



Crl.A.No.602 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.02.2023

PRONOUNCED ON : 02.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

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Thameem Sheriff

... Appellant

Vs.

State rep. by

The Inspector of Police,
W-23, All Women Police Station,
Royapettah,
Chennai-14
Crime No.31 of 2019.

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. to set-aside the conviction and sentence passed by the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai, in S.C.No.208 of 2019, dated 23.05.2022.



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For Appellant : Mr. M.Govindarajau
For Respondent : Mr. C.E.Pratap,
Government Advocate (Crl.side)

ORDER

Challenging the conviction and sentence passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai, in S.C.No.208 of 2019, dated 23.05.2022, the present Criminal Appeal has been filed.

2. The fact of the case is that the victim girl aged about 17.6 years was studying in a college and at the time of occurrence, her date of birth is 16.07.2001. At that time, she had love affair with the appellant/accused and also had sexual relationship with him and in consequence, she became pregnant. The victimgirl along with grand mother and sister of the accused went to Kowsika Hospital, where, the Doctor examined her and informed about her pregnancy. After two days, the victim informed the fact to the



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appellant/accused, Thameem Sheriff. Thereafter, on 30.01.2019, on the promise of marriage, she went along with the accused. Thereafter, the father of the victim girl gave a complaint (Ex.P3) to the respondent police and the respondent police registered a case in Crime No.31 of 2019 for the offence under Section 366(A) of IPC and Section 4 of POCSO Act. After completion of investigation, final report has been filed and the same has been taken on file as S.C.No.208 of 2019 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai.

3. Based on the above materials, the Trial Court framed charges as against the accused under Section 366 of IPC and Section 6 of POCSO Act and the accused denied the same as false. In order to prove the case of prosecution, as many as 8 witnesses were examined, 10 documents were marked.



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4. When the incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false, he did not choose to examine any witness nor mark any documents.

5. Having considered all the materials, the Trial Court convicted the accused for the offence under Section 366 IPC and Section 6 of POCSO Act and sentenced to undergo Imprisonment for 7 years with a fine of Rs.5000, in default to undergo simple imprisonment for one month for the offence under Section 366 of IPC and sentenced to undergo Rigorous imprisonment for 10 years with a fine of Rs.5000/-, in default to undergo simple imprisonment for one month for the offence under Section 6 of POCSO Act. Challenging the above conviction and sentence, the accused is before this Court with this appeal.

6. The learned counsel for the appellant/accused contended that the conviction and sentence recorded by the Trial Court are contrary to law, weight of evidence and probabilities of the case. All the prosecution



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witnesses are interested witnesses and the relatives of the victim girl. The Trial Court failed to consider the fact that the accused and the victim girl are having love affair and the victimgirl voluntarily went with the accused. He further contended that the victimgirl was not even willing to go with her parents and hence, she was kept at Juvenile Board, Kellys. Her statement was recorded on 01.02.2019. Again another statement was recorded on 04.02.2019 and once again another statement was recorded on 28.02.2019. Further, 164 Cr.P.C. statement was recorded by the XVIII Metropolitan Magistrate, Chennai on 27.02.2019, but the victim girl deposed differently before the Trial Court, and hence, it is not trustworthy. The appellant/accused did not kidnap the victim girl. The DNA Report(Ex.P9) was marked through the Investigating Officer(P.W.8) and he is not a competent person to speak about the DNA Report. Therefore, the DNA Report(Ex.P.9) cannot be taken into consideration. The accused lost his opportunity to cross examine the Expert with regard to the correctness or otherwise of the DNA Report(Ex.P.9) . Therefore, the evidence is not enough to upheld the conviction of the appellant/accused and reiterated the



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other grounds raised in the grounds of appeal and thus, pleaded to acquit the accused from the charges and pleaded to allow the Criminal appeal.

7. The learned Government Advocate (Crl.side) appearing for the respondent police supported the judgment of the Trial Court. He further contended that before the Trial Court, the prosecution examined 8 witnesses and marked 10 documents. The victim girl(P.W.1) clearly stated about the sexual intercourse with the appellant/accused and she being a minor girl, her age is proved as per the Birth Certificate Ex.P.1, her consent is immaterial. The DNA Report(Ex.P.9) is also supported the prosecution case that the accused had sexual intercourse with her and he is the biological father of the “male foetus”, which was removed from the victim girl. There is no reason to disbelieve the evidence of the victim girl. It is corroborated by the medical evidence given by Dr.Sujatha (P.W.3). Therefore, the prosecution proved the charge beyond all reasonable doubt and the Trial Court rightly found the accused guilty and convicted him for the offence committed by him as per law and there is no ground to interfere



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with the findings of the Trial Court and thus, pleaded to dismiss the Criminal Appeal.

8. I have considered the case in the light of the submissions made by the counsel for the parties and perused the materials available on records carefully.

9. In this case, the appellant/accused is prosecuted by the respondent police for having kidnapped the minor victimgirl from her lawful guardians, namely, her father and mother and also made aggravated sexual assault for the offence punishable under Section 366(A) of IPC and Section 4 of POCSO Act.

10. The prosecution examined 8 witnesses. Among the 8 witnesses, P.W.1 is the victim girl, P.W.2 is the father of the Victim girl, P.W.3 and P.W.4 are Doctors, who examined the victim girl and the appellant/accused, P.W.5 to P.W.8 are police officials, who registered the



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case, conducted investigation and filed the final report.

11. In this case, it is not in dispute that the victim girl had love affair with the appellant/accused. The Birth Certificate of the Victim girl(Ex.P.1) has been marked through the victimgirl(P.W.1) . In Ex.P.1, the date of birth of the victim girl is mentioned as 16.07.2001. The occurrence took place on 30.01.2019. It evidenced the fact that on the date of occurrence, she was below the age of 18 years. The Trial Court, in its judgment discussed this fact in paragraph 11 of the judgment. It is also not disputed.

12. The learned counsel for the appellant/accused contended that the accused did not kidnap the victim girl from her house and she voluntarily went with the accused out of her own volition. In this regard, I have gone through the evidence of P.W.1 victim girl. In her evidence, she deposed that she loved the appellant/accused and the said fact was known to the family members of the appellant/accused and she frequently went with the



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appellant/accused to Kovalam Beach and stayed in a lodge and had sexual intercourse with him. In consequence, she became pregnant. Further knowing the fact of pregnancy, the appellant/accused asked her to meet an advocate and for that purpose, he asked her to take her original certificates from her home. Hence, she had taken her certificate and went along with the accused to meet the advocate and then, not returned to home. Thereafter, based on the complaint given by her father, the case has been registered and with the help of Doctor abortion has been effected to her. It evidenced the fact that, she went with the accused from her own volition. But, the consent of the minorgirl is immaterial in view of the Section 366(A) of IPC.

13. The father of the victimgirl was examined as P.W.2. He has not supported the prosecution case and hence, he was treated as hostile. According to him, the victim girl was produced by the advocate of the appellant/accused before the police and the victim girl has not stated anything about what happened to her and thereafter, she was sent to Home.



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Dr.Sujatha(P.W.3) examined the victim girl. On examination, she found the victim was pregnant and she evidenced the possibility of intercourse and gave the Accident Register (Ex.P.4) and Medical Report(Ex.P.5). Dr.Sivakumar(P.W.4) examined the appellant/accused and gave the certificate about his potentiality(Ex.P6). Mr.Manikumar, Sub Inspector of Police,(P.W.5) received the complaint from the father of the Victim girl and registered the First Information Report (Ex.P.7). Mr. Devaraj, Inspector of Police(P.W.6) conducted initial investigation and recorded the statement of the witnesses. Mr Krishnamoorthy, Inspector of Police (P.W.7) taken up the case for further investigation and recorded the statement of the victim girl and altered the offence into 366(A) of IPC and 4 of POCSO Act and the alteration report is marked as Ex.P.8. Mrs. Antony Vijithra(P.W.8) conducted further investigation and made arrangement for taking the victimgirl's foetus for DNA test and got DNA Report (Ex.P9). In the DNA Report(Ex.P.9), it is stated that the accused is the biological father of the male foetus removed from the victim girl. Thus, the evidence of the victim girl is corroborated by the medical evidence and the DNA Report(Ex.P.9).



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Though the counsel for the appellant/accused contended that the DNA Report (Ex.P.9) was not marked through Expert, who conducted the test, it will not affect the prosecution case since the victim girl herself in her evidence clearly stated that the accused had sexual intercourse with her and hence, she became pregnant. Under this circumstances, there is no reason to disbelieve the evidence of the victim girl and also there is no reason to reject her evidence. Though the victim girl had love affair with the appellant/accused and voluntarily had sexual intercourse with the accused, she being a minor girl under 18 years of age, her consent is immaterial to immune the accused from the charges. Therefore, the Trial Court rightly found that the prosecution has proved the case beyond all reasonable doubt and found the accused guilty and convicted him. Hence, I find no reason to interfere with the finding of the Trial Court and also the conviction and sentence. I find no merit in the Criminal appeal and this appeal is liable to be dismissed.

14. In the result, the Criminal Appeal is dismissed and the judgment



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passed by the Trial Court is confirmed. The appellant is directed to surrender before the Trial Court and the Trial Court is directed to issue warrant to secure the accused to undergo the remaining period of sentence.

02.03.2023

mrp

To

**1. The Sessions Judge,
Mahila Court (Fast Track),
Erode.**

**2. The Public Prosecutor,
High Court,
Madras**



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V.SIVAGNANAM, J.,

mrp

Pre-delivery order in

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