



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.557 of 2019

Saravanan
S/o.Podu

... Appellant/Accused

Vs.

The State, rep.by
The Inspector of Police,
Nallipalayam Police Station,
Namakkal District.

(Crime No.157/2015 of Erumapatty PS) ... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) Cr.P.C., to set aside the judgment dated 20.12.2018 in Spl.C.C.No.14 of 2016 on the file of the Sessions Judge, Fast Track Mahila Court, Namakkal.

For Appellant : Mr.B.Vasudevan
For Respondent : Mr.R.Suryaprakash
Government Advocate [Crl.Side]

J U D G M E N T

The appellant has filed this appeal seeking to set aside the judgment dated 20.12.2018 in Spl.C.C.No.14 of 2016 on the file of the Sessions Judge, Fast Track Mahila Court, Namakkal.

2. The respondent police registered a case against the appellant in Crime No.157 of 2015 for the offence under Section 366 (A) IPC and Section 5(1) r/w. 6 of POCSO Act, 2012. After investigation, laid the charge sheet before the Sessions Judge, Fast Track Mahila Court, Namakkal. Since the offence is against women particularly a child, the learned Sessions Judge taken the case on file. The learned Sessions Judge after taking the charge sheet on file in Special C.C.No.14 of 2016, framed charges against the appellant for offence under Section 366(A) and 5(1) r/w. Section 6 of POCSO Act and he was convicted and sentenced to undergo 5 years Rigorous Imprisonment with fine of Rs.1,000/-, in default, to undergo 3 months Rigorous Imprisonment for offence under Section 366(A) and also convicted and sentenced to undergo 10 years Rigorous Imprisonment with



fine of Rs.1,000/-, in default, to undergo 3 months Rigorous Imprisonment for offence under Section 5(1) r/w. 6 of POCSO Act. Challenging the said judgment of conviction and sentence, the accused has filed the present appeal.

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3. The learned counsel for the appellant would submit that there is no independent witness examined in this case and has also not examined the neighbour and no witness has spoken that the appellant took the victim girl. The medical evidence did not support the evidence of P.W.1. P.W.1 deposed that the appellant used her for 10 days, but medical evidence did not detect spermatozoa or semen in the vagina and also did not detect the presence of injuries on genitals and did not detect the presence of marks of violence on other parts of the body. P.W.1, victim girl, did not complain the act of sexual intercourse of the appellant with her before the Doctor, who examined the victim girl. There is no supporting medical evidence of P.W.1, victim child. The age of the victim child has not been proved and there is no corroboration and there is no independent witness.

4. It is further submitted that the prosecution has not substantiated the charges framed against the appellant and the offence under Section 366(A) would not be attracted in this case. The case of the prosecution is that the appellant kidnapped the girl and induced another man to have sexual intercourse with the victim girl. Section 366(A) would not get attracted and the medical evidence does not support the case of the prosecution to convict the appellant under Section 5(1) r/w. 6 of POCSO Act. The learned Special Judge, based on presumption and also on the ground of sympathy, convicted the appellant for the offence punishable under Section 366(A) and 6 of the POCSO Act, and awarded maximum punishment, which warrants interference.

5. The learned Government Advocate (Crl.Side) would submit that the victim girl was aged about 17 years at the time of the occurrence. The mother of the victim girl went to Coimbatore for doing a construction coolie work along with her daughter victim girl and son. The appellant was also working as a coolie along with the victim at Coimbatore. During that period, the appellant fell in love with the victim child and falsely promised to marry her. The appellant was already married and having children. Prior to three months to the occurrence, when the victim child was alone at her house in Poyar Street, the appellant threatened the victim child and had sexual intercourse with her and threatened not to disclose the same to her parents. Due to apprehension, the victim did not disclose the act committed by the appellant to her parents and thereafter, the victim went to Coimbatore whereas the appellant again approached her and had sexual intercourse. Then the victim returned to Navaladipatty to

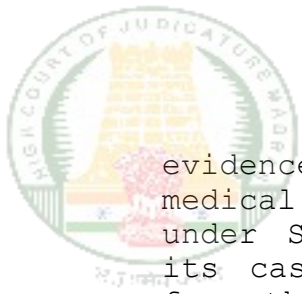


worship her local temple. At that time, on 22.10.2015 at about 12.00 noon, when the victim child was alone at her house, the appellant came there in a bike bearing Registration No.TN-48-E-0414 and compelled the victim child to come along with him to Erode to marry her and thereby the appellant took her to Arasalur, Erode District in the said motorcycle. Thereafter, the appellant arranged to stay along with him in his relative's house at Arasalur and during their stay at the above house, the appellant had repeated sexual intercourse with her. Thereafter when the victim asked the appellant to leave her in her parents house, the appellant dropped her at Navaladipatty bus stop on 02.11.2015 and thereby the appellant committed offences punishable under Sections 366(A) IPC and 5(1) r/w. 6 of POCSO Act.

6. The victim girl was examined as P.W.1 and has narrated that she was working as a coolie and the appellant was also working as a coolie in the same construction. At that time, the appellant fell in love with her and in the absence of her mother, when the victim child was alone in her house, the appellant had sexual intercourse with her. The victim child went to her native place in Navaladipatty for festival. After the festival, the mother left for Coimbatore, the victim girl was residing in grandmother, P.W.4's house. P.W.4, Grandmother and P.W.3, her brother, were not in the house. At that time, the appellant came to the house of grandmother and when the victim child was alone and he took the victim girl to Arasalur, Erode District and stayed in his uncle's house. At that time, the appellant had repeated sexual intercourse with her. Since the appellant is already a married man and having children and taking advantage of the teenage of the victim child, he made a false promise and also taking advantage of the age factor, the appellant committed the offence.

7. P.W.2, mother of the victim, P.W.3, brother of the Victim, P.W.4, grandmother of the victim, have also spoken about the victim age of the girl and the Doctor, P.W.7, who examined the victim girl determined the age of the victim on 07.11.2015 at Government Hospital, Salem. On medical examination, it was revealed that the victim was aged above 16 and below 18 years. A certificate to that effect is also issued and the same is marked as Ex.P.6. The Doctor, P.W.9, examined the appellant and he has spoken about the potency of the appellant.

8. From the oral and documentary evidence, the prosecution proved that at the time of occurrence, the victim girl was aged about 17 years and the age certificate was marked as Ex.P.6 and also the victim was produced before the Judicial Magistrate for recording the statement under Section 164 Cr.P.C. and the said statement was also marked as Ex.P.7. The reading of the



evidence of P.W.1, victim girl, the Doctor, P.W.7, and the medical report Ex.P.5 and Ex.P.6 and also the statement recorded under Section 164 Cr.P.C., Ex.P.7. The prosecution has proved its case beyond reasonable doubt. He removed the victim girl from the custody of the lawful guardians without their consent and had also proved the case beyond reasonable doubt and the trial Court rightly appreciated the evidence. Therefore, there is no merit in the appeal.

9. Heard and perused the materials on record.

10. The case of the prosecution is that the victim girl was aged about 17 years at the time of occurrence and doing construction coolie work at Coimbatore and the accused is also a native of victim village. During the time of work at Coimbatore, the appellant fell in love with the victim child and falsely promised to marry her. The appellant was already married and having children. Prior to three months from the date of occurrence, when the victim child was alone at her house in Poyar Street, the appellant threatened the victim child and had sexual intercourse with her and threatened not to disclose the same to her parents. Due to apprehension, the victim did not disclose the act committed by the appellant to her parents and thereafter, the victim went to Coimbatore, whereas the appellant again approached her and had sexual intercourse. Then the victim returned to Navaladipatty to worship at local temple. At that time, on 22.10.2015 at about 12.00 noon, when the victim child was alone at her house, the appellant came there in a bike bearing Registration No.TN-48-E-0414 and compelled the victim child to come along with him to Erode to marry her and thereby the appellant took her to Arasalur, Erode District by the said motorcycle. Thereafter, the appellant arranged to stay along with him at his relative's house at Arasalur and during their stay at the above house, the appellant had repeated sexual intercourse with her. Thereafter, when the victim asked the appellant to leave her at her parents' house, the appellant dropped her at Navaladipatty bus stop on 02.11.2015 and thereby, the appellant committed offences punishable under Section 366(A) IPC and 5(1) r/w. 6 of POCSO Act.

11. In order to prove the case on the side of the prosecution, 14 witnesses were examined as P.W.1 to P.W.14 and 14 documents were marked as Ex.P.1 to Ex.P.14. One material object was marked as M.O.1 and after completing the prosecution evidence, incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the appellant. He denied it as false and pleaded not guilty. On the side of the defence, no oral and documentary evidence was produced. After the trial, the Appellate Court convicted the appellant on both the charges under Section 366(A) IPC and



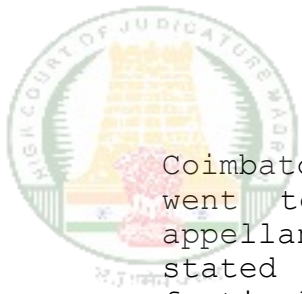
Section 51 r/w. 6 of the POCSO Act. The Appellate Court is a fact finding Court and it has to re-appreciate the entire evidence and give an independent finding.

12. The nutshell of the prosecution case is that the victim is a child aged about 16 years and she was working as a coolie along with her mother and brother. The appellant was also working as coolie. During that time, the appellant fell in love with the victim child and in the absence of the parent at the house of the victim child at Coimbatore, the appellant had sexual intercourse and thereafter, the victim girl went along with her mother to their native village for festival at Arasalur. After festival, the mother of the victim returned to Coimbatore. The victim girl and brother stayed with their grandmother. At that time, on 22.10.2015 at about 12.00 noon the appellant went to Arasalur in a bike M.O.1 and in the absence of the grandmother and brother, the appellant took the victim girl to Erode where he stayed in his uncle house and had repeated sexual intercourse with her and subsequently, the appellant dropped the victim girl and thereafter, the victim girl informed her parents and had given complaint to the police. The investigating officer, on completion of investigation, laid the charge sheet. The trial Court framed the charges and conducted the trial and convicted the accused. The victim girl was examined as P.W.1 and she has narrated the incidents and also she was produced before the Doctor, P.W.7, for medical examination. P.W.7 is the Doctor working in the Government Hospital, Salem. On 07.11.2015, the victim was produced before the Doctor who examined the victim girl and determined the age of the victim girl as above 16 years and below 18 years. Subsequently, she was produced before the Judicial Magistrate to record her statement under Section 164 Cr.P.C. After completing the formalities, her statement was recorded. A reading of Ex.P.7 would reveal that the victim narrated the incidents and that it was the appellant one who committed the sexual offence. The mother of the victim girl, P.W.2, has stated that she and her daughter were working in the same construction site as coolies. The appellant was also working with the victim girl and he is a known person and there is possibility of easy access. The brother of the victim girl was examined as P.W.3. He also stated that he and her sister P.W.1 victim child stayed along with their mother in Coimbatore and doing construction work and the appellant was also staying in a nearby place. Along with their family, the victim girl went to Navaladipatty to worship at local temple. The appellant also came there and he does not belong to that village. During that time, when the victim girl was alone in her grandmother's house and everyone went out, the appellant came there and took her to his relative's house at Arasalur. The grandmother of the victim girl was examined as P.W.4. She has also stated that her daughter and her grand



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children came to their house for festival. After festival, her daughter left for Coimbatore and at that time, the grand daughter victim child and grand son were staying with her. One day P.W.4, left for her neighbour's house and the grand son also left along with his friends. At that time, the victim girl alone was in the house and subsequently, the victim girl was missing and thereafter, they came to know that the appellant took the victim girl. After 10 days the victim girl informed her parents that the appellant took her to Erode and stayed in his relative's house. P.W.5 is an eye-witness to the appellant taking the victim girl from Navaladipatty. She has stated that when she along with the victim girl were talking with each other near the temple, at that time, the appellant came and forcibly took the victim girl with him and after 10 days they came back. Soon after registering the case, the victim child was produced before P.W.6. P.W.6 deposed that on 06.11.2015, the victim child was produced before her through police and she examined the victim girl. At that time, there was no external injury. However, hymen was not intact and her vagina admitted one finger and she was of the opinion that there was a possibility of sexual intercourse and since there was no scan facility, the victim girl was sent to the Government Hospital, Salem and P.W.7, who examined the victim girl, gave opinion that the victim girl was between 16years to 18years. P.W.8, is the Judicial Magistrate who recorded the statement of the victim girl under Section 164 sub-clause (5) of Cr.P.C. and the statement is marked as Ex.P.7. Ex.P.7, clearly shows that the victim girl along with her mother and brother was working in the construction site. At that time, the appellant was also working in the same construction site and therefore they developed friendship and the accused expressed that he is in love with her and also proposed to marry her. At that time, the victim girl did not know that the appellant was a married man and also he promised to marry her and he took her to Arasalur in Erode District and stayed in his uncle's house. The victim girl further stated that the accused has spoiled her life and by threat and coercion, he misused her for 10 days. From the evidence of P.W.1 to P.W.8 and Ex.P.1 to Ex.P.9, the prosecution has proved the case beyond reasonable doubt. Even though the statement recorded under Section 164 Cr.P.C is not a substantive evidence, it can be used for corroboration by prosecution or for contradiction by accused. So in this case, the victim child was examined as P.W.1 and she deposed before trial Court that the appellant suppressed the fact that he was a married man and promised to marry her and had forcible sexual intercourse and he took away the victim girl from the custody of the lawful guardian without their consent and during that time, had sexual intercourse with her and P.W.2 and P.W.3, who are mother and brother respectively of the victim girl have also stated that the appellant was working with them in the construction work at



Coimbatore stayed near by their residence and subsequently, they went to their native Navaladipatty. During the time, the appellant also came to the said village. P.W.4 grand mother also stated that when her daughter and grand children came for the festival, at that time, the appellant also came to their village. The Doctor's evidence also clearly proves that the age of the victim girl is below 18 years and medical evidence supports the prosecution case that the hymen was not in tact and when the victim girl was produced before the Magistrate, the Magistrate also recorded the statement under Section 164 Cr.P.C., which also strengthen the evidence of P.W.1, victim girl. Therefore, the prosecution has proved the case based on cogent and convincing evidence and there is no discrepancy in the evidence of the victim girl and there is no reason to doubt about the trustworthiness of the victim girl and the medical evidence also supports the evidence of the victim girl. Therefore, this Court also, while re-appreciating the entire evidence, finds that the appellant made a false promise to the victim girl below 18 years and since she was subjected to sexual intercourse which was committed by the appellant, this Court, finding that the appellant committed an offence under Section 5 (1) of POCSO Act and therefore, he is liable to be punished under Section 6 of the POCSO Act. As far as Section 366 (A) is concerned, no case is made out and the said Section reads as follows:-

"366A. Procuration of minor girl -

Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine."

13. When it is not the case of the prosecution that the appellant kidnapped and seduced the minor girl aged below 18 years to have illicit intercourse with another person, Section 366(A) will not get attracted. Conviction and sentence under Section 366(A) is set aside and conviction under Section 5(1) r/w. 6 of the POCSO Act is confirmed.

14. Accordingly, the Criminal Appeal is partly allowed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar



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To

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- 1.The Sessions Judge,
Fast Track Mahila Court, Namakkal.
- 2.The Inspector of Police,
Nallipalayam Police Station,
Namakkal District.
- 3.The Superintendent,
The Central Prison, Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Superintendent,
Central Prison, Salem.

Copy to: The Section Officer,
Criminal Section,
High Court, Madras-104.

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JPL(CO)
CB(18/08/2021)