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IN THE HIGH COURT OF JUDICATURE AT MADRAS

[JUDGMENT RESERVED ON : 12.07.2021]

[JUDGMENT DELIVERED ON : 01.10.2021]

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.104 of 2018

Velliyangiri

... Appellant/Single Accused

..Vs..

State represented by the
Inspector of Police,
All Women Police Station,
Thudiyalur,
Coimbatore District.
[Crime No.41 of 2015]

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, as against the order passed by the learned Sessions Judge, Mahila Court, Coimbatore [Essential Commodities Special Court] in Special C.C.No.4 of 2016, dated 23.01.2018, convicting the appellant to undergo 10 years rigorous imprisonment under Section 3 r/w. 5(m) and r/w. Section 6 of POCSO Act and pay fine of Rs.5,000/- and in default 6 months rigorous imprisonment.

For Appellant : Mr.S.Senthil Kumar

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

JUDGMENT

The convicted sole accused is the appellant herein. The appellant has preferred this criminal appeal against the order passed by the learned Sessions Judge, Mahila Court, Coimbatore [Essential Commodities Special Court] in Special C.C.No.4 of



2016, dated 23.01.2018, convicting the appellant under Section 3 r/w. 5(m) and r/w. Section 6 of POCSO Act and sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.5,000/- and in default to undergo 6 months rigorous imprisonment.

2. The respondent police has filed charge sheet against the accused herein in Crime No.41 of 2015 for the offence under Section 3 r/w. 5(m) and r/w. Section 6 of POCSO Act.

3. The case of the prosecution, in brief, is as follows:-

[i] The complainant is the mother of the victim girl. The accused is the friend of the father of the victim girl namely, Mohanapriya, who is aged about 10 years. On the occurrence date, i.e., on 26.11.2015 at about 06.30 p.m., the accused came to the victim girl's house. At that time, the victim girl, her mother and her grandmother were there and the father of the victim girl was out of station. The accused told them that due to matrimonial dispute, his wife and child went to his wife's parents house at Royarpalayam and if they sent their daughter (victim girl) along with him, it will be helpful to compromise them. Accordingly, they sent the victim girl along with the accused. While the accused and the victim girl were going from Chandrapuram towards Sundamendu, there was a maize field and the accused took the victim girl into the maize field and committed sexual assault and the same was reported to the respondent police by P.W.1 on 27.11.2015 at about 11.10 p.m. After receipt of that complaint, P.W.11-Sub Inspector of Police attached with Thudiyalur police station registered an FIR in crime No.41/2015 for the offence under Section 3(a) r/w. Section 4 of POCSO Act.

[ii] P.W.12-Inspector of Police attached with Perur police station, took the case for investigation, examined P.W.1 to P.W.6 and recorded their statements and prepared mahazar and sent the victim girl for medical examination on 28.11.2015. P.W.13-Inspector of Police, who took up the case for further investigation, arrested the accused on 30.11.2015 and sent him for medical examination on 05.12.2015. Further, she examined P.W.7 and P.W.8 and recorded their statements and thereby, closed the investigation on 21.01.2016 and laid charge sheet against the accused.

[iii]. In order to prove the case of the prosecution, the prosecution has examined P.Ws.1 to 13 and marked documents Exs.P.1 to P.12. On the side of the defence, D.W.1 and D.W.2 were examined and marked documents Exs.D.1 to D.7.



[iv]. The trial Court, on consideration of the evidence of P.W.2-victim girl coupled with P.W.8, medical evidence and Ex.P.10-Accident Register copy, has held that the victim was subjected to sexual assault and called upon the accused to rebut the presumption as contemplated under Section 29 of the POCSO Act.

[v]. On proper appreciation of the evidence of D.W.1-Doctor and D.W.2 with Exs.D.1 to D.6, the trial Court has held that the injuries said to have been caused upon the accused are subsequent to the act of the accused in committing the sexual assault on the victim girl by the village mob and thus, rejected the suggestive case and laid the conviction and sentence as stated supra.

4. The learned counsel for the appellant/accused would submit that there is a material contradiction between the version of the victim girl/PW2 with that of PW10/Doctor and there is a delay of two days in filing the FIR. In the accident register copy, the date of the occurrence is mentioned as 28.11.2015 and furthermore, there is a delay of three days in sending the victim girl for the medical examination and the requisition given by the Court was not filed before the Trial Court. On 02.12.2015, the accused was sent to medical examination under POCSO Act. In view of the delay in submitting the accused, the medical examination is vital. The dress owned by the victim girl at the time of the offence was not collected and not produced before the Court and there is no seizure mahazar on behalf of the prosecution. As per the evidence of PW10/Doctor, there is no external injury on the private part of the victim girl and no hymen intact and further she has stated that the private part is admitting one finger and internal side found reddish. Therefore, the alleged aggregative penetrative sexual assault cannot be made out.

5. The suggestive case of the defence is that since the accused had illicit sexual relationship with one Kalamani, who is the elder sister of PW6/Loganathan, they have attacked him and caused injuries all over his body. In order to escape from the assault, a false case has been foisted by PW3 through his daughter, who born through the first wife of P.W.3. The Trial Court has rejected the suggestive case and also held that in view of the presumption under Section 29 of the POCSO Act and as the accused has failed to probablize the suggestive case by adducing his evidence, held that the charges are proved and convicted and sentence the accused as stated above. As against the said conviction and sentence, this Criminal Appeal has been



preferred before this Court.

6. P.W.1 Girija is the step mother of P.W.2-victim girl, while P.W.3 is the father and P.W.1 is the second wife of P.W.3 and P.W.4 is the neighbour. P.W.6 is the husband of P.W.4. According to the defence, he has one elder sister by name Kalamani, who said to have illicit intimacy with the accused.

7. As per the evidence of P.W.7, Principal of K.K.Vidhyalaya Matriculation School, where the victim girl was studying, had issued Ex.P.4-Bonafide Certificate, in which, the date of birth of the victim girl is mentioned as 14.02.2006 and the Birth Certificate issued by the Municipal Corporation is marked as Ex.P.5. On an combined reading of the Exs.P.4 and P.5 and the alleged date of occurrence being 26.11.2015, the age of the victim girl, on the date of the occurrence, is below 12 years and hence, she is a minor as defined under the provisions of POCSO Act.

8. The admitted factual matrix is that P.W.2 is the victim girl. Her step mother is P.W.1. After the death of the victim's mother, P.W.3 father of the victim girl has married P.W.1-Girija. P.W.5 Pandari Nathan is the neighbour. The classmate of the victim girl is by name Gayathri and she is the daughter of the accused and in such capacity, he has visited the house of P.W.1.

9. As per the version of P.W.1 and P.W.2, on 26.11.2015 at around 6.30 p.m., the accused came to the house of the victim girl and represented that his wife along with his daughter namely, Gayathri [classmate of the victim girl] had left due to domestic quarrel and in order to compromise his wife, he wanted to take the victim girl to the house of his in law. In short, the version of P.W.1 and P.W.2 is to the effect that the wife of the accused had left her matrimonial home on dispute and the accused requested the parents of the victim girl (P.W.2) that to bring out the compromise with his wife, who had asked P.W.2 to accompany him so that since the victim girl and the daughter of the accused are classmates and they know each other. P.W.1, P.W.3 and P.W.4 are not suspected the foul play of the accused. However, the accused has committed the offence.

10. From the oral and documentary evidence, I find that the date of the occurrence is mentioned as 26.11.2015. But there is a delay of two days in filing the FIR and the Accident Register was issued on 28.11.2015 and there is a delay of 3 days



in sending the victim girl for medical examination and the requisition given by the Court was not marked by the Court on 05.12.2015. The accused was sent to the medical examination under the POCSO Act as could be seen from the evidence of P.W.8-Dr.Jeyakumar, who had issued Ex.P.6 to the effect that there is nothing to suggest the accused is impotent. Based upon the requisition dated 02.12.2015, potential certificate was issued on 15.12.2015. No doubt it is true that the dress owned by the victim girl at the time of the occurrence was not collected and not produced before the Court. I have also find that P.W.10-Dr.Nandhini, who had examined the victim girl on 28.11.2015, had stated that there is no external injury on the private part of the victim girl and there is no hyman intact and further, she has stated that the private part of the victim girl is admitting one finger and internal side found reddish. These are all the points raised by the learned counsel for the appellant/accused seeking acquittal of the accused from the charges levelled against him.

11. After going through the complaint-Ex.P.1 and Ex.P.11-FIR coupled with the evidence of P.W.1 and P.W.2, the date of the occurrence is 26.11.2015. The medical examination by P.W.10-Doctor was conducted on 28.11.2015 and who had issued Ex.P.10-Accident Register, wherein, P.W.10 noticed the injury in the private part of the victim girl and hyman was not intact. Based upon the evidence of P.W.10 coupled with the documentary evidence Ex.P.10, I find that the finding rendered by the learned Sessions Judge, Mahila Court, Coimbatore, that there is a clear case of sexual assault on the minor girl is correct, as discussed infra.

12. Now the point that is to be decided is whether the accused had sexual assault on the victim girl?.

13. No doubt true that there is a delay of two days in filing the FIR and for the said delay, in Ex.P1-complaint, the explanation offered by the step mother of P.W.2 and father/P.W.3 appears to be reasonable. Taking note of the social and economical background of the victim's family, I find that though there is a delay of 2 days in filing Ex.P.11-FIR, the same is duly explained which is also found to be natural and reasonable. The minor discrepancy with regard to spelling regarding the hours is immaterial, taking into consideration the age of P.W.2 i.e., 12 years. Admittedly, P.Ws.3, 4, 5 and 6 are the relatives. P.W.4 is the wife of P.W.6 and thus, I find that on an combined reading of the statement given by P.W.2 on 10.12.2015 and recorded by P.W.9 Judicial Officer under Section



164 of Cr.P.C. coupled with the evidence of P.W.1 and P.W.2, the act of the accused, as narrated above, on the body of the victim girl stands established. Furthermore, the age of the victim girl as determined, based upon the school certificate (and the birth certificate) under Exs.P.4 and P.5, the learned Sessions Judge has rightly come to the conclusion that the prosecution is entitled for initial presumption of sexual assault by the accused on the victim girl, it is for the accused to rebut the presumption under Section 29 of the POCSO Act. As extracted supra, the suggestive case of the defence is that since the accused had sexual relationship with Kalamani, who is elder sister of PW.6-Loganathan, he along with the others have attacked the accused and caused injuries all over his body and in order to escape from the assault, a false case has been foisted by P.W.3 through his daughter, who was born through his first wife.

14. In this connection, to probabalise the suggestive case, the defence examined D.W.1 Dr.Prasanna kumar, who had treated the accused, issued Ex.D.1-Wound Certificate; Ex.D.2-Accident Register and Ex.D.3-Medical Report and through D.W.2-Inspector of Police Sekaran, intimation given by the hospital to the police and the letter given by the accused to the Sub Inspector of Police and the letter given by the accused are marked as Exs.D.5 to D.7 respectively. After going through the evidence of D.Ws.1 and 2 coupled with the documentary evidence of Exs.D.1 to D.7, I find that some injuries have been caused to the accused.

15. The accused is trying to built up a case that he had illicit sexual relationship with Kalamani, who is the sister of P.W.6 and hence, P.W.6 along with other prosecution witnesses have attacked him and caused injuries. From the answer elucidated in the cross-examination of D.W.1, I find that the injuries said to have been caused upon the accused are only after the incident narrated by P.W.1. No doubt, it is true that the injuries found on the accused were not mentioned in the remand report. However, as per the admissions of D.W.1, it is found that after hearing the alleged sexual assault by the accused on the body of P.W.2-victim girl, due to that, the villagers got angry, attacked the accused and caused injuries and therefore, he was admitted in the hospital.

16. At this juncture, it is pertinent to note that as per Ex.P.1-complaint, the alleged incident said to have been taken place on 26.11.2015 at about 6.30 p.m. The complaint was lodged on 26.11.2015 at about 11.10 p.m. The accused was admitted in



the hospital for treatment for the injuries sustained by him on 27.07.2015 at about 9.00 p.m. As per Ex.D.1-wound certificate, the accused was alleged to have attacked by 30 unknown persons by using wire and stick around 8.45 p.m. The injuries found on the body of the accused are described as simple in nature. As per Ex.D.2-Accident Register, the time is clearly mentioned as 8.45 p.m. and the accused was allegedly assaulted by 30 unknown persons. Ex.D.7 is the letter given by the accused to the Inspector of Police, in which, he has stated as follows:-

"..... நான் சம்பந்தப்பட்ட சிறுமியிடம் தவறாக நடந்த காரணத்தாலும் எனக்கு சாதகமாக யாரும் சாட்சி சொல்ல மாட்டார்கள். எனவே, எனது புகார் வாக்குமூலத்தின் மீது தற்சமயம் நடவடிக்கை எதுவும் வேண்டாம் என கேட்டுக் கொள்கிறேன். "

17. Ex.D.6 is the letter given by the Special Sub Inspector of Police to the Inspector of Police, regarding not pressing of the complaint given by the accused for the reason that no one can come and depose in support of his case, since he has committed a wrong on the minor girl. Under Ex.D.7-letter written by the accused to the Sub-Inspector of Police goes to show that the accused not pressed his complaint since he had committed a wrong on the minor girl and because of the said reason, no person will come and give evidence in his support and hence, he requested not to take any further steps based upon his complaint and hence, the contents found in Ex.D.7, as extracted supra, clearly shows that the suggestive case of the defence is not true.

18. In fact, the alleged assault on the body of the accused by the villagers is due to the outburst of the angry of the village people on the crime committed on the body of the victim girl. In order to escape from the prosecution case and the arrest, the accused got admitted in the hospital and based upon the intimation from the hospital authorities, the police have received the complaint. However, subsequently, the accused himself has given a letter to the Special Sub-Inspector of Police and requested that since he has committed a wrong on the body of the minor girl, the village people will not support his case and hence, he requested not to take any further action on his complaint and hence, I find that the suggestive case of the defence falls to ground, in view of the recital contains in Ex.D.7.

19. The discrepancies as pointed out by the learned counsel for the appellant are minor in nature which does not



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affect the veracity of the version of P.W.2 as to the act of the accused on the body of P.W.2-victim girl. The suggestive case of the defence on the proper perspective of the documents adduced by both the parties appears that it is only an afterthought. The injuries caused on the accused by the angry mob are simple in nature, since the accused has committed sexual assault on the minor girl and now the accused wanted to turn around to say that the alleged attack by the group of people is prior in time rather it is subsequent to the sexual assault by the accused on P.W.2 and hence, the rejection of the suggestive case by the learned Sessions Judge, on different reasoning, is hereby confirmed.

20. The statement of the victim girl-P.W.2 inspires the confidence of this Court as the same is free from discrepancy and supported by medical evidence and thus, the Court is entitled to take the sole evidence of the victim girl-P.W.2 and to convict the accused. Besides the accused has not even rebutted the presumption in favour of the prosecution case by examining his side of witness. As discussed supra, the documents filed by the accused through D.W.2 appears to have been boomraged upon his head and thus, I find that the version of P.W.2 is reliable.

21. The accused assaulted P.W.2 sexually and had intercourse with her nearly ten minutes with bare body. Mere absence of any external injury on the private part of the victim girl and on the backside of the girl does not belie the version of P.W.1. The reliability of the evidence of P.Ws.4, 5 and 6 was challenged on the ground that the accused is having illicit sexual relationship with the sister of P.W.6. In view of the discussion supra, this Court finds that it is only an afterthought to built up a theory for the accused.

22. Though the trial Court has not discussed the documentary evidence filed by the accused under Exs.D.1 to D.7, it remains to be stated that for the different reasons, the learned Sessions Judge has held that the accused has failed to rebut the presumption as required under Section 29/27 of the POCSO Act and consequently held that the charges under Section 3 r/w. 5(m) and r/w. Section 6 of POCSO Act has been proved in the manner known to law. In view of the discussion in the preceding paragraphs, the finding of the learned Sessions Judge that the prosecution has satisfied the essential ingredients to raise the presumption in their favour as to the sexual assault by the accused on the body of P.W.2 and based upon the documentary evidence issued by the municipal authorities, the victim girl is



a minor and held that the prosecution is entitled for presumption and in view of the failure on the part of the accused to probabalise the suggestive case to the level of preponderance of probabilities, correctly come to the conclusion that the prosecution case stands negatived and such a finding rendered by the learned Sessions Judge does not suffer from any irregularity or illegality warranting interference at this appellate stage and hence, the conviction and sentence passed by the learned Sessions Judge, Mahila Court, Coimbatore, are liable to be confirmed.

23. In the result,

[i] this Criminal Appeal is dismissed.

[ii] The conviction and sentence passed by the learned Sessions Judge, Mahila Court, [Essential Commodities Special Court], Coimbatore, are confirmed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

Jrl

To

1. The Sessions Judge,
Mahila Court,
[Essential Commodities Special Court],
Coimbatore.
2. The Inspector of Police,
All Women Police Station,
Thudiyalur,
Coimbatore District.
3. The Superintendent,
Central Prison,
Coimbatore.
4. The Public Prosecutor (Crl.Side),
High Court,
Madras.



Copy to:

1. The Hon'ble POCSO committee,
High Court, Madras.
2. The Section Officer,
Criminal Section,
High Court, Madras-104.

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+1cc to Mr.S.Senthil Kumar, Advocate, S.R.No.51211

Judgment made in
Crl.A.No.104 of 2018

SRA(CO)
SU(27/10/2021)