



WEB COPY



Crl.A.No.692 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2024

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.692 of 2017

Madan

... Appellant

vs.

State Rep. by
Deputy Superintendent of Police,
Pollachi Division,
Coimbatore District.
(Crime No.12/2014)

... Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) Criminal Procedure Code, 1973, against the judgment and orders dated 03.10.2017 passed in Spl. S.C.No.56 of 2014 by the Sessions Judge, Mahila Court, Coimbatore.

For Appellant : Mr.S.Shankar

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

JUDGMENT

This criminal appeal is filed against the judgment and orders dated 03.10.2017 passed by the Sessions Judge, Mahila Court, Coimbatore, in



Crl.A.No.692 of 2017

Spl. S.C.No.56/2014.

WEB COPY

2. The appellant stood charged for the offences punishable under Section 3(a) r/w. 4 of the Protection of Children from Sexual Offences Act, 2012 (in short POCSO Act) and Section 506(i) IPC by the trial court in Spl.S.C.No.56/2014.

3. The learned trial court Judge, after full trial, convicted and sentenced the appellant, vide her judgment dated 03.10.2017 as detailed hereunder :

<i>Conviction</i>	<i>Sentence</i>
Section 3(a) r/w.4 of the Protection of Children from Sexual Offences Act (POCSO), 2012	Rigorous Imprisonment for seven years and a fine of Rs.10,000/-, in default, to undergo Rigorous Imprisonment for three months.
The period of sentence already undergone shall be set off under Section 428 Cr.P.C.	

The learned trial court judge found the accused not guilty of the offence under Section 506(i) IPC and acquitted him under Section 235(1) Cr.P.C.

4. The case of the prosecution as could be discerned from the oral and documentary evidence is as follows:



WEB COPY

4.1. The victim (P.W.1) is residing with her parents and her siblings at Uthukuli Village, Pollachi Taluk. Thiru.Natarjan (P.W.2), is the Headmaster of Jameen Uthukuli Higher Secondary School, Pollachi, in which the victim was studying VIII standard. According to P.W.2, the date of birth of the victim is 29.07.2001 as per the School Records (Ex.P1).

4.2. On 15.05.2014 at about 9.00 p.m. the victim child went in search of her mother who had gone to a shop. The appellant, a neighbour came in a motor cycle and enquired her and P.W.1 informed him that she is searching for her mother. The appellant asked the victim to bring a tray which he has kept in a nearby thatched house. Accordingly, P.W.1 went inside the house and the appellant who followed her removed her dress and forced himself upon her. He also threatened P.W.1 with dire consequences, if she revealed the incident to anyone. According to P.W.1, there was no one in the thatched house when she was raped by the appellant. P.W.1 fearing repercussions did not inform her mother immediately. However, after 4 or 5 days she narrated the incident to her maternal aunt Kanniammal (not examined)



Crl.A.No.692 of 2017

who in turn informed the same to Ayyammal (P.W.6), the mother of the victim child.

4.3. Thereafter, the parents of the victim took P.W.1 to All Women Police Station, Pollachi on 20.05.2014 where Ayyammal (P.W.6), the mother of the victim lodged a written complaint (Ex.P7) with Tmt.Veerammal (P.W.9), the then Sub Inspector of Police, All Women Police Station, Pollachi. P.W.9 received Ex.P7 from P.W.6 and registered FIR (Ex.P10) in Crime No.12/2014 against the appellant for the offences punishable under Sections 3(a) r/w. 4 of POCSO Act, 506 (i) IPC and r/w.3 (part ii) (v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (in short SC/ST Act) and placed the records before Thiru.Balasubramanian (P.W.10), the then Deputy Superintendent of Police, Pollachi, for investigation.

4.4. P.W.10 took up investigation in Crime No.12/2014 went to the scene of occurrence and prepared an observation mahazar (Ex.P5) and a rough sketch (Ex.P11) in the presence of the witnesses Ismail (not examined) and Vanitha (P.W.4).



Crl.A.No.692 of 2017

4.5. Dr.Suganya (P.W.7), Assistant Medical Officer attached to Pollachi Head Quarters Hospital examined P.W.1 on 21.05.2014 at about 9.45 p.m. The victim informed the doctor (P.W.7) that she was sexually assaulted by a known person. P.W.7 in her report (Ex.P8) had stated that the vagina of the victim child easily admitted two fingers and her hymen was not intact. She took vaginal smear and swab and sent the same to Forensic Lab for analysis. A copy of the Accident Register was marked as Ex.P8.

4.6.Dr.A.V.R.Sureshkanth (P.W.5), Radiologist, Coimbatore Medical College and Hospital examined the victim girl on 04.06.2014 and issued a certificate (Ex.P6) stating that the age of the victim was above 13 years and below 14 years.

4.7. In the meanwhile, P.W.10 arrested the appellant near Forest Check Post and recorded his confessional statement in the presence of the witnesses Rajan (P.W.3) and Muthuraj (not examined). Based on his confession, he recovered his full arm shirt (M.O.5), Lungi (M.O.6), white color banian (M.O.7) and his undergarments (M.O.8) under the cover of a mahazar (Ex.P4) in the presence of the same



Crl.A.No.692 of 2017

witnesses. He produced the appellant before the Sessions Judge, Magalir Neethimandram, Coimbatore for remanding him to judicial custody.

4.8. P.W.10 sent all the material objects (M.O.1 to M.O.8) to the forensic lab through court. Since he was transferred, Mr.Muthurajan (P.W.11), the then Deputy Superintendent of Police, Pollachi, took up further investigation and produced the victim child before Thiru. Urariuraran (P.W.12), then then Judicial Magistrate No.II, Pollachi for the purpose of recording her statement under Section 164 Cr.P.C. P.W.12 received the proceedings from the Chief Judicial Magistrate, Coimbatore on this regard and recorded the statement of the victim child under Section 164 Cr.P.C. on 13.06.2014, after observing legal formalities.

4.9. P.W.10 also subjected the appellant to medical examination. Dr.Jayasingh (P.W.8) examined the appellant on 05.06.2014 and opined (Ex.P9) that 'there is nothing to suggest that he is impotent.'

4.10. P.W.11 after completing investigation laid a final report before the Sessions Judge, Mahila Court, Coimbatore in



Crl.A.No.692 of 2017

Spl.S.C.No.56/2014 against the appellant for the offences punishable under Section 3(a) r/w. 4 of POCSO Act and Section 506(i) IPC.

4.11. The learned trial court judge framed the charges for the aforesaid offences against the appellant and since he pleaded not guilty, the case was posted for trial.

4.12. In order to bring home the guilt of the accused the prosecution examined 12 witnesses, marked 20 documents and 8 Material Objects.

4.13. The accused, when questioned under Section 313 Cr.P.C with regard to the incriminating circumstances appearing in evidence against him, denied of having committed any offence. However, he did not examine any witness on his side.

4.14. The learned Sessions Judge, Mahila Court, Coimbatore, after analysing the oral and documentary evidence on record, convicted and sentenced the appellant as stated in Paragraph No.3 vide her judgment and orders dated 03.10.2017, aggrieved over



which, the appellant / accused has preferred the present appeal.

WEB COPY

5. Heard Mr.S.Shankar, learned counsel for the appellant and Mr.S. Raja kumar, learned Additional Public Prosecutor appearing for the respondent.

6. Mr.S.Shankar, learned counsel for the appellant contended that

- i. the prosecution has failed to prove that the victim was aged 13 years on the date of occurrence.
- ii. the complaint (Ex.P7) itself was lodged at the instigation of one Rajasekar the paternal uncle of the victim. Rajasekar was inimical towards the appellant as he belonged to a different political party.
- iii. the prosecution did not examine the father of the victim child.
- iv. the appellant misplaced his gold chain in the hut. The victim child and the appellant were searching for the same. Subsequently, the appellant went to the house of the victim and informed the inmates of the house that he traced the chain. Taking advantage of this situation, Rajasekar had filed a police complaint against the appellant with the help of the victim child (P.W.1) and her mother



Crl.A.No.692 of 2017

(P.W.6).

WEB COPY

v. there is a delay of six days in lodging the police complaint.

vi. non-examination of Kanniammal is fatal to the case of the prosecution.

vii.'sperm' was not detected on the dress worn by the victim child.

He therefore, prayed for setting aside the conviction and sentence passed by the trial court judge.

7. Per contra, Mr.S.Raja Kumar, learned Additional Public Prosecutor would contend that the trial court 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 present appeal.

8. In the instant case, the victim was aged 13 years on the date of occurrence and this is evidenced by the School Records (Ex.P1). P.W.2, the Headmaster of the School in which the victim child was studying in VIII standard had deposed that the victim's date of birth is 29.07.2001. Moreover, Dr.A.V.R. Sureshkanth (P.W.5), had examined the victim child and certified that she is above 13 years and below 14



years. Therefore, it is clear that the victim was aged 13 years on the date of occurrence. It is not also the case of the appellant that the victim is aged above eighteen years.

9. The appellant is a neighbour of the victim and her family and they were all in talking terms. P.W.1 (victim) had deposed that the appellant asked her to bring a tray from a nearby and that when she went inside, he followed her and forced himself upon her. P.W.1 did not inform the incident to her mother (P.W.6) as the appellant had threatened her with dire consequences. It is to be pointed out that the victim was aged 13 years and she was also very much upset over the incident. On seeing her condition, Kanniammal, maternal aunt of the victim had enquired her, P.W.1 confided in her the sexual assault made by the appellant. Thereafter, Kanniammal had informed the mother of the victim (P.W.6) who had confronted the wife of the appellant also. The victim had actually informed her maternal aunt four days after the incident and the complaint (Ex.P7) was lodged by P.W.6, the mother of the victim on 21.05.2014. Normally in a case under POCSO Act, the parents may not be willing to give a complaint as it would affect the reputation of the child. Therefore, the delay in lodging the complaint cannot be a factor for



Crl.A.No.692 of 2017

acquitting the appellant. The evidence of P.W.1 is cogent and acceptable and nothing useful was suggested to her during the course of cross examination to discredit or disbelieve her version. P.W.6, the mother of the victim was also corroborated the version of P.W.1 in all material particulars and both of them had withstood the testimony of cross examination. There is nothing on record to show that the victim (P.W.1) was tutored.

10. The contention of the learned counsel for the appellant that one Rajasekar, paternal uncle of the victim was inimical towards the appellant as the appellant belongs to a different political party and therefore, he insisted P.W.6 to lodge a complaint against the appellant, has not been substantiated. P.W.1 was not at all cross examined on this aspect and on the contrary, it was suggested to her during the course of cross examination that she is giving a false evidence against the appellant on the instigation of Kanniammal and her husband.

11. It is difficult to believe that P.W.6 on the instigation of one Rajasekar had asked her daughter (P.W.1) to give evidence against the appellant. Normally no parent will stoop down to that level to give a



Crl.A.No.692 of 2017

false case against a person especially when it involves the future of the child. P.W.1 on the date of occurrence, was searching for her mother and the appellant who came in a two wheeler had asked her to bring a tray from the hut which is situated near the road. The time of occurrence is around 9.00 p.m. and no one was available in and around the area as is seen from the evidence of P.W.1. P.W.1 is the victim in the instant case and her evidence inspires confidence of this Court.

12. The prosecution could have examined Kanniammal, the maternal aunt of the victim. However, Kanniammal had informed P.W.6, the mother of the victim who in turn had enquired his own daughter (P.W.1). P.W.6, is the defacto complainant and her complaint is based on the sequence of events narrated by her own daughter. In the circumstance, non-examination of Kanniammal is not fatal to the case of the prosecution.

13. It is also appropriate to extract Section 29 of POCSO Act which reads thus :



Crl.A.No.692 of 2017

"29. Presumption as to certain offences.—

WEB COPY

Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved."

14. The prosecution has proved the foundational facts in the instant case. The doctor who examined the victim child for determining the age had clearly deposed that the victim was aged 13 years on the date of occurrence. P.W.2, the Headmaster of the school had deposed that the date of birth of the victim is 29.07.2001. Dr.Suganya (P.W.7), had also in her report (Ex.P8) had stated that the vagina of the victim child easily admitted two fingers and her hymen was not intact and these suggest that the victim child was raped. The dress worn by the victim was sent to forensic lab on 17.06.2014 i.e. after lapse of a month. P.W.6 had also in her evidence had stated that she had washed the clothes worn by the victim child on the date of occurrence. Therefore, it is impossible to detect sperm on the dress worn by the victim child.



Crl.A.No.692 of 2017

WEB COPY

15. As already observed the evidence of P.W.1 and P.W.6 are cogent and acceptable and therefore, the conviction and sentence passed by the trial court judge are perfectly in order and I do not see any reason to interfere with the same.

16. In the result,

(i) This Criminal Appeal is dismissed.

(ii) The judgment and orders dated 03.10.2017 passed in Spl. S.C.No.56 of 2014 by the Sessions Judge, Mahila Court, Coimbatore, is hereby confirmed.

25.07.2024

Index : yes/no
Speaking /Non speaking Order
mtl



Crl.A.No.692 of 2017

WEB COPY

To

1. The Sessions Judge, Mahila Court, Coimbatore.
2. State Rep. by the Deputy Superintendent of Police, Pollachi Division, Coimbatore District.
3. The Public Prosecutor, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras



WEB COPY



Crl.A.No.692 of 2017

R.HEMALATHA, J.

mtl

Crl.A.No.692 of 2017

25.07.2024