



CrI.A.No.1063 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2022

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

CrI.A.No.1063 of 2022

George

... Appellant

Vs.

The Inspector of Police,
W-18, All Women Police Station,
M.K.P.Nagar,
Chennai -39.

... Respondent

Prayer:Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records in S.C.No.432 of 2018 dated 23.05.2022 passed by the Court of Sessions, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai and to set aside the judgment of conviction and sentence.

For Appellant : Mr.G.Karuppasamy Pandiyan

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor



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JUDGEMENT

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This Criminal Appeal has been filed against the judgment dated 23.05.2022 passed in S.C.No.432 of 2018, on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai.

2. The respondent police registered a case in Crime No.714 of 2015 for the offence under Sections 342 and 506(ii) IPC and Section 6 of POCSO Act. After investigation, laid a charge sheet before the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai, since the offence is against the child. The learned Special Judge taken the charge sheet on file in S.C.No.432 of 2018. After completing the formalities, framed the charges against the appellant for the offence under Sections 366 and 342 IPC and Section 6 of POCSO Act. During trial, in order to substantiate the charges, on the side of the prosecution, totally eight witnesses were examined as P.Ws.1 to 8 and 11 documents were marked as Exs.P1 to P11. No material object was exhibited.



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3. On completion of examination of the prosecution witnesses, all incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the accused by questioning under Section 313 Cr.P.C. He denied the same as untrue and pleaded not guilty. On the side of the defence, no oral and documentary evidence was let in.

4. On completion of trial, hearing the arguments advanced on either side and considering the materials placed on record, though the trial court acquitted the appellant for the offence under Section 342 IPC., found the appellant guilty and convicted him for the offence under Section 366 IPC and Section 5 of POCSO Act. He was sentenced to undergo 10 years Rigorous Imprisonment and to pay fine of Rs.5,000/- in default to undergo simple imprisonment for further period of one month for the offence punishable under Section 6 of POCSO Act and also sentenced him to undergo Imprisonment for seven years with a fine of Rs.5,000/- in default to undergo simple imprisonment for one month for the offence under Section 366 IPC. Challenging the said judgment of conviction and sentence, the accused has filed the present appeal before this Court.



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5. The case of the prosecution is that the accused kidnapped the victim child from the custody of her parents and wrongfully confined the victim child in his house, had sexual intercourse with her. Based on the information given by the victim girl, her mother lodged a complaint.

6. Learned counsel appearing for the appellant would submit that there is a delay in filing the F.I.R and genesis of the F.I.R itself doubtful. There is no explanation with regard to delay in filing the complaint, registering the F.I.R and sending the same to the Court. Delay in filing the F.I.R is fatal to the case of the prosecution. When the victim girl was admitted in hospital, she made a complaint. But F.I.R shows that P.W.2, the mother of the victim girl has given the complaint. Therefore, the complaint given by the victim is suppressed. P.W.2 has stated that her daughter has not stated anything about the alleged occurrence. Charges have also not been properly framed against the appellant as contemplated under Section 212 Cr.P.C., Date, time and place of occurrence have not been specifically mentioned in F.I.R. Therefore, ingredients of Section 366 IPC would not attract. The marriage of



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the victim girl with the appellant was not established. The evidence of the prosecution does not made out the offence under Section 366 IPC. The victim girl has not stated that she was subjected to penetrative sexual assault more than once. There are material contradictions between the evidence of the P.W.1, the victim girl and P.W.2 mother of the victim girl. Further in Exs.P4 and P5, medical records, there is no mentioning about penetrative sexual assault. The evidence of doctor and the medical records are contrary to each other. The evidence of the victim girl is not trustworthy and it is not reliable. The victim girl has not spoken about the truth of the incident and it is unbelievable that the victim girl has not spoken anything about the alleged incident and about her pregnancy either to her mother or grandmother or close relatives or her friends till give birth to the child. No mother would keep quite till her daughter give birth to the child and it is unbelievable that own mother is not aware of the pregnancy of her own daughter. Prosecution has suppressed all the facts and it is failed to prove its case beyond all reasonable doubt. Therefore, benefit of doubt may be extended to the appellant.



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7. In support of his contentions, he placed reliance on the judgment of the Hon'ble Division Bench of Madras High Court (Madurai Bench) dated 18.07.2016 reported in **2016 (4) MLJ Criminal 611** in the case of *Chellappan Vs State represented by the Inspector of Police, Gandarvakottai Police Station, Pudukkottai* and also the judgment of this Court dated 18.01.2016 reported in **2016 (2) MLJ (Criminal) 134** in the case of *Karuppaiah Vs. State*.

8. Learned Additional Public Prosecutor appearing for the respondent would submit that age of the victim girl is 16 years and she was studying X standard at the time of occurrence. As per Ex.P1, birth certificate, the date of birth of the victim is 12.02.1999. The occurrence has taken place in the year 2014. Therefore, age of the victim girl is 16 years at the time of occurrence. She has stated in her evidence that she was compelled to stay in the house of the appellant and the appellant had penetrative sexual assault on her more than once. Hence, the appellant has committed the offence under Section 366 IPC and also offence under Section 5 which is punishable under Section 6 of POCSO Act. In the cases of this nature, non-mentioning of date and time of



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occurrence are not fatal to the case of the prosecution. Since the victim told her mother that the appellant is the one who had committed the offence, and due to the same, she become pregnant, her mother lodged a complaint against the appellant. Further, even before the Judicial Magistrate, while recording the statement under Section 164 Cr.P.C and also when she was produced before the doctor, she has clearly named the appellant and stated that the appellant is the one who committed sexual intercourse on her more than once. From the medical records, it is found that the the victim girl was subjected to penetrative sexual intercourse. Investigating Officer has clearly stated that upon request made before the Court and by the order of the court, samples were taken from the victim, appellant and the baby born to the victim were sent to Forensic Lab for getting report. Ex.P.10 is the DNA report, in which it is clearly mentioned that the appellant is the biological father of the baby born to the victim child. Therefore, prosecution has established its case beyond all reasonable doubt. Once the DNA report reveals that the victim girl gave birth to the baby and the appellant is the biological father of the baby born to the victim girl, mere non-mentioning of the date and time of occurrence is not fatal to the case of the prosecution. Since the victim is a



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child under the definition of the POCSO Act and she was subjected to penetrative sexual assault by the appellant, the prosecution proved the charge for the offence under Section 5 which is punishable under Section 6 of POCSO Act. Since the victim girl was compelled to stay in the house of the appellant where, the appellant had forcible sexual intercourse with the victim girl, offence under Section 366 IPC also proved. Therefore, there is no merit in the appeal and the same is liable to be dismissed.

9. Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused the materials.

10. This Court is the appellate court, as a final court of fact finding appreciated the entire evidence in accordance with law. The trial court framed the charges against the appellant for the offence under Section 366 IPC and for the offence punishable under Section 6 of POCSO Act. In order to substantiate the charges, on the side of the prosecution totally eight witnesses were examined and 11 documents were marked. Out of eight witnesses,



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victim was examined as P.W.1. P.W.2 is the mother of P.W.1. P.W.3 is the cousin sister of victim, P.W.4 is the grand mother of the victim. P.W.5 is the doctor, who conducted the medical examination on the victim girl. P.W.6 is the doctor who issued the Potency Certificate for the accused. The victim was produced before the Judicial Magistrate for recording statement under Section 164 Cr.P.C and the same was marked as Ex.P2. Ex.P5 is the medical report of the victim child given by the doctor and Ex.P6 is the potency certificate of the accused. P.W.2 is the mother of the victim girl is not an eye witness and she is a hearsay witness. The victim girl in her evidence has clearly narrated that the appellant took the victim girl to his house, had sexual intercourse with her. Before the Judicial Magistrate, she has clearly stated that the appellant had penetrative sexual assault on her more than once. Before the doctor P.W.5, she has stated that the accused is the one who committed penetrative sexual assault on her more than once. During the examination of witnesses, she has clearly deposed that the appellant had sexual intercourse with her more than once and due to that, she became pregnant. From the evidence of doctor P.W.5 and Exs.P4, 5 and 10, it is found that the victim girl gave birth to a baby. From Ex.P10, the DNA report,



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it is proved that the appellant is the biological father of the baby born to the victim child. During her evidence, P.W.5 the doctor has clearly stated that when the victim girl was produced before her, the victim girl stated that the appellant had committed penetrative sexual assault on her more than once and also she stated that she did not inform the same either to her parents or her grandmother. The victim girl informed her pregnancy only to the appellant and for that the appellant asked her to keep quite. Due to fear and shame, she did not reveal about her pregnancy to anybody. Ex.P1, birth certificate of the victim girl clearly shows that her date of birth is 12.12.1999 and hence the age of the victim is 16 years at the time of occurrence. During the occurrence, the child was studying X standard. Hence, she is a child under the definition of Section 2(1)(d) of POCSO Act. From the evidence of P.W.1, the victim girl and medical evidence P.Ws.5 and 6 and Exs.P5,6 and 10, it is found that the appellant had penetrative sexual intercourse with the victim child more than once and due to the same, the victim has got pregnant and the appellant is the biological father of the baby born to the victim child. Since the victim was subjected to penetrative sexual assault more than once, which is an offence of aggravated penetrative sexual assault, hence it falls under Sections



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5(l) and 5(j)(ii) of POCSO Act. Therefore, from the evidence of P.W.1, the statement recorded under Section 164 Cr.P.C- Ex.P2, and also the doctors evidences Ex.P5, P6 and Ex.P10, the prosecution proved that the appellant committed penetrative sexual assault on the victim girl more than once. The prosecution also proved that the victim is a child under the definition of Section 2(1)(d) of POCSO Act and she was subjected to penetrative sexual assault by the appellant. While questioning under Section 313 Cr.P.C., the appellant denied all the allegations, however he admitted that samples were taken from him for DNA test. Cases of this nature, delay in filing the complaint, registering the F.I.R and sending the same to the Court are not fatal to the case of the prosecution. In the cases of this nature, the victim girl is a child and she may not know the consequences of the penetrative sexual assault. She may either reveal the incident that has happened to her by the appellant to her parents or suppressed the same. On a reading of entire materials, it is found that the appellant was very well known as to what is the case registered against him and what are the charges were framed against him and he actively participated in all proceedings. Further it is proved that the custody of the child was removed from the lawful guardian without their



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consent by the appellant for the purpose of having illegal intercourse and marry her. The act of the appellant is an offence under Section 366 of IPC.

11. Therefore, in this case, on reading of the entire materials on record, this Court also finds that the victim is a child and she was subjected to penetrative sexual assault by the appellant more than once and she gave birth to baby. The prosecution proved its case beyond reasonable doubt and the trial court also rightly appreciated the evidence, convicted the appellant. Therefore, this Court do not find any merit in the appeal and the same is liable to be dismissed. Accordingly, the Criminal Appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

14.10.2022

mfa
Index:yes/No
Internet:yes/No



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To

1. The Sessions Judge,
Special Court for Exclusive Trial of Cases under POCSO Act,
Chennai.
2. The Inspector of Police,
W-18, All Women Police Station,
M.K.P.Nagar,
Chennai -39.
3. The Public Prosecutor,
High Court of Madras,
Chennai.



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P.VELMURUGAN, J.

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