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Crl.A.No.682 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2022

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.No.682 of 2017

Vincent

...Appellant

Vs.

State represented by
The Inspector of Police,
All Women Police Station,
Thudiyalur,
Coimbatore.
(Crime No.9 of 2014)

...Respondent

PRAYER: Criminal Appeal is filed under Section 374 (2) the Code of Criminal Procedure, to call for the entire records and set aside the order passed in Special C.C.No.59 of 2014 dated 13.03.2017 on the file of the Sessions Judge, Magalir Neethimantram (Mahila Court) Coimbatore dated 13.03.2017.

For Appellant : Mr.V.Perarasu
For Respondent : Mr.S.Udaya Kumar(Criminal side)
Government Advocate

JUDGMENT

Heard the learned counsel for the appellant and the learned
Government Advocate (Criminal side) appearing for the respondent/Police.



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2.It is a case where the appellant/accused was charged for the offence under Section 5 (j) (ii), (l) r/w 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 506 (Part II) I.P.C. On considering the evidence of the prosecution witnesses P.W.1 to P.W.13 and Exhibits P1 to P9, the Trial Court found the charge proved and sentenced the accused to undergo twelve years Rigorous Imprisonment and Rs.5000/- fine in default, six months Simple Imprisonment for offence under Section 5 (j) (ii), (l) r/w 6 of the Protection of Children from Sexual Offences Act, 2012. As far as the charge under Section 506 (Part II) I.P.C., the Trial Court acquitted the accused.

3.The learned counsel appearing for the appellant/accused submitted that the First Information Report came to be lodged on 17.02.2014 after six months of the alleged occurrence. Since the accused was already a married person having two children, the belated complaint was given only to harass him with an ulterior motive. At the time of complaint, the girl was six



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months pregnant and she was with her grandfather. Her father and grandmother were examined as P.W.8 and P.W.4. For all these six months, they did not think it fit to give any complaint. The trial Court has found that there is no incriminating materials against the accused, acquitted him for charge under Section 506 (Part II) I.P.C. It is palpably clear that there was no forcible sexual assault or intercourse as alleged by the prosecution. The trial Court relied upon the DNA report Ex.P7 and the evidence of P.W.10 Dr.Devilakshmi and P.W.12 D.Thilaga, which are not conclusive proof for paternity.

4.The learned counsel further submitted that the minor girl/P.W.3 had deposed that she has voluntarily went to the house of the accused and moved with him and she was not inclined even to give complaint. While so, the trial Court ought not to have believed the belated complaint and the evidence of Ex.P7 DNA report for convicting the accused.

5.The learned Government Advocate (Criminal side) appearing for the respondent/Police drew the attention of this Court to the evidence of P.W.3, the victim girl which has been substantially extracted and discussed by the



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trial Court. He further submitted that, in the light of the evidence of the victim girl and the evidence of P.W.10 and P.W.12, the Doctors who have given Ex.P4 Accident Register report and Ex.P7 DNA report, the prosecution has clearly proved its case beyond reasonable doubt and accused is the cause for the pregnancy and child birth of the minor child. While so, the offence under Section 5 (j) (ii), (l) r/w 6 of Protection of Children from Sexual Offences Act, 2012 squarely attracts and there is no error in the finding of the trial Court. This Court after giving its consideration to the rival submissions, finds that the victim girl is the daughter of a mill labourer. The accused, aged 40 years, has befriended the victim and impregnated her. At the time of complaint, the victim was around 15 years old. Ex.P5, the bonafide certificate issued by the School reveals that the date of birth of the victim is 09.05.1999. After noticing the physical change of the victim girl, she has been taken to P.W.10 Doctor who has examined her and found that she is twenty four weeks pregnant. After the child birth, DNA test has been conducted and it has been ascertained through DNA test that the accused is the biological father of the child born to the victim. Ex.P7 DNA report and the evidence of P.W.12 the Assistant Director shows the conclusive proof that fifteen years old girl was



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impregnated by the accused. This crime squarely attracts Section 5 (j) (ii),

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6.As far as the sentence is concerned, the learned counsel for the appellant/accused submits that the appellant is having two children and now they are nearly fifteen years old and some leniency may be shown on the sentence. This Court finds that prior to the Amendment of Section 6 of the POCSO Act, which came into effect from 16.08.2019, the term of imprisonment prescribed for the offence of aggravated penetrative sexual assault, was not less than ten years, but it may extend to imprisonment for life and the accused shall also be liable to pay fine. After the amendment, the minimum sentence prescribed now is twenty years. In this case, the alleged occurrence had taken place prior to the amendment. At that point of time, the minimum sentence for the said offence was ten years. Taking note of that fact, the sentence is modified to ten years Rigorous Imprisonment and fine of Rs.5,000/- in default, he shall undergo six months Simple



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Imprisonment. Except the said modification, all other portion of the

judgment of the trial Court in Special C.C.No.59 of 2014 dated 13.03.2017

is confirmed. Since the appellant/accused is in jail pending this Criminal Appeal, he shall undergo the remaining period of sentence as modified above. The period of imprisonment already underdone by him shall be set-off under Section 428 Cr.P.C.

7.Resultantly, Criminal Appeal in Crl.A.No.682 of 2017 is partly allowed with above directions.

08.07.2022

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Speaking Order/ Non Speaking Order

Index: Yes/ No



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To

1.The Sessions Judge,
Magalir Neethimantram (Mahila Court)
Coimbatore.

2.The Inspector of Police,
All Women Police Station,
Thudiyalur,
Coimbatore.
(Crime No.9 of 2014)

3.The Public Prosecutor,
High Court of Madras.



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Dr.G.JAYACHANDRAN,J.

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