



CRL A No.608 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2022

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Appeal No.608 of 2021

M.Gokula Kannan

... Appellant

Vs.

State by

Inspector of Police

W.18, All Women Police Station,

MKB Nagar, Chennai.

(P6 Kodungaiyur PS Crime.No.1489/2015)

... Respondent

Prayer : Criminal Appeal filed under Sections 374(2) of Criminal Procedure Code by the appellant praying to set aside the conviction and sentence and fine imposed on him in S.C.No.280 of 2017 on 10th August 2021 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai.

For Petitioner : Mr.J.Selvaraja

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor



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JUDGMENT

This Criminal Appeal has been filed seeking to set aside the Judgment of conviction and sentence and fine imposed on the appellant in S.C.No.280 of 2017 dated 10.08.2021 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai.

2.The respondent police registered the case against the appellant in Crime No.1489 of 2015 for offence punishable under Section 4 of Protection of Children from Sexual Offences Act, 2012 @ into Section Section 6 of Protection of Children from Sexual Offences Act, 2012 and 313 IPC. After completing the investigation, the respondent police laid charge sheet before the Mahila Cum Children Court in S.C.No.280 of 2017 for the offence punishable under Section 6 of Protection of Children from Sexual Offences Act, 2012 (herein after referred as POCSO Act, 2012) and 313 of IPC. During pendency of the case, on constitution of the Special Court, the case was transferred to the Special Court for Exclusive Trial of Cases under POCSO Act, Chennai. The learned Sessions Judge, after completing the formalities, framed the charges against the appellant



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for the offence punishable under Section 6 of POCSO Act, 2012 and Section 313 of IPC.

3. After framing the charges, in order to prove the case of the prosecution during trial, totally 12 witnesses were examined as P.W.1 to P.W.12 and 17 documentary evidences were marked as Exs.P.1 to P17 and one Court document was marked as Ex-C.1.

4. After completing the examination of the prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the appellant/accused by questioning under Section 313 Cr.P.C. However, the appellant/accused denied the same as false and pleaded not guilty. On the side of the defence, the accused was examined as D.W.1 and on both sides no material object was exhibited.

5. On conclusion of trial and after hearing the arguments advanced on either side and also considering the materials, the Special Court not



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found the appellant guilty for the offence under Section 313 of IPC.

However, found him guilty for the offence under Section 6 of Protection of Children from Sexual Offences Act, 2012 and convicted and sentenced to undergo 10 years rigorous imprisonment and fine of Rs.10,000/- in default to undergo three months simple imprisonment for the said offence. Challenging the Judgment of conviction and sentence, the appellant has filed this present appeal before this Court.

6. The case of the prosecution is that prior to 21.12.2015, while the victim child aged about 16 years was alone at her home, the appellant being a neighbor got acquaintance with her. Thereafter, one day, when the victim child was alone at home, the appellant entered into her house under the pretext of fixing the cable connection and as against her wish committed penetrative sexual assault on her. Subsequently, he repeated the said act for several times by threatening her not to disclose the same to anybody. Subsequently, the victim child became pregnant and when it came to the knowledge of her family members, on 04.09.2015, the appellant tied Thali and married the victim child at a Temple at



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Kannadasan Nagar and took her to his uncle's house at Siruvapuri and lived with her for two months. Thereafter, under the pretext that the womb has not grown well, as against the willingness and without the consent of the victim child, terminated the pregnancy and then on 06.11.2015, brought the victim child and left her in the street near her parents' house on the eve of Deepavali and thereafter, never came back to take the victim child. Hence, the complaint.

7. The learned counsel for the appellant would submit that the appellant and the victim girl had love affair and subsequently, they got married with the blessings of their parents of the victim girl and the elders of their family and they were living happily. If at all the marriage had taken place without the knowledge of the parents of the victim girl, the family members of the appellant and the victim girl could not have visited their house for their first year Deepavali festival which would prove that the marriage between the victim girl and the appellant took place with their blessings. Even in the statement recorded by the police under Section 161 Cr.P.C., the victim girl/P.W.2 has stated that the appellant induced her to



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love him and marry him and after becoming pregnant, aborted the foetus and now refused to live with her which would clearly prove that there was no forcible sex and the only grievance of the victim girl was that the appellant refused to live with her and therefore, she improvised the allegations with a sole intention to book the appellant under grave sections. He would further submit that since the appellant married the victim girl with the blessings of their parents and the elders of their family, no offence would be made out against the appellant and that the trial Court failed to appreciate the same and wrongly convicted the appellant which warrants interference of this Court.

8. The learned Additional Public Prosecutor appearing for the respondent police would submit that the birth certificate of the victim girl was marked as Ex.P.2 and as per Ex.P.2, the date of birth of the victim is 11.03.1999. The incidents have taken place during 2015 and therefore, at the time of incidents, the victim was aged only about 16 years. Therefore, the victim was a child under the definition of 2(1)(d) of POCSO Act at the time of incidents. He would submit that the victim child herself has stated



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that the appellant forcibly had sexual intercourse with her for several times. Even in the statement recorded by the Magistrate under Section 164 Cr.P.C., she has clearly narrated the commission of offence by the appellant. Further, when the victim child was examined as P.W.2, she has clearly deposed that the appellant is a known person, residing besides her house and she knows him from her childhood and while she was studying in 10th Std., one day she was alone in her house. At that time, the appellant entered into her house under the guise of fixing Cable connection and bolted the door from inside the house and forcibly had sexual intercourse with her. She has further stated that the appellant had threatened her not to reveal the same to anybody or otherwise he would upload her videos in the social media and therefore, she did not reveal the same to anybody and in that manner, the appellant had sexual intercourse with her for 4 to 5 times due to which, she became pregnant. When it came to the knowledge of the parents of the victim child, the appellant has tied Thali to the victim child in a Temple, in the presence of both of their parents and relatives. He would further submit that the father of the victim child was examined as P.W.1 and the mother of the victim child was examined as P.W.3 and they



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have spoken about how they came to know that the victim child was pregnant and under what circumstances the marriage between the victim girl and the appellant took place. They have also spoken about the appellant aborting the foetus of the victim girl in a private hospital and abandoning the victim child near their house during Deepavali festival. Therefore, the father of the victim child lodged the complaint and subsequently, the victim child was produced before the Magistrate who recorded her statement under Section 164 Cr.P.C. wherein also, the victim child has clearly stated the offence committed by the appellant. Further, the victim child was produced before the Doctor/P.W.9 for medical examination and the doctor has clearly deposed that the during examination, the victim child told her that her neighbour had sexual intercourse with her for several times and subsequently on 04.09.2015, she married him and when she was four months pregnant, her pregnancy was terminated on 05.10.2016 in a Private Hospital at Kundrathur. Further she has given opinion that the hymen of the victim child was not intact and that the victim child might have been subjected to sexual intercourse for several times. Since the miscarriage of the foetus was not proved by the



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prosecution with appropriate evidence, the learned Sessions Judge not found the appellant guilty for the said offence. However, through the evidence of P.W.2/victim child, P.W.1/father of the victim child, P.W.3/mother of the victim child, P.W.9/doctor who conducted medical examination on the victim child and also from Ex.P.2/birth certificate of the victim child, Ex.P.3/statement of the victim child recorded under Section 164 Cr.P.C., Ex.P.6/potential test report of the appellant, Exs.P.7, P8, P9 and P.10/Medical Certificates of the victim girl and Ex.P.11/opinion of the doctor/P.W.9, the prosecution has proved its case that the victim was a child at the time of occurrence and the appellant has committed forcible sexual intercourse with the victim child for more than once. Therefore, it falls under Section 5(l) of POCSO Act which is aggravated penetrative sexual assault, punishable under Section 6 of the Act. Hence, the trial Court rightly appreciated the materials evidence and convicted the offence and there is no merit in the revision and the appeal and the appeal is liable to be dismissed.



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9. Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and perused the materials available on record.

10. Since, the appellate Court is the final Court of fact finding, it has to re-appreciate the evidence independently and to give its findings. Accordingly, this Court gone through the entire materials and Judgment of the trial Court and appreciated the entire evidence independently and gives its finding.

11. In order to substantiate the charges, on the side of the prosecution, as many as 12 witnesses were examined out of which, the victim was examined as P.W.2.

12. The victim girl/P.W.2 in her evidence has clearly narrated the entire incidents that the appellant is residing besides her house and she knows him from her childhood and that she is a drop out of 11th Std. When she was studying 10th Std., one day when she was alone in her house, the



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appellant entered into her house under the guise of fixing Cable connection and bolted the door from inside the house and forcibly had sexual intercourse with her. Even though she resisted, she could not succeed her attempt. She has further stated that the appellant had threatened her not to reveal the same to anybody or otherwise, he would upload her videos in the social media and therefore, she did not reveal the same to anybody and in that manner, the appellant had sexual intercourse with her for 4 to 5 times. Subsequently, she fell ill and therefore, she went to a Health Centre wherein, her pregnancy was confirmed and thereafter, she revealed everything to her parents. Subsequently, the appellant tied Thali to her in the presence of both of their parents and thereafter, the appellant taken the victim girl to his relatives house and stayed there for two months and thereafter, he taken her to hospital and aborted the foetus and during Deepavali festival, the appellant left her in the street near her parents' house and did not return back.

13 P.W.1 is the father of the victim child and he has stated that on 04.09.2015, his daughter/victim child was not well and hence, he had



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taken her to hospital wherein, he was informed that his daughter/victim child was pregnant. Thereafter, when they enquired, the victim child had informed that the appellant is the reason for her pregnancy. Hence, the relatives of the victim girl spoken to the parents of the appellant for which, the parents of the appellant requested not to go to police and the appellant would marry the victim child and on the same day i.e. 04.09.2015, the appellant tied Thali to the victim child in a Temple and taken her to his uncle's house at Siruvapuri where they stayed for two months. Subsequently, the appellant taken the victim child to a hospital at Tamparam and aborted her pregnancy. Thereafter, on 06.11.2015, during Deepavali festival, he brought the victim child along with his uncle and aunt and left them near the house of the victim child and thereafter, did not return to take the victim child back to his house. Hence, the lodged the complaint in the police station.

14. P.W.3 is the mother of the victim child and she has also spoken about the incidents what she heard from her daughter and the subsequent marriage between the victim and the appellant and also about the



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termination of pregnancy by the appellant and leaving the victim child near her house and not returning to take the victim child back to his house.

15. Though P.W.1 and P.W.3 are hearsay witnesses, they have clearly stated that when the victim child was taken to hospital, they came to know that the victim child was pregnant and when they enquired her, she has told them that the appellant is the cause for the same. P.W.4 and P.W.5 are neighbours and they are also hearsay witnesses and that they have spoken about hearing the news from P.W.1/father of the victim child.

16. P.W.6 is the doctor who is alleged to have aborted the foetus of the victim child. She has stated that as per her Out Patients Register, on 01.10.2015, she has examined the victim child as out patient and she has further stated that she does not know as to what treatment was given to her since, her prescription was not produced to her.

17. P.W.8 is the doctor who conducted potential test on the appellant and the potential test report was marked as Ex.P.6.



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18. P.W.9 is the doctor who conducted medical examination on the victim child and she has spoken that on 05.01.2016, the victim child who was then aged about 17 years, was brought to her hospital. At that time the victim child told her that her neighbour had sexual intercourse with her for several times and subsequently on 04.09.2015, she married him and when she was four months pregnant, her pregnancy was terminated on 05.10.2016 in a Private Hospital at Kundrathur. The Doctor has further stated that the hymen of the victim child was not intact and she has opined that the victim child might have been subjected to sexual intercourse for several times.

19. Ex.P.2 is birth certificate of the victim child in which the date of birth of the victim is mentioned as 11.03.1999 and the occurrences alleged to have taken place in the year 2015. Therefore, the age of the victim was about 16 years at the time of occurrences and therefore, she was a child under the definition of Section 2(1)(d) of POCSO Act at the time of occurrences.



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20. The victim child was also produced before the Magistrate for recording statement and the statement recorded under Section 164 Cr.P.C was marked as Ex.P.3 in which, the victim child has clearly stated that she was subjected to forcible sexual intercourse by the appellant several times and the appellant had also threatened her not to reveal the same to anyone or otherwise, he would show her videos to everyone.

21. Therefore, from the evidence of P.W.1/father of the victim child, P.W.2/victim child, P.W.3/mother of the victim child, P.W.9/doctor who conducted medical examination on the victim girl and from Ex.P.1/complaint, Ex.P.2/birth certificate of the victim child, Ex.P.3/ statement of the victim child recorded by the Magistrate under Section 164 Cr.P.C., Exs.P.7, P8, P9 and P10/certificates to show that the victim child was subjected to medical examination and also from Ex.P.11/ the opinion of the doctor/Ex.P.9, the prosecution proved its case that when the victim was a child at the time of occurrence and that she was subjected to penetrative sexual assault by the appellant.



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22. The learned counsel for the appellant taken the ground that the appellant subsequently, realized his mistake and married the victim girl which clearly proves that when the victim was a child, the appellant has had sexual intercourse with her for several occasions. Therefore, the appellant has committed the offence which falls under Section 5(l) of POCSO Act punishable under Section 6 of POCSO Act. Even assuming that the victim child had given consent to the appellant for the physical relationship, the consent is immaterial since, the victim was a child at the time of occurrence.

23. The trial Court after appreciating the entire evidence, convicted the appellant for the offence punishable under Section 6 of POCSO Act and awarded the minimum sentence as prescribed for the offence under Section 6 of POCSO Act, prior to the amendment in the year 2019. Though the trial Court considered the fact that the appellant subsequently married the victim, once committing an offence under the POCSO Act and subsequently marrying the victim child by the accused may not be a



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ground to absolve the criminal offence and therefore, the trial Court considering the mitigating circumstances, rightly awarded the minimum sentence of 10 years. This Court does not find any ground to interfere with the Judgment of the trial Court and there is no merit the appeal and the appeal is liable to be dismissed.

24. Accordingly, this Criminal Appeal is dismissed. The respondent police is directed to secure the appellant to undergo the remaining period of sentence if any.

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To

1. The Sessions Judge, Special Court for Exclusive Trial of Cases
under POCSO Act, Chennai.
2. Inspector of Police
W.18, All Women Police Station,
MKB Nagar, Chennai.
3. The Public Prosecutor Officer, High Court, Madras
4. The Section Officer, Criminal Section, High Court, Madras.

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