



WEB COPY

Crl.A.No.



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.01.2026

Coram:

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

Crl.A.No.48 of 2020

Premkumar

.. Appellant

Vs.

The State represented by
Inspector of Police
All Women Police Station
Central, Coimbatore
(Crime No.2 of 2017)

.. Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment dated 26.11.2019 in Spl.C.C.No.21 of 2018, on the file of the learned Sessions Judge, Mahila Court, Mahalir Neethimandram, Coimbatore.

For Appellant : Mr.S.Suresh
for Mr.Swamisubramanian

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



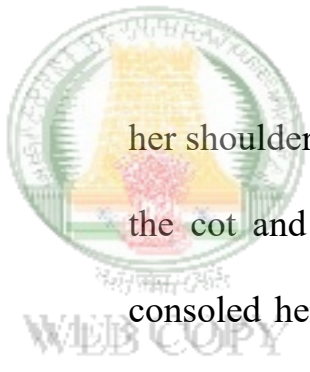
ORDER

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

WEB COPY This Criminal Appeal has been filed against the judgment of conviction and sentence dated 26.11.2019 in Spl.C.C.No.21 of 2018, on the file of the learned Sessions Judge, Mahila Court, Mahalir Neethimandram, Coimbatore.

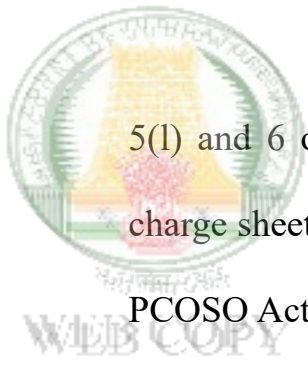
2. The case of the prosecution is that the victim is a native of Ramanathapuram. Her parents have been engaged in agriculture. The victim girl studied till 10th std in a government school in Karadarndhakkudi and thereafter, the victim girl and her father came to Coimbatore in March 2015 and she joined 11th standard in a Corporation School. Her mother used to visit her from time to time. The appellant, who is from her native, used to come to her home to visit her father and if she needed any book, her father will tell to the appellant and he would buy it for her. Sometimes the appellant used to pick up her from her school. While so, on 14.05.2016, her father died. Thereafter, her mother, brother and sister came to Coimbatore and were staying with her. In August 2016, second week of Sunday at 10 a.m., the appellant came to her house and took her outside to buy her school book. Since he changed the route, the victim girl asked him as to where he was going for which, he replied that he was going to his house for taking money and took her to his house at Siddhapudhur. The victim girl stood outside of his house but the appellant compelled her to come inside. The appellant was a married man. His wife and two children were residing at Vadhavaneri. When the victim girl went inside, no one was there in the house. The appellant asked her to sit and put his hand in

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her shoulder and removed her dress. When the victim girl tried to stand, he pushed her on the cot and forcibly had sexual intercourse with her. When the victim girl cried, he consoled her and thereafter, took her to her home in his two wheeler. At that time, he threatened her not to disclose anything to her family or else he would kill her family members. Therefore, the victim girl did not disclose anything to her family. After 10 days, the accused told her that he has taken her nude photos and by threatening her stating that she has to come whenever he calls or otherwise he would show the photos to all, he had sexual intercourse with her three times. Thereafter, the victim girl did not menstruate for two months. In February 2017, the accused took her to hospital for abortion stating that he is her husband. The doctor who examined the victim, told that the fetus cannot be aborted. Whenever her mother asked her as to whether she got menstruation, she said yes. On 18.05.2017, she suffered with severe stomach pain. When her mother tried to apply oil in her stomach, she found her stomach so big and when her mother questioned her, she told her mother what had happened. Thereafter, since the victim was suffering with severe pain, her mother and brother took her to hospital, wherein she delivered a girl baby on 19.05.2017 and in the hospital, she gave the name of the appellant as father of her child. After the victim girl was discharged from the hospital on 24.05.2017, she went to AWPS, Gandhipuram and gave the written complaint/Ex.P.2.

3. Based on the complaint lodged by the victim, the respondent police registered a case in Crime No.2 of 2017 against the appellant herein for the offence under Sections



5(l) and 6 of POCSO Act, 2012 and after completion of investigation, they filed the charge sheet against the appellant for the offence under Sections 5(j)(ii)(l) read with 6 of PCOSO Act, 2012 before the Sessions Judge, Magalir Neethimandram, Coimbatore, and the same was taken on file in Spl.C.C.No.21 of 2018. The learned Sessions Judge, after completing the formalities and perusal of records found that prima facie case was made out and thereby, initially framed charges against the appellant for the offence under Sections 5(l) & (m) read with 6 of POCSO Act & 506(i) of IPC. Thereafter, it was brought to the notice of the Court that even though the contents of charges were correctly framed, Sections were wrongly mentioned in the charge sheet. Hence, the charges were amended as under Section 5(l)(j)(ii) & (m) read with 6 of POCSO Act, 2012 on 13.11.2019 as per Section 216(1) Cr.P.C. and since there was no material alteration, both side admitted that there is no need for further evidence. Hence, both side evidence was closed.

4. During trial, in order to substantiate the charges against the appellant, on the side of the prosecution, totally 14 witnesses were examined as P.W.1 to P.W.14 and 22 documents were marked as Exs.P.1 to P.22, besides, the true copy of hospital register was marked as Ex.X1.

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. However, on the side of the defence, no oral and documentary evidence was let in.



6. After completion of trial and upon hearing of the arguments advanced on either side and perusal of records, the trial Court found the accused not guilty for the offence under Section 5(m) of POCSO Act, 2012. However, the trial Court found the accused guilty for the offence under Section 5(l) & (j)(ii) read with 6 of POCSO Act, 2012 and Section 506(i) of IPC and thereby, convicted and sentenced him to undergo life imprisonment and to pay a fine of Rs.10,000/-, in default to undergo one year R.I. for the offence under Section 5(l) & (j)(ii) read with 6 of POCSO Act, 2012 and to undergo two years R.I. and to pay fine of Rs.1000/-, in default to undergo six months R.I. for the offence under Section 506(i) IPC. The sentences imposed on the accused were ordered to run concurrently and the sentence already undergone by the accused was ordered to be set off under Section 428 of Cr.P.C.

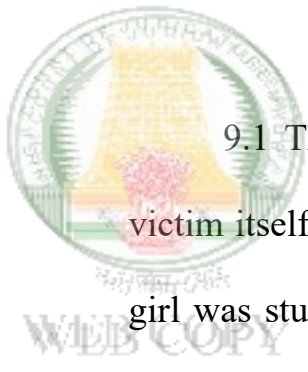
7. Challenging the judgment of conviction and sentence, the accused has filed the present appeal.

8. The learned counsel for the appellant submitted that there are contradictions and discrepancies between the complaint and statement recorded from the victim under Section 164 of Cr.P.C and also in the depositions of P.W.1, P.W.2 and P.W.3. In the complaint and deposition, the victim has stated that the appellant had told her that to take money, he was going to his house, whereas in the statement recorded under Section 164 of Cr.P.C., she has stated that the appellant had told her that to take helmet, he was going to his house. Further, in the complaint and deposition, the victim has stated that



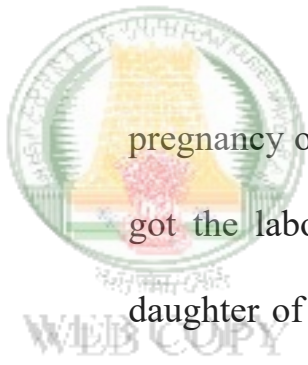
while going to purchase book, the appellant took her to his house, whereas statement recorded under Section 164 Cr.P.C., she has stated that after buying books, the appellant took her to his house. Further, in the complaint and chief examination, the victim has stated that after 10 days of the first sexual assault, the appellant blackmailed her stating that he had taken her nude photos, whereas in the statement recorded under Section 164 of Cr.P.C., she has stated that after one month of the first sexual assault, the appellant blackmailed her. The learned counsel further submitted that both in the complaint and statement recorded under Section 164 of Cr.P.C., the victim girl did not mention anything as if, after the first incident the appellant threatened her while dropping her at her home, whereas in the chief examination, she has stated that the appellant had threatened her with dire consequences after the first incident, while taking her in his two wheeler to her house and therefore, she did not disclose the first incident to anyone.

9. The learned counsel for the appellant further submitted that the victim was not a child and knowing well that the appellant is a married man, she had consented for the sexual intercourse with the appellant and became pregnant and therefore, they did not take any legal action against the appellant immediately. A perusal of chief examination of P.W.1 would clearly show that it is a consensual relationship and lodging the complaint after delivery of child alleging that the appellant forcibly had sexual intercourse, is only an afterthought.



9.1 The learned counsel for the appellant further submitted that the age of the victim itself is doubtful. Though P.W.10/Head Master of the School in which the victim girl was studying, has issued a Bonafide Certificate/Ex.P.14 mentioning the age of the victim as 02.07.2000, he has deposed that based on the 10th mark sheet, produced by the victim at the time of joining in their school only, he mentioned the said date in the Bonafide Certificate and that he did not see the source of date of birth. Further, Ex.P.3/Birth Certificate of the victim has been obtained at Vadhavaneri Village. P.W.2/mother of the victim categorically deposed that P.W.1/victim was born at Ilayankudi Government Hospital, which is situated 20 k.m. away from Vadhavaneri Village. Therefore, the evidence of P.W.1, P.W.2 and P.W.3 coupled with Ex.P.3 throws much light upon the prosecution case as it lacks any sanctity. Therefore, the prosecution has not proved the case beyond reasonable doubt that the victim was a child under the definition of POCSO Act. When once the prosecution has not established the age of the victim, the conviction under the POCSO Act is erroneous. In the absence of proof of age, the consent is a vital point and neither the POCSO Act nor the offence under Section 375 IPC, would attract against the appellant. Further, the prosecution has not proved that the appellant only had taken the victim girl to the hospital for abortion.

9.2 The learned counsel for the appellant also submitted that the prosecution has not proved that the mother of the victim came to know about the pregnancy of the victim only at later point of time. When a girl who is unmarried and school going is pregnant, definitely the mother would have noted the same. But in this case, it is alleged that the

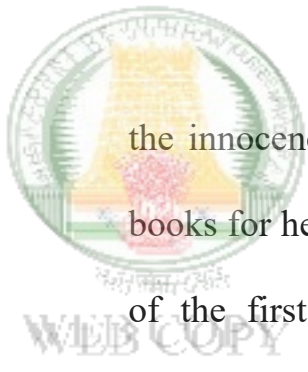


pregnancy of P.W.1 was known to P.W.2/mother and P.W.3/brother only when the victim got the labour pain. The prosecution conveniently suppressed the fact that the other daughter of P.W.2, is a nurse and is working at a Primary Health Center at Ganapathy. Hence, the statement of the prosecution is unbelievable and highly imaginary in nature.

9.3 The learned counsel for the appellant further submitted that before awarding maximum punishment, the Court must hear the accused on the question of sentence under Section 235(2) of Cr.P.C., which is a mandatory provision, whereas the trial Court failed to comply with the same. Further, as per the new amendment 2019, the minimum period of sentence is 20 years, but as per the old Act, the minimum sentence is 10 years. In the present case, the date of occurrence is August 2016. However, the learned Sessions Judge has awarded life imprisonment. The learned Sessions Judge failed to consider that the victim was not a child at the time of occurrence and it was a consensual relationship and therefore, neither the POCSO Act nor the IPC offence for rape would attract against the appellant.

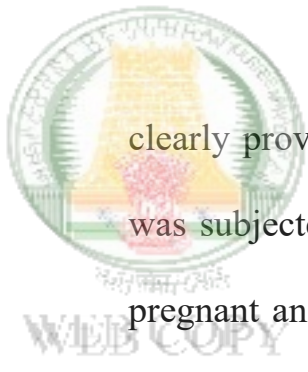
9.4 The learned counsel for the appellant further submitted that the trial Court failed to consider the contradictions and discrepancies and erroneously convicted the appellant. Therefore, the benefit of doubt has to be extended in favour of the appellant and the appellant has to be acquitted and the judgment of conviction and sentence passed by the trial Court is liable to be set aside.

10. Per contra, the learned Additional Public Prosecutor appearing for the respondent police submitted that the appellant is a married man and taking advantage of



the innocence of the victim child, he took her to his house under the guise of buying books for her and committed penetrative sexual assault on her. Further, taking advantage of the first sexual intercourse, he blackmailed the victim girl stating that he has videographed the first incident and if she refuses to come whenever he calls, he would kill her family members and by stating so, he subjected the victim to sexual intercourse multiple times due to which, the victim became pregnant and also delivered a girl child on 19.05.2017. The birth certificate of the child born to the victim was marked as Ex.P.1. During the course of investigation, samples were collected from the victim and her child and also from the appellant and DNA test report/Ex.P22 proved that the appellant is the biological father of the child born to the victim.

11. The learned Additional Public Prosecutor further submitted that in order to prove the age of the victim girl, the birth certificate of the victim was marked as Ex.P.3 as per which, the date of birth of the victim is 02.07.2000. Further, the Headmaster of the School, in which the victim studied, was examined as P.W.10 and he issued a certificate/Ex.P.14 stating that the date of birth of the victim is 02.07.2000. Therefore, it is clear that at the time of occurrence, the victim was aged 17 years and she was a child under the definition of POCSO Act. Even the doctor who conducted radiological test on the victim, was examined as P.W.5 and she has issued a report Ex.P.6 stating that the age of the victim is above 16 and below 18 years. Therefore, from the statement of the victim recorded by the learned Judicial Magistrate under Section 164 Cr.P.C., evidence of prosecution witnesses viz., P.W.1, P.W.2 and P.W.3 and also medical records, it is

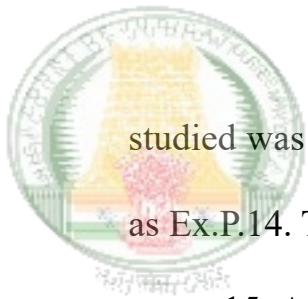


clearly proved that the victim was a child under the definition of POCSO Act and she was subjected to penetrative sexual assault by the appellant due to which, she became pregnant and also delivered a child. Therefore, the prosecution proved its case beyond all reasonable doubt.

12. The learned Additional Public Prosecutor further submitted that since the victim was a child at the time of occurrence, the offence committed by the appellant falls under the POCSO Act. The trial Court rightly appreciated both the oral and documentary evidence and finding that the victim was a child and she was subjected to penetrative sexual assault by the appellant, rightly convicted the appellant and imposed the maximum sentence of life imprisonment. He further submitted that it is not as if there was a love affair between the appellant and the victim girl. The appellant is a married man and taking advantage of the innocence of a child, he exploited her and subsequently, by blackmailing the victim, he has continued to have sexual intercourse with the victim and made her pregnant. Therefore, there is no mitigating circumstances and there is no merit in this appeal. Therefore, this appeal is liable to be dismissed.

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

14. In order to prove the case of the prosecution, on the side of the prosecution, 14 witnesses were examined in which, the victim was examined as P.W.1, the mother of the victim was examined as P.W.2 and the brother of the victim was examined as P.W.3. The Radiologist who conducted radiological test on the victim was examined as P.W.5 and the radiology test report was marked as Ex.P.6. The Head Master in which the victim girl



studied was examined as P.W.10 and the bona fide certificate issued by him was marked as Ex.P.14. The DNA test report was marked as Ex.P.22.

15. As far as penetrative sexual assault is concerned, the victim has clearly stated in her complaint/Ex.P.2 that the appellant forcibly committed penetrative sexual assault on her and subsequently, by blackmailing her, continued to have sexual intercourse with her due to which, she became pregnant and also delivered a child on 19.05.2017. The birth certificate of the child born to the victim was marked as Ex.P.1. The Doctor who assisted the delivery of the victim was examined as P.W.14. Based on the complaint lodged by the victim, the case in Crime No.2 of 2017 came to be registered by the respondent police and during the course of investigation, the victim was produced before the Judicial Magistrate for recording of statement and the learned Magistrate recorded her statement under Section 164 Cr.P.C. in which also, the victim girl has clearly narrated the incident of penetrative sexual assault committed by the appellant. Therefore, from the evidence of the victim/P.W.1, P.W.2/mother of the victim, P.W.3/brother of the victim, statement of the victim recorded by the learned Judicial Magistrate under Section 164 Cr.P.C./Ex.P.4, the evidence of the doctor/P.W.14 who assisted the delivery of the victim girl doctor, birth certificate of the child born to the victim/Ex.P.1, it is clearly proved that the victim girl was subjected to penetrative sexual assault by the appellant due to which, the victim became pregnant and also gave birth to a girl child on 19.05.2017. During the course of investigation, samples were collected from the appellant, victim girl and her child and were sent to Forensic Department for DNA test.



The DNA test report/Ex.P.22 also clearly shows that the appellant is the biological father of the child born to the victim.

16. As far as the age of the victim is concerned, the birth certificate of the victim which was marked as Ex.P.3, clearly shows that the date of birth of the victim is 02.07.2000. The Head Master of the School in which the victim studied has issued a Bona fide Certificate/Ex.P.14 based on the 10th mark sheet of the victim as per which also, the date of birth of the victim is 02.07.2000. Even P.W.5/Doctor who conducted radiological test on the victim, has certified that the victim is aged above 16 years and below 18 years and the radiological report was marked as Ex.P.6. Therefore, from Ex.P.2/complaint given by the victim, Ex.P.4/statement recorded by the learned Magistrate under Section 164(5) of Cr.P.C., Ex.P.3/the birth certificate of the victim, Ex.P.6/radiological report of the victim and Ex.P.14/Bona fide Certificate, it is clear that the date of birth of the victim is 02.07.2000. The date of occurrence is second week of August 2016 and the victim girl has given birth to a child on 19.05.2017. Therefore, the prosecution has proved that at the time of occurrence, the victim had not completed the age of 18 years and she was a child at the time of occurrence under Section 2(d) of POCSO Act.

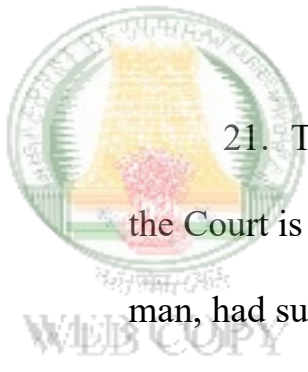
17. In the cases of this nature, no other independent witnesses can be expected since the accused commit this kind of offence in a secluded/hidden place by taking advantage of the innocence of the children.



18. As stated above, in the present case, both in the complaint and the statement recorded under Section 164 Cr.P.C. and also in her evidence, the victim girl has categorically stated that she was subjected to penetrative sexual assault by the appellant and due to which, she became pregnant and subsequently, she gave birth to a girl child. The DNA test report/Ex.P.22 also confirmed the same.

19. The contradictions and discrepancies pointed out by the learned counsel for the appellant are not material contradictions to disbelieve the evidence of the prosecution witnesses. The contradictions and discrepancies pointed out by the learned counsel for the appellant are minor contradictions, which will not go into the root of the matter and affect the case of the prosecution.

20. Therefore, on a reading of the materials both oral and documentary evidence, especially the evidence of P.W.1/victim, statement of the victim recorded under Section 164 Cr.P.C., the evidence of the doctors and also the medical records including the DNA test report, clearly show that the appellant has committed penetrative sexual assault on the victim girl who was a child under the definition of POCSO Act. Since the appellant subjected the victim girl for penetrative sexual assault for more than once and made her pregnant, the offence committed by the appellant is termed as aggravated penetrative sexual assault. The trial Court rightly appreciated the evidence and convicted the appellant and sentenced him to undergo the maximum punishment of life imprisonment. This Court finds no merits in this appeal and the same is liable to be dismissed.



21. Though the learned counsel for the appellant prayed to reduce the sentence 11 the Court is not convinced, taking into account the fact that the appellant being a married man, had subjected the victim girl to penetrative sexual assault, who is a child under the definition of POCSO Act, this Court finds no mitigating circumstances to reduce the sentence.

22. Accordingly, this Criminal Appeal is dismissed.

(P.V., J) (M.J.R., J)
02.01.2026

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Crl.A.No.



To

1. The Sessions Judge,
Mahila Court, Mahalir Neethimandram, Coimbatore
2. The Inspector of Police
All Women Police Station
Central, Coimbatore
3. The Public Prosecutor,
High Court, Madras.
4. The Central Prison,
Coimbatore



Crl.A.No.
P.VELMURUGAN, J

and

M.JOTHIRAMAN, J

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