

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.171 of 2019
and
Crl.M.P.No. 4564 of 2019

1. Murugesh @ Murugan

2. Jaya ...Appellants /Accused No.1 & 2

-Vs-

State represented by
The Inspector of Police,
All Women Police Station (North),
Tiruppur. ...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C. to call for the entire records pertaining to the Judgment rendered by the learned Magalir Neethimandram (Fast Track Mahila Court), Tiruppur in Special SC.No.33 of 2016 vide its Judgment dated 29.11.2018, under Section 16 r/w 17 of protection of children from sexual offences Act, 2012 and sentenced to undergo 5 years Rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo 1 year Rigorous Imprisonment. And the 1st petitioner/1st Accused convicted under Section 7 r/w 8 of Protection of Children from Sexual Offences Act, 2012 and sentenced to undergo 5 years Rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo 1 year Rigorous Imprisonment and set aside the same and consequently acquit the appellant.

For Appellants : Mr.M.Pitchai Muthu

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

O R D E R

The respondent Police registered a case against the appellants in Crime No. 28 of 2015 for the offences punishable under Section 7 r/w 8 of Protection of Children from Sexual

Offences Act, 2012 and under Section 16 r/w 17 of Protection of Children from Sexual Offences Act, 2012. After completing the investigation, the Inspector of Police, All Women Police Station (North), Tiruppur has charge sheeted the first appellant for the offence under section 7 r/w 8 of Protection of Children from Sexual Offences Act 2012 and the 2nd appellant for the offence under Section 16 r/w 17 of Protection of Children from Sexual Offences Act 2012 stating that the minor victim girl Apsara Banu was aged 13 years at the time of occurrence.

2. The learned Judge, Magalir Neethimandram, (Fast Track Mahila Court), Tiruppur framed charges against the appellants for the offences stated above. During trial, in order to prove the case of the prosecution, on the side of the prosecution as many as 10 witnesses namely PW1 to PW10 were examined and marked Exs.P1 to P11 besides, one material object MO1 and examined DW1 & DW2 on the side of the defence. After completing trial and hearing of arguments adhered on either sides, the learned Sessions Judge found the 1st appellant guilty under Section 7 r/w 8 of Protection of Children from Sexual Offences Act, 2012 and convicted and sentenced to undergo Rigorous imprisonment for a period of five years along with fine of Rs.5,000/- in default, to undergo Rigorous imprisonment for further period of one year and found the 2nd appellant guilty for the offence under Section 16 r/w 17 of Protection of Children from Sexual Offences Act, 2012 and convicted and sentenced to undergo Rigorous imprisonment for five years along with fine of Rs.5,000/- in default, accused to undergo Rigorous imprisonment for further period of one year.

3. Challenging the same, the appellants have filed the present Criminal Appeal before this Court.

4. Learned counsel appearing for the appellants would submit that the judgment of the Trial Court is against the law, the Trial Court erred in convicting the Appellants when none of the prosecution witnesses have supported the case of the prosecution. The trial Court erred in convicting the appellants since the entire case of the prosecution is doubtful as the participation of the appellants have not been supported by reliable materials. The Court below failed to note that the prosecution witnesses have improved their version before the trial Court and deviated from their original version. Hence, their testimony cannot be relied upon. The Court below failed to consider the vital aspect with regard to the delay in lodging the First Information Report, and there was an unexplained long delay in lodging the complaint which clearly vitiates the entire case of the prosecution.

5. Further, he would submit that the medical evidence has

not supported the case of the prosecutions, hence the conviction based on the same have no legs to stand. The other reasons assigned by the Court below in convicting the appellants are unsound and unsustainable. Without considering the nature of evidence adduced by the witnesses and the victim, the learned Trial Court has erroneously found both the appellants guilty and therefore, the convictions and sentences imposed by the Trial Court are liable to be set aside.

6. According to the learned Government Advocate (Crl.Side) appearing for the respondent, PW10 deposed that she sent the victim for medical examination to the Government Hospital, Tiruppur through the Woman Police Constable/Kanimozhi. PW10 examined the witnesses Pachiammal, Kishore, Ragupathi. Thangaraj, Easwaran and recorded their statements. Further, PW10 deposed that she gave a requisition to record Statement under Section 164 Cr.P.C. from the victim and on 03.12.2015 statement under Section 164 Cr.P.C. was recorded by the Judicial Magistrate No.1, Udumalpet. Ex P1 is the 164 Cr.P.C. Statement recorded from the victim. PW10 has contended that the said proceedings viz. Statement under Section 164 Cr.P.C. Was recorded from the victim by the Judicial Magistrate was also video graphical. M.O.1 series are the C.Ds. (2 in Nos.). She gave a requisition to sent the 1st appellant for medical examination and on 10.11.2015 and 11.11.2015, the 1st appellant was subjected to undergo medical examination. She examined Dr.Hemalatha who examined the victim at the Government Hospital, Tiruppur, recorded her statement and obtained the Medical certificate for the victim.

7. It is clearly evident from the evidences that the victim girl is minor at the time of occurrence. During the trial, the victim girl narrated the events, PW4 is a neighbour of the victim girl. She clearly deposed the scene of occurrence during her examination. She deposed that while she was sitting outside her house, she saw the victim pushing the first appellant and running out of the house of the second appellant. She also deposed that first appellant tried to harass the victim girl. Therefore, the evidence clearly shows that both the appellants have committed the crime. PW2 has also deposed that first appellant harassed the victim girl. The Special Court has rightly appreciated the evidence of the prosecution especially the victim girl and also the neighbour PW4. This Court does not find any perversity in the judgment of the Trial Court. This Court finds, there is no sound reasons and grounds to interfere with the Judgment of the Trial Court.

8. In view of all the oral and documentary evidences adduced and produced by the prosecution, this Court finds that there is no merit in the present Criminal Appeal and accordingly

the criminal appeal stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
learned Magalir Neethimandram,
(Fast Track Mahila Court),
Tiruppur.
2. The Inspector of Police,
All Women Police Station (North),
Tiruppur.
3. The Superintendent,
Central Prison,
Coimbatore.
4. The Superintendent,
Central Prison,
for women,
Coimbatore.
5. The Public Prosecutor,
High Court of Madras.

+2cc to Mr.S.Elango, Advocate, S.R.No. 40345

Cr1.A.No.171 of 2019
and
Cr1.MP.No.4564 of 2019

VG I(CO)
GN(17/12/2019)

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