witnesses and after hearing both the parties, had come to the conclusion that the accused found guilty of offence punishable under the POCSO Act. There is no reason to interfere with the judgment of conviction, when it is well founded.

7. Though the learned counsel for the petitioner seeks leniency of the Court to reduce the lesser sentence. However, on reading of provisions in POCSO Act, it is seen that the whoever commits penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.

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 girl aged about 14 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 Section 5(n) & (1) read with 6 of the POCSO Act. In the case on hand, there is no reason to discord the evidence of the victim. Further the appellant/accused did not establish his defence by examining any witness. The prosecution have proved its

case beyond all reasonable doubt. This Court does not find any reason 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. There is no merit in the appeal.

10. In the result, this Criminal Appeal is dismissed and the judgment in Special C.C.No.8 of 2013, dated 31.05.2016, passed by the learned Sessions Judge, Mahalir Neethimandram (Mahila Court), Coimbatore is confirmed. The lower appellate Court is directed to secure the custody of the accused to undergo remaining period of sentence.

13.03.2019

Index : Yes/No
Speaking order/Non speaking order

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To

1. The Sessions Mahalir Neethimandram (Mahila Court) Coimbatore.
2. The The Inspector of Police,
All Women Police Station, Coimbatore,
3. The Public Prosecutor,
High Court of Madras.

P.VELMURUGAN.,J.

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