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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.12.2021

DELIVERED ON : 23.12.2021

CORAM :

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.536 of 2020

Keerthiraj

...Appellant

vs.

State rep by
The Inspector of Police,
All Women Police Station (East)
Coimbatore District
(Crime No.17/2015)

...Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, 1973 praying to set aside the judgment made in Spl.C.C. No.10 of 2019 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore, dated 18.02.2020.

For Appellant : Mr. S.N. Arunkumar

For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor.

J U D G M E N T
(Made by R.HEMALATHA, J.)

This appeal is against the judgment and order dated 18.02.2020, passed by the Special Court for POCSO cases, Coimbatore, in Special C.C.No.10 of 2019, wherein the appellant was convicted for the offence under Sections 5(1), 5(j) (ii) r/w 6 of the Protection of Children from Sexual Offences Act, 2012 (herein after called as POCSO Act) and sentenced to undergo Life Imprisonment and pay a fine of Rs.2,000/- in default, to undergo Rigorous Imprisonment for one year. The trial court further



directed the Government to pay a compensation of Rs.3,00,000/- to the victim and a sum of Rs.2,00,000/- to the female child born to the victim under Section 33(8) of POCSO Act r/w 7(2) of POCSO Rules 2012.

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2. The case of the prosecution in nutshell is as follows:
- i. Sankari @ Sankareswari is the mother of the victim child who was aged 15 years. Sankari was separated from her husband and was living with her two girl children at Chekkan Thottam, Ganapathy, Coimbatore. The older one was married and was living with her husband, while the younger one, the victim, discontinued her studies when she was in VIII Standard as she was suffering from symptoms of epilepsy.
 - ii. P.W.1 was employed in a construction company as a labourer and the victim P.W.2 was alone in the house, when she got acquainted with the appellant Keerthiraj, who was introduced to her by another friend by name Usha (not examined). The appellant developed intimacy with the victim girl and exploited her by promising to marry her. There were also occasions when he used to threaten her that he would commit suicide.
 - iii. Over a period of time, though the victim girl did not reveal about the relationship, mother of the victim (P.W.1) got suspicious when the victim girl started vomiting and the victim girl was taken to the Government Hospital, where her pregnancy was confirmed. Thereafter, the victim girl confessed that she was forcibly made to have sex with the appellant and that it used to happen during her (P.W.1) absence when she was away for work.
 - iv. P.W.1 immediately went to Puliyakulam East All Women Police Station and gave a written complaint (Ex.P1) on 29.09.2015, which was received by Tmt.A.Prema (P.W.6), Assistant Sub Inspector of Police, All Women Police Station and registered FIR (Ex.P11) in Crime No.17 of 2015 under Section 3 r/w 4 of POCSO Act 2012. Tmt. Priyamalini (P.W.7), Inspector of Police, took up investigation and sent the victim to Coimbatore Medical College Hospital for medical examination. She then went to the scene of offence and prepared an Observation Mahazar (Ex.P6) and a rough sketch (Ex.P12) in the presence of the witnesses Vijay (P.W.3) and Jovel (not examined). The same day evening, at about 6.15 p.m, the appellant was arrested by P.W.7 at Saravanampatti bus stop. His police confessional statement was obtained in the presence of one Thangam and Jothibas (both not examined). Thereafter, the appellant was produced before the concerned court for remand.
 - v. Dr. Punithavathi, who examined the victim girl (Accident



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- Register Ex.P7) on the next day, i.e. 30.09.2015, confirmed the pregnancy of the victim and in the certificate of examination for sexual offences (Ex.P8), she has observed that the hymen was not intact and the uterus was enlarged with a fetus of 20-22 weeks.
- vi. On 13.10.2015, Tmt. Sharmila (P.W.8), Additional Mahila Court Judge (Magisterial level) recorded the statement of the victim under Section 164 of the Code of Criminal Procedure (Ex.P5). The proceedings were also recorded in a Compact Disc (CD) and the same was marked as Ex.P13.
 - vii. The appellant was subjected to potency test on 16.10.2015 at Kovai Medical College Hospital. Dr.Pandeeswaran (P.W.5) opined that there was nothing to suggest that the appellant was impotent.
 - viii. P.W.7 also obtained the birth certificate (Ex.P3) of the victim girl from the Principal, Rathanapuri Corporation School, Coimbatore. The date of birth of the victim girl is 14.09.2000 as per Ex.P3.
 - ix. On 10.01.2016, the victim girl gave birth to a female child and on 18.07.2016, the victim girl, her child and the appellant were subjected to DNA test at Coimbatore Medical College Hospital and the same was sent to Forensic Science Laboratory, Chennai, through the Sessions Judge, Mahila Court, Coimbatore, and the report (Ex.P15) concluded that the appellant is the biological father of the female child born to the victim.
 - x. In the meanwhile, P.W.7 was transferred and Tmt.Masuthabegum (P.W.9) verified the records and after completing investigation, laid a final report before the Mahila Court, Coimbatore, in Spl.C.C. No.2 of 2018, which was subsequently transferred to Special Court for exclusive trial of cases under POCSO Act and renumbered as 10/2019 against the accused for the offences under Section 5(1), 5(j) (ii) r/w 6 of POCSO Act.
 - xi. In order to bring home the guilt of the accused, the prosecution examined 9 witnesses and marked 15 exhibits.
 - xii. When the appellant was questioned under Section 313 of the Code of Criminal Procedure Code, he admitted of having sex with the victim and that he is the father of the victim's child. He further added that since the mother of the victim did not give her daughter in marriage to him, he married another woman. However, he assured that he would pay necessary amount towards maintenance of his child. He did not examine any witness on his side.

3. The learned counsel for the appellant contended that this case is different from the other POCSO cases



inasmuch as the appellant admitting his having sex with the victim and also owning up the child. He also undertook to bear the expenses which would be incurred towards maintenance of the child. The learned counsel also pointed out that the appellant in the same 313 Cr.PC statement had mentioned that both of them (he and the victim girl) were in love with each other and it was only because of the resistance from her family, it did not materialize. The learned counsel also added that the victim girl is also married as is seen from her evidence. Therefore, the plea of the learned counsel was for this Court to take a lenient view and reduce the sentence to the extent possible.

4. Per contra, Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor, contended that the sexual act by the appellant was not consensual but was by force as can be evidenced from the depositions of P.W.1 and P.W.2. Even assuming it was consensual, the age of the victim girl was just 15 years at the time of the incident and therefore, covered under POCSO Act. The consequence of sexual act ending up in pregnancy and delivering of a child is definitely traumatic and no lenience should be shown to the appellant.

5. This is yet another case where the victim was just 15 years of age when she was sexually abused by an acquaintance (appellant). It is evident from the deposition of P.W.2 that it was not a solitary instance of sexual abuse by the appellant, but was abused on several occasions. It is also observed from her evidence that in order to avoid the appellant visiting her house, P.W.1, the victim's mother, had even shifted her residence to a different place and only after she shifted to the new residence, the victim girl started vomiting, which led to the medical examination and confirmation of pregnancy. P.W.1 has explained that she had no suspicion on her daughter's pregnancy as her daughter had irregular menstrual cycle, sometimes extending even upto 6 months. It is also pertinent to mention at this juncture that the fetus was 20-22 weeks old on the date of medical examination by P.W.4. As per the deposition of P.W.1, she had come to know about the marriage of the appellant only after the pregnancy of the victim girl was detected. Though the victim girl has stated that she was forced into sex every time, it is difficult to believe that she did not reveal about the relationship to anyone. No doubt, the age of the victim was such where emotions of infatuation is mistaken for a serious relationship. At the same time, the version of the victim girl as regards the promise of marriage made by the appellant has an element of truth in it. The fact that her father got separated and deserted the family also could have emboldened the appellant.



6. The appellant on his side was more pragmatic by admitting that it was his child and that he had the intention of marrying her and never intended to disown her too. Whether the sexual act was consensual or forced is immaterial as far as the present case is concerned because of the age of the victim.

7. Such incidents leave a permanent blot on the society and create a doubt regarding the awareness on sexual education amongst grown up children. On one side knowledge of "good touch and bad touch" is imparted to much younger children and on the other, we find older children as victims of sexual exploitation. According to P.W.1 and P.W.2, P.W.2 had kept all the incidents to herself without sharing her problem. Had the victim given some hint about the alleged misbehaviour of the appellant to even her peers, like that one who had introduced her to the appellant, the victim could have been saved from the severe trauma of becoming a mother of a child when she herself was a child. However, the act of the appellant does not deserve sympathy because even after knowing the age of the victim, he continued to repeatedly abuse her. However, the appellant in his statement under Section 313 Cr.PC did not shift the entire blame on the victim. He also expressed his desire that he wanted his child born to the victim girl. In many such cases it is found that the accused remains stubborn with no remorse. But, in the instant case, the appellant also promised to take care of the expenses of the child which is one reason to make this court think of a possibility of reducing the sentence. Thus considering all the facts and circumstances of the present case, this court is inclined to show some lenience by reducing the life sentence already awarded by the trial court to 10 years without any remission benefits and to pay a fine of Rs.2,000/- in default, to undergo Rigorous Imprisonment for one year.

8. In the result,

(i) This Criminal Appeal is partly allowed.

(ii) While confirming the conviction passed by the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore, dated 18.02.2020, in Spl.C.C. No.10 of 2019, the sentence is modified as under:

The accused is sentenced to undergo Rigorous Imprisonment for 10 years without any remission benefits and to pay a fine of Rs.2,000/- in default, to undergo Rigorous Imprisonment for one year.

(iii) The District Legal Services Authority, Coimbatore, is directed to ensure that, the compensation of Rs.3,00,000/- to the victim girl and Rs.2,00,000/- to the female child born to the victim girl (as ordered by the Sessions Judge, Special Court for



Exclusive Trial of Cases under POCSO Act, Coimbatore, dated 18.02.2020, in Spl.C.C.No.10 of 2019) are paid, if not already paid, within 3 months from the date of this judgment.

Sd/-

Assistant Registrar(CO)

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// True Copy //

Sub Assistant Registrar

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To

1. The Inspector of Police,
All Women Police Station (East)
Coimbatore District
(Crime No.17/2015)
2. The the Sessions Judge,
Special Court for Exclusive Trial of Cases under POCSO Act,
Coimbatore.
3. The Secretary,
District Legal Services Authority, Coimbatore.
4. The District Collector, Coimbatore.
5. The Commissioner of Police, Coimbatore City.
6. The Public Prosecutor,
High Court, Madras.
7. The Section Officer,
Criminal Section, High Court, Madras.
8. The Superintendent,
Central Prison,
Coimbatore.

+1cc to Mr.W.Camylen Gandhi, Advocate SR.No.69411

Cr1.A.No.536 of 2020

AD(CO)

CB(03/01/2022)