



Crl. A(MD)No.381 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRL.A.(MD)No.381 of 2019

Antony

: Appellant

Vs.

State rep. by

The Inspector of Police,
All Women Police Station,
Alangulam,

(Crime No.7/2015),

Tirunelveli District.

: Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, seeking to call for the records in S.C.No.64 of 2015, on the file of the Mahila Court, Tirunelveli, Tirunelveli District and set aside the judgment and order dated 19.07.2019, by acquitting the appellant.



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Crl. A(MD)No.381 of 2019

For Appellant : Mr.V.Kathirvelu, Senior Counsel
for Mr.K.Prabhu
For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

JUDGMENT

[Delivered by P.N.PRAKASH, J.]

This criminal appeal is filed against the judgment and order dated 19.07.2019 in S.C.No.64 of 2015, on the file of the learned Sessions Judge, Mahila Court, Tirunelveli, Tirunelveli District.

2.The prosecution story runs thus:

2.1.The victim girl “X” is the daughter of Ponnuthai [P.W.1] and Iyyadurai [P.W.3]. She was born on 10.07.2004 and at the time of the incident, she was studying 6th Standard in the local village school. The family was residing in South Street, Kurunthanmozhi Village, Tenkasi District. “X” is a Dalit. The appellant was her neighbour and he is also a Dalit.

2.2.While so, it is alleged that on 01.04.2015, while “X” was sleeping in her house, the appellant forcibly carried her behind her house, stuck plaster on her mouth and ravished her. “X” was unable to



Crl. A(MD)No.381 of 2019

raise alarm. Ponnuthai [P.W.1], woke up in the night and not finding her daughter beside her, went in search of her to the backyard of her house, where she saw the appellant sexually abusing “X”. On seeing Ponnuthai [P.W.1], the appellant fled.

2.3.On a written complaint [Ex.P.1], given by Ponnuthai [P.W.1], Jeyashri [P.W.21], Sub-Inspector of Police, registered a case in Alangulam Police Station Crime No.7 of 2015, for the offences under Sections 5 and 6 of the POCSO Act, on 01.04.2015 at 10.00 a.m., and prepared the printed FIR [Ex.P.23], which reached the jurisdictional Magistrate on 01.04.2015 at 05.45 p.m., on the same day, as could be seen from the endorsement thereon.

2.4.Investigation of the case was taken over by Stellabai [P.W.24], Inspector of Police, who went to the place of occurrence and prepared the observation mahazar [Ex.P.12] and rough sketch [Ex.P.24].

2.5.“X” was medically examined by Dr.Arumugaselvi, [P.W.11], at the Government Medical College and Hospital, Tirunelveli, who issued a medical memo [Ex.P.27] and referred “X” to Dr.Esther



Crl. A(MD)No.381 of 2019

[P.W.23]. Dr.Esther [P.W.23], noticed injuries in the private parts of “X” and gave her treatment vide Exs.P.25 to P.27, as an inpatient in the hospital.

2.6.The Section 164 Cr.P.C., statement [Ex.P.2] of “X” was recorded on 18.04.2015 at 03.00 p.m., by Mrs.R.G.G.Gajara [P.W.17], learned Judicial Magistrate V, Tirunelveli.

2.7.The appellant was arrested on 01.04.2015 at 02:00 p.m., and was remanded in judicial custody. After examining various witnesses and collecting various reports, the investigating officer [P.W.24] completed the investigation and filed a final report in S.C.No. 64 of 2015, in the Court of the Sessions Judge, Mahila Court, Tirunelveli, [Special Court for POCSO Act Cases], against the appellant for the offences under Sections 452, 342, 366, 328 and 506(I) IPC., r/w. Section 6 of the POCSO Act.

3.On appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with. The trial Court framed charges under Sections 452, 363, 328 and 506(I) IPC r/w. Section 6 of the POCSO Act and when questioned, the appellant pleaded “not guilty”.



Crl. A(MD)No.381 of 2019

WEB COPY

4.To prove the case, the prosecution examined 24 witnesses and marked 27 exhibits and 2 material objects. When the appellant was questioned under Section 313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. No witness was examined nor any document marked from the side of the appellant.

5.After considering the evidence on record and hearing either side, the trial Court by judgment and order dated 19.07.2019, has convicted and sentenced the appellant as under:

Offence under Section	Conviction and Sentence
452 IPC	To undergo 7 years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for three months
363 IPC	To undergo 7 years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for three months
6 of the POCSO Act	Life imprisonment and to pay a fine of Rs.1,00,000/-, in default to undergo simple imprisonment for three months.

6.The trial Court has directed that out of the total fine amount of Rs.1,20,000/-, a sum of Rs.1,00,000/- should be paid to "X", apart



Crl. A(MD)No.381 of 2019

from which, the trial Court has also awarded a compensation of Rs. 2,00,000/- to "X" under Section 357(A) Cr.P.C., payable by the Government.

7.Challenging the aforesaid conviction and sentences, the present Criminal Appeal has been filed.

8.Heard Mr.V.Kathirvelu, learned Senior Counsel representing Mr.K.Prabhu, learned counsel appearing for the appellant and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the respondent.

9.The entire case rests on the evidence of "X" and Ponnuthai [P.W.1]. "X" was 12 years old when she was examined in chief in the trial Court on 27.01.2016. After putting preliminary questions to "X" in order to test her ability to depose, the trial Court, after being convinced that she is capable of giving evidence, has recorded her evidence.

10."X", in her examination in chief, has *inter alia* stated that she is 12 years old; she is staying with her parents, sister and brother in



Crl. A(MD)No.381 of 2019

South Street, Kurunthanmozhi village; she is studying 7th standard in Harijan Middle School; she knows the appellant [whom she has referred to as Antony uncle]; on the night of 31.03.2015, while she was sleeping beside her brother and mother, the appellant carried her behind her house and forcibly administered some medicine into her mouth; he also stuck a plaster on her mouth and removed her underpants and sexually abused her; she was wearing a nightie; at that time, her mother came out looking out for her and found her in a state of shock; she told everything to her mother and her mother took her to the police station and gave a complaint.

11.She has further stated that she was taken for treatment and to the doctor also, she has stated everything. She has also stated that her statement was recorded by the Magistrate and the said statement was marked as Ex.P.2. She identified the appellant but she was not cross-examined on the same day. However, she was cross-examined on 11.04.2016. In the cross-examination, the defence was not able to make any serious dent in her testimony and she reiterated the statement that was given by her in her examination in chief. In fact, when she was questioned as to whether the plaster that was stuck on her mouth was recovered, she stated that her mother threw the



Crl. A(MD)No.381 of 2019

plaster away. It was ultimately suggested to her that on account of previous enmity between her mother and the appellant, the case was foisted against the appellant, which was denied by her.

12.“X's” evidence has been substantially corroborated by the evidence of her mother Ponnuthai [P.W.1], father Iyyadurai [P.W.3], brother Gurusamy [P.W.4], neighbours Veluthai [P.W.8] and Ramar [P.W.9], to whom “X” had narrated the incident soon thereafter. That apart, the medical evidence of Dr.Arumugaselvi [P.W.11] and Dr.Esther [P.W.23] also support the assertion of “X”.

13.Dr.Esther [P.W.23], in her evidence, has *inter alia* stated that on 01.04.2015, “X” was admitted as an inpatient in the Government Medical College and Hospital, Tirunelveli, and was shifted to Obstetrics and Gynecology Ward under her on 02.04.2015; from 02.04.2015 to 09.04.2015, “X” was admitted as an inpatient and vaginal exploration was done; lacerations were found in the wall of the vagina, which was sutured. The case sheet was marked as Ex.P.25 and discharge summary was marked as Ex.P.26.



Crl. A(MD)No.381 of 2019

WEB COPY

14.Defence was not able to dislodge the medical testimony of Dr.Arumugaselvi [P.W.11] and Dr.Esther [P.W.23]. Except suggesting that on account of previous enmity between Ponnuthai [P.W.1], the mother of “X” and the appellant, the appellant has not brought on record any material to dislodge the charge against him. Even when the appellant was questioned under Section 313 Cr.P.C., he has merely denied the incriminating circumstances against him and he has not given any explanation as to why “X” and her mother have to falsely implicate him in this case.

15.Learned Senior Counsel appearing for the appellant submitted that the incident took place in the night of 31.03.2015 and at that time, the minimum sentence for the offence under Section 6 of the POCSO Act was only 10 years, which has been subsequently enhanced to imprisonment for life with effect from 16.08.2019 by Act 25 of 2019 and prayed atleast for reduction of sentence. He also submitted that the appellant is not even able to pay the fine thus far, as he is also equally in penury.



Crl. A(MD)No.381 of 2019

WEB COPY

16.The appellant is now 55 years old. In this case, the offence had taken place on 31.03.2015, when the minimum sentence under Section 6 of the POCSO Act was 10 years. Taking into consideration the facts and circumstances of the case, we are of the opinion that interests of justice would be served, if the imprisonment for life that has been awarded by the trial Court for the offence under Section 6 of the POCSO Act is reduced to 15 years rigorous imprisonment, without any remission whatsoever. This means that atleast till his sixty seventh age, the appellant will have to be in the prison.

17.As regards the conviction and sentence imposed on the appellant in respect of the other offences, the same shall stand confirmed. The sentence of fine and the compensation awarded to "X" by the trial Court under Section 357(A) Cr.P.C., shall also stand confirmed.

18.The sentences are ordered to run concurrently. The period of sentence already undergone by the appellant is ordered to be set off under Section 428 Cr.P.C.



Crl. A(MD)No.381 of 2019

WEB COPY

19.In the result, this Criminal Appeal is allowed in part.

[P.N.P., J.] & [R.H., J.]

02.08.2022

Index : Yes/No

Internet : Yes

Note: Mark a copy to

1) The Director of Social Defence,
Chennai.

2) The District Collector,
Tirunelveli District.

3) The District Child Protection Officer,
Tirunelveli District.

MR



Crl. A(MD)No.381 of 2019

WEB COPY

To

1.The Sessions Judge,
Mahila Court,
Tirunelveli District.

2.The Inspector of Police,
All Women Police Station,
Alangulam,
Tirunelveli 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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Crl. A(MD)No.381 of 2019

P.N.PRAKASH, J.
and
R.HEMALATHA, J.

MR

JUDGMENT MADE IN
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