

Subramaniam Vs. The State, rep.by The Inspector of Police, Erode District

Subramaniam Vs. The State, rep.by The Inspector of Police, Erode District

SooperKanoon Citation : sooperkanoon.com/1189282

Court : Chennai

Decided On : Aug-04-2016

Judge : S. Nagamuthu & V. Bharathidasan

Appeal No. : Crl.Appeal No. 269 of 2016

Appellant : Subramaniam

Respondent : The State, rep.by The Inspector of Police, Erode District

Judgement :

(Prayer: Appeal against the judgment, dated 30.03.2016, made in Special S.C.No.25 of 2015 on the file of Sessions Court, Magalir Neethi Mandram (Fast Track Mahila Court), Erode.)

S. Nagamuthu, J.

1. The appellant is the sole accused in S.C.No.25 of 2015 on the file of Fast Track Mahila Court, Erode. He stood charged for the offences under Section 6 of the Protection of Children from Sexual Offences Act (POCSO Act) and Section 506-II of IPC. By judgment, dated 30.03.2016, the trial Court convicted him under Section 6 of the Protection of Children from Sexual Offences Act alone and sentenced him to undergo imprisonment for life and to pay fine of Rs.10,000/-; in default, to undergo simple imprisonment for two years. Challenging the said conviction and sentence, he has come up with this appeal.

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

2.1. The accused is a resident of Vaikalpudur village, V.Ramanathapuram, in Erode District. He is aged about 58 years. The victim in this case is P.W.3. According to the case of the prosecution, as on the date of the alleged occurrence, P.W.3 was aged only 16 years and, thus, she was a child, as defined under the POCSO Act. During the relevant time, she was studying in Plus One Standard in a local school. The accused was already married and his wife was alive. The house of the accused is situated four houses beyond the house of P.W.3. Since they were all local residents, in a friendly manner, the family members of P.W.3, including P.W.3, used to visit the house of the accused and vice versa. The wife of the accused died after sometime. Even after her demise, P.W.3 used to visit the house of the accused. On one occasion, when P.W.3 visited his house, the accused told her to marry her since his wife had died. On the promise of marrying her, the accused wanted her to consent for sexual intercourse with him. But, P.W.3 bluntly refused.

2.2. While so, on 13.09.2013, P.W.3 had gone to the shop of the accused. The accused, by playing deception, took her inside the house and against her will and wish, by force, had sexual intercourse with her. While leaving her, he threatened her of dire consequences, if she disclosed the same to anybody. He further told that if she disclosed the same to anyone, she and her family members would be excommunicated by the people of her community. As instructed by the accused, P.W.3, even thereafter, visited the house of the accused on many occasions. The accused also repeatedly had sexual intercourse with her on number of occasions. Every time, the accused kept her under constant fear and warned her not to disclose about their relationship to anyone. After two to three months, P.W.3 developed abdominal pain. There was also bleeding from her vagina.

2.3. P.W.1, the mother of P.W.3, noticed the same. She immediately took P.W.3 to a private hospital known as Hariharan Hospital at Gobichettipalayam. P.W.5, Doctor Chitra, who was on duty at the said hospital, examined P.W.3 on 15.12.2014 around 02.00 p.m. P.W.3 had complained that she had bleeding through her vagina. P.W.5 examined her and found that P.W.3 was pregnant of

18-20 weeks. Her cervix was fully open. Placenta was seen in the vagina. The doctor conducted scan examination and found the uterus as measuring 20x10x12 cms. Uterus was empty, but cervix was fully open. Placenta in the vaginal cavity was noticed. From that examination, she found that P.W.3 had suffered partial abortion. Then, she removed the placenta and informed the same to P.W.1.

2.4. P.W.1 enquired P.W.3. P.W.3 told her that the accused had sexual intercourse with her on number of occasions and threatened her not to disclose the same to anyone, including P.W.1. After treatment, P.W.3 returned home. Thereafter, P.W.1 and other family members enquired the accused. The accused replied that it was true that he had sexual intercourse with P.W.3 and, for that, he was willing to give any amount of money. He further wanted them either to close the issue by receiving the money or to do whatever they were capable of doing. P.W.1 and her family members initially did not want to go to the police station, because, they had an apprehension that the same would spoil the future of P.W.3. But, the accused continued to threaten the family members of P.W.3. At last, P.W.1 went to All Women Police Station of Gobichettipalayam on 01.03.2015 and made a complaint at 08.30 a.m.

2.5. P.W.12, the then S.I. of Police of All Women Police Station, Gobichettipalayam, on receiving the said complaint (vide Ex.P-1), registered a case in Crime No.4 of 2015 under Sections 6 of the POCSO Act and 506-II IPC. Ex.P-16 is the F.I.R. She forwarded both the documents, namely, the complaint and the F.I.R., to the Court, which was received by the learned Judicial Magistrate at 10.15 a.m., on 01.03.2015.

2.6. The case was taken up for investigation by P.W.13, the then Inspector of Police. On 01.03.2015, she went to the place of occurrence, namely, the house of the accused and prepared an observation and a rough sketch, in the presence of P.W.2 and another witness. Then, she forwarded P.W.3 to the hospital for medical examination. On 01.03.2015, at 01.45 p.m., P.W.8 Dr.Malarvizhi, examined P.W.3 at the Government Hospital at Gobichettipalayam. According to her, the sexual organs of P.W.3 were fully developed and she was fully matured enough. There were no external injuries found on her. The doctor found that there was rupture of

hymen in the vagina of P.W.3. To a specific query as to whether there were any symptoms of abortion of foetus, the doctor stated that the same could not be found. According to her, the vaginal smear taken on chemical examination revealed that there was no spermatozoa. Finally, she gave opinion that there were no symptoms of force on P.W.3. P.W.6, Dr.Sivakumar, examined P.W.3 to ascertain her age. According to him, P.W.1 had completed 18 years of age, but, not completed 20 years. Ex.P-7 is the certificate issued by him. M.O.1 series are the x-rays taken to assess the age of P.W.3.

2.7. P.W.13, during the course of investigation, forwarded P.W.3 to the learned Magistrate, for recording her statement under Section 164 Cr.P.C. Accordingly, the learned Magistrate recorded the statement. On completing the investigation, P.W.13 laid chargesheet against the accused.

3. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment and the accused denied the same. In order to prove the case, on the side of prosecution as many as 13 witnesses were examined and 22 documents were marked. No material objects were marked.

4. Out of the said witnesses, P.W.1, the mother of the deceased, has stated that when P.W.3 informed that she was suffering from abdominal pain, she took her to P.W.5, for treatment. P.W.5 found that P.W.3 was pregnant and she had suffered partial abortion. She has further stated that when she enquired P.W.3, she told about the occurrence. She has also stated about the complaint made to the police. P.W.2 is a close relative of P.W.3. He has also spoken about the same facts as spoken by P.W.1. P.W.3 has spoken about the entire occurrence, as we have already narrated in the earlier paragraphs. P.W.4 has stated that she was a resident of V.Ramanathapuram village. She knew that the accused was running a grocery shop. Her house is also in the same building. According to her, most of the villagers used to purchase household articles and groceries only from the shop of the accused. She has further stated that she had seen P.W.3 in the shop on many occasions. She did not take a different view. Later, she came to know about the occurrence. P.W.5 Dr.Chitra has stated that she examined P.W.3 on 15.12.2013 and found that she had undergone partial abortion. She removed placenta. The

pregnancy was 18-20 weeks of age. Ex.P-3 is the prescription given by her and Ex.P-4 series are the scan reports and Ex.P-5 is the final opinion. P.W.6 Dr.Sivakumar has stated that on examination, he found P.W.3 to have completed 18 years of age and not completed 20 years. P.W.7 has stated that he examined the blood samples and the vaginal discharge from P.W.3. He found that there was no spermatozoa. P.W.8 has also spoken about the medical examination conducted on P.W.3 at Gobichettipalayam Government Hospital on 01.03.2015. He has stated that since there were no external injuries, he found no symptoms of any physical violence on P.W.3. P.W.9, Dr.Thangadurai, has stated that he examined the accused on 03.03.2015 and found that he was capable of performing penile sexual intercourse with a woman. P.W.10, Head Constable, has stated that he took P.W.3 to the hospital for medical examination. P.W.11, another Head Constable, has stated that he took the accused to the hospital for medical examination. P.W.12 has spoken about the registration of the case on the complaint of P.W.1. P.W.13 has spoken on the investigation done and the filing of the final report.

5. When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose either to examine any witness or to mark any document on his side. His defence was a total denial. Having considered all the above, the trial Court convicted the accused under Section 6 of the POCSO Act, as detailed in the first paragraph of this judgment. That is how, he is before this Court with this appeal.

6. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and also perused the materials carefully.

7. The appellant had filed Crl.M.P.No.4327 of 2016, seeking suspension of sentence. That petition, along with the appeal, came up for hearing before this Court on 23.06.2016. During the course of argument, the learned counsel for the appellant submitted that the age of P.W.3 has been spoken as more than 18 years by P.W.6, but the trial Court had taken the date of birth of P.W.3 as 30.08.1997, though no material whatsoever was available on record by way of evidence to prove that the date of birth of P.W.3 was 30.08.1997. We went through the entire

records and found that the only evidence available on record was that of P.W.6, who had stated that P.W.3 had completed 18 years of age. Once that evidence is accepted, then, as a corollary, it should be concluded that P.W.3 was not a child, as defined in POCSO Act. Once such a conclusion is arrived at, then, the conviction of the appellant under Section 6 of the POCSO Act should be set aside. It is a different question whether he should be convicted for the offence under Section 376 IPC. During the course of argument, we went through the Case Diary. To our shock, we found that the School Transfer Certificate of P.W.3 was available, showing the date of birth of P.W.3 as 30.08.1997. But, neither the Investigating Officer nor the Additional Public Prosecutor, who conducted the case, took care to prove those documents so as to prove the age of P.W.3, as on the date of commission of crime by the accused.

8. In the judgment of the trial Court, while dealing with the argument of the accused that P.W.3 was not a child as on the date of the alleged crime, in paragraph 17 of the judgment, it is held that though the Investigating Officer had produced only a xerox copy of the School Transfer Certificate of P.W.3, neither the Headmaster of the school nor anybody was examined. The trial Court has further lamented that even the School Certificate, showing the date of birth, was not marked. Having passed strictures against the prosecution, the trial Court did not bother to exercise its power under Section 311 Cr.P.C., to summon those vital witnesses and to prove the available documents pertaining to the date of birth of P.W.3.

9. Before this Court, the learned counsel for the appellant found fault with the prosecution for having failed to prove the date of birth of P.W.3. While considering the said argument of the learned counsel and having gone through the Case Diary of the police, which contained the relevant documents showing the date of birth of P.W.3, we felt that for the failure of the Additional Public Prosecutor, who conducted the trial, and for the failure of the trial Court to exercise its power under Section 311 Cr.P.C. and Section 165 of the Indian Evidence Act, we cannot allow justice to fail at the very altar of the temple of justice. Therefore, we passed an order on 23.06.2016, exercising the jurisdiction of this Court under Sections 311 and 391 Cr.P.C., summoning additional witnesses as Court Witnesses. The

following was the operative portion of the order passed by us in paragraph 11 of the order :

"11. Having said all the above facts, we, on our part, cannot close our eyes and allow justice to be killed on the ground of above lapses. Therefore, we deem it appropriate to invoke the power under Sections 311 and 391 Cr.P.C. to summon the following witnesses and to prove the following documents :

(i) We hereby recall P.W.13/Inspector of Police for the purpose of further examination before this Court. The Inspector of Police shall appear along with the original birth extract (birth certificate) of the victim.

(ii) We also summon the Headmaster of the Government High School, Alathur Thattarpalayam-638 455, Gobichettipalayam, Erode District, who shall appear before this Court along with the original admission register.

(iii) The witnesses shall appear before this Court on 05.07.2016. The Superintendent, Central Prison, Coimbatore shall cause the production of the accused before this Court on 05.07.2016 at 12.30 p.m."

10. Accordingly, on 05.07.2016, as directed by this Court, the accused was produced from prison. One Mr.K.Murugasamy, Headmaster of the Government High School, Alathur Thattarpalayam, Erode District, where P.W.3 studied, appeared. He was examined as Court Witness (C.W.1). In his evidence, he stated that presently he is working as the Government High School, Alathur Thattarpalayam Village, Erode District, and he has been working in the said school for the past five years. The School Admission Register was in his hands. On referring to the same, he told the Court that on 29.06.2011, P.W.3 joined the said school in IX Standard. According to the Admission Register, her father's name is Senna Naicker and her mother's name is Palaniammal. According to the said register, the date of birth of P.W.3 has been mentioned as 17.11.1997. The application made by the candidate, seeking admission, dated 29.06.2011, was also available. Ex.C-1 is the photostat copy of the said application (Ex.C-1 photostat copy was compared by the Court with the original and then the original was returned to the witness). While seeking admission, her father had produced

the record sheet of the student, issued by the Headmaster of the Panchayat Union Elementary School, V.Ramanathapuram, Alathur, Erode District, where P.W.3 had studied up to V Standard from I Standard. That record sheet is Ex.C-2 (photostat copy was marked after comparing the same with the original). In that school, she studied up to V Standard. She studied in the Panchayat Union Middle School at Alathur, Thattarpalayam, Erode District, from VI Standard to VIII Standard. That record sheet was also produced at the time of admission in the High School. It is Ex.C-3 (photostat copy was marked after verifying the same with the original). The necessary entry in the admission register is Ex.C-4 (photostat copy was marked after comparing with the original). She left the High School on 20.06.2013, for which, the Transfer Certificate was issued.

11. The learned counsel for the appellant crossexamined him. During the course of cross-examination, it was elicited that C.W.1 could not say personally whether the date of birth given by the father of the child was correct or not. He has further admitted that before admitting her in the High School, the birth certificate was not verified. He has further admitted that his evidence that the date of birth of P.W.3 is 17.11.1997 is solely based on Exs.C-1 to C-4.

12. Similarly, P.W.13, Mrs.F.Luda, Inspector of Police, appeared before this Court on 05.07.2016. She was recalled and questioned by this Court, in exercise of its power under Section 165 of the Indian Evidence Act. For the questions of this Court, she answered as follows :

"As per the final report filed by him, the date of birth of P.W.3-Elavarasi is 30.08.1997. I mentioned the date of birth of P.W.3 as 30.08.1997 based on the birth certificate issued by the Sub-Registrar, Kavundhampadi. But the said certificate was omitted to be produced in evidence at the time of trial before the trial Court, though I have produced a copy of the same. I have now brought a certificate obtained on 04.07.2016. The original Birth Certificate of Elavarasi issued on 04.07.2016 is marked as Ex.C-5."

13. The learned counsel for the appellant, with the permission of the Court, crossexamined the witness. She has admitted during the cross-examination that she came to know that as per the school records, the date of birth of P.W.3 is

17.11.1997. She has further admitted that though she verified the school records, since she found the date of birth of P.W.3 as 30.08.1997 as mentioned in birth certificate, she, in the final report, mentioned the date of birth of P.W.3 as 30.08.1997. She has further admitted that she examined the Headmaster and the Sub-Registrar, during the investigation. She has further admitted that she has examined the doctor, who conducted abortion on P.W.3, but, she did not take any action against the doctor. She has denied a suggestion that she did not conduct proper investigation, regarding the age of P.W.3.

14. After the above examination of these two witnesses was over, on 05.07.2016, the accused was questioned under Section 313 Cr.P.C., in respect of the incriminating evidences spoken to by C.W.1 and P.W.13. The accused stated that he did not know anything about the correctness or otherwise of the facts spoken by these witnesses. Thereafter, the case was adjourned for further arguments.

15. We have heard the learned counsel further today i.e., 04.08.2016, and the learned Additional Public Prosecutor appearing for the State and also perused the records carefully.

16. The primary issue raised by the learned counsel for the appellant is that the conviction of the appellant for the offence under Section 6 of the POCSO Act is not sustainable, because, as per the medical opinion, P.W.3 had completed 18 years of age and, thus, she was not a child in terms of the POCSO Act. The learned counsel further submitted that the school certificates proved through C.W.1 cannot be given any weightage, because, the entries in the school records were not made, after verifying the birth certificate. So far as the birth certificate obtained by P.W.13 is concerned, the learned counsel would submit that the same also cannot be given any weightage, because, the person, who gave the information to the registering authority, has not been examined. Thus, the learned counsel would reiterate his argument that P.W.3 had completed 18 years of age as on the date of commission of the alleged crime and, therefore, the conviction is liable to be set aside.

17. The learned Additional Public Prosecutor refuted the said arguments. We have considered the above submissions.

18. The Protection of Children from Sexual Offences Act, 2012, does not contain any specific procedure to be followed by the Court to ascertain the age of a child victim. Section 34 of the said Act deals with the procedure in case of commission of offence by child and determination of age of Special Court. Sub-section 2 of the said provision states "if any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court, after specifying itself about the age of such person and it shall record in writing its reasons for such determination." Except stating so, generally, there is no other guideline in the said provision as to how to determine the age of a child. Section 42-A of the said Act states "the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of inconsistency." From this provision, since it is clear that for determining the age of a child there is no procedure prescribed in the Act, the Court can very well follow the procedure as contemplated in the Juvenile Justice (Care and Protection of Children) Rules, 2007, wherein Rule 12 reads as follows :

"12. Procedure to be followed in determination of Age.-

(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a) (i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law."

19. Following the said procedure, if we appreciate the evidence available on record in the instant case, there can be no difficulty for this Court to act upon the School Certificate, issued by C.W.1, which shows that the date of birth of P.W.3 is 17.11.1997. Assuming that the said date of birth is not supported by any other evidence, there may not be any difficulty for this Court to act upon the birth certificate issued by the competent authority, marked as Ex.C-5, according to which, the date of birth of P.W.3 is 30.08.1997. We are of the view that we need not go into the further question as to whether her actual date of birth is 17.11.1997 or 30.08.1997.

20. As per Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, the School Certificate shall have precedence over the birth certificate. Assuming

that the birth certificate in the instant case needs preference, even then, P.W.3 was only a child as on the date of the commission of the alleged crime. The opinion of the doctor, P.W.6, is only approximate and the same cannot be given any weightage. Rule 12 itself states that medical examination can be resorted to, only in the absence of any of the above certificates, showing the date of birth.

21. It is settled law that if the opinion of the doctor is only approximate, there has to be added two years of margin on either side. Therefore, we are unable to give any weightage to the evidence of P.W.7 and, instead, we hold that P.W.3 was only a child as on the date of commission of the crime, which conclusion is based on the evidence of C.W.1, P.W.13 and Exs.C-1 to C-5.

22. At this juncture, it needs to be mentioned that at the time when we proposed to re-examine C.W.1 and P.W.13 and to receive additional evidence both oral and documentary, Mr.N.Manokaran, the learned counsel for the accused/appellant, in fact, raised an objection, on the ground that it would amount to filling up the lacunae in the case of the prosecution. That was rejected by us, by referring to Section 391 and 311 Cr.P.C. Section 391 Cr.P.C. states that if this Court feels the reception of additional evidence to be necessary, then, after recording its reasons, the Court has to take such evidence. Thus, the only bench mark is, whether such additional evidence in this case is necessary or not, to arrive at a correct conclusion. Since in the instant case the age of P.W.3 is very fundamental to do justice, we thought, receiving additional evidence in respect of the age of P.W.3 was absolutely necessary. As we have held already when we passed the interim order, now, we also hold that the action of this Court in receiving additional evidence by examining C.W.1 and questioning P.W.13 in exercise of our power under Section 165 of the Indian Evidence Act and in receiving Exs.C-1 to C-5 would not amount to filling up the lacunae in the case of the prosecution and, therefore, this argument is once again rejected.

23. Now, turning to the facts of the case, P.W.3, the child, has categorically stated that she was repeatedly subjected to penetrative sexual assault by the accused. P.W.5, Dr.Chitra, on examining P.W.3 on 15.12.2013, by conducting scan examination, found that cervix was wide open. It is common knowledge and it is an

accepted medical opinion that opening of cervix is only to deliver a foetus from the uterus. Further, placenta was also found in the vaginal cavity, which means, the placenta ejected by uterus, came into the vaginal cavity and stayed there. That was removed by P.W.5. The presence of placenta is a definite indicator that P.W.3 was pregnant. From the size of the uterus and the size of the opening of the cervix, P.W.5 had determined the age of pregnancy as 18-20 weeks. Though P.W.5 has been crossexamined at length, nothing has been elicited to discard her opinion. We find that the evidence of P.W.5 is fully convincing and it would go to prove that P.W.3 was pregnant. This evidence of P.W.5 is corroborated by the evidence of P.W.3 and P.W.1. P.W.3 had stated that she developed abnormal pain and informed the same to P.W.1 and, that is why, P.W.1 took P.W.3 to P.W.5. P.W.3 had informed about the occurrence to P.W.1, soon after P.W.5 disclosed the pregnancy. Thus, from these three evidences, it has been clearly established that P.W.3 had undergone penetrative sexual assault by someone.

24. Who is that someone ? It can be answered by only one person i.e., P.W.3. P.W.3, the child, has disclosed that it was this accused, who had repeated sexual intercourse with her in the shop, adjoining to his house. When P.W.1 and others questioned the accused, he confessed that he exploited P.W.3 sexually and for that, he was ready to pay any amount of money. He further wanted P.W.1 and others to close the issue by receiving money and not to precipitate the same. This statement of the accused is an extra-judicial confession. This extra-judicial confession, though a weak piece of evidence, would have corroborative value to corroborate the evidence of P.W.3. Apart from that, P.W.4 has stated that he had seen P.W.3 in the shop of the accused on several occasions. This evidence also further strengthens the case of the prosecution.

25. The learned counsel for the appellant submitted that there was inordinate delay of about 18 months in making the complaint to the police. He would submit that though, according to the prosecution P.W.3 had disclosed to P.W.1 about the occurrence as early as on 15.12.2013 itself, the complaint was made only on 01.03.2015, for which there is no explanation. The learned counsel further submitted that there is also no proof that the accused was the biological father of the foetus. He also submitted that out of personal animosity, the accused has

been falsely implicated in this case.

26. We find it hard to accept this argument. P.W.1, in her evidence, has explained the delay properly, which, in our considered view, is acceptable. P.W.1 has stated that when she, along with others, questioned the accused, he offered to pay money and to close the issue, without precipitating the same. Thereafter, she, being a poor and illiterate woman, would not have preferred to go to the police at once, the reason being that her daughter's future was involved. From the evidence, it could be gathered that P.W.1 did not want to precipitate the issue, because the disclosure of the occurrence to police or anybody might bring disrepute to the family and spoil the future of P.W.3. But, the accused did not stop threatening her family. It was only because of the same, P.W.1 was forced to make the complaint to the police. Thus, on the ground of delay in preferring the complaint, we cannot reject the fully convincing evidence of P.W.3, the child. In our view, it is difficult even to imagine that illiterate poor villagers, who are conscious of the modesty of the girls and the women folk, would go to the extent of making a false allegation of rape, out of personal animosity. Thus, all the arguments advanced by the learned counsel for the appellant are rejected.

27. Above all, this Court finds reasons to raise a presumption that the accused had committed the crime, as provided in Section 29 of the POCSO Act. There are lot of fundamental facts, as we have already discussed, to raise such a presumption. Of course, the said presumption is rebuttable. But, in this case, the accused has not rebutted the said presumption either by means of direct evidence or by means of circumstantial evidence. Thus, by means of the said unrebutted presumption also, the prosecution has conclusively proved that it was this accused, who committed the offence punishable under Section 6 of the POCSO Act. In view of the foregoing discussions, we hold that the trial Court was right in convicting the accused under Section 6 of the POCSO Act.

28. Now, turning to the quantum of punishment also, at the time of occurrence, the accused was 60 years old. He has been in jail for a long time. He had no bad antecedents. He has not shown any misconduct after this case. Having regard to the aggravating as well as the mitigating circumstances, we are of the view that

sentencing him to undergo rigorous imprisonment for ten years and to pay fine of Rs.10,000/- would meet the ends of justice.

29. In the result, the appeal is partly allowed. The conviction of the accused/appellant under Section 6 of the POCSO Act is confirmed. However, the sentence of imprisonment for life imposed by the trial Court on the accused is set aside and, instead, he is sentenced to undergo rigorous imprisonment for ten years and to pay fine of Rs.10,000/-; in default, to undergo rigorous imprisonment for eight weeks.

30. Before parting with this case, we wish to say, that in this case, had the learned Additional Public Prosecutor, who conducted the trial, or the trial Court been vigilant in discharging their obligations under the law in the right manner and in the right way, the valuable time of this Court would not have been wasted in examining two witnesses and by receiving additional evidence. We only expect that this case shall be taken as an eye-opener for the subordinate judiciary as well as the learned Public Prosecutors to realise their responsibilities so as to be vigilant to ensure that "Justice always triumphs".

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com