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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.231 of 2021 and
Crl.M.P.No.5658 of 2021

J.Antony Vinoth

...Appellant

Vs.

The State represented by
The Inspector of Police,
All Women Police Station,
Coonoor, Nilgiris District.
(Cr.No.01/2017)

...Respondent

This Criminal Appeal is filed under Section 374 of Cr.P.C. to set aside the judgment of conviction and sentence made in Spl.C.C.No.01 of 2018 on the file of the learned Sessions Judge, Mahalir Neethmandram (Fast Track Mahila Court), Udthagamandalam at Nilgiris.

For Appellant : Mrs.Yogalakshmi

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

JUDGMENT

The criminal appeal has been filed against the judgment of conviction and sentence made in Spl.C.C.No.01 of 2018 on the file of the learned Sessions Judge, Mahalir Neethmandram (Fast Track Mahila Court), Udthagamandalam at Nilgiris.

2 The respondent police registered a case in Cr.No.01 of 2017 against the appellant for the offence under Sections 315 and 506(i) of IPC and 5(1) r/w 6 of Protection of Children from Sexual Offences Act, 2012 (for brevity "the POCSO Act"). After completing investigation, the respondent police laid a charge sheet before the learned Sessions Judge, Magalir Neethimandram, (FTMC), Udthagamandalam at Nilgiris, which was taken on file in



Spl.C.C.No.01 of 2018. The learned Sessions Judge, after hearing both the accused and the prosecution and after perusing the records, since there is prima facie case, framed charges against the appellant/accused for the offence under Sections 315 and 506 (i) of IPC and Sections 5(1) r/w 6 and 5(j)(ii) r/w 6 of the POCSO Act.

3 Before the trial Court, in order to prove the case of the prosecution, as many as 18 witnesses were examined as P.Ws.1 to 18 and Exs.P1 to P30 were marked and one material object was exhibited as M.O.1. After completing examination of prosecution witnesses, when incriminating circumstances culled out from the evidence of prosecution witnesses were put before the accused by questioning under Section 313 Cr.P.C., he denied the same as false and pleaded not guilty. On the side of the defence, D.W.1 was examined and two documents were marked as Exs.D1 and D2 and no material object was exhibited.

4 The learned Sessions Judge, Magalir Neethimandram, (FTMC), Udhagamandalam at Nilgiris, on completion of trial and hearing arguments advanced on either side, by judgment dated 27.01.2021 convicted the appellant/accused for the offence under Sections 315 and 506(i) of IPC and Sections 5(1) and 5(j)(ii) punishable under Section 6 of the POCSO Act and sentenced him to undergo rigorous imprisonment for a period of two years for each of the offence under Sections 315 and 506(i) of IPC and imposed no fine for the same and to undergo rigorous imprisonment for a period of 20 years with fine of Rs.50,000/-, in default, to undergo simple imprisonment for a period of six months for each of the offence under Sections 5(1) and 5(j)(ii) punishable under Section 6 of the POCSO Act and ordered the sentences to run concurrently. Aggrieved against the said judgment of conviction and sentence, the accused has preferred the present criminal appeal before this Court.

5 The learned counsel appearing for the appellant/accused would submit that the victim girl fell in love with the appellant and knowing fully well that the appellant was already married and got separated from his wife, the victim girl had intimacy with the appellant. Further, the victim girl gave consent and she voluntarily had sexual intercourse with the appellant and she also went up to the stage of pregnancy. Further, age of the victim girl has not been proved by the prosecution in the manner known to law and the prosecution failed to produce Birth Certificate of the victim girl to prove that the victim girl was below the age of 18 years. Hence offence under the POCSO Act would not at all attract and the appellant cannot be convicted for the offence under the POCSO Act. The victim girl gave consent for sexual intercourse and she voluntarily had intercourse with the appellant and hence there



is no necessity for the appellant to give threat to the victim girl and hence ingredients of offence punishable under IPC would not made out.

5.1 Since, prosecution has failed to prove the fact that the victim has not completed the age of 18 years and also by consent the victim girl voluntarily had sexual intercourse with the appellant, the appellant could not be convicted either for the offence under IPC or the POCSO Act. The learned Sessions Judge, failed to consider the same and erroneously come to the conclusion that prosecution has proved its case and wrongly convicted the appellant, which is liable to be set aside.

6 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that the victim girl was aged about 17 years and was studying 12th standard. The appellant/accused is a neighbour of the victim and he got married and also got separated from his wife. The appellant used to talk with the victim, while she was returning home and asked her to come to his home and on false promise to marry the victim, he had sexual intercourse with the victim against her will in the year of 2016 and in that way he repeatedly had intercourse with the victim girl, due to which, she became pregnant. The victim girl missed her menses and while she informing the same to the appellant, he administered pills for abortion and he threatened the victim girl not to reveal anyone about her pregnancy, if she reveal to anyone he would not marry her.

6.1 Exs.P17 & 18, DNA test reports clearly shows that the appellant is the biological father of the fetus, which got aborted by the victim. Further, as per Ex.P6, Bonafide Certificate issued by the School, in which the victim studied, date of birth of the victim is 15.02.2000, which clearly shows that the victim is a child not completed 18 years and she is a child as per the definition of Section 2(d) of the POCSO Act. Hence penetrative sexual assault and the fact that the victim girl is a child below the age of 18 years have been proved by the prosecution beyond all reasonable doubts. The learned Sessions Judge, after appreciating the evidence of prosecution witnesses in a proper manner, has convicted the appellant and awarded imprisonment, which does not call for any interference of this Court and the appeal is liable to be dismissed.

7 Heard the learned counsel appearing for the appellant and the learned Government Advocate (Crl.Side) appearing for respondent police and perused the materials available on record.

8 Case of the prosecution is that P.W.1 is the victim girl and was aged about 17 years and was studying 12th standard



in the year 2017. The accused is a neighbor and got separated from his wife. The victim girl got acquainted with the appellant while returning home every day and they often talked with each other and the appellant compelled the victim girl to come to his home and on a false promise that he would marry her, had sexual intercourse with her for several times and due to which the victim got pregnant. The victim girl informed the same to the appellant and he threatened the victim not to reveal anyone, if she revealed, he would not marry her and administered five pills for abortion. As instructed by the appellant, the victim girl consumed the pills and got over bleeding and immediately she informed the same to her parents P.W.2 and P.W.3. Thereafter, the victim was taken to the Government Hospital, Coonoor, where it was informed that the fetus got aborted and referred the victim to Government Hospital, Udhagamandalam. The Police Officials came and obtained statement from the victim girl and the present case was registered against the appellant.

9 This Court, being an Appellate Court, is a final Court of fact finding, which has to necessarily re-appreciate the entire evidence and give an independent finding. Accordingly, this Court has re-appreciated the entire oral and documentary evidence produced before this Court.

10 P.W.1 is the victim, P.W.2 is father and P.W.3 is mother of the victim girl. When P.W.1 the victim girl produced before the Magistrate for recording statement under Section 164 of Cr.P.C., she has clearly stated that the appellant compelled her to come to his home and had intercourse with her against her will on 20.12.2016 and thereafter repeatedly had sexual intercourse and made the victim girl became pregnant. P.W.1, the victim girl also stated that when she revealed the same to the appellant, he threatened her not to reveal anyone and if she revealed, he would not marry her and he also offered five pills for abortion. P.W.2 and P.W.3 in their evidence, have stated that the appellant forced their daughter P.W.1 to consume the pills for abortion and their evidence corroborated with the evidence of the victim girl. P.W.2 and P.W.3 parents of the victim girl have spoken about the complaint of pain, which the victim had and they took her to the Hospital and they were informed that their daughter got abortion and hence she has over bleeding. It is seen that blood samples were taken from the victim and the appellant for DNA test and as per Exs.P16 and 17, it is proved that the appellant is biological father of the fetus.

11 P.W.13, the Doctor, who examined the victim girl has spoken about the pregnancy of the victim and he also deposed that on enquiry, the victim girl told that she had intercourse with the appellant in the month of May 2017 and the victim girl



reiterated the same before P.W.17, who also examined the victim girl. Hence, as far as penetrative sexual assault is concerned, it was proved from the evidence of P.Ws.1, 2, 3, 13, 15, 16 and 17 and from Exs.P16 and 17, it is also proved that the appellant is the biological father of the fetus. As far as age of the victim is concerned, prosecution has proved that the victim girl was aged about 17 years and not completed 18 years, by producing Ex.P6 Bonafide Certificate and also from the evidence of P.W.7 the Head Master of the School.

12 Even though, it is contended by the learned counsel for the appellant that the victim girl gave consent for intercourse and hence it is a consensual sex and the appellant has not committed any offence under the POCSO Act, it is proved that the victim girl is only 17 years and not completed 18 years and hence her consent is immaterial and the contention of the learned counsel is not acceptable. It is also proved that the appellant had sexual intercourse with the victim girl repeatedly and made the victim girl became pregnant and offered pills for abortion and he also intimidated the victim girl not to reveal anyone about her pregnancy and hence the learned trial Judge has framed charges for the offence under Sections 315 and 506(i) of IPC and Sections 5(1) and 5(j)(ii) punishable under Section 6 of the POCSO Act and convicted accordingly.

13 In fine, this Court come to the conclusion that there is no merit in the appeal and there is no sound reason to interfere with the judgment of conviction and sentence. Accordingly, this criminal appeal is dismissed. The trial Court is directed to secure the appellant/accused to serve remaining period of imprisonment, if any. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Sessions Judge,
Mahalir Neethmandram (Fast Track Mahila Court),
Udhagamandalam at Nilgiris.



2.The Inspector of Police,
All Women Police Station,
Coonoor, Nilgiris District.

3.The Superintendent,
Central Prison,
Coimbatore.

4.The Public Prosecutor,
High Court of Madras.

+1cc to Mr.M.Guruprasad, Advocate SR. No.34388

Crl.A.No.231 of 2021 and
Crl.M.P.No.5658 of 2021

JPL (CO)
PR (19/01/2022)