

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.699 of 2018

G.Sathish Kumar

.. Appellant/Accused

Vs.

The State rep. By its
The Inspector of Police,
All Women Police Station,
Ambur, Vellore District.

.. Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to set aside the conviction and judgment given by the Sessions Court, Fast Track Mahila Judge, Vellore in Spl.S.C.No.44 of 2015 dated 19.06.2018.

For Appellant : Mr.S.Panneerselvam
Legal Aid Counsel

For Respondent : Mr.R.Surya Prakash
Government Advocate (Criminal Side)

JUDGMENT

This Criminal Appeal has been filed against the judgment of conviction dated 19.06.2018 made in Spl.S.C.No.44 of 2015 by the learned Sessions Court, Fast Track Mahila Judge, Vellore.

2. The case of the prosecution is that the age of the victim girl is 8 years and she was born on 05.07.2007. On 11.07.2015 at about 3.30 p.m., the victim girl and his brother were playing game in front of her house, at the time the appellant/accused, who is the neighbour of victim girl, he took her to his house and on compulsion, had sexual relationship with her. Hence, the mother of the victim girl lodged a complaint before the respondent police. The respondent police registered a case in Crime No. 2 of 2015 for the offences under Sections 363, 366 of IPC r/w. 6, r/w. 5(m) and 8 r/w 7 of POSCO Act 2012, and investigated the matter and filed the final report. The learned Sessions Court, Fast Track Mahila Judge, Vellore framed charges in Spl.S.C.No.44 of 2015 for the offences under Sections 363, 366 of IPC r/w. 6, r/w.5 (m) and 8 r/w 7 of POSCO Act 2012 against the appellant/accused.

3. Before the trial Court, in order to prove the case of the prosecution, P.W.1 to P.W.9 were examined, Ex.P1 to Ex.P13 were marked and M.O.1 to M.O.3 were produced. On the side of the defence, D.W.1 and D.W.2 were examined and Ex.D1 was marked and no material objects were produced.

4. The learned Sessions Judge, after trial, found that the accused is guilty of the offence punishable under Section 366 IPC and convicted and sentenced him to undergo rigorous imprisonment for a period of seven years with fine of Rs.5,000/- in default, to undergo rigorous imprisonment for a further period of six months and for the offence punishable under Section 6 r/w. 5 (m) of POSCO Act and convicted and sentenced him to undergo rigorous imprisonment for a period of ten years with fine of Rs.5,000/- in default, to undergo rigorous imprisonment for a further period of six months and for the offence punishable under Section 8 r/w. 7 of POSCO Act and convicted and sentenced him to undergo rigorous imprisonment for a period of three years with fine of Rs.1,000/- in default, to undergo rigorous imprisonment for a further period of six months by judgment dated 19.06.2018.

5. Aggrieved against the judgment of conviction dated 19.06.2018, the convict has preferred this present criminal appeal before this Court.

6. The learned counsel for the appellant would submit that a false case has been foisted against this appellant. The prosecution has failed to prove the injury sustained by the appellant. The unexplained injury sustained by the appellant is vital to the case of the prosecution. The doctor's medical report is not supported. Ex.P.3, medical report was produced by Dr.Ramya, one who examined the victim girl but at the time when prosecution witnesses were examined, another doctor, Dr.Sharmila Devi was examined before the trial Court and there is no evidence to show that the victim girl was subjected to the sexual assaulted. According to the learned counsel for the appellant, the learned Sessions Judge had not properly appreciated the materials on record. Therefore, he seeks to set aside the order passed by the learned Sessions Judge.

7. On the other hand, the learned Government Advocate (Crl.Side) submitted that the victim girl has clearly narrated the sexual harassment committed by the appellant/accused. P.W.1, grandmother, eye witness, she has clearly spoken about the appellant taking her grand daughter to his house and he committed the sexual harassment with the grand daughter and at the time she went to the house of the appellant/accused, she beat him and took her grand daughter to her house. The victim girl was taken to the hospital and subsequently, she gave a complaint to the appellant/accused. The trial Court has considered the nature of the offence and found that the prosecution has proved its case with cogent and reliable

evidence and there is no reason to discord the prosecution evidence. Therefore, there are no merits in this case and is liable to be dismissed.

8. Heard, Mr.S.Panneerselvam, learned counsel for the appellant and Mr.R.Surya Prakash, learned Government Advocate (Crl.Side) for the respondent and perused the available records.

9. On a reading of the evidence of P.W.1 and P.W.3 have spoken about the involvement and sexual assault made by the appellant towards the victim girl. E.P.10, medical report of the victim girl, clearly states that she was sexually assaulted by one known person and the victim girl has also clearly narrated that the accused had sexually abused the victim girl. The trial Court recorded the statement of the victim girl under Section 164 Cr.P.C., and Ex.P.4, statement recorded under Section 164 Cr.P.C, clearly shows that the appellant committed sexual assault on the victim girl. Though, the learned counsel for the appellant submitted that the appellant sustained injury, but the prosecution has failed to explain it, the reading of the evidence of D.W.1 and D.W.2 and also Ex.R1, accident register, registered on 12.07.2015 shows that the injury sustained by the appellant was self inflicted and he had caused the grave injury by using blade. Therefore, the contentions raised by the learned counsel for the appellant are not acceptable and more over Ex.P.8 has clearly stated the appellant's sexual potency and the victim girl has clearly spoken about the sexual assault committed by the appellant towards her. Therefore, there is no reason to disbelieve the evidence of P.Ws. 1 to 3.

10. Considering the facts and circumstances of the case, this Court is of the view, on the available documents, offence under Section 366 of IPC is stated to be kidnapping, abducting or inducing woman to compel her marriage, etc. but there is no evidence to show that the appellant to compel the victim girl for marriage. Therefore, conviction under Section 366 of IPC is unwarranted. Under these circumstances, this Court finds no merit in the order passed by the Sessions Court for the offence under Section 366 of IPC and the same is set aside and the conviction and sentence passed by the Sessions Court for the offences under Section 6 r/w.5 (m) and 8 r/w 7 of POSCO Act 2012 is confirmed.

In the result, the Criminal Appeal is partly allowed.

Sd/-
Assistant Registrar(CS)

//True Copy//

<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar

dh

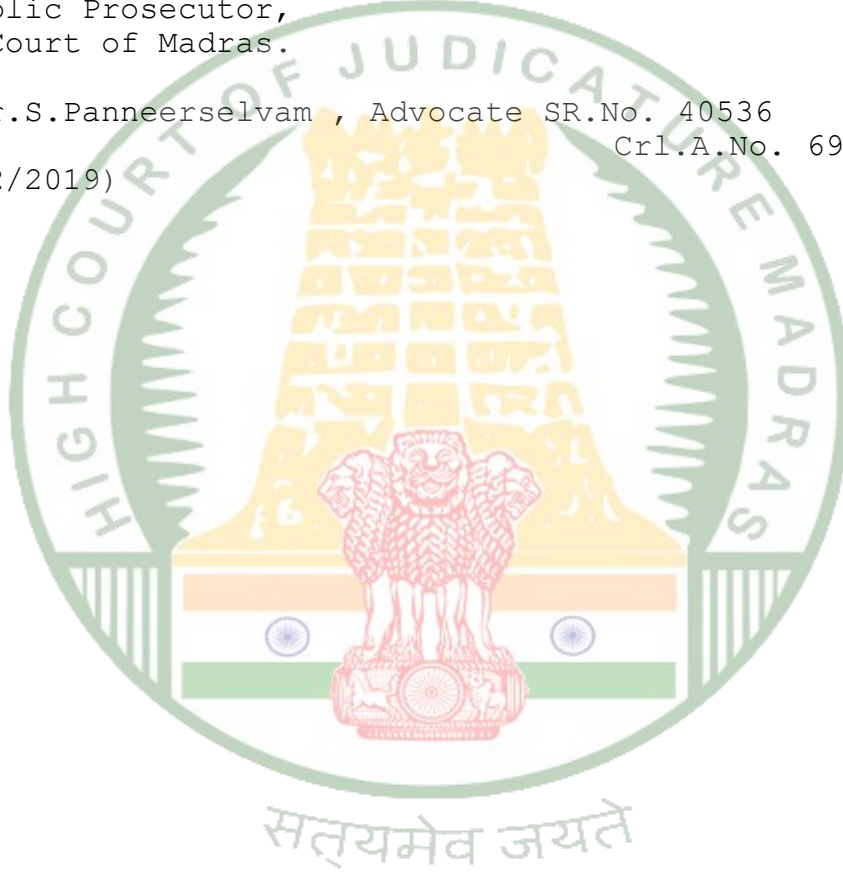
To

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

+lcc to Mr.S.Panneerselvam , Advocate SR.No. 40536

Crl.A.No. 699 of 2018

A.SK(13/12/2019)



WEB COPY