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Crl.A.No.712 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.712 of 2022
and Crl.M.P.No.9283 of 2022

Prabhu

... Appellant/sole Accused

v.

State represented by
Inspector of Police
Anupparapalayam Police Station,
Tiruppur District.
(Crime No.2933 of 2020)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, against the conviction of the appellant and sentence in Spl.S.C. No.66 of 2020 dated 30.12.2021, on the file of the learned Sessions Judge, Mahila



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Court (FAC), Tiruppur and set aside the conviction and sentence imposed in judgment dated 30.12.2021 and acquit the appellant.

For Appellant : Mr.W.Camyles Gandhi

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

JUDGMENT

(Order of the Court was made by SUNDER MOHAN,J.)

This Criminal Appeal has been filed by the sole accused challenging the conviction and sentence imposed upon him vide judgment dated 30.12.2021 in Spl.S.C.No.66 of 2020 on the file of the learned Sessions Judge, Mahila Court (FAC), Tiruppur.

2.(i) It is the case of the prosecution that the appellant is closely related to the victim and was married to the victim's cousin sister; that the victim used to visit the house of the appellant; that the appellant enticed the victim, who was aged 14 years at the time of occurrence, promised to marry her and committed repeated penetrative sexual assaults, after kidnapping the victim girl.



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(ii) PW2, the mother of the victim, was working as a labourer in a Baniyan factory. On 24.07.2020, when she returned home from work, she found the victim missing and that inspite of the search, she could not trace the victim. Therefore, on 25.07.2020, she lodged a complaint before the Thirumurugan Poondi Police Station, which was registered as 'child missing' in Cr.No.2933 of 2020. The said complaint was marked as Ex.P1 and the printed FIR was marked as Ex.P8.

(iii) The Inspector of Police, attached to Thirumurugan Poondi Police Station, took up the investigation and examined the witnesses. On 26.07.2020 after the victim was traced and was examined, the offences were altered to Section 366-A of the IPC and Sections 5 (l), 5(n) read with Section 6 of the Protection of Children from Sexual Offences Act (hereinafter referred to as 'POCSO Act'). The alteration report was marked as Ex.P9.

(iv) Thereafter, the investigation was transferred to PW6, who examined further witnesses. She sent the victim for medical examination.



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On 26.07.2020 at about 2.45 p.m., went to the scene of the occurrence and prepared the Rough Sketch (Ex.P10). She arrested the accused at about 5.15 p.m., and subjected him to a medical examination. Thereafter, she examined the Doctor and other witnesses. On 30.07.2020, the statement of the victim under Section 164 Cr.P.C., was recorded by the learned Judicial Magistrate No.III, Tiruppur, pursuant to the requisition sent by PW6. After examination of other witnesses, she filed the final report on 07.08.2020 against the appellant for the offences under Section 366 of the IPC and Sections 5(l), 5(n) read with Section 6 of the POCSO Act, before the learned Sessions Judge, Mahila Court (FAC), Tiruppur, which was taken on file as Special S.C.No.66 of 2020.

(v) On the appearance of the appellant, the provisions of Section 207 Cr.P.C., were complied with and the trial Court framed charges against the appellant, and when questioned, the appellant pleaded 'not guilty'.

(vi) To prove the case, the prosecution examined 7 witnesses as P.W.1 to P.W.7 and marked 12 exhibits as Exs.P1 to P12. When the



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appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The accused did not examine any witnesses or mark any documents.

(vii) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established its case beyond reasonable doubt and held the appellant guilty of offence under Section 366 of the IPC and Sections 5(l), 5(n) read with Section 6 of the POCSO Act. The appellant was convicted and sentenced as follows:

<i>Offence under Section</i>	<i>Sentence imposed</i>
366 IPC	To undergo RI for 10 years and to pay a fine of Rs.5,000/- in default to undergo RI for 6 months.
5(l), 5(n) read with Section 6 POCSO Act	To undergo life imprisonment and to pay a fine of Rs.10,000/- in default to undergo RI for 6 months.
The sentences were directed to run concurrently.	

Hence, the appellant has preferred the appeal challenging the said conviction and sentence.

3. Heard, Mr.W.Camyles Gandhi, learned counsel appearing for the



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appellant, and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/State.

4. (i) The learned counsel for the appellant submitted that the victim's version is an improvement and contrary to her statement under Section 164 Cr.P.C; and that the victim and the appellant are known to each other and the appellant has been victimised.

(ii) The learned counsel pointed out that the victim had subsequently married one Prakash and the appellant had nothing to do with the allegations and prayed for acquittal.

5. The learned Additional Public Prosecutor *per contra* submitted that the prosecution has established its case beyond reasonable doubt. The medical evidence corroborates the version of the victim and nothing has been elicited in the cross examination to disbelieve the medical evidence and the evidence of the victim. He therefore submitted that the trial Court had rightly convicted the appellant and no interference is called for.



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6. We have carefully considered the rival submissions and have perused all the relevant records.

7. The prosecution has examined seven witnesses to prove its case. PW1 is the victim; PW2 is the mother of the victim; PW3 is the Doctor attached to Tiruppur Government Hospital; PW4 is the Mahazar witness and has signed as a witness in the Rough Sketch and in the Seizure Mahazar; PW5 is the Doctor, who conducted the medical examination of the appellant; PW6 is the investigating officer; and PW7 is the Headmistress of Government Middle School, where the victim was studying. The date of birth of the victim was established as 25.05.2007, through the evidence of PW7 and the documents filed by her.

8. As stated earlier, PW1-victim, is the cousin sister of the appellant's wife. She had deposed that she used to go to appellant's house and play with the children of the appellant; that the appellant's wife used to leave for work in the morning and return in the evening and on one such occasion,



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when the children of her cousin sister and the appellant, were playing outside, the appellant inappropriately touched her breast and committed penetrative sexual assault; that thereafter, the appellant used to take the victim to a remote place on every Mondays and forcibly have sexual intercourse; that he promised to marry the victim and he took her to his aunt's place; and that while they were staying there, the police came to secure her on the complaint given by her mother-PW2.

9. PW2 is the mother of the victim, who lodged the complaint and came to know from the victim-PW1 that the appellant committed penetrative sexual assaults on her. PW3 is the doctor who issued the Accident Register (Ex.P2) and stated that the victim informed her that she had sexual intercourse with a known person. She had also noted that the hymen was ruptured and not intact.

10. The fact that the victim and the appellant are closely related is not disputed. The age of the victim has been established by the prosecution through the evidence of PW7 and the certificate-Ex.P12. Further, the age of



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the victim has also not been seriously disputed by the defence, except for making a few suggestions to PW7 that the certificate was false.

11. The evidence of PW1 is cogent and convincing. Though in the statement under Section 164 Cr.P.C., the victim had not specifically stated about the penetrative sexual assaults, we are however, convinced that this would not affect the credibility of the victim-PW1, as her evidence is corroborated by the medical evidence and the evidence of the other witnesses. Nothing has been elicited in the cross examination of PW1 to disbelieve her version except for suggesting that the details of the penetrative sexual assault have not been stated in the statement under Section 164 Cr.P.C., given before the Magistrate. Ex.P2, the Accident Register issued by PW3 refers to sexual contact multiple times for about two days before examination and that the hymen was not intact. The evidence of PW3, the Accident Register [Ex.P2] and the evidence of the victim, confirm that the victim was subjected to penetrative sexual assault.

12. Thus, the prosecution has established that the victim was



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subjected to repeated penetrative sexual assaults and that the appellant who was closely related to her, had committed the penetrative sexual assaults. Thus, the offence under Section 5(l) and 5(n) of the POCSO Act, punishable under Section 6 of the POCSO Act, has been proved against the appellant.

13. The prosecution has further established that the appellant took the victim girl to his aunt's house by enticing her and promising to marry her. The evidence therefore, proves that the appellant is guilty of the offence under Section 366 of the IPC, as well. Therefore, we see no reason to interfere with the finding of guilt against the appellant in respect of the offence under the aforesaid penal provisions. Accordingly, the conviction for the offence under Section 5(l) and 5(m) read with Section 6 of the POCSO Act and Section 366 of the IPC, is confirmed.

14. The sentence imposed on the appellant by the trial Court for the offence under Section 366 of the IPC to undergo 10 years RI and to pay the fine of Rs.5,000/- and in default to suffer RI for a period of six months, is



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confirmed. However, as regards the punishment for the offence under Section 5(l) and 5(n) r/w Section 6 of the POCSO Act, considering the fact that the victim had stated that on her own will, she went with the appellant and the element of force is not established, we are of the view that the ends of justice would be met, if the appellant is sentenced to undergo a rigorous imprisonment for period of twenty years and to pay a fine of Rs.10,000/- and in default to undergo rigorous imprisonment for a period of six months.

15. In the result, the Criminal Appeal is Partly Allowed. The judgment of conviction and sentence dated 30.12.2021 made in Spl.S.C.No.66 of 2020 on the file of the learned Sessions Judge, Mahila Court (FAC), Tiruppur is modified as follows:

(i) The appellant is convicted for the offence under Sections 5(l) and 5(n) r/w Section 6 of the POCSO Act, and sentenced to undergo a rigorous imprisonment for a period of twenty years and to pay a fine of Rs.10,000/- and in default to undergo rigorous imprisonment for a period of six months;

(ii). The conviction and sentence imposed upon the appellant



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by the trial Court for the offence under Section 366 of the IPC, are confirmed;

(iii). The sentences are directed to run concurrently; and

(iv) It is directed that the period of sentence already undergone by the appellant shall be set off under Section 428 Cr.P.C.

Consequently, the connected Criminal Miscellaneous Petition is closed.

Index : yes/no
Speaking /Non-speaking order
Neutral citation : yes/no
ars

(M.S.R.,J.) (S.M.,J.)
05.06.2024

M.S.RAMESH,J.
AND
SUNDER MOHAN,J.
ars

To

1. The Sessions Judge, Mahila Court (FAC),
Tiruppur.

2. The Inspector of Police,
Anupparapalayam Police Station,
Tiruppur District.



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3. The Superintendent,
Central Prison, Coimbatore.

4. The Public Prosecutor,
High Court, Madras

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