



Crl.A.(MD)No.237 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

CORAM

**THE HONOURABLE MR.JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR**

Orders Reserved On 21.09.2023	Orders Pronounced On 29.09.2023
----------------------------------	------------------------------------

Crl.A.(MD)No.237 of 2021

Suresh

... Appellant / Sole Accused

Vs.

The State of Tamil Nadu Rep. through its
The Inspector of Police,
All Women Police Station,
Pudukkottai.
(Crime No.6 of 2019)

... Respondent/Complainant.

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C., to call for the Judgment, dated 05.05.2021, passed by the Learned Sessions Judge / Pudukkottai in Spl.S.C.No.14 of 2019 and set aside the same.

For Appellant : Mr.R.Manickaraj,
(Legal Aid Counsel)

For Respondent : Mr.A.ThiruvadiKumar,
Additional Public Prosecutor.



Crl.A.(MD)No.237 of 2021

JUDGMENT

M.NIRMAL KUMAR, J.

This appeal has been filed by the appellant / sole accused as against the conviction and sentence, dated 05.05.2021, made in Spl.S.C.No.14 of 2019, by the learned Sessions Judge / Mahila Court Pudukkottai.

2. The appellant / sole accused stood convicted and sentenced to undergo imprisonment as detailed hereunder:-

Conviction under Section	Sentence	Fine amount
5(1) r/w.6 of POCSO Act, 2012	To undergo Life imprisonment.	To pay a fine of Rs.1,00,000/- in default, to undergo 3 months.
5(j)(ii) r/w.6 of POCSO Act, 2012	To undergo Life imprisonment.	To pay a fine of Rs.1,00,000/- in default, to undergo S.I. for 3 months.
312 IPC	To undergo rigorous imprisonment for 3 years.	To pay a fine of Rs.50,000/- in default, to undergo S.I. for 3 months.
506(i) IPC	To undergo rigorous imprisonment for 2 years.	To pay a fine of Rs.20,000/- in default, to undergo S.I. for 3 months.



Crl.A.(MD)No.237 of 2021

WEB COPY

3. The Trial Court ordered the sentences to run concurrently and the period of detention already undergone by the accused was set-off under Section 428 Cr.P.C.

4. Challenging the legality of the conviction and sentence awarded by the Trial Court vide impugned judgment, the appellant / sole accused has preferred this Criminal Appeal.

5. The facts leading to the filing of this appeal, necessary for the disposal of this criminal appeal, are as follows:-

(i) The victim girl xxx is aged 15 years D/o.xxx, is residing in No. 988, 4th street, Pasumpon Nagar, Narimedu, Pudukkottai, along with her parents and the victim girl was residing near the house of the accused Suresh and the wife of the accused Saranya was working as Professor in SriBharathi college and whenever the victim girl had doubts in her subjects, she used go to Saranya, wife of the accused, and get cleared her doubts. On 09.03.19, at around 10.30 a.m., the victim girl, in order to clear some doubts regarding the subjects, gone to the house of the accused Suresh, when the accused with mental



Crl.A.(MD)No.237 of 2021

culpable state of mind tried to sexually assault the victim girl and two weeks after 09.03.2019, when no one was in the house of the accused, called the victim girl to come and study and had made the victim girl come to his house. When the victim girl went to the house of the accused, the accused pulled the hands of the victim girl, closed the doors, forcefully wrestled her, when the victim girl cried loudly, shut her mouth, made her lie down, lifted her nightie, lied on top of the victim girl, inserted his penis inside the vagina of the victim girl and committed aggravated penetrative sexual assault on the victim girl twice. Further, the accused criminally threatened the victim girl that, if she revealed the sexual assault to others, he would murder her parents.

(ii) On 08.07.2019, at around 9.00 a.m., when the victim girl proceeded to School in her cycle, the accused asked her, if she got her periods and when the victim girl informed that she had not had her periods, the accused gave tablets to her, and forced her to take the same, after taking tablets, victim got severe stomach pain and bleeding. Thus, the accused had committed the offence.



Crl.A.(MD)No.237 of 2021

6. Based on Ex.P1, Complaint, P.W.6, Investigating Officer, registered the case in Crime No.6 of 2019, for the offence under Sections 5(j)(ii) r/w.6, 5(I)(m) r/w 6 of Protection of Children from Sexual Offences Act, 2012, and Section 506(i) of IPC.

7. P.W.1, victim girl in her evidence deposed, that she is residing in 4th street, Pasumpon Nagar, Pudukkottai, along with her mother, presently aged 16 years and when she was studying 10th standard, She used to go to the next house of her house, for tuition, whenever she got doubt in her subjects and clear doubts from Saranya, wife of the accused, who is working as professor in a college, but does not know college name. On 09.03.2019, at around 10.30 a.m., she went to Saranya's house, for clearing her doubts, and at that time, both Saranya and the accused Suresh were there in the house. She asked her doubts with Saranya and was studying, wife of the accused informed that she was going to shop and left. At that time, accused gave lemon juice, she informed that she did not want, but the accused compelled her to drink the Juice. After drinking the juice, she felt drowsy, fell unconscious and she does not know what happened after that. After Saranya came home, she woken the victim, Saranya corrected her nightie, victim informed Saranya that she was feeling



Crl.A.(MD)No.237 of 2021

pain all over her body, Saranya told her that, since she had studied, she must be tired and asked her to go home and sleep. After going to her house, victim felt pain all over her body and from her genitals something in white had come after that for two weeks she did not visit Saranya's house. One day, she was standing outside her house and filling ink, the accused called the victim, on the pretext Saranya was in the house and she called her, compelled the victim to come to his house, she refused, but the accused Suresh pulled her, and dragged her inside his house. She shouted and the accused Suresh wrestled with her, closed her mouth, made her lie down, penetrated his penis inside her vagina and pressed. She shouted and the accused told her that he raped her and she would get pregnant. She was not able to bear the pain, victim was crying informed that she will complaint to her mother, for which, the accused criminally threatened her that he would murder her mother and hence, victim did not tell the incident to anyone. On 08.07.2019, when victim proceeded to school, the accused intervened and asked her, if she got her periods, for which, she asked him why he was asking about that and the accused threatened her to answer him and she told that she had stomach pain and that he had done something to her. The accused given tablets and informed her that, if she took the tablets, she would get her



Crl.A.(MD)No.237 of 2021

periods, forced her to take tablets, later victim developed severe stomach pain. Even after coming home, her stomach pain did not recede, when her mother asked, she narrated the entire incident. Victim's mother took the victim to hospital in an Auto and while travelling in the Auto, victim started bleeding and when she got down from the Auto something round and white in colour fell down and her mother seeing the same, cried asking what it was and her mother called her uncle through phone, informed the incidents to her uncle. Next day, her uncle took her to child-line, where she was enquired, victim disclosed all facts and then they went to All Women Police Station and given a complaint, Ex.P1, written in her own handwriting, she had also given statement before the Judicial Magistrate, Pudukkottai, which is Ex.P.2. Her date of birth is 03.08.2003 and her birth certificate is Ex.P.3. The accused Suresh had given her three tablets and she taken only one tablet and the other two tablet was in her school bag, which was handed over to the police. The empty medicine cover printed MIREPRSTONE -200 is MO1 and the medicine cover written as MTK is MO2 and the medicine RX combpalk PHSI KHU is MO3 and the medicine PHSI – MISOPROST OL 200 mg is MO4 and the medicine Accdent misoprostol tablets Pharmaceuticals is MO5 and the small bit printed MISOPROST OL is MO6.



Crl.A.(MD)No.237 of 2021

WEB COPY

7.1. P.W.2. Azhgusundaram, uncle of the victim girl, in his evidence deposed, that he is residing in 4th street, Pudukkottai and is running a fabrication unit. On 08.07.2019, his sister called him through phone, and his sister narrated the happenings. The victim girl had informed him that in their school they taught about Child Protection Officer. So, P.W.2 took the victim girl to the Child Protection Officer and from there, they were taken to All Women Police Station and police enquired him. The victim girl given complaint and the 2nd signature in the observation mahazaar is that of his and the same is Ex.P.4 and he does not remember for what he had signed and does not remember who else signed along with him with respect to the witness not speaking about the observation mahazaar being prepared in his presence. He had been treated by the prosecution to that extent as hostile.

7.2 PW.3 Thirumathi. Usha @ Girija, the observation mahazaar witness, in her evidence deposed, that she is residing in Pasumpon Nagar, Pudukkottai and is working in Savouries Company and the first signature in the observation mahazaar is that of hers and police on 11.07.2019 at around 12 p.m., come to house of Thangamani and



Crl.A.(MD)No.237 of 2021

solaimalai, prepared rough sketch and she along with one Azhagusundaram stood as witness and signed in the observation mahazaar and the same is Ex.P.5 and police enquired her.

7.3. PW.4, Dr.Ramkumar, medically examined the accused. Earlier, he worked as Assistant Professor in Pudukkottai Government Medical College Hospital. On 17.07.2019, at about 10.30 a.m., when he was on duty, on the direction of Mahila Court, one Suresh was produced on examining him, found no evidence to show that he was incapable of performing an act of sexual intercourse and issued Ex.P6, potency certificate.

7.4. P.W.5, Dr.Mugilvizhi, deposed that she is presently working as Assistant Professor in Pudukkottai Government Medical College Hospital. On 11.07.2019, the victim girl, aged 15 years, appeared for medical examination. On examining the victim girl found that, she was unmarried, for past two months, she was pregnant, and for past 5 days, she was bleeding, she was given tablets for termination of pregnancy. Her pulse and BP was normal. On examination of her uterus, it was found that eight weeks pregnancy was incompletely aborted, on conducting urine and scan test, her pregnancy was



Crl.A.(MD)No.237 of 2021

confirmed and she was admitted as inpatient and her uterus was cleaned and the tissues were sent for test and she issued certificate Ex.P7, the Material Objects 1 to 6, tablets are used for termination of pregnancy.

7.5. P.W.6 Tmt. Kavitha, Investigating Officer, deposed, that when she worked as Inspector of Police, All Women Police Station, Pudukkottai, on 11.07.2019, received information from the Social Welfare Office, Pudukkottai, proceeded to the house of Azghagusundaram, P.W.2 and enquired the victim girl, P.W.1, received written complaint given by the victim girl, and registered a case, at about 8.30 a.m., in Cr.No.6 of 19, for the offence under Section 5(i), 5(m), 5(j)(ii) r/w. 6 of POCSO Act and Section 506(i) IPC., sent the printed FIR and the complain to Court, taken up the case for investigation, enquired the victim girl, her mother, recorded their statements, sent the victim girl for medical examination. On the same day, at 10.30 a.m. in the presence of P.W.2 and P.W.3 prepared observation mahazaar and rough sketch, EX.P.9, and recorded their statements. On the same day, at around 13.00 hours, arrested the accused, sent the accused to Judicial custody, on 12.07.2019, enquired the witnesses Solaimalai, Lakshmi, Shantha, Palanimuthu,



Crl.A.(MD)No.237 of 2021

Senthil and recorded their statements. On 17.07.2019, sent the accused for medical examination. On 16.07.2019, enquired the victim girl and her mother, recorded their further statement. During enquiry recovered the tablets given by the victim girl, under Form 95, which is marked as Ex.P.10, 164 Cr.P.C statement of the victim girl and her mother was recorded and the CD containing the 164 Cr.P.C. Statement is MO7, 164 Cr.P.C statement of the mother of the victim girl is Ex.P.11, enquired Dr.Mugilvizhi and Dr.Ramkumar recorded their statements and obtained Medical certificate, on completing the investigation, on 07.08.2019 laid charge sheet, as against the accused u/s 5(1), 5(j)(ii) r/w 6 of POCSO Act and 506(ii) IPC.

8. The trial court examined P.W.1 to P.W.6, marked Ex.P.1 to P.11 and MO.1 to MO.7 on completion of examination of witness. The appellant/accused did not file any documents nor let in any oral evidence.

9. The trial Court, on consideration and appreciation of oral and documentary evidences and other materials, convicted and sentence the appellant / accused as stated above and hence, this appeal.



Crl.A.(MD)No.237 of 2021

10. Mr.R.Manickaraj, the learned Legal Aid Counsel appearing for the appellant would submit that there was huge delay of 120 days in lodging the complaint from the date of occurrence and the same was not explained satisfactorily by the prosecution. P.W.6, Inspector of Police, failed to seize the dresses worn by the victim girl at the time of occurrence and the foetus was not collected and sent for medical examination. No independent witnesses from the occurrence place were examined by the prosecution. He would further submit that the very case of the prosecution is that the wife of the appellant was a professor in a College and it is usual for the victim girl to visit the house of the appellant and get clarified her doubts with the appellant's wife, the prosecution did not prove or let any evidence to show that the wife of the appellant is a professor in a college. The termination pills seized by the investigation officer, after four days and no proper explanation given by P.W.6, the Investigation Officer. The trial Court over-looked material omission in the statement of the victim. He submitted that the evidence of P.W.1 is highly doubtful, contradictory. She says that on 09.03.2019, she was first sexually assaulted and two weeks thereafter penetrative sexual assault. On 09.07.2019, tablets for termination of pregnancy given by appellant, but the Doctor, P.W.5, evidence is that foetus was 8 weeks old, which



Crl.A.(MD)No.237 of 2021

is contradictory, proves the fact that P.W.1 has not come with truth.

The prosecution case, on this score, has fallen down like a pack of cards, further collection of MO.1 to M.O.6 four days later is not made in the manner known to law. The prosecution failed to prove the case *prima facie*. Therefore, finding of the trial Court is liable to set-aside.

11. On the other hand, Mr.A.ThiruvadiKumar, the learned Additional Public Prosecutor for the State would submit that the complainant is the victim girl, aged 16 years, and was studying 10th standard, when the occurrence took place. The accused is her neighbour. P.W.1 had given corroborative evidence, confirming her complaint, 164 Cr.P.C statement and the evidence of PW1, victim girl is corroborated by the evidence of PW5, Dr.Mugilvizhi, who medically examined the victim girl. It has been proved that the accused committed aggravated penetrative sexual assault on the victim girl, thereby, made her pregnant, forced the victim girl to take termination pills causing, miscarriage, the sole evidence of the prosecutrix is believable and trustworthy. The evidence of PW1 reveals the criminal intimidation by the accused. The prosecution proved its case through PW1 to PW6 and Ex.P.1 to Ex.P.11 and MO1 to MO7. PW1 the victim girl categorically stated that, since the accused had criminally



Crl.A.(MD)No.237 of 2021

threatened her that he would kill her and her parents, fearing for the same, not informed immediately, hence, delay in lodging the complaint. In rape case, delay is not of much 'significance' as the victim has to muster courage to come out in open and expose herself, sole evidence of the victim girl is sufficient to convict the accused. The trial court by a well reasoned Judgement has convicted the appellant and prayed for dismissal of the appeal.

12. We have considered the rival submissions made by learned counsel for the parties and perused the record.

13. The victim girl was examined as P.W.1. The victim girl cogently explained the entire incidents and the statement given by her before the learned Magistrate under Section 164 Cr.PC., Ex.P2 is in conformity. All the witnesses cross examined in detail, but nothing could be elicited in favour of the defence. There is nothing on record to say that the appellant roped in on a false charge. It is by now well settled that the conviction of a person for the commission of rape, can be based on the sole testimony of the victim girl, provided the evidence of the victim is cogent, reliable and inspiring confidence. In the present case, there is ample corroboration with the evidence of



Crl.A.(MD)No.237 of 2021

the victim girl. There is nothing to doubt the evidence of P,W.1/
Victim, as regards the penetrative sexual assault of the appellant.

14. As far as delay in lodging of an F.I.R. is concerned, it is not proper to throw the case of the victim girl by saying that F.I.R. was lodged with delay. The delay in lodging an FIR in a rape case is not of much "significance" as the victim has to muster courage to come out in open and expose herself in a "conservative social milieu". In rape case, the delay in filing the FIR in all circumstance is not of significance. Sometimes the fear of social stigma and on occasions the availability of medical treatment to gain normalcy and above all psychological inner strength to undertake such a legal battle. In the present case, the F.I.R. was lodged with delay for the above reasons, further P.W.1 in her Complaint, Ex.P1, gave reasons for delay.

15. Now, with regard to abortion of pregnancy, the appellant forced the victim to take the pills on 08.07.2019 and the production of M.Os.1 to 6 by the victim's mother is to be seen. M.Os.1 to 6 said to have been produced by the victim's Mother, S.Thangamani, on 16.07.2019 and the same has been received, recorded by way of Form-95, Ex.P10. Admittedly, in this case, the victim's mother has not



Crl.A.(MD)No.237 of 2021

been examined and Ex.P10 as well as her 164 statement, Ex.P11 both marked through the Investigating Officer, P.W.6. Hence, it cannot be admitted in evidence as proved.

16. From the Complaint, Ex.P1, which is a detailed one, which has been given after consultation with the Child Help-line by P.W.1 and P.W.2. In the Complaint, Ex.P1, as well as in her 164 statement, Ex.P2, there is no mention about M.Os.1 to 6, handed over to P.W.1 and she had kept the same in her school bag. From the evidence of P.W.5, the Doctor, who examined the victim on 11.07.2019 who issued Ex.P7, Accident Register, though in her oral evidence she states about urine test as well as scan done on the victim and the victim treated as inpatient and for Dilation and Curettage (DNC) carried out, there is no corresponding records produced. In this case, neither, the scan report nor the urine test and any other test report produced, except the Accident Register, Ex.P7, no medical records produced. From the Accident Register, the impression given by Doctor is that there was an incomplete abortion that is based on the statement of the victim girl and nothing more. In view of the same, it cannot be conclusively held that the victim had forced miscarriage. In view of the same, this Court finds the conviction of the appellant for the offence under



Crl.A.(MD)No.237 of 2021

Section 5(j)(ii) r/w 6 of POCSO Act, 2012 and Section 312 of Indian Penal Code, not sustainable.

17. It is relevant to note that the occurrence took place on 09.03.2019, prior to the amendment of Section 6 of the POCSO Act 25 of 2019, which came into effect from 16.08.2019. Prior to the amendment, Section 6 of the POCSO Act, reads as follows:-

' 6.Punishment for aggravated penetrative sexual assault

Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine."

The above provision makes it clear that the punishment provided prior to the amendment should be for a term, which shall not be less than ten years, but it may extend to imprisonment for life and also fine.

18. Taking note of the over all circumstances, we are of the view



Crl.A.(MD)No.237 of 2021

that if the appellant/accused is convicted for the period of 12 years of rigorous imprisonment, the same will meet the ends of justice.

19. In view of the above discussions, the conviction against the appellant is sustained and the sentence is modified in the following manner:

(a) The conviction imposed on the appellant under Section 5(l) r/w 6 of the POCSO Act, is hereby sustained and the appellant is sentenced to undergo 12 years rigorous imprisonment without remission;

(b) The conviction imposed on the appellant under Section 5(j)(ii) r/w 6 of POCSO Act, 2012 and Section 312 of Indian Penal Code, not sustainable and the appellant is acquitted of both the charges.

(c) The fine amount of Rs.1,00,000/- imposed by the Trial Court stands confirmed.

(d) The period of sentence already undergone by the appellant/accused is ordered to be set off under Section 428 Cr.P.C.



Crl.A.(MD)No.237 of 2021

20. In the result, the Criminal Appeal is allowed in part to the extent indicated above.

21. We appreciate the services rendered by the learned Legal Aid Counsel, Mr.R.Manickaraj, , who has appeared for the appellant. We direct the Legal Aid Services Authority to pay his remuneration.

22. Insofar as the payment of compensation, the trial Court initially ordered a sum of Rs2,50,000/- to be paid to the victim girl, by the Government. It is reported that the said amount of Rs.2,50,000/- had already been paid. The trial Court ordered a further compensation of Rs.5,00,000/- (Rupees Five Lakhs Only) by following the guidelines issued by the Tamil Nadu Government in G.O.(Ms)No. 33/2020, Social Welfare and Nutritious Meal Programmed (SW 5(2) Department, dated 03.10.2020 to the victim girl. Hence, this Court directs that a compensation of a sum of Rs.5,00,000/- be paid to the victim by the Government. This sum shall be deposited in an interest bearing account with the mother as the guardian. The mother shall be permitted to withdraw interest every month. The said sum shall be utilized only for the up keep and rehabilitation of the victim. The said amount is to be paid to the victim, within a period of 30 days,



Crl.A.(MD)No.237 of 2021

from the date of receipt of copy of the Judgment. The Director of Social Defence, Chennai, the District Collector, Pudukkottai and the District Child Protection Officer, Pudukkottai, shall ensure that the compensation amount, as directed above, is disbursed to the victim girl within the aforesaid stipulated period and file a report to that effect before the Trial Court immediately thereafter. In the event of non-compliance in payment of compensation amount, the victim or her parents can approach this Court for disobedience of the order of this Court by filing appropriate petition.

(M.S.R.,J.) (M.N.K., J.)

29.09.2023

Index : Yes / No

Internet : Yes/ No

mpk/smn2



Crl.A.(MD)No.237 of 2021

WEB COPY

To

- 1.The Sessions Judge,
Pudukkottai.
- 2.The Inspector of Police,
All Women Police Station,
Pudukkottai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,

CC :

- 1.The Principal Secretary,
Government of Tamil Nadu,
Social Welfare and Women Empowerment Department,
Secretariat, Chennai-600 009.
- 2.The Director of Social Defence,
Chennai.
- 3.The District Collector,
Pudukkottai.
- 4.The District Child Protection Officer,
Pudukkottai.
- 5.The Superintendent,
Central Prison, Trichy.



WEB COPY



Crl.A.(MD)No.237 of 2021

**M.S.RAMESH, J.
AND
M.NIRMAL KUMAR, J.**

Pre-Delivery Judgment made in

Crl.A.(MD)No.237 of 2021

29.09.2023