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CrI.A.No.518 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2022

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

CrI.A.No.518 of 2021

Asaithambi

... Appellant

Vs.

State by
The Inspector of Police,
All Women Police Station,
Bargur,
Krishnagiri District.

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the conviction and judgment in Special S.C.No.74 of 2018 on the file of the learned Sessions Judge and Magalir Fast Track Court, Krishnagiri, dated 11.01.2021.

For Appellant : Mr.K.Ethirajulu
Legal Aid Counsel

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor



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JUDGEMENT

This Criminal Appeal has been filed against the judgment dated 11.01.2021 passed in Special S.C.No.74 of 2018 on the file of the learned Sessions Judge, Magalir Fast Track Court, Krishnagiri.

2. The respondent police registered a case in Crime No.5 of 2018 against the appellant for the offence under Section 5(l) read with 6 and under Section 5(j)(ii) of POCSO Act and 506(ii) IPC. After investigation, laid a charge sheet before the learned Sessions Judge, Magalir Fast Track Court, Krishnagiri, since the victim is a child under the definition of POCSO Act. The learned Sessions Judge taken the charge sheet on file in Special S.C.No.74 of 2018. After completing the formalities, framed the charges against the appellant for the offence under Sections 5(l) read with 6, 5(n) read with 6 and 5(j)(ii) read with 6 of POCSO Act and 506(ii) IPC. After framing charges and completing all the formalities, during trial, in order to substantiate the charges, on the side of the prosecution, totally 21 witnesses were examined as P.Ws.1 to 21 and 29 documents were marked as Exs.P1 to P29. On the side of the defence, no oral and documentary

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evidence was produced.

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3. On completion of trial and hearing the arguments advanced on either side and considered the entire materials, the Special Court found the accused guilty for the abovesaid charges and convicted and sentenced him to undergo 14 years rigorous imprisonment and to pay fine of Rs.25,000/- in default to undergo one year rigorous imprisonment for the offence under Section 5(l) read with Section 6 of POCSO Act. Further, he was convicted and sentenced to undergo 10 years rigorous imprisonment and to pay fine of Rs.10,000/- in default to undergo six months rigorous imprisonment for the offence under Section 5(n) read with Section 6 of POCSO Act and he was convicted and sentenced to undergo 14 years rigorous imprisonment and to pay fine of Rs. 25,000/- in default to undergo one year rigorous imprisonment for the offence under Section 5(j)(ii) read with Section 6 of POCSO Act. Further, he was convicted and sentenced to undergo one year rigorous imprisonment and to pay fine of Rs.1,000/- in default to undergo two months rigorous imprisonment for the offence under Section 506(ii) IPC. Aggrieved over the judgment of conviction and sentence passed by the



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learned Sessions Judge, Magalir Fast Track Court, Krishnagiri in Special S.C.No.74 of 2018, the accused has preferred the present Criminal Appeal before this Court.

4. The specific case of the prosecution is that the appellant is the uncle's son of the victim. Victim has completed 9th standard and going to 10th standard. During that time, the appellant under the guise of marrying her, had sexual intercourse with her on several occasions and also threatened her as to if she reveal the same to anybody, he will set fire on her. Since the appellant repeatedly had sexual intercourse on her on several occasions, she become pregnant. Hence complaint has been lodged as against the appellant before the respondent police. The respondent police registered the case and investigated the matter and laid a charge sheet before the trial court. After trial, the trial court convicted the appellant for the abovesaid charges.

5. Learned Legal Aid Counsel appearing for the appellant would



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submit that there was a delay in filing the complaint and sending the F.I.R to the Court, which will vitiate the case of the prosecution. The inordinate delay was not explained. Therefore, the unexplained delay in filing the complaint is fatal to the case of the prosecution. The alleged occurrence had not taken place as projected by the prosecution. Since the victim and the appellant are relatives, the alleged occurrence has taken place with the consent of the victim girl only. Age of the victim girl has not been proved. Unless ascertaining the age of the victim, offence under POCSO Act would not attract. The prosecution has not proved its case beyond reasonable doubt that at the time of occurrence, victim is a child and against her consent, appellant has committed offence. Since both are relatives and also they was a love affair between them, the family members talked about their marriage. Since the same has not been materialized, parents of the victim girl instigated the victim to lodge a false complaint against the appellant. The investigating Officer has not conducted a fair investigation and even without examining any independent witnesses, registered a false case against the appellant. P.W.1 is a victim girl and P.W.2 is her mother and P.Ws.3 to 7 are relatives and they are interested witnesses and conviction



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cannot be recorded on the basis of interested witnesses alone and no independent witnesses were examined in this case. There are contradictions between the evidence of P.Ws.1 and 2 and also prosecution witnesses. The trial court failed to consider the entire facts and convicted the appellant only on sympathy ground. Hence, the judgment of the trial court is liable to be set aside.

6. Learned Additional Public Prosecutor would submit that at the time of occurrence, age of the victim girl is 14 years and she completed IX standard and admitted in X standard. Date of birth of the victim is 20.05.2004. In order to prove the same, the school certificate issued by the Headmaster of the school in which the victim girl was studied has been marked as Ex.P8. Appellant is the relative, who is none other than son of her paternal uncle. Further, the appellant had committed penetrative sexual assault on the victim girl more than once on several occasions, due to that she become pregnant. Samples were taken from the victim and appellant and the foetus of the victim were sent to Forensic Lab for getting report. Ex.P.28 is the DNA report, in which it is clearly mentioned that the



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appellant is the biological father of the baby born to the victim child.

From the evidence of P.Ws.1 and 2, prosecution proved that the appellant is the close relative of the victim girl and he had committed penetrative sexual assault on the victim girl more than once by threatening her with dire consequences and due to the same, the victim girl become pregnant. Hence all the abovesaid three charges were proved by the prosecution beyond reasonable doubt. Hence, the delay in filing the complaint is not fatal to the case of the prosecution. The doctor-PW.13 has clearly deposed that the victim was subjected to penetrative sexual assault and also the doctor, who conducted medical examination on the victim girl has stated that the victim is pregnant. From the oral and documentary evidence especially medical evidence shows that the victim was subjected to penetrative sexual assault. Therefore, prosecution has established its case beyond all reasonable doubt. Trial Court rightly appreciated the evidence and found the appellant guilty for the abovesaid charged offences and there is no merit in the appeal and the same is liable to be dismissed.

7. Heard the learned counsel appearing for the appellant and the



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learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

8. This Court is the Appellate Court and final Court of fact finding, it has to re-appreciate and revisit the entire evidence and give the independent finding. In order to substantiate the charges, the victim was examined as P.W.1. Mother of the victim girl was examined as P.W.2. The victim girl was produced before the Judicial Magistrate to record statement under Section 164 Cr.P.C., which has been marked as Ex.P3. In the statement of the victim girl Ex.P3, she has clearly stated that the appellant is the close relative and he had penetrative sexual assault on her more than once on several occasions. The appellant also asked her not to reveal the sexual act committed by him to anybody and also threatened her as to if she reveal the same to anybody, he will set fire on her. Mother of the victim girl was examined as P.W.2 has also corroborated the evidence of P.W.1. In the cases of this nature, the victim girl will not reveal the sexual act committed by the accused immediately to her parents. Moreover, in this case, accused and victim are close relatives. Therefore, delay in filing the complaint is



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not fatal to the case of the prosecution and the same may not be the sole ground to disbelieve the case of the prosecution. Ex.P8, school certificate of the victim girl clearly shows that the date of birth of the victim is 20.05.2004 and the sexual act committed by the appellant was during the year 2018. Hence the age of the victim is only 14 years at the time of occurrence and she is a child under the definition of Section 2(i)(d) of the POCSO Act. Since the victim is a child and the appellant is the close relative of her and she was subjected to penetrative sexual intercourse by the appellant, due to the same she become pregnant, the act committed by the appellant falls under Section 3(a) which is punishable under Section 4 of POCSO Act. Since the appellant is a close relative and he had committed penetrative sexual assault on the victim girl more than once on several occasions, the act committed by the appellant turned into an aggravated penetrative sexual assault, the trial court framed the charges against the appellant as stated above. Evidence of the victim girl clearly shows that appellant threatened her as to not reveal the act committed by him to anybody. Hence the victim girl had also not informed the sexual act of the appellant to anybody still she become pregnant. From the evidences of



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P.Ws.1 and 2, it is found that appellant is the close relative of the victim and the appellant has not denied the relationship between the victim and him.

Further from the evidence of doctor P.W.13, Ex.P.28-DNA report, Ex.P5-AIR copy, Ex.P11-medical certificate of the victim girl issued by the doctor P.W.13, and Ex.P16, clearly it is proved that the victim was subjected to penetrative sexual assault and appellant is the biological father of the foetus of the victim. The trial Court rightly appreciated the evidence found the appellant guilty for the charged offence and convicted and sentenced him as stated above. This Court also finds that the appellant found guilty for the abovesaid charges. Cases of this nature, no independent eye witness can be expected except the victim and therefore under these circumstances, conviction can be recorded based on the evidence of the prosecutrix, if the evidence of the prosecutrix inspires the confidence of the Court. The victim girl's evidence is natural, cogent and consistent and no reason to discard the evidence of the victim girl and it inspires the confidence of this Court. A reading of the entire materials, this Court do not find any perversity or illegality in the order passed by the trial court and there is no merit in the appeal and the same is liable to be dismissed. Accordingly



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Criminal Appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

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Index:yes/No

Speaking Order: Yes/No

To

1. The Sessions Judge,
Magalir Fast Track Court,
Krishnagiri.
2. The Inspector of Police,
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Bargur,
Krishnagiri District.

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P.VELMURUGAN, J.

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