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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.07.2021

PRONOUNCED ON : 28.07.2021

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

CRL.A.No.330 of 2018

Selvaraj

.. Appellant/Accused

Vs.

The State by
The Inspector of Police
North All Women Police Station
Tiruppur

.. Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C. to set aside the conviction and sentence imposed on the appellant by the judgment and order dated 28.03.2018 passed by the Mahalir Neethimandram (Fast Track Mahila Court), Tiruppur in Special S.C.No.15 of 2016.

For Appellant : Mr.I.C.Vasudevan

For Respondent : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor

J U D G M E N T

This criminal appeal is directed against the judgment and order of conviction and sentence dated 28.03.2018 passed by the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Tiruppur in Spl.S.C.No.15 of 2016.

2. The prosecution case is as under :

2.1. Since this is a case under the Protection of Children from Sexual Offences Act, 2012 (for short "the POCSO Act"), for the sake of anonymity, we are referring to the victim as "X". Her date of birth is 04.12.1997 (vide Ex.P1) and she is the daughter of Kumar (P.W.4), residing in No.2, Susaiyapuram, North Tiruppur.



2.2. "X's" father (P.W.4) is a painter and her mother was employed in a banian factory in Tiruppur. She was studying in 10th standard in a nearby school. Her younger siblings were school-going children.

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2.3. Her father Kumar (P.W.4) has rented out some portions belonging to him, abutting his house and the appellant was in occupation of one such portion as a tenant. On 07.11.2012, "X" did not go to school, as she suffered from stomach ache. She was in the foyer of her house watching television and at that time, the appellant, who saw her, asked her for the reason, for not going to school. When she told him that she was having stomach ache, the appellant bought a tablet from a nearby shop and asked her to take it. She believed him and consumed that tablet, after which, she felt very giddy and dizzy.

2.4. The appellant herded her to his house and deflowered her. Thereafter, he threatened her by saying that he would tell everyone that she had come on her own volition to have sex with him and thus, tarnish her image. He also threatened her that he would harm her parents, if she discloses this to anyone. Therefore, she did not disclose this to her parents immediately.

2.5. Taking advantage of her pusillanimity, the appellant started sexually abusing her off and on, on the same threat. As days passed, she started feeling uneasy and on 05.03.2013, she complained to her aunt-Shanti (P.W.5), that she was frequently suffering from dizziness and vomiting. Therefore, Shanti (P.W.5) took her to the KMCH Hospital, Erode, where, on examination by the doctors, it was discovered that she was five months pregnant. When she was questioned by her family, she naturally spilled the beans.

2.6. On 06.03.2013, "X" gave a complaint (Ex.P1), based on which, Ramadevi (P.W.7), Sub-Inspector of Police, AWPS, Tiruppur, registered a case in Crime No.16 of 2013 under Sections 376(1) and 506(I) IPC at 18.00 hrs on 06.03.2013 and prepared the printed FIR (Ex.P8), which reached the jurisdictional Magistrate at 11.30 p.m. on the same day, as could be seen from the endorsement thereon. Investigation of the case was taken over by Nirmala (P.W.9), Inspector of Police, who went to the residence of the appellant and prepared an observation mahazar (Ex.P7).

2.7. The local people apprehended the appellant and handed him over to the police and he was placed under arrest. "X" was medically examined by Dr.Shanti (P.W.2) on 07.03.2013 and on her directions, various clinical tests were performed. At the request of the police, "X" was admitted in the Government Hospital, Tiruppur, on 07.03.2013, where, she was medically



examined by Dr.Thamizhselvi, Gynaecologist and Obstetrician, who diagnosed that she was pregnant and the foetus is about 16 weeks old vide final opinion (Ex.P4).

2.8. Since Dr.Thamizhselvi passed away, Dr.Shanti, who was the R.M.O. of the Government Hospital, Tiruppur, under whom, Dr.Thamizhselvi worked, was examined as P.W.2.

2.9. Dr.Muthuvel (P.W.3) of Government Hospital, Tiruppur, medically examined the appellant on 07.03.2013 and issued the medical examination certificate (Ex.P5), wherein, he has given the following opinion :

"Opinion:

1. There is no anatomical reason to say the patient is impotent.
2. No evidence could be found to say recent sexual intercourse.
3. Semen/Blood/Saliva/Sample sent for analysis.

Final opinion reserved pending & chemical analysis report."

He arranged to collect the blood and semen of the appellant and forwarded the same to the Tamil Nadu Forensic Science Laboratory, for examination and report. Serological examination report dated 10.10.2014 (Ex.P6), which is admissible under Section 293 Cr.P.C. states as follows :

"Final Opinion : There is no evidence to say that he is impotent."

2.10. "X" delivered a male child on 14.08.2013 and named him Samu. At the request of the Investigating Officer, the learned Judicial Magistrate No.I, Tiruppur, sent "X", the appellant and the child, for drawal of blood samples in FTA cards to the Government Hospital, Tiruppur on 13.08.2015. The FTA cards with the blood samples of "X", the appellant and the child were sent by the learned Judicial Magistrate No.I, Tiruppur to the DNA division, Tamil Nadu Forensic Sciences Department, where DNA profiling was done by Thilaga (P.W.8), Assistant Director of Tamil Nadu Forensic Science Laboratory and the DNA report was marked as Ex.P9. In her evidence as well in the DNA report, she has given her conclusion as under :

"Conclusion : From the DNA typing results of the above samples, it is found that in the absence of identical twins, Mr.S.Selvaraj is the biological father of the male child Shamu."



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2.11. After the transfer of Nirmala (P.W.9), Mohanasundari (P.W.10), Inspector of Police, continued the investigation and altered the penal provisions from Sections 376(1) and 506(I) IPC to Sections 5(j)(ii) and (1) read with Section 6 of the POCSO Act and Section 506(II) IPC and the alteration report was marked as Ex.P11.

2.12. After examining the witnesses and collecting various reports, Mohanasundari (P.W.10), completed the investigation and filed a final report against the appellant for the offences under Sections 5(j)(ii) and (1) read with Section 6 of the POCSO Act and Section 506(II) IPC, in the Special Court for POCSO Act Cases (FTC), Mahalir Neethimandram, Tiruppur.

2.13. On appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the trial Court framed charges against the appellant for the aforesaid offences. When questioned, the appellant pleaded "not guilty".

2.14. To prove the case, the prosecution examined 10 witnesses and marked 11 exhibits. When the appellant was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same. He did not offer any explanation whatsoever.

2.15. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 28.03.2018, in Spl.S.C.No.15 of 2016, convicted and sentenced the appellant as under :

Provision under which convicted	Sentence
Sections 5(j)(ii), (1) read with 6 of the POCSO Act	Rigorous imprisonment for life with fine of Rs.10,000/- for each of the offences, in default, to undergo one year rigorous imprisonment for each of the offences
Section 506(II) IPC	Rigorous imprisonment for seven years

The aforesaid sentences were ordered to run concurrently. The trial Court, has also awarded a compensation of Rs.3,50,000/- to "X" from the Victim Compensation Fund under Section 357-A Cr.P.C. Aggrieved by the conviction and sentence, the appellant has preferred this appeal.



3. Heard Mr.I.C.Vasudevan, learned counsel for the appellant and Mr.Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the respondent State.

4. "X" in her evidence, has stated that, her date of birth is 04.12.1997; both her parents were working; while both her parents had gone for work on 07.11.2012, she was alone at home and did not go to school, as she was suffering from stomach ache; the appellant, who was residing in the next house and was a tenant under her father, made enquiries with her as to why she did not go to school; when she told him the reason, he bought a pill and asked her to consume it, by saying that it would cure her stomach ache; after she consumed it, she felt very giddy; the appellant took her inside his house, undressed her and had coitus; thereafter, he threatened her saying that if she complains to anyone, he would tell everyone that she had come on her own volition; he also threatened her that if she exposed him, he would get rid of her parents; fearing him, she did not tell this to anyone, knowing which, the appellant, using that as a trump card, had sex with her on four occasions; as days passed by, she started feeling giddy and was vomiting; she conveyed this to her aunt-Shanti (P.W.5); she was taken to KMCH Hospital, Erode, where she was diagnosed that she was pregnant; when her aunt (P.W.5) and family members questioned her, as to who was responsible for her pregnancy, she disclosed everything to them; on 06.03.2013, she went with her family members and gave a complaint (Ex.P2) and on 14.08.2013, she delivered a boy baby and named him Samu.

5. The defence was not able to make any serious dent in "X's" testimony in cross-examination. Though she was asked about certain omissions in the complaint (Ex.P1) qua her testimony, nothing substantial was elicited from her. The testimony of "X" is amply corroborated by the DNA findings.

6. Shanti (P.W.5), aunt of "X", has stated in her evidence that, when "X" complained to her that she was feeling dizzy and was vomiting frequently, she took her to the KMCH Hospital, Erode, where the doctors examined "X" and stated that she was pregnant.

7. "X" was examined by Dr.Thamizhselvi on 07.03.2013 and the medical records show that "X" was pregnant and the foetus was about 16 weeks old vide Ex.P4. Dr.Shanti (P.W.2) stated that Dr.Thamizhselvi had passed away and that, she is deposing based on the records available in the Hospital. The factum of "X" delivering a male child on 14.08.2013, has been established satisfactorily via the evidence of "X", her father Kumar (P.W.4), her aunt (P.W.5), coupled with the Birth Certificate of Samu (Ex.P3).



8. Mr.I.C.Vasudevan contended that there is no material to show, as to who had drawn the sample blood for DNA profiling and therefore, much credence cannot be placed on the DNA report. We are unable to agree with this submission, in the light of the fact that the entire process of drawal of samples in the FTA cards and sending the same for DNA profiling has been done on the orders of the Judicial Magistrate No.I, Tiruppur, as could be seen from the DNA report (Ex.P9).

9. Thilaga (P.W.8), who performed the DNA profiling, has stated that, she received a requisition from the Judicial Magistrate No.I, Tiruppur on 18.08.2015, enclosing the FTA cards of the appellant, "X" and the child. The genotype detected by her (P.W.8) is mentioned in the DNA report (Ex.P9). Based on this profiling, she (P.W.8) has issued the report (Ex.P9) containing the reasons for arriving at the opinion that the appellant fathered "X's" child. We consciously avoided to extract (Ex.P9) in this judgment, since it contains the name of "X".

10. Mohanasundari (P.W.10) has stated in her evidence that, she took steps to collect the FTA card from the Tamil Nadu Forensic Science Laboratory and deputed one Gomathi, PC-119 to accompany the appellant, "X" and her child to the Government Hospital, Tiruppur on 13.08.2015, for drawing blood samples from them. In the cross-examination, this evidence has not been disputed at all and therefore, we have no reasons to reject the DNA report (Ex.P9).

11. The twin presumptions envisaged under Sections 29 and 30 of the POCSO Act, come into play and the appellant has failed to dislodge them. The appellant has merely suggested to "X" that, her pregnancy was on account of her relationship with her classmates and not by him, which suggestion, she has denied. The learned counsel for the appellant contended that the conduct of "X" was strange and that, she did not reveal to anyone about the incident that took place on 07.11.2012 and therefore, her testimony should not be accepted.

12. We are unable to agree with the above submission of the learned counsel for the appellant because, "X" was a 15 year old girl studying in the 10th standard at the relevant time. The appellant was her neighbour and he had a son of "X's" age, who was also studying in the 10th standard. In fact, "X" has stated in her evidence that, the appellant's son Rajan is of her age. When the appellant gave her a pill for her stomach ache, she trusted him and consumed it. She felt giddy. Thereafter, the weak situation in which she was, was exploited by the appellant to the hilt to satiate his sexual appetite. The appellant knew that "X" will inform her parents and that is why, he threatened her by saying that he would tell everyone that she came on her own volition and thus, damage her name. Apart from that, he also



threatened her that he would liquidate her parents. On a 15 year old girl, these threats would indubitably have a powerful sway and that is the reason for her remaining tight-lipped. This fear in "X" emboldened the appellant to exploit her further and have sex with her on three occasions subsequently. Hence, the testimony of "X" does inspire much confidence and we have no good reasons to doubt her assertions.

13. In view of the above discussions, we uphold the conviction of the appellant under Sections 5(j)(ii) and (1) read with Section 6 of the POCSO Act and Section 506(II) IPC.

14. Mr.I.C.Vasudevan pleaded for reduction in sentence. We are afraid that we cannot show any leniency to the appellant, whose deviousness has resulted in an onerous responsibility of bringing up a child as a single mother befalling "X", who otherwise may have reached the apogee in studies.

In the result, this criminal appeal is dismissed and the judgment and order of conviction and sentence dated 28.03.2018 passed by the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Tiruppur in Spl.S.C.No.15 of 2016, is confirmed.

Sd/-
Assistant Registrar(CS-IX)

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Sub Assistant Registrar

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To

1. The Sessions Judge
Mahalir Neethimandram (FTC)
Tiruppur
2. The Inspector of Police
North All Women Police Station
Tiruppur
3. The Superintendent Central Prison Coimbatore.
4. The Judicial Magistrate No.1 Tiruppur.
5. Do Through Chief Judicial Magistrate Tiruppur.
6. The Honourable POSCO Committee
High Court Madras-104



7. The Public Prosecutor
High Court, Madras

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The Section Officer,
Criminal Section,
High Court, Madras

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