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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	20.12.2023
Pronounced on	:	12.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.A(MD)No.448 of 2022

Sathish Kumar

.. Appellant/Sole Accused

Vs.

The State rep by,
The Inspector of Police,
Musiri Police Station,(Musiri AWPS),
Tiruchirappalli District.
(Crime No.1546/2020).

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the records in Special S.C.No.115 of 2020 on the file of the learned Sessions Judge, Mahila Court, Tiruchirappalli, Tiruchirappalli District and to set aside the judgment dated 20.05.2022 and acquit the appellant from the charges levelled against him.

For Petitioner : Mr.M.Karunanithi
for Mr.K.Arunraj

For Respondent : Mr.M.Muthumanikkam
Government Advocate (Criminal side)



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JUDGMENT

The appellant is the sole accused in Spl.S.C.No.115 of 2020 on the file of the Mahila Court, Tiruchirappalli, Tiruchirappalli District. The learned Special Judge by judgment dated 20.05.2022 convicted the appellant for the offence under Section 366 IPC, 9 of the Prohibition of Child Marriage Act and Section 5(l) r/w 6(1) of the POCSO Act and sentenced him to undergo 10 years Rigorous Imprisonment and to pay fine of Rs.1,000/-, in default, to undergo 6 months Simple Imprisonment for the offence under Section 366 IPC; to undergo one year Rigorous Imprisonment and a fine of Rs.1000, in default, to undergo 3 months Simple Imprisonment for the offence under Section 9 of the Prohibition of Child Marriage Act and to undergo 20 years Rigorous Imprisonment and a fine of Rs.3000/- in default, to under 6 months simple imprisonment for the offence under Section 5(l) r/w 6(1) of the POCSO Act. The above sentences are ordered to run concurrently. Challenging the same, the appellant filed this appeal.

2. Case of the prosecution:

According to the prosecution, PW2/victim girl was studying 11th standard in the Government Girls Higher Secondary School, Musiri in the



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year 2020. Due to lock down on account of COVID pandemic, she did not go to school and was working in a Fancy shop. The appellant was working in a bakery near the said shop where the victim girl was working. The appellant had a love affair with her. Upon making a false promise to marry her, on 27.08.2020 at 6.45 p.m, he had taken the victim girl with him in his Mahendra Verito Car bearing Registration No.TN 37 BZ 0300 to Namakkal. At the time, on the way to Salem, he took the victim girl to a Pillaiyar Kovil situated at Namakkal and tied Thali in her neck. In the car, he committed repeated penetrative sexual assault, in spite of the resistance given by the victim girl. In the meantime, PW1 gave a complaint about the missing of the victim girl at Musiri police station. Pending investigation, on 29.08.2020, the police officer found the victim girl along with the appellant. Thereafter, the victim girl's statement was obtained and offences was altered as stated supra and the appellant was arrested. The investigation was conducted and completed by obtaining the medical opinion and other materials and the final report was filed before the jurisdictional Court. The said final report was taken on file in Spl.C.C.No. 115 of 2020. Thereafter, the learned trial Judge summoned the accused. After his appearance, the learned trial Judge served the copies under



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Section 207 Cr.P.C. Thereafter, the learned trial Judge framed proper charges and explained the same to the accused. The appellant pleaded not guilty and stood for trial.

3. To prove the case, the prosecution examined P.W1 to P.W16 and marked Ex.P1 to Ex.P19 and M.O1. The learned trial Judge, after recording the above evidence, questioned the accused under Section 313 Cr.P.C, by putting the incriminating materials available against him. The appellant denied the same as false. On the side of the defence, no witness was examined and no documents were marked.

4. The learned trial Judge, after considering all the materials and evidence, convicted and sentenced the appellant as stated supra. Challenging the same, the appellant filed the present appeal before this Court.

5. The learned counsel for the appellant made the following submissions:



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5.1. The learned counsel for the appellant submitted that from reading the entire evidence of the prosecution, the conviction and sentence passed against the appellant under Section 5(1) read with 6(1) of the POCSO Act, will not stand. There is no evidence to convict the appellant for the offence for penetrative sexual assault. The evidence of the victim girl is that the appellant is said to have committed penetrative sexual assault in the car. The doctor's evidence does not corroborate the other evidence. The doctor specifically stated that there is no injury over the private part of the victim girl and also there is no trace of the penetrative sexual assault on her body. In the said circumstances, the conviction and sentence passed against the appellant under the above said offences is liable to be set aside.

5.2. The learned counsel for the appellant further submitted that the age of the victim girl is not proved in accordance with law. The prosecution examined P.W8-Assistant Headmistress to prove the age of the victim girl. They produced only Ex.P9. In Ex.P9, it is stated that the date of birth of the victim girl is 13.01.2004. The said evidence of PW8 is not admissible to prove the age of the victim girl. In the said



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circumstances, he relied on the judgement of the Hon'ble Supreme Court reported in 2023 Live Law (SC) 538. As per the judgement of the Hon'ble Supreme Court, school certificate is to be produced from the entry in the school record and the proof of entry which was made on the basis of authenticated source. But, the same was not taken for consideration to prove the age of the victim girl. The learned counsel for the appellant further submitted that without proper proof of age of the victim girl, the charge under the POCSO Act is not maintainable. In the said circumstances, the conviction and sentence passed against the appellant is liable to be set aside.

6. The learned Additional Public Prosecutor submitted that the victim girl, in her evidence, specifically stated that she was studying 11th standard at the time of occurrence and other witnesses examined on the side of the prosecution also corroborated the said version of the victim girl that she was studying in 11th Standard. In the said circumstances, the age of the victim girl is less than 18 years at the time of occurrence. Therefore, the Court, even without the aid of Ex.P9, can convict the appellant on the basis of the oral evidence. The learned Additional Public



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Prosecutor further submitted that the non-production of the school certificate is not a ground to disbelieve the evidence of the school authorities, namely Assistant Headmistress, Government Girls Higher Secondary School, Musiri. The learned Additional Public Prosecutor further submitted that in the judgement relied by the learned counsel for the appellant, a specific question was asked by the defence counsel about the entry made in the School Register. The same was not made in the case on hand. Therefore, no question was put to any of the witnesses relating to the age of the victim girl and there was no explanation or pleadings in the CrPC 313 proceedings regarding the above particulars. In the said circumstances, the finding of the learned trial judge about the age of the victim girl is not liable to be interfered. The learned Additional Public Prosecutor further submitted that when the victim girl specifically deposed before the Court that the appellant committed penetrative sexual assault on her, no corroborative evidence is necessary unless her evidence is unbelievable. In this case, there is no reason to disbelieve her evidence. In the said circumstances, the evidence of the doctor about the penetrative sexual assault is not material in this case. Hence, he seeks for the confirmation of the conviction and sentence imposed by the learned trial



Judge.
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6.1. The learned Additional Public Prosecutor further submitted that in the evidence of PW2-the victim girl, the appellant took her to Namakkal in spite of resistance by the victim girl to enter into marriage with him. He intentionally took her in his car and took her to Pillaiyar Kovil situated in Namakkal -Salem Road and tied Thali around her neck and had penetrative sexual intercourse repeatedly inside the car in spite of protest by her. From the above narration of the events by P.W2 there is no reason to disbelieve the same. There is no cross-examination relating to the above penetrative sexual assault. Therefore, in the absence of any cross examination, the evidence of the chief examination has to be accepted. Hence, the learned Additional Public Prosecutor submitted that the all ingredients have been proved to convict the appellant for the alleged offence as stated above and the minimum sentence was imposed as per the provision of the POCSO Act.

7. This Court has considered the rival submissions made by both sides and also perused the records and the impugned judgement passed by



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the learned trial Judge and the precedents relied upon by both side.

8. Whether the conviction and the sentence of imprisonment imposed by the learned trial Judge against the appellant is in accordance with law?

9. P.W2 is residing at Parvathipuram, 2nd Street, Musiri with her parents and brother. At the time of the occurrence, ie., on 28.07.2020, she was studying 11th Standard and due to COVID pandemic situation, she was working in a Fancy store situated in the Musiri-Thiruvavur Road. Opposite to the said shop, the appellant was working in a bakery shop. At the time, the appellant had love affair with her. He also assured to marry her. When he insisted to marry her, she refused to marry him. Again, he insisted her on 27.08.2020. She went to the Fancy store on 27.08.2020 morning, and on that day, she informed the owner of the shop that she got some stomach pain and left the shop at 6.45 p.m. After that she accompanied the appellant and the appellant took her in his car and on the way to Salem near Namakkal, he married her in the Pillayar Kovil and in the car, he committed aggravated penetrative sexual assault in the Car



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repeatedly. The next day also he forcefully had sexual intercourse with her.

In the meantime, P.W1-father of the victim girl gave a complaint to the jurisdictional police, namely, the respondent Musiri police station. On knowing the same, the appellant on 29.08.2020 at 12.00 p.m, left the victim girl in the Musiri Periyar Bridge. From the said place, she approached the respondent police bitterly crying. The Musiri police officers made enquiry and arrested him and he disclosed the above said penetrative sexual assault and they also recorded 164 Cr.P.C statement before the learned Judicial Magistrate. P.W1 was cross-examined by the appellant. There was no cross-examination relating to the above penetrative sexual assault and there is no reason to disbelieve the deposition of the victim girl relating to the above penetrative sexual assault. Further, the appellant also not furnished any explanation relating to the above evidence during the 313 questioning. Even though the doctor had given evidence that there was no sign of aggravated penetrative sexual assault, but the victim girl stated that she was subjected to aggravated penetrative sexual assault repeatedly. Hence, the prosecution filed the final report under Section 366 IPC, Section 9 of the Prohibition of Child Marriage Act and Section 5(1) r/w 6(1) of the POCSO Act and also the



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charges were framed and the learned trial Judge recorded the conviction and sentence as stated supra.

9.1. When the prosecution proved the case through the unimpeachable cogent evidence of the victim girl herself, there is no need to prove the case by corroborative evidence. When the victim girl's evidence inspired confidence, there is no need for corroborative evidence. The Hon'ble Division Bench of this Court, **MANU/TN/8697/2021** in the case of **Senthil Kumar Vs. State** in **Crl.A.No.448 of 2018** has held as follows:

15. As per Sec. 29-30 of the POCSO Act whenever a person is charged for the offence of the Sec.6 of the POCSO Act the initial presumption as to the commission of the offence and the intention to commit the same will be in favour of the prosecution. The burden is only on the accused to prove the contrary. If the evidence of the victim is solid and unrebutted and has the quality to convince the Court, there is no harm in accepting the evidence of the victim as true. No doubt the evidence of child witnesses should be scrutinized with due care because of their tender age and



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understanding. The learned trial Judge has interacted with the child by putting some formal questions and convinced himself about the maturity of the child to depose his evidence.

16. Once the Court is convinced that the evidence of the victim is acceptable it is not always necessary to look for corroborative evidence. Since the accused has got the reverse burden to prove his innocence, it is the duty of the accused to rebut the evidence of the victim through the contrary evidence. Time and again it has been held in the various judgments of the Hon'ble Supreme Court that the victim stands on a higher pedestal and his /her evidence cannot be taken so lightly. It is worthwhile to reiterate the judgment of the Hon'ble Supreme Court in State of Himachal Pradesh Vs. Sanjaikumar [2017 (2) SCC 551]. In the said judgment the Hon'ble Supreme Court has held as under:

“After thorough analysis of all relevant and attendant factors, we are of the opinion that none of the grounds, on which the High Court has cleared the respondent, has any merit. By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for



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corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If the court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version. To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars, as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or



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suspicion? The plea about lack of corroboration has no substance {See Bhupinder Sharma v. State of Himachal Pradesh(2003)8SCC 551). Notwithstanding this legal position, in the instant case, we even find enough corroborative material as well, which is discussed hereinabove.”

(Emphasis supplied)....”

Hence, it is well settled principle, when there is a conflict between the medical evidence and the ocular evidence victim, the evidence of victim is to be taken into consideration. In this case, the victim girl clearly deposed without any infirmity that she was subjected to Aggravated penetrative sexual assault repeatedly by the appellant. Therefore, the contention of the appellant, that the medical evidence did not support the prosecution case is not a ground to disbelieve the evidence of the victim girl, more particularly, in this case, when there is no explanation on the side of the appellant during the course of the cross-examination or 313 proceedings.

9.2.The prosecution proved the age of the victim girl through the examination of the Assistant Headmistress of the Government Girls Higher Secondary School, Musiri. The said witness clearly spoke about the entry in the School record. The said witness has no motive against the



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appellant to depose falsely against the appellant. Further, there was no cross-examination on the said aspect. In the cited judgement, a specific questioning has been asked by the defence counsel that the basis on which the entry was made, was not disclosed during the course of the cross-examination in the said case. But in the case on hand, there is no such cross-examination. Even in the section 313 CrPC proceedings, the appellant never disputed the age of the victim girl. In this case, it is relevant to note the Hon'ble Three Judges Bench of the Supreme Court reported in the case of *Veerendra v. State of M.P.* reported in (2022) 8 SCC 668 at page 706

92. That apart, PW 9 who was the Headmistress in charge in Government Primary Boys School, Jawaharganj, brought and proved Ext. P-14—school admission application of the deceased, Ext. P-15—admission register and the copy of which was marked as Ext. P-15C and also Ext. P-16 which is her age verification certificate issued from the school. They would disclose her admission number as 1937 and the date of birth as 10-9-2006. Her evidence was not seriously challenged by the appellant during the cross-examination. At any rate, no contra-evidence was adduced in this regard by the appellant.



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In the said circumstances, the prosecution clearly proved the case against the appellant with regard to the aggravated penetrative sexual assault.

9.3. When the prosecution proved the case about the penetrative sexual assault, the presumption under Section 29 and 30 of the POCSO Act can be invoked.

10. Section 29 and 30 is as follows:

Section 29: Presumption as to certain offences.

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.

Section 30: Presumption of culpable mental state.

(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.



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(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

10.1. As per the above provision, when the victim girl specifically stated that she was subjected to the aggravated penetrative sexual assault, it is the duty of the appellant to prove his case that the victim girl is not under age. As per Section 30 of the Act, it is clear that the appellant did not prove his case beyond reasonable doubt. In the said circumstances, the prosecution clearly proved the case against the appellant and never dispelled the presumption under Section 29 of the POCSO Act in the manner stated in Section 30 of the POCSO Act.

11. In the result, this criminal appeal stands dismissed and the judgment passed by the learned Sessions Judge, Mahila Court, Tiruchirappalli, in Spl.S.C.No.115 of 2020 dated 20.05.2022 is hereby confirmed.

12.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The learned Special Judge,
Mahila Court,
Tiruchirappalli,
Tiruchirappalli District.
- 2.The Inspector of Police,
Musiri Police Station,(Musiri AWPS),
Tiruchirappalli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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Predelivery Judgment made in
Crl.A(MD)No.448 of 2022

12.03.2024