

BEFORE THE JUVENILE JUSTICE BOARD : AT : KARIMNAGAR.

PRESENT:- Smt Sampathi Rao Chandana
I-Addl. Judl. Magistrate of First Class-
cum-Prl.Magistrate, Juvenile Justice Board,
Karimnagar.

Wednesday, the 27th day of May, 2020.

J.C.C.No. 01 of 2018.

Between:

The State through Sub-Inspector of Police,
P.S.Dharmapuri, (Crime No.36 of 2016).

...Complainant.

And

CCL: Peetla Venkatesh, S/o Venkati, Age: 17 years, Waddera,
R/o Dharmapuri village.

...Child-in-Conflict with Law.

This case is coming before me on 21.05.2020 for final hearing in the presence of Senior A.P.P., for the state and of Sri Md.Mobin, Counsel for the Child-in-Conflict with Law. having been heard and stood over for consideration to this day, the Court delivered the following:

:: FINAL ORDER ::

The Sub-Inspector of Police, Dharmapuri P.S, has filed charge sheet against Child-in-Conflict with Law in Cr.No.36 of 2016 for the offences under Sections 417,420, 376, 506 r/w 34 of Indian Penal Code (herein referred as “ IPC ”) and Section 4 of Protection of Children from Sexual Offences, 2012 (herein after referred as POCSO Act).

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

The complainant/L.W.1/Sampangi Anjamma came to police station and lodged a complaint before the police stating that she is resident of Dharmapuri village by doing coolie work, that her daughter/L.W.2/Sampangi Jyothi/victim is residing at home lonely. The CCL is also resident of Dharmapuri village. The CCL has developed greedy and lusty eye on the LW.2, that the CCL

frequently came to the house of the L.W.2 when she was alone in the house. Thereafter, the CCL followed her since eight months and told that he is loving her. The CCL induced the LW.3 in guise of love and promised to get marry her and with deceitful words the CCL participated in sexual intercourse with her since last six months, which was also known to the A.2. Then the CCL sexually exploited the L.W.2 at the outskirts of their colony at ten days back to the date of report and the incident witnessed by the L.W.3/Sampangi Kishan who is younger brother of victim/L.W.2. On knowing the incident L.W.1 and L.W.2 asked the CCL about marriage, but the CCL and his mother/A.2 bluntly told and refused to get marry her and threatened with dire consequences, thereby cheated the LW.2. Finally the complainant requested to take necessary action against the CCL and his mother/A.2. Then the mother of the complainant lodged the report with police. On its basis, a case in Cr.No.36 of 2016 was registered for the offences under Sections 417, 420, 376 and 506 r/w 34 of IPC and Section 4 of POCSO Act, 2012. During the course of investigation statements of witnesses were recorded. After completion of investigation, the police filed charge sheet against Child-in-Conflict with Law for offences under Section 417, 420, 376 and 506 r/w 34 of IPC and Section 4 of POCSO Act, 2012.

3. On receiving notice, the Child-in-Conflict with Law appeared before the Board and copies were furnished to him as required under Section 207 of Cr.P.C.

4. The Juvenile Justice Board took cognizance against the Child-in-Conflict with Law for the offences punishable Under Sections 417, 420, 376 and 506 r/w 34 of IPC and Section 4 of POCSO Act, 2012.

5. The Child-in-Conflict with Law was examined under Section 251 of Cr.P.C by explaining to him the substance of the accusations levelled against him for the offences Under Sections 417, 420, 376 and 506 r/w 34 of IPC and Section 4 of POCSO Act,2012 for which he pleaded not guilty and preferred for inquiry.

6. During inquiry, the prosecution has examined P.Ws. 1 to 12 and got marked Exs.P.1 to P.10 on its behalf.

7. After the closure of evidence of prosecution, the Child-in-Conflict with Law was examined under Section 313 of Cr.P.C, by explaining to him in his vernacular language the incriminating material appearing against him in prosecution evidence, the CCL denied the same and reported no defense evidence.

8. Heard both sides through phone call in the presence of concerned Court staff, the learned Sr.A.P.P advanced his arguments by stating that prosecution witnesses i.e., P.Ws.1 to 12 supported the case of prosecution without any contradictions and the said offence was committed against the P.W.2, the learned Sr. A.P.P further submitted that on considering the sufficient and irributable evidence on hand in favour of the prosecution case the CCL may be found in conflict with law and requested to punish the CCL accordingly in the interest of justice.

In turn the counsel for CCL vehemently argued that the CCL is no way concerned with the present offence and there is no document filed by the prosecution that the victim was a minor on the date of incident and the medical evidence did not reveal that the victim experienced sexual assault in

the hands of the CCL and finally prayed not to find the CCL in conflict with law for the alleged offences.

9. Now the point for determination:

1. *Whether the prosecution succeeded in establishing that the CCL was minor on the date of the incident ?*

2. *Whether the CCL followed the victim in the name of love and and sexually exploited the victim ?*

3. *Whether the prosecution proved that the CCL cheated the victim and committed rape against the victim thereby committed offences defined under Section 417 which is punishable under Section 420 of IPC and under Section 376, 506 of IPC and Section 4 of POCSO Act, 2012 beyond all reasonable doubt ?*

4 *To what finding ?*

10. POINT NO.1:

The Ex.P.9/date of birth certificate of CCL clearly shows that on the date of the incident the CCL was aged below eighteen years. The Ex.P.9 was not disputed by the counsel for CCL hence it can be considered that on the date of the incident the CCL was aged below eighteen years as such the CCL shall be tried under the provisions of Juvenile Justice Act, 2015. The point is answered accordingly.

POINT NO.2:

On perusal of entire record it can be said that the complaint was lodged on 10.03.2016 by stating that one week prior from the date of the complaint, the P.W.2/victim was sitting along with the CCL at stream in their village on observing them by the P.W.3 who is the brother of P.W.2/victim the CCL ran away. Later the P.W.3 questioned the victim about the CCL then she said that the CCL is in love with her and the CCL participated in sexual intercourse

with her with a promise to marry her. On knowing the same the P.W.3 informed the same to his mother/P.W.1/complainant. Later the complainant questioned the victim and narrated the same to the parents of CCL. The parents of the CCL agreed to perform the marriage of victim with the CCL. But they have failed to fulfill the promise as such the P.W.1 came up with a complaint against the CCL. It is true there is a delay in lodging complaint by P.W.1 against the CCL even though the P.W.1 came to know the alleged offence prior to one week from the date of the complaint. The P.W.1 in the complaint itself specifically mentioned they have waited with a hope that the CCL family come up with a compromise and perform the marriage of the victim with the CCL. The reasons given by the P.W.1 are satisfactory because any prudent man especially in Indian Scenario will wait to settle the matter in related to sexual offences against their innocent daughters amicably. Moreover, in number of Judgments pronounced by the Apex Court again and again stated that delay in lodging complaint especially in relation to sexual offences shall not be considered as fatal to the case of the prosecution. Hence, herein this case the reasons provided for the delay in lodging complaint is considered to be satisfactory.

When it comes to the question whether the CCL followed the victim in the name of love and exploited sexually with a false promise of marriage. The P.W.1 the complainant herein this case along with P.W.3 consistently deposed that the victim informed them that the CCL followed her in the name of love and exploited her sexually with promise of marriage. When it comes to question of law with regard to sexual intercourse, that is purely within the knowledge of the victim and the culprit. As such herein this case if we see

the Sec 161 Cr.P.C, Sec 164 Cr.P.C statements and the evidence given by the victim before the board there is a consistency that the CCL followed her in the name of love from six months prior to the date, when they were noticed by the P.w.3 the brother of the victim at the stream of their village. Moreover, the victim consistently deposed that she had participated into sexual intercourse in several times with the CCL as the CCL promised her to get marry. So, the consistency in the evidence of P.W.2 clearly establishes that the CCL followed her in the name of love.

When it comes to the question of sexual intercourse it can be verified by conducting medical examination to the victim girl. Herein this case the investigating officers subjected the victim girl to medical examination and the P.W.6/Dr.N.Sudhakashini Devi who conducted medical examination on 11.03.2016 which is evident under Ex.P.4 admitted that she had collected that two vaginal smears, two vaginal swabs and vaginal wash sent to the R.F.S.L,Hyderabad. The on verification of the R.F.S.L report marked under Ex.P.5 shows that seaman and spermatozoa are detected on item No.1 and on such report the P.W.6 gave her final opinion that “ **possibility of sexual intercourse cannot be ruled out** ”. So, the medical evidence of P.W.6 supported by Exs.P.4 to P.6 establishes that the victim experienced the sexual intercourse. Moreover the P.W.6 specifically stated that on her examination of the victim she found hymen is not intact admitting two fingers without pain. Hence the evidence of P.W.2 corroborated with the evidence of P.W.6. It is true the medical report and R.F.S.L reports are not at all conclusive proofs but it can be taken into consideration as a corroboration when there is absolute evidence in relation to the offence. Hence the oral evidence of the P.W.2 in

conformity with the medical evidence would show that the CCL committed rape against the victim. The defense counsel did not furnish any evidence either in oral or documentary form to discredit the evidence of P.W.2, P.W.6 and Exs.P.4 to P.6 and the P.W.1 in her cross examination admitted that the P.W.2/victim got married with another person, by eliciting that fact from the P.W.1 the defense counsel tried to bring to the notice of the board that the victim already married as such there is no use of trying the CCL but the marriage of the victim girl after the sexual offence will not wash out her memory and agony till her death so that contention is not considered by this board and she had denied no offence committed against the victim by the CCL and the CCL falsely implicated into the offence by keeping the previous grudges but there is no evidence advance by the defence counsel to prove the same. Likewise the P.W.2 and P.W.3 denied the suggestions put forth by the defense counsel. In the absence of irribatubal evidence the Court can draw a conclusion that the victim was followed by the CCL in the name of love and the victim exploited sexual intercourse by the CCL. There appears no prudent reason for not believing the version of the prosecution. Hence the point is answered in favour of the prosecution.

POINT NO.3:-

With the discussion made under point No.2 it is clear that the CCL followed the victim in the name of love and the victim was forced to sexual intercourse at the behest of the CCL. Now it is to be see that whether the P.W.1 the mother of the victim requested the parents of the victim and they had promised to perform the marriage of the victim with the CCL but they have failed to do so, in support of this contention the prosecution got examine

L.W.4 who was cited as circumstantial witness to the incident as P.W.4. Wherein the P.W.4 consistently stated in her 161 Cr.P.C statement in her chief examination before the board that she came to know at about four years back on one day when she returned to her house after completion of the daily work she noticed that the P.W.3 took his sister into their house forcibly on her enquiry the P.W.1 and P.W.3 he narrated that the CCL used the victim sexually and on the next day a panchayath was held in the presence of caste elders where the CCL agreed to marry the victim girl but failed to fulfill his promise as such the P.w.1 lodged a complaint against the CCL and his parents, as a circumstantial witness she came to know the entire incident through P.Ws.1 to 3.

The defence counsel failed to adduce any evidence to discredit the evidence of P.W.4. The counsel for CCL argued that in the absence of the examination of any of the panchayath elders by the prosecution how the Court can draw a conclusion that a panchayath was held. It is true that none of the panchayath elders were cited as witnesses and they were not examined by the prosecution but that is not a valid ground to discredit the evidence of P.W.4 when she had specifically mentioned that a panchayath held on the next day, when she came to know about the acts of CCL through P.Ws.1 to 3. The Section 134 of Indian Evidence Act specifically stated that “no particular number of witnesses shall in any cases be required for the proof of any fact”. Hence the evidence of P.W.4 with stand with the cross examination. Hence this board is of considered view that the prosecution establish that the CCL cheated the accused in the name of love with a false promise of marriage and sexually exploited the victim. There appears no prudent reason for not

believing the version of the prosecution that the CCL cheated the victim, committed rape thereby committed the offence under Sections 417, 420, 376 and 506 IPC and Section 4 of POCSO Act, 2012 the P.Ws.10 to 12 investigated in to the matter without any lapses and their oral evidence supported with the Exs.P.7 to P.10.

In view of the above discussion this board is in the considered view that the CCL committed the offences. Hence the point is answered in favour of the prosecution.

POINT NO.5:

In the result, the CCL is found in Conflict with Law under Section 18 of Juvenile Justice Act, 2015 for the offences under Sections 417, 420, 376 and 506 IPC and Section 4 of POCSO Act, 2012.

Typed to my dictation directly on computer by Personal Assistant, corrected and pronounced by me in the Board on this the 27th day of May, 2020.

I-Addl. Judl. Magistrate of First Class
cum-Prl.Magistrate, Juvenile Justice Board,
Karimnagar.

The board found the CCL is in conflict with law and the same is pronounced through the phone call to both the counsels due to the out break of Covid-19, this Board is unable to secure the presence of the CCL to question about the quantum of sentence as such the matter is posted for pronouncing quantum of sentence to 08.06.2020.

Typed to my dictation directly on computer by Personal Assistant, corrected and pronounced by me in the Board on this the 27th day of May, 2020.

I-Addl. Judl. Magistrate of First Class
cum-Prl.Magistrate, Juvenile Justice Board,
K A R I M N A G A R.

Date: 01.07.2020.

Hearing on the quantum of sentence, the CCL submitted through video call that he is aged of 18 years, and he is eking his lively hood as a daily labour. The CCL also submitted that his parents doesn't have sound financial capacity to look after themselves or his sister as such the entire family burden is on his shoulder any stringent punishment would lead to grave difficulty to his family, as such prayed mercy of this board in sentencing him.

The Board has sympathy with the submissions made by the CCL. However, considering the nature of the offence and the vulnerable position of the victim and on considering frequent occurrence of these kind of offences against the innocent children the mitigating circumstances submitted by the CCL appears to be less weight, considering the legislative intention and also mitigating circumstances submitted by the CCL I am of the considered opinion that a moderate view cannot be taken in the present case for imposing punishment on the CCL.

In the result, this Board is passing orders against the CCL under Section 18 (1) (f) of Juvenile Justice Act, 2015, the CCL is released on probation of good conduct and placed under the care and supervision of District Probation Officer, Karimnagar **for a period of three years for the offences under Sections 417 of IPC, the** CCL is also placed under the care and supervision of District Probation Officer, Karimnagar **for a period of three years for the offences under Sections 420 of IPC, the** CCL is also placed under the care and supervision of District Probation Officer, Karimnagar **for a period of three years for the offences under Sections 376 of IPC, the** CCL is also placed under the care and supervision of District Probation Officer, Karimnagar **for a period of three years for the offences under Sections 506 of IPC, the** CCL is also placed under the care and supervision of District Probation Officer, Karimnagar **for a period of three years for the**

offences under Section 4 of POCSO Act, 2012. The entire period of supervision of the District Probation Officer, Karimnagar for the said offences shall run concurrently. The District Probation Officer, Karimnagar is directed to supervise the child and submit the report on conclusion of the said period.

The CCL is apprised of his right to prefer appeal against the final order sentence passed by this board. The CCL reported that he is having means to engage counsel for preferring the appeal.

The office is direct to furnish true copy of final order to the CCL forthwith.

Typed to my dictation directly on computer by Personal Assistant, corrected and pronounced by me in the Board on this the 01st day of July, 2020.

I-Addl. Judl. Magistrate of First Class
cum-Prl.Magistrate, Juvenile Justice Board,
K A R I M N A G A R.

APPENDIX OF EVIDENCE:
WITNESSES EXAMINED:

FOR THE PROSECUTION:

P.W.1:	S.Anjamma.
P.W.2:	S.Jyothi
P.W.3:	S.Kishan
P.W.4:	B.Laxmi
P.W.5:	Ch.Mallaiah
P.W.6:	Dr.N.Sudhakshina Devi.
P.W.7:	S.Rajam
P.W.8:	A.B.Durga
P.W.9:	S.Mallaiah
P.W.10:	B.Santhosh Kumar
P.W.11:	Ch.Srinivas
P.W.12:	M.Venkataramana

FOR THE DEFENCE: -None-

EXHIBITS MARKED

FOR THE PROSECUTION:

Ex.P.1	Complaint.
Ex.P.2	Section 164 Cr.P.C statement of P.W.2

Ex.P.3	Signature of PW.5 on crime details form.
Ex.P.4	Medical certificate along with requisition.
Ex.P.5	R.F.S.L report.
Ex.P.6	Final opinion.
Ex.P.7	Express FIR.
Ex.P.8	Age proof certificate.
Ex.P.9	Date of birth certificate of CCL
Ex.P.10	Potency certificate.

FOR THE DEFENCE: -None-

MATERIAL OBJECTS:- -Nil-

I-Addl. Judl. Magistrate of First Class
cum-Prl.Magistrate, Juvenile Justice Board,
K A R I M N A G A R.

