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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.8 of 2018

R. Kumar

...Appellant

-Vs-

State Rep. by
The Inspector of Police,
All Women Police Station,
Ranipet,
Vellore District.

...Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C. to set aside the conviction and sentence passed by the learned Sessions Judge, Mahalir Neethi Mandram (Fast Track Mahila Court), Vellore in Spl.S.C.No.18 of 2016 dated 22.11.2017.

For Appellant : Mr.C.S.S.Pillai, Legal Aid Counsel

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

JUDGMENT

This Criminal Appeal has been filed to set aside the conviction and sentence passed by the learned Sessions Judge, Mahalir Neethi Mandram (Fast Track Mahila Court), Vellore in Spl.S.C.No.18 of 2016 dated 22.11.2017.

2. The respondent police registered a case against the revision petitioner for the offences under Section 450, 354-B, 376(2)(h)(k) read with 375(b) of IPC & Section 6 read with 5(k)(m) read with 3(b) of Protection of Children from Sexual Offence Act (hereinafter referred to as 'POCSO'). After investigation, the respondent police filed charge sheet in Crime No.44 of 2013 for the offence under Section 450, 354-B, 376(2)(i)(l) read with 375(b) of IPC and Section 6 read with 5(k)(m) of POCSO Act before the learned Sessions Judge, Magalir Neethi Mandram, Fast Track Mahila Court, Vellore, which was taken up on file in Special Sessions Case No.18 of 2016. Before the trial Court, in order to prove the case of the prosecution, the respondent police examined as many as eight witnesses viz., P.W.1 to P.W.8



and marked eight documents viz., Ex.P1 to Ex.P8. After completion of prosecution side evidences when the incriminating materials culled out were put before the accused, he denied the same as false. On the side of the accused, no one was examined and no document was marked. The learned Sessions Judge, after advertng to the materials placed on record and after hearing both the parties, found the accused guilty and convicted him for the offence under Section 450 of IPC and sentenced him to undergo two years rigorous imprisonment and to pay a fine of Rs.5,000/- in default, to undergo one month simple imprisonment and convicted for the offence under Section 354(B) of IPC and sentenced him to undergo three years rigorous imprisonment and to pay a fine of Rs.5,000/- in default, to undergo one month simple imprisonment and further, convicted the accused for the offence under Section 6 of POCSO Act and sentenced him to undergo ten years rigorous imprisonment and to pay a fine of Rs.5,000/- in default, to undergo one month simple imprisonment.

3. Aggrieved against the said judgment of conviction and sentence, the appellant has preferred the present criminal appeal before this Court.

4. The learned counsel for the appellant/accused would submit that the appellant has not committed any offence and he is an innocent person. The prosecution has not proved its case beyond reasonable doubt. The prosecution has stated that the occurrence took place on 16.12.2013 at about 02.00 hours, but whereas in the medical records shows that the occurrence took place only on 18.12.2013. The prosecution has not proved as to whether it was a holiday for school. Therefore, the date and time of the occurrence is doubtful. On the date of occurrence, whether the victim attended school or she was in house was not brought out in evidence, which creates doubt. P.W.5/Maragathavalli, who was the Head Mistress of the school has not produced the attendance register before the Court. The medical examination was done to the victim only after three days of the alleged incident. There is no eye witness to the alleged occurrence. The victim has not sustained any external injuries and the Doctor's Report says that 'Hymen was not intact' which means there is no aggregative sexual assault and hence there is no ingredients for the alleged offence. The benefit of doubt should have been extended to the appellant and the learned Sessions Judge failed to consider all these aspects and convicted the appellant on the sympathy ground. Hence, the appellant is entitled for acquittal.

5. The learned Government Advocate (Crl.Side) would submit that at the time of the occurrence, the victim was studying in



VI standard. P.W.1 father of the victim, has clearly stated that on 16.12.2013, while he was returning from his work, he noticed that the door was locked inside. At that time, he heard the screaming of his daughter. By that time, the appellant ran away from the house and the victim was found without any dress. P.W.2 is the victim child. She deposed that she knew the appellant, who committed the offence. She has clearly deposed that the accused/appellant has misbehaved with her when her parents were not in home. P.W.3 mother of the victim stated that while she returned from her work, she heard about the occurrence from her husband and also further she stated that the occurrence took place during the study leave of the half yearly examination. P.W.4 Doctor, who examined the victim has deposed that the occurrence took place on 16.12.2013 not on 18.12.2013. The contradictions pointed out by the learned counsel may not go to the root of the prosecution case. Further, the cases like this, the Court cannot expect any direct eye witness and the trust worthy of evidence of the victim girl has to be taken into consideration. In the present case, the evidence of the victim is enough. Therefore, the learned Sessions Judge has rightly convicted the accused and there is no reason to interfere with the judgment.

6. Heard the learned counsel for the appellant as well as the learned Government Advocate (Criminal Side) and perused the materials available on record.

7. The case of the prosecution is that on 16.12.2013 at about 02.00 hours, when the victim child was alone, the appellant with entered into her house, locked it from inside and committed sexual assault. At that time, the parents of the victim had gone to their work. The appellant committed the offence of aggravated penetrative sexual assault. In order to prove the case, the victim girl was examined as P.W.2, father of the victim, who preferred the complaint was examined as P.W.1. On reading of the evidence of P.W.1 and P.W.2. This Court is satisfied that the prosecution has established that the appellant/accused has committed the alleged offence under POCSO Act. The evidence of the Doctor, who examined the victim child and Accident Register proved the same. Victim was examined by the Magistrate, who recorded the statement under Section 164 Cr.P.C. The learned counsel for the appellant submitted that even in the statement recorded under Section 164 Cr.P.C., the victim girl has not spoken anything about the sexual assault made by the appellant. Mother of the victim girl alone has explained those things. Moreover, it is clear that the offence under POCSO Act has been committed by the accused.



8. Further, Section 376 IPC itself shows that whoever, except in the cases provided for by sub-section(2) commits rape, shall be punished with imprisonment of either description, for a term which shall not be less than seven years but which may be for life, or for a term which may extend up to ten years and shall also be liable to fine, and if the woman raped is his own wife, and is not under twelve years of age, in which cases, the description for a term which may extend to two years or with fine or with both; provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

9. Under these circumstances, we cannot expect any direct evidence for an offence committed under Section 376 IPC.

10. A perusal of the entire evidence, it is seen that P.W.1 has clearly stated that while he returned home from his work, he noticed that doors were locked from inside and he heard the screaming of the victim. He called his daughter to open the door. At that time the appellant ran away from backside. P.W.2 has also narrated about the incident. The evidence of the doctor shows that her hymen was not intact, but the fact of insertion of fingers on private part of the victim by the accused.

11. On reading of evidences of P.W.1, P.W.2 and P.W.4, this Court is of the view that the prosecution has clearly proved the offences that the appellant has committed the offence under Section 6 read with 5(k)(m) of the POCSO Act. In cases of this nature under the POCSO Act, the Court cannot expect any direct eye witness, and the evidence of the victim itself would be suffice to convict the appellant.

12. The victim girl, who is aged about ten years at the time of occurrence, has clearly narrated the incident and the involvement of the appellant in the offence, which would clearly attract offence under POCSO Act. In the case on hand, there is no reason to discard the evidence of the victim girl. Further, the appellant/accused did not establish his defence by examining any witness. This Court does not find any perversity in the judgment to take a different view in the present case on hand. For the offence under POCSO Act, the accused should be punished with heavy terms of imprisonment, in order to give effect implementation to the Act.

13. Considering the seriousness of the offence, this Court does not find any reason to interfere with the judgment of the learned Sessions Judge in Special S.C.No.18 of 2016 dated 22.11.2017 and there is no merit in the appeal.



14. Under these circumstances, the present Criminal Appeal is dismissed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Sessions Judge,
Mahlir Neethimandram,
Fast Track Mahila Court, Vellore.

2. The Inspector of Police,
All Women Police Station,
Ranipet, Vellore District.

3. The Public Prosecutor,
High Court of Madras.

Copy To: The Section Officer, Criminal Section,
High Court of Madras, Chennai -104.

+1 cc to M/s.C.S.S.Pillai,Advocate Sr.No. 36241

AKM/21.01.2020/5P- 6C /

Crl.A.No.8 of 2018