



Crl.A.(MD)No.191 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 24.06.2025

CORAM :

THE HONOURABLE **DR. JUSTICE R.N.MANJULA**

Crl.A.(MD)No.191 of 2017

Bajarudeen

... Appellant

versus

State rep., by
The Inspector of Police,
Thiruvidaimaruthur Police Station,
Thanjavur District.
Crime No.54 of 2015

... Respondent

Prayer : Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the records in Special Sessions Case No.09 of 2016 on the file of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thanjavur, Thanjavur District and set aside the judgment dated 19.04.2017 and acquit the appellant of the charges leveled against him.

For Appellant : Mr.M.Shunmalar

For Respondent : Mr.A.Albert James
Government Advocate (Crl.side)



Crl.A.(MD)No.191 of 2017

JUDGMENT

—

WEB COPY

This criminal appeal has been preferred challenging the judgment of conviction and sentence dated 19.04.2017 made in Special Sessions Case No.09 of 2016 by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thanjavur, Thanjavur District, thereby convicting and sentencing the appellant /sole accused for the offence under Section 6 of Protection of Children from Sexual Offences Act, 2012 to undergo 10 years of rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo 1 year of simple imprisonment.

2. The case of the prosecution is that the victim girl was 15 years old at the time of occurrence. On 02.02.2015 at about 03.00 pm., when the mother of the victim girl namely P.W.1, was not at home, the accused came there and insisted the victim girl to come along with him and forcibly took her to Vadamattam Mariamman Kovil, where the accused tied 'Thali' to her and thereafter, he took her to his sister's house. The sister of the accused refused to allow them into her house. Thereafter, the accused took the victim girl to Aaduthurai and then to Bangalore. As P.W.1 did not know where the victim girl has gone, she lodged a complaint on 04.02.2015. Based upon the complaint, FIR was registered in Crime No.54 of 2015 by



Crl.A.(MD)No.191 of 2017

the Thiruvidaimaruthur Police Station for the offence under Section 366(A) of IPC.

3. Thereafter, on 07.02.2015, during search, the accused and victim girl were identified by the mother of the victim girl at Hosur and they were brought to the police station. Thereafter, the victim was sent to Children home and she was subjected to medical examination and thereafter, she was sent along with her mother, P.W.1. Upon enquiry, P.W.1 came to know from the victim girl that the accused had sexual intercourse with the victim girl continuously for three days.

4. After completion of the investigation, the Investigating Officer has filed a charge sheet against the accused under Section 366(A) of IPC and Section 6 of POCSO Act, 2012 and the same was taken on file in Spl.S.C.No.9 of 2016 by the learned Sessions Judge, Mahalir Neethimandarm, Fast Track Mahila Court, Thanjavur. After receipt of summons from the trial Judge, when the accused appeared in person before the trial Judge, copies of the documents were served on him under Section 207 of Cr.P.C. After giving sufficient time to the accused and after hearing the accused and considering the documents, necessary charges were framed for the offences under Section 366(A) of IPC, Section 9 of Children



Crl.A.(MD)No.191 of 2017

Marriage Prohibition Act and Section 6 of POCSO Act. The accused had denied the charges and pleaded not guilty for the aforesaid charges and claimed to be tried.

5. During trial, on the side of the prosecution, P.W.1 to P.W.16 were examined and Ex.P1 to Ex.P13 were marked.

6. On completion of the evidence on the side of the prosecution, when the accused was questioned under Section 313 of Cr.P.C, as to the incriminating circumstances found in the evidence of prosecution witnesses against him, the accused had come with the version of total denial and stated that he had been falsely implicated in this case. On the side of the defence, no oral and documentary evidence was let in.

7. The trial Judge, after hearing the arguments advanced on either side and also considering the materials available on record, found the appellant guilty and awarded punishment, as referred to above, by the impugned judgment of conviction and sentence.

8. Aggrieved over the same, this criminal appeal has been preferred by the appellant/sole accused.



Crl.A.(MD)No.191 of 2017

9. Heard both sides.

WEB COPY

10. The learned counsel for the appellant submitted that there was love affair between the victim girl and the accused and the victim girl has voluntarily left the home and accompanied with the accused, as her parents started finding some other alliance to her. It is further submitted that the victim had given 164 Cr.P.C statement before the Magistrate, in which, she has stated that herself and the accused were in love each other and she had voluntarily accompanied the accused to Bangalore, where they were living in a separate house. The victim girl has not stated any incriminating evidence against the accused; Only after the victim girl was left with the custody of P.W.1, mother, she was tutored and deposed before the Court. When she was examined before the court, she has stated that the accused had committed penetrative sexual assault on her. It is contended that the age of the victim girl was not proved in the manner known to law and the trial Judge did not consider this vital aspect and wrongly convicted the accused for the offence under Section 6 of POCSO Act.

11. The learned Government Advocate (crl.side) submitted that the age of the victim girl was below 18 years and the same was proved by producing the school certificate, wherein the date of birth of the victim girl was shown as 05.11.1999; On the date of occurrence, the victim girl was 15



Crl.A.(MD)No.191 of 2017

years and two months, the same was proved during medical examination; the victim girl has stated in her evidence that she initially hesitated to say about the penetrative assault committed by the accused and hence, her 164 statement before the Magistrate was short and in her evidence, she had stated what had actually happened. The learned trial Judge has rightly appreciated the evidence of the victim girl/P.W.2 and held that the accused was found guilty for the offence under Section 6 of POCSO Act.

12. Even according to the trial Court, it was a love affair between the victim girl/PW2 and the accused. From the evidence of P.W.1, mother of the victim girl, it reveals that the accused used to follow the victim girl, whenever she was going to the school and due to this, the victim girl eventually stopped from attending the school. The learned trial Judge has rightly appreciated the evidence available on record and convicted the accused. So far as the age of the victim child is concerned, her age has been determined based upon the school certificate issued, where it has been shown that the date of birth of the victim child is 05.11.1999. The victim child was studying in Kumbakonam St.Joseph Girl Higher Secondary School at the time of occurrence. The Head Master of the school was examined as P.W.9. He has stated that from the School Transfer Certificate, he came to know that the date of birth of the victim child is 05.11.1999 and



Crl.A.(MD)No.191 of 2017

that is also shown in the 10th standard mark sheet of the victim child, which has been marked as Ex.P.8. The school certificate has been produced as Ex.P.7. Hence, the age of the victim has been proved as per Section 94 of the Juvenile Justice Act.

13. However, the learned counsel for the appellant submitted that the age of the victim has not been proved in accordance with law and hence, the victim girl cannot be considered as child, falling under the definition of child under the POCSO Act. Even during the cross-examination of the victim girl and her mother P.W.1, it was not suggested that the date of birth has been wrongly given. Despite charges have been framed against the accused is inclusive of Section 366-A of IPC, the learned trial Judge has observed that the victim girl was not compelled to go with the accused and it was on her own wish. The learned trial Judge observed that the victim did not travel with the accused and she did not try to escape from the bike raising any noise. Her statement before the trial Court also made it clear that she only contacted with the accused, after she started to love him. On the alleged date, the victim called the accused as she was frustrated due to the efforts taken by her parents to find some other alliance. So, the accused and the victim have planned to get out the house. Hence, the trial Court has observed that the accused had responded to the call of victim girl.



Crl.A.(MD)No.191 of 2017

WEB COPY

14. As pointed out by the learned counsel for the appellant, the victim girl gave 164 statement before the Magistrate on 25.03.2015, wherein she has stated that after she gone with the accused to Bangalore, the accused was working as AC Mechanic and she was staying in the house of the owner of the accused and the accused was staying in a separate place. But, when she was examined before the Court, she has stated that she was staying along with the accused in the house of his owner and they were allowed to stay there, without knowing that she is a minor. She further stated that during that occasion of three days, the accused had committed penetrative sexual assault on her on the pretext that he would marry her. But in the very same evidence, the victim girl has stated that the accused married her by tying Tali around her neck and thereafter only, they went to Bangalore. When the victim girl was examined as P.W.2, she confronted with her statement given before the Magistrate. She has stated that she did not state certain facts to the Magistrate during her 164 statement, because she was having some hesitation to give the same before the Magistrate. The learned trial Judge got that statement confusing and had proceeded to rely upon the evidence of the victim given before the Court and had convicted the accused for the offence under Section 6 of POCSO Act.



Crl.A.(MD)No.191 of 2017

15. But the victim's mother was present even on 25.03.2015 when she was giving 164 statement before the Court. In-fact she did not go with her mother, after she was secured. So, at the time, she gave evidence on 30.09.2015 before the Court she was under the custody of her mother. During her cross-examination, she has stated that after she has gone to her mother's custody, she has been lenient to whatever her mother said. Under such circumstances, it is not known whether her statement before the Court was voluntary or whether her statement before the Magistrate under Section 164 was true and voluntary.

16. No doubt Section 164 statement of the victim was anterior in time and it could be her spontaneous statement. During that time, she could not have been under the influence of anyone including her parents, whereas during her evidence, it could have been possible that someone could have tutored her as she was under the custody of parent and her parents have all along given objection for the affair with the accused.

17. No doubt that the parents of the victim would stand inimical to the accused. She has stated in her evidence that on the assurance given by the accused to marry her, the accused have committed penetrative sexual assault with her. No doubt, in sexual offences, the evidence of the victim is



Crl.A.(MD)No.191 of 2017

more significant and the Court can rely on the same even without any corroboration. Therefore, her evidence is cogent and consistent and hence, it is reliable.

18. If there is scope for any doubt in view of the material contradictions, then it is always safe to search for any corroboration. As the victim has stated in her 164 statement that she was staying in the owner's house of the accused, it would have been worthwhile for the prosecution to examine the owner. But his evidence was not available before the Court. So, the evidence of the victim, which has major contradiction need uncorroboration.

19. So far as the offence under Section 4 or 6 of POCSO Act is concerned, the prosecution has got the benefit of having the initial presumption against the accused under Sections 29 and 30 of the POCSO Act. Hence, the reverse burden would lie on the shoulder of the accused and he has to rebut the initial presumption.

20. As it has been held repeatedly that the rebuttal proof need not always be direct, but it can also be the infirmity on the side of the prosecution. In the instant case, the victim's evidence is not consistent and



Crl.A.(MD)No.191 of 2017

she has given different statement during 164 before the Magistrate and in the Court during her examination. In view of the same, it would have been appropriate, if trial Judge had placed reliance on her evidence and corroborated the same. The learned Judge, by ignoring the above weakness in the case of the prosecution and without considering the infirmities in the case of the prosecution as rebuttable proof in favour of the accused has found the accused guilty for the offence under Section 6 of POCSO Act.

21. No doubt, the offences of sexual assault against the children are very serious offence and punishment for the same is also very grave. The accused has got a huge responsibility to prove his innocence, once the foundation facts are found to be present and initial presumption is drawn against him. In the instant case, there are sufficient evidence to show that the accused had taken the victim on the date of the occurrence and both the accused and the victim were found together and the origin of the prosecution case. From the complaint lodged by the mother of the victim, who is examined as P.W.1, she has stated in the complaint that the victim and the accused were in love with each other for two years and that was not accepted by the complainant and that on 02.02.2015, the accused had taken away the victim in his two wheeler and compelled her to marry and they were missing. As the evidence of the victim would show that she had gone



Crl.A.(MD)No.191 of 2017

with the accused and believed that the accused had married her, the foundational facts were proved. Even though the victim has stated in her evidence that she was staying in the owner's house, then the foundational fact that the victim was with the accused was proved, the initial presumption under Sections 29 and 30 of the Act will go for the prosecution. At that stage, the burden of rebuttal will be shifted to the shoulder of the accused. In such circumstances, the accused has got no other option except to rely on the materials contradictions, infirmities and all other doubtful circumstances, as rebuttal circumstances in his favour. In the instant case, as stated already, there are material contradictions, which were ignored to be considered by the driver and the evidence of the victim was accepted, though it was contrary to her previous statement.

22. In view of the above stated reasons, this Criminal Appeal is allowed and the impugned judgment of conviction and sentence are hereby set aside. The appellant is acquitted of all the charges. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

24.06.2025

Index : Yes/No
NCC : Yes/No.

Rmk



Crl.A.(MD)No.191 of 2017

WEB COPY

To

1.The Sessions Judge,
Mahalir Neethimandram (Fast Track Mahila Court),
Thanjavur, Thanjavur District

2. The Inspector of Police,
Thiruvudaimaruthur Police Station,
Thanjavur District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4.VR Section.
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.A.(MD)No.191 of 2017

DR.R.N.MANJULA, J.,

Rmk

Crl.A.(MD)No.191 of 2017

24.06.2025