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CrI.A.No.596 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.03.2024

PRONOUNCED ON : .07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.596 of 2021 and
CrI.M.P.No.762 of 2024

Rupan

... Appellant

Vs.

State by Inspector of Police,
W-9 All Women Police Station,
Villivakkam, Crime No.4 of 2018,
Chennai – 600 049.

... Respondent

PRAYER: Criminal Appeal is filed under Section 374(2) of Code of Criminal Procedure, to set aside the conviction and sentence imposed on the appellant in S.C.No.212 of 2019 dated 09.11.2021 on the file of the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai-104.

For Appellant : Mr.V.K.Sathiamurthy

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



Crl.A.No.596 of 2021

JUDGMENT

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The appellant was found guilty for offence under Section 6 of The Protection of Children from Sexual Offence Act, 2012 r/w 376(3) of IPC r/w 42 of The Protection of Children from Sexual Offence Act, 2012 and he was convicted for offence under Section 376(3) IPC and sentenced to undergo 20 years Rigorous Imprisonment and to pay a fine of Rs.25,000/- in default to undergo Simple Imprisonment for three months by judgment, dated 09.11.2021 in S.C.No.212 of 2019 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, 2012, Chennai. Challenging the same, the present criminal appeal is filed.

2.The case of the prosecution is as follows:

(i)PW1 is the victim girl and her mother is PW2. The victim girl and her mother/divorced woman took a house on lease in the month of August 2017 and residing there. The appellant is a neighbour. At the time of occurrence, the victim was a school going girl studying 9th std and the appellant was a college student studying in Loyola College. The victim girl's mother/PW2 employed as Village Administrative Officer and was attending coaching classes for TNPSC Group-II Exam. She used to leave home to attend work at 08.30



a.m and return back in the evening. On Sundays she used to attend the coaching class. Taking advantage of the victim girl being alone, the appellant followed her when she was going to school and returning back to home, developed friendliness with her and also enquired about her mother's nonavailability. On coming to know that PW2 used to attend classes on Sundays, the appellant entered the victim girl's house, enticed her slowly and had physical relationship. When the victim girl refused, the appellant informed that having sexual relationship with condom nothing would happen, cannot be detected. Thereafter, the appellant committed penetrative sexual assault on four occasions prior to 16.10.2018. On 16.10.2018 when the victim girl came from school, the appellant entered the victim girl's house through rear door and forced her for physical relationship. The victim girl refused and informed that next day she is having exam and she has to attend tuition. When she was inside the bedroom to change her dress, enraged over the refusal the appellant bolted the bedroom outside and left the house through rear entrance. When PW2 returned back to home, she found the main door locked from inside and she unable to open the door. PW2 rang the victim girl who informed that she was inside the bedroom and the bedroom is locked from outside and further she informed that rear door is open. PW2 came through



the rear door, unlatched the bedroom door and enquired victim girl who informed that the appellant came to the house and was speaking with her and he might have locked the bedroom from outside. On persistent questioning by PW2, the victim girl informed appellant having physical relationship on four occasions and forced her to have physical relationship on 16.10.2018 and when she refused the same, the appellant locked the bedroom from outside and left the house by rear side. PW2 questioned the appellant and his mother who had shown no remorse on the other hand they became aggressive against PW2. PW2 informed the happenings to her friend PW3 who came and questioned the appellant and his mother.

(ii) On the next day *i.e.*, on 17.10.2018, a complaint (Ex.P3) lodged to the respondent Police. PW6/Investigating Officer received the complaint (Ex.P3), registered FIR (Ex.P8) in Crime No.4 of 2018, visited the scene of occurrence, recorded the statement of witnesses, prepared Observation Mahazar (Ex.P9), Rough Sketch (Ex.P10) and produced the victim girl to PW4/Doctor attached to Kilpauk Medical College and Hospital. PW4 examined the victim girl, issued Exs.P4 to P6. On the next day, the appellant was arrested and produced before the Doctor/PW5 for medical examination.



PW5 examined him and issued potency certificate (Ex.P7). Thereafter, the victim girl produced before the Magistrate and her statement under Section 164 (Ex.P2) recorded. Birth certificate of the victim girl marked as Ex.P1. On conclusion of investigation, PW6 filed charge sheet before the trial Court.

(iii) During trial, on the side of the prosecution, seven witnesses examined as PW1 to PW7 and ten documents marked as Exs.P1 to P10. On the side of the defence, the house owner of the appellant examined as DW1 and medico legal care guidelines and protocols marked as Ex.D1. The Vice Principal of Our Lady of Velanganni Matriculation Higher Secondary School, Villivakkam, Chennai examined as CW1, through whom, his Identity card and transfer certificate of the victim girl marked as Exs.C1 & C2. On conclusion of trial, the trial Court convicted the appellant as stated above.

3. The learned counsel for the appellant submitted that during the relevant period, the appellant was a college going student studying in Loyola College. The appellant was a neighbour to the victim girl. Both developed liking towards each other which blossomed into love affair. The victim girl's mother/PW2 employed as Village Administrative Officer. She was attending coaching classes for TNPSC Group-II Exam on Sundays from 10.00 am to



05.00 pm. The appellant and victim girl used to chat in the victim girl's house whenever PW2 not at home. The love affair and friendliness between appellant and her daughter/victim girl was opposed by PW2. PW3 is the friend of PW2 and they were having living in relationship. The victim girl was unable to speak against this relationship of her mother/PW2 and she used to share her pains with appellant. PW2 on coming to know about the appellant and victim girl having love affair, picked up quarrel. Due to which, their relationship not cordial. The victim girl used to call the appellant to home whenever her mother gone out. On 16.10.2018, the victim girl and the appellant were chatting for sometime and there was some heated arguments between them. Annoyed over the same, the appellant latched the bedroom door outside and left the place. The appellant used to enter the victim girl's house through rear door as per the call of the victim girl. The victim girl used to keep the rear door open for the appellant to enter and exit. On 16.10.2018, PW2 came home, called the victim girl to open the door. Finding her daughter that she was locked inside the bedroom, PW2 entered the house through rear door. On coming to know about appellant entering the house, chatting with her daughter, PW2 abused and assaulted the victim girl and picked up fight with the appellant and his mother. PW2 called her friend/PW3, a living in



partner, who came there and there was a big fight. Despite strong objections of PW2, the appellant continued his love affair with victim girl, to cut of the relationship and to reach lesson. PW2 a Village Administrative Officer, familiar with investigation procedure and Police administration, devised a plan forced and compelled the victim girl to speak against the appellant as though appellant had physical relationship by using condom and nobody can detect penetrative sexual assault and nothing will happen to her. This is an exaggerated version. Having no other option, the victim girl had to toe the line of her mother. For that reason, in complaint (Ex.P3), statement under Section 164 Cr.P.C (Ex.P2) and to Doctor/PW4 and in the trial Court, the victim girl stated that the appellant had committed penetrative sexual assault on four occasions prior to 16.10.2018 a sweeping allegation without any details. Without analyzing and considering the evidence in a comprehensive manner, the trial Court convicted the appellant.

4.The learned counsel further submitted that the trial Court failed to consider the evidence of the Doctor/PW4 who admits the victim girl's physical condition observed might be for other reasons. This has not considered along with the evidence of house owner/DW1 who in his evidence stated about the



respondent Police though served summon to appear, thereafter informed that the case adjourned since the Presiding Officer was on leave and later not called as witness in the case. DW1 further stated that PW3 signed in the lease agreement as husband of PW2. On 16.10.2018, PW2 & PW3 picked up quarrel with the appellant and his mother as regards the love affair between the appellant and the victim girl nothing more. When DW1 enquired the victim girl, the victim girl confirmed she only called the appellant to her home through rear entrance and she was very firm in confirming her love relationship with the appellant. DW1 confirmed that on 16.10.2024, the dispute was only with regard to love affair between the appellant and victim girl nothing more. This being so, PW2 manifested the love affair as though penetrative sexual assault committed by the appellant on four occasions prior to 16.10.2018 which subsequently steamed and developed on the next day on 17.10.2018 when the complaint (Ex.P3) was lodged at about 10.30 am. The evidence of DW1 not considered by the trial Court on the other hand the trial Court had merely gone on the evidence of PW1 to PW3 and convicted the appellant. The evidence of PW3 is in the nature of hearsay. PW3 stated that it was PW1 and PW2 who informed to him about the happenings on 16.10.2018 and prior to it. But PW1 and PW2 not stated about informing to PW3. Now



the only evidence available is PW1 and PW2. PW2 stated that she entered the house through back door since the main door locked. It is confirmed that without concurrence of the victim girl, the only inmate of the house, the appellant could not have entered through the rear entrance. The admitted case is that on 16.10.2018, the appellant locked the bedroom from outside and left the house and not committed any sexual assault or touched the victim girl. The victim girl in her statement (Ex.P2) stated that only on the persistent and forcible questioning of her mother/PW1, she informed about prior happenings on 16.10.2018. PW2 is a Village Administrative Officer, her evidence is with exaggerations and contradictions. Hence, the evidence of PW1 and PW2 has to be considered with caution. As a mother more so a single mother, she got enraged over her daughter's love affair with the appellant at young age. Hence, there is possibility of implications against the appellant, which the trial Court failed to consider.

5.It is further submitted that the evidence of victim girl is in contradiction to the statement recorded under Section 164 Cr.P.C (Ex.P2). If the victim girl statement (Ex.P2) taken as a whole, it would confirm that on compulsion of her mother the victim girl gave statement against the appellant



as though he committed penetrative sexual assault. He further submitted that the explanation of the appellant to be considered along with the evidence of the house owner/DW1 which would confirm that the appellant implicated in the above case which the trial Court failed to consider.

6.The learned counsel for the petitioner finally submitted that PW2 after realizing her exaggeration and embellishment at that time and based on which the appellant convicted now realizing the same and considering the appellant a college student now perusing MBA, has come forward with the joint memorandum of understanding to withdraw the complaint against the appellant. Now PW2 is agreeable to withdraw the complaint against the appellant and not to pursue the case. The Memorandum of Understanding is signed by the victim girl, her mother/PW2, the appellant and his mother. Now the victim girl attained majority and filed affidavit confirming joint memorandum of understanding.

7.The learned Additional Public Prosecutor appearing for the respondent Police submitted that at the time of occurrence, the victim girl aged about 13 years studying 9th std in Our Lady of Velanganni Matriculation Higher Secondary School, Villivakkam, Chennai. The appellant and PW2 are



neighbours. PW2/Village Administrative Officer used to attend the work on week days and during weekends she attends coaching class for TNPSC Group-II Exam. The victim girl bicycles to the school. The victim girl was followed by the appellant whenever she was to the school and coming back. Later they developed friendly relationship. Taking advantage of the victim girl being alone in the house, the appellant forced the victim girl to have physical relationship. On 16.10.2018, after work, PW2 had come home at about 05.30 p.m found the main door locked inside, when she called the victim girl to open the door, the victim girl was inside the bedroom but locked from outside. Thereafter, PW2 entered the house from rear side, opened the bedroom door and enquired the victim girl who informed that the appellant came and locked the bedroom outside. After persistent questioning, the victim girl informed love relationship with the appellant and also informed that prior to 16.10.2018 on four occasions the appellant had physical relationship with her. Though she felt pain, out of fear the victim girl not informed her mother. On 16.10.2018, the appellant forced her to have physical relationship which she refused and went into the room and got dressed up for tuition, the appellant getting enraged for refusal latched door from outside and left home by rear side. Thereafter, PW2 lodged complaint (Ex.P3) to the respondent Police.



PW6/Investigating Officer registered FIR (Ex.P8), visited scene of occurrence, prepared Observation Mahazar (Ex.P9), Rough Sketch (Ex.P10) examined the victim girl, her mother and PW3. Thereafter, produced the victim girl before the Doctor/PW4 who examined her issued Exs.P4 to P6. The appellant was arrested, produced before PW5/Doctor who examined and issued potency certificate (Ex.P7). The victim girl produced before the Magistrate and her statement under Section 164 Cr.P.C (Ex.P2) recorded. On completion of investigation, charge sheet filed before the trial Court. On the evidence of witnesses more particularly on 164 Cr.P.C statement (Ex.P2) of victim girl corroborated with the evidence of Doctor/PW4, PW2 and Exs.P3, P4, P5 & P6, the trial Court convicted the appellant. Thus, from the victim's evidence and medical evidence, the offence committed by the appellant proved and the trial Court convicted the appellant.

8.He fairly submitted that the appellant, his mother and the victim girl, her mother/PW2 now produced a Joint Memorandum of Understanding after resailing to the reality. The victim as well as her mother/PW2 are not willing to further proceed against the appellant considering the age at which both the appellant and victim girl showed liking to each terming as love affair not



knowing the seriousness and consequences. He further submitted that now the appellant and victim girl are separated pursuing her education independently and they focused in excelling in their career. In addition, the victim girl produced affidavit supporting the Joint Memorandum of Understanding. The respondent Police also enquired with the victim girl and the victim girl and her mother/PW2 confirmed about their inclination not to further proceed against the appellant.

9.This Court considered the rival submissions and perused the materials available on record.

10.PW1 is the victim girl and PW2 her mother. The appellant is a neighbour and a college student. It is admitted that the victim girl and appellant were in friendly terms which later blossomed into love affair which was not to the liking of PW2 who objected the same. PW2 is bringing up the victim girl as a single mother since her earlier marriage broken down. PW2 employed as Village Administrative Officer and she has to leave home in the morning and she will be back home in the evening. On Sundays she was attending coaching class for TNPSC Group-II Exams from morning 10.00 am



to evening 05.00 pm. Her absence in the home taken advantage by the appellant. The victim girl at that time aged about 13 years studying 9th std, developed love affair with the appellant who was aged about 22 years a college student. Both were in adolescent age, on infatuation not knowing the seriousness and consequence, had committed to their love affair continued the same despite the opposition of PW2, which got PW2 enraged and lost.

11.PW2 getting agitated emotionally finding that the appellant entering the house from rear side which the victim girl permitted, called PW3 a confident and close person to her. PW3 came there both PW2 and PW3 questioned the appellant and his mother on the confident picked up a quarrel and fight, confirmed by the house owner/DW1. Earlier DW1 was served with the Court summons thereafter Police informed him that the Presiding Officer was not sitting on that particular date and thereafter the respondent Police failed to call and inform him about the case. The house owner examined as defence witness as DW1, who in his evidence confirms that on 16.10.2018, there was a big fight between the appellant and his mother on one side and PW1 & PW3 on other side. PW2 and PW3 questioned the appellant love affair with the victim girl and entering the home of PW2. DW1/house owner



intervened at that time. DW1 is very categorical that on 16.10.2018 the fight was only with regard to love affair between the appellant and victim girl. This love affair magnified into a penetrative sexual assault committed on the victim girl on the next day *i.e.*, on 17.10.2018 when the complaint was lodged at about 10.30 am.

12.It is to be reminded that PW2 is a Village Administrative Officer required to work with the Police, well aware about the procedure and functioning of police. The statement of the victim girl (Ex.P2) is that it was only on force and threat of her mother she stated about four occasions prior to 16.10.2018 penetrative sexual assault committed by the appellant. With regard to usage of condom and assurance given are clear exaggerations. In this case, the evidence of PW3 is in the nature of hearsay. The evidence of PW2 mother of victims as regards happenings on four previous occasions, to be considered along with the evidence of the victim girl. PW1 confirms that it is on the compulsion and force of her mother/PW2, she stated so. The evidence of the Doctor/PW4 who examined the victim girl needs consideration. The evidence of Doctor/PW4 is that the victim girl's physical observation and condition on the date of examination *i.e.*, on 18.10.2018 might be for other



reasons also her evidence ought to be considered in totality and not in isolation. Added to it, the evidence of DW1/house owner is the explanation with regard to what was the dispute and what had happened on 16.10.2018. This explanation not considered.

13. There are exaggerations and embellishment in the evidence of the victim girl/PW1, PW2 and PW3 which the trial Court failed to consider. On the other hand, the appellant who is an MBA student, is suffering with sentence of twenty years which would destroy his entire career and future. It is also to be seen at that age both were in teens not knowing the seriousness and consequences against the wish of parents having love affair had close relationship. Be that as it may, the defacto complainant/PW2, victim girl/PW1 and appellant, his mother realized the consequences. Now both the appellant and victim girl are pursuing their respective studies and focused to excel in their career and decided to bury the hatchet and to continue their life independently. A joint memorandum of understanding filed in Crl.M.P.No.762 of 2024 in Crl.A.No.596 of 2021 before this Court to the effect that compromise arrived between the parties and the victim girl and PW2 are not inclined to further pursue the complaint against the appellant willing to



withdraw the complaint. The victim girl now major filed affidavit in support of the joint memorandum of understanding. During the adolescent age, boys and girls get involved in relationship, such relationship would be the result of mutual innocence and biological attraction, which cannot be construed as an unnatural one or alien to between opposite sex. Realising for taking emotional decision earlier, now after reconsideration decided to resile.

14.In view of the above, this Court comes to the conclusion that the conviction cannot be sustained based on the evidence of the victim girl, her mother/PW2 and PW3, the Doctor/PW4 evidence and house owner/DW1 cannot be brushed aside and ignored. Added to it, considering the future of the appellant and the victim girl, both focused on their education and future coupled with the silence expressed by all concern, this Court finds the conviction not sustainable.

15.In the result, this criminal appeal is allowed setting aside the conviction and sentence imposed on the appellant by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai in S.C.No.212 of 2019, dated 09.11.2021. The appellant is acquitted of all



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charges. Bail bond if any executed shall stand cancelled. Fine amount if any paid shall be refunded. The connected criminal miscellaneous petition in Crl.M.P.No.762 of 2024 in Crl.A.No.596 of 2021 is ordered.

.07.2024

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Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

To

- 1.The Sessions Judge,
Special Court for Exclusive Trial of Cases under POCSO Act,
Chennai.
- 2.The Inspector of Police,
W-9 All Women Police Station,
Villivakkam, Chennai – 600 049.
- 3.The Public Prosecutor,
Madras High Court.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY JUDGMENT IN
CrI.A.No.596 of 2021

.07.2024