



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRIMINAL APPEAL NO.389 OF 2021

Ajithkumar

...Appellant / Sole Accused

.Vs.

State Rep.by
The Inspector of Police
Pothanur Police Station
Coimbatore City
Coimbatore District
(Crime No.969 of 2018)

...Respondent / Complainant

Prayer :

Criminal Appeal filed under Section 374(2) of Criminal Procedure Code praying to set aside the Judgment and sentence passed in Spl.C.C.No.3 of 2020 dated 30.04.2021, on the file of Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore and acquit the Appellant in view of the above stated grounds.

For Appellant : Mr.Philip Ravindran Jesudoss

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

J U D G M E N T

(The case has been heard through video conference)

The Criminal Appeal has been filed against the Judgment of conviction and sentence passed in Spl.C.C.No.3 of 2020 dated 30.04.2021 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore

2. The respondent police registered a case against the appellant in Crime No.969 of 2018 for the offence punishable under Sections 366(A) IPC, Section 9 of Prohibition of Child Marriage Act 2006 and Section 5(1) of POCSO Act 2012 which is punishable under Section 6 of POCSO Act 2012. After



investigation, the respondent police laid charge sheet before the Special Court, Coimbatore and the same was taken up on file in Spl.C.C.No.3 of 2020. The learned Sessions Judge after completing the formalities, framed charges against the appellant for the offence punishable under Sections 366(A) IPC, Section 9 of Prohibition of Child Marriage Act 2006 and Section 5(1) which is punishable under Section 6 of POCSO Act 2012.

3. After framing charges, in order to prove the case of the prosecution during trial, on the side of the prosecution as many as 14 witnesses were examined as P.W.1 to P.W.14 and 18 documents were marked as Exs.P.1 to P.18 besides one material object was exhibited as M.O.1 and one Court Document was marked as C1.

4. After completing the examination of the prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the appellant by questioning under Section 313 Cr.P.C. However, he denied the same as false and he pleaded not guilty. On the side of the defence no oral or documentary evidence was marked.

5. On completion of trial and conclusion of arguments advanced by both the counsels and considering the materials available, the learned trial Judge found guilty of the accused for the offence under Sections 366(A) IPC, Section 9 of Prohibition of Child Marriage Act 2006 and Section 5(1) which is punishable under Section 6 of POCSO Act 2012 and convicted and sentenced him to undergo rigorous imprisonment for 10 years and to pay fine of Rs.1,000/- in default to undergo one year rigorous imprisonment for the offence under Section 366(A). He was also convicted and sentenced to undergo 2 years rigorous imprisonment and to pay fine of Rs.1,000/- in default to undergo 6 months rigorous imprisonment for the offence under Section 9 of Prohibition of Child Marriage Act 2006. Further, he was convicted and sentenced to undergo rigorous imprisonment for 20 years and to pay fine of Rs.5,000/- in default to undergo one year rigorous imprisonment for the offence under Section 5(1) which punishable under Section 6 of POCSO Act 2012 and a sum of Rs.5 lakhs was awarded as compensation. Challenging the said judgment of conviction, sentence and compensation, the appellant has filed the present appeal before this Court.

6. Today the appeal is listed for admission. Since the offences are against a child aged about 15 years, this Court carefully gone through the entire materials including the grounds of appeal submitted by the appellant and the Judgement of the trial Court.



7. It is the case of the prosecution that the daughter of the defacto complainant who is aged about 15 years was found missing from 24.09.2018. Hence, the defacto complainant lodged a complaint before the respondent police and the case was initially registered for "Girl Missing" in Crime No.969 of 2020. During the course of investigation, it was found that the appellant on the pretext of marrying the victim, took her to Tiruppur and thereafter, stayed with her at several places till 08.11.2018 during which time, the appellant has tied her Thali and married her and also had sexual intercourse with her on several times. Therefore, the case was altered into Sections 366 (A) IPC, Section 9 of Prohibition of Child Marriage Act 2006 and Section 5(1) of POCSO Act 2012 which is punishable under Section 6 of POCSO Act 2012. Subsequently, the victim was produced before the doctor for medical examination and also before the Magistrate for recording her statement under Section 164 Cr.P.C. and after completion of investigation, the charge sheet was laid.

8. In this case, since this Court is the Appellate Court of fact finding, it has to re-appreciate the evidence independently and to give its findings. Accordingly, this Court gone through the entire materials and Judgment of the trial Court and appreciated the entire evidence independently and give its finding.

9. In order to substantiate the charges framed against the appellant, on the side of the prosecution as many as 14 witnesses were examined. Out of the 14 witnesses, the victim girl was examined as P.W.2.

10. In the evidence, P.W.2-victim has clearly narrated the entire incident. She has stated that the appellant is the one who took her to several places from 24.09.2018 to 08.11.2018 during which time, the appellant had tied her Thali and married her and also had sexual intercourse with her on several times. P.W.7-doctor who conducted medical examination on the victim has clearly stated that the victim was subjected to penetrative sexual assault and her hymen was not intact and she was subjected to sexual assault on several times. Therefore, from the evidence of P.W.2-victim and P.W.7-doctor, it is clear that P.W.2-victim was subjected to penetrative sexual assault.

11. In order to prove the age of the victim girl, Ex.P.2-Copy of the Aadhaar Card of the victim was marked. According to P.W.1-father of the victim, P.W.2-victim and Ex.P.2-Copy of the Aadhaar Card of the victim, the date of birth of the victim girl is 26.06.2003 and the date of occurrence is on 24.09.2018. Therefore, on the date of occurrence, the age of victim was 15 years and she had not completed 18 years and she was a child



under the definition of 2(1) (d) of POCSO. Per contra, the defence had not disproved that the victim is not a child and she had completed 18 years at the time of alleged occurrence. Therefore, the trial Court came to conclusion that the victim was a minor and not completed the age of 18 years at the time of alleged occurrence and she was a child under the definition of 2 (1) (d) of POCSO.

12. P.W.2-victim has clearly stated that the appellant took her on 24.09.2018 and they stayed at various places during which, he tied her Thali and made her to believe that she was his wife and had sexual intercourse with her. Therefore, the prosecution has proved that the appellant has committed the offence under Section 9 of Prohibition of Child Marriage Act 2006 since, the victim was below 18 years and she was a child at the time of occurrence as stated above.

13. As far as penetrative sexual assault is concerned, from the evidence of P.W.7-doctor and Exs.P.11 and 12/Medical Report and Opinion of the doctor, the prosecution has proved that the victim was subjected to penetrative sexual assault. Since the victim was a child and the appellant committed penetrative sexual assault on the victim for more than once, the offence committed by the appellant falls under Section 5(1) i.e. aggravated penetrative sexual assault which is punishable under Section 6 of POCSO Act.

14. The evidence of P.W.2-victim clearly shows that the appellant is the one who took the victim and tied Thali and had sexual intercourse with her. Since, the victim had not completed the age of 18 years and without the consent of the lawful guardians, the appellant took the victim girl to several places for the purpose of marriage and also had sexual intercourse with her, the appellant has committed the offence under Section 366 (A) IPC.

15. Therefore, from the evidence of P.W.2-victim girl, P.W.7-doctor, Ex.P.3-the statement recorded under Section 164 Cr.P.C., Ex.P.11-Medical report, Ex.P.12-final opinion of the doctor/P.W.12 and Ex.P.17-alteration report, the prosecution has proved its case beyond all reasonable doubt.

16. A reading of the evidence of the prosecution witnesses and the documentary evidence and also the Judgment of the trial Court, this Court finds that there is no merit in the appeal and that the grounds raised in the appeal has already been answered by the trial Court. This Court does not find any perversity in the Judgment passed by the trial Court and there is no necessity to admit the appeal and to call for the records and hearing the matter in detail. This Court is not satisfied with the grounds



of appeal. Therefore, the Criminal Appeal is dismissed at the admissions stage itself.

WEB COPY

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Ksa-2

To

1. The Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore.
2. The Inspector of Police
Pothanur Police Station
Coimbatore City
Coimbatore District
3. The Public Prosecutor Officer,
High Court, Madras.
4. The Section Officer,
Criminal Section,
High Court, Madras.
5. The Superintendent,
Central Prison, Coimbatore.

+1cc to Mr.Philip Ravindran Jesudoss, Advocate, S.R.No.42965

Criminal Appeal No.389 of 2021

PM(CO)
PM/23/12/2021