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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.360 of 2020

Tamilselvan

... Appellant/Accused

.Vs.

State rep by
Inspector of Police,
All Women Police Station,
Gobichettypalayam.
(Crime No.1 of 2018)

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure praying to set aside the Judgment dated 14.10.2019 passed in Special Sessions Case No.8 of 2018 by the Learned Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court) Erode and acquit the accused.

For Appellant : Mr.M.Dhamodharan
(Legal Aid Counsel)

For Respondent : MR.S.Sugendran
Government Advocate (Crl.Side)

J U D G M E N T

(The case has been heard through video conference)

This Criminal Appeal has been filed against the Judgment dated 14.10.2019 passed in Spl.S.C.No.8 of 2018 by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Erode.

2. The respondent police originally registered the case against the appellant for the offence under Section 366 of IPC and also for the offence punishable under Section 6 of POSCO Act. After investigation laid the charge sheet before the Special Court since the offence is against a woman especially a child under the definition of POSCO Act. The learned Special Judge after completing the formalities, taken the charge sheet on file in Special S.C.No.8 of 2018 and after completing the



3. After completing the formalities and in order to prove the case of the prosecution, on the side of the prosecution 25 witnesses were examined as P.W.1 to P.W.25 and 49 documents were marked as Exs.P1 to P.49. Besides 4 material objects were exhibited as M.O.1 to M.O.4.

5. On completion of trial and hearing of the arguments advanced on either side and considering the materials, the trial Court not found the appellant guilty for the offence under Section 366 IPC and also 3(1)(w)(i) of SC/ST (POA) Amendment Act 2015. However, found the appellant guilty for the offence punishable under Section 6 of POSCO Act and convicted and sentenced him to undergo 12 years rigorous imprisonment and to pay fine of Rs.5,000/- in default, to undergo 3 months simple imprisonment. Challenging the said Judgment of conviction and sentence, the appellant has filed the present appeal before this Court.

<https://hcservices.ecourts.gov.in/hcservices/>



9. The case of the prosecution is that the victim lives



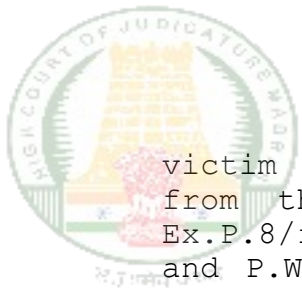
with her mother and grandfather. She belongs to Hindu Sakkiliyar community and the appellant belongs to Hindu Nadar in community. While so, the appellant called up the cell phone number of the victim's mother and started to develop relationship with the victim girl by introducing himself as a bachelor. Thereafter, by inducing the victim girl that he would marry her, took the victim girl to Sundapalayam and committed penetrative sexual assault on her on 20.01.2018 and 27.01.2018. When the grandfather of the victim came to know about their relationship, he enquired about the appellant and came to know that the appellant is already a married man and has a family at Palaiyur, Kadukkampalayam. After realizing the offence committed by the appellant, the victim girl along with her mother and grandfather lodged the complaint against the appellant. Thereafter, she was produced before the Judicial Magistrate and her statement was recorded under Section 164 Cr.P.C. The appellant is the sole accused and against him three charges were framed for the offence under Section 366 IPC, Section 6 of POSCO Act and Section 3(1)(w)(i) of SC/ST (POA) Amended Act 2015.

10. This Court is the appellate Court as a final court of fact finding and it has to re-appreciate the entire evidence and to give its findings independently. Accordingly, this Court pursued the entire materials and the Judgment of the trial Court, and gives its findings independently.

11. In order to substantiate the above said charges, on the side of the prosecution totally 25 witnesses were examined and 49 documents were marked and 4 material objects were exhibited. Out of the 25 witnesses, the victim was examined as P.W.1.

12. The date of birth of the victim is 29.01.2000 and date of occurrence is on 20.01.2018. In order to prove the age of the victim, the Head Master of the school in which the victim studied was examined as P.W.14 and the certificate issued by the P.W.14 was marked as Ex.P.17/School certificate and the copy of the Transfer Certificate issued by the Board of Secondary School was marked as Ex.P.18 in which, the date of birth of the victim is mentioned as 29.01.2000. Admittedly, the date of offence is on 20.01.2018 and thereby, the prosecution has proved that the age of the victim is only 17 years and she was a child under the definition of Section 21(d) of POCSO Act at the time of occurrence.

13. As far as the commission of offence is concerned, on the side of the prosecution, the victim was examined as P.W.1. and she has clearly narrated the entire incident. Even prior to that, the victim was produced before the doctors/P.W.4 and P.W.6 for medical examination and they have clearly stated that the



victim was subjected to penetrative sexual assault. Further, from the documents viz., Ex.P.7/copy of Accident Register, Ex.P.8/final opinion of doctor and from the evidence of P.W.4 and P.W.6, it is proved that the victim was not completed 18 years at the time of occurrence and she was subjected to penetrative sexual assault. Earlier, the victim was also produced before Judicial Magistrate to record statement under Section 164 of Cr.P.C. and the said statement was marked as Ex.P.2. A reading of the previous statement/Ex.P.2 clearly shows that how the victim got acquaintance with the appellant and subsequent to their telephone conversation, the appellant has promised to marry the victim and believing his words, the victim went along with the appellant to the place of occurrence wherein, the victim was subjected to sexual assault by the appellant for more than once.

14. From the evidence of the victim/P.W.1 and doctor/P.W.6 and the medical examination report, clearly show that the victim was subjected to penetrative sexual assault. The appellant had promised to marry the victim girl and thereby, the victim has given consent and went along with the appellant. However, since the victim was a child at the time of occurrence, her consent is immaterial. Though, the trial Court wrongly acquitted the appellant for the offence under Section 366 IPC and also Section 3(1)(w)(i) of SC/ST (POA) Act, neither the victim nor the State has filed any appeal against the same. Therefore, this Court does not interfere with the acquittal of the accused for the charged offences under Section 366 of IPC and 3(1)(w)(i) of SC/ST (POA) Act.

15. A perusal of entire materials viz., the evidence of the victim/P.W.1, doctors/P.W.4 and P.W.6, the School Certificate issued by the Head Master of the school in which the victim studied/Ex.P.15, copy of the Transfer Certificate/Ex.P.18, the medical examination report of the doctors/Ex.P.8 and P.11 and the previous statement of the victim recorded under Section 164 Cr.P.C./Ex.P.2, this Court comes to independent conclusion that the victim was not completed the age of 18 years at the time of occurrence and she was a child under the definition of 2(1)(d) of POCSO Act and she was subjected to penetrative sexual assault which was made by the appellant and that the prosecution has proved its case beyond all reasonable doubt. Further, the call details of the accused is also produced before this Court which clearly shows that the appellant had contact with the victim girl through her mother's cell phone and had access with the victim girl. Therefore, this Court does not find any perversity in the Judgment of the Court below. Therefore, there is no merit in the appeal and the appeal is liable to be dismissed.



16. Accordingly, this Criminal appeal is dismissed. The Judgment dated 14.10.2019 passed in Spl.S.C.No.8 of 2018 by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Erode, is hereby confirmed. Hence, the trial Court is directed to secure the appellant/accused to undergo the remaining period of sentence, if any.

17. M.Dhamodharan, Legal Aid Counsel, appearing for the appellant is entitled for remuneration as per rules.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ksa2/dsn

To

1. The Sessions Judge, Magalir Neethimandram
(Fast Track Mahila Court), Erode.
2. The Honourable Posco Committee
High Court, Madras.
3. The Superintendent,
Central Prison,
Coimbatore.
4. The Inspector of Police,
All Women Police Station,
Gobichettypalayam.
5. The Public Prosecutor Officer, High Court, Madras.

Copy to

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

Crl.A.No.360 of 2020

SRA (CO)
CT 07/01/2022