

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Appeal No.53 of 2019

R.Perumal

... Appellant

Vs.

State rep by :
Inspector of Police,
All Women Police Station,
Krishnagiri,
Krishnagiri District.

... Respondent

Criminal Appeal is filed under Section 374(2) Cr.P.C. to set aside the conviction and sentence imposed against the appellant in Spl.S.C.No.54/2016 by the learned Sessions Judge Fast Track Mahila Court, Krishnagiri by an order dated 20.11.2018 and acquit the appellant.

For Appellant : Mrs.P.Veeranarayana
for M/s.M.P.Saravanan

For Respondent : Mr.K.Madhan
Government Advocate (Crl.Side)

ORDER

This Criminal Appeal has been filed against the Judgment passed in Spl.S.C.No.54/2016 by the learned Sessions Judge Fast Track Mahila Court, Krishnagiri dated 20.11.2018.

2. The respondent-Police registered a case against the appellant in Crime No.17 of 2016 for the offences under Sections 450 IPC, 5(1) and 6 of POCSO Act, 2012. After the investigation, a charge sheet was filed and the same was taken on file in Spl.S.C.No.54 of 2016, on the file of the Fast Track Mahila Court, Krishnagiri.

3. In order to prove the case of the prosecution, during the course of investigation, 13 witnesses were examined as PW1 to PW13 and 19 documents were marked as Exs.P1 to P19. After completing the examination of the prosecution witnesses, when the accused was questioned under Section 313 of the Code of Criminal Procedure, 1973 with regard to incriminating materials

available in the evidence against him, he denied his complicity in the crime and on the side of the defence, neither witness was examined nor any document was produced.

4. The learned Sessions Judge, Krishnagiri, after completion of the trial, convicted the appellant and sentenced him to undergo 5 years rigorous imprisonment for the offence under Section 450 IPC and a fine of Rs.12,000/- in default to undergo 6 months rigorous imprisonment and also convicted and sentenced him to undergo 15 years rigorous imprisonment for the offence under Section 5(1) r/w Section 6 of POCSO Act, 2012 and a fine of Rs.15,000/- in default to undergo 1 year rigorous imprisonment.

5. As aggrieved against the order of conviction and sentence, the accused has preferred the present Criminal Appeal before this Court.

6. The learned counsel for the appellant would submit that both the appellant and victim are the relatives and at the time of alleged offence, the appellant was staying in the house of the victim and therefore, the ingredients of Section 450 IPC will not meet out and there is no evidence to show that the appellant proceeded into the house of victim and committed the offence under Section 5(1) r/w 6 of the POCSO Act. The learned counsel would further submit that there was a delay in filing the complaint and the delay has not been properly explained, which is a fatal to the case of the prosecution. Further, the learned counsel for the appellant would submit that PW1/Valli is the mother of the PW2/victim girl and PW3 is the father of PW2/victim girl. During the examination before the trial court, the parents of the the victim girl have not supported the case of the prosecution and the victim girl herself has stated that no offence has been committed by the appellant. Further, he would submit that PW7/Doctor has also given the evidence by stating that there were no external injuries found in the body of the victim, however, the Lower Court failed to consider all those aspects and erroneously convicted the appellant. The headmaster, one who was examined as PW-9, has clearly admitted that there is no proper evidence for date of birth of the victim girl in the school records and as such, the prosecution has not proved its case beyond the reasonable doubt. Even, the statement recorded by the Investigating Officer has not been substantiated during trial and there is no corroborative evidence by the parents of the victim girl and they have not stated before the Trial Court that the appellant has committed the offence under Section 450 IPC, 5(1) r/w 6 of POCSO Act, 2012 and the Trial Court failed to consider the above aspects and however, convicted the appellant and awarded maximum punishment, which warrants interference.

7. The learned Government Advocate appearing on behalf of the respondent would submit that at the time of occurrence, the age of the victim girl was only 15 years and to substantiate the same, the birth certificate of the victim girl (Ex.P19) was produced. The date of occurrence is between 20.07.2016 and 15.08.2016. Therefore, at the relevant point of time, the age of the victim girl was only 16 years and therefore, she would fall under the definition of Section 2(1)(d) of POCSO Act. Further, he would submit that though PW1 to PW3 have not supported the case of the prosecution, at the time of cross examination, while examining as witnesses before the Trial Court, however, at the earlier point of time when statement was recorded under Section 164 Cr.P.C. by the Judicial Magistrate, the victim girl clearly narrated the entire events. Therefore, it is clear from the statement of the victim girl under Section 164 Cr.P.C., and deposition of chief examination of the victim that the victim girl was subjected to penetrative sexual assault. After chief examination, she and her family members were threatened by the appellant and that is the reason, the entire family members have not revealed the entire facts while examining as witnesses.

8. It is further submitted that during the statement recorded by the learned Judicial Magistrate under Section 164(5) Cr.P.C., the victim girl has revealed all the facts. Further, the Headmaster of the school, in which, the victim girl has studied, was examined as P.W.9, and he stated that the date of birth of the victim girl was recorded without any birth certificate. The Doctor evidence clearly shows that though there is no external injuries in the private part of the victim girl and her hymen was not intact and there is possibility of having sexual intercourse, and made entry in Ex.P.6 accident register. The date of occurrence and date of clinical examination of the doctor is not on the same day or not immediately soon after the occurrence and therefore, it cannot be expected any of fresh injury, however, the doctor has confirmed the possibility of having sexual intercourse. Therefore, the prosecution has proved its case beyond all reasonable doubts and the Trial Court on proper appreciation of evidence has rightly convicted the appellant and hence prays for dismissal of the Appeal.

9. Heard both sides.

10. The case of the prosecution is that in the year 2016, when the victim girl was aged 15 years, the appellant came to the house of the victim for doing the tiles work and in the absence of her parents, he gave some food to the victim and after having, she becoming unconscious and the appellant had intercourse with her and also took some photos and thereafter, he used to threaten her and had sexual intercourse for several

times. The appellant also threatened her that if she reveals the fact and not cooperated, he will release the photos in the public platform, therefore, as and when required, the appellant used to exploit the victim girl and had sexual intercourse with her.

11. Thereafter, the victim girl informed to the parents and they have lodged a complaint before the Jurisdictional Police Station and the Police investigated the matter and thereafter, filed a charge sheet. The learned Sessions Judge taken the charge sheet on file in Spl.S.C.No.54 of 2016 and after framing charge and completing trial convicted the accused for the offences under Section 450 of IPC and 5(1) r/w Section 6 of POCSO Act, 2012. A reading of the evidence shows that the parents of the victim girl during the cross-examination, have not supported the case of the prosecution. However, the demeanor of the witnesses was clearly observed by the Trial Court and they have stated that the victim girl, while giving the evidence, was weeping and a careful reading of the statement given by the victim under Section 164 Cr.P.C., before the Judicial Magistrate would clearly reveal that the victim girl has narrated the entire events, which shows that the appellant had sexual intercourse with her and the appellant with the help of someone tattooed his name on her. During chief examination, the victim child has narrated the events. The doctor, who was examined as PW7 stated that there was a tattoo mark on the left side of the breast of the victim girl and she also deposed that hymen of the victim girl was not intact and there was a possibility of having sexual intercourse. The birth certificate of the victim girl clearly shows that the victim girl was under 16 years and she would fall under the definition of Section 2(1) (d) of the POCSO Act.

12. It is the contention of the learned counsel for the appellant that there are no materials to convict the appellant for the offence under Section 354 and the prosecution has also not stated that the appellant has trespassed into the house of the victim girl and forcefully had intercourse with the victim girl, the prosecution also stated that since the appellant is a relative of the victim's family, he came and stayed in their house and one day in the absence of her parents, he made her to become unconscious and had sexual intercourse with her and had also recorded videos, photos and by threatening her with the photos taken, had sexual intercourse on several times.

13. It is to be noted that, the victim girl is aged about 15 to 16 years at the time of occurrence and the appellant is a married person and aged about 24 years and without the knowledge of the victim girl, he gave some food to the victim girl and after having the same, she became unconscious and thereafter, he

had sexual intercourse with her and had taken photos. The doctor evidence also corroborated the statement given by the victim girl under Section 164 Cr.P.C. Though during the cross examination, victim has turned hostile, but during chief examination, she has narrated everything. The evidence of hostile witness would not be totally rejected. If spoken in favour of the prosecution or the accused are required to be subjected to close scrutiny and the portion of the evidence is consistent with the case of the prosecution or defense can be relied upon.

14. A combined reading of the statement of the victim girl recorded under Section 164 Cr.P.C., chief examination of the victim child and the evidence of P.W.7-Doctor and Ex.P.7-Accident Register, the prosecution has proved its case that the appellant has committed the offence under Section 5(1) r/w 6 of the POCSO Act. At this juncture, it would be useful to refer the Section 5(1) & 6 of POCSO Act.

Section 5 - Aggravated penetrative sexual assault

(1) whoever commits penetrative sexual assault on the child more than once or repeatedly;

Section 6 - Punishment for aggravated penetrative sexual assault

(1)Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death.

(2)The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.

15. A careful reading of the language of the said provisions of law and also the statement recorded under Section 164(5) Cr.P.C of the victim child, chief examination of victim child and medical evidence, this Court has come to the conclusion that the appellant has committed the offence under Section 5(1), which is punishable under Section 6 of the POCSO Act. The victim girl has not stated before Trial Court while she was cross-examined as witness but however, after preparing the complaint she revealed before the respondent Police and also before the Judicial Magistrate. Therefore, in the first available opportunity, the victim girl narrated events both before the Investigation Officer and Judicial Magistrate and even during chief examination also, she has clearly deposed that the appellant has committed penetrative sexual assault on

several times but subsequently, due to some fear or some reason, the family of the victim did not support the case of the prosecution during the cross-examination. It is settled proposition of law that the evidence of hostile witness need not be discarded in totality, but the portion of evidence, in chief examination, which supports the case of the prosecution can be taken for consideration.

16. In this case, delay was properly explained by the prosecution. In POCSO Act cases, no parent would take a hasty decision and immediately rush to the Police Station and file a complaint. It will affect the future of the female child. Therefore, the parents would naturally think about the future of the child and also about the reputation of the family. Normally, they used to take advise of the elders in the village. The main contention of the learned counsel for the appellant that the delay in filing the complaint is fatal to the case of the prosecution and the same is not acceptable. Mere delay in filing complaint in cases like this, may not be fatal to the case of the prosecution if the delay is satisfactorily explained. Further, minor contradictions will not affect the case of the prosecution. Mere technicalities should not be allowed to stand in way of administration of justice.

17. On a careful reading of the entire documents available on records, this Court finds that the appellant has committed the offence under Section 5(1) which is punishable under Section 6 of the POCSO Act and the Trial Court also rightly appreciated the entire evidence and convicted and therefore, the appeal is partly allowed and conviction and sentence for the offence under Section 450 IPC alone is set aside and conviction and sentence passed for the offence under Section 5(1) punishable under Section 6 of POCSO Act is confirmed.

In the result, the Criminal Appeal is partly allowed as indicated above.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. Inspector of Police,
All Women Police Station,
Krishnagiri,
Krishnagiri District.

2.The Sessions Judge,
Fast Track Mahila Court,
Krishnagiri.

3.The Public Prosecutor,
Madras High Court.

4.The Superintendent,
Central Prison,
Vellore.

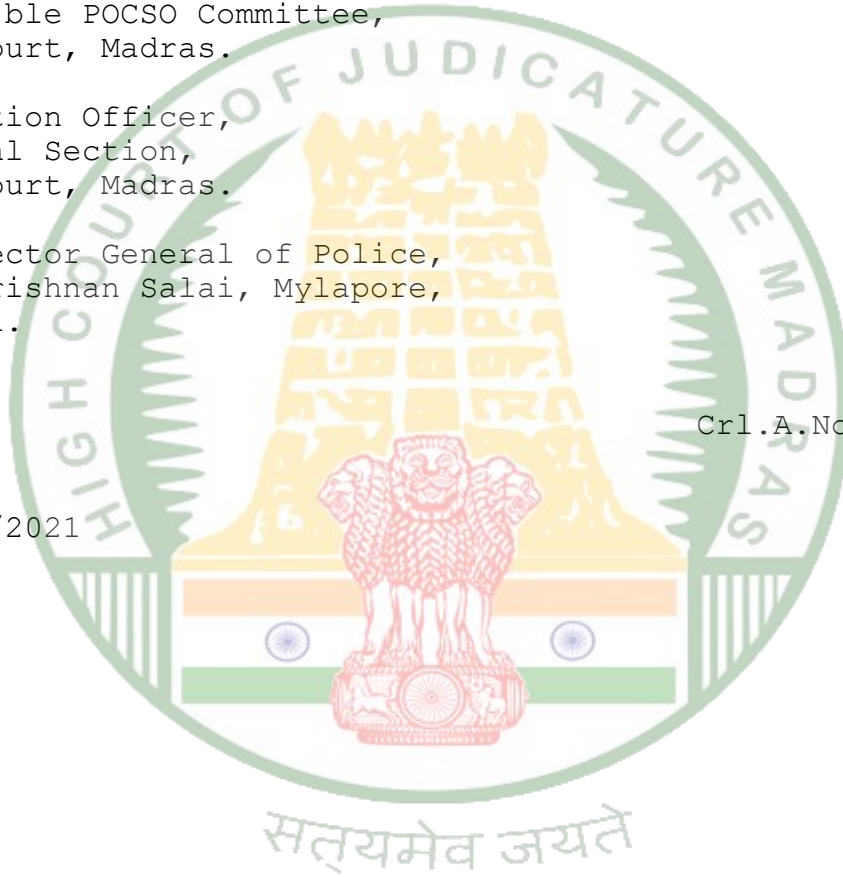
5.The Hon'ble POCSO Committee,
High Court, Madras.

6.The Section Officer,
Criminal Section,
High Court, Madras.

7.The Director General of Police,
Radhakrishnan Salai, Mylapore,
Chennai.

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