

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 12.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.573 of 2017
and
Crl.M.P.No.991 of 2019

Jayaprakash

...Appellant

-Vs-

The State of Tamilnadu,
represented by,
The Inspector of Police,
All Women Police Station,
Thudiyalur, Coimbatore.
Crime No.14 of 2015

....Respondent

Prayer This Criminal Appeal is filed under Section 374(2) of Cr.P.C., to call for the records from the lower Court in Spl.C.C.No.30 of 2015 on the file of learned Sessions Judge, Mahila Court, Coimbatore, and set aside the Judgment and sentence imposed on the appellant by the learned Sessions Judge, Mahila Court, Coimbatore by judgment dated 14.07.2017.

For Petitioner : Mr.M.Abdul Rasack

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

सत्यमेव जयते
J U D G M E N T

The present Criminal Appeal has been filed seeking to set aside the judgment of conviction dated 14.07.2017 passed by the learned Sessions Judge, Magalir Neethimandram, Coimbatore, under POCSO Act in Spl.C.C.No.30 of 2015.

2 The case of the prosecution is that the age of the victim girl is 16 years she was born on 24.11.1997. The victim and the accused were neighbour. The victim was studying second year B.Com (C.A) in R.V. Arts & Science College in the year of 2014. the victim and the accused have been loving each other for about five years. About two years prior to the complaint, one

day, while the victim was present alone in her house, the accused came there, promised to marry her after getting divorce from his first wife and had physical relationship with her by compulsion and against the wish of the victim. Further the accused in the same manner had physical relationship with the victim on many occasions and made her pregnant which led to delivery of male baby. Based on the complaint preferred by the victim girl, the respondent registered a case in Crime No.14 of 2015. After investigation, charge sheet was filed by the Inspector of Police, against the accused for offence under Section 3(a) r/w 5(j) (ii), (1) r/w 6 of Protection of Children from Sexual Offences Act-2012.

3 After completion of legal procedure and formalities, charges were framed for offence under Section 3(a) r/w 5(j) (ii), (1) r/w 6 of Protection of Children from Sexual Offences Act-2012. In order to prove the case of the prosecution, before the trial Court, they have examined P.W.1 to P.W.14 and have marked Ex.P1 to Ex.P14. After completing the prosecution witnesses when incriminating circumstances were put before the accused he denied as false. On the side of the appellant, no oral evidence was examined and no document was marked. The Sessions Court, after completing the trial and hearing the arguments and on a perusal of the materials, found the appellant/accused guilty and convicted him for offence under Section under Section 3(a) r/w 5(j) (ii), (1) r/w 6 of Protection of Children from Sexual Offences Act-2012, and sentenced him to undergo 12 years rigorous imprisonment and to pay a fine of Rs.5,000/- in default, to undergo 6 months simple imprisonment. Aggrieved by the order passed by the learned Sessions Judge, Mahila Court, dated 14.07.2017, the appellant/accused has preferred the present Criminal Appeal before this Court.

4. The learned counsel for the appellant would vehemently argue that the victim girl was 17 years, after 6 months of the occurrence only they gave complaint. On 20.04.2015 they went to hospital for treatment, the Doctor who examined the victim girl confirmed that the girl was pregnant, which was not believable, because 6 months the parents of the victim girl would not have kept quiet. They filed a false case against the appellant and the prosecution has not proved its case as projected by the prosecution. There is one doubt that the benefit of doubts have to be extended to infavour of the accused. If two views are possible the view which is favourable to the accused has to be given benefit of it. Therefore, which warrants interference of this Court.

5 The learned Government Advocate (Criminal Side) would strongly oppose the contention raised by the learned counsel for

the appellant. Further, he would state that the victim girl was 17 years. The appellant is the neighbour and also he is a married man, he falsely promised to the victim girl that he will marry her after divorcing his wife and had a physical relationship with the victim girl. After 6 months she came to know that she was pregnant. Therefore, the parents of the victim girl gave complaint and subsequently DNA test was conducted, the report reveals that the appellant is the biological father of the child born to the victim girl. Therefore, once it is proved that the girl is below 18 years and had a physical relationship with her the offence under POCSO Act made out and also it is a statutory presumption under Section 29 of the POCSO Act. It is for the accused has to rebut the presumption. In this case, the evidence of P.W.1/victim girl and the parents of the victim girl and doctor evidence and DNA test report clearly show that the appellant has committed offence under Section 3(a) r/w 5(j) (ii), (1) r/w 6 of Protection of Children from Sexual Offences Act-2012. Therefore, there is no merits in the appeal, this appeal is liable to be dismissed.

6 Heard the learned counsel appearing for the appellant and the learned Government Advocate (Crl.Side) appearing for the respondent police and perused the materials available on record.

7 Before the trial Court, the victim girl was examined as P.W.1 and her statement recorded under Section 164 Cr.P.C. reveals that at the time of occurrence, she was aged about 16 years. Even at that time, when she was studying second year B.Com (C.A) in R.V.Arts and Science College in the year of 2014 she had a love affair with the appellant. Based on the false promise made by the appellant, he had sexual intercourse with her on many occasions. Due to that, she got conceived and led to delivery of male baby. Subsequently, P.W.2/father of the victim girl has stated that when the victim had medical checkup it came to know that she was in six months pregnancy. She informed the facts to her parents. P.W.7/Doctor who examined P.W.1 on 20.04.2015 has deposed that at that time P.W.1 was in six months pregnancy. P.W.7 was not cross examined by the defence. Further P.W.11/Doctor who examined P.W.1 on 17.06.2015 has also deposed that at that time of examination P.W.1 was in eight months pregnancy. He issued EX.P.9 AR copy in this regard. It is to be noted that P.W.11 was also not cross examined. Further the evidence of P.W.1 that she delivered a male baby on 15.07.2015 has also been not disputed by the defence. Considering these evidence, it is clear that the occurrence ought to have been taken place in the month of November(or) December 2014. Therefore it is clear that at the time of occurrence the age of the P.W.1 would be only 17 years. There is no evidence to show that the victim was completed 18 years at the time of occurrence. DNA test was conducted and the report also reveals

that the appellant is the biological father of the child born through the victim girl. Therefore, the prosecution has proved its case beyond any reasonable doubt. The appellant has committed the offence under Section 3(a) r/w 5(j) (ii), (1) r/w 6 of Protection of Children from Sexual Offences Act-2012 and the trial Court has also found from the evidence of P.W.1, the victim girl and P.W.7 and P.W.8 Doctors who examined the victim at different occasions, and the medical evidence that she was minor at that time of occurrence.

8 On a reading of the entire evidence of P.W.1 to P.W.14, this Court has also found that the accused committed the offence under Section 3(a) r/w 5(j) (ii), (1) r/w 6 of Protection of Children from Sexual Offences Act-2012. The judgment of conviction and sentence passed by the learned Sessions Judge, Coimbatore, in Special C.C.No.30 of 2015 is confirmed.

9 For the above said reasons, this Court finds that the present Criminal Appeal has absolutely no merits and therefore the same is dismissed. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sbn

To

1. The Sessions Judge, Mahila Court, Coimbatore.
2. The Inspector of Police,
All Women Police Station,
Thudiyalur, Coimbatore.
3. The Public Prosecutor,
High Court of Madras.
4. The Superintendent,
Central Prison, Coimbatore.

+1cc to Mr.M.Abdul Rasack, Advocate, S.R.No.36728

Cr1.A.No.573 of 2017
and
Cr1.M.P.No.991 of 2019

NRL(CO)
CS/23/10/2019