



Bail Slip

The Appellant/Accused Viz., Seetharaman @ Mani aged about 26 years S/o.Srinivasan (in S.C.No.278/2007 dated 18/06/2019 on the file of the Special Court for Cases under POCSO Act 2012/Mahila Court, Chennai) was released on bail as per the order of this Court dated 18/07/2019 in CrI.M.P.No.8949/2019 in CrI.A.No.409/2019.

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

Reserved on : 22.03.2021

Pronounced on: 01.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.409 of 2019

Seetharaman @ Mani,
S/o.Srinivasan

..

Appellant /Accused

versus

The Inspector of Police,
N-4, Harbour Police Station,
Chennai - 600 081.
Crime No.1144 of 2015)

.. Respondent /Complainant

Prayer: Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, to set aside the conviction and sentence passed by the learned Sessions Judge, Special Court for Cases under POCSO Act, 2012 [Mahila Court], Chennai in S.C.No.278 of 2017 dated 18.06.2019.

For Appellant : Mr.S.Samuel Raja Pandian
for M/s.R.C.Paul Kanakaraj

For Respondent : Mrs.T.P.Savitha
Government Advocate (CrI.Side)

J U D G M E N T

This Appeal has been filed against the conviction and sentence passed by the learned Sessions Judge, Special Court for Cases under POCSO Act, 2012 [Mahila Court], Chennai in S.C.No.278 of 2017 dated 18.06.2019.



2. Originally, the respondent Police has registered a case against the appellant / accused in Crime No.1144 of 2015 for "girl missing" and subsequently, altered the case for the offences under Section 366A of IPC and punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 [hereinafter called as "POCSO Act". After investigation, they laid a charge sheet against the appellant before the learned Sessions Judge, Special Court for Cases under POCSO Act, 2012 [Mahila Court], Chennai. Since the offence charged against the appellant was against women, especially a minor child falls under the POCSO Act, the learned Sessions Judge, had taken the case on file in S.C.No.278 of 2017 and framed the charge against the appellant.

3. After trial, on 11.07.2018, the learned Sessions Judge, convicted the appellant for the offences under Section 366 of IPC and punishable under Section 6 of the POCSO Act and sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default to undergo 6 months Rigorous Imprisonment for the offence punishable under Section 6 of the POCSO Act and sentenced him to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default to undergo 6 months Rigorous Imprisonment for the offence under Section 366 of IPC.

4. Against which, the appellant filed an appeal before this Court in Crl.A.No.596 of 2018 and this Court, by a judgment dated 19.12.2018, set aside the conviction and sentence passed by the Special Court and remitted back to Trial Court liberty was given to cross-examine the witnesses, within stipulated time and based on that judgment, the matter was remitted back to the Special Court.

5. After compliance of the directions of this Court, once again, the Special Court pronounced the judgment, on 18.06.2019, stating that the appellant was not found guilty for the offence punishable under Section 6 of the POCSO Act and thereby, acquitted him. However, the Special Court found guilty of the appellant for the offence under Section 366 of IPC and sentenced him to undergo 3 years Simple Imprisonment and to pay a fine of Rs.10,000/-, in default to undergo 6 months Simple Imprisonment. Challenging the said conviction and sentence, the appellant has preferred the present appeal before this Court.

6. The learned counsel appearing for the appellant would submit that, on 06.08.2015, the mother of the victim girl has given a complaint for "girl missing" before the respondent Police stating that the victim girl was at home, at about 1.00p.m., without going to the college. As per the evidence of



P.W.1 / victim girl, on her own volition, she has chosen to proceed with the appellant and therefore, there is no question of threat or coercion by the appellant upon the victim girl and hence, the offence under Section 366 of IPC, does not attract.

WEB COPY

7. Further, P.W.1 / victim girl has stated that she voluntarily went along with the appellant. The Investigating Officer has not recovered the two-wheeler, which was used by the appellant to take the victim girl for travelling, which is fatal to the case of the prosecution. When the victim girl was taken by the appellant, she was all along travelling with the appellant voluntarily and freely and she was not detained by the appellant forcibly.

8. P.W.4 / Doctor, who examined the appellant has stated that there was no injury on his private part and there was no symptoms have been found in his private part to have sexual intercourse. P.W.6 / Doctor, who examined the victim girl has stated that there was no external injury. Therefore, the trial Court found that the appellant was not found guilty for the offence punishable under Section 6 of the POCSO Act and also found that there was no penetrative sexual intercourse and thereby, acquitted him for the offence punishable under Section 6 of the POCSO Act. However, wrongly convicted the appellant for the offence under Section 366 of IPC and there is no evidence to show that the appellant forcibly kidnapped the victim girl against her will and therefore, the trial Judge erroneously held that the appellant has committed the offence under Section 366 of IPC. Therefore, the judgment of the trial Court warrants interference.

9. The learned Government Advocate (Crl. Side) appearing for the State would submit that though the case was originally registered for "girl missing" and subsequently, the mother of the victim girl committed suicide, the appellant along with the victim girl went to the village and there, the respondent Police secured them and after investigation, they altered the case and the victim girl was produced before P.W.6 / Doctor for medical examination and thereafter, she was produced before the learned Judicial Magistrate for recording evidence under Section 164 Cr.P.C. which is marked as Ex.P.1.

10. The evidence of P.W.6 / Doctor shows that the victim girl was subjected to sexual intercourse and also, the statement recorded by the learned Judicial Magistrate under Section 164 Cr.P.C., which was marked as Ex.P.1 shows that the appellant took the victim girl to Keezha Tirupathi, tied Thali and stayed there and during that time, he had sexual intercourse with her.



11. Though the evidence of P.W.1 / victim girl clearly shows that at the time of occurrence, the age of the victim girl was only 17 years and she was taken by the appellant, who was a minor at the time of occurrence, without the consent of her lawful guardians / parents and had sexual intercourse with her and therefore, he committed the offences under Section 366 of IPC and Section 5 of the POCSO Act, which is punishable under Section 6 of POCSO Act.

12. Though the trial Judge has pointed out certain discrepancies and contradictions, acquitted the appellant for the offence punishable under Section 6 of POCSO Act. However, the fact remains that at the time of occurrence, the victim girl was only 17 years and she was taken by the appellant, without the consent of her lawful guardians / parents, took her to Tirupathi. The mother of the victim girl gave complaint for "girl missing" and subsequently, she came to know that the victim girl eloped with the appellant and hence, she committed suicide.

13. The evidence of P.W.1 itself clearly shows that she went along with the appellant and the appellant took the victim girl to Tirupathi and also Kalahasti and there to parents of the appellant and during that period, the appellant had sexual intercourse with the victim girl. Though the trial Court found that the prosecution has failed to prove the penetrative sexual intercourse with the victim girl, the fact remains that the victim girl was minor at the time of occurrence and the custody of the victim was removed from the lawful guardians without their consent, the appellant has committed the offence under Section 366 of IPC and there is no merit in the appeal and hence, the appeal is liable to be dismissed.

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

15. The case of the prosecution is that, on 06.08.2015, at about 2.00p.m., the appellant took the victim girl, who was aged about 17 years, in a two-wheeler, by stating that he would take her to a Temple. But the appellant without taking her to a nearby temple, took her to Tirupathi against her will. On 07.08.2015, when they were in Keezha Tirupathi, the appellant forcibly tied Thali on her neck and when she asked about the same, the appellant told that he liked her for a long time and therefore, he took her to Tirupathi, tied Thali and married her. On the same day, they started from Tirupathi and reached Kalahasti and on 08.08.2015, they stayed in the Temple itself. On 09.08.2015, the appellant took the victim girl to Ondikuppam at Tiruvotriyur in the two-wheeler, where they stayed in a hut. At that time, the appellant had sexual intercourse with the



victim girl several times on compulsion by stating that they are husband and wife and nobody would separate them.

16. After completing the investigation, the respondent Police registered the case for the offences under Section 366 of IPC and Section 5 of the POCSO Act. Since the offence was against a minor child, charge sheet has been filed before the Special Court. The learned Sessions Judge, Special Court for Cases under POCSO Act, 2012 [Mahila Court], Chennai, taking cognizance of the charge sheet on file and after completing the formalities, framed the charge against the appellant for the offences under Section 366 of IPC and Section 6 of the POCSO Act.

17. During trial, in order to prove the case of the prosecution, on the side of the prosecution, as many as 7 witnesses were examined as P.W.1 to P.W.7 and 20 documents were exhibited as Ex.P.1 to Ex.P.20, besides 10 material objects were marked as M.O.1 and M.O.10.

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

19. The learned Sessions Judge, after completing the trial and after hearing the arguments on either side, convicted the appellant for the offence under Section 366 of IPC and sentenced him as stated above. Challenging the same, the appellant has filed the present Appeal before this Court.

20. Since the appellate Court is a fact finding Court and it has independently re-appreciated the entire evidence and gave independent finding, likewise this Court also thoroughly gone into the entire materials and re-appreciated the entire evidence and has given a finding.

21. A perusal of the records shows that out of 7 witnesses, to prove the case of the prosecution, the victim girl was examined as P.W.1 and she narrated the incident and during investigation, she was produced before the learned Judicial Magistrate for recording the statement under Section 164 Cr.P.C. A combined reading of the evidence of P.W.1 and the statement recorded under Section 164 Cr.P.C., are very clear that the age of the victim girl was only 17 years at the time of occurrence and the custody of the victim girl was removed by the appellant from the lawful guardians without their consent.

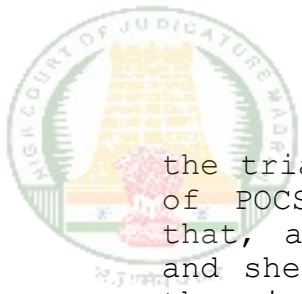
22. The learned counsel appearing for the appellant



vehemently contended that the victim girl was aged about 17 years, also she understand the happenings and she voluntarily went with the appellant and she was free even at the time of travelling in the two-wheeler and she has not raised hue and cry, while she was travelling in the two-wheeler and she has not made any alarm or attempt to escape. If at all, the appellant taking against her will, she should have raised alarm, while travelling in the two-wheeler and she has not done so and therefore, she voluntarily went with the appellant. Thereafter, the victim girl heard the news that her mother committed suicide, she turned as if the appellant took her and committed a sexual assault forcibly.

23. However, a close reading of the evidence of P.W.1 shows that the appellant asked the victim girl to come to a Temple in the local area but the appellant did not take the victim girl to temple in local area, but he took the victim girl to Tirupathi, tied Thali and thereafter, to Kalahasti and then to Tiruvotriyur. Even otherwise, since the age of the victim girl was only 17 years, in order to prove her age, the prosecution marked a xerox copy of the X Standard Mark Sheet of the victim girl, which was marked as Ex.P.2, in which, the Date of Birth of the victim girl was mentioned as 28.11.1997. Xerox copy of the birth certificate of victim is available in the case records, in which also, date of birth of victim is mentioned as 28.11.1997. The date of occurrence was on 06.08.2015 and at the time of occurrence, the age of the victim girl was only 17 years, she has not completed the age of 18 years and therefore, she was a minor child under the definition of Section 2 (1)(d) of the POCSO Act. Once it is proved that the victim is a child, she is a minor, not completed 18 years, if her custody was removed from the lawful guardians without their consent, Section 361 of IPC would attract. Therefore, in this case, the appellant took the victim girl without the consent of her lawful guardians and therefore, the appellant has committed the offence punishable under Section 363 of IPC. If the evidence of sole witness is cogent, credible and trustworthy, conviction is permissible. In this case, evidence of victim is cogent, there is no reason to discard the evidence of victim. Evidence of hostile witness need not be discarded in totality but the portion of evidence, in chief which supports the prosecution can be taken for consideration.

24. Though the appellant has committed the offence punishable under Section 6 of the POCSO Act, the statement under Section 164 Cr.P.C. was recorded. However, the trial Court, acquitted the appellant for the offence punishable under Section 6 of the POCSO Act. But no appeal has been filed either by the prosecution or on the side of victim, therefore, in the absence of the same, this Court cannot interfere with the judgment of



the trial Court as far as the offence punishable under Section 6 of POCSO Act, is concerned. However, the prosecution proves that, at the time of occurrence, the victim was only 17 years and she was a minor and from the evidence of P.W.2 / father of the victim girl, even the evidence of P.W.1 that she was taken by the appellant, without the consent of her parents / lawful guardians and took her to Tirupathi, Kalahasti and also Tiruvotriyur, which clearly shows that the appellant has committed the offence under Section 361 punishable under Section 363 of IPC. Therefore, once the prosecution proves that the victim is a minor not completed age of 18 years and her custody was taken against the lawful guardians without their consent by a person, which amounts to offence punishable under Section 363 of IPC. Therefore, the appellant has committed the offence punishable under Section 363 of IPC and hence, there is no merit in the appeal and the appeal is liable to be dismissed.

25. Accordingly, this Criminal Appeal is dismissed, with the above modification. However, there is no modification regarding quantum of sentence.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

sri
To

- 1.The Sessions Judge,
Special Court for Cases under POCSO Act [Mahila Court],
Chennai.
 - 2.The Inspector of Police,
N-4, Harbour Police Station,
Chennai - 600 081.
 - 3.The Superintendent, Central Prison,
Puzhal, Chennai.
 - 4.The Public Prosecutor,
High Court, Madras.
- CC: The Section Officer,
Criminal Section(Records)
High Court, Madras.

Criminal Appeal No.409 of 2019

GD(CO)
CB(02/08/2021)CB(10/08/2021)