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CRL.A.NO.858 OF 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 24 / 08 / 2023

JUDGMENT PRONOUNCED ON: 30 / 01 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CRL.A.NO.858 OF 2018

AND

CRL.M.P.NO.721 OF 2020

IN

CRL.A.NO.858 OF 2018

Bharathi

... Appellant /
Accused

Versus

The State
Represented by the Inspector of Police
Anupparpalayam Police Station
Tiruppur, Tiruppur District.
(Crime No.748 of 2013)

... Respondent /
Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, praying to set aside the conviction and sentence imposed in Spl.S.C.No.19 of 2017 dated 16.11.2018 on the file of Magalir Neethimandram (Fast Track Mahila Court) Tiruppur.

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For Appellant : Mr.R.Sankarasubbu
For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal is preferred, assailing the judgment dated 16.11.2018 passed by the learned 'Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur' (henceforth 'Trial Court' for the sake of convenience) in Special S.C.No.19 of 2017, by the 'appellant' (henceforth 'accused' as per Trial Court's description), in which he was convicted and sentenced to undergo rigorous imprisonment for seven years with fine of Rs.10,000/- for the offence under Section 3(a) read with 4 of 'Protection of Children from Sexual Offences Act, 2012' [hereinafter referred to as 'POCSO Act' for the sake of convenience and brevity], in default thereof, to undergo rigorous imprisonment for a further period of one year.

2.The case of the prosecution in brief is as follows:

2.1. X (P.W.1), aged 12 years and pursuing 7th Standard at the time of the occurrence, is the sole-victim in this case. The accused is a



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neighbour of the victim. On 27.11.2013 at about 13.00 hours, when the victim was at her house, the accused came there and called the victim to his house. All house in one single row – 27 houses in more than one row but within the same compound. When the victim went to the accused's house, he locked the door from inside and hugged the victim. When the victim resisted, he enticed the minor victim girl that he would marry her, that she is going to be his wife and forcibly committed penetrative sexual assault upon the minor girl.

2.2.Later P.W.1's aunt Tmt.M (P.W.5) (name masked for the sake of privacy of the victim) and her uncle Thiru.S (P.W.2) (name masked for the sake of privacy of the victim), in search of P.W.1, knocked the door of the accused's house. At first the accused did not open the door. As they knocked the door again and again, the accused opened the door and on seeing them, the accused ran out of his house. They took P.W.1 to their house. P.W.1 informed her aunt and uncle about the occurrence. Thereafter they gave information to P.W.1's father and upon his return home, on the night of 27.11.2013, they went to Anupparpalayam Police Station and P.W.1's uncle



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Thiru.S (P.W.2) lodged a complaint (Ex-P.1) before the Police. First Information Report (F.I.R.) (Ex-P.10) was registered in Crime No.748 of 2013 for the offence under Section 3(a) r/w 4 of POCSO Act.

2.3.The case was taken on the file of Fast Track Mahila Court, Tiruppur and numbered as Spl.S.C.No.19 of 2017. After appearance of the accused, a copy of all case records were provided to the accused as required under Section 207 of 'The Code of Criminal Procedure, 1973', [hereinafter referred to as "Cr.P.C." for the sake of brevity]. After hearing both side arguments and perusal of the entire records, the Trial Court framed charge against the accused under Section 3(a) r/w 4 of POCSO Act and when it was read over and explained to the accused, he pleaded not guilty. Hence, trial was ordered.

2.4.The prosecution in order to prove its case, examined 11 witnesses as P.W.1 to P.W.11 and marked Ex-P.1 to Ex-P.11. and M.O.1 to M.O.3. The defense side examined one witness as D.W.1.



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2.5. After analysing the oral and documentary evidence, the trial court came to the conclusion that the charge under Section 3(a) r/w 4 of POCSO Act was proved against the accused and thereby convicted and sentenced him under Section 3(a) r/w 4 of POCSO Act to undergo seven years of rigorous imprisonment and ordered to pay a fine of Rs.10,000/-, in default thereof, to undergo rigorous imprisonment for a further period of one year.

2.6. Feeling aggrieved by the judgment, the accused has preferred this Criminal Appeal.

ARGUMENTS

3. Mr. R. Sankarasubbu, learned counsel for the accused argued that the Trial Court did not consider the medical evidence that no injury was found on the body of the victim girl; that the Trial Court did not consider the evidence of D.W.1 in the right prospective; and that the medical evidence does not support the prosecution case. Accordingly, he prayed to allow the Criminal Appeal and acquit the accused.

4. In response to the above argument, Mr. A. Gokulakrishnan,



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learned Additional Public Prosecutor submitted that the testimonies of the victim (P.W.1), P.W.2 and P.W.5 are believable and trustworthy and there is no reason to reject the same. He further submitted that the deposition of P.W.1, P.W.2 and P.W.5 are corroborated by the evidence of P.W.3; that the Trial Court after considering the entire evidence and materials on record, has concluded that the accused committed the offences under Section 3(a) read with 4 of POCSO Act; and that there is no reason to interfere with the impugned judgment of the Trial Court. He further submitted that the victim did not give consent for the sexual act and even while assuming that the victim had given consent, since the victim is a child as per Section 2(d) of the POCSO Act, the consent cannot be treated as a valid consent. Accordingly, he prayed to dismiss the Criminal Appeal.

5.This Court has perused the entire case file and heard either side. The points that arise for consideration are as follows:

(i)Whether the prosecution has proved the



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offence under Section 3(a) r/w 4 of POCSO Act against
the accused?

(ii) Is there any reason to interfere with the
impugned judgment of the Trial Court?

DISCUSSION AND DECISION TO POINT NOS.(i) AND (ii)

6. X (P.W.1), aged 12 years and pursuing 7th Standard at the time of the occurrence, is the sole-victim in this case. She has deposed that the accused is her neighbour; that on 27.11.2013 as she was suffering from fever, she did not go to school and she was alone at home; that at about 13.00 Hours when she was standing in front of her house, the accused came to his house for lunch, enquired her why she is standing outside; that when she stated that she is suffering from fever, the accused called her to his house stating that he would give tablet to her; that when she went to the accused's house, he locked the door from inside and hugged her; that when she resisted, he enticed her that he would marry her, that she is going to be his wife, removed her dress and raped her. She has further deposed that her aunt-M



and her uncle-S came and knocked at the door and at first, accused did not open the door as they again knocked the door accused opened the door, on seeing them ran away from the place.

6.1.P.W.2 who is none other than the maternal uncle of X, in his evidence has deposed that P.W.1 is his younger sister's daughter; that at the time of occurrence, P.W.1 was pursuing 7th Standard and 13 years old; that on the date of occurrence, the mother of P.W.1 called him over phone, stated that her daughter was not doing well and asked him to go and get tablets for her; that, accordingly he went to his sister's house, however, P.W.1 was not found there; that, P.W.2 went to his elder sister's house *i.e.*, P.W.5's house situated two houses away from P.W.1's house and enquired about P.W.1; that at that time, Thiru. RK (D.W.1) (name masked for the sake of privacy of the victim) who was residing opposite to the victim's house, informed him that he saw P.W.1 getting into the accused's house; that they then went to the accused house and knocked the door; that they enquired the accused about P.W.1 when he opened the door and the accused was anxiously blinking; that P.W.2



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and his elder sister (P.W.5) saw P.W.1 sitting in a corner of accused's house and crying; that P.W.2 raised alarm and people in the vicinity, came to the scene of occurrence; and that meanwhile, the accused fled from the scene of occurrence. He further deposed that, later, when they enquired the victim, she stated that the accused raped her; and that thereafter, between 08.30 and 09.00 p.m., they went to Anupparpalayam Police Station and P.W.2 lodged the complaint before the Police.

6.2.P.W.5 who is none other than aunt of P.W.1 deposed that on 27.11.2013, at about 12.00 hours, she came to her home to have lunch; that at about 14.00 hours, her brother (P.W.2) came there and told that P.W.1 was not doing well and so he brought tablets for her, but, P.W.1 could not be found in P.W.1's house and enquired her about P.W.1; that, P.W.5 replied that P.W.1 will be at her house only and they both went and searched for P.W.1 but, she could not be traced out; that at that time, RK (D.W.1) who was residing opposite to the accused's house, told them that P.W.1 is at the accused's house; that thereafter, they knocked the door of the accused's house but the accused opened the door only after knocking about 3 times; and that



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when they went inside the accused's house, they saw P.W.1 sitting in a corner and crying. She further deposed that, when they enquired the victim (P.W.1) she stated that as she was not doing well, she was standing in front of her house, at that time, the accused who came there enquired her as to why she was standing outside, when P.W.1 stated that she was not doing well, the accused telling her that he will give tablets to her and took her into his house wherein, the accused removed her dress and misbehaved with P.W.1. She further deposed that when P.W.5 and her brother (P.W.2) were about to enquire the accused, he ran away from the scene of occurrence and that thereafter, between 08.30 and 09.00 p.m., they went to Anupparpalayam Police Station and P.W.2 lodged the complaint before the Police.

6.3.P.W.6 is the mother of the victim (P.W.1). She deposed that at the time of occurrence, her daughter was aged 12 years and her date of birth is 13.10.2001. On 27.11.2013, as P.W.1 was not doing well and as she could not take leave, she went to work; that at about 01.30 p.m., she contacted her brother (P.W.2) over phone and asked him to get tablets for her and go and check in on her daughter. She further deposed that, later, her



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brother (P.W.2) contacted his wife i.e., P.W.6's sister-in-law over phone, informed her about the occurrence and asked them to come home; that her sister-in-law is also working along with P.W.6; that thereafter, her sister's husband took her home stating that her father was not doing well; that when she went home, she came to know that her neighbour / accused misbehaved with her daughter; and that thereafter, between 08.30 and 09.00 p.m., they went to Anupparpalayam Police Station and P.W.2 lodged the complaint before the Police.

AGE OF THE VICTIM

7.The victim was born on 13.10.2001. The date of occurrence is 27.11.2013. P.W.2 in Ex-P.1 Complaint, has clearly stated that the victim was studying 7th Standard and her date of birth is 13.10.2001. X (P.W.1) in her evidence has clearly stated that her date of birth is 13.10.2001. Mother (P.W.6) of the victim has also deposed that date of birth of X is 13.10.2001. P.W.6 filed Ex-P.7 – Birth Certificate before the Trial Court. The defense side did not raise any question about Ex-P.7. Hence, this Court concludes that on



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the material date, the victim was studying 7th standard and was 12 years old.

Hence, the prosecution has proved that on the date of alleged offence, the victim was a child as per Section 2(d) of POCSO Act.

8.P.W.1 in her evidence has clearly stated that accused forcibly committed penetrative sexual assault on her. P.W.3 is the Doctor who examined victim – X and issued Medical Certificate (Ex-P.2). Medical evidence also corroborates the evidence of victim (P.W.1) that the accused had physical contact with the victim – X. P.W.4 is the Doctor who examined the accused and issued Ex-P.4 – Medical Certificate. She gave opinion based on the chemical analysis report (Ex-P.5) and Surgeon's opinion that there are no anatomical reason to say that the accused is impotent.

9.The evidence of P.W.1 to P.W.6 are cogent and believable and inspire confidence of the Court. There is no reason to reject their evidence. From the conjoint reading of the evidence of P.W.1 to P.W.6, this Court is of the view that the prosecution has established the *prima facie* case that the offence has been committed against the victim girl. Hence, the prosecution is



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entitled to the presumption stated in Sections 29 and 30 of the POCSO Act.

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10.Now, the onus shifts to the accused to rebut the presumption.

In this regard, the accused has examined RK (D.W.1). D.W.1 in his evidence has deposed that he is residing opposite to the accused's house. He further deposed that on 27.11.2013, he was in his house and the victim girl as usual went to her school in the morning and returned home at 16.30 hours and the accused also as usual went to his job and returned at 18.30 hours; that the victim girl and the accused were standing in front of the accused's house and talking to each other; that at that time, the victim's father came there in a drunken mood and questioned and assaulted the accused; that in turn, the accused assaulted the victim's father; and that thereafter, the victim's aunt and uncle came there and quarreled with the accused and took the accused to the police station.

11.It is to be noted that, though D.W.1 was cited as prosecution witness, the prosecution did not examine him as a prosecution witness.

According to D.W.1, on the material date i.e., 27.11.2013 at about 13.00



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hours, the accused was not in the scene of occurrence, on the other hand, he went to his job and returned back at 18.30 hours only and as usual, the victim on the material date, went to school and returned back at 16.30 hours. If it is so, the accused could have very well examined his employer to prove the said fact. But he did not do so. Further, if really the victim went to school on the date of occurrence and returned from school only at 16.30 hours, the defense side could have summoned the school authorities and marked the attendance register. Hence, the evidence of D.W.1 is not sufficient to rebut the presumption stated in Sections 29 and 30 of the POCSO Act.

CONCLUSION

12.Considering the facts and circumstances of the case, this Court is of the view that the Trial Court after considering the material evidence, has rightly come to the conclusion that the prosecution has proved the offence punishable under Section 3(a) read with 4 of POCSO Act. Therefore, there is no reason to interfere with the impugned judgment of the Trial Court. Point Nos.(i) and (ii) are answered accordingly against the



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accused and in favour of the respondent.

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13.In fine, the Criminal Appeal is dismissed. Consequently,
connected miscellaneous petition is closed.

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Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking order
TK

To

- 1.The Sessions Judge
Magalir Neethimandram
(Fast Track Mahila Court)
Tiruppur.
- 2.The Inspector of Police
Anupparpalayam Police Station
Tiruppur,
Tiruppur District.
- 3.The Public Prosecutor
High Court of Madras.

R.SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
CRL.A.NO.858 OF 2018

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