



Crl.A.(MD).No.249 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 21.08.2023

DELIVERED ON : 10.11.2023

CORAM

**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE M.NIRMAL KUMAR**

Crl.A.(MD)No.249 of 2021

K.Subramanian

.. Appellant / sole Accused

Vs.

State through:

The Inspector of Police,
All Women Police Station,
Pattukottai District.
(Crime No.2/2017)

.. Respondent / complainant

Appeal filed under Section 374(2) of Criminal Procedure Code,
against the judgment dated 24.04.2018 in Spl. SC No.48/2017 passed by the
Sessions Judge, (FAC), Mahila Court, Thanjavur.

For Appellant : Mr.S.Sivasubramanian

For Respondent : Mr.A.Thiruvadikumar
Additional Public Prosecutor



Crl.A.(MD).No.249 of 2021

JUDGMENT

(Judgment of the Court was delivered by ***M.S.RAMESH, J.***)

The appellant is the sole accused in the case before the Mahalir Neethimandram (Fast Track Mahila Court), Thanjavur in Spl. S.C.No. 48/2017, who has been found guilty for having committed the offences under Section 5(l), 5(n), 5(k) and 5(j)(ii) all read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') and Section 506(i) IPC and thereby convicted and sentenced to undergo imprisonment for life till his last breath without any concession or remission in his punishment through judgment dated 24.04.2018.

2. The case of the prosecution is that the appellant is the biological father of the victim girl and she was also mentally ill. When the victim girl was 17 years four months and ten days, the appellant had forcibly raped his daughter, owing to which, she became pregnant and gave birth to a child on 27.03.2017. The appellant had also been repeatedly having sexual intercourse with the victim girl thereafter, till two months before she delivered his child. The mother of the victim girl was unaware of the



Crl.A.(MD).No.249 of 2021

pregnancy of her daughter, untill she gave birth to the child. Since the appellant, being the biological father of the victim, had involved in aggravated penetrative sexual assault repeatedly and had also impregnated the victim, he was charged for the offences under Sections 5(l), 5(m), 5(l), 5(j)(ii) all read with Section 6 of the POCSO Act and 506(I) IPC.

3. Before the trial Court, the victim girl was examined as P.W.1 and her statement given under Section 164 Cr.P.C., was marked as Ex.P1. P.W.2 is the mother of the victim girl and her complaint to the police was marked as Ex.P.2. P.W.6 is the Government Doctor, who had treated P.W.1 immediately after the delivery of the child and the Accident Register was marked as Ex.P.6. The date of birth of P.W.1 evidencing that she was born on 20.12.1999 in the bonafide certificate (Ex.P.8) was marked through P.W. 7, who is the Headmistress of the school in which P.W.1 studied. P.W.8- Doctor had produced the potency certificate for the accused, which was marked as Ex.P.9. P.W.11 is the Head Constable, who had obtained the blood samples from the accused, P.W.1, as well as the new born baby, for the purpose of analysing the DNA test. P.W.13 is the scientific officer, who had conducted the DNA test, the report of which is marked as Ex.P12. The



Crl.A.(MD).No.249 of 2021

investigation was conducted by P.W.14, who had also filed a charge sheet.

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4. The trial Court, on the strength of the oral and documentary evidence before it, had come to the conclusion that P.W.1 was a child as defined under the POCSO Act based on Ex.P.8 and the evidence of P.W.7. The oral testimony of P.W.1 was also considered along with the evidences of P.Ws.2 and 3. Strong reliance was placed on the DNA report given by P.W.13, which report had certified that the baby born to P.W.1 is the daughter of the appellant and the test on the sample DNA of the appellant was arrived at 99.598 and the final opinion that the appellant is the father of the baby was 99.99999999999999%. On this basis, he was convicted for the aforesaid offences and sentenced to undergo imprisonment as stated supra.

5. The learned counsel for the appellant submitted that there was some unexplained delay in lodging the complaint and producing the appellant for medical examination and that the evidence of P.W.2 - mother is unreliable since her statement that she was not aware that her daughter was pregnant till the date of her delivery, is unbelievable.



Crl.A.(MD).No.249 of 2021

6. Per contra, the learned Additional Public Prosecutor submitted that when P.W.1's age is confirmed through the evidence let in by the prosecution, which establishes that she was a child on the date of the incident and in view of the DNA test report, which certifies that the appellant was the father of the baby born to P.W.1, all the offences for which the appellant was charged, stands substantially proved and therefore, there is no infirmity in the final judgment of the trial Court.

7. Though the learned counsel for the appellant made an earnest effort to substantiate the grounds he had raised, which has been extracted earlier, we do not intend to venture into analysing those minor discrepancies in the oral testimonies of the witnesses, owing to the fact that the major grounds on which the appellant was found guilty for the offences committed, could not be overcome by him.

8. It is the case of the prosecution that P.W.1 was born on 20.12.1999, in support of which claim, the bonafide certificate issued by the school in which P.W.1 had studied was marked as Ex.P8 through the Headmistress (P.W.7) of TELC School at Pattukottai, since the school certificate to



Crl.A.(MD).No.249 of 2021

substantiate the age of the child under the provisions of the POCSO Act is permissible. The appellant was not able to discredit the oral statements of P.W.7 during trial. Thus, the basic fact that P.W.1 was a minor, being 17 years four months and 10 days at the time of the incident, stands substantiated.

9. The next crucial fact that requires to be proved by the prosecution is as to whether the appellant had committed the offence for which he was charged. P.W.1, in her statement, had deposed that about a year back, when her mother had gone to a temple and she was alone with the appellant, that night, the appellant had gagged her mouth with a cloth and tied her hand. Thereafter he had threatened her with knife and had sexual intercourse with her. Thereafter he had told her that she must not reveal this incident to her mother or anyone else, failing which, he would kill her and her mother. P.W.1 had further stated that her father had thereafter repeatedly had sexual intercourse with her, until two months before she gave birth to a child. In the cross-examination, the defence could not discredit any of the statement made by P.W.1 in this regard. P.W.2, who is the mother of P.W.1, stated that P.W.1 was unsound and she was little backward in her studies and she was



Crl.A.(MD).No.249 of 2021

doing her 8th standard when she was 17 years old. She has also stated that about a year back her daughter had swollen hands and legs and has also having stomach pain and that suddenly given birth to a child. When she had enquired with P.W.1, she had revealed the incident, stating that the appellant had sexually assaulted her on many occasions and had also threatened her not to reveal the same to P.W.2. The statement of P.W.2 was also not discredited by the defence. The birth of the child was spoken to by P.W.6, who was the Doctor, who treated P.W.1 immediately after the delivery of her child. In her statement, she had spoken about P.W.1's delivery of the child, which weighed 1.2 kgs only.

10. The learned counsel for the appellant made a faint effort to state that the evidence of P.W.2 is not credible since her ignorance of her daughter being pregnant till the time of delivery is unbelievable. Such a statement, merely on a surmise, will not hold good. Even otherwise, there is lot of possibility that the pregnancy of P.W.1 could have been gone unnoticed by P.W.2 since the child was born to P.W.1 had weighed only 1.2 kgs and apparently the foetus, during the major part of the pregnancy, may not have shown out. Apart from this, the other statements of P.W.1



revealing the paternity of her child and the sexual assault the appellant had caused on her, was spoken to by P.W.2 also, which statement was not discredited by the defence.

11. The crucial piece of evidence against the appellant is the DNA test conducted on the baby born to P.W.1. As per Ex.P.12, the chance of paternity of the child born to P.W.1 to be contributed to the appellant as a biological father was 99.99999999999999%. The relevant portion of the report of Ex.P.12, where such an inference was drawn reads as follows:

“Inference: In a child, under each of the STR locus, one allele should be contributed by the biological mother (maternal) and the other allele should be contributed by the biological father (paternal).

1.Of the two alleles under each of the 15 STR loci found in the child 'R', one allele (maternal) was contributed by the biological mother 'S' and hence the other allele (paternal) ought to have been contributed by the father of this child.

2.All such paternal alleles, which ought to have been contributed by the father to the child 'R' are found to be present in the alleged father Mr.Subramanian.

3.Apart from the alleles accounted as present either in the biological mother 'S' or in the alleged father



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Crl.A.(MD).No.249 of 2021

Mr.Subramanian, no other unaccounted allele is present in the child, 'R'.

4.Since the alleged father Mr.Subramanian is not found excluded from the paternity of the child 'R' under any of the 15 STR loci tested, his probability of paternity has been computed.

5.The cumulative probability of paternity of the alleged father Mr.Subramanian for being the father of the child 'R' is 99.999998%.

6.The cumulative chance of exclusion of any random man from the paternity of the child 'R' is 99.999999999999%.”

(For the sake of anonymity, the name of P.W.1 is referred to as 'S' and the baby born to P.W.1 is referred to as 'R')

12. The contents of Ex.P12 were proved through the oral statement of P.W.13, the scientific officer, who had conducted the DNA test. As a matter of fact, no cross-examination was done on this witness, except for extracting a statement that the appellant, P.W.1 and her child had not directly given the blood samples to the expert. Ex.P12 is a crucial piece of evidence, which links the appellant's paternity to P.W.1's child. The consequential conclusion that could be derived is that the appellant had indeed committed aggravated



Crl.A.(MD).No.249 of 2021

penetrative sexual assault on P.W.1, on more than one occasion, through which P.W.1 had given birth to his child. The evidences touching upon this aspect, since could not be discredited by the appellant, we do not find any reason to interfere with the judgment of the trial Court touching upon this aspect.

13. However, a portion of the conviction and sentence imposed on the appellant, which we intend to interfere, is the award of life imprisonment for the remainder of the natural life of the appellant. As per the case of the prosecution, the occurrence had taken place on 28.03.2016 and on several dates thereafter till the child was born on 27.03.2017. Section 6 of the POCSO Act 2012 came to be amended by Act 25 of 2019, with effect from 16.08.2019. Prior to the amendment, the punishment for aggravated penetrative sexual assault under Section 6 was with rigorous imprisonment for a term, which shall not be less than 10 years and which may extend to imprisonment for life and shall also be liable for fine. After 16.08.2019, the maximum period of imprisonment for life was extended to imprisonment for remainder of the natural life of the prisoner.



Crl.A.(MD).No.249 of 2021

14. The trial Court, having found the appellant guilty for all the offences, for which, he was charged, ought to have applied the punishment provided under the pre-amended Act for aggravated penetrative sexual assault, as it stood on the date on which he had committed these offences. Since the occurrence of aggravated penetrative sexual assault had occurred on 28.03.2016 and many dates thereafter and P.W.1 gave birth to the appellant's child on 27.03.2017, which was prior to the amendment of Section 6 of the POCSO Act on 16.08.2019, the punishment as prescribed prior to the amendment ought to have been applied. Thus, having found him guilty of all the charges, the trial Court ought to have imposed the maximum period of imprisonment of rigorous imprisonment for life and not for imprisonment for the remainder of his natural life. To this extent, the judgment of the trial Court, requires interference.

15. In the result, the judgment of the trial Court convicting and sentencing the appellant is confirmed. However, imposition of the maximum period of the life imprisonment for the remainder of his natural life shall stand modified to rigorous imprisonment for life.



Crl.A.(MD).No.249 of 2021

16. With this modification, the judgment of the trial Court stands confirmed. The criminal appeal stands dismissed.

(M.S.R.,J.) (M.N.K.,J.)
10.11.2023

NCC : Yes
Index : Yes
RR



Crl.A.(MD).No.249 of 2021

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To

- 1.The Inspector of Police,
All Women Police Station,
Pattukottai District.
- 2.The Sessions Judge,
(FAC), Mahila Court,
Thanjavur.
- 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.249 of 2021

M.S.RAMESH, J.
and
M.NIRMAL KUMAR, J.

RR/DP

Pre-Delivery Judgment in
Crl.A.(MD)No.249 of 2021

10.11.2023