



Crl.A.No.722 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.10.2022

CORAM:

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

Crl.A.No.722 of 2021

Anandakumar

...Appellant

Vs.

The State represented by
The Inspector of Police,
Periyanaickenpalayam Police Station,
Coimbatore.

...Respondent

This Criminal Appeal is filed under Section 374(2) of Cr.P.C. to set aside the judgment of conviction and sentence dated 20.10.2021 made in Spl.C.C.No.20 of 2019 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore.

For Appellant : Mr.J.N.Naresh Kumar
Legal Aid Counsel

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor



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JUDGMENT

The criminal appeal has been filed against the judgment of conviction and sentence dated 20.10.2021 made in Spl.C.C.No.20 of 2019 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore.

2 The respondent police registered a case in Cr.No.194 of 2017 against the appellant for the offence under Sections 366 IPC and Section 3(a) punishable under Section 4 of Protection of Children from Sexual Offences Act, 2012 (for brevity “the POCSO Act”). After completing investigation, the respondent police laid a charge sheet before the Mahlila Court, Coimbatore, which was taken on file in Spl.C.C.No.17 of 2018 and charges were framed against the appellant/accused for the offence under Sections 366 IPC and Section 3(a) punishable under Section 4 of the POCSO Act. Subsequently, after formation of the Special Court for POCSO Act Cases and as per the orders, the case was transferred to Special Court for Exclusive Trial of Cases



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under POCSO Act, Coimbatore, and renumbered as Spl.C.C.No.20 of 2019.

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3 Before the trial Court, in order to prove the case of the prosecution, as many as 13 witnesses were examined as P.Ws.1 to 13 and Exs.P1 to P15 were marked. After completing examination of prosecution witnesses, when 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, D.W.1 was examined and one letter was marked as Ex.D1 and no material object was exhibited. Chariot

4 The learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore, on completion of trial and hearing arguments advanced on either side, by judgment dated 20.10.2021 convicted the appellant/accused and sentenced him to undergo rigorous imprisonment for a period of five years and to pay fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for a further period of one year for the offence under Section 366 of IPC and to undergo rigorous imprisonment for a



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period of 20 years and to pay a fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for a further period of two years for the offence under Section 3(a) punishable under Section 4 of the POCSO Act. Aggrieved against the said judgment of conviction and sentence, the accused has preferred the present criminal appeal before this Court.

5 The learned legal aid counsel for the appellant/accused would submit that there are contradictions in the evidence of P.W.1 father of the victim girl regarding writing of complaint. During chief examination, P.W.1 stated that he himself written the complaint, but on cross examination, P.W.1 stated that he is an illiterate and he did not aware of author of the complaint. It is an admitted fact that on the date of occurrence, the victim went to 'car festival' along with her friends and came back late night and it is not possible for the accused to commit such offence as alleged by the prosecution.

5.1 Further Ex.D1 is the letter written by the victim admitting that



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the P.W.1 falsely lodged the complaint and she is not a reason for the incarceration of the appellant and when the victim was recalled by the Court to examine about D1, there also she admitted the recitals of D1. The trial Court has failed to note the above fact and erroneously convicted the appellant. There are contradictions in the evidence of P.W.6, who is the neighbour of the appellant with regard to the arrest, which shows that there is no such occurrence taken place as alleged by the prosecution.

5.2 P.W.7 is the Doctor, who examined the victim clinically, had opined that there is no evidence for the forceful intercourse and even as per the evidence of P.W.2/victim also there is no forceful sexual intercourse. Hence medical evidence does not support the case of the prosecution.

5.3 P.W.9, who registered the FIR had not carried out the enquiry in a proper manner and handed over the investigation to P.W.10. The evidence of P.W.10 proves that there is no clearance about the arrest of the appellant. On the side of the accused, his wife was examined as D.W.1 and from her evidence it is clear that the accused did not commit any offence as alleged by



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the prosecution and accused has proved his innocence. D.W.1 has spoken about receiving of letter Ex.D1 written by the victim.

5.4 Prosecution has not proved its case beyond all reasonable doubts and the trial Court has failed to appreciate the evidence of D.W.1 and Ex.D1 and also failed to note the discrepancies in the evidence of the prosecution witnesses and erroneously convicted the appellant, which warrants interference of this Court.

6 The learned Additional Public Prosecutor appearing for the respondent police would submit that the victim was aged about 16 years at the time of occurrence and appellant/accused enticed and abducted her from her parents and had forceful sexual intercourse by making false promise that he would marry her. The statement of the victim was also recorded under Section 164 Cr.P.C., in which she has clearly stated that the accused had intercourse with the victim by making false promise that he would marry her. Further, when the victim was examined as P.W.2 before the Trial Court, where she has clearly deposed that the appellant/accused on 09.05.2017 took



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the victim and forcefully had sexual intercourse with her by making false promise that he would marry her.

6.1 The trial Court after considering the evidence of the victim and the prosecution witnesses, has rightly convicted the appellant/accused for the offence under Section 366 IPC and Section 3(a) punishable under Section 4 of the POCSO Act and imposed sentence, which does not call for any interference of this Court.

7 Heard the learned legal aid counsel appearing for the appellant and the learned Additional Public Prosecutor for the respondent police and perused the materials available on record.

8 It is the case of the prosecution that the appellant/accused, who is a married man and having two children, on 09.05.2017 abducted the victim, who was 16 years old, and went to a village near Uthukuli, where his uncle one Muniyappan's house was situated and stayed there in front portion of the house, since the door was locked, for a whole night and by enticing the victim



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using sweet quoted words and promising to marry her, had sexual intercourse with her against her wish and hence the present case was registered against the appellant for the offence under Section 366 IPC and Section 3(a) punishable under Section 4 of the POCSO Act.

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 In order to substantiate the charges framed against the appellant/accused, P.Ws.1 to 13 were examined, out of which, victim was examined as P.W.2. A perusal of the deposition of P.W.2 clearly shows that she narrated the entire incidents and the act of the appellant/accused. Father and mother of the victim were examined as P.W.1 and P.W.3 and P.W.5 is brother of the victim. Even though they are not eye witnesses, they have corroborated the evidence of the victim girl P.W.2 to the effect that she was not in the house for some time. As far as age proof is concerned, prosecution



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has marked Ex.P2 copy of Birth Certificate of the victim, in which date of birth of the victim is mentioned as 25.12.2001 and the date of occurrence is 09.05.2017 and at the time of occurrence the victim girl was aged about 16 years and hence she is a child under the definition of Section 2(1)(d) of POCSO Act. There is no dispute regarding the age of the victim and no contra evidence was produced by the defence and hence prosecution has proved that the victim was a child at the time of occurrence.

11 As far as the commission of offence is concerned, P.W.7 the Doctor, who examined the victim clinically in her evidence deposed that there is old tear in the hymen at 5'O clock and 9'O clock position. Even though, in Exs.P9 and P10, it is stated that there is no external injuries, from Ex.P9 it is clear that there was tear in the hymen, which proves that there was penetrative sexual assault. It is contended by the learned counsel that medical records not supported the case of the prosecution and there was no injury on the body of the victim to prove the forceful sexual intercourse, but a careful perusal of the evidence of the Doctor P.W.7 and Ex.P9, shows that there was old tear in the hymen, which proves that the victim was subjected penetrative



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sexual assault.

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12 Even assuming that the victim went along with the appellant voluntarily and with consent of the victim only the appellant had intercourse with her, since the victim was 16 years at the time of occurrence and has not completed the age of 18 years and she is a child under the definition of Section 2(1)(d) of POCSO Act, the consent is immaterial and the language of consent, forceful and voluntarily are all unknown to the POCSO Act. Further it is to be noted that the appellant being a married man and having two children has committed the offence under the POCSO Act.

13 Even though, medical evidence shows that there is no forceful and recent sexual assault, as already stated from Exs.P4, P9 and P10 and also evidence of P.Ws.2 and 7, it is proved that the victim was subjected to penetrative sexual assault and hence prosecution has proved the foundational facts that the appellant committed the penetrative sexual assault on the victim.

14 Once it is proved that the victim was a child at the time of



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occurrence and she was subjected to penetrative sexual assault and further the appellant is the one who committed the said offence, then foundational facts of commission of offence is proved and presumption under Section 29 and 30 would come into play and it is for the accused to rebut the presumption and prove his innocence. Further it is proved that the appellant took the victim from the custody of the lawful guardian without their consent for the purpose of illegal intercourse and hence he has committed offence under Section 366 of IPC.

15 In this case, on a combined reading of evidence of prosecution witnesses viz. P.Ws.1, 2 and 7 and Exs.P4, P9 and Ex.P10, this Court is of the opinion that prosecution has proved the charges beyond reasonable doubt and the accused has not rebutted the presumption in the manner known to law.

16 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



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trial Court is directed to secure the appellant/accused to serve remaining period of imprisonment, if any.

17 The legal aid counsel, who appeared and argued the matter on behalf of the appellant/accused is entitled to the remuneration as per the rules.

28.10.2022

Index : Yes/No
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To

1. The Sessions Judge,
Special Court for Exclusive Trial of
Cases under POCSO Act, Coimbatore.
2. The Inspector of Police,
Periyanaickenpalayam Police Station,
Coimbatore.
3. The Public Prosecutor, High Court of Madras.

P.VELMURUGAN, J.,

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