



Crl.A.(MD)No.361 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.09.2023

CORAM

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

Judgment reserved on 10.08.2023	Judgment pronounced on 29.09.2023
------------------------------------	--------------------------------------

Crl.A.(MD)No.361 of 2021

Velpandi, S/o.Late. Muthukrishnan

... Appellant/Sole Accused

Vs.

State, Rep. by
The Inspector of Police,
All Women Police Station,
Palayamkottai,
Tirunelveli District.
(Crime No.17 of 2016)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for records and set aside the judgment passed by the learned Sessions Judge, Special Court for POCSO Act Cases, Tirunelveli, Tirunelveli District, in Special Case No.16 of 2019, dated 03.12.2020.

For Appellant

:

Mr.C.Mayilvahana Rajendran



WEB COPY



Crl.A.(MD)No.361 of 2021

For Respondent : Mr.A.Thiruvadikumar
Additional Public Prosecutor

JUDGMENT

M.NIRMAL KUMAR, J.

This appeal has been filed by the appellant/sole accused as against the conviction and sentence, dated 03.12.2020, made in Special Case No.16 of 2019, by the learned Sessions Judge, Special Court for POCSO Act Cases, Tirunelveli, Tirunelveli District.

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

Conviction under Section	Sentence	Fine amount
u/s. 6 of the Protection of Children from Sexual Offences Act, 2012	To undergo imprisonment for life.	To pay a fine of Rs.25,000/-, in default, to undergo simple imprisonment for one year.
u/s.506(i) I.P.C.	To undergo rigorous imprisonment for two years.	To pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for three months.

The Trial Court further ordered the sentences to run concurrently and also



Crl.A.(MD)No.361 of 2021

granted set-off under Section 428 Cr.P.C. The appellant/accused challenging the legality of the conviction and sentence awarded by the Trial Court, vide impugned judgment, dated 03.12.2020, has filed this Criminal Appeal.

3. The case of the prosecution is that, on 28.11.2016 at 02.30 p.m. when K.Arumaikani, Head Constable (P.W.15), was in charge of the respondent Police Station, one Rajashree Violet, Sub-Inspector of Police, Mumbai Shahu Nagar Police Station, and the victim girl (P.W.1) gave the first information report of Mumbai Shahu Nagar Police Station (Ex.P.13), counsellor's (Sarika) complaint and statement. After receiving the same and obtaining statement from the victim girl (P.W.1), the respondent Police registered a case in Crime No.17 of 2016 for the offences under Sections 376 and 354 (B) and (D) I.P.C. read with Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 [hereinafter referred to as "the POCSO Act"].

3.1. According to the victim girl (P.W.1), she used to stay at her



Crl.A.(MD)No.361 of 2021

grandmother's [P.W.6] house at Ambikapuram, Melapalayam, from her childhood. Since she failed in S.S.L.C. examination, she discontinued her studies. On the last Sunday of April, 2015, when she was at her grandmother's house, the appellant/accused [uncle of the victim girl], who is the husband of her aunt [mother's sister], came with her aunt and touched her hand and cheek. On that day, her mother took her aunt and went to see the sister of the victim girl. The victim girl and the appellant/accused were alone in the house. On the same day, at around 02.00 p.m., the appellant/accused forced her and had sexual intercourse with her inside the house. At that time, when there was breathing problem, she could not raise alarm. The appellant/accused threatened the victim girl not to inform the same to anyone. When she attempted to inform the same to her mother and aunt, the appellant/accused gave signal not to inform the same to them. After that, the appellant/accused often came to the house of her grandmother. When her grandmother, aunt were sleeping in the upstairs and her grandfather was sleeping outside the house, and the victim girl fell asleep after watching T.V., the appellant/accused came inside the house, forced her and had sexual intercourse with her. Since there was breathlessness, she could not raise any alarm. Thereafter, the



Crl.A.(MD)No.361 of 2021

appellant/accused forced her and had sexual intercourse with her thrice.

WEB COPY

3.2. Further, according to P.W.1, her paternal aunt, Nesamani [P.W. 2], who came from Mumbai, took her to Mumbai on 22.08.2016. On 22.11.2016, the victim girl fell ill in Mumbai and fell down. Thereafter, she was taken to Chota Sion Hospital, where it was confirmed that she was 6 months pregnant. After that, one Sarika, Counsellor, informed the same to the Police and lodged a complaint at Shahu Nagar Police Station, Mumbai. The victim girl did not know Hindi, hence, unable to give details, but informed them the place of incident was Melapalayam. Hence, the Shahu Nagar Police brought her and her aunt to Tirunelveli Commissioner's Office on 28.11.2016 and subsequently, they appeared before the respondent Police Station and a case registered.

4. P.W.1, Victim girl, in her evidence, deposed that she was working as a Saleswoman in a Fancy Store at Melapalayam. Further, she reiterated the averments made in the complaint (Ex.P.1) about aggravated penetrative sexual assaults committed by the appellant/accused, she got conceived and delivered a male child, later, the child was handed over to the Government



Crl.A.(MD)No.361 of 2021

Children Home and thereafter, the said child was given in adoption.

WEB COPY

4.1. P.W.2 the aunt of the victim girl, in her evidence, deposed that she is residing at Mumbai. On 24.08.2016 she came from Mumbai to attend the funeral ceremony of her daughter-in-law's father. On the same day, when she went to see the victim girl, she found the victim sad. When she questioned the reason for victim girl's sadness, the family members informed P.W.2 the victim failed in 10th Standard Examination, hence sadness. Thereafter, on 28.08.2016 when she went to the house of the victim girl to inform that she was going to Mumbai, the victim girl informed P.W.2 that she was willing to come with her. The mother and grandmother of the victim girl informed P.W.2 that if she takes the victim girl to Mumbai, she will be little happier. Hence, P.W.2 took the victim girl to Mumbai. Thereafter, on 22.11.2016, the victim girl fainted on the road when they were returning after attending a ritual ceremony of his relative at Mumbai. Immediately, she took the victim girl to a hospital, where the doctor examined the victim girl and informed P.W.2 that the victim girl was six months pregnant. The doctor informed the same to one Sarika, Counsellor. Thereafter, the said Sarika took them to Shahu Nagar Police Station, Mumbai, where a complaint has been lodged. Subsequently, P.W.2 came to



Crl.A.(MD)No.361 of 2021

know about the penetrative sexual assault made by the appellant/accused.

WEB COPY

4.2. P.W.3 Mahendran, Centring Worker, is the witness to the Observation Mahazar (Ex.P.4).

4.3. P.W.4, the mother of the victim girl (P.W.1), deposed in line with P.W.2.

4.4. P.W.5, the grandmother of the victim girl, deposed that her granddaughter [victim girl] grew up with her, stayed in her house and studied since childhood. The appellant/accused is her son-in-law namely, her younger daughter's husband. Since the victim girl (P.W.1) failed in S.S.L.C., she was upset. At that time, P.W.2 came from Mumbai and P.W.5 asked P.W.2 to take P.W.1 to Mumbai, where P.W.1 was there for nearly two months. After examination of the victim girl in the Hospital at Tara, Mumbai, P.W.5 came to know about the pregnancy of P.W.1 and the penetrative sexual assault committed by the appellant/accused.

4.5. P.W.6 - Dr.Vennila, examined the victim girl, deposed that on the request made by the Inspector of Police, All Women Police Station, Palayamkottai, she conducted medical examination on the victim girl and found that there were no genital and bodily injuries. On abdominal examination, P.W.6 found that the gestational age was 26 weeks. She gave



Crl.A.(MD)No.361 of 2021

Accident Register to the victim girl, which was marked as Ex.P.5.

WEB COPY

4.6. P.W.7 – P.V.Rajasekar, Scientific Officer, deposed that on 12.07.2017, he received a blood smeared cloth and samples of semen from one Muthumala, Police Constable. He sent the blood smeared cloth to the Forensic Science Laboratory, Madurai, for examination. After examination, he received an inconclusive report. Thereafter, he gave Ex.P.6 Biological report.

4.7. P.W.8 – Rajesh, who was working as Scientific Officer, Regional Forensic Science Laboratory, Madurai, examined the blood samples of the appellant/accused, victim girl and the child and gave Ex.P.7 DNA analysis report, confirming the appellant/accused is the biological father of the child of the victim girl.

4.8. P.W.9 - Dr.Sudalaimuthu, Professor, attached to the Tirunelveli Medical College Hospital, examined the appellant/accused and opined that there was nothing to suggest that he was impotent and gave Ex.P.8 potency certificate.

4.9. P.W.10 – Hebsiba Shobana, Head Constable, deposed that on 30.11.2016 she took the victim girl to the Tirunelveli Medical College



Crl.A.(MD)No.361 of 2021

Hospital for conducting scan and blood test and thereafter, handed over her to the Home.

4.10. P.W.11 – Samuthirapandi, Special Sub-Inspector of Police, Tirunelveli Town Police Station, deposed that he along with one Alexander, Head Constable, escorted the appellant/accused from Central Prison, Palayamkottai to Tirunelveli Medical College Hospital, for medical examination and thereafter, handed over him to the Central Prison, Palayamkottai.

4.11. P.W.12 – Thangam, Head Constable, deposed that on 17.04.2017, she brought the victim girl and her child to the Tirunelveli Medical College Hospital, where the blood samples of the appellant, victim girl and the child collected. She handed over the same to the Court and then, handed over them to the Regional Forensic Science Laboratory, Madurai.

4.12. P.W.13 – Dr.Ilangovan, Resident Medical Officer (RMO), Tirunelveli Medical College Hospital, deposed that he took the blood samples of the appellant/accused, victim girl and the child in F.T.A. Card and sent the same to the Forensic Science Laboratory through V.Thangam (P.W.12), Head Constable, for examination.



Crl.A.(MD)No.361 of 2021

4.13. P.W.14 – Muthumala, Head Constable, Palayamkottai Police Station, deposed that on 11.07.2017 at 11.00 a.m., she received sample semen of the appellant/accused from Tirunelveli Medical College Hospital and handed over the same to the Forensic Science Laboratory, Tirunelveli.

4.14. P.W.15 – Arumaikani, Head Constable attached to the All Women Police Station, Tirunelveli Town, deposed that on 28.11.2016 at 14.00 hours, while she was on duty, received the F.I.R. of Shahu Nagar Police Station, Mumbai and complaint. Thereafter, she obtained a statement from the victim girl and registered a case in Crime No.17 of 2016, for the offences under Sections 376 and 354 I.P.C. and Sections 4, 8 and 12 of the POCSO Act, against the appellant/accused. Then, she sent the F.I.R. (Ex.P.11), statement of the victim girl and the F.I.R. of Shahu Nagar Police Station, Mumbai, to the learned Judicial Magistrate No.V, Tirunelveli, as well as to the superior officers.

4.15. P.W.16 – Velkani, Inspector of Police, attached to All Women Police Station, Palayamkottai, on receipt of the complaint [Ex.P.1] and F.I.R. [Ex.P.11], took up investigation, proceeded to the place of occurrence, in the presence of Mahendran [P.W.3] and Renganathan, prepared Observation Mahazar and Rough Sketch, which are marked as



Crl.A.(MD)No.361 of 2021

Exs.P.4 and P.12, respectively. Thereafter, P.W.16 enquired the victim girl, Nesamani (P.W.2), Mahendran (P.W.3) and Renganathan and recorded their statements. On 28.11.2016 at about 19.30 hours, P.W.16 arrested the appellant/accused in front of the fair price shop at Veeramanickapuram. After completion of investigation, she filed a final report against the appellant/accused for the offences under Section 6 of the POCSO Act and Section 506(i) I.P.C. and forwarded the same to the jurisdictional Court.

4.16. Thereafter, the learned Sessions Judge, Special Court for POCSO Act Cases, Tirunelveli, took the case on file in Special Case No.16 of 2019 and issued summons to the appellant/accused. On his appearance, framed charges under Section 6 of the POCSO Act and Section 506(i) I.P.C. and questioned the appellant/accused. He pleaded not guilty for the charges levelled against him.

4.17. The prosecution, in order to prove their case, examined the witnesses namely, P.W.1 to P.W.16 and marked Exs.P.1 to P.17.

4.18. The appellant/accused was questioned under Section 313[1][b] Cr.P.C., with regard to the incriminating circumstances made out against him in the evidences rendered by the prosecution and he denied it as false. The appellant/accused did not file any documents nor let in any oral



Crl.A.(MD)No.361 of 2021

evidence.

WEB COPY

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

5. The learned counsel for the appellant submitted that P.W.13 doctor admitted that the blood sample of the appellant and P.W.1 have not been taken in his presence and the same was taken by the Lab Assistant. The Lab Assistant, who took blood samples, ought to have been examined as prosecution witness by the Investigating Officer. However, he was not examined and hence, the DNA report, which was marked as Ex.P.7, could not be relied upon by the Trial Court.

5. 1. The learned counsel further submitted that a relative boy of the appellant is the reason for victim girl's pregnancy and already there was dispute over partition of property, using this dispute, the appellant has been falsely implicated in this case.

5.2. The learned counsel further submitted that the prosecution has failed to prove the case beyond reasonable doubt and the prosecution witnesses have not given clear evidence, there are inconsistency with each



Crl.A.(MD)No.361 of 2021

other. There is material contradiction in the prosecution witnesses and there is a material improvement in the version of the prosecution witnesses. The conclusion arrived at by the Trial Court is perverse and the Trial Court ignored the inconsistencies and contradictions in the evidence of the witnesses, which would destroy the very root and foundation of the prosecution case, alternatively without prejudice to his submission on merits, in the event of this Court not accepting the contention, the sentence can be modified. Since the offence was committed prior to the amendment *i.e.*, 16.08.2019, the learned counsel for the appellant seeks for modification of the punishment to lesser sentence, considering the fact that the appellant has got two minor children and he is the only breadwinner of the family, due to his incarceration, his children and family are suffering for existence.

6. Mr.A.Thiruvadikumar, learned Additional Public Prosecutor submitted that on the last Sunday of April, 2015, at around 02.00 p.m., when the victim girl was alone in her grandmother's (P.W.5) house, the appellant/accused, who is the uncle of the victim girl, forced the victim girl and had sexual intercourse with her inside the house. Thereafter, the appellant/accused often came to the house, forced her and had sexual



Crl.A.(MD)No.361 of 2021

intercourse with her for more than thrice. On account of the abovesaid acts committed by the appellant/accused, the victim girl got conceived and on 01.02.2017 gave birth to a male child at Karisalpatti Primary Health Centre. Subsequently, on 04.02.2017, the child was handed over to Vidiyal Home, Alangulam, Tirunelveli District. Thereafter, on 02.01.2021, the said child was given in adoption by the Child Welfare Committee, Tirunelveli. Insofar as the payment of compensation of Rs.3,00,000/- is concerned, now proceedings are pending with the Social Welfare Department.

6.1. The learned Additional Public Prosecutor submitted that sufficient evidence, both oral and documentary were placed before the Trial Court, which, on proper appreciation, found to be true, proved by the prosecution and convicted the appellant/accused.

6.2. The learned Additional Public Prosecutor further submitted that the evidence of the victim girl (P.W.1), is cogent and convincing and once the evidence of the victim is found to be trustworthy and believable, the same would be sufficient to hold that the appellant/accused is guilty of the charges levelled against him, which the Trial Court held and rightly too. In



Crl.A.(MD)No.361 of 2021

this case, the evidence of P.W.1, victim is confirmed by the evidence of P.W.2, P.W.4 and P.W.5, who are aunt, mother and grandmother of the victim girl. Further, the medical evidence confirms that the appellant is the cause and reason for the pregnancy of the victim girl. P.W.6, P.W.7, P.W.8 and P.W.13 and Exs.P.5 to P.7 confirms that the appellant is the biological father of the victim girl's child.

6.3. In fine, it is submitted by the learned Additional Public Prosecutor that the appellant/accused has not probalilized his innocence. The Trial Court, on cogent and convincing reasons and based on oral and documentary evidence, has found the appellant/accused guilty of the charges levelled against him and rightly convicted and sentenced him and, therefore, no interference is called for with the conviction and sentence recorded by the Court below.

7. This Court carefully considered the submissions made on either side and also perused the oral and documentary evidence, to which its attention was drawn.

8. In the present case, the most important evidence that has to be



Crl.A.(MD)No.361 of 2021

taken into consideration by this Court is, the evidence of the victim girl, who was examined as P.W.1. The victim girl cogently explained the entire incidents and also in the statement given by her before the learned Magistrate under Section 164 Cr.P.C. (Ex.P.2). The evidence of P.W.1 inspires confidence of this Court and the same has not been assailed during cross-examination. Apart from the evidence of the victim girl (P.W.1), the evidence of the Doctor, P.W.6, corroborates the version given by the victim girl. The evidence of P.W.2, P.W.4 and P.W.5 confirms the case of the prosecution and it is in line with the version given by the victim girl (P.W.1). The evidence of P.W.13 confirms, collection of F.T.A. Card, and P.W.8 confirms the DNA test conducted. That apart, Ex.P.7 DNA Analysis Report proves that the appellant/accused is the biological father of the child of the victim girl.

9. The appellant taking prevaricate stand, initially raising a defence as though a relative boy of the appellant is the reason for victim's pregnancy, and there was animosity, added to it, there was also family property dispute, hence, the appellant is falsely implicated. But, during examination of the appellant under Section 313 Cr.P.C., he gives different explanation that it



Crl.A.(MD)No.361 of 2021

was the victim, who forced the appellant to have such relationship, which exposes the hollowness in the appellant's explanation. Further, DNA test report confirms the act of the appellant.

10. Insofar as the offence under Section 5 of the POCSO Act is concerned, there is a legal presumption under Section 29 of the POCSO Act and the Court shall presume that the person, who is prosecuted for committing the offence, has committed the offence, unless the contrary is proved. That apart, there is also a presumption of culpable mental state under Section 30 of the POCSO Act. The appellant has not dislodged the statutory presumption and that apart, the prosecution has proved the case beyond reasonable doubt against the appellant. In view of the same, this Court does not find any ground to interfere with the conviction made by the Court below against the appellant and the Court below has given cogent reasons after analyzing the evidence on record.

11. The learned counsel for the appellant urged this Court to consider reducing the sentence on the ground that Section 6 of the POCSO Act, as it stood prior to the amendment, which came into effect from 16.08.2019, the



Crl.A.(MD)No.361 of 2021

punishment extended from ten years, which can go up to life imprisonment.

The Court below without considering the facts and circumstances of the case and the plea made by the appellant, while being questioned on the sentence, proceeded to impose the maximum sentence of life imprisonment against the appellant.

12. In the present case, the victim girl was aged about 16 years at the time of occurrence and the same is clear from Ex.P.16 Birth Certificate of the victim girl. The penetrative sexual assault has been committed on the child more than once, which makes the child pregnant and hence, it attracts Section 5(j)(ii) and (l) of the POCSO Act. The Court below on considering the age of the victim girl and the gravity of the offence, which involved the depraved mind of the appellant, thought it fit to impose the maximum sentence of life imprisonment. The appellant is said to be married and has two children. That apart, the appellant had undergone sentence for nearly 7 years.

13. It is relevant to note that the occurrence took place in the year 2015, 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



Crl.A.(MD)No.361 of 2021

of the POCSO Act, reads as follows:-

WEB COPY

"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.

14. Taking note of the over all circumstances, we are of the view that if the appellant/accused is convicted for the period of 12 years of rigorous imprisonment, the same will meet the ends of justice. There is no ground to interfere with the sentence imposed for the offence under Section 506(i) IPC.

15. 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 and sentence imposed under Section 506(i) I.P.C. is hereby confirmed;



Crl.A.(MD)No.361 of 2021

WEB COPY

(b) The conviction under Section 6 of the POCSO Act is hereby sustained and the appellant is sentenced to undergo 12 years rigorous imprisonment without remission;

(c) The fine amounts imposed by the Trial Court stand confirmed.

(d) The sentences are ordered to run concurrently; and

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

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

16. Insofar as the payment of compensation of Rs.3,00,000/- is concerned, we hereby direct the State Government to pay the said amount (Rupees Three Lakhs only) as victim compensation to the victim girl, within one month from the date of receipt of a copy of this judgment. The Director

20/23



Crl.A.(MD)No.361 of 2021

of Social Defence, Chennai, the District Collector, Tirunelveli and the District Child Protection Officer, Tirunelveli, 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.

Index : Yes / No

Internet: Yes / No

Neutral Citation: Yes / No

smn2

Copy to:-

(M.S.R., J.)

(M.N.K., J.)

29.09.2023

- 1.The Chief Secretary to Government of Tamil Nadu,
Secretariat, Chennai-600 009.
- 2.The Director of Social Defence,
Chennai.
- 3.The District Collector,
Tirunelveli.
- 4.The District Child Protection Officer,
Tirunelveli.



Crl.A.(MD)No.361 of 2021

To
WEB COPY

- 1.The Sessions Judge,
Special Court for POCSO Act Cases,
Tirunelveli, Tirunelveli District.
- 2.The Inspector of Police,
All Women Police Station,
Palayamkottai,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.A.(MD)No.361 of 2021

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

smn2

Pre-delivery judgment made in

Crl.A.(MD)No.361 of 2021

29.09.2023