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Crl.A.No.765 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2024

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.765 of 2018

Sathishkumar

...Appellant

vs.

State rep by
The Inspector of Police,
J-13, Taramani Police Station,
Crime No.202 of 2014
Chennai District

...Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, 1973, against the judgment dated 20.09.2018 passed by the learned Sessions Judge, Mahila Court, Special Court for cases under POCSO Act 2012, Chennai, in S.C.No.75 of 2017.

For Appellant : Mr. C.S.S. Pillai

Legal Aid Counsel

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 20.09.2018, passed by the learned Sessions Judge, Mahila Court, Special Court for cases under POCSO Act 2012, Chennai, in S.C.No.75 of 2017.

2. The appellant is the accused in S.C.No.75/2017 and is convicted and sentenced as detailed hereunder:

<i>Conviction</i>	<i>Sentence</i>
Under Section 6 of the Protection of Children from Sexual Offences Act 2012	Rigorous Imprisonment for ten years and a fine of Rs.10,000/-, in default, to undergo Rigorous Imprisonment for six months. A compensation of Rs.50,000/- is awarded as compensation to the victim for the mental agony suffered by her and the same was ordered to be paid by the State Government from the Victim compensation Fund or other Scheme or Fund as prescribed under Rule 7(4) & (5) of the POCSO Act.



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

follows :

- i. Indira (P.W.1) is the mother of the victim girl (P.W.3) and she is a maid in IIT Canteen. She also had a son who is a mechanic. Gopal (P.W.2), who is a mason, is the husband of P.W.1.
- ii. The victim girl was 16 years old and she discontinued her studies and was working in a Textile shop. The victim girl got acquainted with the appellant, who is her neighbour. When P.W.1 came to know about this, she sent the victim girl to her relative's houses at Kanniyakumari and Thiruvannamalai. After staying at each place for about one month, she came back to Chennai.
- iii. On 10.02.2014, the appellant contacted the victim girl through phone and lured her stating that he would marry her at Hogenakkal. On 11.02.2014 the appellant took the victim girl in a Tata Sumo car bearing Registration Number TN.11E.7177 and left the car at his sister's house at Guindy and proceeded to Tiruttani. On 12.2.2014 he tied thali to the victim girl at Tiruttani and took her to Salem and then to Hogenakkal, where he took a room in CM Lodge and had sexual intercourse with the victim girl for two days. Thereafter, he took her to nearby places and had sexual intercourse



with her multiple times.

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- iv. On 11.02.2024, when the victim's brother came home for lunch by 12.30 p.m., he found a letter written by her sister (victim girl) stating that she is leaving the house and going with the appellant. He intimated this to his mother (P.W.1) over phone.
- v. As the whereabouts of the victim girl was not known, P.W.1 lodged a complaint (Ex.P1) with Tmt. TamilSelvi (P.W.12), the Sub Inspector of Police, J-13, Taramani Police Station, Chennai. Based on her complaint, P.W.12 registered an FIR in Crime Number 202/2014 of Taramani Police Station, Chennai, under the caption 'girl missing'.
- vi. Thiru. Jagadeesan (P.W.13), the then Inspector of Police, J-13, Taramani Police Station, Chennai, took up investigation in Crime No.202/2014, went to the scene of occurrence, prepared an Observation Mahazar (Ex.P4) in the presence of the witnesses Kumar (P.W.6) and Velu (not examined) and a rough sketch (Ex.P21).
- vii. On 26.02.2014, the victim girl surrendered before the J-13, Taramani Police Station, and informed the police that at the insistence of the maternal aunt of the appellant, the appellant took



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her to various places and had sexual intercourse with her. Hence P.W.13, altered the case from 'Girl missing' to Section 376 IPC and prepared an alteration Report (Ex.P22).

viii. On 26.02.2014, P.W.13 arrested the victim at 2.30 p.m. near a bus stand and recorded his confessional statement (the admissible portion of which was marked as Ex.P.23) in the presence of the witnesses Charles (P.W.7) and Srinivasan (P.W.8). Based on his confessional statement a red colour Tata Sumo car bearing Registration Number TN.11E.7177 was seized under the cover of a mahazar Ex.P24. He sent the car to the Jurisdictional Magistrate under form 91 (Ex.P25). Thereafter, he produced the appellant before the Magistrate for remanding him to judicial custody.

ix. Dr. Kalpana (P.W.9), Assistant Medical Officer, Egmore Maternity Hospital, examined the victim girl and opined that the victim was pregnant. The Accident Register Copy was marked as Ex.P9.

x. Dr. Anitha (P.W.10), Kasturibai Gandhi Hospital examined the victim girl and found the hymen of the victim girl intact. She took vaginal smear and swab to find out the presence of any sperm and sent the same to forensic laboratory. After getting the report of the forensic laboratory, she opined that the vaginal smear and swab



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did not contain any 'spermatozoa'. The certificate given by P.W.10 was marked as Ex.P11 and the report of the Forensic Science Department was marked as Ex.P16.

xi. In the meanwhile, the appellant was sent to Kilpauk Government Hospital, Chennai, where Dr. Vinoth (P.W.11) examined him and opined that there is nothing to suggest that the appellant is impotent. He also conducted Radiological test in order to ascertain his age and accordingly assessed his age. In the opinion of Radiologist, the appellant is aged about 21-25. The Potency Certificate and the Age Certificate issued by P.W.11 were marked as Ex.P18 and Ex.P19 respectively.

xii. Thereafter, the victim girl was produced before the XVIII Judicial Magistrate, Saidapet, Chennai, and her statement under Section 164 Cr.P.C. (Ex.P3) was recorded.

xiii. P.W.13 after completing the investigation, laid a final report before the learned Sessions Judge, Special Court for Cases under POCSO Act 2012/Mahila Court, Chennai, against the appellant for the offences punishable under Sections 366 IPC and 6 of POCSO Act, and the same was taken on file as S.C. No.75/2017.



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xiv. On the side of the prosecution 13 witnesses were examined and 25

documents were marked. Thereafter the appellant was questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances appearing in evidence against him and he denied of having committed any offence. He examined himself as D.W.2 and his maternal aunt Manujula as D.W.1. and did not mark any documentary evidence.

xv. Manujula (D.W.1) is the maternal aunt of the appellant. Her deposition is that both the families knew each other very well as they were neighbours and initially though the mother of the victim girl had agreed for the marriage proposal, subsequently she changed her mind.

xvi. The Sessions Judge, Special Court for Cases under POCSO Act 2012/Mahila Court, Chennai, after analysing the oral and documentary evidence on record, acquitted the appellant of the offence under Section 366 IPC and convicted him for the offence punishable Under Section 6 of the Protection of Children from Sexual Offences Act 2012 and sentenced him as stated in Paragraph No.2.



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xvii. Aggrieved over the conviction and sentence passed by the Sessions Judge, Special Court for Cases under POCSO Act 2012/Mahila Court, Chennai, the present Criminal Appeal has been preferred.

4. Heard Mr. C.S.S. Pillai, learned Legal Aid Counsel appearing for the appellant and Mr.S. Raja kumar, learned Additional Public Prosecutor appearing for the respondent.

5. The victim was just 15 years at the time of the incident. The prosecution theory is that she was forcibly taken to different places including Hogenakkal, where she had to stay with the appellant in a lodge and had to experience sexual harassment. This was in February 2014. When she returned home on 26.02.2014, she was found to be pregnant (33 days). It is also contended that the appellant tied mangalsutra on her neck in a temple signifying marriage in the temple. On the contrary, the appellant has contended that they both were in relationship and that when the victim's parents had different idea (of getting her married to her own maternal uncle) she had forced him to take her away. It is further contended by him that she had eloped with

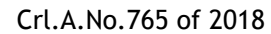


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him on her own volition and that at no point of time any force was used on her and that the victim now made a volte-face and blamed him for everything that happened between them.

6. The depositions of the prosecution witnesses and the defence witness D.W.1 bring to light the following facts:

- a) Both the appellant and the victim knew each other and were also in a relationship.
- b) The victim had left behind a letter explaining her reason for eloping with the appellant on 11.02.2014.
- c) The contents of the letter was never revealed.
- d) The victim's family was not interested in victim girl getting close to the appellant in any manner. The had indeed made her stay away from him in other relatives' houses.
- e) There was unexplained delay of more than two years in filing the charge sheet by the Investigation Officer.
- f) The victim is married to her uncle and has a child.
- g) The victim had gone to many places and had travelled to and from Chennai with the accused during the 10-12 days period when she was reported as missing.



7. Notwithstanding all these facts, the victim was just 15 years old.

The provisions of Protection of Children from Sexual Offences Act 2012 (herein after referred to as "POCSO Act") are very clear. Section 2(d) of the POCSO Act defines a child as any person below the age of eighteen years. Section 5(j) (ii) of the POCSO Act reads as "whoever commits penetrative sexual assault on a child, which in the case of a female child, makes the child pregnant as a consequence of sexual assault is said to commit aggravated penetrative sexual assault". Thus it is clear that the appellant had committed this grave offence. He was much older than the victim. He was 25 while she was just 16. A 25 year old man cannot be ignorant of the consequences of making a girl pregnant. It is also deposed by the victim that the sexual assault was multiple and not just on



one occasion. Though the victim is happily married now, the mental trauma or the effect of such an incident would haunt her forever. Dr.

Amutha(P.W.10) confirmed the pregnancy of the victim girl. The consent or not from the victim girl is immaterial in such cases. There was a suggestion to the Investigation Officer (P.W.13) as to whether DNA test was done. But in the light of the facts of this case, it is clearly exposed by oral evidence on both sides that the couple was in close contact with each other and the girl had left her home and stayed with the appellant for about two weeks in a far off place, that too in a hotel. It is also clear that the appellant had tied a thali on her neck, may be, under the impression that his acts would be legally recognised. All these factors could have helped him if the age of the victim was more than 18. But this is not so. The learned counsel for the appellant also tried to argue on the age of the girl victim. I do not find any merit in it. Ex.P2 is the school register extract showing her Date of Birth as 23.06.1999. The incident took place on 11.02.2014. Even D.W.1 (the appellant's maternal aunt) deposed that both the families were knowing each other very well as they were neighbours and initially the mother of the victim girl had agreed to the proposal of marriage with the appellant and later changed her mind. There was no mention by her about the age of the



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victim in her depositions. The appellant (D.W.2) did not dispute on her age but rather put the entire blame on her stating that she was the one who insisted on eloping with him and that there was no force exerted upon her.

8. In such circumstances, I do not find any infirmity in the trial court's verdict. The conviction and sentence are perfectly in order.

9. In the result,

(i) This Criminal Appeal is dismissed.

(ii) The judgment and orders dated 20.09.2018, passed by the learned Sessions Judge, Mahila Court, Special Court for cases under POCSO Act 2012, Chennai, in S.C.No.75 of 2017, is confirmed.

(iii) The appellant shall surrender before the learned Sessions Judge, Mahila Court, Special Court for cases under POCSO Act 2012, Chennai, within 15 days from the date of receipt of a copy of this order/uploading of the order, failing which, the Trial Court shall take steps to secure him for serving the remaining period of sentence.



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WEB COPY (iv) This Court places on record its appreciation to Mr.C.S.S.Pillai, learned Legal Aid counsel, for his valuable assistance in deciding this case. The High Court Legal Service Committee shall pay a sum of Rs.10,000/- to the said counsel towards his fee.

17.04.2024

bga

Index : yes/no

Speaking /Non speaking Order

To

1. The Inspector of Police,
J-13, Taramani Police Station
Crime No.202 of 2014
Chennai District
2. The Sessions Judge,
Mahila Court, Special Court for cases under POCSO Act, Chennai
3. The Public Prosecutor, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras



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R.HEMALATHA, J.

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