

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 08.04.2019
C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.789 of 2018

D.Manikandan

... Appellant/Accused

-Vs-

State rep. by
The Inspector of Police,
J-6 Tiruvanmiyur Police Station,
Chennai.
(Crime No.1794/2015)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, praying call for the records and set aside the conviction and sentence imposed against the Appellant as 03.10.2018 made in S.C.No.317 of 2017 on the file of the Special Court for Cases under POCSO Act 2012/Mahila Court, Chennai.

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

J U D G M E N T

This appeal arises against the judgment dated 03.10.2018 made in S.C.No.317 of 2017 passed by the Special Court for Cases under POCSO Act 2012/Mahila Court, Chennai, convicted the appellant/accused for offence under section 366 IPC and Section 6 of POCSO Act, 2012 and sentenced him to undergo 5 years Simple Imprisonment and fine of Rs.5,000/-, in default, 6 months Simple Imprisonment for the offence under Section 366 IPC and 10 years Rigorous Imprisonment and fine of Rs.5,000/-, in default, 6 months Rigorous Imprisonment for the offence under Section 6 of The Protection of Children from Sexual Offences Act, 2012.

2. The case of the prosecution is that at the time of occurrence, the victim girl was aged 16 years and studying in XI standard. On 30.04.2015, during night hours, the appellant/accused influenced her to come out of the home and then took her to Koyambedu and from there, he took her to Trichy Samayapuram Mariamman Temple and performed marriage with her. He made her to stay in a house there and during nights, he committed

repeated penetrative sexual assault on her. After some time, he sold the gold bangles of the victim girl and then took her to Avinasi and there also he compelled her and had sexual intercourse with her multiple times. PW-1/father of the victim, lodged a complaint before the Inspector of Police, J-6 Tiruvanmiyur Police Station, Chennai and a case was registered as "girl missing" in Crime No.1794 of 2015 and after completing the investigation, altered the charge and filed charge sheet against the accused before the learned Sessions Judge, Mahila Court, Chennai, informing the commission of offences under Sections 363, 366 IPC and Section 6 of POCSO Act 2012 and the case was tried in S.C.No.317 of 2017.

3. During trial, on the side of the prosecution, prosecution examined PWs.1 to 10 and marked Exs.P1 to P14. After completing the evidence, incriminating circumstances culled out from the prosecution witnesses, which were put before the accused, he denied as false. None were examined on behalf of the defence nor any exhibits were marked. After hearing the arguments, the learned Sessions Judge, under judgement dated 03.10.2018, convicted the appellant/ accused for offences under Section 366 IPC and Section 6 of POCSO Act, 2012 and sentenced him as stated above. There against, the present appeal has been preferred before this Court.

4. The learned counsel for the appellant would submit that initially the complaint was registered under "girl missing". On the very same day, the Investigation Officer recorded the statement of the defacto complainant and prepared the observation mahazar, which falsifies the complaint. The learned counsel would submit that the appellant/accused was working under PW-1/Father of the victim girl and that he removed the accused from the job and hence, there was previous enmity between the appellant/accused and the victim girl's family. PW-2/victim girl has stated that they married in Trichy Samayapuram Mariyamman Temple and the accused taken her to Avinasi. However, the prosecution has not produced any oral and documentary evidence to prove the same. Though PW-2 stated that she has gone to Trichy, the Investigation Officer arrested the accused at Guindy. PW-9-Doctor, who examined the victim girl, stated that no semen was found in the chemical analysis report. PW-6-Doctor, who examined the accused stated that there was no trace found of sexual assault. Further, there is no eye witness and there are material contradictions and discrepancies in the evidence of the prosecution witnesses. Therefore, the prosecution failed to prove its case beyond reasonable doubts and the learned Sessions Judge failed to consider the aspect that originally the complaint was registered as "girl missing" and subsequently, altered to 366 IPC and Section 6 of POCSO Act. The Sessions Judge, without looking into the material

contradictions, convicted the appellant/accused on the ground of sympathy, which warrants interference.

5. The learned Government Advocate (Crl.Side) appearing for the respondent would submit that the victim girl was examined as PW-2 and she has stated that the statement under Section 164 Cr.P.C was recorded. PW-2 has clearly narrated that the appellant threatened her and took her to several places and also to Avinasi, where they were married and stayed in a house and lived as husband and wife. In the case of POCSO Act, the evidence of the victim girl itself is enough. Therefore, the trial Court rightly convicted the appellant/accused, which warrants no interference.

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

7. The case of the prosecution is that the victim girl was aged 16 years and studying in XI standard. On 30.04.2015, during night hours, the appellant/accused met the victim girl and influenced her to come out of the home and then took her to Koyambedu and from there, he took her to Trichy Samayapuram Mariamman Temple and performed marriage with her. He made her to stay in a house there and during nights, he committed repeated penetrative sexual assault on her. After some time, he sold the gold bangles of the victim girl, then took her to Avinasi and there also he compelled her and had sexual intercourse with her several times. The victim girl was aged 16 years at the time of occurrence. There is no proof for marriage. The evidence of PW-1 and also the complaint show that the victim girl was taken from the custody of the parents. From the evidence of the prosecution witnesses, it reveal that the appellant/accused taken the victim girl and married her and also had sexual intercourse for several times. PW-9-Doctor, who examined the victim girl, has clearly stated that the hymen is not intact. PW-6-Doctor, who examined the appellant, has stated that he is capable of having sexual intercourse. Though the learned counsel for the appellant would submit that no semen was deducted in the chemical analysis report, it was disproved by the prosecution. The complaint given on 30.04.2015 and as per the evidence of PW-2, the victim girl was away from 30.04.2015 to 20.05.2015. The prosecution traced the victim girl on 20.05.2015 and she was produced before the Doctor only on 11.08.2015. Therefore, semen cannot be expected after three months from the occurrence. The learned counsel for the appellant would submit that PW-6-Doctor, one who examined the appellant/accused, stated that there was no trace for having intercourse. Though the accused was arrested on 20.05.2015, he was examined by Doctor only on 12.08.2015.

8. In the circumstances, as stated by the learned Government Advocate (Crl. Side) in the case of POCSO Act, the evidence of the victim alone is suffice to consider the case. Though the learned counsel for the appellant stated that due to previous enmity, PW-1/father of the victim girl foisted the false complaint, there is no evidence for the same. The evidence of PW-2/victim girl was corroborated with the medical evidences. In the circumstances, the prosecution proved that the accused had sexual intercourse with the victim. It is for the appellant/accused to establish his defence. In this case, there is no reason to discard the evidence of the victim girl. On reading of the oral and Medical evidence and the judgment of the Sessions Judge, this Court finds that there is no reason to interfere with the judgment and this Criminal Appeal is liable to be dismissed.

9. Accordingly, this Criminal Appeal shall stand dismissed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kmi

To

1. The Sessions Judge,
Special Court for Case Under POCSO Act 2012
Mahila Court, Chennai.

2. The Inspector of Police,
J-6 Tiruvanmiyur Police Station, Chennai.

3. The Public Prosecutor,
High Court, Madras -104.

4. The Superintendent,
Central Prison No.I, Puzhal, Chennai

Copy To
The Section Officer,
Criminal Section, High Court, Madras-104

+3cc to Mr.P.Pugalendhi, Advocate, S.R.No.33938

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PM(CO)
CS/28/11/2019