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Crl.A(MD)No.83 of 2023

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K.K.RAMAKRISHNAN, J.

This appeal is listed today under the caption 'for being mentioned' at the instance of the learned counsel for the appellant.

2. The learned counsel for the appellant submitted that there was some typographical error in the order dated 11.08.2023 viz., crime number was wrongly mentioned as **“Crime No.3 of 2020” instead of “Crime No.15 of 2021”** and the special case number was typed as **“Spl.S.C.No.17 of 2020” instead of “Spl.S.C.No.172 of 2021”** and the respondent police was typed as **“Madurai Town All Women Police Station” instead of “Thirupparankundram All Women Police Station”**.

4. Heard both side counsel and perused the order dated 11.08.2023 in Crl.A(MD)No.83 of 2023.

5.The learned Government Advocate(criminal side) has no objection to carry out the above said corrections in the order dated 11.08.2023.

6. Since it is a typographical error, the Registry is directed to



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carry out the above said corrections in the order copy dated 11.08.2023 in Crl.A(MD)No.83 of 2023 wherever it is necessary and also to substitute the last para as follows:

“13. In the result, this Criminal Appeal is allowed and the judgment passed in Spl.S.C.No.172 of 2021 dated 30.08.2022 on the file of the learned Sessions Judge, Special Court for the Exclusive Trial of Protection of Children from Sexual Offences Act cases-cum-Sessions Court, Madurai, is hereby set aside and the appellant is acquitted from the charges. The appellant is directed to be released forthwith unless his presence or custody is required in connection with any other case. The compensation granted by the learned Special Judge in respect of the victim girls remains unchanged.”

6. The Registry is directed to issue a fresh order copy to the parties after making the above said corrections by marking a copy to the **Superintendent of Prison, Central Prison, Madurai.**

26.09.2023

PJL

Note:Issue order copy on 27.09.2023.



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Copy to:
The Superintendent of Prison,
Central Prison, Madurai.



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27.09.2023



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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.08.2023

CORAM

THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD)No.83 of 2023

Muthuramalingam

.. Appellant / Sole Accused

Vs.

The State rep. by

The Inspector of Police,

Madurai Town All Women Police Station,

Madurai City.

(Crime No.3 of 2020)

.. Respondent/

Complainant

PRAYER: Appeal filed under Sections 374(2) of the Criminal Procedure Code, to call for the records relating to the judgment passed in Spl.S.C.No.17 of 2020 dated 30.08.2022 on the file of the learned Sessions Judge, Special Court for the Exclusive Trial of Protection of Children from Sexual Offences Act cases-cum-Sessions Court, Madurai, and set aside the same.



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For Appellant : Mr.M.S.Suresh Kumar

For Respondent : Mr.R.Sivakumar
Government Advocate (Criminal side)

JUDGMENT

The sole accused in Spl.S.C.No.17 of 2021 on the file of the learned Special Judge, Special Court for the Exclusive trial of POCSO Act cases-cum- Sessions Court, Madurai, filed this appeal challenging the conviction and sentence imposed by the learned Special Judge vide order dated 30.08.2022 in Spl.S.C.No.17 of 2021. The appellant was convicted for the offence under Sections 11(i) and 12(2 counts) of the Protection of Children from Sexual Offences Act, 2012, and sentenced to undergo three years simple imprisonment for each count (totally 6 years) and a fine of Rs.1,000/- for each count (totally Rs.2000/-), in default, to undergo simple imprisonment for six months for each count (totally 1 year) and ordered to undergo the sentence concurrently. He also awarded compensation of Rs.50,000/- each, to the victim girls. Challenging the same, the appellant is before this Court.



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2. Case of the prosecution:

The appellant is a mason and he is living in No.482, Nallammal Compound, Sangupillai Matt, Sinthamani, Madurai. In the said compound, number of persons are residing. The appellant drinking liquor everyday heavily and in an inebriated condition causing nuisance without even noticing his Dhoti slipping down and running helter-skelter around the compound, losing control of himself and lying around there is a regular feature. According to the prosecution, on 26.07.2021 at 7.45 pm., when the complainant and other persons were waiting near the public water tap to fetch water in front of the compound, the victim girls/PW.3 & PW.4 were playing around. At that time, the appellant committed sexual assault on the victim girls by stroking their private parts and also caused sexual harassment by lifting his Dhoti and exposing his private part to the victim girls in an inebriated condition. Therefore, the respondent police, on receipt of the complaint from PW.1, registered the case in Crime No.15/2021 against the appellant for the offence under Sections 9(m), 10 (2 counts), 11(i), 12(2 counts) of the the Protection of Children from Sexual Offences Act, 2012 (hereinafter called as 'the POCSO Act').



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2.2. The investigation officer-PW.15, after arresting the appellant on 27.07.2021 itself, conducted the investigation and after collecting the material documents, entrusted the investigation to PW.16. Thereafter PW.16 completed the investigation and filed the final report before the Special Court for the offence under Sections 9(m), 10(2 counts), 11(i), 12(2 counts) of the POCSO Act. The learned trial Judge, after framing necessary charges, questioned the accused and the accused pleaded not guilty and stood for trial.

2.3. On the side of the prosecution, to prove the charges, PW.1 to PW.16 were examined and Ex.P1 to Ex.P17 were marked and also Court document-Ex.C1 was marked. The learned trial Judge, questioned the appellant under Section 313 Cr.P.C by putting the incriminating circumstances available against him and the appellant denied the same as false. Neither witness nor document was produced on the side of the defence.

3. The learned trial Judge, considering the above documents and submission of the learned counsel for the accused and the learned



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Public Prosecutor, acquitted the appellant under Sections 9(m) and 10(2 counts) of the POCSO Act, holding that the victims never deposed before the Court that the appellant touched their private parts and hence the offence under Sections 9(m) and 10(2 counts) of the POCSO Act, are not made out. But the learned trial Judge convicted the appellant for the offence under Sections 11(i), 12(2 counts) of the POCSO Act, holding that the prosecution proved the case that the appellant lifted his Dhoti and had shown his private parts to the victim girls and thereby, he committed the offence of sexual harassment and imposed the sentence as stated above by passing the impugned judgment dated 30.08.2022 in Spl.S.C.No.172 of 2021.

4. Challenging the same, the appellant preferred the above appeal on the grounds stated in the memorandum of grounds of appeal.

5. The learned counsel for the appellant submitted that even as per the prosecution, the appellant is aged about 52 years and doing mason work. At the time of the occurrence, he was in an inebriated condition without even noticing that his Dhoti is slipping down and



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losing control of himself and lying there. Some of the witnesses assaulted him and hence, he fled from the place of the occurrence. In the said circumstances, the evidence of the prosecution witnesses that he lifted the Dhoti and showed the private parts with criminal intention to the victim girls in the night hours around 7.45 p.m on 26.07.2021 is unbelievable. Therefore, the appellant committed offences under Sections 11(i) and 12(2 counts) of the POCSO Act, with criminal intent is not convincing and hence, the ingredients of Sections 11(i) of the POCSO Act, are not made out.

6. The learned counsel for the appellant further submitted that the learned trial Judge, after acquitting the appellant from the charges under Sections 9(m) and 10(2 counts) of the POCSO Act, ought not to have convicted the appellant under Sections 11(i) and 12(2 counts) of the POCSO Act, on the basis of the same evidence.

7. The learned counsel for the appellant further submitted that the evidence of the victim girls are not trustworthy and the remaining evidence also not corroborated with the version of the victim girls. Only



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because the appellant caused nuisance in the locality under the influence of alcohol, a false case was registered against the appellant.

8. Further, he submitted that the appellant is inside the jail from the date of occurrence and hence, he seeks for the modification of sentence in the event of the Court finds that the appellant is guilty of the above charge.

9. On the other hand, the learned Additional Public Prosecutor submitted that PW.3 clearly testified about the sexual harassment at the hands of the appellant. Hence, the acquittal under Sections 9(m) and 10 (2 counts) of the POCSO Act, is not a bar to render the conviction under Sections 11(i) and 12(2 counts) of the POCSO Act. The prosecution proved the charges on the basis of the available evidence. Hence, he prayed for the confirmation of the conviction.

10. This Court has considered the rival submissions and also perused the records and the precedents relied upon by them.



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11. Now, the only question arises for consideration in this case is *whether the conviction passed by the learned trial Judge under Sections 11(i) and 12(2 counts) of the POCSO Act, is sustainable after acquitting the appellant for the offence under Sections 9(m) and 10 (2 counts) of the POCSO Act, on the basis of evidence adduced by the prosecution?*

11.1. The appellant is aged about 52 years. He is a mason. He is residing at 482, Nallammal Compound, Sangupillai Matt, Sinthamani, Madurai. He is a drunkard. Further, he was roaming around the compound in the inebriated condition even without knowing the slipping of his dress and groaning and lying in different places in the compound. In the said condition, it is alleged that on 26.07.2021, at 7.45 p.m, the appellant committed sexual assault on the victim girls, namely, PW.3 and PW.4 by stroking their private parts and also committed offence of sexual harassment of showing his private part to the victim girls by lifting his Dhoti. After the occurrence, when PW.1 questioned the same, the appellant was in a drunken mood and fled from the scene of occurrence.



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12. Material portion charges as follows:

“விளையாடிக் கொண்டிருந்த போது அங்கு வந்த நீர் பாதிக்கப்பட்ட சிறுமி XXXX-ன் தங்கையை அவர்களுடைய வீட்டில் உள்ளே வைத்து கதவைப் புட்டிவிட்டு பாதிக்கப்பட்ட சிறுமி XXXX-ன் மார்பையும் இடுப்பையும் தொட்டு இழுத்துள்ளீர். பின்னர் பாதிக்கப்பட்ட சிறுமி YYYன் கையை பிடித்து இழுத்துள்ளீர். பின்னர் உமது கைலியை தூக்கி பாலியல் தாக்குதல் புரிந்துள்ளீர்கள்.

மேற்படி சம்பவத்தின் தொடர்ச்சியாக உமது கைலியை தூக்கி உமது ஆண் உறுப்பை பாதிக்கப்பட்ட சிறுமிகள் XXXX மற்றும் YYY பாரக்கும்படி செய்து பாலியல் தாக்குதல் புரிந்துள்ளீர்.”

12.1. To prove the above said charges, the prosecution ought to have proved the following incidents:

(i) The appellant forcefully took the victim girls to their house and committed sexual assault on them by stroking their private parts.

(ii) When the victim girls were playing around their house, the appellant committed the offence of sexual harassment by lifting his Dhoti and showed his private parts to the victim girls.

12.2. Both victims never deposed in the above said line. They deposed that the appellant never took them to the house and stroked their



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private parts. But they deposed that the appellant only lifted his Dhoti and not even stated that the appellant showed his private part to them. When the allegation of committing the sexual assault by stroking the private parts of the victim girls is not proved, subsequent event of lifting of the Dhoti is highly improbable in the special circumstances of this case that the prosecution witnesses on seeing the appellant in a drunken state, shouted at him and assaulted him and hence, he fled from the scene of occurrence.

12.3. The above conclusion is also supported by the evidence of PW.7, who deposed that he is one of the residents of the said compound and the appellant was residing in the said house for the past two years and prior to the occurrence, he never committed such a shameful act in the said compound. Further, he deposed that the appellant was also in an inebriated condition, running helter-skelter and lying over there in the compound.

12.4. Even as per the prosecution witnesses, the appellant was in drunken and inebriated condition which impaired his senses. He did



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not even notice the slipping down of his Dhoti. Therefore, the witnesses assaulted him and hence he fled from the scene of occurrence. Hence, two views are available on the face of records. One view is that the appellant lifted his Dhoti and the another view is the appellant was in an inebriated condition, running helter-skelter and lying in different places in the compound without even noticing the slipping down of his dhoti. It is settled principle that when two views are available in respect of the same fact, benefit of doubt should be given to the accused.

12.6. In overall circumstances, this Court is of the view that the prosecution failed to prove the charge of sexual harassment with the necessary criminal intent as required under Sections 11(i) and 12(2 counts) of the POCSO Act. Accordingly, the question arising for consideration is answered in favour of the appellant.

13. In the result, this Criminal Appeal is allowed and the judgment passed in Spl.S.C.No.17 of 2020 dated 30.08.2022 on the file of the learned Sessions Judge, Special Court for the Exclusive Trial of Protection of Children from Sexual Offences Act cases-cum-Sessions



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Court, Madurai, is hereby set aside. The compensation granted by the learned Special Judge in respect of the victim girls remains unchanged.

11.08.2023

Index: Yes/No
Internet: Yes/No
NCC : Yes/No
PJJ

To

1. The Sessions Judge,
Special Court for the Exclusive Trial
of Protection of Children from Sexual
Offences Act cases-cum-Sessions Court,
Madurai.

2. The Inspector of Police,
Madurai Town All Women Police Station,
Madurai City.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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