



Crl.A.No.14 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

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Rangasamy

...Accused/Appellant

VS.

The State represented by its
Inspector of Police,
Kovilpalayam,
G.Chavadi Police Station,
Coimbatore,
(Crime No.724 of 2020)

...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973, to set aside the Judgment and Sentence and Conviction imposed upon the appellant herein by the learned Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore in Special Calender Case No.2 of 2021 dated 30.11.2022 and acquit the appellant.

For Appellant : Mr.R.Karthikeyan

For Respondent : Dr.C.E.Pratap
Government Advocate (Crl.Side)



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JUDGMENT

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This Criminal Appeal has been filed by the accused, challenging the conviction and sentence imposed upon him, vide Judgment dated 30.11.2022 in Spl.C.C.No.2 of 2021, on the file of the learned Sessions Judge, Principal Special Court For Exclusive Trial of Cases under the Protection of Children from Sexual Offences Act, Coimbatore.

2 (a). The case of the prosecution is that the appellant/accused and the victim were neighbours; and that on 14.07.2020, at about 4.30 p.m., while the victim was playing outside her house, the appellant/accused took the victim to his house and with a sexual intent, hugged her and kissed her on the forehead and thereby committed the offence under Section 7 r/w 8 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO Act).

(b). It is further the case of the prosecution that P.W.2, the mother of the victim girl, on coming to know of the occurrence, had lodged a complaint [Ex.P2] on 15.07.2020, at about 11.30 a.m. P.W.7/Sub Inspector of Police,



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received a complaint and registered the same in Crime No.724 of 2020 for the offence under Section 7 r/w 8 of the POCSO Act. Thereafter, P.W.8/Inspector of Police took up the investigation and after taking steps to record the statement of the victim under Section 164 of Cr.P.C., and examination of other witnesses, filed the Final Report for the alleged offence under Section 7 r/w 8 of the POCSO Act.

(c). On the appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with, and the trial Court framed charges against the appellant, and when questioned, the appellant pleaded 'not guilty.'

(d). To prove the case, the prosecution examined eight witnesses as P.W.1 to P.W.8, marked nine exhibits as Exs.P1 to P9 and the statement of the victim under Section 164(5) Cr.P.C., was marked as Ex.C1. When the appellant was questioned under Section 313 of the Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. The appellant did not examine any witnesses or mark any documents.



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WEB COPY (e). On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established its case beyond reasonable doubt and held the appellant guilty of the offence under Section 7 r/w 8 of the POCSO Act. The appellant was convicted and sentenced as follows:

<i>Offence under</i>	<i>Sentence imposed</i>
7 r/w 8 of the POCSO Act.	To undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/-, in default to undergo further three months of simple imprisonment.

Hence, the accused has preferred the appeal challenging the said conviction and sentence.

3. Heard, Mr.R.Karthikeyan, learned counsel appearing for the appellant and Dr.C.E.Pratap, learned Government Advocate (Crl.Side), appearing for the respondent/State.

4. The learned counsel for the appellant/accused submitted that all the witnesses except the official witnesses turned hostile and the trial Court erred in convicting the appellant on the basis of the evidence of the witnesses



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in the chief examination without considering the credibility of their deposition; and therefore, the Judgment of the conviction is liable to be set aside.

5. The learned Government Advocate (Crl.Side) submitted that the evidence of the witnesses would show that they have been won over by the appellant; and that all of them turned hostile during cross-examination, although the consistent case of the witnesses is that the appellant/accused committed the offence of sexual assault; therefore there is no infirmity in the Judgment of the Trial Court and hence prayed for dismissal of the appeal.

6. This Court carefully considered the submissions made on either side and perused the records.

7. As stated earlier, the prosecution had examined eight witnesses. P.W.1 is the victim girl. P.W.2 is the mother of the victim girl and the *de-facto* complainant. P.W.3 is the father of the victim girl. P.W.4 is the Observation Mahazar Witness. P.W.5 is the uncle of the victim girl. P.W.6 is



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the Headmistress of the school where the victim studied and had issued a bonafide certificate [Ex.P5]. P.W.7 is the Sub-Inspector of Police who registered the FIR. P.W.8 is the Investigating Officer, who conducted the investigation.

8. The complaint, as stated earlier, was lodged by P.W.2/mother of the victim, on the information given by P.W.1/victim girl. It is the initial version of P.W.1 and P.W.2 that the appellant took the victim/P.W.1 into his house and with sexual intent, hugged and kissed her on the forehead. During the cross-examination of all the witnesses, they turned hostile and stated that the statements made in the chief examination were based on the tutoring by the Police and therefore the version given in the cross-examination is true. The relevant portion of the cross-examination of P.W.1 reads as follows:

"எதிரி என்னை பாலியல் ரீதியாக எவ்வித
துன்புறுத்தம் செய்யவில்லை என்றால் சரிதான். என்னை
கையை பிடித்து இழுக்கவில்லை என்றால் சரிதான்.
என்னை நெற்றியில் முத்தம் வைக்கவில்லை என்றால்
சரிதான். என்னை கையை பிடித்து இழுத்து வீட்டிற்குள்



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கூட்டிச் செல்லவில்லை என்றால் சரிதான். எதிரி குடித்துவிட்டு தகராறு செய்ததால் நான் இவ்வாறு கோபத்தில் அவர் மீது புகார் கொடுத்துவிட்டேன். நான் ஏற்கனவே வேறு ஒரு நீதிமன்றத்தில் பெண் நீதிபதி அவர்களிடம் வாக்குமூலம் கொடுத்த போது போலீசார் என்னை புகாரில் உள்ளபடி தான் சொல்ல வேண்டும் என்று சொன்னதால் சொல்லியுள்ளேன் என்றால் சரிதான்."

The evidence of the other witnesses is similar. The prosecution thereafter sought permission to cross-examine the witnesses. Nothing has been elicited in the cross-examination of the witnesses to show that the appellant had won over the witnesses. In any event, if the victim had resiled from her earlier version on which basis the case has been instituted and does not wish to pursue her complaint, it is highly unsafe to merely rely upon her deposition in chief as done by the trial Court, especially in a case of this nature, where the allegation is of sexual assault and the entire case would depend on the evidence of the victim and there cannot be any medical evidence to corroborate the allegation of this nature.

9. It is no doubt true that the Hon'ble Supreme Court has held that in



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some cases, notwithstanding the fact that the witnesses have turned hostile, the portion of the evidence that is consistent with other evidence on record can be relied upon. However, apart from the evidence of the victim, there is no other evidence to corroborate her version made in the chief examination. All the other witnesses, namely the parents of the victim and the uncle, who initially supported the prosecution, turned hostile. Therefore, this Court is of the view that the Judgment of conviction cannot be sustained on such evidence and the appellant is therefore entitled to the benefit of the doubt, and hence, the Judgment of conviction and sentence passed by the trial Court is liable to be set aside.

10. In the result, this Criminal Appeal is allowed and the appellant is acquitted of all the charges. The conviction and sentence passed in Spl.C.C.No.2 of 2021, dated 30.11.2022, on the file of the learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore, are set aside. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged. However, in the circumstance, the compensation, if any, paid to



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the victim need not be recovered from the victim.

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28.11.2024

Speaking /Non-speaking order

Neutral citation : yes/no

dk

Copy to:

1. The Sessions Judge,
Principal Special Court for Exclusive Trial of Cases
under POCSO Act, Coimbatore.
- 2.The Inspector of Police,
Kovilpalayam,
G.Chavadi Police Station,
Coimbatore,
3. The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN,J.

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