



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRIMINAL APPEAL NO.505 OF 2020

Rameshkumar

... Appellant/Accused

..Vs..

State rep. by
The Inspector of Police
All Women Police Station
Gobichettipalayam
Erode - District
(Crime No.2 of 2017)

... Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, praying to allow the criminal appeal by setting aside the Judgment made in Special Session Case No.11 of 2018 on the file of the Sessions, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode dated 09.01.2020.

For Appellant	: Mr.D.Veerasekharan
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)

This Criminal Appeal has been filed against the Judgment made in Special Session Case No.11 of 2018 dated 09.01.2020 passed by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode.

2. The respondent police registered the case against the appellant in Crime No.2 of 2017 for the offence punishable under Section 6 of POCSO Act and also Section 506 (i) of IPC. After investigation laid the charge sheet before the Special Court, Mahila Court, Erode since the offence is against a woman particularly against a child under the definition of 2(1)(d) of POCSO Act. The learned Special Judge after completing the formalities, taken the charge sheet on file in Spl.S.C.No.11 of 2018 and framed charges against the appellant for the offence under Section 450 IPC and under Section 5(j)(ii) and 5 (1) which are punishable under Section 6 of POCSO Act and also under Section 506(i) IPC.



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3. After completing the formalities regarding the charges, during trial, in order to prove the case of the prosecution, on the side of the prosecution as many as 17 witnesses were examined as P.W.1 to P.W.17 and 27 documents were marked as Exs.P1 to P27 besides 1 material object (X-ray 3 nos.) was exhibited and one Court document was marked as C1.

4. After completing the examination of the evidence 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 pleaded not guilty. On the side of the defence one witness was examined as D.W.1 and one document was marked as Ex.D.1.

5. On completion of trial and hearing the arguments advanced on either side and considering the materials, the trial Court not found guilty of the accused for the offence under Sections 450 and 506(i) IPC and acquitted him. However, found him guilty for the offence under 5(j)(ii) and (1) and convicted him under Section 6 of POCSO Act and sentenced him to undergo 20 years rigorous imprisonment and to pay fine of Rs.1,00,000/- in default to undergo three months simple imprisonment and the amount of Rs.1,00,000/- imposed and recovered as find to be paid to the victim girl after appeal time or appeal is over. Challenging the said Judgment of conviction and sentence, the appellant has filed the present appeal before this Court.

6. The learned Counsel for the appellant would submit that the prosecution has not proved the age of the victim and the age of the victim at the time of offence was more than 18 years and she was not a child under the definition of 2(1)(d) of POCSO Act. Further, Ex.D1/birth certificate of the victim which has been marked on the side of the defence clearly shows that the said certificate was registered only after the occurrence in order to bring the appellant into the offence under the POCSO Act and the prosecution has concocted the birth certificate of the victim which clearly shows that the victim was not a child at the time of occurrence. He would further submit that the appellant has not committed any offence much less the offences under Section 5 of POCSO Act and the prosecution failed to prove its case beyond all reasonable doubt. He would submit that from the very same evidence, the trial Court came to the conclusion that the prosecution failed to prove its case for the offence under Section 450 and 506(i) IPC and acquitted the appellant from the said charges. However, from the very same evidence, the trial Court wrongly convicted the appellant for the offence under Section 5(j)(ii) and (1) of POCSO Act. Even assuming that he has committed the offence under Section 5 of POCSO Act, the minimum sentence prescribed for the offence punishable under



Section 6 of POCSO is only 10 years whereas, the trial Court has wrongly imposed sentence of 20 years rigorous imprisonment. He would reiterate that there was no forcible sexual assault and the victim had already become major and she was not a child and that it was a consensual sex. However, he would pray at least the sentence may be reduced.

7. The learned Government Advocate (Crl. Side) would submit that the age of the victim at the time of occurrence was only 16 years. The appellant is a married man who has got two children and the victim was a minor and she was a child under the definition of 2(1)(d) of POCSO Act. The appellant committed penetrative sexual assault and made the victim child to become pregnant. Subsequently, she gave birth to a female baby and after medical examination, the DNA profiles were sent to the Forensic Lab and the report clearly shows that the appellant is the biological father of the female baby born to the victim child which itself shows that the appellant has committed penetrative sexual assault on the victim child and which falls under Section 5(j)(ii) and (l) of the POCSO Act. Therefore, the trial Court from the evidence of the victim child as well as the medical evidence and Forensic report has arrived to the conclusion that the prosecution proved its case beyond all reasonable doubt. Though, the trial Court found that the prosecution not proved the charges for the offence under Sections 450 and 506(i) IPC, however, the prosecution proved its case for the offence under Section 5(j)(ii) and 5(l) of POCSO Act and thereby, convicted the appellant and sentenced him to undergo 20 years rigorous imprisonment. Though the minimum sentence prescribed at the relevant point of time for the offence punishable under Section 6 of POCSO Act was 10 years, the offence committed by the appellant are two sets of offence viz. (1) the appellant made the victim child become conceive which falls under Section 5(j)(ii) of POCSO Act and (2) the appellant has had sexual intercourse with the victim child more than once which falls under Section 5(l) of POCSO Act. Therefore, the trial Court taking into account of the fact that the appellant who is a married man and got two children, committed repeated penetrative sexual assault on the victim child who was only aged 16 years and made her to conceive and subsequently, she gave birth to a female baby, rightly imposed sentence of 20 years rigorous imprisonment and there is no mitigating circumstances. Therefore, the appeal is liable to be dismissed.

8. Heard the learned Counsel for the appellant and the learned Government Advocate (Crl. Side) appearing for the respondent and perused the materials on record.

9. The case of the prosecution is that P.W.1 is the mother of



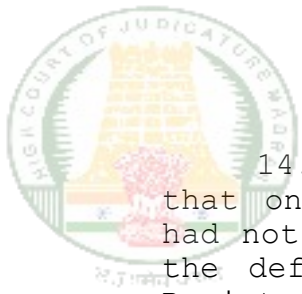
the victim/P.W.2. P.W.1/the mother of the victim was working at Mysore as a sanitary worker and her father was staying at Sirumugi and works as a Coolie. Once, P.W.1/the mother of the victim came home, she found her daughter's belly bigger and when she asked, her daughter/P.W.2 replied that she had food just then. Next time, when P.W.1/the mother of the victim came home, her daughter cried due to stomach pain. Therefore, she took the victim/P.W.2 to a nearby Government hospital wherein, it was informed that her daughter / P.W.2 was pregnant and was about to deliver baby. When P.W.1/the mother of the victim enquired, the victim/P.W.2, she said that the accused is the reason for the same and he had also criminally intimidated her not to disclose the same to any one. Hence, the complaint.

10. Since in this case, this Court is the appellate Court of fact finding, it has to re-appreciate the entire evidence independently and to give its findings. Accordingly, this Court pursued the entire materials and the Judgment of the trial Court.

11. In order to substantiate the charges framed against the appellant, on the side of the prosecution as many as 17 witnesses were examined as P.W.1 to P.W.17 and 27 documents were marked as Exs.P1 to P27 besides 1 material object (X-ray 3 nos.) was exhibited and one Court document was marked as C1.

12. The victim was examined as P.W.2 and she has clearly narrated the incident. In order to prove the age of the victim, the prosecution marked Ex.P.12/the transfer certificate of the victim girl issued by the Department of School Education in which the date of birth of the victim is mentioned as 14.10.2001. Though the learned Counsel for the appellant pointed out that the Ex.D1/the birth certificate of the victim has been registered only on 04.07.2018 which is after the occurrence only for the purpose of showing the victim as minor, however, even in Ex.D1, the date of birth of the victim is only mentioned as 14.10.2001 which corroborate the document Ex.P.12. On 04.07.2018 is the date of application for obtaining the copy of the birth certificate, but not the date of registration.

13. A careful perusal of Ex.P.12/transfer certificate of the victim child and Ex.D1/birth certificate of the victim child clearly shows that the date of birth of the victim is 14.10.2001 and the date of occurrence is on 14.10.2016. However, the complaint has been given on 13.10.2017. Even at that time of complaint, the victim was only 17 years. Ex.P.4 is the birth certificate of the baby born to the victim child which shows that the victim child gave birth to a female baby on 07.10.2017.



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14. A complete reading of P.W.2, Ex.P.12 and Ex.D1 shows that on the date of occurrence the victim was a minor and she had not completed the age of 18 years and she was a child under the definition of 2(1)(d) of POCSO Act. Even in the Accident Register/Ex.P.15, the age of the victim is mentioned as 17 years. Section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, says about Presumption and Determination of age as to prove the age of the Juvenile as well as the victim by evidence.

15. Therefore, this Courts finds that on the date of occurrence, the victim was only 16 years old and the documents are genuine one. The entry is made in the public records and the defence has not proved anything contrary of Ex.P.12/transfer certificate and therefore, as per Ex.P.12/transfer certificate of the victim, on the date of occurrence, the victim was only 16 years and she was a child under the definition of 2(1)(d) of POCSO Act. As far as Section 5(j)(ii) and 5(l) of POCSO are concerned, the victim during examination as a witness P.W.2, she has clearly narrated the entire incident. Further, the evidence of doctors/P.W.6, P.W.7, Ex.P.9/certificate issued by the doctor, Ex.P.4/birth certificate of the female baby born to the victim child and the DNA Test Report, clearly shows that the appellant committed the offence under Sections 5(j)(ii) and 5(l) of POCSO Act which are punishable under Section 6 of POCSO Act. Once the prosecution proved that from the DNA profile that the appellant is the biological father of the child born to the victim, then it is for the appellant to rebut the presumption that the appellant has not committed penetrative sexual assault on the victim. In this case, the appellant has not rebutted the presumption in the manner known to law. Therefore, this Court as a final Court of fact finding Court finds that the appellant has committed aggravated penetrative sexual assault on the victim child under Section 5(j)(ii) and 5(l) which are punishable under Section 6 of POCSO Act. Therefore, considering the facts and circumstances of the case, this Court does not find any merit in the appeal and the appeal is liable to be dismissed.

16. As far as the quantum of sentence is concerned, the learned Counsel for the appellant pointed out that the minimum sentence at the relevant point of time was only 10 years. Though on the date of occurrence, Section 6 of POCSO Act prescribed the minimum sentence of 10 years, however, it can be extended to life. Even then, the appellant has committed 2 sets of offence. One is, the appellant made the victim to conceive and subsequently, she gave birth to a female child which falls under Section 5(j)(ii) of POCSO Act. The other one is, the appellant has had penetrative sexual intercourse with the victim child more than once which falls under Section 5(l) of POCSO Act. this Court does not find any mitigating circumstances to award



the minimum sentence. Further, Section 6 of POCSO Act prescribes sentence up to life. Therefore, this Court does not find any mitigating circumstances to reduce the sentence.

17. Taking into account of the fact that the appellant is a married man and got two children and made the victim child pregnant who was aged 16 years and subsequently, she gave birth to a female child, this Court is of the opinion that the appellant does not deserve to be shown any leniency for reducing the sentence imposed by the trial Court and the appeal is deserved to be dismissed.

18. Accordingly, this Criminal Appeal is dismissed. The Judgment passed in Special Session Case No.11 of 2018 on the file of the Court of Sessions, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode, dated 09.01.2020, is hereby confirmed. Hence, the trial Court is directed to secure the appellant/accused to undergo the remaining period of sentence, if any. The period of incarceration already undergone, shall be given set off.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

1. The Court of Sessions
Magalir Neethi Mandram, (Fast Track Mahila Court),
Erode
2. The Inspector of Police
All Women Police Station
Gobichettipalayam, Erode - District
3. The Public Prosecutor Officer, High Court, Madras.
4. The Section Officer, Criminal Section,
High Court, Madras.

+1cc to Mr.D.Veerasekharan, Advocate, S.R.No.45408

Criminal Appeal No.505 of 2020

VSN-II (CO)
CS/13/10/2021