

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.184 of 2021

S.Chinnappa

.. Appellant

.Vs.

State represented by
The Inspector of Police,
All Women Police Station,
Thiruvavarur,
Crime No.17 of 2019.

.. Respondent

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure to call for the records in S.C.No.01 of 2020 on the file of the Sessions Judge, Fast Track Mahila Court, Thiruvavarur and to set aside the judgment dated 06.03.2021 made in S.C.No.01 of 2020.

For Appellant : Mr.P.Muthamizh Selvakumar

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

J U D G M E N T

This Criminal Appeal has been filed against the Judgment dated 06.03.2021 in S.C.No.1 of 2020 by the learned Sessions Judge, Fast Track Mahila Court, Thiruvavarur.

2.The case of the prosecution is that the victim girl, who is aged about 17 years was residing along with her mother and brother, the accused/appellant is none other than the step father of the victim girl and he often come to the house of the victim girl. On 20.11.2019 at 1.30 p.m, when the victim girl was alone in the house, the accused came inside the house and expressed his desire to have sex with her and if she conceded, he will buy everything for her needs and pulled her nighty and

when the victim girl shouted, the accused left from the place of occurrence. Hence, a complaint/Ex.P1 has been filed against the appellant.

3.The respondent-Police registered a case in Crime No.17 of 2019 against the appellant for the offence punishable under Sections 6, 10 and 12 of The Protection of Children from Sexual Offences Act, 2012 [hereafter referred to as 'POCSO Act' for the sake of convenience] and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 2002 [hereafter referred to as 'TNPHW Act' for the sake of convenience]. On completion of the investigation, the respondent police filed a charge sheet before the learned Sessions Judge, Fast Track Mahila Court, Tiruvarur and the same was taken on file in Spl.S.C.No.01 of 2020. After completing the formalities, the learned Sessions Judge, framed charges against the appellant for the offence punishable under Section 12 of POCSO Act alternatively 354 A of IPC alternatively 4 of TNPHW Act.

4.In order to prove the case of the prosecution before the trial Court, on the side of the prosecution as many as 13 witnesses were examined as P.W.1 to P.W.13 and marked 10 documents as Exs.P1 to P10 and no material object was marked. After examining the prosecution witnesses, the incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the appellant/accused and questioned under Section 313 of Cr.P.C., wherein he denied all the incriminating circumstances as false and pleaded not guilty. On the side of the defence, no oral and documentary evidence was produced.

5.The Court below, after hearing the arguments advanced on either side and also considering the materials available on record, found that the appellant is found guilty only for the offence under Section 12 of POCSO Act and convicted and sentenced to undergo simple imprisonment for a period of two years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of three months. Challenging the said conviction and sentence, the appellant is before this Court.

6.The learned counsel for the appellant would submit that the appellant is the step father of the victim girl and the victim girl had developed love affair with a person and the appellant condemned the same and advised her to marry his sister's son, who is a physically challenged person. In order to avoid the said marriage proposal, the victim girl filed a false complaint against the appellant. Though the appellant is not a biological father of the victim girl, he treated the victim girl as his own daughter and the appellant had never committed any

alleged offence. He would further submit that there is no eye witness to the said occurrence and medical examination was also not conducted. However, the trial Court failed to appreciate the defence taken by the learned counsel for the appellant and wrongly convicted the appellant only on assumption and sympathy and hence, the judgment of conviction and sentence passed by the trial Court against the appellant is liable to be set aside.

7.1 The learned Government Advocate (Crl.Side) for the respondent would submit that the appellant is the step father of the victim girl. On the date of occurrence i.e. on 20.11.2019 at about 1.30 p.m, when the victim girl was alone in her house, the appellant had sexually harassed the victim girl and if she accepted his wish, he will provide everything for her needs and pulled her nighty and when she resisted the same, the accused left from the place of occurrence. Subsequently, the victim girl informed the said incident to her mother and thereby, the complaint/Ex.P1 has been registered against the appellant and charges were framed against him.

7.2 The learned Government Advocate (Crl.Side) would further submit that in order to substantiate the charges framed against the appellant, on the side of the prosecution as many as 13 witnesses were examined, out of which, the victim girl was examined as P.W.1; mother of the victim girl was examined as P.W.2; and maternal aunt of the victim girl was examined as P.W.3. He would further submit that since there was no penetrative sexual assault, it is not necessary to produce the victim girl before the Doctor for medical examination. Therefore non-production of the victim girl before the Doctor for medical examination is not fatal to the case of the prosecution. However, in order to prove the age of the victim girl, the prosecution examined P.W.6, the Doctor who conducted radiology test on the victim girl has opined that the victim girl has completed 16 years, but, not completed 18 years and issued Age certificate, which was marked as Ex.P7. Further, Ex.P3/Xerox copy of Transfer Certificate clearly shows that the date of birth of the victim girl is 12.07.2003. Therefore, as per the evidence of P.W.6, Ex.P3 and Ex.P7, the prosecution has proved its case that at the time of occurrence, the victim girl was aged below 18 years. Since she was a child, it comes under the definition of 2(1) (d) of POCSO Act. He would further submit that the victim girl was produced before the Judicial Magistrate for recording her statement under Section 164 Cr.P.C/Ex.P2, in which, the victim girl has clearly narrated the said incident.

7.3 The learned Government Advocate (Crl.Side) would further submit that there was no eye witness to the said occurrence. In cases involving sexual harassment, molestation, etc. the evidence of the victim is enough for conviction and it does not

require any corroboration unless there are compelling reasons for seeking corroboration. He would further submit that the presumption under Section 29 of POCSO Act can very much be attracted against the accused. In the present case, the said presumption has not been rebutted by the accused in the manner known to law. Therefore, the trial Court has rightly convicted the appellant and hence, the appeal is liable to be dismissed.

8. Heard the learned counsel for the appellant and the learned Government Advocate (Cr1.Side) for the respondent and also perused the materials available on record.

9. This Court, being an Appellate Court, is the final Court of fact finding, which has to necessarily re-appreciate the entire evidence and give an independent finding.

10. A reading of the complaint (Ex.P1) clearly shows that the appellant, who is none other than the step father of the victim girl had sexually harassed the victim girl and thereby, the case was registered against the appellant and charges were framed for the offence punishable under Sections 12 of POCSO Act alternatively 354 A of IPC alternatively 4 of TNPHW Act.

11. In order to substantiate the said charges on the side of the prosecution totally 13 witnesses were examined as P.W.1 to P.W.13, out of which, the victim girl was examined as P.W.1. A reading of the evidence of victim girl clearly shows that the appellant is the second husband of victim girl's mother. On 20.11.2019, when the victim girl was alone in the house, the appellant came and asked water to drink and when she gave water to the appellant, at that time, the appellant expressed his desire to have sex with her and if she accepted his wish, he will provide everything for her needs and also pulled her nighty and when she shouted, the accused left from the place of occurrence. Due to the said incident, P.W.1 became frustrated and consumed rat poison, thereafter, she was taken to hospital, where P.W.10/Sub Inspector of Police recorded her statement and filed the complaint/Ex.P1. Subsequently, the victim girl was produced before the Judicial Magistrate for recording her statement under Section 164 Cr.P.C/Ex.P2, in which, the victim girl clearly narrated the said incident. Therefore, the complaint, statement under Section 164 Cr.P.C was substantiated by examining the victim girl as P.W.1.

12. Further, in order to prove the age of the victim girl, the prosecution produced Ex.P3/Xerox copy of Transfer Certificate and Ex.P7/Age Certificate, which clearly show that at the time of occurrence, the victim girl has completed 16 years, but, not completed 18 years. Therefore, from the evidence of P.W.6, Ex.P3 and Ex.P7, the prosecution has proved its case

that at the time of occurrence, the victim girl was aged below 18 years. Since she was a child, it comes under the definition of POCSO Act.

13.After the occurrence, the victim girl consumed poison and she was admitted in the hospital on 21.11.2019. P.W.11/Doctor, who examined the victim girl has deposed that on enquiry, the victim girl has stated that the appellant tried to misbehave with her and on medical examination she found that hymen of the victim girl was intact and also found that she was not pregnant and gave a medical report (Ex.P9). Though P.W.2/mother of the victim girl was not an eye witness to the said occurrence, however, she has clearly deposed that the victim girl has spoken about the said incident, thereby, they filed the complaint against the appellant. In cases of this nature, one cannot expect independent eye witness, the evidence of the victim girl regarding sexual assault is enough for conviction and it does not require any corroborative evidence, unless there are compelling reasons seeking for corroboration. If the evidence of sole witness is cogent, credible and trustworthy, conviction is permissible.

14.The main defence taken by the learned counsel for the appellant is that since the appellant made arrangements to marry the victim girl to her sister's son, who is a physically challenged person, the victim girl made a false complaint against the accused. However, it has not been established by the defence that the victim girl was having love affair with other person and in order to escape from that marriage, a false complaint has been foisted against the appellant. Since the victim girl is a minor, she has not gone to the extent of making such false complaint against the appellant under the POCSO Act and if the appellant made any arrangements to conduct the marriage, prima facie the victim girl would have filed a complaint against the appellant under the Prohibition of Child Marriage Act, 2006. Therefore, the defence taken by the learned counsel for the appellant is not acceptable. Further, the appellant has also not examined any witness on his side to establish that, due to such marriage proposal, a false case was registered against him. Even though the appellant need not come to the witness box and establish his defence, when the evidence of the prosecution witnesses and the medical report are very effective, it is the duty of the accused to establish his defence, especially under the POCSO Act, and the presumptions are to be rebutted by the accused, however, in this case, the same has not been done by the appellant in the manner known to law. Therefore, from the evidence of P.W.1/victim girl, P.W.2/mother of the victim girl, P.W.11/Doctor, Ex.P.2/Statement recorded under Section 164 Cr.P.C, Ex.P.3/Xerox copy of Transfer Certificate, Ex.P7/Age Certificate of the victim girl and

Ex.P9/Doctors Opinion, the prosecution has proved its case beyond all reasonable doubts.

15.This Court being an Appellate Court, has independently re-appreciated the entire evidence and found that the contradictions pointed out by the learned counsel for the appellant are not material contradictions and it will not affect the case of the prosecution. Therefore, where the offence under POCSO Act is very well established, this Court has no hesitation in considering the evidence of the victim girl alone, and it cannot expect any corroborative evidence or eye-witness or any other independent witness. Admittedly, in the case, the victim girl has clearly narrated the said incident before the trial Court and in her statement recorded under Section 164 Cr.P.C.

16.Under these circumstances, this Court does not find any reason to interfere with the judgment of the trial Court and the appeal is liable to be dismissed.

17.In fine, this Criminal Appeal deserves to be dismissed and accordingly, the same is dismissed. The conviction and sentences passed in S.C.No.01 of 2020 by the Sessions Judge, Fast Track Mahila Court, Thiruvarur is confirmed. If the appellant/accused is not in duress, the trial Court is directed to take appropriate steps to secure the presence of the appellant to serve the remaining period of sentence.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sessions Judge,
Fast Track Mahila Court,
Thiruvarur.
- 2.The Inspector of Police,
All Women Police Station,
Thiruvarur.
- 3.The Public Prosecutor,
High Court, Madras.

- 4.The Deputy Registrar | with a direction to send back the
 (Criminal Section), | original records, if any, to the
 High Court, Madras. | trial Court
- 5.through The Section Officer,
 Criminal Section (Records),
 High Court, Madras-104.
- 6.The Hon'ble POCSO Committee,
 High Court, Madras.

CRL.A.No.184 of 2021

RR (CO)
PR (22/09/2021)