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Crl.A.No.730 of 2018/17

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.11.2022

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.730 of 2018
and Crl.M.P.No.10234 of 2021

Purushothaman

... Appellant

Vs

The State represented by
The Inspector of Police,
Virudhachalam All Women Police Station,
Virudhachalam,
Cuddalore District.
(Cr.No.25 of 2017)

... Respondent

Prayer:- Criminal Appeal filed under Section 378 of Criminal Procedure Code, to set aside the conviction and sentence imposed in Spl.S.C.No.39 of 2018 dated 02.11.2018 on the file of the Mahila Court, Cuddalore.

For Appellant

: Ms.Sindhuza
For Mr.P.Vijendran

For Respondent

: Mr.A.Gopinath
Government Advocate (Crl.Side)



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JUDGMENT

This Criminal Appeal is directed as against the judgment dated 02.11.2018 passed in Spl.S.C.No.39 of 2018 by the learned Sessions Judge, Mahila Court, Cuddalore, thereby convicting the appellant for the offence under Sections 341, 366, 506(ii), 323 of IPC and Section 4 of Prevention of Children from Sexual Offences Act, 2012 (herein after referred to as “the POCSO Act”).

2. The case of the prosecution is that on 20.05.2016, when the victim minor girl was returning to home from the agricultural field at about 7.00 p.m., the appellant/accused already known person to the victim wrongly restrained her, gagged her with a cloth, dragged her to the nearby sugarcane field and committed penetrative sexual assault on her under threat. Thereafter, he threatened the victim girl not to reveal it to anybody and if she revealed, he would stab her with a knife and murder her. When the victim girl shouted, the accused slapped her on her cheeks. It was reported to her mother and the same was reported to the village panchayat, in which the accused agreed to marry the victim girl and later



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he refused to live with her. Therefore, the victim girl lodged complaint on 19.11.2017.

3. On receipt of the complaint, the respondent registered FIR in Crime No.25 of 2017 for the offences under Section 506(1) of IPC and Section 3 & 4 of the POCSO Act. After completion of investigation, the respondent filed final report and the same has been taken cognizance in Spl.S.C.No.25 of 2017 for the offences under Sections 341, 366, 506(ii), 323 of IPC and Section 4 of the POCSO Act.

4. In order to bring the charges to home, the prosecution examined P.W.1 to P.W.10 and marked documents in Ex.P.1 to Ex.P.8. On the side of the appellant/accused, he examined D.W.1 to D.W.4 and also marked documents in Ex.D.1 series. On a perusal of oral and documentary evidences, the trial found him guilty for the offences under Sections 341, 366, 506(ii), 323 of IPC and Section 4 of POCSO Act and sentenced him as follows :-



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Sl.No	Conviction	Sentence
1.	Section 341 of IPC	To undergo simple imprisonment for one month and to pay a fine of Rs.500/- in default to undergo simple imprisonment for further period of seven days.
2.	Section 366 of IPC	To undergo rigorous imprisonment for seven years and to pay a fine of Rs.2,500/- in default to undergo simple imprisonment for further period of one year.
3.	Section 506(ii) of IPC	To undergo rigorous imprisonment for three years and to pay a fine of Rs.7,000/- in default to undergo simple imprisonment for further period of one year.
4.	Section 323 of IPC	To undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for further period of three months.
5.	Section 4 of POCSO Act	To undergo rigorous imprisonment for fourteen years and to pay a fine of Rs.50,000/- in default to undergo simple imprisonment for further period of two years.
The sentences were ordered to run concurrently.		

Aggrieved by the same, the present appeal.

5. The learned counsel appearing for the appellant submitted that the prosecution failed to prove the age of the victim, since the



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prosecution did not file any birth certificate produced by the victim. The Head Master only issued birth certificate which was marked as Ex.P.8. Admittedly, birth certificate was not available and no proof for date of birth was produced at the time of admitting her in school. Therefore, the victim is not at all child as defined under Section 2(1)(d) of the POCSO Act, at the time of occurrence.

5.1. She further submitted that the alleged occurrence had happened on 20.05.2016, whereas the complaint lodged only on 19.11.2017, with the delay of 18 months. The prosecution failed to explain the inordinate delay in lodgement of the complaint. It is fatal to the case of the prosecution. The victim deposed that she got married the appellant/accused and she was willing party to the marriage and due to separation after 1½ years of marriage, the present complaint has been foisted as against the appellant. There was no medical evidence to show that there was sexual assault by the accused. Therefore, there was contradiction in the deposition of P.W.1. Therefore, her evidence cannot be taken into account, since it is not creditable one and not trust worthy.



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5.2. The learned counsel appearing for the appellant also produced a copy of FIR in Crime No.74 of 2018 registered by the Karuveppilankurichi Police Station, Cuddalore, for the offences under Sections 341, 294(6), 324 & 307 of IPC on the complaint lodged by one Thenmozhi. The said FIR was registered as against the appellant. In that FIR, the complainant viz., Themozhi made allegations that the complainant's brother-in-law one Chinnayettu fell in love with the victim and without knowing that, the appellant got married the victim. Even after their marriage, the victim had intimacy with the said Chinnayettu due to which, there was a dispute between the appellant and the said Chinnayettu.

5.3. The learned counsel appearing for the appellant further submitted that the above FIR shows the victim girl lost her virginity only due to the said Chinnayettu and not because of the appellant herein. She further submitted that though the said FIR registered within the district of Cuddalore, the respondent wantonly suppressed the said fact and failed



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to prove its case beyond any doubt. In support of her contention, she relied upon the judgement reported in **(2011) 2 SCC 385** in the case of ***Alamelu and anr Vs. Sekar and anr.***

6. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent police submitted that in order to prove the age of the victim the SSLC mark certificate was marked as Ex.P.1 through the victim. In support of the said SSLC mark certificate, the Head Master of the Government School has also issued certificate confirming the birth day of the victim which was marked as Ex.P.8.

6.1. Insofar as the delay is concerned, even according to the defence, the appellant got married the victim and thereafter he lived together with the victim. Only after knowing the fact that the victim already fell in love with one Chinnayettu and even after their marriage, she continued her love, the appellant left her in lurch. Therefore, admittedly when the victim was minor, the appellant committed penetrative sexual assault on her and before the panchayat, he agreed to



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marry her and lived together. However, after the period of some time, the appellant left her in lurch and hence the victim lodged the present complaint. Therefore, the victim properly explained the delay in lodgement of complaint. That apart in the case of penetrative sexual assault, the delay in lodgement of complaint is in-material. Therefore, the prosecution categorically proved its case beyond any doubt and the Court below rightly convicted the appellant and it doesn't warrant any interference from this Court. Hence, he prayed to dismiss the appeal.

7. Heard Ms.Sindhuza, learned counsel appearing for the appellant and Mr.A.Gopinath, learned Government Advocate (Crl. Side) appearing for the respondent/Police.

8. Admittedly, the victim was born on 21.01.2001. When the victim was returning to her home after finishing her agricultural cooly work on 20.05.2016 at about 7.00 pm., the appellant/accused waylaid the victim and wrongfully restrained her. Thereafter, he gagged her with cloth and dragged her to nearby sugarcane field and committed



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penetrative sexual assault under threat. He also threatened her with dire consequences, if she revealed to anybody. He also had slapped her on her cheeks. Immediately, it was informed to her mother, who was examined as P.W.2. It was informed to panchayathar and in the panchayat, the accused admitted his guilty and assured to marry the victim. Thereafter, he dragged the issue for more than year and thereafter he left her in lurch. Therefore, the victim girl lodged the present complaint. Hence, there was no delay in lodgement of complaint.

9. The victim was examined as P.W.1. She categorically deposed that after the occurrence she informed the same to her mother viz., P.W.2. Thereafter, they were enquired by the panchayathar. In the panchayat, the appellant assured that he would marry the victim. However, he failed to marry her and therefore, the complaint was lodged. The said complaint was marked as Ex.P.2. Though, in the cross-examination, she stated that she got married with the appellant and had taken photographs which were marked as Ex.D.1 series, thereafter the appellant left her in lurch and flew away. It clearly proves that only to



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escape from the clutches of law, the accused got married the minor victim and thereafter, he left her in lurch, thereby cheated her.

10. The victim mother was examined as P.W.2 and she also reiterated the deposition of P.W.1 and also corroborated the evidence of P.W.1. One of the panchayathars was examined as P.W.3 and he deposed that the occurrence was informed to him and thereafter there was a punchayat, in which the accused admitted his guilty and also assured to get marry with the victim. However, he dragged the issue and failed to marry the victim girl. Hence, she lodged the complaint.

11. In this regard, it is relevant to rely upon the judgement dated 04.08.2016 made in ***Crl.A.No.269 of 2016*** in the case of ***Subramani Vs. The State***, in which the Hon'ble Division Bench of this Court held as follows:-

“17. The Protection of Children from Sexual Offences Act, 2012, does not contain any specific procedure to be followed by the Court to ascertain the age of a child victim. Section 34 of the said Act deals with the procedure



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in case of commission of offence by child and determination of age of Special Court. Subsection 2 of the said provision states "if any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court, after specifying itself about the age of such person and it shall record in writing its reasons for such determination." Except stating so, 15 generally, there is no other guideline in the said provision as to how to determine the age of a child. Section 42-A of the said Act states "the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of inconsistency." From this provision, since it is clear that for determining the age of a child there is no procedure prescribed in the Act, the Court can very well follow the procedure as contemplated in the Juvenile Justice (Care and Protection of Children) Rules, 2007, wherein Rule 12 reads as follows:

"12. Procedure to be followed in determination of Age.- (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall



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determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The Court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the 16 Committee by seeking evidence by obtaining – (a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof; (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; (iii) the birth certificate given by a corporation or a municipal authority or a panchayat; (b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them,



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may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year. and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a) (i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law."

Following the above procedure, on a perusal of the evidences available on record, the SSLC certificate issued by the State Board of School Education, was marked as Ex.P.1. According to the said certificate, the date of birth of the victim is 21.01.2001. It is also supported by the certificate issued the Head Master, which was marked as Ex.P.8. Therefore, the prosecution proved that the victim was minor at the time of occurrence.

12. The learned counsel appearing for the appellant vehemently contended that there was a delay in lodgement of complaint. P.W.1 to P.W.4 categorically deposed that after the occurrence, there was a



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panchayat in which, the accused admitted his guilty and also agreed to marry the victim. However, he dragged the matter for 1½ years and therefore the victim lodged the complaint. Hence, all the witnesses properly explained the delay. In a rape case, the prosecutrix remains worried about her future. She remains in traumatic state of mind. The family of the victim generally shows reluctance to go to the police station because of society's attitude towards such a woman. It casts doubts and shame upon her rather than comfort and sympathise with her. In fact, after the occurrence, immediately the victim informed to P.W.2 and thereafter they were informed to the panchayathar. In the panchayat, the accused agreed to marry the victim. Thereafter, he failed to marry the victim and as such, there was no delay in the lodgement of complaint.

13. That apart, in the case of sexual offences, the criteria may be different altogether. As honour of the family is involved, its members have to decide whether to take the matter to the Court or not. In such a fact situation, near relations of the prosecutrix may take time as to what course of action should be adopted. Thus delay is bound to occur. Further



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the delay in lodging of complaint is concerned, the delay in a case of sexual assault cannot be equated with the cases of other offences.

14. As rightly observed by the trial Court, if the evidence of D.W.1 to D.W.4 taken in to account, the accused must have been convicted for the offences under Section 6 of the POCSO Act, since the accused had committed aggravated penetrative sexual assault on the victim for eight months. Further D.W.1 to D.W.4 deposed that the accused already married the victim and only because the accused left for job, the victim lodged the present complaint. If it is so, there is absolutely no impediment for him to live with the victim and there is no need to initiate the complaint. However, the accused only to escape from the clutches of law, examined them and failed to disprove the case of the prosecution.

15. The victim girl was examined by P.W.6, the doctor and she opined that the victim's hymen was not intact and there is possibility of sexual intercourse. She issued medical examination report which was



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marked as Ex.P.4 and it revealed that the accused had penetrative sexual assault on her under the pretext of marriage and thereafter, he left her in lurch. It seems that after the occurrence, there was a panchayat in which P.W.2, the mother of the victim agreed for a compromise and said compromise effected in terms of marriage between the victim and the accused. Before the panchayat, the marriage was hurriedly performed in a village temple and thereafter the accused left her in lurch.

16. It is seen that after penetrative sexual assault, though the accused got married the victim, it would not absolve the liability of the accused under Section 4 of the POCSO Act. In order to escape from the clutches of law, the accused hurriedly compromised the issue and got married the victim. Even assuming that the accused already married the victim, he would be punished for the offence under Section 9 of the Prohibition of Child Marriage Act. Therefore, the trial Court rightly convicted the appellant and it doesn't warrant any interference from this Court.



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17. Accordingly, the Criminal Appeal stands dismissed. The conviction and sentence imposed on the appellant by the judgment dated 02.11.2018 passed in Spl.S.C.No.39 of 2018 by the learned Sessions Judge, Mahila Court, Cuddalore, is hereby confirmed. Consequently, connected miscellaneous petition is closed.

24.11.2022

Index:Yes/No

Internet:Yes/No

Speaking/Non-speaking order

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To

1. The Sessions Judge,
Mahila Court, Cuddalore
2. The Inspector of Police,
Virudhachalam All Women Police Station,
Virudhachalam,
Cuddalore District.
3. The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.,

rts

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