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CrI.A.No.66 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2024

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CrI.A.No.66 of 2018
and
CrI.M.P.No.15078 of 2022

Ramkumar

... Appellant

vs.

The Inspector of Police,
All Women Police Station,
Jayankondam,
Ariyalur District.
(Crime No.8/2016)

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) Criminal Procedure Code, 1973, against the judgment and orders dated 10.02.2017 passed in Spl.S.C.No.20 of 2016 by the Sessions Judge, Fast Track Mahila Court, Ariyalur.

For Appellant : Mr.R.Sankarasubbu

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor



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J U D G M E N T

This criminal appeal is filed against the judgment and orders dated 10.02.2017 passed by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur, in Spl.S.C.No.20 of 2016.

2. The appellant is the accused in Spl.S.C.No.20 of 2016 and is convicted and sentenced as detailed hereunder:

Sl. No .	Conviction	Sentence
1.	Section 6 of POCSO Act, 2012	Rigorous Imprisonment for twelve years and a fine of Rs.5,000/-, in default, to undergo Simple Imprisonment for one year.
2.	Section 10 of POCSO Act, 2012	Rigorous Imprisonment for five years and a fine of Rs.2,000/-, in default, to undergo Simple Imprisonment for six months.
3.	Section 450 IPC	Rigorous Imprisonment for five years and a fine of Rs.2,000/-, in default, to undergo Simple Imprisonment for six months.
4.	Section 506(i) IPC	Simple Imprisonment for six months and a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for one month.
The aforesaid sentences shall run concurrently. The period of sentence already undergone by the accused shall be set off under Section 428 Cr.P.C.		



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3. The case of the prosecution as could be discerned from the oral and documentary evidence is as follows:

3.1. The victim girl (P.W.2), aged about 16 years, is residing at Kaliyamman Kovil Street, Jayankondam along with her mother Chitra (P.W.1). Her father died long back. The victim had low IQ level and therefore, she was not sent to school after completing V Standard. On 23.09.2016, Chitra (PW.1), mother of the victim girl as usual left for work and when she returned back at about 8.00 p.m., she saw her daughter crying in the house of one Geetha (P.W.10) sister-in-law of P.W.1. She brought her daughter (P.W.2) back home and enquired her. The victim girl had stated that fifteen days back, she was raped by the appellant. Immediately, Chitra (PW.1), mother of the victim girl informed her sister-in-law's husband Panneer Selvam (P.W.3) and also her paternal uncle's daughter Valli (P.W.5) over phone. P.W.3 and P.W.5 came down to the house of P.W.1 and enquired the victim girl. Thereafter, P.W.1 took the victim girl to All Woman Police Station, Jayankondam and lodged a complaint (Ex.P1) with Tmt.K.Selvakumari (P.W.15), the then Sub Inspector of Police. P.W.15 received the written complaint (Ex.P1)



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from P.W.1 and registered FIR (Ex.P10) in Crime Number 8/2016 against the appellant for the offences punishable under Section 450, 506(i) IPC and Sections 6 and 10 of the Protection of Children from Sexual Offences Act, 2012 (In short “POCSO Act”) and placed the records before the Inspector of Police, Andimadam Police Station, for investigation, since the regular Inspector of Police, All Women Police Station, Jayankondam was on leave.

3.2. Thiru.S.Senthil Kumar, (P.W.16), the Inspector of Police, Andimadam Police Station and holding additional charge of All Women Police Station, Jayankondam took up investigation in Crime No.8/2016, went to the scene of occurrence and prepared an observation mahazar (Ex.P3) and a rough sketch (Ex.P2) in the presence of the witnesses Delhi Durai(P.W.6) and Suresh (not examined). He examined all the witnesses including the victim girl and recorded their statements under Section 161(3) Cr.P.C.

3.3. P.W.16 also sent the victim girl to Government Hospital, Jayankondam, where Dr.Banumathi (P.W.7) examined her and opined that the hymen of the victim girl was absent and vagina admitted one



finger. The Medical Certificate issued by Dr.Banumathi (P.W.7) was marked as Ex.P4.

3.4. Thereafter, P.W.16 arrested the appellant near Jayankondam Junction and produced him before the Sessions Judge, Fast Track Mahila Court, Ariyalur for judicial custody.

3.5. Subsequently, the appellant was subjected to medical examination by Dr.Elavarasan (P.W.14) attached to Government Hospital, Jayankondam, who opined that there is nothing to suggest that the appellant was either impotent or incapable of performing sexual intercourse. The certificate issued by Dr.Elavarasan (P.W.14) was marked as Ex.P8.

3.6. The victim girl (P.W.2) in her evidence had stated that on a Sunday at about 4.00 p.m., when she went for taking bath in her house, the appellant, who is working as a Priest in a nearby Temple forced himself upon her. Thereafter, on the next Friday, he called her to the temple at about 1.00 p.m., and had sex with her. According to P.W.1, she did not inform both the incidents to her mother fearing repercussions and



subsequently, she informed her Paternal Aunt-Geetha (P.W.10) that the appellant raped her, who in turn asked her to tell her mother. Thereafter, she informed her mother about the occurrence and was taken to the Police Station and then to the Hospital.

3.7. Tmt.Sumathi (P.W.8), the Headmistress of Panchayat Union School, Kallathur Village had deposed that the date of birth of the victim was 18.06.2000 as per the school records (Ex.P5).

3.8. Dr.Anbazhagi (P.W.11) examined the victim girl and gave a certificate that the IQ level of the victim girl was only 45%. Her certificate was marked as (Ex.P7).

3.9. All the prosecution witnesses supported the case of the prosecution in all material particulars.

3.10. Thiru.Velusamy (P.W.17), the Inspector of Police, All Women Police Station, Jayankondam, on return of duty, took up further investigation in Crime No.8 of 2016, obtained the medical certificates from the doctors and after completing investigation, laid a final report in



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Spl.S.C.No.20 of 2016 before the Sessions Judge, Fast Track Mahila Court, Ariyalur, for the offences punishable under Sections 450 and 506(i) IPC and Sections 6 and 10 of POCSO Act, against the appellant.

3.11. The learned Sessions Judge, after furnishing the copies of records to the accused under Section 207 Cr.P.C., framed charges against the accused for the offences punishable under Sections 450 and 506(i) IPC and Sections 6 and 10 of POCSO Act. Since the appellant pleaded not guilty, the case was posted for trial.

3.12. In order to bring home the guilt of the accused, the prosecution examined 17 witnesses and marked Ex.P1 to Ex.P10.

3.13. The appellant, when questioned under Section 313(1)(b) Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him, denied of having committed any offence. He examined two witnesses on his side and marked one document.

3.14. The evidence of Thiru.Rajkumar (D.W.1) was that on 23.09.2016, he was with the appellant till 2.00 p.m., in the temple since it



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was a Friday and thereafter, both of them left the temple after closing the gate. The evidence of Tmt.Alamelu (D.W.2) was that on 11.09.2016, the appellant/accused did not come down to the area where the victim's house is situated.

3.15. The learned Sessions Judge, after analysing the oral and documentary evidence on record, convicted the appellant for the offences punishable under Sections 450, 506(i) IPC and Sections 6 and 10 of POCSO Act and sentenced him as stated in Paragraph No.2, vide his judgment and orders dated 10.02.2017, challenging which, the present appeal is filed by the appellant.

4. Heard Mr.R.Sankarasubbu, learned counsel appearing for the appellant and Mr.S.Raja Kumar, Additional Public Prosecutor appearing for the respondent/complainant.

5. Mr.R.Sankarasubbu, learned counsel appearing for the appellant/accused contended that (i) the victim has not specifically stated the date of occurrence in her deposition. (ii) D.W.1 in his evidence had categorically stated that he was with the appellant till 2.00 p.m., in the



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temple on 23.09.2016. (iii) D.W.2 was also categorical in her deposition that the appellant did not come down to the area where the victim girl was residing. (iv) The prosecution has not filed any acceptable evidence to show that the victim girl was aged about 16 years and the evidence of P.W.8, Headmistress of Panchayat Union Primary School, Kallathur Village, is not sufficient in this regard. (v) Dr.Banumathi (P.W.7) had not clearly stated that the victim girl was subjected to sexual assault and there was no external injuries on her private parts. Therefore, he prayed for setting aside the conviction and sentence passed by the Trial Court.

6. Per contra, Mr.S. Rajakumar, Additional Public Prosecutor appearing for the State would contend that the trial court had, after analysing the oral and documentary evidence, rightly convicted and sentenced the accused and therefore, no interference is called for by this Court and prayed for dismissal of the Criminal Appeal.

7. The case of the prosecution is that the victim was born on 18.06.2000 and filed School Records (Ex.P5) to substantiate her age. The P.W.8, Headmistress of Panchayat Union Primary School, Kallathur Village, where the victim studied upto V Standard had produced her School Records and had clearly deposed that the victim was born on



18.06.2000. It is not the case of the appellant that the victim was more than 18 years of age. It is an admitted fact that the Intelligent Quotient of the victim girl was just 45% and Dr.Anbazhagi (P.W.11) had assessed it by way of conducting various tests. However, the victim (P.W.2) was able to narrate the incident cogently that took place on two occasions. The Trial Court Judge had also taken certain precautions before examining her as a witness by putting her some questions. The victim had narrated the sequence of events and she had also withstood the testimony of cross examination. There is nothing on record to show that the victim was tutored.

8. In the instant case, the victim had clearly stated that she was assaulted sexually by the appellant. The victim was also clear in her evidence that she was subjected to penetrative sexual assault and as already observed that there is nothing to infer that she was tutored. Moreover, her evidence is consistent with her complaint (Ex.P1) and her statement under Section 164 Cr.P.C., before the Judicial Magistrate. Her evidence is thus reliable and trustworthy. The mother of the victim (P.W.1) and her paternal aunt (P.W.10) had also corroborated the version of the victim girl in all material particulars. When the victim girl



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has low IQ level it is too much to expect her to state the time and date of the 2 incidents. She could remember the incidents and had narrated them cogently.

9. The appellant in order to show that he was not alone inside the temple on 23.09.2016 at about 1.00 p.m., had examined one Rajkumar (D.W.1), who is owning a Grocery shop in Jayankondam. D.W.1 in his evidence had stated that he was with the appellant till 2.00 p.m., on 23.09.2016. However, the appellant when questioned under Section 313(1)(b) Cr.P.C., had stated that on 23.09.2016, he locked the temple at about 12.00 noon and went back home. Thus, the evidence of D.W.1 does not fit in with the version of the appellant. The evidence of D.W.2 is that on 11.09.2016, the appellant did not visit the place where the victim girl was residing cannot also be accepted as her evidence does not inspire the confidence of the guilt. It is not known as to how D.W.2 is able to remember the date and time. The Trial Court Judge had infact in Paragraph No.46 had observed thus:-

“46. On the other hand the evidence of DW.2 Alamelu is highly suspicious. The evidence of the defence



witness Alamelu is also highly improbable. There was no reason for DW.2 to note the particular date and the particular time to say that on 11.09.2016 from 3.15 p.m to 5.30 p.m the accused had not visited the house of the victim. There was no special reason available for DW.2 to remember that particular date and time and watch whether the accused visited the house of the victim or not. Further it is clearly seen from the chief and cross examination of DW.2 that she was very much interested in the acquittal of the accused. She is an interested witness, interested only in the welfare of the accused and not in favour of finding the truth. In the teeth of evidence of PW.2 and other prosecution witnesses the evidence of DW.2 had become invalid and of no consequence. The evidence of DW.2 could not come to the rescue of the accused.”

10. It is also pertinent to extract Section 29 of the POCSO Act:

*“29. **Presumption as to certain offences.**- Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary*



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is proved.”

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11. The appellant had not adduced any acceptable evidence to rebut the presumption and therefore, the conviction of the appellant for the offences under Sections 450, 506(i) IPC and Sections 6 and 10 of POCSO Act by the Trial Court Judge is perfectly in order.

12. As regards the sentence, the contention of the learned counsel appearing for the appellant is that the accused has been in prison for the past 8 years and some leniency can be shown to him by reducing the sentence.

13. Section 6 of the POCSO Act (before amendment in 2019) reads thus:-

“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.”



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WEB COPY 14. In the instant case, the Trial Court had sentenced the appellant to undergo Rigorous Imprisonment for a period of twelve years for the offence punishable under Section 6 of POCSO Act. The appellant has been facing trial from the year 2016 and in the circumstances, the sentence passed by the Trial Court under Section 6 of POCSO Act is reduced to ten years.

15. In the result,

- (i) This Criminal Appeal is partly allowed. Consequently, the connected criminal miscellaneous petition is closed.
- (ii) The judgment and orders dated 10.02.2017 passed in Spl.S.C.No.20 of 2016 by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur, is confirmed with regard to the conviction.
- (iii) The sentence passed by the Trial Court is modified as under:



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2.	Section 10 of POCSO Act, 2012	Rigorous Imprisonment for five years and a fine of Rs.2,000/-, in default, to undergo Simple Imprisonment for six months.
3.	Section 450 IPC	Rigorous Imprisonment for five years and a fine of Rs.2,000/-, in default, to undergo Simple Imprisonment for six months.
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The aforesaid sentences shall run concurrently. The period of sentence already undergone by the accused shall be set off under Section 428 Cr.P.C.		

25.06.2024 Index : yes/no
Speaking /Non speaking Order
Neutral Citation : yes / no
dm



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To

1. The Sessions Judge,
Fast Track Mahila Court,
Ariyalur.
2. The Inspector of Police,
All Women Police Station,
Jayankondam, Ariyalur District.
3. The Additional Public Prosecutor,
High Court, Madras.
4. The Section Officer, Criminal Section,
High Court, Madras.



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R.HEMALATHA, J.

dm

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