



Crl.A.No.1017 of 2022

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE **P.VELMURUGAN**

Crl.A.No.1017 of 2022

Jaikrishnan

...Appellant

Vs.

1. The State represented by
Deputy Superintendent of Police,
Pennagaram Taluk,
Dharmapuri District.
2. The Inspector of Police
All Women Police Station, Pennagaram,
Dharmapuri District.

3. Munniammal

...Respondents

This Criminal Appeal is filed under Section 374(2) of Cr.P.C. to set aside the conviction and sentence made in Spl.S.C.No.28 of 2021 dated 01.08.2022 on the file of the Fast Track Mahila Court, Dharmapuri.



WEB COPY



CrI.A.No.1017 of 2022

For Appellant : Mr.V.Sakkarapani

For Respondents : Mr.S.Sugendran
Addl. Public Prosecutor for R1 & R2

JUDGMENT

The criminal appeal has been filed against the judgment of conviction and sentence made in Spl.S.C.No.28 of 2021 dated 01.08.2022 by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri.

2 The respondent police registered a case in Cr.No.4 of 2021 stating that on 26.01.2021 at about 11.00 a.m. the defacto complainant, who belongs to scheduled caste community asked her daughter the victim child, who was aged about 12 years, to switch off the Motor. The victim child after switching off the Motor, went to the cattle shed to feed the cattle and at that time the appellant/accused, who hidden near the cattle, caught hold the victim and when the victim raised alarm, he threatened her with dire consequences with knife and made her to lie on the floor and removed her



Crl.A.No.1017 of 2022

addresses and committed rape on her. Hence the present case was registered against the appellant/accused for the offence under Sections 376(2)(f) and 506(ii) IPC, 3(1)(w)(i) and 3(2)(va)(v) of SC/ST (Prevention of Atrocities) Act, 2016 and Section 3(a) punishable under Section 4(2) of the Protection of Children from Sexual Offences Act (in short “the POCSO Act”). After completing investigation, the respondent police laid charge sheet before the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, which was taken on file in Spl.S.C.No.28 of 2021. The learned Sessions Judge, after hearing both the accused and the prosecution and after perusing the records, since there is *prima facie* case, framed charges against the appellant/accused for the offence under Sections 376(2)(f) and 506(ii) IPC, 3(1)(w)(i) and 3(2)(va)(v) of SC/ST (Prevention of Atrocities) Act, 2016 and Section 3(a) punishable under Section 4(2) of the POCSO Act.

3 Before the trial Court, in order to prove the case of the prosecution, as many as 24 witnesses were examined as P.Ws.1 to 24 and Exs.P1 to P38 were marked besides 6 material objects were exhibited as M.Os.1 to 6. After completing examination of prosecution witnesses, when



Crl.A.No.1017 of 2022

incriminating circumstances culled out from the evidence of prosecution witnesses were put before the accused by questioning under Section 313 Cr.P.C., he denied the same as false and pleaded not guilty. On the side of the defence, no one was examined and no document was marked.

4 The learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, on completion of trial and hearing arguments advanced on either side, by judgment dated 01.08.2022 convicted the appellant/accused and sentenced him to undergo rigorous imprisonment for a period of three years with fine of Rs.5,000/-, in default, to undergo simple imprisonment for a further period of three months for the offence under Section 3(1)(w)(i) and 3(2)(va)(v) of SC/ST (Prevention of Atrocities) Act, 2016, to undergo rigorous imprisonment for a period of twenty years with fine of Rs.20,000/-, in default, to undergo simple imprisonment for a further period of one year for the offence under Section 3(a) punishable under Section 4(2) of the POCSO Act and to undergo rigorous imprisonment for a period of three years with fine of Rs.3000/-, in default, to undergo simple imprisonment for a further period of three months for the offence under Section 506(ii) IPC



Crl.A.No.1017 of 2022

and ordered the sentence to run concurrently and acquitted the appellant/accused for the offence under Section 376(2)(f) IPC. Further out of the total fine of amount of Rs.28,000/-, Rs.20,000 was ordered to disburse to the victim child after the appeal time and also directed the Government to pay Rs.5,00,000/- after deducting the amount of Rs.20,000/- already given to the victim child. Aggrieved against the said judgment of conviction and sentence, the accused has preferred the present criminal appeal before this Court.

5 The learned counsel appearing for the appellant/accused would submit that there are lot of contradictions in the evidence of P.Ws.1 to 4 and there is contradiction in the evidence of P.W.8 to P.W.10 regarding obtaining signature by the respondent police. It is the evidence of P.W.2 that the appellant, at knife point, committed rape on her daughter P.W.1, but, in the complaint, no where it is stated that the appellant was having knife at his hand at the time of committing the alleged offence and during chief examination only P.W.2 stated the above, which creates doubt in the case of the prosecution. Further P.W.2 the mother of the victim is not an eye witness



Crl.A.No.1017 of 2022

and her evidence could not be relied upon by the prosecution. In fact the mother of the victim demanded Rs.5.00 lakhs from the appellant and since he refused to give the same, P.W.2 filed false complaint against the appellant.

5.1 From the evidence of P.W.19 it is proved that before approval of appointing of Investigating Officer, the Investigating Officer went to the place of occurrence and prepared observation Mahazar and Rough Sketch, which is against the procedure of law. The respondent police has not conducted fair investigation, which caused serious prejudice to the appellant/accused.

5.2 The learned counsel appearing for the appellant/accused would further submit that P.W.15, Doctor, who examined the victim girl clinically, has stated that there is no external or internal injury found on the body of the victim. Ex.P14 to Ex.P16 medical evidence also proves that there is no injury found on the body of the victim.



Crl.A.No.1017 of 2022

5.3 P.W.21 the Sub Collector, Dharmapuri District, in his cross examination has stated that he issued Ex.P22 Community Certificate only on temporary basis and not a permanent one. The trial Court erroneously relied on Ex.P22 Community Certificate of the victim issued by P.W.21 and wrongly convicted the appellant/accused for the offence under the SC/ST PoA Act.

5.4 The trial Court has miserably failed to consider the above facts and erroneously convicted the appellant/accused, which warrants serious interference of this Court and the learned counsel prays to allow the appeal by setting aside the conviction recorded against the appellant.

6 The learned Additional Public Prosecutor appearing for the respondent police would submit that on 26.01.2021 at about 11.00 a.m. the defacto complainant, who belongs to scheduled caste community asked her daughter the victim child, who was aged about 12 years, to switch of the Motor and the when the victim went to the cattle shed, the appellant/accused, who hidden near the cattle, caught hold the victim and



Crl.A.No.1017 of 2022

when the victim raised alarm he threatened her with dire consequences with knife and made her to lie on the floor and removed her dresses committed rape on her. When the mother of the victim girl, P.W.2 went in search of the victim, since she did not return back home, she found the appellant with underwear in the cattle shed and her daughter the victim child narrated the incident. Subsequently, P.W.2 made complaint against the appellant/accused and the case was registered.

6.1 The contradictions pointed out by the learned counsel for the appellant/accused are not material contradictions and the same would not affect the case of the prosecution. Since after the occurrence, there was panchayat to settle the issue, there was delay in lodging the complaint and the same has been explained by the prosecution with cogent evidence.

6.2 The statement of the victim under Section 164 was recorded, in which, the victim has categorically stated about the offence committed by the appellant/accused. Subsequently, while examining before the Court also she has clearly stated about the act of the appellant, which falls offence



Crl.A.No.1017 of 2022

under the POCSO Act and he also threatened the victim with knife and the offence under Section 506(ii) also attracted. Prosecution has proved its case beyond all reasonable doubt and the trial Court has rightly recorded conviction against the appellant and awarded sentence, which does not call for any interference of this Court.

7 Heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for respondents 2 & 3 police and perused the materials available on record.

8 Case of the prosecution is that on 26.01.2021 at about 11.00 a.m. the defacto complainant, who belongs to scheduled caste community asked her daughter the victim child, who was aged about 12 years, to switch of the Motor and after switching of the Motor when the victim went to the cattle shed to feed the cattle, the appellant/accused, who hidden near the cattle shed, caught hold the victim and when the victim raised alarm he threatened her with dire consequences with knife and made her to lie on the floor and removed her dresses committed rape on her. When the mother of



Crl.A.No.1017 of 2022

the victim girl, P.W.2 went in search of the victim, since she did not return back home after long time, she found the appellant with underwear in the cattle shed and on enquiry, her daughter the victim child narrated the incident. Hence the present case was registered against the appellant for the offence under Sections 376(2)(f) and 506(ii) IPC, 3(1)(w)(i) and 3(2)(va)(v) of SCT/ST Prevention of Atrocities) Act, 2016 and Section 3(a) punishable under Section 4(2) of the POCSO Ac

9 This Court, being an Appellate Court, is a final Court of fact finding, which has to necessarily re-appreciate the entire evidence and give an independent finding. Accordingly, this Court has re-appreciated the entire oral and documentary evidence produced before this Court.

10 As far as age of the victim child is concerned, the victim was examined as P.W.1 and she has clearly stated that she is studying 9th standard and she narrated the occurrence and she also stated that her date of birth is 05.09.2008. In order to substantiate the same, prosecution has marked Ex.P10 School Certificate and the Head Master of the School was



Crl.A.No.1017 of 2022

also examined as P.W.11, who has spoken about the issuance of Ex.P10.

Even though, Birth Certificate of the victim was not marked, prosecution has marked the School Certificate Ex.P10. It is relevant to refer Section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 which says that any entry made in the public record said to be a genuine, unless, the contrary is proved. Under this circumstances, the Court can safely come to the conclusion that prosecution has proved the age of the victim by producing Ex.P10 School Certificate. Therefore, prosecution has proved that at the time of occurrence the victim child was aged about 12 years and hence she was a child under the definition of Section 2(1)(d) of POCSO Act.

11 As far as commission of offence under Section 506(ii) IPC is concerned, the statement of the victim and her mother under Section 164 Cr.P.C. were recorded and marked as Ex.P1 and Ex.P3, in which, they have clearly deposed that the appellant at knife point committed rape on the victim, who was only 12 years old at the time of occurrence and threatened the victim not to reveal anyone. Subsequently they have also examined before the Court as P.Ws.1 and 2, which also clearly proved that the



Crl.A.No.1017 of 2022

appellant committed sexual assault on the victim and threatened her at knife point and the same are substantiated with the previous statement of the victim. Further in the complaint Ex.P2 itself, it is clearly stated that the appellant having knife on his hand at the time of committing the offence. Therefore, prosecution has proved the charge under Section 506(ii) IPC.

12 Coming to commission of offence under the POCSO Act, the victim has clearly deposed that when she went to the cattle shed to feed the cattle, the appellant came from the hidden place and committed rape on her. P.W.15, the Doctor, who examined the victim girl has even though stated that there is no external or internal injuries found on the body of the victim, however she has stated that hymen not intact and the victim was subjected to sexual intercourse. Ex.P14 copy of the Accident Register shows the history of the case as the victim was brought by her mother with the allegation of sexual assault by a known person. Ex.P15 is the Medical report of the victim, in which it is stated that hymen not intact and there is possibility of sexual intercourse. Ex.P16 is the Discharge Summary, in which it is stated that the victim was brought by her mother for the alleged



Crl.A.No.1017 of 2022

offence of sexual assault by a known person. Therefore from the medical evidence it is proved that the victim was subjected to penetrative sexual assault and the evidence of the victim P.W.1 and mother of the victim P.W.2 proved that the appellant is the one who committed the said offence.

13 Even though, the appellant took a defence that the mother of the victim could not be the eye witness and her evidence cannot be relied upon and further she demanded Rs.5.00 lakhs and since the appellant refused the same, P.W.2 foisted false case against the appellant, but the fact remains that the victim has clearly deposed that the appellant while committing the offence of rape, her mother opened the door and when she entered into the room the appellant pushed her and ran away from the place. P.W.2 mother of the victim has also reiterated the same, which corroborates with the evidence of the victim girl. Further the appellant has not proved the defence by examining any witness or by examining himself. The contradictions pointed out by the learned counsel are not material contradiction, which would go to the root of the case of the prosecution and mere defect on the side of the prosecution is not the ground to disbelieve the



Crl.A.No.1017 of 2022

evidence of the victim child.

WEB COPY

14 As far as the offence under the SC/ST Act is concerned, prosecution has marked community certificate of the victim as Ex.P22, which proves that the victim belongs to suppressed community. P.W.21 the Sub Collector, who issued the community certificate Ex.P22 has also been examined and he has spoken about the issuance of Ex.P22. Further Ex.P11 is the community certificate of the accused, which shows that the appellant/accused is not belong to the SC/ST community. P.W.12, the Regional Joint Tahsildar, has spoken about the issuance of Ex.P11. Therefore prosecution has proved that the victim is member of Scheduled Caste community and the appellant/accused is non member of Scheduled Caste community. Hence the offence under Section 3(1)(w)(i) and 3(2)(va)(v) of SCT/ST Prevention of Atrocities) Act, 2016 is also proved.



Crl.A.No.1017 of 2022

15 In fine, this Court come to the conclusion that there is no merit

in the appeal and there is no sound reason to interfere with the judgment of conviction and sentence. Accordingly, this criminal appeal is dismissed. The trial Court is directed to secure the appellant/accused to serve remaining period of imprisonment, if any.

11.11.2022

Index : Yes/No
cgi

To

1. The Sessions Judge, Fast Track Mahila Court, Dharmapuri.
2. The Deputy Superintendent of Police, Pennagaram Taluk, Dharmapuri District.
3. The Inspector of Police, All Women Police Station, Pennagaram, Dharmapuri District.
4. The Public Prosecutor, High Court of Madras.



WEB COPY



Crl.A.No.1017 of 2022

P.VELMURUGAN, J.,

cgi

Crl.A.No.1017 of 2022

11.11.2022