

Dr.T.Ambujakshi Vs State Of Kerala

Court: High Court Of Kerala

Date of Decision: Jan. 23, 2025

Acts Referred: Code of Criminal Procedure, 1973 " Section 482

Indian Penal Code, 1860 " Section 312, 313, 376(2)(n), 376(2)(f), 376(3)

Protection of Children from Sexual Offences Act, 2012 " Section 5(j)(ii), 5(l), 5(n), 6, 6(1), 19, 19(1), 21

Juvenile Justice (Care and Protection of Children) Act, 2000 " Section 75

Hon'ble Judges: A. Badharudeen, J

Bench: Single Bench

Advocate: Sooraj T.Elenjickal, Aswin Kumar M J, Arun Roy, Shahir Showkath Ali, Jibu T S

Final Decision: Allowed

Judgement

A. Badharudeen, J

1. The 2nd accused in S.C.No.495/2020 on the files of Special Court for the trial of offences under the Protection of Children from Sexual Offences

Act ("POCSO Act" for short), Hosdurg, has filed this CrI.M.C under Section 482 of the Code of Criminal Procedure seeking the relief to quash

Annexure A1 final report in SC.495 of 2020 pending before Fast Track Special Court, (POCSO Act Cases), Hosdurg, against the petitioner.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor in detail. Perused the available records including the case diary

produced by the learned Public Prosecutor. Also gone through the decisions placed by the learned counsel for the petitioner.

3. In the instant case, the prosecution alleges commission of offences punishable under Sections 376(2)(n), 376(3), 376(2)(f) and 109 of the Indian

Penal Code ("IPC" for short) as well as under Sections 6, 6(1) r/w 5(l), 5(n), 5(j)(ii) of the POCSO Act and under Section 75 of the Juvenile

Justice (Care and Protection of Children) Act, 2000 ("J.J Act" for short) by the 1st accused, who alleged to have subjected the minor victim to

repeated sexual intercourse. The specific allegation against the petitioner, who is arrayed as the 2nd accused, is that the 2nd accused (doctor), who

had examined the victim, though came to know about the pregnancy of the minor victim, failed to report the same to the police in tune with the

mandate of Section 19(1) of POCSO Act and also had conducted abortion of the victim without consent. On this premise, prosecution alleges

commission of offences punishable under Section 21 r/w 19 of the POCSO Act as well as under Sections 312 and 313 of the Indian Penal Code

(` IPCÃçâ,~â,,ç for short) by the 2nd accused.

4. The learned counsel for the petitioner argued that none of the offences would get attracted against the petitioner and he pointed out that when the

victim was produced before the petitioner, the victim and her parents (who accompanied her) informed the Doctor that she was a married lady,

attained majority and the age was reported as 18 years. Therefore, the Doctor had no occasion to see the case of the victim as one under the POCSO

Act. According to the learned counsel for the petitioner, regarding the abortion/miscarriage also, the victim reached the hospital with profused bleeding

and with symptoms of miscarriage and the doctor practically done the same to save her life and the doctor in no way caused abortion voluntarily and

that she caused miscarriage in good faith to save the life of the victim and there was consent of the victim, who reported to be a major at the time of

consultation. Further her parents also consented the same with a view to save her life. The learned counsel for the petitioner has placed decision of

the Madras High Court reported in [MANU/TN/6918/2024], [Jenbagalakshmi v. The State of Tamil Nadu & Ors., where there was allegation against

a medical practitioner that he had committed offence under Sections 5(i), 5(j)(ii), 6(1) and 21(1) of Protection of Child from Sexual Offences Act,

2012 (` POCSO ActÃçâ,~â,,ç for short) and Section 312 of IPC and in the said decision, on similar facts, the Madras High Court quashed prosecution

against the doctor. Another decision of the High Court of Karnataka in CrI.P.NO.3694 of 2023 dated 27.03.2024 also placed in support of the same

allegation, where the Karnataka High Court followed the ratio of the decision of the Apex Court reported in [(2018) 18 SCC 292 : 2018 (10) SCJ 583 :

AIR 2018 SC 4654 : MANU/SC/0830/2018 : 2018 (3) KLT 934 : 2018(2) ALD(CrI.) 960 (SC) : 2019 (106) ACC 352], Tessy Jose & Ors. v. State of

Kerala, and quashed the prosecution against the doctor. The facts of the case in Tessy Jose & Ors. v. State of Kerala (supra), is that the 1st accused

had raped the victim when she was a minor in the year 2016. As a result, she became pregnant. As per victimÃçâ,~â,,çs mother, when the victim started

complaining about pain in her stomach, thinking it to be some problem related to stomach, she brought her to the hospital, where the appellants were

working, on 7th February, 2017. It was found that the victim was in advanced stage of pregnancy. In fact, soon after she was brought to the hospital,

she went into labour, and she delivered a child. Insofar as the appellants are concerned, their role was that they attended to the victim. Appellant No.1

is a 66 year old lady who is a Gynaecologist and had conducted the delivery. Appellant No.2 is a Paediatrician, who had attended to the baby of the

victim after the delivery. Appellant No.3, is a 69 year old Hospital Administrative. She was roped-in in that capacity though she did not attend to the

victim or the baby. It is not the case of the prosecution that these appellants had any knowledge about the alleged rape of the victim, allegedly

committed by accused No.1 at any time earlier. In fact, they did not come into picture before 7th February, 2017 when the victim was brought to the

hospital. However, the charge against these Appellants is primarily on account of purported commission of an act under Sections 19(1) of POCSO

Act.

5. In the said case, the Apex Court found that there is no evidence to implicate the appellants, who failed to inform the crime to the police and quashed

the proceedings against the appellants therein holding that evidence should be such which should at least indicate grave suspicion. Mere likelihood of

suspicion cannot be the reason to charge a person for an offence, after observing in paragraphs 8 and 9 as under:

“8. After going through the record and hearing the counsel for the parties, we are of the opinion that no such case is made out even as per the material

collected by the prosecution and filed in the Court. The statement of the mother of the victim was recorded by the police. The statement of the victim was also

recorded. They have not stated at all that when the victim was brought to the hospital, her mother informed the appellants that she had been raped by the accused

No.1 when she was a minor. Admittedly, the victim was pregnant and immediately went into labour. In these circumstances, it was even the professional duty of

appellant No.1 to attend to her and conduct the delivery, which she did. Likewise, after the baby was born, the Appellant No.2 as a Paediatrician performed her

professional duty.

9. The entire case set up against the Appellants is on the basis that when the victim was brought to the hospital her age was recorded as 18 years. On that basis

Appellants could have gathered that at the time of conception she was less than 18 years and was, thus, a minor and, therefore, the Appellants should have taken

due care in finding as to how the victim became pregnant. Fastening the criminal liability on the basis of the aforesaid allegation is too far-fetched. The

provisions of Section 19(1), reproduced above, put a legal obligation on a person to inform the relevant authorities, inter alia, when he/she has knowledge that

an offence under the Act had been committed. The expression used is “knowledge” which means that some information received by such a person gives

him/her knowledge about the commission of the crime. There is no obligation on this person to investigate and gather knowledge. If at all, the Appellants were

not careful enough to find the cause of pregnancy as the victim was only 18 years of age at the time of delivery. But that would not be translated into

criminality.”

6. Zealously opposing quashment of the proceedings as canvassed, it is submitted by the learned Public Prosecutor that the petitioner was having

knowledge regarding the fact that the victim was aged below 18 years at the time of her examination. Therefore, the allegation of commission of

offence under Section 21 r/w 19(1) of POCSO Act is made out, prima facie. According to the learned Public Prosecutor, miscarriage also was done

without the consent of the minor victim and no evidence is forthcoming to hold that the same was done to save the life of the victim. Therefore,

offences under Sections 312 and 313 of IPC also would attract, prima facie.

7. While addressing the rival contentions, the case diary contains the consultation note prepared on 22.06.2020 at Arimala hospital, where the

prosecution alleges that the petitioner herein attended the victim. In the said consultation note, the name of the victim is shown as XXX (name

suppressed), 18 years, came with history of pain abdomen plus bleeding P & V. As per this note, there was treatment and it was noted that the details

of the infirmities were explained to the relatives. Thus the consultation dated 22.06.2020 doesn't show the age of the victim as below 18 years.

The case diary also contains the note book of Dr.Ambujakshy (the petitioner herein) for aborting the victim's pregnancy at Arimala hospital. As

on 22.06.2020, the victim by name XXX, aged 18 years also met the petitioner. The case diary also contains the doctor's orders and progress

sheet dated 22.06.2020 regarding the procedure underwent by the victim and in that also, the age of the victim is stated as 18 years. In the clinical

chart form part of the hospital records also, the age of the victim is shown as 18 years. In the consent given by the father of the victim for doing

evacuation also, the age of the victim is shown as 18 years.

8. It is true that after registration of this crime when the victim was examined by another doctor on 20.07.2020, as requested by the prosecution side

her age was recorded as 15 years 11 months and 20 days.

9. However, none of the records produced by the prosecution would show that the petitioner herein had occasion to consider, prima facie, that the

victim, who approached with abdomen pain and bleeding with symptoms of miscarriage was under the age of 18 years as per the age disclosed by her

as well as her parents. The Apex Court in *Tessy Jose & Ors. v. State of Kerala* (supra), held that there is no obligation on the doctor to investigate

and detect knowledge regarding the age of the victim. As a natural phenomena when a patient meets a doctor, the doctor would act upon the age

disclosed by her and no roving enquiry in this regard is mandated by law. Thus once the age disclosed is 18 years, there is no necessity to delve upon

its correctness by the doctors normally, unless the age disclosed is, prima facie, not convincing, by appearance or otherwise. Fastening criminal liability

under Section 21 of the POCSO Act r/w Section 19(1) cannot be based on irrelevant materials and subsequent facts brought into, for which the

accused has no nexus. The knowledge of the doctor regarding commission of an offence when the victim reaches the hospital along with her parents

and discloses her age as 18 years to the doctor, is their disclosure, unless there is no reason to doubt the same. There is no need to scrabble about the

age rather than believing it for the purpose of proceeding further. Section 19(1) of the POCSO Act provides as under:

“(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) any person (including the child), who has apprehension that

an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to,--

(a) the Special Juvenile Police Unit; or

(b) the local police.

(2) Every report given under sub-section (1) shall be--

(a) ascribed an entry number and recorded in writing;

(b) be read over to the informant;

(c) shall be entered in a book to be kept by the Police Unit.

(3) Where the report under sub-section (1) is given by a child, the same shall be recorded under subsection (2) in a simple language so that the child understands

contents being recorded.

(4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having

such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.

(5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection,

then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection including admitting the child into shelter

home or to the nearest hospital within twenty-four hours of the report, as may be prescribed.

(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child

Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and

protection and steps taken in this regard.

(7) No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-section (1).

10. In the instant case, going through the medical records form part of the prosecution records, whereby the victim was treated in Arimala Hospital,

the age of the victim is shown as 18 years and nothing otherwise would suggest that the doctor had occasion to know about the age of the victim as

below 18 years by any other methods normally available. In such a case, it is difficult to hold that the doctor deliberately failed to report the same to

the police within the mandate of Section 19(1) and thereby committed offence punishable under Section 21 of the POCSO Act. Regarding the

offences under Sections 312 and 313 of IPC, it is discernible from the statement of the victim and the witnesses that the victim reached the hospital

with profused bleeding and on the verge of miscarriage. Then the doctor had given treatment to complete the process of miscarriage with a bona fide

attempt to save the victim. Thus, prima facie, offences under Sections 312 and 313 of IPC also would not attract, against the petitioner. In such view

of the matter, prosecution against the petitioner is liable to be quashed.

11. Before adieu, it is inevitable to observe that I had occasion to come across many cases where doctors being inveigled into criminal cases under the

POCSO Act within the sweep of Section 21 r/w Section 19, urging that there was failure to report the crime as stipulated in Section 19. In this regard,

it is high time to address on this issue. Doctors are bestowed with the duty to save the life of the patients and have been busily engaged in their vow.

Therefore, while implicating doctors in criminal cases with the aid of Section 19 of the POCSO Act, the investigating officer must apply his mind from

the materials collected and form an unbiased opinion to see, prima facie, that there is deliberate intention or omission to report the crime. Unless the

said deliberate intention not divulged from the records, unwanted implication of doctors in crime shall be avoided. It is noticed that doctors got arrayed

as accused with the aid of Section 19 of the POCSO Act mechanically, without applying the mind of the investigating officer. This is nothing but

absolute injustice and putting the doctors under mental trauma of criminal prosecution and the same would stand as a rider for the doctors in doing

their duties promptly. Therefore, the investigating officers are specifically directed to be more cautious when doctors' involvement is doubted in

POCSO offences and implication of doctors in criminal cases under the POCSO Act shall be avoided unless relevant materials do not justify the

same.

12. In the result, this Criminal Miscellaneous Case stands allowed. Annexure A1 final report in SC.495 of 2020, pending before Fast Track Special

Court, (POCSO Cases), Hosdurg, arose out of Crime No.377/2020 of Neeleswaram Police Station, Kasargode District, against the petitioner stands

quashed.

Registry is directed to forward copy of this order to the Director General of Police, Trivandrum to take necessary steps in this regard to ensure

compliance of the directions in paragraph No.11 of this order by the investigating officers hereafter, without fail.