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CrI.A.No.824 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2024

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CrI.A.No.824 of 2018

Soundarrajan

...Appellant

vs.

State represented by
The Inspector of Police,
All Women Police Station,
Thiruvannamalai.
Crime No.05/2013

...Respondent

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, 1973, against the judgment and orders dated 03.12.2018 passed by the Sessions and Fast Track Mahila Court, Thiruvannamalai, in Spl.S.C.No.18 of 2016.

For Appellant : Mr. M. Krishnamoorthy

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

JUDGMENT

This criminal appeal is filed against the judgment and orders dated 03.12.2018 passed by the learned Sessions Judge, Thiruvannamalai in Spl.S.C.No.18 of 2016.



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2. The appellant is the accused in Spl.S.C.No.18 of 2016 and is convicted and sentenced as detailed hereunder:

<i>Conviction</i>	<i>Sentence</i>
Section 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 Simple Imprisonment for six months. A sum of Rs.4,00,000/- is awarded as compensation to the victim and the same was ordered to be paid by the State Government.
The period of sentence already undergone shall be set off under Section 428 Cr.P.C.	

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

3.1. The victim (P.W.1) is an orphan who was reportedly handed over to the orphanage MDM Children's Home in Thiruvannamalai at the age of 3 years by her parents. Subsequently, her parents expired. She was studying in Adi Annamalai Government High School in VIII Standard during 2013. As per the school records (Ex.P16) and the evidence of Tmt.Amudha (P.W.7), Headmistress of Adi Annamalai Government High School, the Date of Birth of the victim is 07.03.1999.



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3.2 The appellant Soundarrajan residing in V Cross Street, Idukkupillaiyar Nagar, Vengaikkal, Thiruvannamalai, was an English teacher in the school taking class for P.W.1. According to P.W.1, he used to treat her differently and also repeatedly ask her to come home. He had expressed his desire to marry her on more than one occasion. Subsequently, he threatened the victim that she would not be able to pass in the forthcoming examination unless she comes to his house. On 19.02.2013, P.W.1 fearing serious repercussions visited the victim's house in the evening at about 6 p.m., when the appellant was not there in the house. In fact, on 15.02.2013, the appellant had informed the victim that he would be alone in his house as his wife and children are out of town. George (P.W.8), the owner of the house in which the appellant is residing as a tenant enquired P.W.1 and subsequently he called up the appellant stating that the victim had come home to meet him. The appellant/teacher immediately came home and took the girl into the house and molested her. This led to further penetrative sexual assault. The appellant did not allow the victim to leave the place and engaged in sexual act. Subsequently, at her request she was dropped near Suryalingam temple, near her brother's house early in the morning. Since they were not able to locate her brother's house, P.W.1 returned to



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children's home. Since the gate was locked, she had to scale the fence.

She also asked one of her inmates to open the door but to her surprise, the door was opened by one Latha, a teacher and Jerry Martina, incharge of the Home (both not examined). The next day her sister Selvi (P.W.3) was called to whom the victim girl confessed the happenings thereby leading to police complaint (Ex.P1) by the victim (P.W.1).

3.3. Murugan (P.W.2) one of the co-ordinators of Childline received a phone call from Sathish (P.W.15), Home Programme Director, on 19.02.2013 at 9 p.m that one of the inmates of MDM Children's Home had gone missing. P.W.15 informed P.W.2 that the child's brother's house is near Sakthi theatre. P.W.2 went near the area, however, he could not locate the house. Thereafter, he went in search of the victim to her grand mother's house at Radhapuram at about 11 p.m. The victim was also not found there. Therefore, they informed Thiruvannamali Taluk Police Station at about 1 a.m., who in turn advised them to wait till morning. On 20.02.2013, P.W.2 was informed by Sathish (P.W.15) that the victim had come back to the children's home.



3.4. Selvi (P.W.3) is the elder sister of the victim. Her evidence is that she was informed on 19.02.2013 that her sister (P.W.1) had gone missing from the Home. She came down to the Home immediately the next day and enquired her sister P.W.1. According to P.W.3, her sister (P.W.1) initially was hesitant to inform her about the incident. After some persuasion, P.W.1 confessed . P.W.1 informed her about the sexual assault made by the appellant on her on the previous night. She in turn informed the same to Sathish (P.W.15). Thereafter, they took P.W.1 to All Women Police Station, Thiruvannamalai, and gave a written complaint (Ex.P1).

3.5. Tmt. Hemamalini (P.W.18), the then Inspector of Police, All Women Police Station, Thiruvannamalai, received the written complaint (Ex.P1) from P.W.1 on 20.02.2013 and registered an FIR (Ex.P10) in Crime Number 5/2013 for the offences punishable under Sections 376 and 506(i) IPC. She took up investigation, examined the victim girl, recovered the dress worn by her (M.O.1 to M.O.5)) under Form 95 in the presence of the witnesses Jerry Martina (not examined) and Murugan (P.W.2). Thereafter, she altered the FIR to Sections 376, 506(1) IPC and Section 3 and 7 of POCSO Act. She arrested the accused on the night of



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20.02.2013 and produced him before the Judicial Magistrate-II, Thiruvannamalai,, who in turn remanded him to judicial custody.

3.6. On 21.02.2013, she went to the scene of occurrence and prepared an observation mahazar (Ex.P11) and rough sketch (Ex.P12 and Ex.P13) in the presence of the witnesses Murugan (P.W.2) and Jerry Martina. She examined the inmates of MDM Children's Home and recorded their statements individually. On 21.02.2013, she sent the victim girl to the Government Medical College Hospital, Thiruvannamalai, for medical examination along with Sathish (P.W.15), Child line co-ordinator, Ashok Kumar (P.W.16), one of the trustees of the Home and Chezhan (P.W.17), the Secretary of the Home.

3.7. Dr. Praveena (not examined) examined P.W.1 on 21.02.2013 and found that the victim was not a virgin. However, she did not find any external injuries on her body. Her Report on Medical Examination of a Female Victim of Sex Offence was marked as Ex.P8 through Dr. Usha Kalyanai (P.W.13).



3.8. Dr. Arumugam (P.W.12), Senior Civil Surgeon- Radiologist, Medical College Hospital, Thiruvannamalai, opined that the age of the victim is 17 years. His report was marked as Ex.P7.

3.9. The victim was thereafter produced before Tmt. Tasnim (P.W.14), Judicial Magistrate, Arani, for recording her statement under Section 164 Cr.P.C. Tmt. Tasnim, after observing necessary legal formalities recorded the statement of the victim (P.W.1) as per the proceedings of the Chief Judicial Magistrate dated 26.02.2013. The statement of the victim was marked as Ex.P9.

3.10. Tmt. Anusha (P.W.9), Tahsildar of Thiruvannamalai, issued a Community Certificate (Ex.P4) stating that the victim belongs to Hindu Aunthathiar community.

3.11. Priya (P.W.6) is the friend of P.W.1 and one of the inmates of MDM Children's Home. Her evidence is that P.W.1 informed her that the appellant had handed over his phone number and insisted her to call him over phone. Accordingly P.W.1 used to call the appellant from a nearby shop. Sampath (P.W.10), the shopkeeper, in his deposition had stated that



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several persons used to come to his shop for making phone calls and therefore he could not remember the victim P.W.1 and the appellant. All the other witnesses corroborated the versions of prosecution in all material particulars.

3.12. Tmt. Hemamalini (P.W.18), after completing investigation laid a final report before the Judicial Magistrate No.II, Thiruvannamalai in P.R.C. No.39/2013 against the appellant for the offences punishable under Section 4 of the Protection of Children from Sexual Offences Act (POCSO), 2012 and 506(i) IPC.

3.13. The learned Judicial Magistrate No.II, Thiruvannamalai, after furnishing copies of records to the accused under Section 207 Cr.P.C, committed the case to the Court of Sessions, Thiruvannamalai. The Principal Sessions Judge, Thiruvannamalai, took the case on file in S.C.No.18/2016 and made over the same to the court of Additional Sessions and Fast Track Mahila Court, Thiruvannamalai.

3.14. The learned Additional Sessions Judge, Thiruvannamalai, framed charges against the appellant for the offences punishable under



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Section 4 of the Protection of Children from Sexual Offences Act (POCSO), 2012 and 506(i) IPC.

3.15. In order to bring home the guilt of the accused the prosecution examined 18 witnesses and marked 16 documents and 5 Material Objects.

3.16. The appellant, 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 adduce any oral or documentary evidence.

3.17. The learned Additional Sessions Judge, Thiruvannamalai, after analysing the oral and documentary evidence on record, while acquitting the appellant for the offence under Section 506(i) IPC, convicted and sentenced him for the offence punishable under Section 4 of the Protection of Children from Sexual Offences Act (POCSO), 2012 as stated in paragraph No. 2.



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3.18. Aggrieved over the judgment and orders passed by the trial Court judge, the appellant has preferred the present appeal.

4. Heard Mr. M. Krishnamoorthy, learned counsel for the appellant, Mr.S. Rajakumar, learned Additional Public Prosecutor for the respondent.

5. Mr. M. Krishnamoorthy learned counsel for the appellant has attempted to dilute the gravity of the offence by taking the plea that the victim girl was not a minor even at the time of the incident and the prosecution has miserably failed to substantiate her age by filing a valid birth certificate. However, it is seen from Ex.P7 which is an Age Certificate issued by the Senior Civil Surgeon cum Radiologist Dr.Arumugam (P.W.12) that the victim girl was 17 years old on 20.02.2013 when she was examined. It is understandable that in the absence of a birth certificate, the certificate of the Radiologist is a credible evidence and cannot be brushed aside since it is based on the scientific examination of various bones in the body. It is also pertinent to mention that Tmt.Amudha (P.W.7), the Headmistress of Adi Annamalai Government High School produced the Admission Form (Ex.P16) and



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the School Records which show the Date of Birth of the victim girl, as 07.03.1999. It has to be kept in mind that the victim girl is an orphan born in a poor family and neither she nor her siblings had any birth certificate issued by the concerned authorities. It was suggested to Dr.Arumugam (P.W.12), the Radiologist, that depending upon the Nutrition taken by different persons the growth of bone may vary and therefore, there is a possibility of a margin of error in the estimation of the age of the victim. However, the Doctor stood firm by his report.

6. Another contention of the learned counsel for the appellant was that the victim girl was also liking the appellant and she had consented for the sexual act only due to the admiration she had for him. The victim was aged less than 18 years at the time of occurrence and even assuming that there was consent from her, the same cannot be construed as a consent and such a consent is immaterial under POCSO Act. Therefore, this argument also does not hold good.

7. It was also argued that the house of the appellant was 7 km away from the Children's Home and the statement of P.W.1 that she knew only the location of the Children's Home and her school, creates suspicion.



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This again is not acceptable as Mr.George (P.W.8) who himself is a Retired Policeman (House owner of the appellant) was categorical in mentioning that the victim girl had actually visited the house of the appellant on the date of occurrence. There is also no documentary evidence adduced by the appellant to support his contention that his house is 7 km away from the Home.

8. Another defence taken is that none of the seized dress items contained any blood or semen as reported in Ex.P14, the analysis report of the forensic lab and that the Doctor who examined the victim girl had opined that there is no evidence of rape. In Medical Report (Ex.P8) the Doctor had opined that the victim girl was not a virgin and her vagina easily admitted one finger. However, the aspect of consent is already discussed earlier and needs no repetition. The victim was examined only on the next day of the occurrence. It is also pertinent to point out that the dress worn by the victim, though said to have recovered on the evening of 20.02.2013, were sent for forensic analysis only on 15.03.2013.

9. The depositions of Murugan (P.W.2), Co-ordinator of Child Line, Malliga (P.W.4), the Warden of the Home, George (P.W.8), the



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House owner of the appellant, corroborated P.W.1's version to a great extent and except for minor inconsistencies nothing is found fatal to the case of the prosecution. The evidence of P.W.1 fits in with her written complaint (Ex.P1) and her statement before the Judicial Magistrate under Section 164 Cr.P.C. There is nothing on record to suggest that P.W.1 was tutored by someone or telling lies. Hence conviction of the appellant for the offence punishable under Section 4 of the Protection of Children from Sexual Offences Act (POCSO), 2012, is confirmed.

10. It is appalling that such incidents of sexual assault happen without any fear of law. It is more so when the victim girl is an orphan and no one to care for her. Teaching is a noble profession and there are many instances the teachers feel proud about the achievements of their pupils. However, in the instant case the one who is expected to protect and nurture the child by way of making the child a good human being himself destroyed the future of the child. This is classic case of 'fence eating the crops' in the sense that the accused teacher not only took advantage of his position but also exploited the victim girl who was an orphan and had to fend for herself. In the circumstances, no leniency can be shown in passing the sentence. Hence the sentence passed by the trial court is found adequate and is confirmed.



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11. In the result,

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- i. The Criminal Appeal is dismissed.
- ii. The judgment dated 03.12.2018 passed in Spl.S.C.No.18 of 2016 by the Sessions and Fast Track Mahila Court, Thiruvannamalai, is confirmed.
- iii. The accused is directed to surrender before the trial Court viz., the Sessions and Fast Track Mahila Court, Thiruvannamalai, 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.
- iv. This Court while suspending the sentence in Crl.M.P.No.492 of 2020 directed the present appellant to deposit a sum of Rs.4,00,000/- to the credit of Spl.S.C.No.18 of 2016 on the file of the Sessions Judge, Fast Track Mahila Court, Tiruvannamalai. The said amount shall be paid to the victim girl towards compensation.

19.06.2024

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Index : yes/no

Speaking /Non speaking Order



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To

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1. The Inspector of Police, All Women Police Station, Thiruvannamalai.
2. The Sessions and Fast Track Mahila Court, Thiruvannamalai.
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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