



Crl.A.No.138 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	10.06.2024
Pronounced on	05.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

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Satheesh @ Satheesh Kumar

...Appellant

Vs.

State rep. by
The Inspector of Police,
Annur Police Station,
Coimbatore District.

...Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to allow the appeal by setting aside the judgment dated 20.01.2020 passed in S.C.No.32 of 2019 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore.

For Appellant : Mr.John Sathyan, Senior Advocate
for Mr.K.Govi Ganesan

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

JUDGMENT



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M.S.RAMESH,J.

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Heard Mr.John Sathyan, learned Senior Advocate appearing for the appellant and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor, for the respondent.

2. The appellant herein has been found guilty for the offence under Section 5(1) read with 6 of The Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the POCSO Act') and sentenced to undergo imprisonment for the remainder of his natural life and to pay a fine of Rs.1,000/- in default to undergo one year rigorous imprisonment, as well as guilty for the offence under Section 366(A) of the Indian Penal Code (hereinafter referred to as 'IPC') and sentenced to undergo 10 years imprisonment and to pay a fine of Rs.1,000/- in default to undergo one year rigorous imprisonment, through the judgment dated 20.01.2020 passed in Special Calendar Case No.32/2019 on the file of the Special Court for Exclusive Trial of Cases Under POCSO Act, Coimbatore. The said judgment is assailed in this appeal.

3. The case of the prosecution is that the minor victim girl, born on



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02.10.2001 and aged about 15 years, is the daughter of one Shanmugam. On 15.02.2017 at 11.30 P.M., when she had gone to the fields to switch off the motor, the appellant herein, who was present there, with his two wheeler, had lured her stating that he wanted to marry her and had forcibly taken her in his motorcycle and committed aggravated penetrative sexual assault several times. In view of these acts, the appellant has committed the offence under Section 366 IPC and Section 5(l) read with 6 of the POCSO Act.

4. The trial Court, on being convinced with the *prima facie* case being made out against the appellant, had framed charges for the offences against him, to which he had pleaded 'not guilty'. To substantiate the charges against the appellant, the prosecution had examined P.W.1 to P.W.11 and had marked Exs.P.1 to P.17 and M.O.1 on their side. There was no oral or documentary evidence on the defence side.

5. P.W.1 Shanmugam is the father of the victim girl, who had given the complaint (Ex.P.1). In his evidence, he speaks about the appellant having kidnapped his 16 year old daughter in his two wheeler, after promising to



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marry her and committed penetrative sexual assault several times. P.W.2 is the victim girl, who had deposed that she knew the appellant earlier through phone conversations and that on 15.02.2017, the appellant had called her and asked her to come out of the house. At about 11.00 P.M., when she went to the fields, she found the appellant standing there and who compelled her to ride with him in the two wheeler for five minutes. When she refused, the appellant had threatened her with a knife and forcibly took her in the two wheeler. He then committed penetrative sexual assault on her many times and left her the next day early morning at Puliampatti, asking her to go home by bus. She had then called her mother, who came and secured her. She also speaks about the statement she had given before the Magistrate under Section 164 Cr.P.C (Ex.P.3). P.W.3 is the mother of the victim girl, who speaks about missing of her daughter at 04.00 A.M. and the complaint which her husband and brother gave on 16.02.2017. P.W.4 is the brother of P.W.3, who speaks about missing of the victim girl and the phone call she made and thereafter, securing the victim girl from the place where the appellant dropped her. P.W.5 is the Inspector of Police, who had registered the case against the appellant in Crime No.57/2016, based on the complaint



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given by P.W.1. The appellant was arrested on 17.02.2017 in the presence of P.W.6 and obtained his confession statement (Ex.P.6). The seizure mahazar was marked as Ex.P.7 and the photographs of the two wheeler of the appellant was marked as M.O.1. P.W.7 is the doctor, who had examined the victim girl on 17.02.2017 and through her medical report (Ex.P.8) and final opinion (Ex.P.9), she had opined that there was no forcible sexual act, but there were signs of forcible physical injuries 4 to 5 days prior to examination. P.W.8 is the doctor, who had conducted the potency test on the appellant and the potential certificate was marked as Ex.P.11. P.W.9 is another mahazar witness, who had witnessed the seizure of M.O.1 and the arrest of the appellant. P.W.10 is the Inspector of Police, NIBCID, Coimbatore, who conducted the initial investigation and altered the offences. The rough sketch (Ex.P.14) was prepared by him and the photographs of the appellant's two wheeler was marked as M.O.1, which was seized through Form 95 (Ex.P.16). P.W.11 is the Inspector of Police, Burgur All Women Police Station, Krishnagiri, who had conducted the subsequent investigation and recorded the victim girl's statements under Section 164 Cr.P.C. (Ex.P.17). On completion of the investigation, she laid the charge sheet. The



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appellant was thereafter examined under Section 313(1)(b) Cr.P.C. about the incriminating circumstances, who denied the same. On the strength of the evidences, the trial Court had found the appellant guilty and sentenced him accordingly.

6. The learned Senior Counsel appearing for the appellant would submit that there are some serious discrepancies in the statement of the victim girl, as reflected in the First Information Report (FIR) and her oral testimonies before the Court. As per her initial statement, which was narrated by P.W.1 in the complaint (Ex.P.1), it is stated that the appellant had forcibly taken away the victim girl with a promise to marry her, whereas in her oral testimony in her statement under Section 164 Cr.P.C., as well as in the trial, she had improved the allegation, stating that the appellant threatened her with a knife and took her in a two wheeler. He also submitted that there was an unexplained delay in making the complaint, as well as, the complaint reaching the Court. According to the learned Senior Counsel, the occurrence had allegedly taken place on 15.02.2017 at 11.30 P.M. Though it is admitted by P.W.1 to P.W.3 that the victim girl had narrated the entire



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incident to them at 06.00 A.M. of 16.02.2017, the complaint was made only at 04.00 P.M. of 16.02.2017. Thereafter, the FIR had reached the Court only on 18.02.2017 at 02.10 P.M., after about two days and thereby raised a doubt with regard to the very occurrence itself. By drawing attention of this Court to Section 164 Cr.P.C. statement of the victim girl, he pointed out the discrepancy in the statement of the victim, having admitted of seeing the appellant prior to the occurrence and her subsequent oral testimony of seeing the appellant only on the day of occurrence.

7. Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that the victim girl's age has been substantiated before the trial Court to the effect that she is a child, as defined under the POCSO Act. The fact that the appellant had forcibly taken the victim girl has been spoken to by the victim herself in the complaint (Ex.P.1), as well as in the statement under Section 164 Cr.P.C. (Ex.P.3) and in her oral testimony. When a child has been sexually assaulted more than once through penetration, the contradictions pointed out by the appellant have no consequences and that the sentence awarded by the trial Court does not



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require interference.

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8. We have given our anxious consideration to the arguments made by the respective counsels and have perused the original records available.

9. The victim girl (P.W.2) was born on 02.10.2001, as per the birth certificate (Ex.P.2) issued by Udhagamandalam Municipality, which was marked through P.W.1. This fact that she was a minor has not been discredited by the appellant. Thus, the fact that the victim was aged only 15 years at the time of the occurrence, stands substantiated.

10. The victim, in her statements made to her father (P.W.1), which statements were reiterated by him to the Police in his complaint (Ex.P.1), as well as in the 164 Cr.P.C. statement and the oral testimony, had spoken about the appellant forcibly taking her away and committing the offence of penetrative sexual assault more than once. Though P.W.2 is the only witness, who speaks about the occurrence, her testimony in this regard also could not be discredited by the appellant. The medical report of the doctor indicates



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that there were signs and symptoms of forcible physical injuries present 4 to 5 days prior to the examination, on the victim girl. The potency test report of the appellant also certifies that he is not impotent. Where any person commits penetrative sexual assault on a child more than once or repeatedly, he is guilty of having committed the offence of penetrative sexual assault, as defined under Section 5(l) of the POCSO Act. As such, the findings of the trial Court, by holding the appellant guilty of having committed the offence under Section 5(l) of the POCSO Act, cannot be found fault with.

11. The consequential issue that arises for consideration is as to whether the trial Court was justified in imposing the maximum punishment of imprisonment for life for the remainder of his natural life?

12. In the case of *Alister Anthony Pareira Vs. State of Maharashtra* reported in (2012) 2 SCC 648, as well as in several other decisions of the Hon'ble Supreme Court, it has been held that imposition of sentence should commensurate with the nature and gravity of the crime, which shall depend on the facts and circumstances of each case. The relevant portion reads as



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follows:-

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“84. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.”

13. In the instant case, we find that though the evidence of the victim (P.W.2) cannot be disbelieved, but there are certain circumstances and certain portions of her evidence which is improbable. In her deposition, she had given an exaggerated version that the appellant threatened her with a knife before forcibly taking her. However, there is no such allegation in her



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earlier versions. That apart, we find that though P.W.2 was found at a bus stop in the early hours of 16.02.2017, the complaint was lodged at 4.00 P.M. on 16.02.2017. The FIR in Crime No.57/2016 was not despatched to the learned Magistrate immediately and it was despatched only on 18.02.2017 at 2.10 P.M. However, the delay in lodging the complaint and despatching the FIR by itself may not be fatal in all cases.

14. That apart, we find from the doctor's opinion (Ex.P.9) that there is no evidence of forcible sexual assault and there were symptoms of forcible physical injuries 4 to 5 days before the examination. The above factors in our view does not absolve the appellant of the offence under Section 5(l) read with Section 6 of the POCSO Act, but would certainly be relevant while awarding sentence in the facts and circumstances of this case.

15. In this background, we are of the considered view that in the light of the lacuna in investigation, as well as the discrepancies in the evidences, the maximum sentence of life imprisonment awarded to the appellant could be modified.



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16. Section 6 of the POCSO Act came to be amended through Act 25 of 2019, with effect from 16.08.2019, by increasing the minimum punishment from 10 years to 20 years. In these given circumstances, we are of the view that the punishment awarded by the trial Court for the offence under Section 5(l) of the POCSO Act could be reduced to the minimum sentence of 10 years, as provided in the pre-amended provision of Section 6.

17. For all the foregoing reasons, the judgment of the trial Court, insofar as holding the appellant guilty of having committed the offence under Section 366(A) of IPC and Section 5(l) read with Section 6 of the POCSO Act, stands confirmed. However, the sentence awarded to the appellant for having committed the offence under Section 5(l) read with Section 6 of the POCSO Act is reduced to 10 years, which period shall be set off as against the imprisonment already undergone by the appellant.

18. In the result, this Criminal Appeal stands partly allowed.



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[M.S.R.,J.] [S.M.,J.]
05.07.2024

Index: Yes/No

Neutral Citation: Yes/No

Speaking order/Non-speaking order
hvk

Note: Issue order copy on 08.07.2024

To

1. The Superintendent of Prisons,
Central Prison, Coimbatore.

2. The Inspector of Police,
Annur Police Station,
Coimbatore District.

2. The Public Prosecutor,
High Court of Madras.



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M.S.RAMESH, J.
and
SUNDER MOHAN, J.

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Pre-delivery judgment made in
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05.07.2024