



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.633 of 2018
and
Crl.M.P.No.13977 of 2018

Ajithkumar

...Appellant/Accused

-Vs-

The State Rep. by
The Inspector of Police,
Namakkal All Women Police Station,
Namakkal District.
(Crime No.7 of 2016)

...Respondent

This Criminal Appeal is filed under Section 374(2) of Cr.P.C. to set aside the judgment dated 25.04.2018 in Spl.C.C.No.22 of 2016, on the file of the learned Sessions Judge (Fast Track Mahila Court), Namakkal.

For Appellant : Mr.R.Ganesh Babu (Legal Aid Counsel)
For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.Side)

JUDGMENT

This criminal appeal has been filed to set aside the judgment dated 25.04.2018 in Spl.C.C.No.22 of 2016 on the file of the learned Sessions Judge, Fast Track Mahila Court, Namakkal.

2. The appellant is the accused. The respondent police has registered a case against the appellant/accused, based on the complaint given by P.W.1/mother of the victim, for the offence under Sections 366(A) IPC and Section 5(1) read with 6 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act'). After investigation, the prosecution had filed the charge sheet before the learned Sessions Judge, (Fast Track Mahila Court), Namakkal, which was taken on file in Spl.C.C.No.22 of 2016. In order to prove the case of the prosecution, before the Special Court, P.W.1 to P.W.16 were examined and Ex.P1 to Ex.P13 were marked. When the above incriminating materials were put before the appellant/accused under section 313 Cr.P.C, he denied the same and on the side of the defense, no oral and document was marked. The learned Sessions Judge, after advertng to the materials



placed on record and after hearing both the parties, by judgment dated 25.04.2018, found the appellant guilty for offences under Section 366(A) IPC and Section 5(1) read with 6 of POCSO Act and convicted the appellant for the offence under Section 366(A) IPC and sentenced him to undergo seven years rigorous imprisonment and to pay a fine of Rs.500/- in default, to undergo three months rigorous imprisonment; and convicted him for the offence under Section 5(1) read with 6 of POCSO Act and sentenced him to undergo 10 years rigorous imprisonment and to pay a fine of Rs.500/- in default, to undergo three months rigorous imprisonment.

3. Aggrieved by the said judgment of conviction and sentence, the accused has preferred the present criminal appeal before this Court.

4. The learned counsel for the appellant/accused would submit that the age of the appellant is only 17 years and the victim has completed 18 years. Initially the respondent police registered a case as kidnapping case, subsequently, they filed charge sheet for the offence under POCSO Act. The appellant and the victim were loving each other, therefore, there is no intention to make a sexual assault. The alleged offence has taken place on 03.06.2015. But F.I.R. registered only on 05.06.2016. There is a huge delay in filing the F.I.R. and there is no explanation given for the delay, which shows that the delay is fatal to the case of the prosecution. The prosecution has not proved its case beyond reasonable doubt. The age of the accused and the victim have not been ascertained. The prosecution has not proved the age of the victim girl as no Birth Certificate or School Certificate were produced. From the evidence of the Head Master of the School, it is seen that the victim has studied in 10th standard during the year 2016-2017. Therefore, in the absence of the proof of the age of the victim, POCSO Act would not attract. The medical evidence has corroborated not the girl has completed 18 years. The girl hasthat on her own volition, she left with the appellant. Therefore, POCSO Act would not attract and Section 366(A) IPC would not attract, because he has not made a false promise and he has not forced the victim to have illicit intercourse with another person.

Section 366(A) IPC is as follows:- Procurement of minor girl-whosoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be



liable to fine.

The learned Sessions Judge, failed to consider all these aspects and convicted the appellant. Further, the learned counsel would submit that a false case has been foisted against him. There is a material contradiction between the victim girl herself in the statement recorded before the Magistrate and Sessions Judge. These facts have not been considered by the learned Sessions Judge. The accused was convicted not on merits, which warrants interference of this Court.

5. The learned Government Advocate (Crl.Side) appearing for the respondent would submit that at the time of the occurrence, the appellant has completed 18 years and the victim was studying in tenth standard and she was only 15 years. During vacation in the year 2016, she went to her maternal Aunt's house situated at Sullipalayam. The accused is neighbour of the victim's aunt and they developed their friendship. When P.W.4 returning from her work, she heard that the accused misbehaved with the victim. Thereafter, P.W.4 has brought the victim in her house. Thereafter, the accused with intention, kidnapped the victim and had sexual assault with her. On the date of occurrence, P.W.6 Udhayakumar has seen the accused and victim talking at 8.30 p.m. near Alanganathan diversion road. The accused had taken her from lawful custody of her elders, to Tiruchengode Bus Stand, where they have spent whole night and on the next day morning, the accused had taken her to Ulagappampalayam in his grandfather's house and sexually assaulted the victim. Thereafter, the accused left the victim at Bodinaickenpatty Bus stop after two days. During their stay, on 04.06.2016 and 05.06.2016, in the house of the grandfather of the appellant, he had sexual relationship with the victim and thereafter, left in her village. In order prove the case of the prosecution, the respondent police has examined P.W.1/mother of the victim, P.W.2/victim girl and P.W.10/Head Master, where the victim girl studied and also Doctor who has examined her. The prosecution has proved its case beyond reasonable doubt and the Special Court has rightly convicted the accused and there is no reason to interfere with the judgment of the Special Court.

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

7. The case of the prosecution is that P.W.2 victim was kidnapped by the accused under the guise of marriage. On 03.06.2016 at about 8.00 p.m., the accused kidnapped the victim from Bodinaickenpatty Bus stop to Tiruchengode and thereafter, he took her to Ulagampalayam, his grandfather's house, where the accused stayed along with the her till 05.06.2016. During the occasion, the accused had sexual intercourse with the victim by



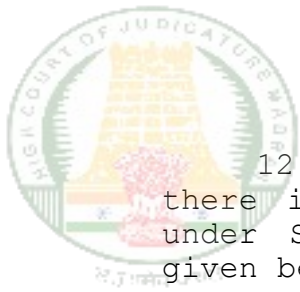
force.

8. P.W.1/defacto complainant is the mother of the victim and has given a complaint on 03.06.2016 stating that her daughter was missing. In spite of several search made by P.W.1, she did not find her. Later, the victim has returned back to her house on 05.06.2016 at about 7.00 p.m. On enquiry, the victim has stated to her mother that when the victim went to her maternal aunt house at Sullipalayam, the accused made friendship with her and later, he had sexual intercourse with her by force.

9. Based on the complaint given by P.W.1/mother of the victim, the respondent police registered a case against the appellant/accused, for the offence under Sections 366(A) IPC and Section 5(1) read with 6 of Protection of Children from Sexual Offences Act, 2012. After investigation, the prosecution had filed the charge sheet before the learned Sessions Judge, (Fast Track Mahila Court), Namakkal, which was taken on file in Spl.C.C.No.22 of 2016. In order to prove the case of the prosecution, before the Special Court, P.W.1 to P.W.16 were examined and Ex.P1 to Ex.P13 were marked.

10. P.W.6 is an independent witness, he has stated that at about 8.30 p.m. the accused and the victim were seen in Alanganathan diversion road on the date of occurrence. P.W.10 is the Head Master, and he has issued certificate for the victim about her age and Ex.P4 is the certificate issued by P.W.10, date of birth of the girl is mentioned as 01.02.2001. The Doctor who was examined as P.W.14 has clearly spoken about potency of the accused. P.W.14 Doctor, who examined the victim girl, has clearly stated that there is no external injury found on the body and there was a possibility that the victim girl would have had sexual intercourse.

11. From the evidence of P.W.1, P.W.2, P.W.4, P.W.10 and P.W.15 and Ex.P4 age proof certificate, it is seen that the prosecution has proved its case beyond reasonable doubt. The victim girl, who is aged about 15 years 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 Section 5(1) read with 6 of POCSO Act. In this case on hand, there is no reason to refuse the evidence of the victim. This Court has also come to the conclusion that the age of the accused is 18 years and the age of the victim is only at 15 years at the time of the occurrence. The accused has forcefully had sexual relationship with the victim girl. Therefore, Section 29 of the PocsO Act is Statutory presumption i.e. the accused has to rebut the presumption.



12. The learned counsel for the appellant submitted that there is a contradiction in the statement made by the victim under Section 154 Cr.P.C. before the Magistrate and evidence given before the trial Court.

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13. On a reading of the entire records, it is only a minor contradiction which would not go to the root of the case. There is no personal enmity or motive filed by the complaint. Evidence of P.W.15/Doctor and medical records shows that there was spotted sexual harassment. Therefore, this Court finds that the appellant/accused committed the offence punishable under Section 5(1) read with 6 of POCSO Act. As regard the offence under Section 366(A) IPC is concerned, absolutely no allegation and evidence against the accused. It is not meeting the ingredients of the Section 366(A) IPC.

14. Therefore, this Court finds that the evidence recorded by the Special Judge, Section 366(A) IPC is un-warranted. Without any materials, conviction and sentence were passed by the learned Sessions Judge for the offence under Section 366(A) IPC and the same is set aside. Conviction and sentence recorded by the learned Sessions Judge for the offence under Section 5(1) read with 6 of Pocso Act are confirmed.

15. In the result, this Criminal Appeal is partly allowed. Consequently, connected miscellaneous petition is closed. The trial Court is directed to secure the custody of the accused to undergo remaining period of sentence, if any.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Sessions Judge FTC
Mahila Court, Namakkal

2. The Inspector of Police,
Namakkal All Women Police Station,
Namakkal District.

3.The Superintendent
Central Prison
Coimbatore.(Crime No. 7/2016)



5.The Section officer
Criminal Section
High Court, Madras 104.

+1 CC to Mr.R.Ganesh Babu, sr 40855.

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and
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EV (CO)
SP (13/09/2019)