

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.343 of 2019

Aravind

...Appellant

Versus

State represented by its
The Inspector of Police,
All Women Police Station,
Panruti, Cuddalore District.
Crime No.17 of 2015

...Respondent

PRAYER: Criminal Appeal is filed under Section 374(2) Cr.P.C seeking against the judgement of learned Mahila Court, Cuddalore dated 08.01.2019 in Spl.S.C.No.17 of 2016.

For Appellant : Mr.S.Suresh

For Respondent : Mr.R.Suryaprakash
Government Advocate

J U D G M E N T

This Criminal Appeal is filed against the judgment of Mahila Court at Cuddalore dated 08.01.2019 passed in Spl.S.C.No.17 of 2016.

2. The respondent police registered the case against the appellant and 4 others in crime No.17 of 2015 for the offence under Sections 313, 506(i) IPC and Section 3 and 4 of POCSO Act. The Police after investigation since offence alleged is against women especially child and falling under POCSO Act and is triable by the Sessions Judge, laid charge sheet before the Sessions Judge, Mahila Court Cuddalore. After completion of the formalities, the Sessions Judge, Mahila Court framed two charges as against 5 accused. After trial, the Sessions Court acquitted the other accused (A-2 to A-5) and convicted the appellant/1st accused for the offence punishable u/s.6 of POCSO Act. Challenging the said judgment of conviction and sentence, the appellant/1st accused has filed the present appeal before this court.

3. The learned counsel for the appellant would submit that the appellant and the victim girl fall on love. During such time, she conceived. Parents of the victim girl came to know that the appellant loved the victim girl and so they left their daughter in the house of the accused. At that time, the appellant and the victim girl have given birth to a child. Therefore, hospital authorities approached the respondent police. The respondent police investigated the matter and laid charge sheet. Though the other accused were acquitted by the Special Court, this appellant has been convicted. The prosecution has not proved its case beyond reasonable doubt. The appellant has not taken the custody of the child from the natural guardian. P.W.2/Victim girl's father only took the victim girl and left her in the house of the appellant. Appellant loved the victim girl. Therefore, he has not committed any offence. Both the appellant and the victim fall on love and at the instance of the parents of P.W.2, the marriage between the appellant and the victim girl was arranged and the victim girl had already completed 18 years and hence the appellant has not committed any offence. Further he would submit that P.W.1 father of the victim girl died. The appellant has to take care of the victim girl. Therefore, the Judgment of conviction and sentence passed by the learned Special Judge had failed to consider the above fact. There is no offence committed under POCSO Act. There is no forcible sexual penetration and that there was no injuries and forcible sexual penetration. Therefore, the appellant's conviction has to be set aside.

4. The learned Government Advocate (Crl.Side) would submit that at the time of occurrence, the age of the victim girl was only 14 years. The appellant had loved the victim girl. She was aged 14 years at that time. Therefore, without knowing the consequences, she conceived. She also subsequently intimated the same to her parents. She was admitted in the hospital. She gave birth to a still born girl child. The hospital authorities intimated it to the police and the respondent police registered the case and investigated the matter. The respondent police also collected DNA Analysis Report Ex.P.9. The DNA test report reveals that the appellant is the biological father and therefore the prosecution has proved that the victim girl was minor aged 14 years and the appellant had sexual intercourse with the minor girl and the quick born baby was given birth by the victim girl and the trial court, after going through the entire evidence, convicted the appellant.

5. Heard and perused the records.

6. The case of the prosecution is that the appellant had fall on love with the victim girl/P.W.2, who was aged 14 years. Parents of the victim came to know the intimacy between the appellant and their daughter. The victim girl became pregnant and so her parents came to the house of Appellant and pleaded the appellant's parents for marriage and left their daughter in the house of the appellant. On 03.07.2015 the victim girl gave birth to a still born female baby. The hospital authorities approached the respondent police. The respondent police registered the case.

7. After investigation, respondent police laid the charge sheet. After completing formalities, the trial court framed charge. During the trial, on the side of the prosecution as many as 12 witnesses were examined as P.W.1 to 12 and 9 documents were marked as Ex.P.1 to Ex.P.9. No material Object was exhibited. After completing the evidence of the prosecution witnesses, incriminating circumstances culled out from the prosecution witnesses was put before the appellant by questioning under Section 313 Cr.P.C., for which the accused denied the same as false and pleaded not guilty. On the side of defence, no witness was examined and no document was marked.

8. It is the case of the prosecution that at the time of occurrence, the victim has not completed the age of 18 years. From the evidence of P.W.1 to 12, it was clearly proved that the victim girl has not completed the age of 18 years. The doctor evidence is that the victim girl gave birth to a still born child and the child in the womb was eight months old. The doctor who conducted autopsy on the body of the female baby born, found the foetus was within 6 to 8 months. P.W.11 Scientific Officer compared the DNA of appellant and victim girl and the DNA of the still born child and found that the victim girl was the biological mother of the still born baby and the appellant is the biological father of the girl baby. The DNA report was marked as Ex.P.9, which clearly proves that the appellant was the biological father of the deceased baby. Therefore, the report shows that the appellant had sexual intercourse with the victim.

9. The fact remains that on the date of occurrence, the victim girl was minor and aged about 14 years. The Birth certificate for proof of age of the minor girl obtained from school was marked as Ex.P.3 through Head Master of the school where the victim girl studied. The school record of the victim girl shows that her date of birth is 02.01.2000. The date of

occurrence was 01.05.2014. Therefore, at the time of the occurrence, the victim girl was only 14 years. Therefore, it clearly shows that the appellant had sexual intercourse with the victim girl and the victim girl gave birth to a still born baby. The DNA report further shows that the victim girl gave birth to quick born child on 03.07.2015. The age of the victim girl was 15 years at that time. The DNA test report shows that the appellant is the biological father of the said foetus. Therefore, it clearly shows that the victim girl was below 16 years. The appellant had sexual intercourse with the victim girl. Even though she has given consent and the parents know about the pregnancy, the offence falls under the POCSO Act.

10. The evidence of P.Ws.1, 2, 3 and 4 and the statement of the victim girl also prove the offence committed by the appellant. The victim girl was also examined by Judicial Magistrate under Section 164(5) Cr.P.C., statement also reveals that the appellant had penetrative sexual intercourse with the victim girl. Therefore, a reading of the evidence of P.W.1 victim girl and the evidence of P.W.7 doctor who examined the victim girl deposed that the victim girl gave birth to a dead foetus. Further Ex.P.9 DNA report clearly shows that appellant is the biological father of the quick born baby.

11. From the evidence of P.W.1, P.W.6, P.W.7 and P.W.8, the prosecution has clearly proved that the appellant had penetrative sexual intercourse with the victim girl who is child under the definition of Section 2(1)(d) of POCSO Act and also the DNA test report would go to show that the appellant is the biological father of the still born dead baby. The victim girl who was examined before the Magistrate has stated that appellant had penetrative sexual intercourse with her.

12. The Appellate court is a fact finding court for which it has to re-appreciate the entire evidence. As such, this court perused the entire records and gone through both oral and documentary evidence carefully.

13. A reading of the entire materials on record and the evidence of P.W.1 victim girl, P.W.7, P.W.8 doctors evidence and the statement recorded under section 164 Cr.P.C., Ex.P.3 school certificate and Ex.P.6 Post Mortem Report of the baby, Ex.P.9 DNA test report, this court finds that the appellant has committed the offence punishable under section 6 of POCSO Act. The trial court has rightly appreciated the evidence and convicted the appellant. There is no merit in the appeal and the

appeal is liable to be dismissed. Accordingly the criminal appeal is dismissed. The judgment of conviction and sentence passed by Mahila Court at Cuddalore dated 08.01.2019 passed in Spl.S.C.No.17 of 2016, is confirmed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Mahila Court, Cuddalore.
 2. The Inspector of Police,
All Women Police Station,
Panruti, Cuddalore District.
 3. The Public Prosecutor,
High Court of Madras.
 4. The Superintendent
Central Prison, Cuddalore.
- +1 CC to Mr.G. Vinodh Kumar, Advocate sr 9785.

Cr1.A.No.343 of 2019

CP(CO)
SP(12/07/2021)

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