



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE OF RESERVING ORDER  
02.09.2021

DATE OF PRONOUNCING ORDER  
26.10.2021

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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.176 of 2017  
and  
Crl.M.P.No.4524 of 2017

Rajasekar

..Appellant/Accused

Vs.

The State rep.by  
The Inspector of Police,  
All Women Police Station, (West)  
Coimbatore District.  
(Crime No.18/2013)

..Respondent/Complainant

PRAYER : Criminal Appeal is filed under Section 374(ii) of Criminal Procedure Code, to set aside the judgment dated 03.02.2017 passed in Special C.C.No.61/2014 on the file of Sessions Judge, Mahila Court, Coimbatore, convicting the appellant for the offence under Section 3(a) r/w 4 of POCSO Act and sentenced to undergo 10 years rigorous imprisonment and imposed a fine of Rs.5,000/- in default to undergo simple imprisonment for three months.

For Appellant : Mr. K. Balaji

For Respondent : Mr. R. Vinoth Raja,  
Government Advocate

J U D G M E N T

The matter is heard through "Video Conference".

2. Convicted sole accused is the appellant herein. The appellant is in custody. It is a jail appeal.

3. This criminal appeal is filed to set aside the judgment dated 03.02.2017, passed by the Sessions Judge, Magalir Neethimandram, Coimbatore in Spl.C.C.No.61/2014, in convicting the appellant herein under Section 3(a) r/w 4 of Protection of Children from Sexual Offences Act, 2012 (herein after referred





found that P.W.1 was in six month pregnancy. P.W.7/Dr.Murugalakshmi, has examined P.W.1 on 30.12.2013 at the Government Medical College Hospital, Coimbatore and confirmed that P.W.1 was in 6-7 months pregnancy and she has issued the AR Copy/Ex.P.8. So, it is clear from the medical evidence of P.W.7/Doctor who had medically examined the victim, categorically found the rupture of hymen of the victim girl and her pregnancy at the time of medical examination. The above fact is supported by other attending circumstances and evidence adduced by prosecution through the victim girl which is supported by her mother, uncle and aunty. Admittedly, there is no direct evidence for the occurrence but the victim girl categorically deposed in her evidence that the accused only committed penetrative sexual assault upon her.

11. P.W.2/mother of the victim girl, her evidence is on 20.12.2013, who came to know about the occurrence and she along with P.W.3 and P.W.4 approached the accused and enquired him. The accused though initially admitted his involvement, subsequently denied his relationship with the victim girl and refused to marry her. Hence, P.W.1/victim girl, lodged Ex.P1/complaint before the respondent-police.

12. She had categorically stated that during the year 2013, she was nearing 17 years and 5 months prior to that while she was alone in her home, the accused came to her home and after locking the door, has expressed his desire to have get her married and had sexual intercourse on promise to marry and thereafter, on similar such promise, she also had sexual intercourse subsequently. When her mother found that she is sick, she was taken to P.W.5/Dr.Kumudham Rajendran, who had examined and stated that she is six months pregnant, when she conveyed the same to the accused, the accused refused to marry and further threatened her with dire consequence and also stated that he has no connection for the child in the womb. Subsequently, P.W.1/victim girl gave a complaint. Her further evidence is to the effect that the police had took her to the Magistrate for recording the statement and subsequently, she gave birth to a female baby on 11.04.2014 and named her Magathi Shree and thereafter, P.W.10 has conducted DNA test.

13. In the cross examination she had reiterated the same thing and denied the suggestion that she was deposing falsely since the accused refused to marry her. In the statement under Section 164 of Cr.P.C., (Ex.P.14) and statement before the police recorded under Section 161 of Cr.P.C., she had stated the same version, as stated before trial Court. There is no exaggeration or embellishment in the version of the victim. The testimony of the victim girl is found to be duly corroborated by the testimonies of P.W.2 to P.W.4.



14. On perusal of the evidence of P.W.1 with regard to the alleged act of the accused on the body of the victim girl/P.W.1 coupled with the discovery of factum of her pregnancy by P.W.2 from the medical examination of P.W.5 coupled with P.W.7 goes to show that the evidence of P.W.1/victim girl, is reliable and trustworthy. Consequently, inspiring the confidence of this Court.

15. It remains to be stated that the evidence of P.W.3 and P.W.4 though, they are related, their version duly corroborate the evidence of P.W.2 regarding coming to know about the pregnancy of P.W.1 and the act of the accused on the body of P.W.1/victim girl. There is nothing in the cross examination to disbelieve the evidence of P.W.2, P.W.3 and P.W.4. As stated supra, I find that the evidence of P.W.1/victim girl does not suffer from any basic infirmity and the probable factor does not render it unworthy of credence.

16. Where the statement of the victim does not suffer from any basic infirmity and the probability factors in support of the allegation of rape, then by relying upon victim statement, conviction can be lied. Applying the above test to the facts of the instant case, the statement of the victim girl do not suffer from any infirmities or any improbabilities. The victim had clearly testified that the accused had ravished her. It is a settled legal proposition that Courts can act on solitary evidence of victim if it is, found to be cogent and trustworthy.

17. It remains to be stated that the Doctors viz., P.W.5 and P.W.7 in their evidence have deposed about the pregnancy of the P.W.1/victim girl. P.W.6/Dr.Jeyasingh, has deposed that the accused is medically fit for sex. Ex.P7/potency report and Ex.P8/AR Copy lend clear corroboration to their evidence. DNA Report has been marked as Ex.P12. P.W.10, the Junior Scientific Officer has deposed about Ex.P12/DNA Report wherein, it has been concluded that the accused is the biological father of the female child born to P.W.1/victim girl.

18. Thus, this Court finds that the prosecution has proved the charges beyond reasonable doubt. The evidence of P.W.1 regarding the penetrative sexual assault made by the accused on her body, on promise to marry and the evidence of Doctors viz., P.W.5 and P.W.7, as extracted above, regarding coming to know about the pregnancy of P.W.1 and giving birth to the child, coupled with the evidence of P.W.10/Scientific Officer, who had issued DNA Report under Ex.P12. Besides, P.W.6/Dr.Jayasingh, also deposed that there is nothing to suggest that the accused is impotent based upon Ex.P7/potency certificate and hence, this Court comes to the conclusion that the prosecution has proved the charges beyond reasonable doubt. Hence, this Court is to



the considered view that the prosecution has proved the essential ingredients for the offence under Section 3 of the POCSO Act and the 'fact' has been proved beyond reasonable doubt.

19. Under Section 30 of the POCSO Act, 2012 provides for presumption of culpable mental state of the accused as follows:-

(i) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(ii) For the purposes of this Section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

20. Hence, in view of the above discussions supra, I hold that the fact said to be proved since the fact is relating to the commission of sexual assault on the private part of the P.W.1 by the accused has been proved beyond reasonable doubt and hence, taking into consideration, the entirety of the circumstances, this Court holds that the prosecution has clearly demonstrated the fact of commission of penetrative sexual assault on P.W.1 beyond reasonable doubt as required in 30(ii) of POCSO Act and in consequence, thereof, the prosecution is entitled for presumption as contemplated under Section 30(1) as to the "culpable mental state" of accused and now, it is for the accused to rebut such a presumption as to non existence of such a mental state with respect to the act charged for the offence under Section 4 of the POCSO Act in an attempt to rebut the statutory presumption.

21. Hence, the prosecution having satisfied the basic ingredients under Section 30 of the POCSO Act, entitled for presumption and it is now for the accused to rebut such presumption. By probabilising the suggestive case, up to the level of preponderance of probability.

22. The learned counsel for the appellant/accused has relied upon the evidence of P.W.7 that in the AR Copy issued by P.W.8, it is mentioned as "with consent", viz., willingly.

23. Under Section 2(d) of POSCO Act, "child" is defined as any person below the age of 18 years. The victim was 16 years old and has studied 10th standard. The prosecution has examined P.W.8 Assistant Head Master of the Corporation Higher Secondary School and through her marked Ex.P10 Certificate where in the date of birth of victim girl has been mentioned as 22.02.1997. Further, the prosecution has also marked the birth certificate



of victim girl as Ex.P4 through P.W.1. Both the documents reveal that date of birth of P.W.1 victim girl is 22.02.1997. According to the prosecution the alleged occurrence took place 5 months prior to the date 30.12.2013. If that be so, the age of the victim girl at the material time was below 16 years. This fact is not disproved by the defence by material evidence.

24(a). Thus, this Court finds that at the relevant point of time, the victim girl is below 16 years and hence, the consent is immaterial and therefore, I have no hesitation to negative the said contention raised by the learned counsel for the appellant. Merely because no external injury was found upon the girl, it cannot give raise presumption that it was consent for sexual intercourse. As stated supra, she has not completed 16 years on the alleged date of the sexual assault and therefore, even if, she has given consent, the consent is immaterial and accordingly, the first contention raised by the appellant counsel stands negatived and held against the accused.

24(b).The second contention that is projected based upon the affidavit said to have been given by the victim girl in the nature of consent affidavit to compound the offence that the offence may be compounded since she has compromised with the accused and also accused has expressed his willingness to make some payment for the future of the child.

25. In the decision of the Hon'ble Apex Court in Bhagwan Narayan Gaikwad Vs. The State of Maharashtra and Ors., in C.A.No.1039 of 2021, dated 20.09.2021, has held that (Compromise between accused & victim cannot be the Solitary basis for reduction of sentence awarded in Non-compoundable cases).

26. In the decision of the Hon'ble Apex Court, has held that the powers of the High Court as well as Supreme Court in respect of compounding the offence that are categorized as non-compoundable under the Criminal Procedure Code, has expressly laid down that in so far as the offence against human body up to the level of 326 can be exercised subject to the parameter as prescribed therein. However, when the offence with which the accused stands charged is one against the society, the Court shall refused to do so.

27(a).In view of the categorical, legal pronouncement made by the Hon'ble Apex Court that the powers of the High Court in compounding the offence categorized as non-compoundable offence that are in the nature of "offence against the society cannot be exercised" and hence, the second contention raised by the said appellant is also stands negatived.

27(b).If the Courts are inclined to accept the affidavit



filed by the victim girl after conviction, such a consent may not be free as it gives lot of doubt as to the voluntariness of consent. Besides, it will lead to lawlessness in the Society and hence, the consent affidavit filed by the victim girl shall not be a ground to set the accused free in criminal appeal. Accordingly, the second contention raised by the appellant counsel also stands rejected and held against the accused.

28. I find that P.W.1/victim girl and her version is supported by the evidence of P.W.2/mother and the relatives P.W.3 and P.W.4, the medical evidence of P.W.5 and P.W.6, duly corroborate and proves that P.W.1 was subjected to sexual intercourse and was pregnant at the time of medical examination. Ex.P3/birth certificate shows that the victim girl had delivered a female baby on 11.04.2014, and ocular evidence of P.W.10/Scientific Officer, coupled with documentary evidence of P.12/DNA report also points to the guilt of the accused that accused is the biological father of the child, born to the victim girl. In the absence of any circumstances, militating against her veracity, I find that the evidence of P.W.1/victim girl clearly, proves the charge beyond reasonable doubt. In the absence of any rebuttable evidence by the accused to probabalise the suggestive case.

29. On the point of quantum of sentence, both the parties are heard.

30. Admittedly, the accused is already married and having children. At the time of the offence, victim girl is aged 16 years and the accused made her pregnant and subsequently, gave birth to a child, which is now, 7 1/2 years. The aim of the POSCO Act, is to protect the children from sexual offences. To ensure that the tender age of the children are not to be abused and the childhood and youth are protected against the exploitations and they are given facility to develop a healthy manner, in the condition of freedom and dignity.

31. Therefore, I find that ten years rigorous imprisonment levied by the Sessions Judge cannot be termed as excessive and hence, this Court holds that the conviction passed by the Sessions Judge, under Section 3(a) r/w 4 of the Act, is sustainable in law and the sentence awarded by the Sessions Judge is not excessive and the consent affidavit of the victim girl for compounding the non-compoundable offence viz., the charge under Section 3(a) r/w 4 of the Act, cannot be considered, as the same is oppose to public policy. Since the proved charges are against the society and accordingly, the criminal appeal is devoid of merits and liable to be dismissed.

32. In the result, the criminal appeal is dismissed and the



order of conviction and sentence passed by the learned Session Judge, Magalir Neethimandram, (Mahila Court), Coimbatore, in Special C.C.No.61/2014, dated 03.02.2017, is hereby confirmed. Consequently, connected miscellaneous petition is closed.

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Sd/-  
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

AT

To

1. The Sessions Judge,  
Mahila Court, Coimbatore.
2. The The Inspector of Police,  
All Women Police Station, (West)  
Coimbatore District.
3. The Public Prosecutor,  
High Court of Madras.

+1cc to Mr.K.Balaji, Advocate, S.R.No.55250

Crl.A.No.176 of 2017  
and  
Crl.M.P.No.4524 of 2017

SSD(CO)  
RGA(15/11/2021)