



CRL.A.No.84 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

CRL.A.No.84 of 2018

Ahamed Shabi

... Appellant / Accused

vs.

Inspector of Police,
W22, All Women Police Station,
Mylapore, Chennai.

... Respondent / Complainant

PRAYER: This Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, against the Judgment dated 01.02.2018 passed in S.C.No.33 of 2017 by the Mahila Court, Chennai convicting the appellant u/s.10 of the Protection of Children from Sexual Offences Act, 2012 sentencing him to undergo five years simple imprisonment and imposed a fine of Rs.5,000/- in default to undergo further period of 3 months simple imprisonment.

For Appellant : Mr.D.Manoj Kumar

For Respondent : Mr.S.Udaya Kumar
Govt.Advocate (Crl.Side)

JUDGMENT

Being aggrieved by the judgment and sentence dated 01.02.2018 passed by the Mahila Court, Chennai in S.C.No.33 of 2017, the sole



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accused has preferred this Criminal Appeal.

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2. The details of charge and sentence are tabulated hereunder:

1	Name of the Accused	Ahamed Shabi
2	Charge framed against the accused	U/s.10 of POCSO Act, 2012.
3	Plea of accused	Pleaded not guilty
4	Finding of the Judge	Accused was found guilty for the charge under Section 10 of POCSO Act, 2012.
6	Sentence	The accused is convicted u/s.10 of POCSO Act and sentenced to undergo 5 years SI and with a fine of Rs.5,000/- In default to undergo SI for 3 months.

3. The case of the prosecution is stated hereunder in brief as follows:

3.1 The complainant Mohammed Alim is residing at Srinivasapuram, Chennai. His elder sister Nabeeza Begum has a female child and living in her parents house along with her child, due to mis-understanding between her and her husband. Victim girl has been studying in 6th standard in Mylapore Raphales Girls Higher Secondary School. On 20.03.2016(Sunday) at about 1 p.m., the victim girl went to the shop of the accused, namely, Shajahan Stores situate at Srinivasapuram market in order to buy shoe polish (white).



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3.2. After 15 minutes, complainant went to Shajahan Stores to buy a lock and at that time, as no one was found in the shop, he peeped into the shop, where, the accused made the victim girl to stand nearby the cupboard, holding her two hands and standing in front of her keeping his face close to her face.

3.3. The complainant shocked and asked the accused as to what was he doing and for which he replied something. Then he enquired the victim girl as to why she came inside the shop. She replied that it is the accused who forcibly took her inside the shop and the victim started crying. When the complainant shouted at the accused and pushed him. The accused fell on the feet of the complainant and pleaded to pardon him.

3.4. The complainant took the victim girl to their house and enquired the victim girl in the presence of his mother and sister (mother of the victim girl), the victim girl told that when she asked him to give shoe polish, he did not give the same. When she turned, accused lifted her. When she shouted, he gagged her mouth by one hand and by holding her hand by another hand and he pressed her legs by keeping his legs on the legs of the victim and hugged her. The complainant came and shouted at the accused.

3.5. The accused has committed offence under Section 9(m) r/w. 10



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of POCSO Act. After investigation, final report was filed against the accused under the said provision of law.

4. The Special Court took cognizance of the final report (S.C.No.33 of 2017). Copy of the documents relied upon by the prosecution and statement of witnesses were furnished to the accused under Section 208 of Cr.P.C. After hearing both sides and upon consideration, the trial Court framed charges against the accused under Section 10 of POCSO Act, 2012. When he was questioned about the charge, he denied the same.

5. The learned counsel for the appellant Mr.D.Manoj Kumar, vehemently argued that the defacto complainant is enmical with the accused and false case was foisted against him. He would further state that PW2 and PW4 are hearsay witnesses. To rebut the presumption, RW1 has been examined, to speak about the enmity between the accused and the complainant. These details were not taken into consideration by the trial Court. He strenuously contended that 164 statement was recorded belatedly from the date of First Information Report (F.I.R). Hence, it should not be relied upon.

6. Per contra, Mr.S.Udaya Kumar, learned Government Advocate



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(Crl.Side) strenuously contended that through the evidence of PW1 to PW6, the charge was proved by the prosecution side beyond reasonable doubt. He would further contend that though PW1 is the close relative of the victim, he was the person who witnessed the occurrence and his evidence itself is suffice to come to the conclusion that the accused is guilty of offence under Section 10 of POCSO Act, 2012.

7. In order to substantiate the prosecution case, prosecution examined 6 witnesses out of 14 witnesses listed and marked 10 documents. On the defence side, one witness was examined and two M.Os., were marked.

8. PW1-Mohammed Alim is the maternal uncle of the victim. PW2-Bousiya Begum is the junior maternal aunt of the victim. PW3 is the Victim girl. PW4-Yasin is the son of PW2. PW5-Dr.Vinoth, has issued Ex.P5-potency certificate for the accused. PW6-Mrs.Yuvarani is the Investigating Officer. Birth extract of the victim is Ex.P2. Ex.P3 is the statement of PW3 recorded under Section 164 of Cr.P.C.

The case of the prosecution as projected through the evidence of prosecution witnesses is given hereunder:



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It is the evidence of PW1/defacto complainant that he knows the accused and he is running a shop in the name of Shajahan Stores. On 20.03.2016 at about 1 p.m., he went to Shajahan Stores to purchase lock. The accused is called as shabi bhai. His shop is being run in two shops. One shop is a provision store and another one is a Hardware Shop. A wall to the height of 2 1/2 feet / 3 feet is there in front of the one shop. PW1 went to the provision shop of the accused and called him as bhai. As he was not there and he was not seen, he peeped into the shop. He saw the accused holding the hands of his sister's daughter minor "A". The accused was keeping his legs on the legs of the minor "A". Having seen the same, he felt otherwise. He asked the minor "A" as to why she came there. She told him that she came there to purchase shoe polish and the accused shabibhai told her that there was a cat inside the shop and lifted her and left her inside the shop. The minor "A" told him that he lifted her and made her to sit on the cement bag and when the minor "A" shouted, he gagged her mouth. It is his further evidence that when he shouted at the accused, he told him that mistakenly he did the same and devil came inside him. Therefore, he requested him not to disclose this to any one by holding his legs. Having heard the shoutings of PW1, 4 or 5 persons came to the shop and when they asked as to what had happened, he without disclosing anything, took the victim girl minor "A" and went off. He left with



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minor "A" from his residence and went to the residence of his elder brother Mohammed Arif and explained to him about the occurrence. When his brother and himself came home, in the presence of his mother, the accused told that he mistakenly did the same and pleaded to forgive him. When he left with the minor "A", he did not tell anything to his mother about the occurrence. Meanwhile, his elder brother and the brother-in-law of his elder brother came and told that it can be sorted out at mosque. If the relatives of the accused come to the mosque, they would beat him and hence he was taken to the Mylapore Police Station. PW1 lodged the complaint-Ex.P1. Date of Birth of minor "A" is 16.07.2005. When a suggestion was posed to the effect that when PW3 victim minor "A" went to the shop of the accused and picked kavin's cool drinks bottle, for that the accused shouted her and used bad words. His brother and brother-in-law are members of Muslim Organisation and the accused is a member in another organisation and due to enmity between these two organisations a false case was foisted, for this he answered in negative.

9. PW-2, Bousiya Begum is the junior paternal aunt of the victim and elder sister of PW1. It is the evidence of PW2 that minor "A" is her elder sister Nabeesa Begum's daughter. When she returned home from work on 20.03.2016 at about 5 p.m., she found her mother was crying and on



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enquiry, she told that when her daughter minor "A" went to the shop of the accused to get shoe polish, inside the shop, the accused by holding the hands of the minor victim "A" by gagging her mouth and mis-behaved with the victim minor "A". She further told her that all the persons have gone to the police station. She went to Mylapore All Women Police Station, where his brother and her elder brother's wife along with the minor "A" were there. When she enquired minor "A", she was keeping on crying and got to know about the occurrence from her brother PW1. She has also mentioned about the recording of statement of the minor 'A' by the Judicial Magistrate and the birth certificate of minor "A" is Ex-P2.

10. It is the evidence of PW3-minor "A" in her own words:

"அன்னிக்கு சண்டே, 20ஆம் தேதி மாதம் ஞாயிறம் இல்லை, போன வருடம் மதியானம் 1.30 மணிக்கு ஷூ பாலீஷ் வாங்க கோர்டில் நின்றிருப்பவருடைய கடைக்குப் போனேன். சின்ன வயசுல இருந்தே நான் அவர் கடைக்கு போய்க்கிட்டு இருக்கேன். அவருக்கு என்னை நல்லா தெரியும். நான் ரொம்ப நேரம் இங்கு நின்னுக்கிட்டிருக்க கடைக்காரரிடம் ஷூ பாலீஷ் கேட்டுக்கிட்டே இருந்தேன். அவர் தரவே இல்லை. நான் வீட்டிற்கு போகலாமனு திரும்பி இரண்டு ஸ்டெப் எடுத்து வெச்சேன். அங்க கடையில கடைக்காரரை தவிர யாரும்



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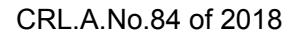


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இல்லை. அந்த கடைக்காரர் பாத்திமா பாத்திமானு கூப்பிட்டார். நான் நின்று திரும்பி பார்த்தேன். அவர் மளிகை கடையிலிருந்து வெளியே வந்து சின்னதா சுவர் இருக்கும் குடோன் பக்கம் நின்னுக்கிட்டு இருந்தேன். என்னை கடைக்காரர் தள்ளி விட்டுட்டாரு. நான் குடோன் பக்கம் விழுந்துட்டேன். அந்த குடோன்ல சிமெண்ட் மூட்டை, டுல்ஸ், துடைப்பம் எல்லாம் இருந்துச்சு. விழுந்துட்ட உடனே காப்பாத்துங்க காப்பாத்துங்கனு கத்தினேன். கடைக்காரர் அவரோட ஒரு கையால என்னோட இரண்டு கையை பிடிச்சிக்கிட்டாரு. அவர் காலால என் கால்களை மிதிச்சிக்கிட்டு இருந்தாரு. பீரோ முன்னாடி என்னை நிற்க வைச்சாரு. என்னை கட்டி பிடிக்க வந்தாரு."

11. During her cross-examination, a question was posed to the effect that when the accused was holding the hands of the victim by one hand and by gagging victim's mouth by another hand, it is not possible to hug the victim for which the victim has given answer that "அப்போ என்கிட்ட வந்தார்... என் கையை பிடிச்சிக்கிட்டு இருந்த கையை எடுத்திட்டு கழுத்தில் கையை போட்டாரு."

12. PW4-Yaseen is the son of PW2. He has deposed that on



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13. PW5-Dr.Vinoth is the Medical Officer of Forensic Sciences Department, Kilpauk Medical College. He would state that on 30.03.2016, when he was working at Royapettah Government Medical College Hospital, at the request of the Court, one Ahamed Shabi was brought by the Police concerned in Crime No.8 of 2016 of All Women Police Station. On examination, he issued a potency certificate – Ex.P5, for the accused.

14. PW6-Ms.Yuvarani is the Investigating Officer. On receipt of the complaint, she recorded the First Information Report(FIR-Ex.P6) in Crime No.8 of 2016, under Section 9m r/w. 10 of POCSO Act. She took up the case for investigation and examined Mohammed Alim(PW1), Bousiya Begum(PW2), Victim(PW3), Mubeena at their residence and recorded their statement. As the said allegation was found to be true she arrested the accused at Srinivasapuram market near Shajahan Shop and he was sent to judicial custody.

15. On 21.03.2016, in the presence of witnesses Yaseen and Mohammed Arif, PW6-Investigating Officer inspected the scene of occurrence namely Shajahan Stores and prepared rough sketch-Ex.P7 and Observation Mahazar-Ex.P8. Their statements were recorded by her. On the next day, Sarbunnisa, Subedha Begum, Famitha Begum were



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examined and their statements were recorded. As per the order of the Court, victim's statement under Section 164 Cr.P.C., was recorded. She examined Dr.Vinoth and recorded his statement. She examined other police constable and recorded his statement. On completion of investigation, final report under Section 9m r/w. Section 10 of POCSO Act was filed against the accused.

16. The statement of minor "A" recorded under Section 164 of Cr.P.C., on 26.04.2016 by the XVIII Metropolitan Magistrate Court, Chennai. The details of 164 statement is extracted hereunder:-

"நான் 6ம் வகுப்பு சென்நபேல்ஸ் மகளிர் மேல் நிலை பள்ளியலை படித்து வருகிறேன். 1 மாதத்திற்கு முன்பாக எங்கள் வீட்டிற்கு இரண்டு தெரு தள்ளி உள்ள ஒரு கடைக்கு நான் ஷூ பாலீஸ் வாங்க சென்றிருந்தேன். நான் கடைக்கு சென்றிருந்த சமையத்தில் இரண்டு நபர்கள் சாமான் வாங்கி கொண்டிருந்தார்கள். நான் கடைக்காரரிடம் ஷூ பாலீஸ் கொடுங்கள் என்று கேட்டுக்கொண்டு நின்று கொண்டிருந்தேன். ஆனால் ரொம்ப நேரம் ஆகியும் நான் கேட்டதற்கு அந்த கடைக்காரர் ஷூ பாலீஸ் தரவில்லை. சாமான் வாங்க வந்த இரண்டு நபர்களும் சாமான் வாங்கி சென்றுவிட்டனர். அந்த கடை ஒரு குடோன் போல இருக்கும். நான் கடைக்காரர் ஷூ



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பாலீஸ் கேட்டும் கொடுக்காததால் கடையில் இருந்து வெளியே வந்துவிட்டேன். கடைக்காரர் வெளியே வந்து என் கையை பிடித்து இழுத்துக்கொண்டு பக்கத்தில் உள்ள குடோனுக்கு அழைத்து சென்றார். என்னை அந்த கடைக்காரர் கூட்டி சென்ற இடம் இருட்டாக இருந்தது. என்னை உள்ளே அந்த கடைக்காரர் கூட்டிக்கொண்டு போகும்போது நான் கத்தினேன். அந்த இடத்தில் இருந்து கத்தும்போது யாருக்கும் வெளியில் சத்தம் கேட்காது. என்னை அந்த கடைக்காரர் கட்டிப்பிடித்தார். நான் அந்த கடைக்காரரை என்னுடைய கையால் அடித்தேன். நான் அவரை அடித்ததால் அவருடைய இரண்டு கால்களையும் என்னுடைய கால்கள் மீது வைத்து அழுத்தி கொண்டு என்னுடைய இரண்டு கைகளையும் முறுக்கி பின்புறம் வைத்து கட்டி பிடித்தார். நான் அந்த சமையத்தில் சத்தம் போட்டேன். அந்த சமையத்தில் என் மாமா தாழ்பாள் வாங்குவதற்காக அந்த கடைக்கு வந்திருந்தார். நான் அந்த சமையத்தில் கத்தினேன். நான் கத்தியதை கேட்டு என் மாமா அந்த கடைக்காரரை அடித்தவுடன் அந்த நபர் என் மாமா காலில் விழுந்து எனக்கு பேய் பிடித்துவிட்டது அதனால் இப்படி செய்துவிட்டேன் என்று சொன்னார். அப்பொழுது என் மாமாவின் நண்பர் எதார்த்தமாக அந்த சந்து வழியாக கடைக்கு வந்தார். அவர் வந்து நின்று கொண்டிருந்தார். அப்பொழுது அந்த கடைக்காரர் குட்டி பூனை உள்ளே ஓடியது.



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அதை நான் பிடிக்கச் சென்றேன். அதை பார்த்து இந்த பெண் பயந்தார். அதனால் நான் பிடித்துக்கொண்டேன் என்று சொன்னார். பின்னர் என் மாமா என்னை கொண்டு வந்து வீட்டில் விட்டுவிட்டார்."

17. One Gani Johnson – DW1 who is running a shop nearby the shop of the accused would state that as some quarrel was going on, he went and enquired. He was told that one baby came to the shop for getting some goods, took away kavins milk packet and the accused having seen that and he shouted at the girl. For that the minor and her maternal uncle along with her relatives along with the persons who belong to Muslim Organisation came and quarreled with the accused. They also went to Mylapore Police Station. During his cross-examination, he would state that he did not see the victim minor girl taking the kavins milk packet.

18. PW2-Bousiya Begum and his son – Yaseen-PW4, have deposed elaborately. PW4-Yaseen though he is a hearsay witness, he has explained in detail about what had happened after PW1 brought the victim minor girl from the shop of the accused. It is relevant to note that nothing was elicited from any of the prosecution witness advantageous to the accused.



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19. There is no enmity between PW1 and the accused. From the evidence of PW1 to PW4, it was made clear that the occurrence is true. It is discernible from the evidence of PW4-Yaseen that when his uncle, PW1 Mohammed Alim and one Arif went to the shop of the accused and shouted at him, immediately public in large number gathered in front of the shop. In this regard, the evidence of PW4 is natural, cogent and believable.

20. When that be the case, the person who is running a shop in a nearby locality would state that on hearing about the quarrel that going on in front of the shop of the accused, he came to the shop of the accused, he has tried to give a different version stating that the minor took the kavins milk packet and having seen the accused shouted at the girl and for that the accused was said to have committed sexual assault. He has also stated that he went to Mylapore Police Station, where, Jamath people had came at the time of quarrel was going on. He would also state that a muslim organisation went and reported to the mosque and the accused was also enquired, but, feigned ignorance of those details. Therefore, it is clearly evident that he wants to hide a full pumkin in the rice by which he had not succeeded, hence, for the above said reasons, his evidence is



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totally not acceptable.

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21. Ex.P1, is the complaint given by PW1-Mohammed Alim, wherein, he has given all the details in the complaint not only about the occurrence and the matters happened thereafter also. As per the evidence of PW1, occurrence had taken place on 20.03.2016 at about 1.15 p.m., the case was registered at 15.00 Hours on the same day. The statement of the victim under Section 164 Cr.P.C., was recorded on 26.04.2016.

22. The learned counsel for the appellant strenuously contended that as the 164 statement of the victim was belatedly recorded that cannot be taken into account.

23. Since because the 164 statement was recorded after a month, it does not lose its sanctity. The statement recorded under Section 164 undoubtedly has to be placed on a higher pedestal. In this regard, reliance is placed on the following judgments of the Hon'ble Supreme Court in :

- i) Prithvi (Minor) v.Mam Raj and another reported in (2004) 13 SCC 279.
- ii) Goutam Joardar v. State of West Bengal [Crl.A.No.1181 and 1182 of 2019 dated 07.10.2021]



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24. Section 29 provides for presumption as to certain offences, where a person is prosecuted for violating any of the provisions under Sections 3, 5, 7 and 9 of the POCSO Act, the trial Court shall presume that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.

25. It is significant to note that no independent witness was examined by the prosecution. Law is well settled, that when the interested witness is examined, his evidence has to be closely scrutinised. The presumption arise under Section 29 of POCSO Act, 2012 is a rebuttable one. The accused may rebut the presumption by means of direct evidence or through circumstantial evidence.

26. It was already decided that the evidence of DW1 is totally bristles with contradictions and it is totally not believable. Therefore, it has to be construed that the presumption remains unrebutted by the accused.

27. As regards proof of date of birth of the victim, her birth extract is marked as Ex.P2. This was marked through PW2 - Bousiya Begum. From a careful perusal of the said birth extract, it appears that the details of date



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of birth were sent to the Corporation of Chennai from the Government Kasthuriba Gandhi Hospital, Triplicane. Her father's name is Mohammed Ismail and mother's name is Bousya Begum. Date of birth of the victim as per Ex.P2 is 16.07.2005.

28. During relevant period of time, she was studying in 6th standard (as stated in 164 statement) and she was 10 years 3 months and 24 days.

29. From the evidence of PW1 and on perusal of the complaint Ex.P1, it is quite clear that though PW1 himself was the witness to the occurrence, he enquired the accused and the accused came to the residence of the victim and thereafter, he was enquired by the members of Muslim Organisation. He was taken to the jamath and thereafter, he was taken to the police station. These details have been narrated in detail by PW1 and PW4, which were not disturbed during cross-examination. Though PW1, PW2 and PW4 are very close relatives of the victim, their evidence about the occurrence in particular by PW1 and the other details have been very clearly spoken out. There is no previous enmity between the accused and PW1. Absolutely, there is no necessity for PW1 to lodge a complaint against the accused that too which involves minor girl aged about 10 years.



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30. The victim while she was examined the very first statement made by her is that it was on Sunday on 20.03.2016 she does not remember the month and the last year at about 1.30 p.m., she went to the shop of the accused in order to purchase shoe polish. During 164 statement, she has stated that she went to the accused shop to get white shoe polish. It is pertinent to note that she has been going that shop since her childhood. It is her evidence which throws more light as to the *mens-rea* of the accused. The evidence of the victim minor girl in her own words is extracted hereunder:

"நான் ரொம்ப நேரம் இங்கு நின்னுக்கிட்டு கடைக்காரரிடம் ஷூ பாலிஷ் கேட்டுக்கிட்டே இருந்தேன். அவர் தரவே இல்லை. நான் வீட்டிற்கு போகலாம்னு திரும்பி இரண்டு ஸ்டெப் எடுத்து வெச்சேன். அங்க கடையில் கடைக்காரரை தவிர யாரும் இல்லை. அந்த கடைக்காரர் பாத்திமா பாத்திமானு கூப்பிட்டார். நான் நின்னு திரும்பி பார்த்தேன். அவர் மளிகை கடையிலிருந்து வெளியே வந்து சின்னதா சுவர் இருக்கும் குடோன் பக்கம் நின்னுக்கிட்டு இருந்தேன். என்னை கடைக்காரர் தள்ளி விட்டுட்டாரு. நான் குடோன் பக்கம் விழுந்துட்டேன். அந்த குடோன்ல சிமெண்ட் மூட்டை, டுல்ஸ், துடைப்பம் எல்லாம் இருந்துச்சு. விழுந்துட்ட உடனே காப்பாத்துங்க காப்பாத்துங்கனு கத்தினேன். கடைக்காரர் அவரோட ஒரு கையால என்னோட இரண்டு கையை பிடிச்சிக்கிட்டாரு. அவர் காலால என் கால்களை மிதிச்சிக்கிட்டு இருந்தாரு. பீரோ முன்னாடி என்னை நிற்க வைச்சாரு. என்னை கட்டி பிடிக்க வந்தாரு."



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31. As per Section 29 of the POCSO Act, 2012, presumption arises against the accused in case of commission of offence under Sections 3, 5, 7 and 9 of the Act, unless the contrary is proved. Section 30 of POCSO Act deals with presumption of culpable mental state. Therefore, as per the above said Section of POCSO Act, the learned Subordinate Judge has raised presumption against the accused.

32. The above said presumptions are rebuttable. On the accused side, one Gani Johnson has been examined as DW1. DW1 would state that in the month of March 2016 on Sunday quarrel was going in front of the shop of the accused and DW1 was in his shop. He along with Rajasekar in shop. Mani running laundry went to the accused shop. One Baby who had come to purchase a product came to the accused shop and tried to take Kavins milk sachet and having seen the same, the accused shouted at the child. For which, the child's maternal uncle and relatives along with members of Tamil Nadu Muslim Munnetra Kazhagam came to the shop of the accused and they were quarreled with them and they went to the Pattinappakkam Police Station in order to lodge a complaint.

33. A careful perusal of the entire evidence of DW1, it is clear that he did not saw the occurrence. Therefore, as regards the occurrence, he



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is a hearsay witness. Therefore, examining DW1, the presumption arose against the accused was not rebutted by the accused herein. Not even a suggestion is posed to the parents of the victim child but the child was tutored.

34. Therefore, from the evidence of the victim, it is discernible that the accused was waiting for an opportunity to be with the victim minor girl alone. It is relevant to note that victim minor girl, during her examination, would state that the accused came to hug her, whereas, in the complaint all the witnesses and in 164 statement it is stated that the accused hugged minor victim besides gagging her mouth. The minor victim is 10 year old child because of the commissions of accused, she was in a way made to repeat about the happenings to her maternal uncle, to her mother, to her aunt and to her grand mother and to the police and finally before the Court. Even when a grown up person is made to explain about the occurrence. He or she cannot give a parrot like version. Considering the age of the child and the situation faced by the minor victim that would not affect the merits of the case. The evidence of minor-PW3 is so casual, cogent and trustworthy. Eye-witness account is unfolded through the evidence of PW1 and PW4. As mentioned supra, it involves honour of the girl child.



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35. The learned counsel for the appellant would vehemently argue that the statement of the victim under Section 164 Cr.P.C., was belatedly recorded would indicate that the victim was tutored. Therefore, the said statement shall not be relied upon. Tutoring of the victim is even possible at the earliest time if the statement was recorded at the earliest. In order to conclude that the statement under Section 164 Cr.P.C., was belatedly recorded, the investigating officer should have been elicited during the cross-examination as to why the statement of the child was belatedly recorded. Without ascertaining from the investigating officer, it should not lie in the mouth of the appellant that the 164 statement of the child was belatedly recorded and hence, the same not to be relied upon.

36. Date of offence is 20.03.2016. The investigating officer gave requisition to the Court for recording of 164 statement of the victim, on 26.03.2016. The statement under Section 164 Cr.P.C., was recorded on 26.04.2016.

37. If at all it comes on record that the delay is attributable upon the investigating officer, even then as the statement recorded under Section 164 Cr.P.C., is not a substantial piece of evidence and it can be used for



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corroboration in order to further strengthen the prosecution case. My views are forfeited by the observations of the Apex Court in (1) Chinnammal v. State of Tamil Nadu and others reported in 1996 (4) Crimes 211 (SC), (2) George v. State of Kerala reported in AIR 1998 SC 1376 and (3) Mohd.Khalid v. State of West Bengal reported in (2002) 7 SCC 334.

38. The trial Court has discussed the entire evidence and documents in detail and came to the conclusion that the charge under Section 10 of POCSO Act is proved beyond reasonable doubt. I find no valid reason to interfere with the findings of the learned trial Court. For no reason, the girl child at the age of 10 years suffered trauma at the hands of the accused and its consequences.

39. In the result, this Criminal Appeal stands dismissed and the conviction and sentence passed by the learned Mahila Judge, Chennai in S.C.No.33 of 2017 stands confirmed. The trial Court shall issue warrant and secure the accused and send him to the prison to serve the remaining period of sentence within four weeks from the date of receipt of a copy of this judgment.



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27.03.2024

Index : Yes/No
Internet: Yes/No
Speaking Order : Yes/No
ssn

To:

1. The Mahila Judge,
Mahila Court,
Chennai.
2. The Inspector of Police,
W22, All Women Police Station,
Mylapore, Chennai.
3. The Public Prosecutor,
High Court, Madras.



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R.KALAIMATHI, J.,

ssn

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27.03.2024