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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.10.2021

PRONOUNCED ON : 29.10.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.A.NO.465 OF 2020

&

CRL.A.NOS.206, 456 OF 2021

CRL.A.NO.456 OF 2021

The State Represented by,
The Inspector of Police,
Anti Trafficking Cell,
Crime Branch CID,
Chennai.

... Appellant

Versus

1. Vasanthi (A1 convicted)
W/o, Marimuthu
2. Jaya @ Jayalakshmi, (A3)
W/o, Selvam
3. Latha Radha @ Latha (A4)
W/o, Kolahpuri,
4. M.Selvam @ Antony (A5 convicted)
S/o, Mani
5. R.Rajesh Kumar @ Rajesh, (A6)
S/o, Raj
6. N.Sathish Kumar, (A8)
S/o, Nagaraj
7. S.Ganesh Kumar, (A9)
S/o, Sivaraj
8. C.Surendhar @ Babulu, (A10)
S/o, R.Chandrasekar

... Respondents



PRAYER:-

Criminal Appeal filed under Section 378(i) of the Code of Criminal Procedure, to allow the appeal and set aside the judgment of acquittal of the accused in S.C.No.286 of 2014 dated 13.10.2020 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai, and convict the respondents/accused (A4, A6 to A10) for the charges framed against them.

For Appellant : Mr.Hasan Mohamed Jinnah
State Public Prosecutor
Assisted By Mr.S.Sugendran
Government Advocate
(Criminal Side)

For R3 : Mr.M.Dhamodharan
Legal Aid Counsel

For R5 : Mr.V.Ramana Reddy

For R6 to R8 : Mr.K.Balaji

CRL.A.NO.465 OF 2020

B.Jaya @ Jayalakshmi @ Sathiya,
W/o, Babu

... Appellant/A3

.Vs.

The State Represented by,
The Inspector of Police,
Anti Trafficking Cell,
Crime Branch CID,
Guindy, Chennai.

... Respondent

PRAYER:-

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, to set aside the judgment in S.C.No.286 of 2014 dated 13.10.2020 passed by the learned Sessions Judge, Special Court of exclusive trial of cases under POCSO Act, Chennai in so far as convicting the Appellant/A3 under section 5 (1)(d)(i) of the Immoral Traffic (Prevention) Act and sentencing her to undergo 7 years Rigorous Imprisonment and convicting the Appellant/A3 under section 4(1) of the Immoral Traffic (Prevention) Act and sentencing her to undergo 7 years Rigorous



Imprisonment and convicting the Appellant/A3 under section 6(1) (b) of the Immoral Traffic (Prevention) Act and sentencing her to undergo 7 years Rigorous Imprisonment and pay a fine of Rs.5,000/- in default to undergo 6 months Rigorous Imprisonment.

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For Appellant : Mr.M.Dhamodharan
Legal Aid Counsel

For Respondent : Mr.Hasan Mohamed Jinnah
State Public Prosecutor
Assisted By Mr.S.Sugendran
Government Advocate
(Criminal Side)

CRL.A.NO.206 OF 2021

Selvam @ Anthony,
S/o, Mani

... Appellant/A5

.Vs.

The State Represented by,
The Inspector of Police,
Anti Trafficking Cell,
Crime Branch CID,
Guindy, Chennai.

... Respondent

PRAYER:-

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, to set aside the conviction and sentence passed in S.C.No.286 of 2014 by the Court of Sessions Judge, Special Court for Exclusive Trial Cases under POCSO Act, Chennai dated 13.10.2020.

For Appellant : Mr.Senthilkumar
For M/s.S.Tamilvendan

For Respondent : Mr.Hasan Mohamed Jinnah
State Public Prosecutor
Assisted By Mr.S.Sugendran
Government Advocate
(Criminal Side)



COMMON JUDGMENT

The Criminal Appeal No.456 of 2021 has been filed by the State to set aside the judgment of acquittal of the respondents 3 and 5 to 8/A4, A6, A8, A9 & A10 passed in S.C.No.286 of 2014 dated 13.10.2020 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai and convict them for the charges framed against them.

2. The Criminal Appeal Nos.465 of 2020 and 206 of 2021 have been filed by the convicts/A3 & A5 to set aside the judgment of convicted dated 13.10.2020 passed in S.C.No.286 of 2014 passed by the learned Sessions Judge, Special Court of exclusive trial of cases under POCSO Act, Chennai.

3. The Inspector of Police, Anti Trafficking Cell, Crime Branch CID, Guindy, Chennai, registered the case against the accused 1 to 10 in Crime No.1 of 2013 for the offence under sections 376, 323 IPC and 3(2)(a), 4(1), 5(1), 6(1), 7(1)(A) of ITP and Section 4 of POCSO Act.

4. On registering the case, after completing the investigation, the complainant police filed the charge sheet before the learned Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, since the offence is against a child. The learned Sessions Judge, after completing the formalities under section 207 Cr.P.C. taken cognizance of the charge sheet on file in S.C.No.286 of 2014.

5. The trial court after completing the formalities, framed the charges against A1 for the offence under Section 5(1)(d)(ii) and 4(1) of Immoral Traffic (Prevention) Act and Section 323 of IPC, against A2 Section 376 IPC, Section 6 of the POCSO Act and Section 5(1)(d)(ii) of Immoral Traffic (Prevention) Act, against A3 for the offence under sections 5(1)(d)(ii), 4(1), 3(2)(a), 6(1)(b), 7(1-A) of Immoral Traffic (Prevention) Act, Sections 323 & 506(ii) of IPC and Section 17 of POCSO Act, against A4 Section 5(1)(d)(ii), 4(1), 3(2)(a), 6(1)(b), 7(1-A) of Immoral Traffic (Prevention) Act and Section 323 & 506(ii) IPC, against A5 Sections 4(1), 3(2)(a), 6(1)(b), 7(1-A) of Immoral Traffic (Prevention) Act and Section 6 of POCSO Act, against A6 Section 5(1)(d)(ii) of Immoral Traffic (Prevention) Act, Section 366A & 370(A) IPC and Section 6 of the POCSO Act, against A7 Section 366A & 370(A) IPC and Section 6 of the POCSO Act, against A8 Section 366A & 370(A) IPC and Section 6 of the POCSO Act, against A9 Section 366A & 370(A) IPC and Section 6 of the POCSO Act and at last against A10 Section 366A & 370(A) IPC and Section 6 of the POCSO Act. During trial, A2 and A7 died and hence charges against them got abated.



6. After framing charges and completing the formalities, during trial, in order to prove the case of the prosecution, on the side of the prosecution, totally 30 witnesses were examined as P.Ws.1 to 30 and 94 documents were marked as Exs.P1 to P94. Besides, 12 material objects were also produced. After examining all the prosecution witnesses, incriminating circumstances culled out from the evidence of prosecution witnesses put before the accused, by questioning under section 313 Cr.P.C, they denied the same as false and pleaded not guilty. On the side of the defence, no oral and documentary evidence was produced.

7. The learned trial Judge, on completion of trial, hearing the arguments advanced on either side and after considering the materials, found A1 guilty for the offence under Sections 5(1)(d)(ii) & 4(1) of Immoral Traffic (Prevention) Act and Section 323 IPC and convicted her and sentenced her to undergo RI for 10 years for the offence under Section 5(1)(d)(ii), to undergo RI for 7 years for the offence under Section 4(1) of Immoral Traffic (Prevention) Act and to undergo RI for 1 year for the offence under Section 323 of IPC, found A3 guilty and convicted for the offence under sections 5(1)(d)(i), 4(1), 6(1)(b) of Immoral Traffic (Prevention) Act and sentenced her to undergo RI for 7 for the offence under section 5(1)(d)(i), to undergo RI for 7 years for the offence under Section 4(1) and to undergo RI for 7 years and to pay fine of Rs.5000/- i/d to undergo RI for 6 months for the offence under section 6(1)(b) of Immoral Traffic (Prevention) Act, found A5 guilty and convicted for the offence under section 6(1)(b) of Immoral Traffic (Prevention) Act and section 376 IPC and sentenced him to undergo RI for 7 years and to pay fine of Rs.5000/- in default to undergo 6 months Rigorous Imprisonment for the offence under section 6(1)(b) of Immoral Traffic (Prevention) Act and for the offence under section 376 I.P.C, sentenced to undergo 7 years Rigorous Imprisonment and to pay fine of Rs.5000/- in default to undergo 6 months Rigorous Imprisonment and acquitted all the other accused in the said case.

8. Challenging the said judgment of conviction and sentence passed by the Special Court, A3 and A5 have filed the Criminal Appeal Nos.465 of 2020 and 206 of 2021 and challenging acquittal of the other accused i.e. A4, A6 & A8 to A10, the State has filed the Criminal Appeal No.456 of 2021. Since all the appeals are arising out of a common judgment, all the appeals are heard together and this Court is pronouncing the common judgment.

9. The learned Government Advocate (Criminal Side) appearing for the State would submit that the victim is only aged about 15 years. P.W.1 the mother of the victim had produced her before A2 and he had penetrative sexual assault on the victim. Subsequently, the mother of the victim introduced A3 also to



the victim and A3 engaged the victim for prostitution and further, mother insisted the victim and advised her to follow the words of A3 and A3 engaged some persons and facilitate her to do prostitution. In that way, A5 to A10 had penetrative sexual assault on the victim girl. Since the victim is only a child and consent of the victim said to have been obtained by them is not valid and the consent is immaterial as far as the offence falls under POCSO Act is concerned. Even, being a mother, for gaining money, she also asked her daughter to do the said act. The victim was produced before the Judicial Magistrate, to record the statement under section 164 Cr.P.C., the Magistrate also recorded the statement. Before the Magistrate, the victim child has narrated that at first, mother introduced the victim to A2 and the said A2 committed penetrative sexual assault on her. Then introduced to A3, A3 committed the offence that she engaged the victim to various persons for sexual act. As far as A5 to A10 are concerned, one of the accused took the victim to Kottiwakkam beach and the other accused joined together had penetrative sexual assault on her and later she escaped to Tirupathy. There she was maintained by one old lady, who was selling mangoes at Thirupathi. Andhra Pradesh State Police doubted on the victim and rescued her and handed over to Child Welfare Committee, Andharapradesh. Subsequently, she shifted to the Child Welfare Committee, Chennai. Based on the complaint given by P.W.1, the respondent police registered the case and investigated the matter. After completion of investigation, laid a charge sheet. The victim was also examined as P.W.2, has clearly deposed that she was a minor at the time of occurrence and she has no father and she lived with her mother. She further stated that she studied up to VII Standard and while living with her mother, she studied VI standard. Since, she did not study well, she was shifted to Tambaram Gurukulam School. At that time, mother along with A2 came to the school and again the mother sent the victim along with A2, A2 committed penetrative sexual assault on her and the mother instructed the victim girl to do the same act. But, she refused to do so and she wanted to continue her study. Since, the mother insisted her and she was only a 14 years old girl and due to penetrative sexual assault, she had body pain and also administered pills. Thereafter, the mother handed over the victim to A3. A3 engaged several persons and insisted the victim to have sexual intercourse with them and collected money. The mother also advised her to do so, for getting money and also instructed her daughter to co-operate with them, then only they will give more money and they can earn money. Both the mother and A3 insisted the victim to continue the prostitution. For that A3 collected money and gave meagre amount to the mother of the victim and remaining amount was kept by A3. In that way, A1 and A3 insisted the victim to have penetrative sexual intercourse with the other accused persons for their monetary

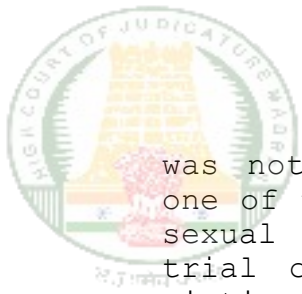


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benefits. A5 to A10 have committed penetrative sexual assault on the victim girl. On a reading of the statement recorded by the Judicial Magistrate under section 164 Cr.P.C and even evidence before the Court as witness, she has clearly narrated various incidents. The trial court convicted A1, A3 and A5, however acquitted the other accused. Medical evidence clearly shows that she was subjected to penetrative sexual assault. In order to identify the accused, Identification parade was also conducted. Though the learned counsel for the appellant has stated that the victim has not named the accused namely A6 to A10, even before the Magistrate, during identification parade, she did not identify A8, whereas, she has clearly named all the accused and identified all the accused in trial. The trial judge should have convicted all the accused. The victim is a child and her own mother took the victim to A2 and allowed for sexual intercourse with him. Subsequently, that day onwards, with the help of A3, insisted the victim to have sexual intercourse. She engaged the victim for prostitution and collected money. Though victim could not name all the persons, however, she has stated all the incidents and named some of the persons, those who have committed penetrative sexual assault. Therefore, the Investigating Officer rightly laid the charge sheet against all the accused. The trial court only convicted A1, A3 and A5 for the charged offences and erroneously acquitted the other accused, which warrants interference.

10. Both the learned Counsel for the the acquitted accused and the learned Legal Aid Counsel who appeared on behalf of appellant/A3 in CrI.A.No.465 of 2020 and also on behalf of A4 on request of the Court at the time of arguments, would jointly submit that the prosecution failed to prove its case beyond reasonable doubt. Though the trial judge extended the benefit of doubt in favour of some of the accused, from the very same evidence, few of the accused were convicted for some of the offences. Age of the victim was not proved by the prosecution. The mother of the victim has not supported the case of the prosecution and she was also arrayed as one of the accused namely A1. The victim was produced before the Judicial Magistrate for recording a statement under Section 164 Cr.P.C, where, she has narrated various incidents on various occasions in various places and also she has stated that A3 made her to do prostitution. A3 engaged various persons and collected money from them. But, the prosecution has not conducted detailed investigation and failed to find out all the accused persons, those who had committed penetrative sexual assault on the victim girl.

11. Further, he would submit that the victim has not named these accused/appellants and even during identification parade, she has not properly identified all the accused especially A8



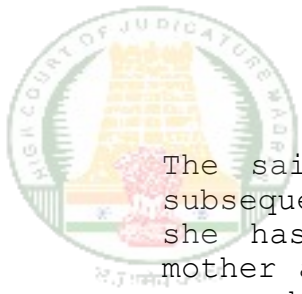
was not identified. Further, the victim stated that in beach, one of the accused took her to other persons and had penetrative sexual intercourse with the victim girl. Whereas, before the trial court, she has stated that the other accused took the victim and four persons were assembled, had penetrative sexual assault on her. The victim has stated that in so many incidents, many persons had sexual assault on her and also does not know all other persons except A2. The other persons are not known persons to the victim. Therefore, the trial court though extended the benefit of doubt in favour of the acquitted accused, however, wrongly convicted the accused A3 and A5. The prosecution has not conducted proper investigation and not identified the proper persons those who have actually committed penetrative sexual assault on the victim and the prosecution, chosen only these accused by pick and choose method, set-up the witnesses and registered the case against them. Therefore, the trial court failed to appreciate the evidence properly and scope of the act and also the role of the investigating agency, wrongly convicted them and rightly acquitted the other accused for the other offences. Therefore, the judgment of the trial court against A3 and A5 are liable to be set aside and the appeal filed by the State liable to be dismissed. Finding of the trial court with regard to the order of acquittal be confirmed.

12. Heard the learned counsel for the appellants and the learned Government Advocate (Criminal Side) appearing for the respondent.

13. The case of the prosecution is that A1 is the mother of the victim. A2 in acquaintance with A1, had sexual intercourse with the victim girl. Subsequently, A3 utilizing the victim for the purpose of prostitution for gaining money and she engaged the victim girl to several persons and she shared the money with the first accused. First accused also allowed her daughter to the said act. On the date of occurrence at Kottivakkam beach, the victim escaped from the place of occurrence and went to Thirupathi, where she was assisted by one old lady. Local police took the victim and handed over to CWC, Andhra Pradesh, who in turn transferred the victim to CWC, Chennai. Hence the complaint.

14. The appellate court is the final Court of fact finding, it has to re-appreciate and revisit the entire evidence and give the independent finding.

15. In order to substantiate the charges before the trial court, totally 30 witnesses were examined and 94 documents were marked on the side of the prosecution. The victim was produced before the Judicial Magistrate to record the statement under section 164 Cr.P.C., and the same was recorded on 11.09.2013.



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The said statement was marked as Ex.P2. The victim was also subsequently examined as P.W.2 and while examining as witness, she has clearly narrated all the incidents, the role of the mother and the penetrative sexual assault committed by the other accused and the act of A3 as a pimp, engaging several persons and used the victim as prostitute. Age of the victim is only 12-14 years at the time of occurrence and she has clearly narrated the offence committed by each of the accused. The previous statement of the victim Ex.P2 was also corroborated the evidence of the victim. Subsequently, the victim was also produced before the doctor for medical examination. The doctor one who conducted the medical examination also deposed that the victim was subjected to penetrative sexual assault. The victim was engaged by her own mother and A3 for prostitution and she was taken to so many places, lodges and other places and A3 collected money and shared the same with the mother of the victim child. At that time of occurrence, the victim was only a minor and she was aged about below 15 years and she has no other option, except to obey the words of mother and A3. Since the victim is only a minor girl, A3 with the consent of A1 mother of the victim took the victim to various places and engaged several persons for sexual act and all are not familiar persons and are all strangers to the victim and therefore the victim could not identify all the persons. The prosecution also could not trace all the persons unless A3 open her mouth to say who were all the persons committed the offence. Even otherwise, since A3 acting as a pimp, she also may not know all the persons those who have been engaged. Therefore, mere non-including of all other persons, those who are all have committed penetrative sexual assault as accused may not be the sole ground to disbelieve the case of the prosecution.

16. As far as A6 to A10 are concerned, A6 to A10 who are transported the victim to the Kottivakkam beach, in three wheeler and had chosen the dark place in the seashore, committed gang sexual assault on her. P.W.2 has clearly stated about the offence of penetrative sexual assault committed by A6 to A10. She has clearly deposed that atlast, A9 took the victim. He gave Rs.4000/- to A3 and took her to beach and he made her to wait till 6 'o clock and thereafter, he informed to his friends and after some time, his four friends came to the place and already they all consumed alcohol, out of four persons, two of them committed penetrative sexual assault through her private part and other two of them have committed oral sexual assault. Thereafter, A9 also consumed alcohol and committed penetrative sexual assault on her and since all are in the inebriated/ semi-conscious mood, the victim girl could not bear the pain. The abovesaid act committed by the accused persons was stated by the victim girl in her previous statement also. Since she could not bear the pain of sexual act, she escaped from the place of



occurrence and went to Tirupathi and stayed there by doing some work with one old lady. Andhrapradesh state police suspected the victim and took her to the home and subsequently on enquiry, they came to know that she is from Tamilnadu and also subsequently with the help of P.W.1, they filed the case and also brought the victim girl from Andhra pradesh to Tamilnadu. In order to identify A6 to A10, identification parade was conducted and the Judicial Magistrate also conducted identification parade and filed the report. The report was marked as Ex.P46. On a reading of Ex.P46, it clearly shows that she has identified all the accused. These accused have alias names and nick names, which alone may not be a sole ground to disbelieve the case of the prosecution. Further A6 to A10 transporting the victim to the beach in the dark place, they have committed gang penetrative sexual assault in one place one after another and at that time, the victim might have noticed them very minutely. Since all of them made penetrative sexual assault on the victim girl, she identified them also. Though, there are some discrepancies, that may not be the sole ground to disbelieve the case of the prosecution, which are not material contradictions which would go to the root of the case of the prosecution.

17. On a combined reading of the evidence of P.W.2-victim, Ex.P2-previous statement of the victim recorded by the Judicial Magistrate, Ex.P46-identification parade report given by P.W.19, evidence of the doctor P.W.21, medical report and forensic report, it clearly shows that the prosecution has proved its case beyond all reasonable doubt that the victim was subjected to penetrative sexual assault and the accused have committed the offence. Though the learned counsel for the appellants submitted that the medical report of the 8th accused Ex.P67 shows that he is not potent and he is not having the capacity to have the sexual intercourse. Opinion of P.W.25 in Ex.P.67 is as follows:

OPINION: Based on the Clinical examination and Urologist, Radiologist, Neurologist and Psychiatrist opinion, the above examined individual may be having erectile dysfunction and his potency status will be below normal.

18. However, on a reading of evidence of P.W.2 and previous statement of the victim girl clearly proved that the accused 5, 6 to 10 have committed penetrative sexual assault on the victim girl one way or the other. It is impossible for the victim to remember and recollect each and every place, incident and each and every person. The discrepancies and contradictions pointed out by the learned counsel for the accused and the trial court judge for acquitting the accused are not material contradictions and the same which will not go into the root of the case of the



prosecution. Even though, the trial judge relied on the document Ex.P67, for acquitting A8, from the evidence of P.W.2, it is clear that two persons committed vaginal penetrative sexual assault on her and the victim girl clearly identified A8 and he also accompanied with other accused A6, A7, A9 A10 and all accused A6 to A10 joined together committed the sexual assault on the victim girl one after another. During that time, two of them had the oral sexual assault and three of them had vaginal sexual assault. Therefore, the findings of the trial court is perverse and there is a compelled circumstance to reverse the findings of the trial court.

19. Therefore, this Court finds that the evidence of the victim is cogent, consistent and trustworthy, which inspires the confidence of this Court. This Court finds that all the accused have committed the charged offences and the trial court failed to appreciate the same. Since several persons are involved in the offence, on several occasions, in different dates and places, all the culprits could not be identified, whereas, in the previous statement and evidence of the victim, she has named all these accused and identified them. In the cases of this nature, no independent witnesses can be expected and no independent witnesses would come forward to give evidence and in the cases of this nature, one cannot expect more than what is stated by the victim, when it is not on one occasion, and it is not committed by one person, but, several persons committed sexual assault on several occasions. Further, in this case, unfortunately, the victim who lost her father, her own mother initially engaged A2 to have sexual intercourse with the victim, subsequently with the help of A3, the victim was sexually assaulted by several persons and therefore, under these circumstances, the appellate court is final court of fact finding, which re-appreciated all the evidence and found that all the accused have committed the charged offence.

20. The evidence of P.W.2 and the previous statement of the victim girl Ex.P2, it is clearly proved that A1 is mother of the victim girl, at the tender age of the victim girl and even the victim's age is only 15 years at that time, mother took the victim to A2 and made him to have a sexual intercourse with the victim. Thereafter, A1 and A2 handed over the victim to A3, who is a pimp, initially for the test, A3 engaged the victim to her own husband/A5 and A5 raped her and A5 advised A3 to take the victim regularly to their customers. Subsequently, A3 engaged the victim to several persons and used the victim for prostitution. Therefore, it is very clear that A2 and A5 had penetrative sexual assault on the victim girl. Since A2 and A7 are died, charges against them are got abated. Further since the offence committed by A5 is prior to coming into force of POCSO Act, the trial court convicted A5 for the offence under section



376 IP.C. Further, A3 handed over the victim after some time i.e., two years later to A4, A4 also engaged the victim for some time and she also committed the offence. There is a specific overt act against A4 also which found from the evidence of P.W.2 and also in the previous statement of the victim Ex.P.2. Therefore, prosecution proved its case against A4 also. As far as A6, A8 to A10, though the trial judge extended the benefit of doubt and acquitted them, whereas, on a reading of the evidence of P.W.2 and previous statement of the victim Ex.P.2, as already stated, A9 took the victim from A3 by paying Rs.4000 and took the victim to beach and called the other accused A6, A7/died, A8 and A10 and all the five persons have committed penetrative sexual assault on the victim girl one way or the other, which clearly falls under section 3 of POCSO Act, punishable under section 4 of POCSO Act. Since more than one person at a time committed the said sexual assault, which falls under section 5 (g) of POCSO Act, which reads that whoever committed gang penetrative sexual assault on a child, it is a aggravated penetrative sexual assault. The explanation to section 5(g) is very clear and as already stated, the evidence of P.W.2 and the previous statement of the victim, Ex.P.2, the victim child has clearly stated that A6 to A10 committed gang penetrative sexual assault on her. Subsequently, P.W.2 also identified all the accused before the Judicial Magistrate during the identification parade. Therefore, this Court finds that the prosecution proved its case against all the accused and the trial court failed to appreciate the evidence and erroneously acquitted A4, A6, A8 to A10. This Court finds that there is a perversity in appreciation of evidence by the trial court and there is a compelled circumstance to reverse the judgment of acquittal passed by the trial court and since it is proved that all the accused have committed the offence one way or the other, which is punishable under sections 4,5,6 of Immoral Traffic (Prevention Act), 376 IPC and section 6 of POCSO Act. The trial court erroneously given the finding that the prosecution failed to prove its case beyond all reasonable doubt against A4, A6, A8 to A10. As the Appellate Court, this Court finds that the prosecution has proved its case beyond all reasonable doubt. The trial court failed to invoke the presumption under section 29 of POCSO Act and in this case, the accused have not rebutted the presumption under section 29 of POCSO Act. Hence, this Court finds that the first accused has committed the offence under sections 5(1)(d) (ii), 4(1) of Immoral Traffic (Prevention Act) and section 323 IPC. Therefore, the conviction and sentence passed by the trial court against A1 is confirmed. Since A2 died, charge against A2 is abated. A3 is found guilty for the offence under section 5 (1)(d)(ii) of Immoral Traffic (Prevention) Act and section 6(1) (b) of Immoral Traffic (Prevention) Act. Therefore, this Court does not find any perversity in the judgment of the trial court by convicting A3 for the abovesaid offence and there is no merit



in the appeal filed by A3 and hence the appeal filed by A3 Crl.A.No.465 of 2020 is dismissed. The conviction and sentence passed in S.C.No.286 of 2014 dated 13.10.2020 on the file of the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai against A3 is confirmed.

21. As far as A5 is concerned, A5 is none other than the husband of A3 and the victim girl has clearly stated that A3 after taking the victim from A2, at first, engaged the victim to her husband A5. The victim girl has clearly stated that A5 has committed penetrative sexual assault on her which is an offence of rape, punishable under section 376 IPC and he also found guilty for the offence under section 6(1)(b) of Immoral Traffic (Prevention) Act. The evidence of P.W.2 clearly proved that A5 has committed the offence punishable under section 6(1)(b) of Immoral Traffic (Prevention) Act and also punishable under section 376 I.P.C. Therefore, this Court does not find any sound reason to interfere with the finding given by the trial court against A5. Hence, the conviction and sentence passed in S.C.No.286 of 2014 dated 13.10.2020 on the file of the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai against A5 is confirmed. Hence the appeal filed by A5 in Crl.A.No.206 of 2021 is dismissed.

22. As far as A4 is concerned, the victim girl has clearly stated that after some time, A3 handed over the victim to A4 and A4 took the victim and she also engaged the victim for sexual act. Therefore, she committed the offence under section 5(1)(d) (ii) of Immoral Traffic (Prevention) Act. Therefore, appeal filed by the State in Crl.A.No.456 of 2021 is partly allowed as against A4.

23. As far as A6, A8 to A10 are concerned, as already stated the victim girl has clearly deposed about the specific role and involvement of the accused A6, A8 to A10 and also subsequently identified them and at the time of commission of offence committed by A6 to A10, POCSO Act came into force. Therefore, they committed the offence under section 5(g) of POCSO Act, which is punishable under section 6 of POCSO Act. Further, A9 has committed the offence under section 366(A) I.P.C and section 5(g) of POCSO Act punishable under section 6 of POCSO Act. From the evidence of victim P.W.2, previous statement Ex.P2, evidence of doctor P.W.21, it is proved beyond all reasonable doubt that A4, A6 & A8 to A10 have committed the offence under Section 5 (g), which is punishable under Section 6 of POCSO Act.

24. Therefore, the judgment of conviction passed by the trial court against A3 and A5 is confirmed and therefore the criminal appeals filed by A3 and A5 are hereby dismissed and the appeal filed by the State is partly allowed as stated above. The



legal aid counsel is entitled for remuneration as per Rules.

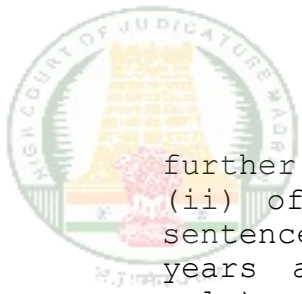
25. Since this Court has passed the reversal judgment for some of the accused, the accused 4, 6 and 8 to 10 are directed to appear before this Court on 10.11.2021 through Video Conferencing "for question of sentence".

This case having been listed on Wednesday, The Seventeenth Day of November, Two Thousand and Twenty One for questioning on sentence in pursuance of the Order dated 29/10/2021 in the presence of Mr.Hasan Mohamed Jinnah, State Public Prosecutor, Assisted By Mr.S.Sugendran, Government Advocate (Criminal Side) for the Appellants in Crl.A.No.456 of 2021 and on behalf of Respondent in Crl.A.No.465 of 2020 and 206 of 2021 and Mr.M.Dhamodharan, Legal Aid Counsel for 3rd Respondent in Crl.A.No.456 of 2021 and for the Appellant in Crl.A.No.465 of 2020 and Mr.V.Ramana Reddy, Advocate for the 5th Respondent in Crl.A.No.456 of 2021 and Mr.K.Balaji, Advocate for the Respondents 6 to 8 in Crl.A.No.456 of 2021 and Mr.Senthilkumar for M/s.S.Tamilvendan, Advocate for the Appellant in Crl.A.No.206 of 2021, this Court made the following Order:-

In compliance with the order of this Court dated 10.11.2021, all the acquitted accused appeared before this Court and they have been questioned the sentence to be imposed on them. All the accused have stated that they did not see the victim ever before and only at the first time in the trial Court they seen the victim. Further they have stated that they are the only bread winners of their respective family and they are no way connected with this case and a false case has been foisted against them. A4 has stated that she has daughter and doing arrangements for her marriage. A6 has stated that he never seen the victim ever before. A8 has stated that medical records proved that he is impotent. A9 has stated that recently he got married. A10 has stated that he lost his father at his childhood itself and he was brought up by his mother and after the arrest only he came to know about the case.

2. In this case, the victim was aged about only 13 to 15 years at the time of occurrence and her own mother A1, who was convicted by the trial Court itself has engaged her in prostitution at the tender age. The accused, without even considering the age of the victim, have committed the offence and hence there is no mitigating circumstances to award lesser punishment and this Court is not inclined to show any leniency in awarding the sentence.

3. A4 is convicted and sentenced to undergo Rigorous Imprisonment for a period of seven years and to pay fine of Rs.5000/-, in default, to undergo rigorous imprisonment for a



further period of one year for the offence under Section 5(1)(d) (ii) of Immoral Traffic (Prevention) Act. A6 is convicted and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only), in default, to undergo rigorous imprisonment for a further period of three years for the offence under Section 5(g) of POCSO Act, which is punishable under Section 6 of POCSO Act. A8 is convicted and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only), in default, to undergo rigorous imprisonment for a further period of three years for the offence under Section 5(g) of POCSO Act, which is punishable under Section 6 of POCSO Act. A9 is convicted and sentenced to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs.5,000/- (Rupees Five Thousand only), in default, to undergo rigorous imprisonment for a further period of one year for the offence under Section 366(A) of I.P.C., and convicted and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only), in default, to undergo rigorous imprisonment for a further period of three years for the offence under Section 5(g) of POCSO Act, which is punishable under Section 6 of POCSO Act. A10 is convicted and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only), in default, to undergo rigorous imprisonment for a further period of three years for the offence under Section 5(g) of POCSO Act, which is punishable under Section 6 of POCSO Act. The period of detention, if any, already undergone by them is ordered to be set off under Section 428 of Cr.P.C.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mfa/ns

Note:- The Police is directed to secure the custody of all the accused to execute the period of Imprisonment.

To

1. The Sessions Judge,
Special Court for Exclusive Trial
of Cases under POCSO Act,
Chennai.



2. The Sessions Judge,
Mahila Court,
Chennai.
3. The Inspector of Police,
Anti Trafficking Cell,
Crime Branch CID,
Chennai.
4. The Chairman,
POCSO Committee,
High Court,
Chennai.
5. The Superintendent,
Central Prison,
Puzhal, Chennai.
6. The Superintendent,
Central Prison for Women,
Puzhal, Chennai.
7. The Public Prosecutor,
High Court, Madras.
8. The Section Officer,
Criminal Section (Records),
High Court, Madras.

Copy To:-

The Superintendent of Jail,
Central Prison,
Puzhal, Chennai.

+1cc to Mr.V.Ramana Reddy, Advocate, S.R.No.59109
+1cc to Mr.K.Balaji, Advocate, S.R.No.59107

CRL.A.NO.465 OF 2020 &
CRL.A.NOS.206, 456 OF 2021

RSI (CO)
PBS/17/11/2021