



Crl. A(MD)No.156 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 31.10.2022

CORAM:

THE HONOURABLE Mrs.JUSTICE J.NISHA BANU

AND

THE HONOURABLE Mr. JUSTICE N.ANAND VENKATESH

Crl. A. (MD)No.156 of 2020

Karunanithi

.. Appellant

Vs.

State rep by
The Inspector of Police,
All Women Police Station,
Thilgar Thidal
Madurai District
(Crime No.21 of 2016)

.. Respondent/Complainant

Appeals filed under Section 374 of Criminal Procedure Code, against the judgment and order dated 31.01.2020 in S.S.C.No.44 of 2017 on the file of the Sessions Judge, Special Court for the Exclusive Trial of cases under POCSO Act, Madurai.

For Appellant

: Mr.C.Muthu Saravanan



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For Respondent

: Mr.A.Thiruvadikumar
Additional Public Prosecutor

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JUDGMENT

J.NISHA BANU
AND
N.ANAND VENKATESH

This criminal appeal has been filed challenging the judgment and order passed by the Sessions Judge, Special Court for exclusive trial of cases under POCSO Act in S.S.C.No.44 of 2017, dated 31.01.2020 convicting and sentencing the appellant in the following manner:

Provisions under which convicted	Sentence	Fine amount
5 j (II) r/w 6 of the Protection of Children from Sexual Offences Act [POCSO Act]	To undergo imprisonment for life	Rs.5,000/-, in default, to undergo rigorous imprisonment for six months
506(i) IPC	To undergo rigorous imprisonment for one year	Rs.2,000/-, in default to undergo two months rigorous imprisonment

2. The case of the prosecution is that the victim girl aged about 15 years was studying in the 9th standard. She attended the bible class in a



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Church and was returning back and at that point of time, the appellant told the victim girl that he has purchased the groceries from the ration shop as requested by her mother and asked the victim girl to come to his house. The victim girl, believing the appellant, went inside the house and the appellant is said to have pushed the victim girl on the cot, removed her clothes and committed penetrative sexual assault on the victim girl. The appellant also threatened the victim girl and warned not to disclose to anyone. The victim girl became pregnant and she did not reveal about this incident for nearly seven months. Ultimately, when the family members started putting pressure on the victim girl, the victim girl told them about the incident.

3. P.W.1, who is the father of the victim girl, gave a complaint (Ex.P1) before the All Women Police Station, Thilagar Thidal and an FIR [Ex.P9] came to be registered. The investigation was taken up by P.W.14 and on completion of the investigation, a final report was filed against the appellant.

4. The Court below, after serving the copies under Section 207 Cr.P.C.



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framed charges against the appellant for offences under Section 5(j) (II) read with Section 6 of the POCSO Act and Section 506(i) of IPC.

5. The prosecution examined P.W.1 to P.W.15 and marked Ex.P-1 to Ex.P14. The defence examined D.W.1. The incriminating materials were put to the appellant, when he was questioned under Section 313(i)(b) of Cr.P.C. and the appellant denied the same as false.

6. The Court below, after considering the facts and circumstances of the case and on appreciation of evidence, came to the conclusion that the prosecution has made out a case against the appellant beyond reasonable doubt and hence, convicted and sentenced the appellant in the manner stated supra. Aggrieved by the same, the present criminal appeal has been preferred before this Court.

7. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State.



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8. The evidence of the victim girl, who was examined as P.W.2, assumes lot of significance in this case. Even when the investigation was pending, the statement was recorded from the victim girl under Section 164(5) Cr.P.C. and the statement recorded has been marked as Ex.P8. The evidence of P.W.2 shows that she used to go to the Church every Sunday along with her family and attended the bible class. On the fateful day, the victim girl was not accompanied by her parents and she went alone and attended the bible class and was returning back. At that point of time, the appellant, who was aged about 66 years, had mislead the victim girl as if he has purchased groceries from the ration shop and asked the victim girl to come to the upstairs to take the groceries. The innocent victim girl believed him and went upstairs and at that point of time, the appellant pushed her on the cot and removed the undergarments of the victim girl and committed penetrative sexual assault on the victim girl. It is also seen from the evidence of P.W.2 that the appellant also exerted life threat against the victim girl, if she disclosed this incident to anyone.

9. The victim girl did not disclose this incident to anyone and it is



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further seen from the evidence of P.W.2 that the appellant had once again attempted to sexually assault the victim girl and luckily she escaped. The victim girl, who was hardly aged about 15 years, was too scared to tell her parents about this incident. However, as fate would have it, the victim girl became pregnant and she started showing the symptoms and when she was taken to the Doctor, they informed the parents that the victim girl was pregnant. Even though the incident had taken place much earlier, it came to light on 03.11.2016 and after much persuasion, the victim girl revealed about the incident only on 08.11.2016.

10. The above evidence of the victim girl has not been discredited in any manner.

11. The evidence of P.W.1, who is the father of the victim girl and P.W.3, who is the mother of the victim girl, shows that they became aware about the incident only on 08.11.2016 and thereafter, the complaint was lodged by P.W.1.



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12. The evidence of the victim girl is corroborated by P.W.10, who was the Doctor, who examined the victim girl and the medical certificate has been marked as Ex.P4 through P.W.10. The accused was also examined by P.W.11 and Ex.P5 medical certificate marked through this witness shows that the primary and secondary sexual characters were well developed and there is nothing to suggest that the accused is impotent or that he is not fit for having sexual intercourse.

13. The FTA card containing the blood samples of the accused, victim girl and the female child born to the victim girl was sent to P.W.13, who is the Deputy Director in the Regional Forensic Science Laboratory through a requisition letter of the Court marked as Ex.P6. The DNA report was marked as Ex.P7, which clearly proved that the accused is the biological father.

14. It is clear from the above that the evidence of the victim girl has been confirmed through the scientific evidence and there is nothing more to be proved on the side of the prosecution, in view of the reverse burden



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15. The accused person examined himself as D.W.1 and he feigned ignorance about the entire incident and he was pleading innocence. The learned counsel for the appellant also submitted that the blood sample was not taken from the accused person in accordance with law.

16. In the considered view of this Court, it is now too well settled that once a piece of evidence is relevant, then the admissibility of the same becomes a secondary issue because illegally collected evidence would also be admissible so long as it is relevant. Useful reference can be made to the decision in ***Pooran Mal v. Director of Inspection (Investigation), New Delhi and others*** reported in ***1974 (1) SCC 345***.

17. This Court does not find any illegality in collecting the blood samples of the accused person and even assuming that the procedure was not followed, the above judgment of the Apex Court squarely covers the so called illegality in following the procedures.



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18. There is no escape for the appellant since the DNA report conclusively points its finger of guilt against the appellant. Before the preparation of the DNA report, the genotype analysis from all the three blood samples were taken into account and the appellant was found to be the father of the girl child delivered by the victim girl.

19. This report is perfectly in line with the evidence of the victim girl. In view of the same, the appellant has not rebutted the presumption under Section 29 of the POCSO Act.

20. In view of the above discussion, this Court does not find any ground to interfere with the judgment and order passed by the Court below and the prosecution has proved the case beyond reasonable doubts.

In the result, this criminal appeal stands dismissed.

[J.N.B., J.] & [N.A.V., J.]
31.10.2022

Index : Yes/No
Internet : Yes
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To

- 1.The Sessions Judge,
Special Court for the Exclusive Trial
of cases under POCSO Act,
Madurai.
- 2.The Inspector of Police,
All Women Police Station,
Madurai District.
- 3.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.
- 4.The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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**J.NISHA BANU, J
AND
N.ANAND VENKATESH, J**

RR

Judgment made in
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31.10.2022