



WEB COPY



Crl.A.No.255 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2024

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.255 of 2017

Kumar

... Appellant / Accused

vs.

State Rep. by
Inspector of Police,
All Women Police Station,
Pollachi.

... Respondent / Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, 1973, against the judgment and orders dated 09.09.2016 passed in Spl.C.C.No.27/2015 by the Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore.

For Appellant : Mr.Jugal Kumar

For Respondent : Mr.S.Rajakumar
Additional Public Prosecutor

JUDGMENT

Challenging the judgment and orders dated 09.09.2016, passed by the learned Sessions Judge, Mahila Court, Coimbatore in Spl.C.C.No.27/2015, the present Criminal Appeal is filed by the appellant / accused.



WEB COPY 2. The appellant is the accused in Spl.C.C.No.27/2015 and is convicted and sentenced as detailed hereunder:

<i>Accused</i>	<i>Conviction</i>	<i>Sentence</i>
Kumar	Section 366 I.P.C	Rigorous Imprisonment for a period of five years and a fine of Rs.3000/-, in default to undergo Simple Imprisonment for three months.
	Section 3 r/w. 5(l)(m) r/w. 6 of POCSO Act-2012	Rigorous Imprisonment for ten years and a fine of Rs.3000/-, 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.		

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

3.1. The victim girl (P.W.1), aged 11 years, was residing with her parents, Uma (P.W.2) and Subramani (P.W.3) in Kaliyapuram, Pollachi. P.W.2 was working in a construction company and she had to leave home daily at 8.30 am in the morning and come back in the night. P.W.3, the father of the victim was unwell and he used to stay at home.

3.2. The evidence of P.W.1 is that on 13.03.2015, she had an afternoon session in the school on account of XII Standard Examinations.



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When the victim was at home at about 11.00 a.m., the appellant came over to her house and called her to his house. Initially the victim refused.

However, she was forcibly dragged into the house of the accused where she was sexually assaulted by him. According to P.W.1, the appellant had committed penetrative sexual assault on her. P.W.1 screamed out of pain and the accused closed her mouth with his hands. Subsequently, P.W.1 came back home, after wearing her dress. However, she did not inform the incident to anyone as the appellant had threatened her with dire consequences. Again on 16.03.2015 at about 10 a.m., P.W.1's father requested the victim to bring her younger brother who was playing near a temple back home. According to P.W.1, when she went in search of her younger brother, the appellant who was standing near a bus stop, took her to his home forcibly and removed her dress and assaulted her sexually once again. At that time, Thiru.Siva @ Selvakumar (P.W.6) the paternal uncle of the victim, came near the house of the appellant and called P.W.1. P.W.1 went home with him. Subsequently, on the same night, she informed her mother Tmt.Uma (P.W.2) about the incident. Tmt.Uma (P.W.2) took her daughter (P.W.1) to the All Women Police Station, Pollachi on 17.03.2015 where P.W.1 lodged a complaint (Ex.P1).

3.3. Tmt.Karpagam (P.W.13), the then Sub Inspector of Police, All



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Women Police Station, received the complaint (Ex.P1) from P.W.1 and registered an FIR in Crime No.4/2015 on 17.03.2015 (Ex.P19) against the appellant for the offences punishable under Sections 365 and 366 I.P.C. r/w. Section 5 (1)(m) and 6 of POCSO Act. She placed the entire records before Tmt.Tamil selvi (P.W.14), the then Inspector of Police, for investigation.

3.4. P.W.14 took up investigation in Crime No.4/2015, went to the scene of occurrence on the same day i.e., 17.03.2015 at about 7.15 p.m. and prepared an Observation Mahazar (Ex.P9) and a Rough Sketch (Ex.P20) in the presence of the witnesses Siva @ Selvakumar (P.W.6), Muruganantham (not examined). She arrested the appellant on the same day near Kaliyapuram bus stop at about 8.30 p.m., and recorded his confessional statement in the presence of the witnesses Sekar (P.W.5) and Pragadeeswaran (not examined). She also recovered his dress worn by the appellant at the time of offence (M.O.1 and M.O.2) under the cover of a Mahazar (Ex.P7) in the presence of the same witnesses. The appellant, thereafter, was brought to the Police Station and produced before the concerned jurisdictional Magistrate for Judicial custody.

3.5. P.W.14 sent the victim along with a head constable of Police,



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to the Government Head Quarters hospital, Pollachi. Dr.Rajeswari (P.W.9) examined the victim girl on 17.03.2015 at about 8.15 p.m and found that her hymen was torn and redness in her private parts. She took smear from her vagina and sent the same to forensic lab for analysis. The Accident Register was marked as Ex.P13. On 20.04.2015 she issued a certificate of examination of Sexual offences stating thus:

"alleged sexual assault by a known person-

On that person's residence- once on Friday at 11.00a.m and 2nd time on Monday on 16.03.2013 at 10.00am.

Attended Menarche at the age of 11 years

LMP 1 year back

Breast - soft, no contusion

Local Examination

1. Hymen absent

2. No external injuries

3. sperms not seen

4. Vagina admits one finger, pain, redness in vagina, foul smells discharge

3.6. The victim (P.W.1) was, thereafter, produced before Tmt.Renuka Devi (P.W.11), the then Judicial Magistrate III, Coimbatore for recording her statement under Section 164 Cr.P.C. P.W.11 recorded



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the statement of the victim under Section 164 Cr.P.C. as per the orders of the Chief Judicial Magistrate, Coimbatore in R.No.1655/2015, dated 18.03.2015 after observing necessary legal formalities.

3.7. Thiru.Hariharan, Judicial Magistrate II, Pollachi, recorded the statement of Thiru.Siva @ Selvakumar (P.W.6), the paternal uncle of the victim under Section 164 Cr.P.C.

3.8. The appellant was produced before Dr.Pandeeswaran (P.W.10), Medical Officer, Government Hospital, Coimbatore on 20.03.2015 who examined the appellant and gave a Potency certificate (Ex.P15) stating that there was 'nothing to suggest that the appellant is impotent'.

3.9. Dr.Senthilkumar (P.W.8), Radiologist determined the age of the victim as about 9 to 11 years. The report of the Radiologist was marked as Ex.P12.

3.10. Thiru.Karthikeyan, (P.W7) the headmaster of Pazhaniammal Higher Secondary School, V.Kaliyapuram issued a certificate (Ex.P11)



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after verifying the School records. According to hm, the date of birth of the victim (P.W.1) is 22.11.2003. P.W.2, P.W.3 and P.W.6 corroborated the versions of the victim (P.W.1) in all material particulars.

3.11. The Investigation Officer (P.W.14) recorded the statements of the witnesses under Section 161(3) Cr.P.C., and after completing investigation, laid a final report before the Mahila Court, Coimbatore in Spl.C.C.No.27/2015 against the appellant for the offences punishable under Section 366 I.P.C., and Sections 3 r/w. 5 (l) (m) r/w. Section 6 of POCSO Act, 2012. Charges for the aforesaid offences were framed by the Sessions Judge, Mahila Court, Coimbatore and the appellant pleaded not guilty.

3.12. In order to bring home the guilt of the accused, the prosecution examined 14 Witnesses and marked 23 documents and 4 Material Objects.

3.13. The appellant, when was questioned with regard to the incriminating circumstances appearing in evidence against him under



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Section 313 of Cr.PC, denied of having committed any offence.

However, he did not examine any witness on his side.

3.14. The learned Sessions Judge, after analysing the oral and documentary evidence on record, convicted and sentenced the accused as stated in paragraph No.2 vide his Judgment and orders dated 09.09.2016. Aggrieved over the same, the present Criminal Appeal is filed.

4. Heard Mr.Jugal Kumar, learned counsel for the appellant and Mr.S.Rajakumar, learned Additional Public Prosecutor for the respondent/state.

5. Mr.Jugal Kumar, learned counsel for the appellant contended that the prosecution mainly relied on the evidence of the victim (P.W.1) and her evidence does not inspire confidence as she has not mentioned in her complaint (Ex.P1) that she informed the incident to her paternal uncle (P.W.6) when she was brought back home from the house of the appellant on 16.03.2015. This is in contradiction to her statement during the course of cross examination that she informed her paternal uncle and another person who accompanied her paternal uncle on 16.03.2013 on the



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way home. His further contention is that P.W.2, P.W.3 and P.W.6 had in their evidence stated that the victim informed the incident only to P.W.2 and not to her father and her paternal uncle (P.W.6). According to him, the trial Court without considering this main aspect, had convicted and sentenced the accused and therefore, the same is liable to be set aside.

6. Per contra, Mr.S.Rajakumar, learned Additional Public Prosecutor would contend that the Court below after analysing the evidence on record, had come to the right conclusion that the accused is guilty of the offence punishable under Section 366 I.P.C., and Section 3 r/w. 5 (l) (m) r/w. Section 6 of POCSO Act, 2012 and there is absolutely no reason for this Court to interfere with the same.

7. In the instant case, the victim girl (P.W.1) was aged 11 years. The appellant who was aged 65 years, had forcibly taken the child to his home on 13.03.2015 and 16.03.2015 and assaulted her sexually. P.W.1 in her complaint had clearly narrated the sequence of events. It is the contention of P.W.1 that she did not inform her mother immediately on 13.03.2015 since she was threatened by the appellant with dire



consequences. On 16.03.2013 she was once again forcibly taken by the appellant to his house and was sexually assaulted. In fact, it was a penetrative sexual assault. In the complaint, P.W.1 had stated that she informed her mother only on 16.03.2013 night. P.W.1 though was examined in Court nearly two years after the incident, she was able to narrate the sequence of events cogently. P.W.1 was not cross examined on the date when her chief examination was recorded by the Court. After a lapse of more than three months she was cross examined and during the course of cross examination, it was suggested to P.W.1 that she had informed the incident to her paternal uncle (P.W.6) and another person who accompanied P.W.6 on 16.03.2015. P.W.1 admitted this. Based on this piece of deposition, the learned counsel for the appellant states that the evidence of P.W.1 is totally unreliable.

8. It is pertinent to point out that P.W.1 was a child aged 11 years on the date of occurrence and was just 13 years during examination in Court. She was examined by the Inspector of Police, doctor, and then by the Magistrate. Subsequently, she had to face the trial. One should understand the mental trauma undergone by the child. Despite all these, P.W.1 had narrated the sequence of events and also withstood the



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testimony of cross examination. It is not the case of the prosecution that she never informed her paternal uncle and her father. The fact remains that the mother of the victim after coming to know of the offence committed by the appellant took her daughter to All Women Police Station, where a written complaint was lodged by P.W.1. Nothing was suggested to any of the prosecution witnesses to show that a false case was foisted against the appellant.

9. The trial Court had in fact analysed all these aspects and had come to the conclusion that the appellant is guilty of the offence punishable under Sections 366 I.P.C., and Section 3 r/w. 5 (l) (m) r/w. Section 6 of POCSO Act, 2012 and all the observations made by the trial Court Judge are perfectly in order and I do not find any reason to interfere with the same. As regards the sentence, though the accused was aged 65 years, his mental perversion is clearly seen in this case. He had the audacity to rape a child who was just 11 years of age. Hence, I do not see any reason to reduce the sentence.

10. In the result,

i. This Criminal Appeal is dismissed.



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- ii. The Judgment and Orders dated 09.09.2016 in Spl.C.C.No.27/2015 passed by the Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore are confirmed.
- iii. The appellant / accused is directed to surrender before the trial Court viz., the Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore, within fifteen days from the date of receipt of a copy of this order / uploading of the order, failing which, the trial Court shall take necessary steps to secure the presence of the accused to serve the remaining period of sentence.

11.06.2024

vum

Index : yes/no

Speaking /Non speaking Order

Neutral Citation : Yes / No

To

1. The Inspector of Police,
All Women Police Station,
Pollachi.
2. The Sessions Judge,
Sessions Judge,
Magalir Neethimandram
(Mahila Court), Coimbatore
3. The Public Prosecutor, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras.



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R.HEMALATHA, J.

vum



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