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CrI.A.No.834 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.834 of 2023
and CrI.MP.No.4640 of 2024

Ajith Kumar

... Appellant

Vs.

State rep. by
The Inspector of Police,
Kadaladi Police Station,
Tiruvannamalai District.
(Crime No.203 of 2019).

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the judgment of conviction and sentence passed by the learned Special Court for the Exclusive Trial of POCSO Act Cases, Tiruvannamalai in Special S.C.No.189 of 2019 dated 19.06.2023 and acquit the appellant.

For Appellant : Mr.E.Sathiyaraj

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



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ORDER

This Criminal Appeal has been filed by the appellant to set aside the impugned judgment, dated 19.06.2023 in Special Sessions Case No.189 of 2019 passed by the learned Sessions Judge, Special Court for the Exclusive Trial of POCSO Act Cases, Tiruvannamalai (trial Court).

2.The appellant was convicted by the Trial Court and sentenced to undergo ten years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one year simple imprisonment for the offence under Section 6 r/w. 5(1) of Protection of Children from Sexual Offence Act [POCSO Act], 2012.

3.The case of the prosecution is that PW1/victim, who is a neighbour of the appellant/accused, when she was studying 11th Standard, went to the house of the appellant/accused to have some ice water on 27.04.2019. At that time, the appellant/accused called her inside the room, removed her dress and committed penetrative sexual offence despite the victim resisted



and refused. The appellant/accused committed the act thrice, due to which, the victim sustained injuries on her private parts and she informed her mother/PW3, who took her to the hospital for treatment. The respondent police on receipt of information from the hospital came there, received the complaint and thereafter, the accused was arrested. Thereafter, the victim girl was produced before PW9/Doctor for medical examination, who examined her and confirmed the sexual assault committed on the victim, issued Accident Register/Ex.P9 and Medical Report/Ex.P10. The victim girl was also produced before the Magistrate and 164 statement/Ex.P2 recorded. The appellant/accused was produced before PW10/Doctor for potency test. PW2 and PW3, father and mother of the victim girl corroborated the evidence of PW1. PW3, PW4 and PW5 are the witnesses for the observation mahazar. PW6 is the neighbour and witness for the arrest and confession of the appellant/accused. All these witnesses not supported the case of the prosecution. PW7/Woman Head Constable visited the hospital, recorded the statement of the victim girl, thereafter PW11/Investigating Officer registered FIR and proceeded with the investigation. PW8 is the Headmaster, who confirms that the victim is a



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minor. During the trial, on the side of the prosecution PW1 to PW11 examined and Ex.P1 to Ex.P17 marked. On the side of the defence, no witness examined and no documents marked. On conclusion of the trial, the Trial Court convicted the appellant/accused as stated above.

4.The contention of the learned counsel for the appellant is that the petitioner and the victim girl were in love with each other. During the trial, the marriage between the victim girl and the appellant was performed on 24.08.2022 with the participation of both the family members including PW2 and PW3. Thereafter, the marriage was registered with SRO, Kadaladi, Tiruvannamalai District vide Registration No.65/2022 on 05.09.2022. PW1 to PW3 confirmed and deposed during the cross examination about the marriage but the Trial Court finding that cross examination was with delay, not considered the subsequent fact of marriage between the appellant and the victim girl, after the marriage they are living happily.

5.The learned Additional Public Prosecutor submits that PW1, a



minor, lodged a complaint/Ex.P1 stating that she went to the house of the appellant/accused to have some ice water, at that time, the appellant committed penetrative sexual assault and caused injuries to her. She informed her mother/PW3, who immediately took her to hospital. PW9/Doctor examined the victim girl, found the injuries, gave treatment, informed the respondent police, issued Accident Register/Ex.P9 and Medical report/Ex.P10. PW7 visited the hospital, recorded the statement of the victim and her mother/PW3, thereafter reported to PW11/Investigating Officer, who registered FIR, prepared observation mahazar/Ex.13 and rough sketch/Ex.P14, examined the witnesses, produced the victim before the Magistrate and 164 statement/Ex.P2 recorded. Thereafter, the appellant/accused was arrested on 01.05.2019, who confessed about the offence. The accused was produced before PW10/Doctor, who examined the appellant/accused and issued Potency Certificate/Ex.P11. PW8/Head Master confirms that the victim is a minor and issued School Certificate/Ex.P8. On collection of evidence and medical records, charge sheet filed.



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6.Today [19.03.2024], the appellant and the victim girl were present before this Court and submitted that marriage between them was solemnized on 24.08.2022, invitation card and marriage registration certificate produced. Further, PW1 to PW3, during cross examination had clearly stated that marriage between the appellant and the victim girl already performed and they are living as husband and wife. But the Trial Court without considering the same, for the reason that cross examination was with delay, had convicted the appellant which is not proper. Further, the Hon'ble Apex Court in ***K.Dhandapani vs. State by the Inspector of Police*** reported in ***2022 SCC Online SC 1056*** and ***Elumalai vs. Inspector of Police, All Women Police Station, Vellore District, Tamil Nadu [Crl.A.No.674 of 2018 dated 03.05.2018]*** had considered the subsequent events and observed that the Courts cannot shut its eyes to the ground reality and disturb the happy family life of the appellant as well as the victim girl even in POCSO cases.

7.The appellant has filed compounding petition along with affidavits before this Court in Crl.M.P.No.4640 of 2024 in Crl.A.No.834 of 2024 to



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compound the offence considering the subsequent fact of marriage and petitioner and victim now living as husband and wife having happy matrimonial life, hence the same is ordered.

8.In view of the above, the conviction and sentence imposed on the appellant in Special Sessions Case No.189 of 2019 passed by the learned Sessions Judge, Special Court for the Exclusive Trial of POCSO Act Cases, Tiruvannamalai is hereby set aside. The appellant is acquitted from all the charges levelled against him. Fine amount, if any, paid shall be refunded. Bail bond, if any, executed shall stand cancelled.

9.In the result, the Criminal Appeal stands allowed.

19.03.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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M.NIRMAL KUMAR, J.

cse

To

- 1.The Sessions Judge,
Special Court for the Exclusive Trial
of POCSO Act Cases,
Tiruvannamalai.
- 2.The Inspector of Police,
Kadaladi Police Station,
Tiruvannamalai District.
- 3.The Public Prosecutor,
High Court, Madras.

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19.03.2024