

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.690 of 2019
and Crl.M.P.No.14584 of 2019

R.Sekar

.. Appellant

.Vs.

The State of Tamil Nadu,
Represented by the Inspector of Police,
All Women Police Station,
Neyveli.

.. Respondent

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure to set aside the judgment and order of conviction dated 31.05.2017 passed in Special Sessions Case No.33 of 2015 on the file of the Sessions Judge, Mahila Court, Cuddalore.

For Appellant : Mr.A.V.Jay Ganesh

For Respondent : Mr.R.Surya Prakash
Government Advocate (Crl.Side)

J U D G M E N T

This Criminal Appeal has been filed against the Judgment dated 31.05.2017 in Spl.S.C.No. 33 of 2015 by the learned Sessions Judge, Mahila Court, Cuddalore.

2.The case of the prosecution is that at the time of the occurrence, the victim (P.W.2), who was aged about 14 years was residing at Karunghuli Village opposite to the house of the appellant. The appellant is a married man and his wife deserted him. The victim girl used to go to the house of the appellant to help his mother. One year before, when the victim girl went to the house of the appellant, the appellant had sexually assaulted her. Afterwards, whenever the victim girl went to the house of the appellant, he used to have sexual intercourse with her and threatened the victim girl to maintain secrecy in the name of honour of the family. Subsequently, she got pregnancy, the mother of the victim girl revealed the truth and thereafter, the (P.W.1) mother of the victim girl preferred a complaint to

the respondent police.

3.The respondent police registered a case in Crime No.8 of 2015 for the offence punishable under Section 3 r/w 4 of The Protection of Children from Sexual Offences Act, 2012 [hereafter 'POCSO Act' for the sake of convenience] later altered into Section 5 r/w 6 of POCSO Act. After investigation, the respondent police filed a charge sheet before the learned Sessions Judge, Mahila Court, Cuddalore and the same was taken on file in Spl.S.C.No.33 of 2015 and charges were framed against the appellant for the offence under Section 5(j)(ii) of POCSO Act and Section 506(ii) IPC.

4.In order to prove the case of the prosecution before the trial Court, on the side of the prosecution as many as 8 witnesses were examined as P.W.1 to P.W.8 and also marked 11 documents as Exs.P1 to P11, besides one material object as M.O.1 was exhibited. After completion of the prosecution side evidences, the incriminating circumstances found from the prosecution evidence were put to the appellant/accused by examining the appellant/accused under Section 313 of Cr.P.C and he has denied all the incriminating circumstances as false and pleaded not guilty. On the side of the defence, no oral and documentary evidence was marked.

5. The Court below, after hearing the arguments advanced on either side and also considering the materials available on record, found that the accused/appellant is guilty of the offence and convicted and sentenced as below:

The appellant found guilty for the offence under Section 506 (ii) IPC and sentenced to undergo rigorous imprisonment for a period of one year; and for the offence under Section 5(j)(ii) of POCSO Act sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.5,000/- and in default, to undergo rigorous imprisonment for a period of one year. Challenging the said conviction and sentence, the appellant is before this Court.

6. The learned counsel for the appellant would submit that during the trial, the mother of the victim girl (P.W.1) deposed that, her daughter/victim girl (P.W.2) aged about 18 years was subjected to sexual assault by the appellant, due to which she got pregnant. However, the trial Court failed to consider the evidence of P.W.1, wrongly under the assumption that as if P.W.2 is minor and convicted the appellant. He would further submit that now the victim girl's family have decided to perform the marriage between the victim girl and the appellant. He would further submit that considering the future of the victim girl, sentence imposed on the appellant may be reduced.

7. The learned Government Advocate (Crl.Side) would submit that at the time of occurrence, the victim girl was aged about 14 years and the appellant committed penetrative sexual assault on her, due to which, she was pregnant by five months. During the trial, the victim girl (P.W.2), has clearly narrated the said incident. The Doctor (P.W.5) who has examined the victim girl, has clearly stated that the victim girl told her that she was sexually assaulted by the appellant. Further the Doctor opined that the hymen of the victim girl was not intact and confirmed her pregnancy and also gave a medical report (Ex.P6). Thereafter, she was produced before the learned Magistrate for recording statement under Section 164 Cr.P.C and the victim girl has clearly narrated the said incident. He would further submit that D.N.A test report (Ex.P11) also clearly shows that the appellant is the biological father of the fetus, which itself clearly proved that the appellant committed penetrative sexual assault on the victim girl, who is aged about 14 years at the time of occurrence. From the evidence of victim girl (P.W.2), the Doctor (P.W.5) and the D.N.A.test report (Ex.P11), the prosecution has proved its case beyond reasonable doubt and the victim girl, at the time of occurrence, was only 14 years and the appellant has committed penetrative sexual assault on the victim girl, and therefore, the trial Court has rightly convicted the appellant, and the appeal is liable to be dismissed.

8. Heard the learned counsel for the appellant and the learned Government Advocate (Crl.Side) for the respondent and also perused the materials available on record.

9.This Court, being an Appellate Court, is final Court of fact finding, which has to necessarily re-appreciate the entire evidence and give an independent finding.

10.The complaint (Ex.P1) has been lodged by P.W.1, who is none other than the mother of the victim girl, since the victim is a girl as well as a minor, the mother of the victim girl (P.W.1) has filed the complaint (Ex.P1) before the respondent police. After registration of the complaint, the victim girl was produced before the Doctor (P.W.5), who has clearly deposed that the victim girl was produced before her for clinical examination and she has stated that the victim was subjected to penetrative sexual intercourse by the appellant, due to which, she got pregnancy and the Doctor (PW-5) gave the medical report (Ex.P6), which confirms that at the time of occurrence, the victim is aged about 14 years. The evidence of the Doctor (P.W.4) and also the Medical Report of the victim girl (Ex.P4) indicate that there are possibilities of sexual assault and the hymen of the victim girl was also not intact. Therefore, the evidence of the

Doctor (P.W.5), coupled with the Medical Report (Ex.P6), confirms that the victim girl was subjected to penetrative sexual assault, due to which she was pregnant, and therefore, the only question that has to be decided is, whether the appellant has committed the penetrative sexual assault on the victim girl.

11. Further, the Doctor (P.W.6), who examined the accused, has clearly deposed that, on examination of the radiology report (Ex.P7) of the appellant, it clearly shows that the age of the appellant is around 40 years. The evidence of the Doctor (P.W.5) and the medical report (Ex.P6), clearly show that the age of the victim girl is 14 years. Further, the D.N.A test conducted on the victim girl, appellant and fetus, which was marked as Ex.P11, clearly shows that the appellant is the biological father of the fetus. Therefore, under these circumstances, where the offence under POCSO Act is very well established, this Court has no hesitation to consider the evidence of victim girl (P.W.2), the Doctor (P.W.5), the D.N.A test report (Ex.P11) and it cannot expect any corroborative evidence or eye-witness or any other independent witness. Admittedly, in this case, the victim girl has clearly narrated before the trial Court as well as before the Doctor who examined her that she was subjected to penetrative sexual assault, due to which she was pregnant and the appellant is the one who had committed the penetrative sexual assault on her, and the said evidence is also corroborated by the medical evidence of the Doctor (P.W.5) and the D.N.A.test report (Ex.P11). Therefore, the trial Court, being a fact finding Court, has rightly appreciated the entire evidence and arrived at a conclusion and convicted and sentenced the appellant for the offence under Section 5(j)(ii) of POCSO Act and Section 506(ii) IPC.

12. Though, the learned counsel for the appellant would submit that the appellant and family members of the victim girl have decided to perform the marriage between them. On a careful perusal of the records, it reveals that at the time of occurrence, the age of the victim girl is 14 years and the appellant is 40 years. It is shocking to hear that the age between the appellant and the victim girl is between the grand father and grand daughter. Now since because the family members of the victim girl and appellant have decided to perform the marriage between them, this Court cannot show any leniency to the appellant/accused.

13. Under these circumstances, this Court can safely come to the conclusion that the appellant has committed penetrative sexual assault on the victim girl and therefore, the prosecution has established its case beyond reasonable doubt. In the light of the above discussion, this Court does not find any merit in

this appeal and the appeal is liable to be dismissed.

14. Accordingly, this Criminal Appeal is dismissed. The conviction and sentence passed in S.C.No.33 of 2015 by the Sessions Judge, Mahila Court, Cuddalore. is confirmed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-)

//True Copy//

Sub Assistant Registrar

ms

To

- 1.The Sessions Judge,
Mahila Court,
Cuddalore.
 - 2.The Superintendent,
Central Prison, Cuddalore.
 - 3.The Inspector of Police,
All Women Police Station,
Neyveli.
 - 4.The Public Prosecutor,
High Court, Madras.
 - 5.The Section Officer | with a direction to send back the
(Criminal Section), | original records, if any, to the
Records | trial Court
High Court, Madras. |
- CC: The Chairman
POCSO Committee,
High Court, Madras-104.

WEB COPY

CRL.A.No.690 of 2019
and Crl.M.P.No.14584 of 2019

UM(CO)
CB(13/07/2021)