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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.09.2021

DELIVERED ON : 06.10.2021

CORAM :

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE Mrs. JUSTICE R.HEMALATHA

Crl.A.No.364 of 2018

Muniraj ... Appellant/Accused
Vs.

State by Inspector of Police
Attur Police Station,
Salem District
(Crime No.271 of 2015) ... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, 1973 to set aside the judgement dated 03.10.2017 in Spl S.C. No.20 of 2016 on the file of the Sessions Judge, Mahila Court, Salem.

For Appellant : Mr.B.Vasudevan

For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor.

J U D G M E N T

Judgment of the Court was made by R.HEMALATHA, J.

This appeal is filed against the conviction and sentence passed by the learned Sessions Judge, Mahila Court, Salem in Special S.C.No.20/2016 wherein the appellant Muniraj was found guilty for the offences punishable under Sections 328, 506(i) IPC and Section 6 of Protection of Children from Sexual Offences (POCSO) Act, 2012 and sentenced as extracted hereunder:

- i. Section 328 IPC - Ten years Rigorous Imprisonment and a fine of Rs.10,000/-, in default, to undergo simple imprisonment for six months.
- ii. Section 506(i) IPC - Two years Rigorous Imprisonment and a



fine of Rs.2,000/-, in default, to undergo simple imprisonment for three months.

iii. Section 6 of Protection of Children from Sexual Offences (POCSO) Act - Life imprisonment and a fine of Rs.10,000/-, in default, to undergo simple imprisonment for six months.

The trial Court further directed that all the sentences shall run concurrently.

2. The appellant and his wife Nallammal (PW-1) were residing at 88 L, Tagore Street, Vadakkukadu, Mullaivadi Village, Attur, Salem District, along with their two children, namely, the victim aged 12 years and Periyasamy aged 8 years. The victim and her brother were studying VII standard and V standard respectively, in St. Mary's R.C. Middle School. The appellant was jobless and was addicted to alcohol and ganja. He used to pick up quarrel with PW-1 frequently and beat her up. During 2014, the appellant beat his wife for not bringing any dowry from her house as a result of which PW-1 left for her brother's house leaving both her children at home with their father, the appellant. The appellant after getting drunk gave milk mixed with an intoxicating drug to his daughter, the victim, and also threatened her to come and lie down with him on his bed. The victim, out of fear laid down in a corner of the cot. When the victim fell unconscious he did the penetrative sexual assault on the child. When she woke up early in the morning she found herself without any dress and her dresses were on the floor. The same day morning he also threatened her that he would kill her mother if she reveals anything to anyone. Subsequently, there was a family dispute between the appellant and his own brother's family, in which, in a fit of rage he had slapped his brother's wife for which she was hospitalized. Pre-empting the police case, he slashed his wife's arm with a blade resulting in a deep cut and injured himself to enable hospitalization. His injury was minor in nature and therefore he got discharged earlier while his wife's (PW-1) injury required more time to heal. In fact, he had enacted this drama in order to blame his brother for the self inflicted injuries. PW-1, the mother still hospitalized, insisted her children to go home with their father. The victim resisted going with her father and on much persuasion, she narrated the earlier incident and the real reason for refusing to go with her father. The victim narrated the incident in which she was given a glass of milk laced with sedatives and was sexually assaulted by her own father. PW-1 was stunned with this revelation and immediately left the hospital taking both her kids to her mother's place. PW-1 found her daughter complaining of difficulty in urinating and therefore bought some ointment and tablets from near by medical shop at Perambalur. PW-1 fearing her husband's threat did not send her



children to the school for about six months till the school had requested the children to write the exam in order to get promoted to next grade. Accordingly the children were taken to school by their grand mother. On one such day, when PW-1 along with her mother Pichayee (PW-3) took the children to write the exams, the appellant came to the school, manhandled her mother (PW-3) and literally carried his wife (PW-1) threatening to throw her into one of the lakes near by. However, at the intervention by a few people who were taking care of cattle, the appellant had to drop his plan. The police took a complaint (Ex.P1) on 25.04.2015, subsequent to which the victim's daughter was admitted in Government Hospital, Attur, on 26.04.2015 for medical check up.

3. Dr.K.S.S.Ravikumar, the Chief Medical Officer in Attur Government Hospital admitted the victim as an in-patient. In the Accident Register (Ex.P9), he had referred the child to a gynaecologist. Dr.R.Padmavathi (PW-9), after physical examination of the child opined that the "hymen was not intact" and that there were symptoms of penetrative sexual assault. She also gave her final report Ex.P15. The victim was discharged on 01.05.2015. Subsequently, she was subjected to age determination test by Dr.Sangeetha (PW-6), who issued a certificate Ex.P8. According to PW-6, the victim was aged between 10 and 12 years.

4. In the meanwhile, the appellant was arrested on 26.04.2015 at 6.00 A.M. near Mullaivadi Buddha Statue by Thiru. Ravichandran (P.W.12), the Inspector of Police, Attur Police Station. His confession statement, admissible portion of which was marked as Ex.P21, was also recorded. Based on his confession, a knife which was hidden in his house was recovered under Form 91 (Ex.P22). Thereafter, he sent the appellant to the Government Hospital, Attur, for physical examination. Dr.Gokularamanan (PW-8), issued a certificate (Ex.P12) stating that there was nothing to suggest that the appellant was impotent.

5. On 04.05.2015, the statements of PW-1 to PW-3 were recorded by the learned Judicial Magistrate VI, Salem, under Section 164 of Criminal Procedure Code. The Investigation Officer also prepared an observation Mahazar (Ex.P5) and a rough sketch (Ex.P20) and also recorded the statements of the witnesses individually. After concluding investigation, PW-13 laid a final report before the concerned Court against the accused for the offences punishable under Sections 328, 376, 506 (i) IPC and 6 r/w 5(m) and 5 (n) and 6(w), 5 (H) and 18 of Protection of Children from Sexual Offences (POCSO) Act.

6. In the trial Court, PW-1, PW-2 (victim) and PW-3 deposed in a corroborative manner and also withstood the testimony of



cross examination. The child victim (PW-2) while deposing before the Court, was visibly threatened by the accused in the presence of the presiding officer and the same was recorded. P.W.2 also mentioned how she used to be threatened with a knife (MO-1).

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7. Mr.B.Vasudevan, learned counsel for the appellant, contended that the victim was tutored by her mother and there was a conspiracy hatched by PW-1 and PW-3 to settle score with the accused who was not able to succeed in the property dispute between the accused and his brother. The theory of defence even in the trial Court was that the allegation of sexual assault was planned and executed meticulously by inventing this 'make believe' story of sexual assault on own daughter. It is not the case of the prosecution that PW-1 did not believe her husband and left her husband's home with an intent of settling the family dispute, the appellant had with his brother. In fact, what we decipher from the sequence of events is that PW-1 would not have left the hospital with her children but for the shocking revelation of sexual assault on her daughter by the accused. Neither his alcohol addiction nor his violent behaviour made PW-1 take this drastic step of going to the police. The learned counsel for the appellant has also harped on the delay of six months in lodging the police complaint from the date of knowing about the sexual assault. According to him, this delay has not been satisfactorily explained by PW-1. In this context, it is to be kept in mind the educational and financial background of PW-1. Being a mother of two children and wife of an alcoholic she did not want to act in a haste and had taken the decision to go to the police only after she was abducted by her husband under a threat of killing her and throwing her body into a near by lake. It was also the contention of the learned counsel for the appellant that Dr.Padmavathy (PW-9), who examined the child deposed that there was no external injury to PW-2 thereby ruling out the possibility of sexual assault. Another contention was that the brother of the victim was not examined as a witness. All these contentions get relegated into oblivion in the light of the clarity found in the deposition of PW-2, the victim. In fact, the victim had answers for many of the natural questions which may arise in anyone's mind. The sanctity of family relationship especially one between the father and the daughter has been given due weightage by the victim and it was only when she was repeatedly threatened and traumatized she had to tell the truth to her mother. No child would, in normal circumstances, want to disturb the harmony in a family. The perversity in the thoughts of appellant does not deserve any sympathy. The cruelty of sexually assaulting his own child is definitely graver than any other crime. Therefore, this Court has no hesitation in confirming the verdict of the trial Court in toto.



8. In the result,

(i) The Criminal Appeal is dismissed.

(ii) The conviction and sentence passed by the learned Sessions Judge, Mahila Court, Salem, dated 03.10.2017 in Spl S.C. No.20 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,
Mahila Court, Salem.
- 2.State by Inspector of Police
Attur Police Station,
Salem District
(Crime No.271 of 2015)
- 3.The Superintendent,
Central Prison,
Coimbatore.

Copy to:

- 1.The Section Officer,
Criminal Section,
High Court, Madras.
- 2.The POSCO Committee,
High Court, Madras.

Cr1.A.No.364 of 2018

SSD (CO)
PR (22/10/2021)