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Crl.A.No.515 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2024

CORAM:

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

Crl.A.No.515 of 2019

Arun Vijay @ Mohamed Ismail

...Appellant

Vs.

State rep. by
Inspector of Police,
All Women Police Station,
Vaniyambadi District.

...Respondents

Prayer: Criminal Appeal filed under Section 374 of Criminal Procedure Code to call for the records and set aside the conviction and sentence imposed against the appellant on 13.12.2017 in Spl.S.C.No.17/2015 on the file of the Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Vellore and acquit the appellant.

For Petitioner : Mr.V.Parthiban
for Mr.M.Mohamed Saifulla
For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor
assisted by Mr.C.Aravind



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JUDGMENT

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

The present appeal is preferred by the sole accused against the judgment in Special Sessions Case No.17/2015, dated 13.12.2017 on the file of the Sessions Judge, Fast Track Mahila Court, Vellore, wherein the accused was found guilty under Sections 342, 376, 323, 506(ii) of the Indian Penal Code (IPC) and Section 6 read with 5(n), Section 6 read with 5(m) of the Protection of Children from Sexual Offences (POCSO) Act, sentencing him to undergo life imprisonment for the offence under Section 6 of the POCSO Act, together with a fine of Rs.10,000/-; rigorous imprisonment for one year for the offence under Section 342 of IPC; rigorous imprisonment for one year for the offence under Section 323 of IPC and rigorous imprisonment for three years for the offence under Section 506(ii) of IPC. All the sentences were ordered to run concurrently.

2. The brief case of the prosecution is as follows:-

2.1. The victim girl, born on 25.03.2003, is the daughter of Sumaiya Parveen. Her biological father had already expired and she was residing with



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the accused/appellant herein, who is her stepfather. On 12.05.2014, her mother was admitted in the hospital and was taken care of by her elder brother. The victim, along with her younger brother, had returned home from the hospital. The accused did not provide dinner for her on that day, but came home with a liquor bottle. During night, when she and her younger brother were sleeping on the cot, the accused made her younger brother to lie down on the floor and while the victim girl was sleeping in the cot, he forcibly tore off her pants and penetrated his penis into her vagina. This act was done after the accused tied the victim girl's legs and hands in the cot and also gagged her mouth. When the victim tried to create an alarm, the accused assaulted her on her mouth resulting in contusion over her cheek. He then threatened her that if she revealed the incident to any person, he would kill her. The victim was bleeding and the accused had wiped the blood with her pants and left the scene. On the following day, Nazira, who is a tenant in their house, came and enquired the victim. The victim girl narrated the incident to her and her husband Iqbal. Thereafter, the neighbors had apprehended the accused, tied him to a pole and assaulted him. The victim girl was thereafter taken to the hospital and Nazira had also given a



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complaint to the local Police. On completion of the investigation, the accused was charge sheeted for the offences under Sections 342, 376, 323, 506(ii) of IPC and Section 6 read with 5(n) and Section 6 read with 5(m) of the POCSO Act.

3. Before the trial Court, the following witnesses and exhibits were examined and marked respectively:-

3.1. victim girl had examined herself as P.W.2;

3.2. the complainant/tenant was examined as P.W.1 and the complaint given by her was marked as Ex.P.1;

3.3. the mother of the victim girl was examined as P.W.3;

3.4. the husband of P.W.1 was examined as P.W.4;

3.5. the observation mahazar witnesses were examined as P.W.5 and P.W.6 and the observation mahazar was marked as Ex.P.2;

3.6. the witness to the confession statement was examined as P.W.7 and the signatures of P.W.7 and P.W.10 in the confession statements were marked as Exs.P.3 and P.7;

3.7. the doctor, who gave first aid to the girl, was examined as P.W.8



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and the medical certificate was marked as Ex.P.5;

WEB COPY 3.8. the Sub-Inspector of Police, who had registered the FIR (Ex.P6) in Crime No.4/2014, was examined as P.W.9;

3.9. the other witness, who had signed in the confession statement of the accused, was examined as P.W.10 and the seizure mahazar and the signature therein were marked as Ex.P.4 and Ex.P.8 respectively;

3.10. the Headmistress, who had issued the school certificate (Ex.P.9), evidencing the victim girl's date of birth as 25.03.2003, was examined as P.W.11;

3.11. the doctor, who had tested the potency of the accused, was examined as P.W.12 and the requisition letter of medical examination was marked as Ex.P.10 and the medical certificate of the accused was marked as Ex.P.11;

3.12. the doctor, who had taken the X-ray, was examined as P.W.13 and through her, the requisition letter, X-ray sheet and radiological report were marked as Exs.P.12, P.13 and P.14 respectively;

3.13. the doctor, who had issued the accident register (Ex.P.15), was examined as P.W.14;



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3.14. the forensic experts, who had issued the biological report (Ex.P.17) and serological report (Ex.P.18), were examined as P.W.15 and P.W.16;

3.15. the Investigating Officer was examined as P.W.17, through whom the rough sketch (Ex.P.19) was marked.

4. On the strength of these oral and documentary evidences, as well as the material objects, the trial Court had found the accused guilty and sentenced him to imprisonment, as stated above.

5. Mr.V.Parthiban, learned counsel appearing on behalf of the appellant, submitted that the mother (P.W.3) of the victim girl had not supported the case of the prosecution and was treated as a hostile witness. He also submitted that during the alleged incident, the victim girl's younger brother, who was alleged to have been in the scene of occurrence, was not examined and therefore, the prosecution has failed to establish the occurrence itself. The learned counsel further submitted that since most of the prime witnesses were not cross examined in the trial Court and also



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since the incident had occurred on 12.05.2014, which was prior to the amendment of Section 6 of the POCSO Act, the punishment imposed could be modified to a lesser sentence.

6. Per contra, Mr.A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent, placed reliance mainly on the evidences of P.W.2/victim girl, P.W.1 and P.W.5, as well as the medical evidences and submitted that since the victim herself has narrated the entire facts, without even a single contradiction, the trial Court had rightly convicted the accused and hence, no interference is required to the sentence imposed by the trial Court.

7. The fact that P.W.2 was born on 25.03.2003 and was less than 12 years on the date of occurrence, has been clearly established by the prosecution through P.W.11, who is the Headmistress of the school in which P.W.2 had studied at the relevant point of time. P.W.11 also speaks about the date on which P.W.2 was admitted in the school on 02.06.2008 and was given the transfer certificate on 06.09.2012, when she was in her 5th



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Standard. P.W.2 herself has stated in her oral testimony that she was 12 years old on the date on which she was examined. In the light of Ex.P.9, which is the school certificate, and by taking into account the evidences of P.W.2 and P.W.11, the prosecution had discharged their burden to prove that P.W.2 was 11 years old on the date of occurrence, i.e., 12.05.2014. When the admissible evidence regarding the age of the victim girl has been corroborated with the oral evidence of P.W.2, we are of the affirmed view that the prosecution had clearly established the fact that P.W.2 was a minor child on the date of occurrence.

8. The consequential issue that would arise for consideration is as to whether the accused had committed the offence of aggravated penetrative sexual assault on P.W.2.

9. P.W.2, in her oral testimony, speaks about her mother being admitted in the hospital owing to vomiting blood and she was assisted by her elder brother. She further speaks about her return to the home along with her younger brother, at which point of time, the accused was in an inebriated



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condition. She narrates the incident, whereby she along with her younger brother were sleeping when the accused had taken her brother from the bed and made him lie down and thereafter had committed aggravated penetrative sexual assault. She also speaks about the accused, who tied and gagged her before commission of the offence, as well as the physical assault on her cheek. Her statement that she had narrated this incident to P.W.1 and P.W.4, who are the neighbours/tenants, are corroborated by them also. The accused had failed to cross examine these two prime witnesses. P.W.1 had then given the complaint (Ex.P.1) on 13.05.2014, which was registered as FIR (Ex.P.6) in Crime No.4/2014 by P.W.9. P.W.8, who is a doctor, who first examined P.W.2 and issued the medical certificate (Ex.P.5), also would state about her examination and sending her to the Government Hospital, Tirupattur for further examination. The doctor (P.W.14), who had rendered first aid for the contusion found in the face of P.W.2, also speaks about P.W.2 informing her that she was sexually and physically assaulted by her father/accused. The forensic experts (P.W.15 and P.W.16) confirmed the presence of the victim's blood stains in the clothes of P.W.2. Apart from cross examining P.W.2, the accused had not chosen to cross examine any other prime witnesses, namely



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P.W.1, P.W.4, P.W.9, P.W.14, P.W.15, P.W.16 and P.W.17.

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10. During cross examination, P.W.2 had reiterated and narrated the incident explicitly, without even a single contradiction of her statements in the chief examination, as well as in the complaint.

11. The learned counsel for the appellant attempted to make a submission that since P.W.3/mother of the victim had turned hostile and that the younger brother, who was present in the scene of occurrence, was not cross examined, the sentence imposed by the trial Court requires to be modified. We are unable to appreciate such a ground. When the unimpeachable testimony of P.W.2, coupled with the medical evidences of P.W.8, P.W.12, P.W.13 and P.W.14, as well as the evidences let in by the forensic experts, namely P.W.15 and P.W.16, could not be discredited, interfering with the sentence imposed by the trial Court, is far fetched. The failure on the part of the accused in having failed to cross examine most of the prime witnesses before the trial Court would clearly establish the prosecution's case of having been proved beyond any reasonable doubt.



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Thus, the failure on the part of the accused to examine the younger brother of P.W.2 or P.W.3 being treated as a hostile witness, would be immaterial and in no way help the case of the defence.

12. Thus, when the prosecution has established their case before the trial Court on the strength of all the oral and documentary evidences beyond any reasonable doubt, we do not find any ground to interfere with the verdict and sentence.

13. In the result, the Criminal Appeal stands dismissed.

[M.S.R., J] [S.M., J]
04.06.2024

Index:Yes/No
Neutral Citation:Yes/No
Speaking order/Non-speaking order
hvk



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

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To

- 1.The Inspector of Police,
All Women Police Station,
Vaniyambadi District.
- 2.The Public Prosecutor,
High Court, Madras.

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04.06.2024