



Crl.A.No.209 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2024

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.209 of 2017

Sarathkumar

...Appellant

vs.

State represented by
The Inspector of Police,
All Women Police Station,
Sooramangalam,
Salem District.
(Crime No.23/2014)

...Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, 1973, against the judgment dated 14.02.2017 passed by the learned Sessions Judge, Mahila Court, Salem in Spl. S.C.No.22 of 2015.

For Appellant : Mr.R.Ezhilarasan

For Respondent : Mr.S. Rajakumar
Additional Public Prosecutor.



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J U D G M E N T

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This criminal appeal is filed against the judgment and orders dated 14.02.2017 passed by the learned Sessions Judge, Mahila Court, Salem in Spl. S.C.No.22 of 2015.

2. The appellant is the accused in Spl. S.C.No.22 of 2015 and is convicted and sentenced as detailed hereunder:

<i>S.No.</i>	<i>Conviction</i>	<i>Sentence</i>
1.	Section 450 IPC	Rigorous Imprisonment for ten years and a fine of Rs.2,000/-, in default, to undergo Simple Imprisonment for three months.
2.	Section 363 IPC	Rigorous Imprisonment for seven years and a fine of Rs.2,000/-, in default, to undergo Simple Imprisonment for three months.
3.	Section 366 IPC	Rigorous Imprisonment for ten years and a fine of Rs.2,000/-, in default, to undergo Simple Imprisonment for three months.
4.	Section 6 r/w.5 (I) of POCSO Act, 2012	Rigorous Imprisonment for ten years and a fine of Rs.10,000/-, in default, to undergo Simple Imprisonment for three months.
The aforesaid sentences shall run concurrently. The period of sentence already undergone shall be set off under Section 428 Cr.P.C.		



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3. The case of the prosecution in a condensed form is as

follows :

- i. The appellant Sarathkumar is a neighbour of the victim girl (P.W.1). They were in love with each other.
- ii. The evidence of the victim P.W.1 was that the appellant had sex with her in her house when no one was there, promising her that he would marry her.
- iii. He also took her to a Park near Dalmiapuram on 09.08.2014 at about 10.30 P.M. and had sex with her and this continued for several days. Since she did not get her menstrual periods, she informed her father Balu (P.W.2) about her relationship with the appellant. Both of them went to All Women Police Station, Sooramangalam on 19.08.2014 and lodged a complaint (Ex.P1) with Ms.K.P.Shanthi (P.W.10), the then Inspector of Police.
- iv. K.P.Shanthi (P.W.10), received the complaint from P.W.1 and registered an FIR (Ex.P12) on the same day in Crime Number 23/2014 against the appellant for the offences punishable under



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Sections 5 and 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 r/w. 376 (ii) (n) IPC.

- v. She took up investigation in Crime No.23/2014, went to the places where P.W.1 and the appellant used to meet each other and prepared Observation Mahazars (Ex.P2 and Ex.P3) and rough sketches (Ex.P13 and Ex.P14) in the presence of the witnesses Selvakumar (P.W.4) and Selvam (not examined).
- vi. Karthick (P.W.3), in his evidence had deposed that his father is hard of hearing and also suffering from night blindness. According to him, the appellant took his sister to a nearby park and had sexual intercourse with her forcibly. P.W.2, the father of the victim corroborated the versions of P.W.1 and P.W.3.
- vii.P.W.10 sent P.W.1 for medical examination along with Tmt.Amudha, Police Constable attached to All Women Police Station, Sooramangalam.



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viii. Dr. Bharathi (P.W.9), examined the victim girl (P.W.1) on 20.08.2014 and found her 'hymen not intact'. The victim was not pregnant and the vaginal smear was taken and sent to forensic lab. She also referred her to Radiologist to ascertain her age.

ix. The forensic laboratory issued a report (Ex.P10) stating that the vaginal smear and swab did not contain any 'spermatozoa'.

x. Dr. Sangeetha (P.W.8) examined the victim girl (P.W.1) and found that the victim's age was above 16 and below 18 years. The age certificate was marked as Ex.P8.

xi. P.W.10, the Investigation Officer arrested the appellant on 19.08.2014 near Ponnammappettai Railway Gate at about 17.15 hours and produced him before the concerned Judicial Magistrate for remand. On 20.08.2014, the Judicial Magistrate No.III, Salem examined the victim and recorded her statement under Section 164 Cr.P.C.



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xii.Dr.Gokularamanan (P.W.7), examined the appellant on 06.09.2014

and opined that there is nothing to suggest that the appellant is impotent. His certificate is marked as Ex.P7.

xiii.P.W.10 after completing investigation, laid a final report before the Mahila Court, Salem, against the appellant for the offences punishable under Sections 450, 363, 366 IPC and Section 6 r/w. 5(l) of POCSO Act in Spl. S.C. No.22/2015.

xiv.The prosecution examined 10 witnesses and marked 21 documents.

xv.When the appellant was questioned with regard to the incriminating circumstances appearing in evidence against him under Section 313 Cr.P.C. he denied of having committed any offence. However, he did not adduce any evidence on his side.

xvi.The learned Sessions Judge, Mahila Court, Salem, after analysing the oral and documentary evidence on record, convicted the



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appellant for the offences punishable under Sections 450, 363, 366 IPC and Section 6 r/w. 5(l) of POCSO Act, 2012 and sentenced him as stated in Paragraph No.2.

xvii. Aggrieved over the conviction and sentence passed by the Sessions Judge, Mahila Court, Salem, the present Criminal Appeal has been preferred.

4. Heard Mr.R.Ezhilarasan, learned Counsel appearing for the appellant and Mr.S. Rajakumar, learned Additional Public Prosecutor appearing for the respondent.

5. Mr.R.Ezhilarasan, learned counsel appearing for the appellant would contend that the victim was aged more than 18 years on the date of occurrence and that no acceptable evidence was filed by the prosecution to prove the age of the victim. He also contended that a photostat copy of the transfer certificate allegedly issued by the Headmaster, Government Higher Secondary School, Karuppur, Salem has alone been marked as Ex.P21. His specific contention is that the Headmaster who issued the certificate was not examined to prove the contents of the document nor



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the original School Records were produced by the prosecution. It is his further submission that the victim had also deposed that she gave her consent to have sex with the appellant and in the circumstances, the conviction and sentence passed by the trial court cannot be sustained.

6. Per contra, Mr.S.Raja Kumar, learned Additional Public Prosecutor would contend that the trial court had, after analysing the oral/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. It is seen from the records that right from the beginning the accused has been questioning the age of the victim girl. In the transfer certificate (Ex.P21), the date of birth of the victim girl has been indicated as 12.04.1998. A perusal of the transfer certificate also shows that the victim was admitted in IX standard in Government Higher Secondary School, Karuppur, Salem on 06.06.2012. The prosecution did not take steps to file the certificate issued by the concerned school authorities where the victim was admitted in I standard. The birth certificate has also not been marked. Moreover, P.W.1 in her evidence had stated that she



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was in relationship with the appellant for the past two years. When the appellant is facing serious charges under Sections 5 and 6 of POCSO Act, 2012, it is the duty of the prosecution to prove the age of the victim, especially, when the victim is closer to the age of 18 years.

8. Another contention of P.W.1 is that the appellant promised to marry her and had sexual intercourse with her. According to P.W.1, the appellant had sex with her on 09.08.2014 at about 10.30 P.M. It is not known as to why P.W.1 did not raise any alarm especially when she had specifically stated that the appellant forcibly had sexual intercourse with her. The relationship between them continued thereafter and the victim girl did not inform her parents immediately. Only on 19.08.2014 she had lodged a complaint with the police. It is pertinent to point out that the age of the appellant was 20 years on the date of occurrence and there is nothing on record to show that he did not have any intention to marry the victim girl from the beginning to conclude that the consent given by P.W.1 was not a consent within the meaning of Section 90 IPC.

9. In view of all the reasons stated by me, the conviction and sentence passed by the trial court is liable to be set aside.



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WEB COPY 10. In the result,

(i) This Criminal Appeal is allowed.

(ii) The judgment and orders dated 14.02.2017 passed by the learned Sessions Judge, Mahila Court, Salem in Spl. S.C.No.22 of 2015, is set aside.

(iii) The appellant (accused in Spl. S.C. No.22/2015) is acquitted from all the offences, of which he is charged. Bail bonds, if any, shall stand cancelled. Fine amount, if already paid, shall be refunded.

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Index : yes/no
Speaking /Non speaking Order
mtl



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To

1. The Inspector of Police, All Women Police Station, Sooramangalam, Salem District.
2. The Sessions Judge, Mahila Court, Salem.
3. The Public Prosecutor, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras.



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R.HEMALATHA, J.

mtl

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