REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 961 OF 2018
[ARISING OUT OF SLP (CRL.) NO. 3712 OF 2018]

DR. SR. TESSY JOSE AND OTHERS .....APPELLANT(S)
VERSUS

STATE OF KERALA .....RESPONDENT(S)

J U D G M E N T

A.K.SIKRI, J.

After hearing this matter on 1st August, 2018, following order was passed:

> "Leave granted.
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> We have heard the arguments.
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> We are informed that the trial is in progress today before the trial court. Since, there is not enough time to dictate the judgment, we are allowing this appeal so that the decision is conveyed to the trial court. Reasons to follow.
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> A copy of this order may be provided to the counsel for the parties."

2. We are now stating our reasons which led us to allow the appeal of the appellants.

3. First Information Report under the provisions of Protection of Children from Sexual Offences Act, 2012 (For short, POCSO Act) has been registered in which charge sheet has been filed and the case registered as Sessions Case No. 460 of 2017 is pending before the Special Judge, Ernakulam. The appellants herein are arrayed as accused nos. 3, 4 and 5. Insofar as the appellants are concerned, allegations against them are under Sections 201 read with Section 34 of the Indian Penal Code (for short, 'IPC'), Section 19(1) read with Section 21(1) of POCSO Act and Section 75 of the Juvenile Justice Act.

4. The case of the prosecution, in brief, is that accused no. 1 had raped the victim when she was a minor in the year 2016. As a result, she became pregnant. As per victim's 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 advance stage of pregnancy. In fact, soon after she was brought to the hospital, she went into labour. She delivered the child. Insofar as the

appellants are concerned, their role is that they attended to the victim. Appellant no. 1 is a 66 years' old lady who is a Gynecologist 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 years' old Hospital Administrative. She is roped-in in that capacity though she did not attend to the victim or the baby.

5. 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. This Section reads as under:

> "Section 19 (I) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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—
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> (a) the Special Juvenile Police Unit; or
> (b) the local police.
>
> (2) Every report given under sub-section(I) 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 (I) is given by a child, the same shall be recorded under Section (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)."

6. As is clear from the aforesaid provision, a person who had an apprehension that an offence under the said Act is likely to be committed or has knowledge that such an offence had been committed would be required to provide such information to the relevant authorities.

7. Thus, what is alleged against the appellants is that they had the knowledge that an offence under the Act had been committed and, therefore, they were required to provide this information to the relevant authorities which they failed to do.

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.

10. The term "knowledge"has been interpreted by this Court in ***AS Krishnan and Others v. State of Kerala***[1] to mean an awareness on the part of the person concerned indicating his state of mind. Further, a person can be supposed to know only where there is a direct appeal to his senses. We have gone through the medical records of the victim which were referred by Mr. Basant R., Senior Advocate for the appellants. The medical records, which are

1 (2004) 11 SCC 576

relied upon by the prosecution, only show that the victim was admitted in the hospital at 9.15 am and she immediately went into labour and at 9.25 am she gave birth to a baby. Therefore, appellant no. 1 attended to the victim for the first time between 9.15 am and 9.25 am on 7th February, 2017. The medical records of the victim state that she was 18 years' old as on 7th February, 2017. Appellant no. 1 did not know that the victim was a minor when she had sexual intercourse.

11. Appellant no. 2 had not even examined the victim and was not in contact with the victim. As per the medical records relied upon by the prosecution, the baby was attended to by appellant no. 2 at 5.30 pm on 7th February, 2017. He advised that the baby be given to the mother. Therefore, appellant no. 2 had no occasion to examine/treat the victim.

12. Appellant no. 3 had not come in contact with the victim or the baby at all. Being the administrator of the hospital it was not possible for her to be aware of the details of each patient. Considering that the victim was brought to the said hospital for the first time on 7th February, 2017, it would not be possible for appellant no. 3 to be aware of the circumstances surrounding the admission of the victim.

13. The knowledge requirement foisted on the appellants cannot be that they ought to have deduced from circumstances that an offence has been committed.

14. Accordingly, we are of the view that there is no evidence to implicate the appellants. 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. Accordingly, these appeals are allowed and the proceedings against the appellants in the aforesaid Sessions Case No. 460 of 2017 are hereby quashed.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

NEW DELHI;
AUGUST 01, 2018.