

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.06.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.A.No.93 of 2020

Renold Mike Tyson

...Appellant

-Vs-

State Rep. by
The Inspector of Police,
Town Police Station,
Karaikal, Puducherry
(Crime No.176 of 2017)

...Respondent

This Criminal Appeal is filed under Section 374(2) of Cr.P.C. praying to set aside the judgment dated 25.11.2019 made in Spl.S.C.No.1 of 2019 by the learned Special Judge, Karaikal.

For Appellant : Mr.V.Perarasu

For Respondent : Mr.D.Bharatha Chakravarthy
Public Prosecutor, (Pondicherry)

JUDGMENT

This criminal appeal has been filed against the judgment of conviction dated 25.11.2019 made in Spl.S.C.No.1 of 2019 by the learned Special Judge, Karaikal, for the offence under Section 4 of the Protection of Children from Sexual Offences Act (in short “the POCSO Act”).

2 The respondent police registered a case against the appellant in Crime No.176 of 2017 for the offence under Section 4 of the POCSO Act, 2012 and after investigation, laid a charge sheet before the learned Special Judge, Karaikal, which was taken on file in Spl.S.C.No.1 of 2019 and the learned Special Judge, after completing all formalities, framed charges against the appellant for the offence punishable under Section 4 of the POCSO Act.

3 In order to prove the case of the prosecution, before the trial Court, P.W.1 to P.W.8 were examined and Ex.P1 to Ex.P11 were marked and no Material Object was exhibited. After completing evidence of prosecution witnesses, when incriminating circumstances culled out and put before the accused, he denied as false and pleaded not guilty. On the side of the defense, no one was examined and no document was marked.

4 The learned Special Judge, after adverting to the materials placed on record and after hearing both the parties, by judgment dated 25.11.2019 convicted the appellant/accused for the offence punishable under Section 4 of the POCSO Act and sentenced him to undergo rigorous imprisonment for a period of 10 years with fine of Rs.15,000/-, in default, to undergo simple imprisonment for a period of one year for the offence under Section 4 of the POCSO Act and also directed the Taluk Legal Services Authority, Karaikal, to pay compensation to the victim child not less than Rs.4.00 Lakhs.

5 Aggrieved against the said judgment of conviction, accused has preferred the present criminal appeal.

6 The learned counsel appearing for the appellant would submit that the victim girl has not made any allegations against the appellant and she did not lodge any complaint against him. It is only father of the appellant, due to civil dispute, had given false information to the Child Line and they have informed to P.W.1, brother of the victim.

After receiving information from Child Line, P.W.1 lodged complaint against the appellant. The victim girl has improved her version by stage by stage. At the time of giving statement before the Magistrate under Section 164 of Cr.P.C. she stated that the appellant had sexual intercourse with her only three times, but, before the Doctor, at the time medical examination, she stated several times. Therefore there are material contradictions in the evidence of the victim girl, which the trial Court failed to consider. Further, father of the appellant, who is the reason to made complaint against the appellant was not examined by the prosecution and also one Rajalakshmi, who accompanied the victim at the time of medical examination, was also not examined, which are fatal to the case of the prosecution.

7 The learned counsel would further contend that the Doctor, one who conducted medical examination on the victim girl was not examined and successor only examined as P.W.5, who gave evidence only based on the records. Further, prosecution has failed to examine any independent witness to prove the offence said to have committed by the

appellant. In Ex.P7, it was stated that there was no external injury and it was deposed that hymen may appears to be not intact by cycling also. The victim also stated that she has a habit of cycling and hence the medical evidence also went against the case of the prosecution. But, the trial Court failed to consider the discrepancies stated above and failed to appreciate the defects in the case of the prosecution and erroneously convicted the appellant based on the contradictory evidence of the victim girl, which warrants interference of this Court.

8 According to the learned Government Advocate (Crl.Side) appearing for the respondent the victim girl, who is aged about 16 years old at the time of occurrence has clearly spoken about the offence committed by the appellant, which would clearly attract offence under the POCSO Act. Even though, victim did not file any complaint, the father of the appellant informed about the act of his son to the Child Welfare Officer and on receipt of the same, the Child Welfare Officer informed the same to P.W.1 and he made complaint before the respondent police. In every cases, we cannot expect the victim to made

complaint before the authority and hence it is not a fatal to the case of the prosecution. Further, the learned counsel for the appellant contended that the victim girl has improved her version by stage by stage. The victim girl, before the Magistrate, has stated that the appellant had sexual intercourse with her three times and before the Doctor, she stated that several times. In colloquial language, people used to say “several times” or “three or four times” if the action has taken place more than two times, like wise only the victim girl has stated. Hence, we cannot conclude that there are discrepancies in the evidence of the victim girl. The victim girl herself stated that last intercourse was three weeks prior to the medical examination and hence the evidence of Doctor stating that there was no symptoms for recent intercourse is not a fatal to the case of the prosecution. From Ex.P7, it is clear that vagina of the victim admitted two fingers and her hymen was not intact. Hence prosecution has clearly proved its case beyond all reasonable doubt and medical evidence also supported the case of the prosecution. There is no reason to interfere with the judgment of conviction, when it is well founded.

9 Heard the learned counsel appearing on either side and perused the materials available on record.

10 Case of the prosecution is that during the year 2015, the victim was residing along with her parents at Neduntheru. On 31.08.2015, father of the victim committed suicide by hanging and hence the house in which victim was residing was demolished by its owner. Thereafter, her mother along with her brother have gone to house of the accused on his request and after sometime her brother left to his Grand Mother's house. Thereafter, mother of the victim also left somewhere else. When the appellant and the victim were alone in the house, the appellant, on a false promise to marry the victim, had sexual intercourse with the victim for several times. On knowing the above, father of the appellant informed the same to the Child Welfare Officer and he intimated the same to P.W.1, brother of the victim. P.W.1 made a complaint against the appellant and hence the present case was registered against the appellant.

11 This Court, being an Appellate Court, is a fact finding Court, which has to necessarily re-appreciate the entire evidence and give an independent finding. Accordingly, this Court has re-appreciated the entire oral and documentary evidence produced before this Court.

12 On reading of the entire allegations made against the appellant, it would reveal that cases of this nature under the POCSO Act, the Court cannot expect independent witness and the evidence of the victim itself would suffice to convict the accused, when it is trustworthy. The victim, who is aged about 16 years at the time of occurrence, has clearly narrated the incident and the involvement of the accused in the offence, which would clearly attract offence under the POCSO Act. In the case on hand, there is no reason to discard the evidence of the victim. Further evidence of P.W.3, the victim girl and the Doctor, P.W.5 and Exs.P5 and P7, statement recorded from the victim girl under Section 164 of Cr.P.C. and medical examination report, have clearly shows that the victim was subjected to sexual intercourse and her hymen was not intact

and vagina admits two fingers. Even though, there was no forceful intercourse as contended by the learned counsel for the appellant, the appellant on a false promise to marry the victim, had sexual intercourse for several times. Age of the victim child being 16 years, her capacity of understanding cannot be on par with an adult, who has completed 18 years. Even otherwise, if she has given consent for sexual intercourse, her consent is immaterial as she was a child under the definition of Section 2(1) of the POCSO Act. Hence the offence committed by the appellant would come under the definition of aggravated penetrative sexual assault under Section 5(l) punishable under Section 6 of the POCSO Act. But, neither, the prosecution nor the Special Judge framed charges under Section 5(l) of the POCSO Act.

13 Hence, the State Judicial Academy is directed to impart training to the stake holders, dealing with the cases under POCSO Act, including the Investigating Officer, the Public Prosecutor and the Special Judge, who is dealing with the cases under the POCSO Act, after obtaining necessary permission from My Lord the Honourable Chief

Justice and Board of Governors.

14 The trial Court has already directed the Taluk Legal Services Authority to pay compensation to the victim not less than Rs.4.00 Lakhs under Victim Compensation Scheme and this Court, in the interest of justice, enhancing the amount to Rs.5.00 Lakhs and the appellant is also directed to pay a compensation of Rs.5.00 Lakhs to the victim girl immediately.

15 With the above observations, directions and modifications, this Criminal Appeal stands dismissed. Trial Court is directed to secure the appellant to serve remaining period of imprisonment, if any.

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Index : Yes/No
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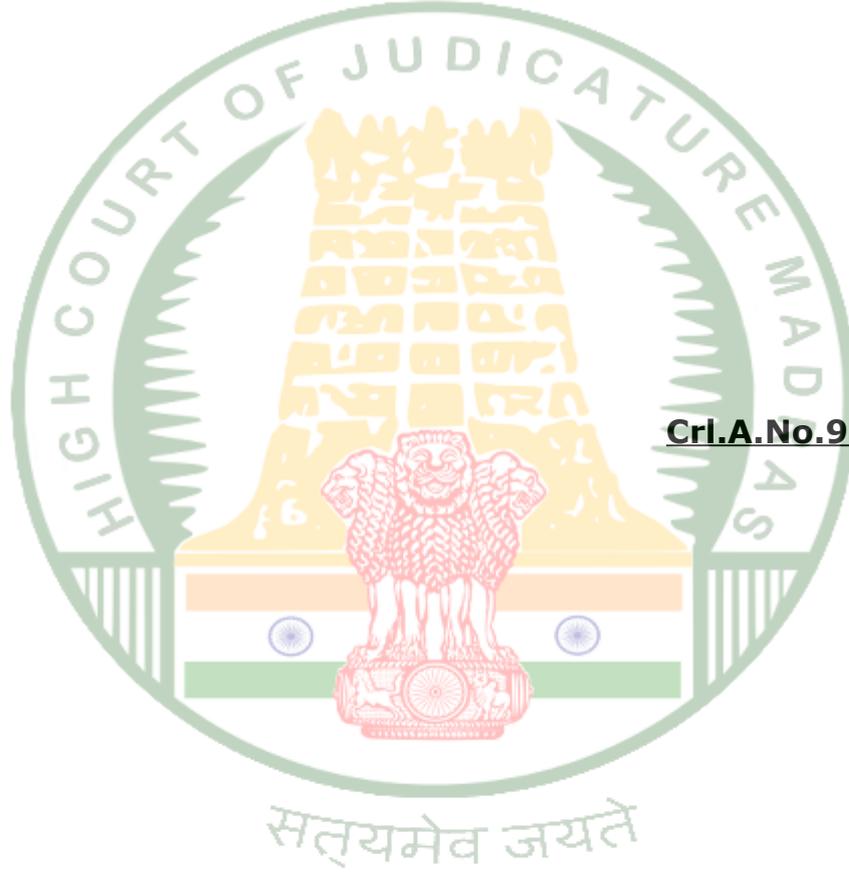
1. The Special Judge, Karaikal.
2. The Inspector of Police, Town Police Station, Karaikal, Puducherry.
3. The Public Prosecutor, High Court of Madras.
4. The Tamilnadu State Judicial Academy, Chennai.

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