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Criminal Appeal No.58 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Criminal Appeal No.58 of 2017
and
CrI.M.P.Nos.1685 & 1686 of 2017

Nagarathinam
S/o.Ramakrishnan

... Appellant/Accused

Vs.

State represented by its
The Inspector of Police,
Poraiyur Police Station,
Nagapattinam District.
Crime No.02 of 2014

... Respondent/Complainant

Prayer : Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure against the judgment passed by Sessions Judge, Fast Track Mahila Court, Nagapattinam, in S.C.No.7 of 2015, dated 07.10.2016.

For Appellant : Mr.R.Shivakumar
for M/s.K.M.Vijayan Associates
For Respondent : Mr.L.Baskaran
Government Advocate [CrI.side]



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JUDGMENT

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This criminal appeal has been filed against the judgment and order passed by Sessions Judge, Fast Track Mahila Court, Nagapattinam, in S.C.No.7 of 2015, dated 07.10.2016, convicting and sentencing the appellant in the following manner:

Sl.No.	Offence u/s.	Sentence
1.	450 IPC	3 years rigorous imprisonment and to pay fine of Rs.1,000/-, in default to undergo 6 months simple imprisonment.
2.	6 r/w 5(l) of the Protection of Children from Sexual Offences Act, 2012	10 years rigorous imprisonment and to pay fine of Rs.50,000/-, in default to undergo 1 year simple imprisonment.

2. Shorn of unnecessary particulars, the case of the prosecution can be summarised thus:

2.1. The victim girl [PW-1] was aged about 15 years. She was studying in the tenth standard at Poraiyur High School. Both her parents used to leave for work and most of the times, the victim girl was staying alone in her house. During the month of May 2012, the victim girl was sleeping inside her house. The appellant had knocked the door and when the



victim girl opened the door, he forcibly locked the door from inside and pushed the victim girl and removed all her clothes and committed penetrative sexual assault against the victim girl. The appellant also threatened the victim girl with dire consequences if she reveal about this incident. Even thereafter, the appellant was repeatedly having forcible sexual intercourse with the victim girl.

2.2. The victim girl became pregnant and on 31.12.2013, she suffered abdomen pain and she rushed to the backyard and delivered a child. On being questioned by her mother, the victim girl narrated to her the entire incident. Everybody in the locality also came to knew about this incident.

2.3. A complaint [Ex.P1] was given by the father and mother of the victim girl, which was also signed by the victim girl on 03.01.2013 at about 14 hours. The complaint was received by Sub-Inspector of Police [PW-9] and based on the complaint, PW-9 registered a First Information Report [Ex.P9] in Crime No.2 of 2014 for offences u/s.4 and 8 of the Protection of



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Children from Sexual Offences Act, 2012 [hereinafter referred to as 'POCSO Act']. PW-9 also immediately forwarded the printed copy of the First Information Report to the Judicial Magistrate II, Mayiladuthurai.

2.4. The investigation was taken up by Inspector of Police [PW-13] and PW-13 went to the scene of occurrence and prepared the observation mahazar marked as Ex.P4 and the rough sketch marked as Ex.P13. PW-13 also went to the Government Hospital, Sirkali and recorded the statements of the victim girl [PW-1] and her mother [PW-2]. Since PW-13 was transferred, the investigation was taken up by PW-15. PW-15 took steps to send the victim girl for recording the statement u/s.164(5) Cr.P.C. Accordingly, Section 164(5) Cr.P.C. statement [Ex.P11] was recorded by the Judicial Magistrate [PW-11]. Similarly, Section 164 Cr.P.C. statement of PW-2 was also recorded [Ex.P10]. The accused person was arrested on 07.10.2014 and both the accused as well as the victim were subjected to medical examination. Since the victim girl had delivered a child, PW-15 had taken steps to send the blood samples and to get the DNA report.



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2.5. The victim girl was treated by the doctor [PW-7]. PW-7, doctor, has stated in his evidence that he admitted the victim girl as an inpatient and gave her treatment. Ex.P6 is the certificate given by PW-7 regarding the sexual assault on the victim girl and the resultant pregnancy and delivery of a girl child. It was also recorded that the victim girl was conscious and oriented.

2.6. PW-8, doctor, treated the child of the victim girl at Government Hospital, Sirkazhi. The child was suffering from some infection and hence, she was treated as inpatient till 11.01.2014. The relevant certificates and discharge summary were also marked as Exs.P7 and P8 through PW-8.

2.7. The appellant was also examined by doctor [PW-6]. PW-6 had issued the certificate marked as Ex.P5 wherein it has been opined that there is nothing to suggest that the appellant is incapable of performing the sexual act.



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2.8. The DNA test was conducted by PW-12 and through this witness, Ex.P12 was marked. On carefully going through Ex.P12, it is seen that the paternity of the child was directly related to the appellant, which was delivered by the victim girl. Thus, it is clear that the child was born to the accused and the victim girl.

2.9. PW-15 ultimately completed the investigation after recording the statements of all the witnesses u/s.161(3) Cr.P.C. and after collecting all the relevant reports, a final report was laid before the District and Sessions Judge, Nagapattinam. Learned Sessions Judge took cognizance of the offence and on appearance of the accused persons, copies were furnished u/s.207 Cr.P.C. The case was thereafter made over to the Court below.

2.10. The Court below framed charges against the appellant [A1] for offences u/s.450 and 506(i) IPC and u/s.6 and 5(l) of the POCSO Act. The mother of the appellant [A2] was also roped in and charge u/s.506(i) IPC was framed against her. When the charges were put to them, they denied the same and pleaded not guilty.



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2.11. The prosecution examined PW-1 to PW-15 and marked Exs.P1 to P15. The incriminating evidence that was collected during the course of trial was put to the accused persons when they were questioned u/s.313(1)(b) Cr.P.C. and they denied the same as false.

2.12. The Court below, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to the conclusion that the prosecution has proved the case beyond reasonable doubts for the offences for which the appellant was convicted and sentenced. Insofar as A2 is concerned, she was acquitted from the charge u/s.506(i) IPC. A1 was also acquitted from this charge. Challenging his conviction, appellant [A1] has filed the present criminal appeal.

3. Heard Mr.R.Shivakumar, learned counsel for appellant and Mr.L.Baskaran, learned Government Advocate [Crl.side], appearing for the respondent/State.



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4. This Court has carefully considered the submissions made on either side and the materials available on record.

5. In a case of this nature, the evidence of the victim girl assumes lot of significance. The victim girl was studying in tenth standard. The appellant came to know that the victim girl was alone in her house, since her parents had gone for work, knocked the door and when it was opened, he forcibly entered the house and locked the door from inside. Thereafter, he gagged her mouth with a cloth, pushed her down, removed her dress and had committed forcible sexual intercourse. He also threatened the victim girl with dire consequences and even thereafter, had repeatedly raped/ravished her. The victim girl became pregnant and she ultimately, delivered a female child on 31.12.2013 in the backyard of her house.

6. The evidence of the victim girl [PW-1] coupled with the DNA report, clearly shows that the victim girl was subjected to forcible sexual



intercourse repeatedly by the appellant and the appellant is the reason behind the birth of the child.

7. The evidence of PW-1 is unassailable and there is nothing before this Court to disbelieve the said evidence. The evidence of PW-1 is further corroborated by the medical evidence that is available and the evidence of doctors, who were examined as witnesses. The evidence of PW-1 is also in line with the statement that was recorded from her u/s.164(5) Cr.P.C. by the Judicial Magistrate, Mayiladuthurai.

8. The evidence of PW-2, who is the mother of PW-1 and PW-3, who is the uncle of PW-1 also corroborates the evidence of the victim girl and it is crystal clear that a child below the age of 18 years has been subjected to grave penetrative sexual assault. The age of the victim girl has also been clearly established by examining the Headmaster of the school as PW-14 and the admission register was marked as Ex.P14 which clearly shows that the date of birth of the victim girl was 07.06.1998. Hence, when the offence



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was committed during May 2012, the victim girl was hardly 14 years and she had not completed 18 years. Even at the time when she delivered the child on 31.12.2013, PW-1 continued to be a child below 18 years.

9. The Court below has carefully considered the evidence of all the witnesses along with documents and has come to a categorical finding that the accused had committed penetrative sexual assault repeatedly on the victim girl. The said finding is backed with cogent reasons and this Court does not find any ground to interfere with the same. Hence, insofar as the conviction of the appellant for offences u/s.450 IPC and Section 6 r/w 5(1) of the POCSO Act is concerned, there is absolutely no ground to interfere. This is more so due to the legal presumption provided under Sections 29 and 30 of the POCSO Act, which has also been noted by the Court below.

10. Learned counsel for appellant submitted that some leniency must be shown insofar as sentence is concerned. Learned counsel submitted that the appellant is a married man and he has two children. It was further



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submitted that the victim girl is also married and she is living with her family and has a child. Learned counsel has also made a fervent plea to bring the facts of the present case at least u/s.4 of the POCSO Act and to reduce the period of imprisonment. On the alternative, learned counsel also requested this Court to bring the facts of the present case u/s.376 IPC.

11. In the considered view of this Court, the appellant had indulged in forcible intercourse with the victim girl repeatedly from May 2012 onwards. Ultimately, it led to the delivery of the child on 31.12.2013. It is quite pathetic that the child was delivered by the victim girl in the backyard of her house. This Court can imagine the amount of pain and agony that the victim girl would have faced at such a young age. The facts of the present case, clearly brings this case within Section 5(l) of the POCSO Act, which is punishable under Section 6 of the POCSO Act where a minimum imprisonment of ten years has been prescribed. The Apex Court in ***State of M.P. v. Babulal [(2008) 1 SCC 234]*** has categorically held that in cases of this nature, the Court should not show any leniency and it has to be dealt



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with sternly and severely. The Court cannot show misplaced sympathy in a case of this nature. This Court must bear in mind the agony faced by the child and in the considered view of this Court, the Court below has awarded appropriate sentence to the appellant and it does not require the interference of this Court.

In the result, this Criminal Appeal stands dismissed. Consequently, connected miscellaneous petitions are closed.

03.04.2023

Index : Yes/No,
Speaking Order / Non Speaking Order
Neutral Citation: Yes/No
gm



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To
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- 1.The Sessions Judge,
Fast Track Mahila Court,
Nagapattinam.
- 2.The Inspector of Police,
Poraiyur Police Station,
Nagapattinam District.
- 3.The Public Prosecutor,
High Court, Madras.



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N. ANAND VENKATESH, J

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