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Crl.A.No.52



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.12.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

Crl.A.No.527 of 2019

Muthu

.. Appellant

Vs.

State represented by
The Inspector of Police
Erode North Police Station
Erode District

.. Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C. to set aside the judgment passed by the Additional Sessions Court, Magalir Neethi Mandram (Magalir Fast Track Court), Erode dated 07.12.2018.

For Appellant : Mr.V.K.Vengadesh Durai Raja
for M/s.Deepan Uday

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor
assisted by Ms.M.Arifa Thasneem



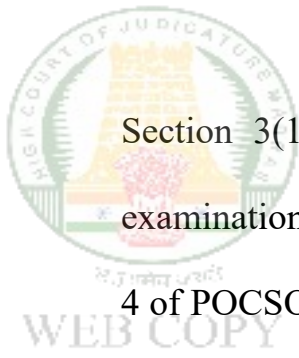
ORDER

(The Order of the Court was made by P.Velmurugan, J)

This Criminal Appeal has been filed to set aside the judgment of conviction imposed by the Additional Sessions Court, Magalir Neethi Mandram (Magalir Fast Track Court), Erode, in S.C.No.180 of 2015 dated 07.12.2018.

2. The case of the prosecution is that the defacto complainant lives with her daughter/victim (18 years and 5 months) and son at Manickampalayam, Erode and they belong to Hindu Chakkiliyar community. The defacto complainant's husband left her about 15 years ago. The daughter of the defacto complainant/victim was working as a threader in a handloom centre and the appellant was also working in the same loom. While so, the appellant knowing well that the victim belongs to Scheduled Caste community, had sexual intercourse with the victim one year from November 2013 under the guise of marrying her, due to which, the victim became pregnant. While the victim was 6 months pregnant, the appellant married another person and when the same was questioned by the defacto complainant, the appellant scolded her by mentioning her caste name. Hence, the mother of the victim lodged a complaint before the respondent police on 03.05.2014.

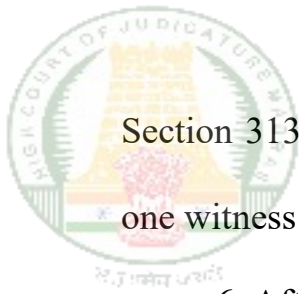
3. Based on the complaint lodged by the mother of the victim, the respondent police registered a case against the appellant in Crime No.272 of 2014 on 03.05.2014 for the offence under Sections 366(A) IPC read with Section 4 of POCSO Act, 2012 and



Section 3(1)(XII) of SC/ST Act and subsequently, based on the investigation and examination of witnesses, altered the offences to Section 366(A) IPC read with Section 4 of POCSO Act and Section 3(2)(v) & 3(w)(ii)(i) of SC/ST Act (new amendment 2014) and after completion of investigation, filed the final report before the Chief Judicial Magistrate, Erode, for the offences under Sections 366(A) @ 366 IPC read with Section 4 of POCSO Act and Section 3(2)(v) & 3(w)(ii)(i) of SC/ST Act and the same was taken on file in PRC No.11 of 2015 and after completing the formalities under Section 207 Cr.P.C., the case was committed to the Principal District and Sessions Court, Erode and the same was taken on file in S.C.No.180 of 2015 and made over to Additional Sessions Court, Magalir Neethi Mandram (Magalir Fast Track Court), Erode, since the offences are against women. The learned Sessions Judge, after completing the formalities and perusal of records found that prima facie case was made out and thereby, framed charges against the appellant for the offences under Sections 376 of IPC and Section 4 of POCSO Act and Sections 3(2)(v) & 3(w)(ii)(i) of SC/ST Act.

4. During trial, in order to substantiate the charges against the appellant, on the side of the prosecution, totally 22 witnesses were examined as P.W.1 to P.W.22 and 36 documents were marked as Exs.P.1 to P.36, besides 1 material object was marked as M.O.1.

5. On completion of examination of the prosecution witnesses, the incriminating materials culled out from the prosecution witnesses were put to the appellant under



Section 313 Cr.P.C and the appellant denied the same as false. On the side of defence, one witness was examined as D.W.1 and 5 documents were marked as Exs.D.1 to 5.

6. After completion of trial and hearing of arguments advanced on either side and perusal of records, the trial Court found the accused/appellant not guilty for the offence under Section 3(w)(ii)(1) of SC/ST Act, however, found him guilty for the offences under Section 376 of IPC and Section 4 of POCSO Act and Section 3(2)(v) of SC/ST Act and convicted him and sentenced to undergo 7 years RI and to pay fine of Rs.10,000/-, in default to pay the fine amount, to undergo SI for one year for the offence under Sections 376 IPC, to undergo imprisonment for life and to pay fine of Rs.10,000/-, in default to pay the fine amount, to undergo SI for one year for the offence under Section 4 of POCSO Act, 2012 and to undergo 5 years RI and to pay fine of Rs.10,000/- in default to pay the fine amount, to undergo SI for one year for the offence Section 3(2)(v) of SC/ST Act. The sentences were ordered to run concurrently. The period of sentence already undergone by the accused during custody was ordered to be set off under Section 428 of Cr.P.C.

7. Aggrieved by the judgment of conviction and sentence, the accused has filed the present appeal.

8. The learned counsel for the appellant submitted that the victim was not a minor at the time of occurrence as alleged by the prosecution. The victim had already married one Sabeer and deserted him and the relationship between the appellant and the victim was a consensual relationship. Earlier, the victim had lodged a similar complaint against

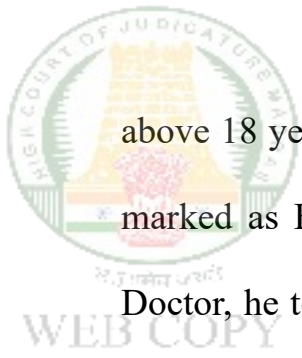


the said Sabeer and others having been registered in FIR No.749 of 2012 on 18.05.2012 on the file of the North Police Station, Erode and the same was tried in C.C.No.192 of 2013 on the file of the Chief Judicial Magistrate, Erode and after trial, the learned trial judge, on finding that the prosecution had not proved the case beyond all reasonable doubt, had dismissed the same. The FIR, complaint statements dated 18.05.2012 and 20.06.2012, statement of Kovalammal/mother of the victim and copy of charge sheet filed against the said Sabeer were marked as Exs.D.1 to D5.

8.1 Even the Doctor/P.W.18, who examined the victim has deposed that on 07.05.2014, the victim had informed her that she married one Sabeer two years back and lived with him only for two months and for the past one year before 07.05.2014, she was in love with one Muthu/the appellant herein and with consent, they had sexual intercourse. The copy of Accident Register issued by P.W.18 was marked as Ex.P.18.

8.2 As far as the age of the victim is concerned, the learned counsel submitted that the certificate/Ex.P.12, issued by P.W.11/the Head Master of the school in which victim had studied, would clearly show that the date of birth of the victim is 18.02.1995. The date of complaint is 03.05.2014 and even as per the version of the prosecution, the appellant and the victim were in physical relationship for one year from November 2013. Therefore, at the time of occurrence, the victim had completed the age of 18 years and she was not a child.

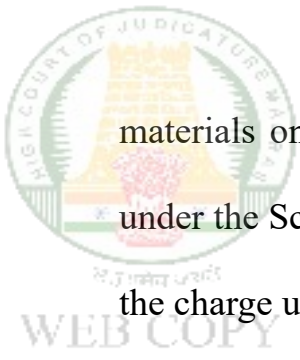
8.3 Even the radiologist, who conducted the radiological test on the victim on 08.05.2014, was examined as P.W.10 and has certified that the age of the victim was



above 18 years and below 20 years. The certificate issued by the radiologist/P.W.10 was marked as Ex.P.13. P.W.10 has further deposed that based on the recommendation of Doctor, he took scan on the victim's abdomen on 09.05.2014 and found 22 to 23 weeks fetus in the uterus of the victim. Further, the Investigating Officer/the Deputy Superintendent of Police, who was examined as P.W.22, in his cross examination, has admitted that the victim had completed the age of 18 by 2013 itself and he has also admitted that at the time of commission of offence, the victim was not a child as she had completed 18 years by that time.

8.4 Therefore, the evidence of P.W.10/Radiologist, P.W.11/Head Master and P.W.18/doctor, P.W.22/Investigating Officer and Ex.Ps.13, 12 and 18, would go to show that at the time of occurrence, the victim was not a child and that the relationship between the appellant and the victim was consensual. Therefore, neither the offence under Sections 376 IPC nor the offence under Section 4 of POCSO Act, 2012 would not attract against the appellant.

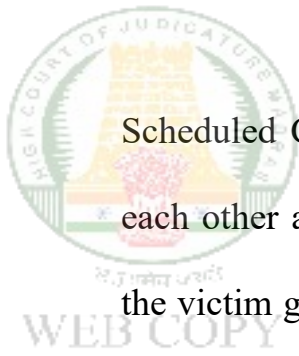
8.5 The learned counsel further submitted that insofar as the charge under Section 3(w)(ii)(1) of SC/ST Act, is concerned, in the statement recorded by the Magistrate both the victim and the mother of the victim have not stated anything that the appellant scolded them by mentioning their caste name. Subsequently, the victim and the mother of the victim have developed the allegations while giving their evidence as if the appellant attacked the victim, scolded them by mentioning their caste name due to which, the victim consumed poison. The learned trial Judge, while considering all the



materials on record found that the prosecution failed to prove its case for the offence under the Scheduled Caste/Scheduled Tribes Act and rightly acquitted the appellant from the charge under Section 3(w)(ii)(1) of SC/ST Act.

8.6. The learned counsel further submitted that in the trial proceedings in C.C.No.192 of 2013 in connection with the FIR lodged against Sabeer/Ex.D1, during cross examination, when a suggestion was put before the mother of the victim as to whether she lodged any complaint against Muthu for raping her daughter and mentioning their caste name, she admitted that she had not lodged any complaint against Muthu/appellant herein. Even in the present case, when a suggestion was put before P.W.1/mother of the victim regarding the said statement made in the case in C.C.No.192 of 2013, she admitted that she stated so later which would shows that the allegations made against the appellant are totally false. He further submitted that there is no independent witness to support the version of the de facto complainant and to prove the allegations. The witnesses P.W.1, P.W.2 and P.W.3 are interested witness and there is no independent witness to corroborate the evidence of P.Ws.1 to 3. The prosecution failed to prove its case beyond all reasonable doubt. The trial Court failed to properly appreciate the evidence of the prosecution witnesses and erroneously convicted the appellant and therefore, he prayed to set aside the conviction and sentence imposed by the trial Court and to acquit the appellant.

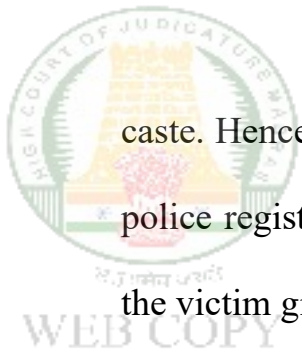
9. The learned Additional Public Prosecutor appearing for the respondent police submitted that the appellant is the member of upper caste and the victim belongs to



Scheduled Caste and while they were working in a handloom centre, they fell in love with each other and on the promise of marrying the victim, the appellant sexually assaulted the victim girl who was a minor, due to which, the victim girl became pregnant. When the victim girl was 6 months pregnant, the appellant married some other girl from his community and when the same was questioned by the defacto complainant/mother of the victim, the appellant scolded her by mentioning their caste name. Hence, based on the complaint lodged by the mother of the victim, the respondent police registered a case. Subsequently, the victim delivered a girl child. During the course of investigation, the samples were collected from the victim and her child and also from the appellant and sent to Forensic Department and the DNA test report confirmed that the appellant is the biological father of the baby born to the victim girl. Since the prosecution has proved its case beyond reasonable doubt, the judgment of the trial Court is liable to be confirmed and the appeal is liable to be dismissed.

10. Heard both sides and perused the materials available on record.

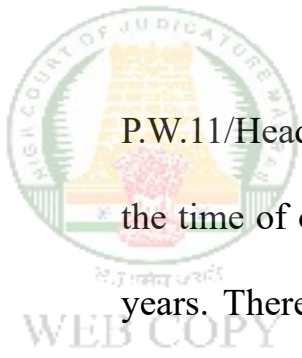
11. The specific case of the prosecution is that the appellant, who is the member of non-Scheduled Caste and the victim who belongs to Scheduled Caste, while working in a handloom centre, fell in love with each other and on the promise of marrying her, the appellant knowing well that the victim was a minor, committed sexual intercourse with the victim, due to which, the victim girl became pregnant and when the victim was 6 months pregnant, the appellant married some other girl from his community. When the same was questioned by the mother of the victim, he scolded her by mentioning her



caste. Hence, based on the complaint lodged by the mother of the victim, the respondent police registered the case in connection with the FIR in the present case. Subsequently, the victim girl delivered a female baby.

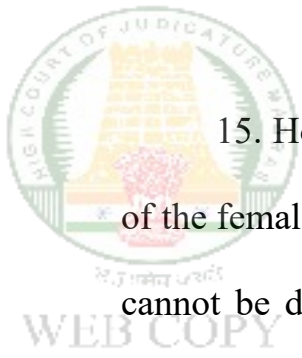
12. In order to prove the case of the prosecution, on the side of the prosecution, totally 22 witnesses were examined as P.W.1 to P.W.22 in which, the mother of the victim, who gave the complaint and set the law into motion was examined as P.W.1. The victim was examined as P.W.2 and the brother of the victim was examined as P.W.3.

13. As far as the age of the victim is concerned, the Head Master of the school in which victim had studied was examined as P.W.11 and he has issued a certificate/Ex.P.12 stating that the victim had studied 6th Std. in their School on 01.06.2005 and her date of birth as per the admission register is 18.02.1995. Further, the radiologist/P.W.10 who conducted the radiological test on the victim, has issued the certificate/Ex.P.13 that the age of the victim was above 18 years and below 20 years. The date of complaint is 03.05.2014. At the time of lodging of the complaint, the victim was six months pregnant. During the course of investigation, the victim girl was produced before the Doctor/P.W.18 for medical examination. P.W.18, in her evidence has stated that on 07.05.2014, the victim had informed her that she married one Sabeer two years back before 07.05.2014 and lived with him only for two months and for the past one year before 07.05.2014, she was in love with one Muthu/the appellant herein and with consent, they had sexual intercourse. Though the prosecution stated that the victim had not completed the age of 18 years at the time of occurrence, from the evidence of



P.W.11/Head Master and P.W.18/doctor and Ex.P.12 and Ex.P.18 this Court finds that at the time of occurrence, the victim was not a child and she had completed the age of 18 years. Therefore, the offence under Section 4 of POCSO Act, 2012 would not attract against the appellant.

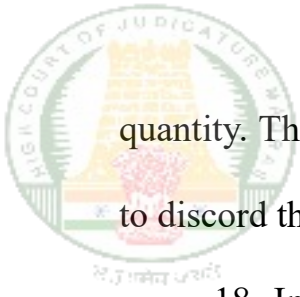
14. As far as the offence under Section 376 IPC is concerned, as pointed out by the learned counsel for the appellant, it is seen from Ex.D1/FIR, lodged by the victim against one Sabeer that the victim had already married one Sabeer and subsequently deserted him and thereafter, lodged a complaint against him alleging that the said Sabeer and three other accused abused her and her sister in filthy language and also one of the accused pulled her sister's hand and threatened them with dire consequences. In the present case, before the Doctor/P.W.18 the victim has informed that that she married one Sabeer two years back and lived with him only for two months and for the past one year before 07.05.2014, she was in love with one Muthu/the appellant herein and with consent, they had sexual intercourse. The copy of the Accident Register issued by P.W.18 was marked as Ex.P.18. Though in the complaint it has been stated as if the appellant had promised to marry her and had physical relationship with her, Ex.D1 and other materials would show that the victim had already married another person and suppressing the same, she had developed intimacy with the appellant. Therefore, this Court is of the view that the relationship between the appellant and the victim is a consensual relationship. Therefore, the charge under Section 376 IPC would not attract against the appellant.



15. However, the DNA test report shows that the appellant is the biological father of the female baby born to the victim girl. Therefore, the relationship between the parties cannot be denied. However, it is stated that subsequently, the victim girl has married some other person.

16. This Court, as a final Court of fact finding, while re-appreciating the entire evidence finds that the prosecution has failed to prove the charges under Section 4 of the POCSO Act. As far as the offence under Section 376 of IPC is concerned, since the victim belonged to Scheduled Caste and she herself stated that she had sexual intercourse with full consent and hence benefit of doubt is extended to the appellant and the appellant is acquitted from the charges under Section 376 of IPC also.

17. On reading of the complaint lodged by P.W.1/mother of the victim and the evidence of P.W.1 and P.W.2/victim, it is clear that admittedly the victim belonged to Scheduled Caste, however, age of the victim girl has not been conclusively proved by the prosecution and hence this Court, extending the benefit of doubt only acquitted the appellant for the offence under Section 376 IPC and Section 4 of the POCSO Act, but at the same time we are of the considered view that the appellant taking advantage of the innocence and age, had committed the act of penetrative sexual assault against the victim girl, who belongs to suppressed community and DNA report also proved the same. Therefore we are inclined to invoke Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. From the evidence of P.W.1 and Ex.P.1/complaint, the quality of evidence has to be taken into consideration and not the



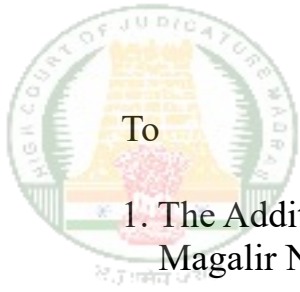
quantity. The evidence of P.W.1 is cogent, consistent and reliable and there is no reason to discord the evidence of P.W.1.

18. In the present case, as stated above, only by extending the benefit of doubt, this Court acquits the appellant from the charges under Section 4 of the POCSO Act and Section 376 of IPC, however, since the prosecution proved its case to invoke Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the sentence imposed by the trial Court under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, is confirmed.

19. With the above modification, this Criminal Appeal is partly allowed. Since the appellant is on bail, the learned Additional Sessions Judge, Magalir Neethi Mandram (Magalir Fast Track Court), Erode, is directed to take steps to secure the appellant to undergo the remaining period of sentence, if any, imposed under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

(P.V., J) (M.J.R., J)
17.12.2025

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To

1. The Additional Sessions Judge,
Magalir Neethi Mandram (Magalir Fast Track Court), Erode
2. The Inspector of Police
Erode North Police Station
Erode District
3. The Public Prosecutor,
High Court, Madras.



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