

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.02.2021

Delivered on : 15.04.2021

CORAM :

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Crl.A.No.451 of 2019
and
Crl.M.P.No.2447 of 2020

Thirumoorthy ... Appellant

Vs.

State represented by
The Inspector of Police,
Kolathur Police Station,
Kolathur, Salem District. ... Respondent

Criminal Appeal filed under Section 374(2)
Cr.P.C., praying to set aside the judgment of
conviction and sentence, dated 18.02.2019, in
Spl.S.C.No.79 of 2016, on the file of the Mahalir
Neethimandram, Salem, Salem District.

For Appellant : Mr.D.Ramesh Kumar
(Counsel on record)
and
Mrs.V.Nalini
(Legal Aid Counsel)

For Respondent : Mr.R.Suryaprakash
Government Advocate
(Crl. Side)

J U D G M E N T

This Criminal Appeal is filed against the
judgment of conviction and sentence, dated
18.02.2019, passed by the learned Sessions Judge,
Mahalir Neethimandram, Salem, in Spl.S.C.No.79 of
2016.

2.The respondent police originally registered a case in Crime No.174 of 2016 for "Girl Missing", and subsequently, after enquiry, the appellant was arrested and his confession statement was recorded in the presence of the Village Administrative Officer, and based on the confession statement of the appellant, recovery was made and subsequently, the case was altered to Sections 363, 342, 302 and 201 r/w. 302 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act" for brevity), against the appellant.

3.After completing the investigation, the respondent police laid a charge-sheet before the Mahalir Neethimandram, Salem. The learned Sessions Judge had taken the case on file in Spl.S.C.No.79 of 2016. After completing the formalities, the learned Sessions Judge framed the charges against the appellant for the offences punishable under Sections 363, 342 IPC and Section 6 of POCSO Act and Sections 302 and 201 r/w.302 IPC.

4.After framing the charges, in order to prove the case of the prosecution, on the side of the prosecution, during trial, as many as 25 witnesses were examined as P.W.1 to P.W.25, and 35 documents were marked as Exs.P1 to P35, and 10 Material Objects were exhibited.

5.After completing the trial and hearing the arguments advanced on either side, considering the materials and since the accused was a Juvenile, the trial Court convicted and sentenced the accused/appellant as follows :

Provision under which convicted	Sentence
Section 363 IPC	Rigorous Imprisonment for seven years
Section 342 IPC	Rigorous Imprisonment for one year
Section 6 of POCSO Act	Rigorous Imprisonment for 10 years
Section 302 IPC	Rigorous Imprisonment for 10 years
Section 201 r/w. 302 IPC	Rigorous Imprisonment for 7 years

The sentences shall run concurrently.

6.Challenging the said conviction and sentence, the appellant/accused has filed the present appeal before this Court.

7.The learned counsel appearing for the appellant/accused would submit that there is no eye-witness in this case to show that the appellant has committed aggravated penetrative sexual assault and murdered the victim child. The appellant was a Juvenile at the time of the alleged occurrence and he was 17 years old, and therefore, the trial conducted against the appellant by the Sessions Court is legally not sustainable and the same is without jurisdiction. Further, there is no evidence to show that the appellant has committed the offence and there are contradictions between the evidence of P.W.1 (father of the victim child) and P.W.2 (mother of the victim child) regarding the time at which the father of the victim child took the victim child to petty shop to get her a chocolate. The mother of the victim child (P.W.2) says, "at 4'o clock", and father of the victim child (P.W.1) says, "at 6'o clock". Therefore, there is a material contradiction in this case.

8.The learned counsel appearing for the appellant would further submit that the medical evidence also does not support the case of the prosecution. Prior to the occurrence, if at all the victim child had eaten a chocolate or biscuit, the post-mortem certificate would reveal that there was no such material found in the stomach. Further, no semen was found in the vaginal swab of the victim child. Therefore, the medical evidence does not support the case of the prosecution. Moreover, there is no independent witness to show that only the appellant committed the offence. Since there is no eye-witness in this case, based on the circumstantial evidence, the appellant was implicated in this case, and there is no motive at all in this case, and the motive has not been established.

9. Therefore, the learned counsel appearing for the appellant would submit that the prosecution has miserably failed to prove its case beyond reasonable doubt and the benefit of doubt should have been extended to and in favour of the appellant. The appellant also was a Juvenile at the time of alleged occurrence, however, the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, have not been followed in this case. Therefore, the appeal is liable to be allowed and the judgment of conviction and sentence, passed by the trial Court, is liable to be set aside.

10. The learned Government Advocate (Crl. Side) appearing on behalf of the respondent police would submit that, P.W.1 is the father of the victim child, and on the date of occurrence, i.e., on 02.07.2016, P.W.1, the father of the victim child, took the victim child to a nearby petty shop and provided chocolate, and left for his work; after completing his work, when he came to the house, the victim child was not in the house; he asked his wife about the child, and thereafter, they searched and they did not find the child, and hence, they made a complaint (Ex.P1) before the respondent Police for "Girl Missing". P.W.10 and P.W.11, who were the neighbours, said that they had seen the victim child with the appellant, and P.W.11 has clearly stated that the appellant took the victim child to his house. Therefore, the Police subsequently went to the house of the appellant, and at that time, seeing the police, the appellant tried to escape, however, the Police caught him and enquired. During enquiry, he admitted the commission of offence and made a confession statement and the same was recorded in the presence of the Village Administrative Officer, and based on the confession, they recovered the body of the deceased victim child and also the other Material Objects. Subsequently, the body of the victim child was produced before the Medical Officer for post-mortem and the Doctor, who conducted the post-mortem, has clearly stated the injuries sustained on the body of the victim child, which clearly corroborates with the confession statement made by the appellant. Subsequently, the Forensic Reports also tallied with the confession statement of the appellant.

11.The learned Government Advocate (Crl. Side) would submit that though there is no eye-witness in this case, in the evidence of P.W.1 the father of the victim child, he has deposed that, on 02.07.2016 at about 6'o clock, he took the victim child to a nearby petty shop to get a chocolate and after providing her a chocolate, he asked her daughter to go to the house, and he went to his work, and after an hour, he came to the house and searched his daughter. P.W.14, one who was having the petty shop near the Mariamman Temple, has also stated that, on the date of occurrence, between 04.45 p.m. and 05.00 p.m., the victim child came to his shop, and thereafter, P.W.1 came to his shop and enquired about his daughter. Therefore, on 02.07.2016, the victim child was available in the shop and nearby the shop, between 5 and 6'o clock, and thereafter, as per the evidence of P.W.10 and P.W.11, the victim child was lastly seen with the appellant, and thereafter, P.W.1 and P.W.2 (parents of the victim child) have not seen their daughter, and therefore, they made a compliant before the Police.

12.Therefore, the learned Government Advocate (Crl. Side) would submit that, as per the evidence of P.W.1, P.W.14, P.W.10 and P.W.11, after 6'o clock, they have not seen the victim child, and the victim child was seen lastly with the appellant, and thereafter, they made a complaint for "Girl Missing" and P.W.10 and P.W.11 informed to the Police during enquiry that they saw the victim child with the appellant, and thereafter, they approached the appellant. After seeing them, the appellant tried to escape, and later on, he was caught and was enquired, and subsequently, he made the confession. Therefore, the prosecution has established its case beyond reasonable doubt with circumstantial evidence and the confession statement made by the appellant in the presence of Village Administrative Officer, is admissible in evidence under Section 27 of the Indian Evidence Act. Hence, the trial Court has rightly convicted the appellant.

13.Heard the learned counsel on either side and perused the materials available on record.

14.The case of the prosecution is that, on 02.07.2016, at about 06.00 p.m., P.W.1 (father of the victim child) took the victim child to a nearby petty shop for getting her a chocolate and after providing her with a chocolate, he asked her to go to the house and he went for his work. At that time, the accused/appellant, being a Juvenile (aged about 17 years), followed the victim child with sexual intent and talked to her. When the victim child said that she wanted to go to her father, he made her believe that her father was in his house and took her to his house. There, he gave her some biscuits, and in the meanwhile, closed the main door of the house and confined the victim child in his house. Thereafter, the accused hugged the victim child and kissed her. The victim child got scared and cried that she wanted to go to her father, and hence, he closed her mouth tightly, pushed her down and turned her neck by his hands, by which, she fainted. Thereafter, he committed aggravated penetrative sexual assault on the victim child. Subsequently, in order to escape from the clutches of law, the accused planned to murder the victim child and took a blade and caused several cut injuries on the cheek, chest, abdomen and private parts, and murdered her, and confined the dead body inside a big vessel in his house.

15.The father of the victim child went on searching for his daughter, but the child was not found, and hence, he gave a complaint before the police and a case was registered in Crime No.174 of 2016 for "Girl Missing". On enquiry, P.W.10 and P.W.11, who were the neighbours, said that they saw the victim child with the appellant, and therefore, they went to the house of the appellant, and when the appellant tried to escape, they caught him, and on enquiry, the appellant narrated the entire episode, and he confessed the commission of aggravated penetrative sexual assault and murder of the victim child, and his confession statement was recorded in the presence of the Village Administrative Officer.

16.Based on the preliminary enquiry and the confession made by the appellant, the respondent Police altered the case to Sections 363, 342, 302, 201, 302 IPC and Section 6 of POCSO Act.

17. After completing the investigation, the respondent police laid a charge-sheet against the appellant before the Mahalir Neethimandram, Salem, and the learned Sessions Judge had taken the case on file in Spl.S.C.No.79 of 2016.

18. The trial Court framed the charges against the appellant as stated supra. When questioned, the appellant pleaded "not guilty".

19. In order to prove the case of the prosecution, on the side of the prosecution, 25 witnesses were examined and 35 documents were marked and 10 Material Objects were exhibited.

20. After completing the examination of the prosecution witnesses, the incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the appellant and he denied the same as false. On the side of the defence, no oral or documentary evidence was produced.

21. After considering the evidence on record and hearing either side, the trial Court, by judgment dated 18.02.2019, in Spl.S.C.No.79 of 2016, convicted and sentenced the appellant as stated above.

22. Challenging the judgment of conviction and sentence, the accused/appellant has preferred the appeal before this Court.

23. This Court, being an Appellate Court, is a fact finding Court, and it has to give its finding independently after appreciating the entire evidence. Accordingly, this Court has re-appreciated the entire evidence.

24. P.W.1 is the father of the victim child, who is the complainant, and initially, based on the complaint (Ex.P1), a case was registered for "Girl Missing". Subsequently, during the enquiry, especially after examining P.W.10 and P.W.11, the police came to know that the victim child was lastly seen with the appellant, and therefore, they approached the appellant, and on seeing the Police,

the appellant tried to escape. However, the appellant was caught hold by the Investigating Officer, and at that time, he made a confession statement in the presence of the Village Administrative Officer (P.W.15). Based on the confession, the dead body of the victim child was traced out from the place of occurrence, and the dead body and other Material Objects were recovered. From the evidence of the father of the victim child (P.W.1) and the mother of the victim child (P.W.2), the victim child was in the house till 4'o clock, and subsequently, she was seen by P.W.10 and P.W.11 with the appellant, and thereafter, she did not turn to the house, and was found missing. P.W.1 (father of the victim child) made a complaint (Ex.P1) before the respondent Police. Based on the complaint, a case was registered.

25.P.W.15 (Village Administrative Officer) has clearly deposed that, in his presence, the appellant gave the confession statement; the signature of P.W.15 in the confession statement was marked as Ex.P3; subsequently, based on the confession, the body was recovered and the Material Objects were recovered. Thereafter, the body of the victim child was sent for post-mortem. P.W.16 conducted post-mortem on the body of the deceased victim child and gave a report. Ex.P7 is the Post-Mortem Certificate of the victim child. Ex.P8 is the final opinion of the Doctor. The visceral organs collected during the post-mortem were sent to the Forensic Sciences Department for examination. P.W.17 and P.W.18 were the Assistant Directors, Forensic Science Laboratory, Salem, and Exs.P10 and P11 are the Biological Report and Serological Report respectively. The accused was also produced before the Doctor (P.W.23) for Potency Test. P.W.24 is one of the Assistant Director of Forensic Science Laboratory, Salem. The Serological Reports were marked as Exs.P15, P16 and P17 and the Biological Reports were marked as Exs.P10, P11 and P12. The Photographer, who took photos at the time of recovery of the dead body and Material Objects, was examined as P.W.19. The admissible portion of the confession statement made by the appellant was marked as Ex.P20.

26. Therefore, from the evidence of P.Ws.1, 10, 11, 14, 15, 16, 17, 18, 19, 23, 24 and Exs.P1, P3, P7, P8, P9 to P17, P20, P23, the prosecution has established that the appellant is the one who has committed the offence. Though the learned counsel appearing for the appellant would submit that the biological report is not supportive and the prosecution has failed to substantiate the charge beyond reasonable doubt, admittedly, in this case, there is no direct eye-witness, however, from the evidence of P.W.1 and P.W.14, and subsequently, from the evidence of P.W.10 and P.W.11, the victim child was lastly seen alive till 6'o clock on 02.07.2016, and she was lastly seen along with the appellant as per the evidence of P.W.10 and P.W.11. Further, as per the complaint (Ex.P1) made on the same night, the girl was found missing. The next day, the Investigating Officer, based on the statement given by P.W.10 and P.W.11, approached the appellant, and at that time, the appellant confessed the commission of offence, and from the evidence of P.W.15 (Village Administrative Officer), the appellant has given a confession statement, and based on that, recovery was made. Further, the opinion of the Doctor who conducted the post-mortem of the victim child, also corroborates the confession made by the appellant. Therefore, though the case is based on the circumstantial evidence, on a perusal of the entire evidence as stated above, it is clear that the prosecution has established its case against the appellant.

27. Since the appellant was a Juvenile, the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015, were also duly followed, and subsequently, the Juvenile Justice Board has also passed an order in C.M.P.No.621 of 2020, dated 29.01.2021, which was not challenged by the appellant.

28. The motive behind is that the appellant/accused intended to have sexual intercourse with the victim child, and therefore, he took the victim child to his house and tried to make a sexual assault, and at that time, the victim child tried to raise an alarm, and in order to escape from the

clutches of law, he turned her neck with hands, and subsequently, she fainted. Thereafter, the appellant committed aggravated penetrative sexual assault on the victim child, and subsequently, caused brutal injuries on various parts of her body. In order to screen the body and also the offence, he concealed the body, and based on the confession, the body was recovered and sent for post-mortem. The evidence of P.W.15 (Village Administrative Officer) clearly shows that, based on the confession, they recovered the dead body of the victim child. Therefore, from the evidence of P.W.10 and P.W.11 (last seen theory), the evidence of P.W.15 (Village Administrative Officer), and also the confession statement of appellant, which completely corroborates with the opinion of the Doctor (P.W.16) who conducted the post-mortem, this Court finds that the prosecution has proved its case beyond reasonable doubt against the appellant, and the trial Court has rightly appreciated the evidence and convicted the appellant under Sections 363, 342, 302, 201 r/w. 302 IPC and Section 6 of the POCSO Act. Since the appellant was a Juvenile at the time of commission of offence, the procedure as per the Juvenile Justice (Care and Protection of Children) Act, 2015, was duly followed, and therefore, there is no merit in the appeal and the same is liable to be dismissed.

29. Accordingly, this Criminal Appeal is dismissed and the judgment of conviction and sentence passed by the trial Court is confirmed. Consequently, connected miscellaneous petition is also closed.

30. The Legal Aid Counsel appearing on behalf of the appellant is entitled for fees as per Rules.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

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To

- 1.The Sessions Judge,
Mahalir Neethimandram,
Salem.
- 2.The Special Judge,
Special Court for the cases under POCSO Act,
Salem.
- 3.The Inspector of Police,
Kolathur Police Station,
Kolathur, Salem District.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Deputy Registrar | with a direction to
(Criminal Section), | send back the
High Court, Madras. | original records to the
trial Court,
if any, immediately
- 6.The Member Secretary, Tamil Nadu Aid Services
Authority, High Court Madras.
- 7.The Officer Incharge, Borstal School, Chengalpatt.
+ 1 cc to Mr.D. Rameshkumar, Advocate Sr.23064

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