



BAIL SLIP

The Petitioner / Accused Viz., Mr.Nagaraj, Male/aged 23 years was released on bail as per order of this Court dated 31.07.2020 in Crl.M.P.No.4020 of 2020 in Crl.A.No.239 of 2020 on the file of the this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.239 of 2020

Nagaraj

.. Appellant

.Vs.

State Represented by
Inspector of Police,
All women Police Station.,
Denkanikottai,
Krishnagiri District.

.. Respondent

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure to set aside the conviction and sentence imposed on the appellant passed by the learned Session Judge, Fast Track Mahila Court, Krishnagiri, Krishnagiri District in Spl.S.C.No.57 of 2018 dated 19.02.2020.

For Appellant : Mr.S.Suresh

Mr.V.Perarasu
Legal Aid Counsel

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 19.02.2020 passed in Spl.S.C.No.57 of 2018 by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, Krishnagiri District.



2.The case of the prosecution is that the accused on the pretext of love with the victim girl, who was aged about 17 years, used to follow her and expressed his love. On 15.06.2018 at about 5.30 a.m, the appellant abducted the victim girl, under the guise of love and on promise of marriage from her lawful guardianship, with an intent to have illicit intercourse with her. He took her to his friend's house situated at Tiruppur and had committed sexual assault till 27.06.2018. Subsequently, a complaint was filed by P.W.1/mother of the victim girl before the respondent police.

3.The respondent police registered a case in Crime No.11 of 2018 for the offence under Section 366(A) IPC. On completion of the investigation, the respondent police filed a charge sheet before the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri for the offence under Sections 366(A) IPC and 5 of The Protection of Children from Sexual Offences Act, 2012 [hereafter 'POCSO Act' for the sake of convenience]. Since the offence is against a girl child, it falls under the definition of 2(1) (d) of POCSO Act. After completing the formalities, the learned Sessions Judge taken the case on file in Spl.S.C.No.57 of 2018 and charges were framed against the accused/appellant for the aforesaid offences.

4.In order to prove the case of the prosecution before the trial Court, on the side of the prosecution as many as 20 witnesses were examined as P.W.1 to P.W.20 and marked 21 documents as Ex.P1 to Ex.P21. After examining the prosecution witnesses, the incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the accused/ appellant and questioned under [Section 313](#) of Cr.P.C and 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 accused/appellant is guilty as follows :

(i) for offence under Section 366 IPC the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for a period of six months.

(ii) for offence under Section 5(1) of POCSO Act which is punishable under Section 6 of POCSO Act, the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.2,000/-, in default to undergo rigorous imprisonment for a period of one year.



Challenging the said conviction and sentences the appellant is before this Court.

6. When the matter was taken up for hearing on 26.07.2021 and 17.08.2021, there was no representation for the appellant. Since there is non-cooperation of the learned counsel for the appellant, this Court appointed Mr.V.Perarasu as a Legal Aid Counsel for the appellant. On 13.09.2021, the learned Legal Aid Counsel for the appellant as well as Mr.S.Suresh, learned counsel entered appearance on behalf of the appellant.

7.1 Mr.S.Suresh, learned counsel for the appellant would submit that at the time of occurrence, the victim girl was 17 years and the appellant was 23 years and they had developed love affairs. Since the appellant belongs to the member of Scheduled Caste and the victim girl is non-member of Scheduled Caste, the parents of the victim girl did not like to perform their marriage. Hence, the victim girl eloped with the appellant and had intimacy with her consent. On coming to know the said fact, the parents of the victim girl registered the complaint against the appellant. After registration of the complaint, the respondent police secured the victim girl and hand over the victim girl to her parents. Thereafter, the victim girl married another person and now she is living happily.

7.2 The learned counsel for the appellant would further submit that during trial, the victim girl/P.W.10 has clearly deposed that due to love affair she eloped with the appellant and they went to Tiruppur. Therefore, the evidence of the victim girl clearly shows that on her own interest she went along with the appellant and hence, Section 366 IPC would not attract. He would further submit that when the victim girl was produced before the learned Judicial Magistrate for recording her statement under Section 164 Cr.P.C she clearly stated that due to love affair and on the promise of marriage, she eloped with the appellant and had intimacy with each other, therefore, Section 5(1) of POCSO Act would not attract. Further, the victim girl has completed 18 years, at the time of occurrence. The Headmistress/P.W.17 has given Study Certificate/Ex.P14, in which, the date of birth of the victim girl is mentioned as 12.08.2000, but, in order to prove the same, birth certificate of the victim girl was not produced by the prosecution and the same is fatal to the case of the prosecution. Therefore, the act committed by the appellant not falls either under Section 366 IPC or Section 5(1) punishable under Section 6 of POCSO Act. He would further submit that the Doctor/P.W.10, who examined the victim girl, has stated that there is no external injury found on the body of the victim girl, therefore, the medical evidence also not supported the case of the prosecution. The learned



Sessions Judge failed to appreciate the entire evidence and convicted and sentenced the appellant only on the assumption and sympathy and therefore, the judgment of conviction and sentence passed by the trial Court against the appellant is liable to be set aside.

8.1 The learned Government Advocate (Crl.Side) for the respondent would submit that the age of the victim girl was only 17 years at the time of occurrence, and the appellant, who is the neighbour of the victim girl, forcibly taken the victim girl from the lawful custody of her parents, without their consent. The appellant under the guise of love affair and on promise of marriage had committed sexual intercourse on the victim girl several times, however, he did not marry her. Subsequently, the parents of the victim girl preferred the complaint against the appellant and that the respondent police arrested the appellant and secured the victim girl. Further, Doctor/P.W.15, who examined the victim girl, has clearly stated that hymen is not intact and there is a tare in the hymen and patulous admits two fingers and she has also given medical report/EX.P9. Therefore, the medical evidence clearly shows that the victim girl was subjected to sexual assault. At the time of occurrence, the victim girl was only 17 years, since she is a minor which falls under the definition of Section 2(1) (d) of POCSO Act. Therefore, the consent of the victim girl is immaterial and defence of consent taken by the learned counsel for the appellant is illegal and unsustainable.

8.2 The learned Government Advocate (Crl.Side) would further submit that during trial, the victim girl was examined as P.W.10 and she clearly deposed that under the guise of love affair and on promise of marriage, the appellant took her to Tiruppur and had forcibly committed sexual assault on her several times. Therefore, from the evidence of the victim girl/P.W.10 and Doctor/P.W.15, the prosecution has proved its case beyond all reasonable doubts. Further to prove the age of the victim girl, the prosecution has produced Ex.P14/Study Certificate of the victim girl and also Xerox copy of the 10th Mark Sheet, in which, the date of birth of the victim girl is mentioned as 12.08.2000, whereas the date occurrence happened on 15.06.2018. Therefore, the victim girl has not completed 18 years at the time of occurrence and hence, the offence committed by the appellant comes under Section 366 IPC and Section 5(1), which is punishable under Section 6 of POCSO Act. The trial Court has rightly appreciated the entire evidence and convicted and sentenced the appellant and hence, the appeal is liable to be dismissed.

9. Heard the learned counsel for the appellant; learned Legal Aid Counsel appearing on behalf of the appellant and the



learned Government Advocate (Crl.Side) appearing for the respondent and also perused the materials available on records.

10.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.

11.In order to substantiate the charges framed against the appellant on the side of the prosecution, the victim girl was examined as P.W.10; the Doctors, who examined the victim girl, were examined as P.W.14 and P.W.15; the Head Mistress of the school, in which the victim girl was studied, was examined as P.W.17; and Ex.P5/Statement of the victim girl recorded under Section 164 Cr.P.C; Ex.P8/Accident Register Copy of the victim girl; Ex.P.9/Medical Report and Ex.P14/Study Certificate.

12.During the trial and the statement of the victim girl recorded under Section 164 Cr.P.C, she clearly deposed that she was 17 years old at the time of occurrence and under the guise of love affair, the appellant followed her regularly, thereafter, they developed love affair. On 15.06.2018 at about 5.30 a.m she went for attending natures call, at that time, the appellant forcibly took her in his two wheeler to Hosur and thereafter, they went to appellant friend's house situated at Tiruppur and they stayed there till 27.06.2018. During the said period, the appellant had committed penetrative sexual assault on her several times, against her will, on promise of marriage.

13.On a careful reading of the evidence of P.W.10/victim girl, Ex.P5/Statement of the victim girl recorded under Section 164 Cr.P.C and the evidence of Doctors P.Ws.14 and 15 and Exs.P8 to P11, it reveal that the prosecution has established its case that the victim girl was subjected to penetrative sexual assault. The evidence of the victim girl is corroborated with the evidence of P.W.1/mother of the victim girl. Further, in order to prove the age of the victim girl, the prosecution marked Ex.P.14/Study certificate and xerox copy of 10th Mark Sheet of the victim girl, which clearly show that date of birth of the victim girl is 12.08.2000, whereas, as per the complaint and First Information Report and the evidence of P.W.10/victim girl, the date of occurrence happened on 15.06.2018. Therefore, at the time of occurrence, the victim girl was only 17 years and not completed 18 years. Admittedly, in this case, the victim girl has clearly narrated the said incident and the medical evidence also supported the case of the prosecution.

14.The main defence taken by the learned counsel for the appellant is that on her own interest the victim girl eloped



WEB COPY

with the appellant and with her consent they developed intimacy with each other. The victim girl was only 17 years at the time of occurrence. Since she is a child, it falls under the definition of Section 2(1) (d) of POCSO Act, and hence consent is immaterial. Therefore, the defence taken by the learned counsel for the appellant is not acceptable.

15. Under these circumstances, this Court finds that the appellant had abducted the victim girl from her lawful guardians without their consent on promise of marriage and had committed penetrative sexual assault on the victim girl and that he had committed the offence under Section 366 IPC. Further, at the time of occurrence the victim girl was only 17 years, since she is a minor, the appellant had committed aggravated sexual assault on the victim girl for more than once and therefore, he had committed the offence under Section 5(1) of POCSO Act, which is punishable under Section 6 of POCSO Act. The trial Court has rightly appreciated the entire oral and documentary evidence and convicted and sentenced the appellant.

16. In the light of the above discussion, this Court does not find any merit in this appeal and the appeal is liable to be dismissed. Accordingly, this Criminal Appeal is dismissed.

17. The Legal Aid counsel appointed by this Court is entitled to legal fees as per Rules.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

ms

To

1. The Session Judge,
Fast Track Mahila Court,
Krishnagiri, Krishnagiri District.
2. The Inspector of Police,
All women Police Station.,
Denkanikottai,
Krishnagiri District.



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. The Member Secretary,
High Court Legal Aid Services Committee,
High Court, Chennai.

6. The Superintendent of Prison,
Central Prison,
Vellore.

+1cc to Mr.V.Perarasu, Advocate, S.R.No.47432

CRL.A.No.239 of 2020

SPD(CO)
SU(06/01/2022)