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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2021

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THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.453 of 2019 and
Crl.M.P.No.9832 of 2019

Arun

.. Appellant

.Vs.

The State by Inspector of Police,
Salem Town All Women Police Station,
Salem District,
Crime No.5 of 2017

.. Respondent

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, to set aside the conviction and sentence imposed on the appellant by the Judgment dated 09.11.2018 passed in Spl.S.C.No.25 of 2017 on the file of the learned Mahila Judge, (Sessions Judge), Salem, by allowing the present Criminal Appeal before this Court.

For Appellant : Ms.Revathi. V
Mr.R.Nalliyappan
For Respondent : Mr.R.Suryaprakash
Government Advocate
J U D G M E N T

This Criminal Appeal has been filed against the Judgment in Spl.S.C.No.25 of 2017 dated 09.11.2018 passed by the learned Mahila Judge, (Sessions Judge), Salem.

2. Originally, the respondent police registered a case against the appellant for the offences punishable under Sections 506 (i) I.P.C and Sections 8 r/w 7, 3 r/w 4 of Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO' Act) and after investigation laid a charge sheet before the learned Sessions Judge, Mahalir Needhimandram for the offences punishable under Sections 451, 506(ii) I.P.C. and Section 4 and 8 of POCSO Act and Section 4 of Tamilnadu Women Harassment Act, 1998 and the learned Sessions Judge also taken the case on file in Spl.S.C.No.25 of 2017.

3. In order to prove the case of the prosecution before the trial Court, on the side of the prosecution as many as 18 witnesses were examined as P.W.1 to P.W.18 and 22 documents were



examined the victim girl and issued Ex.P14- Medical Examination report and Ex.P15-SOC form of the victim girl has opined that the age of the victim is between 16 to 17 years. He would further submit that the victim girl was examined before the Court as P.W.2. and she has clearly narrated before the learned Sessions Judge that the appellant is her neighbour and under the guise of marrying her, on the date of occurrence i.e., on 17.01.2017, the appellant had intercourse with her and thereafter refused to marry her, for which she consumed poison and admitted in the hospital. Thereafter, a complaint was given before the respondent police and the respondent police took up the investigation and filed the charge sheet. He would further submit that the victim was produced before the learned Magistrate, who recorded Section 164 Cr.P.C. statement. He would further submit that the Doctor who examined the victim girl-P.W.16 clearly stated that the victim girl was subject to sexual intercourse. He would further submit that the deposition of victim girl-P.W.2 before the Court clearly corroborates the statement of victim girl recorded under Section 164 Cr.P.C. before the learned Magistrate and hence the prosecution has proved the case beyond reasonable doubt and there is no merit in this appeal and the same is liable to be dismissed.

9. Heard both sides. Perused the records.

10 . The case of the prosecution is that the victim girl is aged about 16 years and the appellant is an auto driver. She is residing in the same locality of the appellant. The appellant had kept watching the victim whenever she goes to work and developed liking towards her and with an intention to commit sexual intercourse, he forced her to kiss him and this happened on three occasions and on one such occasion, the accused forcibly embraced her, squeezed her breast and kissed her, with sexual intent and thereby the accused had committed an offence of sexual assault which involves physical contact without penetration which is punishable under Section 451 IPC and Sections 8 r/w 7 of the POCSO Act, 2012. On the date of occurrence i.e., on 17.01.2017, the accused, knowing about the loneliness of the victim, entered into her house, hugged her, kissed her and had sexual intercourse with her, thereby the accused committed the offence of penetrative sexual assault which is punishable under Section 4 r/w Section 3 of the Protection of Children from Sexual Offence Act, 2012 and 506 (i) of I.P.C. .Further, the accused had given continuous sexual harassment and torture by making false promise that he will marry her and after having enjoyed the sexual intercourse, he left her with a stern warning not to contact him thereafter and cheated her, thereby the accused had committed an offence punishable under Section 4 of the Tamil Nadu Women Harassment Act.



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11. During the trial in order to prove the case on the side of the prosecution, 18 witnesses were examined as P.W.'S 1 to 18 and 22 documents were marked as Exs.P1 to 22, besides one material object. On the side of the defendants none was examined and no documents were marked.

12. 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.

13. After hearing the submissions made on either side and considering the evidence on record, the trial Court, by judgment dated 09.11.2018, in Spl.S.C.No.25 of 2017, convicted the appellant and sentenced him as stated above.

14. Challenging the said judgment of conviction and sentence, the appellant has filed the present appeal before this Court.

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

16. A careful perusal of the records would go to show that P.W.2 is the victim girl and she was examined on the side of the prosecution and she has deposed clearly the conduct of the appellant for the commission of alleged offences and the mother of the victim was examined as P.W.1 and she had corroborated the same. A reading of the evidence of P.W.1 and P.W.2 shows that the appellant is the resident of the same locality of the victim girl and the victim studied upto seventh standard and worked in a private company. Whenever she goes to work, the appellant used to follow her and fell in love with her and also demanded her to kiss him, when she refused to kiss him, the appellant entered into her house and kissed her three times and on 17.01.2017, when the victim girl was alone in the house, the appellant entered into her house and also kissed her, subsequently he had intercourse with the victim girl with a false promise to marry her and thereafter neglected her. When the victim approached the appellant he avoided her and having fed up with the action of the appellant, after two months, she consumed poison and admitted in the hospital and P.W.13-Doctor who examined the victim and recorded accident register- Ex.P9 has clearly stated that the victim was admitted in the hospital by her mother after consuming the poison and P.W.16- Doctor who examined the victim girl has clearly stated that the age of the



victim girl was between 16 to 17 years and she was subjected to sexual intercourse.

17. Though the learned counsel for the appellant submitted that there is no external injury in the private part of the victim, it is not the case of the prosecution that on the date of occurrence she was produced to examine by the doctor, only after two months, after consuming poison, when the victim girl stated that the appellant had sexual intercourse with her, a complaint was given and thereafter she was clinically examined by the doctor and therefore there may not be an external injury. Under these circumstances the contention of the learned counsel for the appellant is not acceptable.

18. Further, a reading of the statement recorded under Section 164 Cr.P.C., makes it clear that the victim girl was produced before the learned Magistrate and the learned Magistrate also recorded the statement from the victim girl and the statement recorded under Section 164 Cr.P.C. itself is very clear that the appellant had committed sexual intercourse on her on 17.01.2017, with the false promise to marry her and thereafter since the appellant refused to marry her and failed to keep up his promise, she consumed poison.

19. A combined reading of the evidence of P.W.2 and P.W.13- Doctor who admitted the victim in the hospital and registered the accident register and P.W.16 - Doctor who examined the victim and Statement recorded under Section 164 Cr.P.C., shows that the prosecution has proved the case beyond reasonable doubt.

20. The trial Court also found that the appellant had committed aforesaid offences and rightly convicted and sentenced the accused as stated supra. Therefore, this Court does not find any perversity in finding of the Judgment of the Court below and there is no merit in the Appeal and the same is liable to be dismissed.

21. In the result, this Appeal is dismissed, confirming the Judgment of the learned Mahila Judge (Sessions Judge), Salem dated 09.11.2018 in Spl.S.C.No.25 of 2017. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-V)

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Sub Assistant Registrar



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To

1.The Mahila Judge, (Sessions Judge), Salem.

2.The Inspector of Police,
Salem Town All Women Police Station,
Salem District.

3.The Superintendent (Central Prison),
Coimbatore.

4.The Public Prosecutor,
High Court, Madras.

Copy to:

The Section Officer,
Criminal Section (Records)
High Court, Madras.

CRL.A.No.453 of 2019

AJS (CO)
CB (13/08/2021)