

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.348 of 2017 and
Crl.M.P.No.7798 of 2017

S.Sarath Kumar

...Appellant

-Vs-

The State rep. by
The Inspector of Police,
All Women Police Station,
Perambalur.
(Cr.No.05/2015)

...Respondent

This Criminal Appeal is filed under Section 374 of Cr.P.C. praying to set aside the judgment of conviction of the appellant in Spl.S.C.No.05/2015 dated 19.01.2017 on the file of the learned Sessions Judge, Mahila Court, Perambalur, by allowing this criminal appeal.

For Appellant :Mr.A.S.Vijayaraghavan for
Mr.K.Murugesan

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

JUDGMENT

This criminal appeal has been filed against the judgment of conviction of the appellant in Spl.S.C.No.05 of 2015 dated 19.01.2017 mad by the learned Sessions Judge, Mahila Court, Perambalur, by allowing this criminal appeal.

2 Case of the prosecution is that the on 07.03.2015, appellant/accused entered into house of the victim girl with an intend to commit sexual assault and raped the victim girl and also intimidated her and thereby committed offence under Section 448, 323, 294(b), 506(i) of IPC and Section 3 r/w 4 of Protection Children from Sexual Offences Act (in short "POCSO Act"), 2012. Therefore the respondent police registered a case in Cr.No.05/2015 and after investigation filed a charge sheet before the jurisdictional Magistrate and the same was taken on file in Spl.C.C.No.15 of 2015 by the learned Sessions Judge, Mahila Court, Perambalur.

3 Before the trial Court, on the side of the prosecution, P.W.1 to P.W.20 were examined and Ex.P1 to Ex.P17 were marked and exhibited M.Os 1 to 3. On the side of the defence, no

witness was examined and no document or Material Object was exhibited.

4 The learned Sessions Judge, after advertng to the materials placed on record and after hearing both the parties, by judgment dated 19.01.2017 convicted the appellant/accused for the offence under Sections 448 of IPC and Section 3 r/w 4 of POCSO Act and sentenced him to undergo simple imprisonment for one year with fine of Rs.1,000/-, in default, to undergo simple imprisonment for further period of three months for the offence under Section 448 of IPC and to undergo rigorous imprisonment for 10 years with fine of Rs.3,000/-, in default, to undergo rigorous imprisonment for one year for the offence under Section 3 r/w 4 of POCSO Act. Aggrieved against the judgment of conviction, the appellant is before this Court with the present criminal appeal.

5 The learned counsel appearing for the appellant would submit the appellant/accused has not committed any offence as alleged by the prosecution and there was a love affair between the victim girl and the appellant. There was a delay in registering FIR and there was contradiction in the prosecution witnesses, which would affect the case of the prosecution. 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. The statement recorded under Section 161 does not attract any offence under POCSO Act. P.W.2 improved the case in the statement under Section 164 which could not be sustained. In fact, P.W.1, has beaten P.W.2 with broom and then only P.W.2 consumed poison. P.W.1, in order to wreck vengeance due to the enmity, has foisted false case against the appellant/accused. Under these circumstances, the Court below ought to have acquitted the appellant.

6 According to the learned Government Advocate (Crl.Side) appearing for the respondent that the victim, who was studying 11th standard at the time of occurrence has clearly identified the accused and has spoken about the offence committed by the appellant/accused which would attract offence under the POCSO Act. Even though, P.W.2/Victim did not state anything about the rape in the statement recorded by the Investigating Officer during investigation under Section 161 of Cr.P.C, has clearly narrated the offence committed by the appellant/accused in the statement recorded by the learned Magistrate under Section 164 of Cr.P.C. The contradiction in the evidence of P.W.1 regarding date of investigation of P.W.1 and P.W.2, is due to her illiteracy only and it should not be taken for consideration, when the victim herself has clearly narrated the offence. The

trial Court, after examining all the witnesses and after hearing both the parties, had come to the conclusion that the appellant/accused 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.

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

8 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 was studying 11th standard 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. P.W.2, since could not bear the act of the appellant/accused had consumed poison and admitted in the Hospital and before the Doctor of the Private Hospital, did not say anything about the rape. Further, no girl would reveal this type of offence committed on her to stranger, soon after the occurrence. In the case on hand, there is no reason to discard the evidence of the victim. Even though, in the statement recorded under Section 161 of Cr.P.C. during investigation, P.W.2/victim has not stated anything about the rape, in the statement recorded under Section 164 of Cr.P.C by the Magistrate, she has clearly narrated the offence committed by the appellant/accused. It is clearly proved by the prosecution that the appellant/accused has committed offence punishable under POCSO Act. Even though, there is minor contradiction as stated by the learned counsel for appellant, this Court is of the view that it will not go to the root of the case. 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.

9 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.

s/d-

Assistant Registrar(CO)

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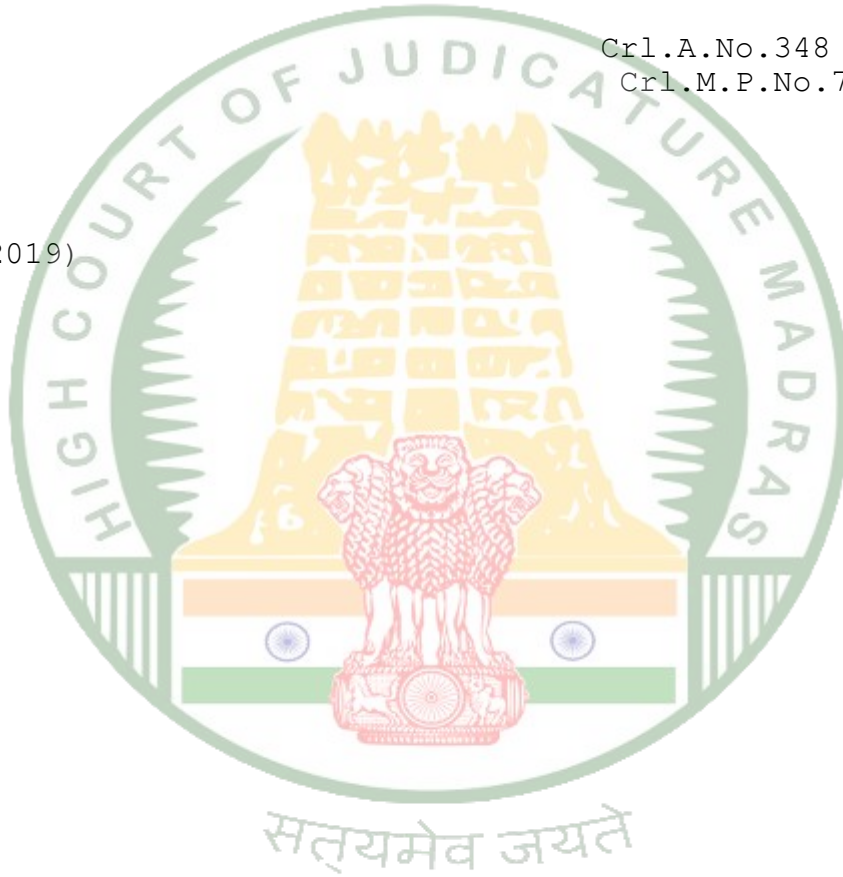
Sub-Assistant Registrar

To

1. The Sessions Judge, Mahila Court, Perambalur.
2. The Public Prosecutor, High Court of Madras.
3. The Judicial Magistrate, Perambalur District.
4. The Inspector of Police
All Womens Police Station
Perambalur District.
5. The Superintendent
Central Prison, Trichy

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AD(CO)
SP(26/09/2019)



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