

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.219 of 2019

Samuvel @ Saminathan

...Appellant

-Vs-

State of Tamil Nadu

Represented by

The Inspector of Police,
All Women Police Station,
Ambur.

...Respondent

This Criminal Appeal is filed under Section 374(2) of Cr.P.C. praying to set aside the judgment of conviction dated 08.03.2019 passed in Spl.S.C.No.46 of 2017 on the file of Fast Track Mahalir Neethimandram (Sessions Court), Vellore, Vellore District and acquit him.

For Appellant : Ms.S.Thamizharasi

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

JUDGMENT

This criminal appeal has been filed against the judgment of conviction dated 08.03.2019 passed in Spl.S.C.No.46 of 2017 by the learned Sessions Judge, Fast Track Mahalir Neethimandram (Sessions Court), Vellore, Vellore District.

2 The respondent police registered a case against the appellant in Cr.No.4 of 2017 for the offence under Section 363, 366 of IPC and Section 6 r/w 5(1) of the Protection of Children from Sexual Offences Act, 2012 (in short "POCSO Act"), stating that the appellant, on 14.03.2017, had kidnapped the victim girl from the legal custodian and had sexual intercourse several times and thereby committed offence punishable under Sections stated supra. The respondent police, after investigation laid charge sheet before the Special Court and the same was taken on file in Spl.S.C.No.46 of 2017 by the learned Sessions Judge, Fast Track Mahalir Neethimandram (Sessions Court), Vellore, Vellore District. After completing the procedural formalities, charges were framed against the appellant.

3 Before the trial Court, on the side of the prosecution P.W.1 to P.W.8 were examined and Ex.P1 to Ex.P11 were marked and no material object was produced. On the side of the defence, no one was examined and no document was marked.

4 The learned Sessions Judge, after trial found the accused guilty of offence punishable under Section 366 of IPC and Section 5(1) r/w 6 of POCSO Act and by judgment dated 08.03.2019 has convicted the appellant and sentenced him to undergo rigorous imprisonment for seven years with fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for one month for the offence under Section 366 of IPC and to undergo rigorous imprisonment for ten years with fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for three months for the offence under Section 5(1) r/w 6 of POCSO Act and also awarded Rs.4,00,000/- as compensation to be paid by the Government of Tamilnadu. Aggrieved against the said judgment of conviction, the accused has preferred this appeal before this Court.

5 According to learned counsel appearing for the appellant, 164 statement of the victim girl/P.W.2 does not speaks anything about the sexual intercourse with the appellant/accused, subsequently she has given evidence before the Court below alleging that the appellant kidnapped her and compelled to have sexual intercourse, which creates doubts in the case of the prosecution. There was much delay in lodging complaint and registering FIR, which was not properly explained by the prosecution. There is no evidence to show that the appellant/accused has compelled P.W.2 to have sexual intercourse with him and there was no injury to prove the version of the prosecution. The victim girl, who is aged about 16 years at the time of occurrence, would know what she is doing and what are the consequences and therefore without consent of P.W.2, the appellant could not take the victim girl. Further, no witness of the prosecution has spoken about the involvement of the appellant to convict him. The learned Sessions Judge, has failed to consider the above facts and erroneously convicted the appellant, which warrants serious interference.

6 The learned Government Advocate (Cr1.Side) appearing for the respondent police would submit that on 14.03.2017, the appellant, being a married man, had kidnapped P.W.2, who is 16 years old at the time of occurrence and had sexual intercourse with P.W.2. The victim girl/P.W.2 has clearly narrated the occurrence before the Court below, which could not be discarded. Even though, P.W.2 had not stated anything about the sexual

assault in the 164 statement, she had clearly narrated the entire occurrence in her evidence before the Court below. P.W.1 corroborates the version of victim child P.W.2. The Doctor, who was examined as P.W.7, has opined that there is possibility of sexual intercourse. Therefore, prosecution has clearly proved its case beyond reasonable doubt and the learned Sessions Judge has rightly appreciated the evidence and convicted the appellant/accused, which does not call for any interference.

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

8 The victim child, who is aged about 16 years at the time of occurrence, has clearly narrated the incident and the involvement of the accused in the offence before the Court below in her evidence, which would clearly attract offence under Section 5(i) r/w 6 of the POCSO Act. The learned counsel for the appellant has contended that there was delay in lodging complaint. It is seen that the appellant/accused being a married man, had misguided P.W.2 that he would marry her, who is 16 years old at the time of occurrence and took her from custody of the legal guardian and committed offence under POCSO Act. Cases of this nature, no parents will rush to police station to lodge a complaint, they may have some hesitation and they will think about the future of the child. Hence delay in lodging complaint and registering FIR will not take away the case of the prosecution. Further it was contended that there was no proof to show that the appellant committed offence as alleged by the respondent police. In the cases of this nature, the evidence of victim child has to be given more weightage and in the case on hand, the victim child, who is 16 years old at the time of occurrence, has clearly narrated the incident. No corroboration is necessary and there is no reason to discard the evidence of the victim. The medical evidence has strengthen the case of the prosecution. The other defence taken by the appellant/accused would not suffice to rebut the presumption under the POCSO Act. 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.

9 In the result, this Court does not find iota of merit and substance in the present criminal appeal and hence the appeal is dismissed.

Sd/-

Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

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To

1. The Sessions Judge, Fast Track
Mahalir Neethimandram (Sessions Court),
Vellore, Vellore District.
2. The Inspector of Police, All Women Police Station, Ambur.
3. The Public Prosecutor, High Court of Madras.

+lcc to Ms.S.Thamizharasi, Advocate SR.No.37591

Cr1.A.No.219 of 2019

GP(CO)
GMY(25/07/2019)



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