

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :16.06.2022

Pronounced on :22.06.2022

CORAM:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.A.No.341 of 2018

Sivapirakasam

..Appellant/Sole Accused

/versus/

The State of Tamil Nadu
Rep.by the Inspector of Police,
All Women Police Station,
Perambalur,
Perambalur District.
(Crime No.11 of 2016)

..Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374(2) of Cr.P.C., against the order of conviction dated 22.03.2018 passed in S.C.No.3 of 2017 on the file of the Sessions Judge, Mahila Court, Perambalur in imposing the sentence of 7 years RI and fine of Rs.5000/- and in default to undergo 2 years Simple Imprisonment for offence under Section 366 of IPC and 10 years RI and fine of Rs.5000/- and in default to undergo 3 years RI for the offence under Section 3 r/w Section 4 of the Protection of Child from Sexual Offences Act 2012.

For Appellant : Mr.A.Padmanaban

For Respondent : Mr.S.Udaya Kumar
Government Advocate(Crl.Side)

O R D E R

The appellant herein was charged for offences under Sections 366 IPC, 294(b) IPC (4 counts), Section 506(1) IPC (4 counts) and Section 3 r/w 4 of the Protection of Children from Sexual Offences Act, 2012 (in short "POCSO Act") and Sections 3 (1) (r) and 3(1)(s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and tried before the Mahila Court, Perambalur.

2.The prosecution to prove these charges examined 23 witnesses, marked 21 exhibits and 6 material objects. The

trial Court, on appreciating the evidence, held him guilty of offences under Section 366 IPC and Section 3 r/w 4 of the POCSO Act

3. The case of the prosecution as unfurled through its witnesses reveals that, the accused Sivaprakasam aged 60 years and the minor victim girl (PW-2) aged about 15 years belong to same village. On 27/11/2016, at 4.00 p.m. the accused offered the minor girl to teach two wheeler driving and asked the minor girl to come to Mottaiyan Kulam. When the minor girl came to Mottaiyan Kulam, the accused took her in his TVS XL bearing Reg.No.TN46 R 7040 (M.O 5) to an isolated place near Kattupakkam mud road on the Ariyalur Bye-pass and had forcible intercourse with her. Then, he took her to a tea shop at Nochikuppam and got water for her to drink. Thereafter he dropped her at Ariyalur Busstand. The victim girl stayed with gypsies on the whole night in the bus stand. At about 11.00 a.m, her paternal uncle and aunty saw her near the bus stand weeping and they brought her home.

4. Meanwhile, when Manjula (P.W-1) the mother of the minor girl found her daughter missing started searching for her. One Selvam (P.W-8) of her village informed PW-1 that he saw PW-2 going with the accused in TVS XL near Mottaiyankulam. When her husband and others went to the house of the accused and enquired about the PW-2, he admitted that he took her to Ariyalur to teach two wheeler riding and left her at Baduvakadu. He threatened them of dire consequence, if they give any complaint to the police and also called them by their caste and abused them.

5. The missing girl, who was brought home by Samidurai (PW-4) and Sasikala (PW-5), informed her mother PW-1 about the aggravated sexual offence committed by the accused and thereafter, she went to the police and gave the complaint Ex.P-1.

6. The trial Court, on considering the evidence, held that the age of the victim girl proved to be less than 18 years through Ex.P-6 and her deposition found natural and reliable. Lack of medical evidence is not fatal to the case of the prosecution, when the minor girl, who is the victim of the crime has identified the accused and narrated about the aggravated penetrative sexual offence committed by him on her. The offence under Section 366 IPC held to be proved, based on the evidence of PW-8, who saw the accused taking the victim in a two wheeler and post occurrence witnesses P.W-4 and P.W-5, who brought back PW-2 to home on the next day, weeping at Ariyalur Bus stand.

7. In the appeal, it is contended that the trial Court erred in relying upon the solitary statement of the victim girl (PW-2), without any corroborating or circumstantial evidence. PW-2 being a child witness her deposition ought to

have been considered cautiously and carefully. In the absence of potency test report, the Court below ought not to have convicted the accused who was 60 years old at the alleged time of occurrence. The delay in lodging the First Information Report not taken note by the trial Court. The case of the prosecution that the victim stayed with gypsies at Ariyalur Bus stand the whole night and the next day morning till 11.00 a.m is whole un-believable. The doctor, who examined the victim girl has categorically stated that she did not find any sign of violence on the victim. The genital admit 2 fingers freely. PW-2 victim girl in the cross examination has admitted there was no bleeding in her genital, after the sexual intercourse by the accused. However, she has stated that she found fluid in her undergarments, but in the chemical examination report of M.O.1 to M.O. 4 , neither in the outer garments nor in the inner garment of the minor girl blood or semen detected. The trial Court therefore erred in drawing statutory presumption under Section 29 of the POCSO Act, in spite of the prosecution failure to prove prima facie case against the accused and the strong rebuttal made by the accused during the Section 313(1) Cr.P.C. proceedings.

8. The learned Government Advocate (Crl.Side) submitted that, the victim girl was studying 9th standard at the time of occurrence. The accused used to entice the minor girl offering small gifts and eateries. On the date of occurrence, the accused asked the minor girl to come to Mottaiyankulam to learn driving from him. When she went there, he took her to a secluded place and committed penetrative sexual offence. The matter was reported to the police by the mother of the victim. The victim girl gave her statement to the Judicial Magistrate and the same reiterated during the trial. The evidence of the victim is natural and consistent. Therefore, in case of these nature, where the offence is committed in secrecy, the evidence of the victim, if corroborated by circumstantial evidence, sufficient to hold the accused guilty.

9. The date of birth of the victim girl proved to be 26/05/2003 through Ex.P-2 certificate issued by the School authority and through the transfer certificate marked as Ex.P-6. Therefore, there is no doubt that PW-2 was a minor on the date of alleged offence. Selvam (PW-8) had deposed that he saw the victim girl along with the accused on 27/11/2016 twice. First, when the accused riding his TVS with PW-1 on the pillion, overtook him near Ariyalur and next at Nochikumal tea shop, when PW-2 was drinking water and the accused sitting in his two wheeler. This part of the PW-8 evidence stands un impeached. The missing minor girl was seen by PW-4 and PW-5 on the next day at about 11.00 am near Ariyalur Bus Stand. They brought her home in an Auto.

10. PW-2 the victim girl has deposed cogently and naturally about the occurrence. To her evidence, the evidence of PW-4, PW-5 and PW-8 lends corroboration. No doubt, these

witnesses are related to the victim family, but then they are chance witnesses. Medical evidence are relied for corroboration to the fact of sexual intercourse. Absence of sign of sex violence or trace of semen will not over rule the possibility of sexual intercourse.

11. In this case, the victim girl has taken to the isolated place and been subjected to penetrative sex by the accused. They both are known to each other and the minor girl has accompanied the accused voluntarily, believing that he is going to teach her two wheeler driving. Sign of sex violence mark is not sine quo for all sexual offence cases. Neither absence of violence mark nor semen in the dress materials of the victim is not sufficient to rebut the statutory presumption under Section 29 of the POCSO Act. When the victim minor had recollected what happen to her and the said information attracts offence under POCSO Act, then the statutory presumption to be drawn against the accused. Provided, the evidence of the victim inspires confidence and not suffer any improvise or embellishment.

12. In the case in hand, in view of the natural, cogent and un-embellished version of the victim girl, the trial Court has held that her evidence inspires confidence.

13. This Court, on re-appreciation of evidence does not find any perversity in the finding of the Court below. Hence, this Criminal Appeal stands dismissed. The conviction and sentence passed by the trial Court viz., learned Sessions Judge, Mahila Court, Perambalur in S.C.No.3 of 2017 dated 22.03.2019 is hereby confirmed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To:

1.The Sessions Judge, Mahila Court,
Perambalur.

2.-do- through The Principal Sessions Judge,
Mahila Court, Perambalur.

3.-do- through The Judicial Magistrate,
Perambalur.

4.The Inspector of Police,
All Women Police Station,
Perambalur.

5.The Superintendent,
Central Prison,
Tiruchirappalli.

6.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Prabakar, Advocate SR. No. 39042

Cr1.A.No.341 of 2018

RSI (CO)
PR (22/07/2022)