



CrI.A.(MD) No.288 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
03.08.2022	18.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CrI.A.(MD) No.288 of 2019

Karthik

... Appellant

-VS-

The State
rep.by the Deputy Superintendent of Police
Thenkarai Police Station
Theni District
(Crime No.777 of 2015)

... Respondent

PRAYER: Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment dated 08.01.2019, in Spl.S.C.No.61 of 2016, on the file of the Fast Track Mahila Court, Theni.



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For Appellant : Mr.G.Karuppasamy Pandian
for Mr.S.Jeyakarthik

For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

J U D G M E N T

P.N.PRAKASH, J.

This criminal appeal is filed against the judgment and order dated 08.01.2019, in Spl.S.C.No.61 of 2016, on the file of the Fast Track Mahila Court, Theni.

2. The Trial Court framed as many as three charges against the appellant, as detailed below:

Charge	Penal Provisions
1.	366 I.P.C.
2.	506(I) I.P.C.
3.	6 of the Protection of Children from Sexual Offences Act, 2012 (for brevity, “the POCSO Act”)



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3. By judgment and order dated 08.01.2019, the Trial Court convicted the appellant and sentenced him, as detailed below:-

Section of Law	Sentence of imprisonment	Fine amount
366 I.P.C.	To undergo seven (7) years rigorous imprisonment.	Rs.5000/- in default to undergo rigorous imprisonment for one (1) year.
506(I) I.P.C.	To undergo one (1) year rigorous imprisonment.	Rs.1000/- in default to undergo rigorous imprisonment for three (3) months.
6 POCSO Act	To undergo imprisonment for life	Rs.5000/- in default to undergo rigorous imprisonment for two (2) years.

The sentences imposed on the appellant were ordered to run concurrently.

4. The prosecution case is as under:

4.1. In the year 2015, the appellant lured the victim girl “X” (P.W.2), who was 15 years old; had sex with her, made her pregnant and thereafter, left her in the lurch. The date of birth of “X”, as per her school records (Ex.P3), is 10.01.2001 and as per the evidence of “X”, she was studying in tenth standard in the Government High School, Saruthupatti, where Chandra (P.W.10) was the Headmistress.



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4.2. Bommi Ammal (P.W.1), mother of “X”, is an illiterate peasant. She (P.W.1) observed an unusual swelling in the belly of her daughter (“X”) and therefore, she (P.W.1) took her (“X”) to Gokila Hospital, Lakshmipuram, where Dr.Rajendran (P.W.15) examined “X” on 29.11.2015 and suggested that a scan be taken. Accordingly, on 30.11.2015, “X” was taken to Maharani Scans, where a scan was taken to “X” and the scan report (Ex.P6), marked through Dr.Rajkumar (P.W.16) of Maharani Scans, shows as under:

“IMPRESSION:

A SINGLE VIABLE FOETUS WITH GROWTH CORRESPONDING TO 16 WEEKS GESTATIONAL AGE BY U/S.

ESTIMATED FOETAL WEIGHT – 152 GMS ± 22 GMS.

ASSIGNED EDD AS PER USG AROUND 14.05.2016.”

4.3. When “X” was questioned by her mother (P.W.1) about this, she (“X”) disclosed that the appellant lured her (“X”) to have sex with him (appellant) on several days by promising to marry her (“X”); on 01.12.2015, “X” contacted the appellant and



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told him that she has conceived; the appellant took her ("X") to Tiruppur and on the next day i.e. 02.12.2015, he (appellant) left her ("X") in Lakshmipuram bus stand and became scarce.

4.4. Therefore, Bommi Ammal (P.W.1) and her relatives approached one Nagarathinam (P.W.8), a Dalit activist and narrated all the facts. On the information provided by Bommi Ammal (P.W.1), Nagarathinam (P.W.8) drafted a complaint (Ex.P1) in Tamil, which was given to the Inspector of Police, Thenkarai Police Station, based on which, Backiam (P.W. 23), Sub Inspector of Police, registered a case in Thenkarai Police Station Crime No.777 of 2015 on 03.12.2015 at 12.00 noon against the appellant for the offences under Sections 366(A), 506(I) I.P.C., 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998 and 4 of POCSO Act read with 3(1)(w)(i) & 3(2)(v) of the SC/ST Amendment Ordinance Act, 2014 and prepared the printed F.I.R. (Ex.P11), which reached the jurisdictional Magistrate at 08.40 p.m., on the same day, as could be seen from the endorsement thereon.



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4.5. Investigation of the case was taken over by Umamaheswaran (P.W.26), Deputy Superintendent of Police, who went to the place of occurrence and prepared an observation mahazar (Ex.P2) and rough sketch (Ex.P14). He (P.W.26) recorded the statements of various witnesses. He (P.W.26) arrested the appellant on 03.12.2015 and sent him into judicial custody.

4.6. On 04.12.2015, “X” was produced before Sivakumar (P.W.9), District Child Protection Officer, who enquired “X” and after deliberations with her parents and relatives, it was decided that “X” should undergo abortion of the foetus.

4.7. After completion of all the legal formalities and obtaining necessary Court orders, Dr.Santhavibala (P.W.25), Assistant Professor, Gynaecology and Obstetrics, Government Medical College and Hospital, Theni, medically terminated the pregnancy of “X” on 12.12.2015 and the foetus was sent to the Tamil Nadu Forensic Sciences Department for DNA profiling.



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4.8. A requisition was given to the jurisdictional Court to direct the prison authorities to cause production of the appellant before the Medical Officer, Government Medical College and Hospital, Theni and accordingly, he (appellant) was produced before Dr.Arunkumar (P.W.20), who drew the blood sample of the appellant. “X” was also produced before him (P.W.20) and he (P.W.20) drew her (“X”'s) blood sample also and sent both the blood samples to the Tamil Nadu Forensic Sciences Department for DNA profiling.

4.9. Dr.Thilaga (P.W.22), Assistant Director, DNA Unit, Tamil Nadu Forensic Sciences Laboratory, conducted DNA profiling and in her (P.W.22's) evidence as well in her (P.W.22's) report (Ex.P10), it is stated that the DNA extracted from the foetus matches with that of “X” and the appellant. In paragraph No.5 of Ex.P10, she (P.W.22) has stated as follows:



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“5.The cumulative probability of paternity of the alleged accused Mr.Karthick for being the father of the child to whom the femur bone (of ref 2) belongs is 99.9999999%.”

4.10. The statement of “X” was recorded under Section 164 of the Code of Criminal Procedure, 1973. The Investigating Officer obtained the community certificates of “X” and the appellant from the Revenue Authorities *vide* Exs.P4 and P5 respectively, which shows that “X” is a Dalit and the appellant is a caste Hindu.

4.11. After examining various witnesses and collecting reports from the experts, the Investigating Officer completed the investigation and filed a final report in Special S.C.No.61 of 2016, before the Fast Track Mahila Court, (Special Court for POCSO Act cases), Theni, for the offences under Sections 366 and 506(I) I.P.C. and Section 6 of the POCSO Act.



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5. On appearance of the appellant, the provisions of Section 207 of the Code of Criminal Procedure were complied with and the Trial Court framed charges against the accused, as detailed in Paragraph No.2, supra.

6. When questioned, the appellant pleaded "not guilty". To prove the case, the prosecution examined 26 witnesses and marked 15 exhibits. When the appellant was questioned under Section 313 of the Code of Criminal Procedure on the incriminating circumstances appearing against him, he denied the same and did not come forward to give any plausible explanation. No witness was examined from the side of the accused nor any document marked.

7. The Trial Court, after considering the evidence on record and hearing either side, by judgment and order dated 08.01.2019, convicted and sentenced the accused, as detailed in Paragraph No.3 supra. Challenging the above said conviction and sentence, the accused has filed the present appeal.

8. Heard Mr.G.Karuppasamy Pandian, learned counsel appearing for Mr.M.S.Jeyakarthik, learned counsel on record for the appellant and



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Mr.A.Thiruvadikumar, learned Additional Public Prosecutor appearing for the respondent.

9. The victim girl (“X”) is the daughter of Bommi Ammal (P.W.1) and Velraj (P.W.4). Manimala (P.W.3) is the aunt of “X”. Bommi Ammal (P.W.1) was examined in chief on 15.09.2016. Bommi Ammal (P.W.1), in her testimony, has *inter alia* stated that she has two daughters and one son; “X” is her (P.W.1's) second daughter; “X” was 15 years old and was studying tenth standard in the local school at the relevant point of time; she (“X”) did not go to school for two months; when she (P.W.1) questioned her (“X”), she (“X”) stated that she (“X”) is not well; however, the school authorities issued transfer certificate; she (“X”) further stated that she (“X”) is not interested in studies; she (P.W.1) found a peculiar swelling in the belly of “X” and so, she (P.W.1) took her (“X”) to Gokila Hospital, where Dr.Rajendran (P.W.15) examined “X” and asked to take a scan; so, she (P.W.1) went to Maharani Scans and took a scan; the scan report (Ex.P6) showed that “X” was four months pregnant; when she (P.W.1) questioned “X”, she (“X”) stated that the appellant promised to marry her and had sex with her (“X”); fearing that she (“X”) would be upbraided, she (“X”) did not disclose anything to anyone; when the appellant was informed about this, he (appellant) took “X” to Tiruppur and



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thereafter, dropped her (“X”) in Lakshmipuram bus stand without her (P.W.1's) knowledge and a day later, “X” came back saying that the appellant dropped her (“X”) in the bus stand and went away.

10. Bommi Ammal (P.W.1) was not cross-examined on the same day i.e.15.09.2016, but was recalled and cross-examined on 23.12.2016. P.W.1, in her cross-examination, has stated that she does not know to read and write and therefore, she does not know what was written in the complaint (Ex.P1). She (P.W.1) has further stated that on coming to know of this, she (P.W.1), her husband Velraj (P.W.4), daughter (“X”), sister Manimala (P.W.3), brother-in-law Selvam (not examined) and Nagarathinam (P.W.8) went to Periyakulam Police Station and gave a complaint (Ex.P1).

11. The learned counsel for the appellant contended that when Bommi Ammal (P.W.1) has disowned the complaint (Ex.P1) and further when it is stated that the complaint (Ex.P1) was not written by Bommi Ammal (P.W.1), but it was written by Nagarathinam (P.W.8), a Dalit leader, the entire prosecution has to be rejected. We are unable to appreciate this submission for the reasons given infra:



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- (i) Bommi Ammal (P.W.1) is a poor peasant, who does not know even to write.
- (ii) When her (P.W.1's) family came to know that “X” was pregnant, they would have been in a state of rude shock, especially, after coming to know that a person of upper caste was responsible for “X”'s pregnancy. Therefore, there is no harm in they [Bommi Ammal (P.W.1), her husband Velraj (P.W.4), daughter (“X”), sister Manimala (P.W.3) and brother-in-law Selvam (not examined)] in approaching Nagarathinam (P.W.8), a Dalit activist, for help.
- (iii) The fact that they [Bommi Ammal (P.W.1), her husband Velraj (P.W.4), daughter (“X”), sister Manimala (P.W.3) and brother-in-law Selvam (not examined)] approached Nagarathinam (P.W.8) has not been suppressed by the prosecution itself, because, Bommi Ammal (P.W.1), in her testimony, has stated that she (P.W.1) does not know to read and write and therefore, she (P.W.1) approached Nagarathinam



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(P.W.8), a Dalit activist, and sought his help to write a complaint (Ex.P1).

12. The learned counsel for the appellant further contended that in the evidence of Bommi Ammal (P.W.1), she has stated that they (Bommi Ammal (P.W.1), her husband Velraj (P.W.4), daughter (“X”), sister Manimala (P.W.3) and brother-in-law Selvam (not examined) and Nagarathinam (P.W.8)) first went to Periyakulam Police Station to give complaint, whereas, the complaint (Ex.P1) in this case was registered by Thenkarai Police Station and therefore, the complaint that was given in Periyakulam Police Station has been suppressed. This argument also cannot hold water, because, the case on hand is not one of murder, where suppression of an earlier complaint may lead to suspicion of the prosecution case. They would have gone to Periyakulam Police Station and the police there would have directed them to go to Thenkarai Police Station, which has the territorial jurisdiction.

13. Further, the learned counsel for the appellant contended that there is an enormous delay in giving the complaint (Ex.P1), which is fatal. According to the evidence of Bommi Ammal (P.W.1) and the scan report (Ex.P6), the fact that “X” was pregnant came to light only on 30.11.2015. It



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must be remembered that the appellant is a caste Hindu and “X” is a Dalit.

Therefore, the family of “X” would have been in a mortal fear to rake up this issue fearing reprisal by the caste Hindus. That is why, they [Bommi Ammal (P.W.1), her husband Velraj (P.W.4), daughter (“X”), sister Manimala (P.W.3) and brother-in-law Selvam (not examined)] took up the matter to Nagarathinam (P.W.8), a Dalit activist, who gave them confidence and prepared the complaint (Ex.P1), based on which, the case was registered on 03.12.2015. Thus, in the facts and circumstances of the case, the delay in lodging of the complaint (Ex.P1) and registration of the case cannot be said to be fatal.

14. The victim girl “X” (P.W.2) was examined in chief on 15.09.2016. In her evidence, she (“X”) has *inter alia* stated that she was studying in tenth standard in the Government High School, Saruthupatti; she was 15 years old; she stopped going to school four months prior to 15th August of the previous year; on the way to school, the appellant used to follow her (“X”), expressed his love and promised to marry her (“X”); so, he (appellant) took her (“X”) several times to a hut adjacent to the tea shop of one Murugan (P.W.24) and had sex with her (“X”); since she (“X”) felt sick, she (“X”) stopped going to school; on 29.11.2015, her mother (P.W.1) took her (“X”) to Gokila



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Hospital, where some tests were done and thereafter, she ("X") was taken to Maharani Scans, where a scan was taken to her ("X"); the scan report (Ex.P6) showed that she ("X") was four months pregnant; when her ("X"'s) mother Bommi Ammal (P.W.1) questioned her ("X"), she ("X") replied that the appellant was responsible for her ("X"'s) pregnancy; she ("X") contacted the appellant on 01.12.2015 and told him (appellant) about her pregnancy; the appellant asked her ("X") to come to Lakshmipuram bus stop, took her (X) to Tiruppur and left her ("X") in Lakshmipuram bus stop on the next day; thereafter, she went along with her parents to meet Nagarathinam (P.W.8); prepared a complaint and gave it in Periyakulam Police Station; she ("X") was taken to the Government Hospital, Theni, where she ("X") underwent abortion, after which, her ("X"'s) statement was recorded by a Magistrate. She ("X") was not cross-examined on 15.09.2016, but was recalled and cross-examined on 28.12.2016. The defence was not able to make any dent in her ("X"'s) cross-examination, but it was suggested to her ("X") that she ("X") voluntarily had sex with the appellant.

15. The learned counsel for the appellant further contended that the age of "X" has not been properly established and therefore, the certificate (Ex.P3) issued by the Headmistress of Government High School, Saruthupatti,



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is inadmissible in evidence. In order to prove the age of “X”, the prosecution examined Chandra (P.W.10), Headmistress of the School, where she (“X”) studied. Chandra (P.W.10), in her evidence, has stated that the date of birth of “X”, as per the school records, is 10.01.2001. Ex.P6 is the extract of the entries in the school register and it is duly attested by the Headmistress Chandra (P.W.10), which, in our opinion, is not inadmissible. It was not suggested to “X” that she was more than 18 years old at the time of occurrence. The fact remains that “X” was studying in tenth standard at the relevant point of time and therefore, “X” being a minor, the question of she having had consensual sex with the appellant cannot be a defence in a prosecution under the POCSO Act.

16. The prosecution has proved satisfactorily the following facts:

- (i) The date of birth of “X” is 10.01.2001 (Ex.P3/evidence of Chandra (P.W.10).
- (ii) “X” was four months pregnant as on 30.11.2015 (Ex.P6 / Dr.Rajkumar (P.W.16).
- (iii) The foetus was aborted by Dr.Santhavibala (P.W.25) *vide* discharge summary (Ex.P12).



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- (iv) Blood samples of “X” and the appellant were taken for DNA profiling with the aborted foetus by Dr.Arunkumar (P.W.20).
- (v) The evidence of Dr.Thilaga (P.W.22) and the DNA report (Ex.P10) clearly show that the appellant was responsible for the pregnancy of “X”.

17. The learned counsel for the appellant further contended that the charges do not disclose the material particulars as required under Section 212 Cr.P.C., and therefore, the entire prosecution is vitiated. The learned counsel for the appellant also contended that the charges do not say as to which provision of Section 5 of the POCSO Act would stand attracted for convicting the appellant under Section 6 *ibid*; therefore, on these grounds, the trial is vitiated.

18. We carefully read the charges, which are in Tamil. The charges contain the necessary ingredients and material particulars for the appellant to understand and defend himself in the trial. From the line of the cross-examination of the prosecution witnesses, it is limpid that the appellant understood the charges well and had not raised any objection in this regard before the Trial Court. Furthermore, we find from the charges that though



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there is no specific reference to any of the provisions in Section 5 of the POCSO Act, yet the charges are very descriptive in nature and they clearly set out the allegations against the appellant in no uncertain terms. The allegations set out in the charges would attract Sections 5(j)(ii) and 5(l) of the POCSO Act. Therefore, non-mentioning of Sections 5(j)(ii) and 5(l) of the POCSO Act in the charges would not vitiate the trial, in the light of Section 464 Cr.P.C., in the absence of the appellant placing before us that a failure of justice has, in fact, been occasioned on account of the said omission. However, the second charge, after descriptively narrating the imputations against the appellant, states that he (appellant) would be liable to be punished under Section 6 of the POCSO Act.

19. The learned counsel for the appellant finally submitted that as the incident took place in the year 2015, under Section 6 of the POCSO Act, the minimum sentence was only ten years and hence, the period of sentence may be reduced. We are unable to persuade ourselves to reduce the sentence, because, the appellant, being an upper caste person, has sexually abused a Dalit child ("X") and after coming to know that she ("X") was pregnant, he (appellant) took her ("X") to Tiruppur and brought her ("X") back to the village and abandoned her ("X"). Even in the trial, he (appellant) has completely



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denied his involvement and therefore, no sympathy can be shown to him (appellant).

20. For all the aforesaid reasons, we find no merits in the appeal preferred by the appellant and hence, the conviction and sentence recorded by the Trial Court warrant no interference.

21. In the result,

- The criminal appeal is dismissed.
- The judgment and order dated 08.01.2019 made in Spl.S.C.No.61 of 2016, on the file of Fast Track Mahila Court, Theni, is upheld.
- The order of suspension of sentence granted by this Court on 15.12.2020 in CrL.M.P.(MD) No.10045 of 2019 *qua* the appellant stands cancelled.
- Since the appellant is on bail, it is directed that the Trial Court shall take steps to secure him and to commit him to prison to serve out the period of sentence.
- As regards victim compensation, the Trial Court has merely directed the Government to give compensation to the victim



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girl, under Section 33(8) of the POCSO Act read with Rule 7(2) of the Rules thereof, without actually quantifying the amount. Under Section 33(8) of the POCSO Act, the Special Court has the power to determine the compensation amount. Since the Trial Court has failed to quantify the compensation amount, we hereby direct the State Government to pay a sum of Rs.5,00,000/- (Rupees five lakhs only) as victim compensation to the victim girl, within three months from the date of receipt of a copy of this judgment.

- The Director of Social Defence, Chennai, the District Collector, Theni and the District Child Protection Officer, Theni, shall ensure that the compensation amount, as directed above, is disbursed to the victim girl within the stipulated period of three months and file a report to that effect before the Trial Court immediately thereafter.

[P.N.P., J.]

[R.H., J.]

18.08.2022

Index : Yes / No

Internet : Yes / No



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- (i) The Director of Social Defence, Chennai.
- (ii) The District Collector, Theni.
- (iii) The District Child Protection Officer, Theni.

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To:

- 1.The Sessions Judge,
Fast Track Mahila Court,
Theni.
- 2.The Deputy Superintendent of Police,
Thenkarai Police Station,
Theni 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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and
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