



Crl.A.No.799 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **27.03.2024**

CORAM :

THE HON'BLE MRS.JUSTICE R.KALAIMATHI

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Kumar @ Vijayakumar

... Appellant

Versus

The Inspector of Police,
All Women Police Station,
Omalur,
Salem District
Crime No.3 of 2015

... Respondent

Prayer : Criminal Appeal filed u/s.374 of the Code of Criminal Procedure, against the judgment dated 12.08.2017 passed in Special SC.No.8 / 2016 on the file of Sessions Judge (Mahila Court), Salem.

For Appellant : Mr.T.Mohanraj
for Mr.Santhana Gopalakrishnan

For Respondent : Ms..G.V.Kasthuri
Additional Public Prosecutor

JUDGMENT

Being aggrieved by the impugned judgement dated 12.08.2017 passed by the learned Mahila Judge of Salem, the sole accused Kumar @ Vijayan 35 years, son of Boothappagounder, has preferred the present appeal herein.



The accused herein was tried for the offence u/s.6 r/w 5 (m) of POCSO Act, 2012 (hereinafter referred to as “ the POCSO Act”). Relying upon the evidence of victim P.W.2 and P.W.12 Doctor Gowri Sangeetha, the Trial Court convicted the accused for the offence u/s.4 of he POCSO Act and sentenced him to undergo seven years imprisonment with a fine of Rs.25,000/- in default of payment of fine to undergo simple imprisonment for six months (the entire fine amount of Rs.25,000/- is ordered to be granted as a compensation to the victim child u/s.357(1) of Cr.P.C.).

2. The case of the prosecution is stated in brief which is given hereunder:

2.1. The defacto complainant Madhammal, wife of Paramasivam is a resident of Milagaikaranur Karamangalam, along with her daughter and two sons. The victim girl minor ‘X’ is studying in 4th standard, aged about 10 years in Omalur Taluk, Sikkampatty H.I.M. aided Primary School. The defacto complainant is a worker in a spinning mill, at Veppadai, and her working hours is from 4 a.m. to 4 p.m.. Her husband is working as a coolie in Bangalore and he used to come home once in two weeks.

2.2. The accused is the neighbour of the defacto complainant Madhammal. By taking advantage of the tender age of the witness minor ‘X’ and her loneliness, the accused exploited her sexually.

2.3. On 5.5.2015, at about 4 p.m., when the minor ‘X’ was playing near her house where the new water tank is situated, the accused forcibly took the child minor ‘X’ with intent to cause sexual assault, committed penetrative sexual assault



by having forcible, sexual intercourse with the minor 'X' who is the child aged below 12 years at the relevant point of time and thereby accused committed an offence punishable u/s. 6 r/w. 5 m of POCSO Act.

3. Upon the appearance of the accused he was furnished with the documents and statements of witness relied upon by the prosecution u/s.208 of the Code of Criminal Procedure. Upon consideration, the Trial Court framed charge against the accused u/s.6 r/w.5 m of the POCSO Act, 2012.

4. When the substance of the charge levelled against the accused was explained to him he denied the same.

5. In order to bring home the guilt of the accused, the prosecution examined 15 witnesses and marked 20 documents. No witness was examined by the defense side.

6. Mr.T.Mohanraju, the learned counsel appearing for the appellant strenuously argued that the victim P.W.2 has not deposed in consonance with the charge. But the Trial Court by wrongly relying upon the evidence of P.W.12 / Doctor Gowri Sangeetha has found guilty of the accused u/s.4 of the POCSO Act which is totally incorrect. He would further contend that even the mother of the victim did not support the prosecution case. Due to the enmity prevailing between the families of the defacto complainant and accused, the defacto complainant lodged a complaint



with utter false details against the accused. Through the evidence of prosecution witnesses, the charge was not proved by the prosecution side and pleaded to set aside the conviction and sentence passed by the Trial Court.

7. Per contra Srimathi.G.V.Kasthuri, the learned Additional Public Prosecutor appearing for the respondents /STATE vehemently contended that through P.W.13 Ms.Angammal, Headmistress of Sikkampatty H.I.M. aided Primary School, the study certificate of the victim child Ex.P.10 is brought on record : that as per Ex.P.10, Date of Birth of the victim is 30.05.2005. She would further argue that though the mother of victim / the defacto complainant has not supported the case of the prosecution, evidence of P.W.2 is sufficient to convict the accused. The case of the prosecution is further strengthened by the evidence of P.W.12 Doctor Gowri Sangeetha and P.W.13 Angammal, Headmistress of Sikkampatty H.I.M. aided Primary School. The medical records lend support to the prosecution case. The charge framed against the accused was proved beyond reasonable doubt by the prosecution before the Trial Court and the Trial Court has convicted the 35 years old accused u/s.4 of POCSO Act for 10 years with a fine of Rs.25,000/- in default to pay the fine to undergo 6 months simple imprisonment.

8. Throughout the discussion, the victim child is mentioned as minor child 'X'.

9. P.W.1, Madhammal is the mother of the victim : P.W.2 is the victim girl minor 'X' : P.W.3, Paramasivam is the father of the victim : P.W.4 Maarakkal is the



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grandmother of the victim : P.W.5 Palanisamy was the panchayat president of Milagaikaranur : P.W.6 Nagaraj and P.W.7 Raja have attested In the observation mahazar : P.W.8 Thiru.Raman, Head Constable had taken the accused to the hospital from the prison and brought him back to the prison for medical examination : P.W.9 Srimathi. Geetha Head Constable produced the victim 'X' before the Medical officer for the purpose of medical examination : P.W.10 Doctor.Rajasekaran, on examination of the accused issued potency certificate / Ex.P4 : P.W.11 Mr.Jaganathan, is the scientific officer who issued biology report / Ex.P.5 : P.W.12 Doctor.Gowri Sangeetha has medically examined the victim and issued Ex.P.7 certificate of examination for sexual offences : P.W.13 Miss.Angammal, Headmistress of Sikkampatty H.I.M. aided Primary School issued study certificate / Ex.P.10 for the victim : P.W.14 Doctor.Gokularamanan Radiologist has issued age certificate for the accused : P.W.15 Thirumathi.Suseela Inspector of Women Police Station of Omalur is the Investigating Officer.

10. Ex.P.1 is the L.T.I of P.W.1 in the complaint statement : Ex.P.2 is the statement of the victim child recorded u/s.164 Cr.P.C. : Ex.P.6 is the accident register copy of the victim child : Ex.P.7 is the certificate of examination for sexual offences of the victim child : Ex.P.10 is the study certificate of the victim child : Ex.P.12 is the complaint statement of Madhammal [P.W.1].

11. Among the independent witnesses, except the victim girl, P.W.1, P.W.3 to P.W.7 have not supported the prosecution case and they were treated as hostile



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witnesses by the prosecution.

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12. Upon the complaint by the mother of the victim, a case was registered u/s.7 r/w.Section 8 of POCSO Act. But it is very pathetic to note that even the mother and father of the minor child have not supported the prosecution case and the mother P.W.1 has retracted from her complaint statement.

13. It is the evidence of P.W.2 minor 'X' that her present age is 12 years and she knows the accused and he is her junior paternal grandfather. Before a year she was complaining of stomach ache and she was taken to Karamangalam Government Hospital by her mother and thereafter, she was sent to Salem Government Hospital. The minor child would state that the accused pressed her breast and she was feeling giddiness. Her brothers were shouting and the neighbours came there : and she got fainted and she was taken to the hospital by her junior paternal uncle. It is her further evidence that before a year, the accused was standing near his residence called her and she refused to go there. When he again called her by stating that betel leaf and Areca nut to be purchased she went near his house, he pulled her hand and pressed her breast. She has also mentioned about the statement given in the Court by her (Ex.P.2 / statement recorded u/s.164 of Cr.P.C.)

14. During the cross examination, the minor 'X' has answered that ஆஜர்
எதிரி என்னிடம் தவறாக நடந்துக்கொண்டபோது எனக்கு நெஞ்சில் காயம் ஏற்பட்டது.



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15. P.W.10 Doctor S.Rajasekaran has examined the accused and issued potency certificate Ex. P.4.

16. P.W.12 is Doctor Gowri Sangeetha, Medical Officer of Government Hospital Salem. It is her evidence that on 6.5.2005 at about 1:15 a.m. (early morning) the affected victim aged about 10 years concerned in Crime No.5 of 2015 of Omalur Women Police Station was brought before her with a requisition of the Inspector of Police of Omalur Women Police Station. The minor child was accompanied by her mother. When she enquired the minor 'X' she told her that neighbour Kumar on 5.5.2015 at about 4 p.m. Their neighbour Kumar at his residence, kissed her, pressed her breasts and manipulated her private parts. Meanwhile as the mother of the accused came, he went off and he did not have sexual intercourse with her and for the past 15 days he used to kiss her on and off. It is her further evidence that she did not attain menarche. On examination of the private parts of the hymen, it was not intact. Vaginal smear was taken and sent for chemical examination and the report was received as negative. She has opined that there may be a possibility of sexual intercourse (Ex.P8).

17. P.W.13 Ms.Angammal Headmistress of Sikkampatty H.I.M. aided Primary School, would state that during the academic year 2015 - 2016, the minor victim 'X' aged about 10 years was studying 5th standard and she has stated the name of the father and mother of the minor victim who belong to Milagaikaranur. Her study



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certificate is Ex.P.10. She completed the 5th standard and Transfer Certificate was issued on 30.4.2016.

18. It is the evidence of the investigating officer P.W.15 Suseela, Inspector of Omalur Women Police Station, that on 6.5.2015 at about 6:30 a.m. on intimation she went to the Salem Government Hospital and as the minor 'X' who was in admission was unwell, she recorded the statement of the mother. At about 10 a.m. case u/s.7 and 8 of POCSO Act was registered under Crime No.3 of 2015. She proceeded to the place of occurrence at about 11:00 a.m. and visited the scene of occurrence in the presence of witnesses Nagaraj and Raja and prepared observation mahazar and rough sketch (Ex.P.14 and 15). Witnesses Madhammal [P.W.1], minor child 'X' [P.W.2], Paramasivam [P.W.3], Marakal [P.W.4], Pazhaniswamy [P.W.5], Segar, Iyyammal, Nagaraj [P.W.6] and Raja [P.W.7] were examined by her and statements were recorded. At about 2:30 p.m. Arrest of the accused was effected at Tharamangalam Bus Station and he was sent for judicial custody. It is her further evidence that on 2.6.2015, the Headmistress of Sikkampatty H.I.M. aided Primary School, Sreemathi Angammal was examined and the study certificate of the minor child was obtained. As per the order of the Court the accused was produced before the medical officer of Salem Government Hospital and age certificate and potency certificate for the accused were obtained. On 6.5.2015 minor 'X' was taken to Salem Government Hospital for examination and certificate of medical examination in respect of minor victim was received. As per the order of the Court statement of the minor 'X' was recorded by the Judicial Magistrate No.III



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Salem on 14.5.2015 she examined Constable Raman, Headmistress Angammal, Doctor Rajasekaran, Doctor Gokularamanan, Doctor Gowri Sangeetha and Jaganathan and Head Constable Geetha and their statements were recorded. Based on her investigation, the case was altered from Section 7 to Section 8 of the POCSO Act to Section 6 r/w. 5 m of POCSO Act and final report was laid u/s. 6 r/w. 5(m) of POCSO Act against the accused.

19. Article 15(3) of the Indian Constitution imposes obligation on the State to make special provision for children. It is relevant to note that the Government of India acceded on 11th December 1992 to the convention on the rights of the child. The said convention was adopted by the General Assembly of the United Nations. It prescribes a set of standards to be followed by the member states in securing the best interests of the child. With avowed object to protect the children's right to privacy and considering the best interests and well being of the child and to ensure the healthy physical, emotional, intellectual and social development of the child and in order to protect the children from offence of sexual assault, sexual harassment and pornography, this Act was passed by the parliament and came into force on 19.6.2012, the date on which the assent of the President was received.

20. The word child is defined under Section 2 d of POCSO Act which is extracted hereunder:

“Child means any person below the age of eighteen years”.



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21. At a relevant point of time, the minor child is said to be twelve years old. To prove the same, the Headmistress of Sikkampatty H.I.M. aided Primary School, Thirumathi. Angammal was examined (P.W.13). Through her, study certificate of minor 'X', Ex.P.10 is marked. From a careful perusal of Ex.P.10 study certificate, it appears that during the academic year 2015 - 2016, the minor victim passed 5th standard and her transfer certificate was issued to the minor 'X' on 30.04.2016. In Ex.P.10, the date of birth of the child is mentioned as 30.05.2005. The Hon'ble Supreme Court in Yuva prakash vs. State represented by Inspector of Police reported in 2023 SCC Online SC 846 has further observed that:

“12. In view of Section 34(1) of the POCSO Act, Section 94 of the JJ Act, 2015 becomes relevant, and applicable. That provision is extracted below:

94. Presumption and determination of age. (1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought



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before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining -

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.”

22. The date of offence is 05.05.2015. As per Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, the age of the minor child has to be assessed. For proper understanding, Rule 12 of the Juvenile Justice Rules, 2007 is



extracted hereunder:

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"12. Procedure to be followed in determination of Age.- (1) *In every case concerning a child or a juvenile in conflict with law, the court or the Board, as the case may be, the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.*

(2) *The court or the Board or, as the case may be, the Committee shall decide the juvenility or otherwise of the juvenile or the child or, as the case may be, the juvenile in conflict with law, prima facie on the basis of physical appearances or documents, if available, and send him to the observation home or in jail.*

(3) *In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or the Board or, as the case may be, the Committee by seeking evidence by obtaining-*

(a)(i) *the matriculation or equivalent certificates, if available; and in the absence whereof;*

(ii) *the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;*

(iii) *the birth certificate given by a corporation or a municipal authority or a panchayat;*

(b) *and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his / her age on lower side within the margin of one year,*



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and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a), (i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law."

23. Whether the child studied in the said school from first standard or in which standard she got admitted in the said school is not known. It is the evidence of P.W.13 Ms.Angammal, Head Mistress that at the time of admission of the child they will ask for the proof for the date of birth of the child. She does not know for proof of birth, what is the document received at the time of admission of the minor 'X'. No ossification test was conducted on the minor child and age was assessed by the radiologist. On 14.5.2015, her statement u/s.164 Cr.P.C. was recorded by the learned Judicial Magistrate No.III of Salem, wherein the minor 'X' has stated that she was studying 4th standard. From the evidence of P.W.13 Headmistress of Sikkampatty H.I.M. aided Primary School, it appears that she studied 5th standard during the academic year 2015 - 2016 and passed out in April 2016. Therefore relying upon the evidence of P.W.13 coupled with Ex.P.10, study certificate, date of birth of minor 'X' is 30.5.2005 and minor 'X' was 10 years old at the relevant point of time.

24. From the evidence of P.W.12, Doctor Gowri Sangeetha, it has been stated that the minor 'X' was sexually abused. It is painful to note that the child is yet



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to attain menarche. At the time of examination P.W.2 minor 'X' has stated that the accused pressed her breast. It has also come on record that when the minor 'X' went near the house of the accused, he did the same thing by holding her hands.

25. When she was enquired by P.W.12 Doctor Gowri Sangeetha she has stated that on 5.5.2015 at about 4:00 p.m. at the residence of the accused he kissed her, pressed her breast and manipulated her private parts and he did not have sexual intercourse. The child is too young the child has to understand about the sexual acts. Yet, has spoken about those acts. P.W.12 Doctor Gowri Sangeetha has given a finding that the hymen of the victim was not intact and there is a possibility of sexual intercourse. The statement given u/s.164 Cr.P.C. by the minor victim before the Magistrate Court is extracted hereunder:

நான் தாரமங்கலம் மிளகாய்நூரில் வசித்து வருகிறேன், நான் 4ம் வகுப்பு படித்து வருகிறேன். எங்கள் ஊரில் உள்ள HIM நீதி உதவி தொடக்க பள்ளியில் படித்து வருகிறேன். நானும் என்னுடைய தம்பிகள் இரண்டு பேரும் எங்கள் வீட்டு கிட்ட ஓடி படித்து விளையாடி கொண்டிருந்தோம். அப்போது குமார் என்ற அண்ணன் எனக்கு தாத்தா முறையானவர் அவருடைய வீட்டுக்கிட்ட நின்று என்னை கூப்பிட்டார். நான் வரமாட்டேன் என்று சொன்னேன். அவருடைய அம்மா உள்ளே டிவி பார்த்துக்கொண்டு இருந்தார், குமார் என்னை வந்து கூட்டிக்கொண்டு வந்தார், அவருடைய வீட்டிற்கு வெளியே யாருமே இல்லாத இடத்தில் என்னை கூட்டிக்கிட்டு போய் முத்தம் கொடுத்தார். நெஞ்சு பகுதியில் என்னை படித்து நசுங்கினார். என் தம்பிகள் முன்னே ஓடி போய்விட்டனர். குமார் என்னை மீண்டும் படித்து அவருடைய ஜட்டியை கழட்டிக்கொண்டு என் ஜட்டியை கழட்டிவிட்டு கையை விட்டு நசுங்கினார். படித்து கிள்ளினார். என் தம்பிகள் என் அக்காவை



விடுதா என்று கத்தினார்கள். அப்பொழுது குமார் அவர்களை கல்லு விட்டு எறிந்து ஒட்டிவிட்டார். தம்பி வெற்றிவேலுக்கு வவது கையில் கல் பட்டு வீங்கி விட்டது, பின்பி மீண்டும் ஒரு நாள் என்னை அழைத்து முத்தம் கொடுத்தார். என்னுடைய பெற்றோர்கள் வேலைக்கு போய் விடுவார்கள் நான் தான் வீட்டில் சமைப்பேன் ஒருநாள் குமார் வீட்டிற்கு வந்து என் தம்பிகள் இடம் நான் எங்கே என்று கேட்டுவிட்டு 1/2 மணி நேரத்திற்கு மேல் அங்கு நின்றுக்கொண்டு இருந்தார், சுமார் 15 நாட்கள் அதேபோல் வந்தார். மீண்டும் மேற்படி குமார் என்னுடைய வீட்டிற்கு வந்து அவருடைய வீட்டிற்கு அழைத்தார். நான் மீண்டும் கூப்பிட்டால் போலிசுக்கு செல்லுவேன் என்று சொன்னதற்கு போய் சொல்லிக்கொள் என்று கூறிவிட்டார். பின்பு நான் என் அம்மாவிடம் சொன்னேன். ஸ்கூலுக்கு ஒரு நாள் வந்து முத்தம் கொடுத்தார். இடுப்பை பிடித்து நசுங்கினார் இடுப்பு எல்லாம் வலிக்கிறது, வயிறு எரிகிறது, இது தான் நடந்தது. நான் சாப்பிட்டு கொண்டிருந்தபோது குமார் வந்து நீ வா வீட்டிற்கு போய் ஜோடியாக டிவி பார்க்கலாம் என அழைத்தார். நீ வரவில்லை என்றால் நடந்தை எல்லாம் இடமும் சொல்லிவிடுவேன் என்று என் கை பிடித்து இழுத்து போனார், மற்றொரு நாள் புதர்க்குற் வா என்று கை பிடித்து இழுத்து போனார் நான் போ என்று கூறிவிட்டேன். மற்றொரு நாள் நான் வாசல் கூட்டிக்கொண்டு இருந்தபோது குமார் வந்து என்னை வாவா என்று கூப்பிட்டார், என் அம்மா அங்கு வரவே என் பிள்ளையை இனிமேல் தொந்தரவு செய்யாதே என்று கூறவே அவர் ஓடி விட்டார்.

26. From a thorough perusal of the above said details, it appears that without anybody's influence she has given statement before the Judicial Magistrate. This Court is conscious of the fact that the statement recorded u/s.164 of Cr.P.C. has to be placed on the higher pedestal. The statement recorded u/s.164 of Cr.P.C. is not a substantive piece of evidence and it can be only used for contradiction or for



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corroboration of the witness statement made in the Court.

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27. My view is fortified by the observations made by the Hon'ble Supreme Court in *Beige Nath Shah Vs State of Bihar* reported in 2010 6 SCC 736, wherein the Hon'ble Apex Court has observed that mere statement of the prosecutrix recorded u/s.164 of Cr.P.C. is not enough to convict the appellant and it is not a substantive evidence and it can be utilized only to corroborate or contradict the witness vis-a-vis statement made in the Court.

28. On a holistic perusal of the evidence of P.W.2 it appears that her evidence is genuine, causal and consistent, trustworthy and of sterling quality. I find a ring of fault in the testimony of the child.

29. The learned Additional Public Prosecutor relied upon the judgment of the Hon'ble Supreme Court reported in **2020 10 SCC 573 Full Bench (Ganesan Vs. State Rep. by Inspector of Police)**, in order to contend that where the testimony of victim is found reliable and trustworthy, conviction on the basis of her sole testimony is permissible.

30. In ***Wahid Khan Vs State of Madhya Pradesh***, the Hon'ble Supreme Court held that the law that emerges on the issue is to the effect that the statement of prosecutrix, if found to be worthy of credence reliable, requires no corroboration. The Court may convict the accused on the sole testimony of the prosecutrix.



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31. As per the evidence of P.W.2, the overtacts are to be brought under sexual assault. Section 7 of POCSO Act is extracted hereunder:

7. Sexual assault.- Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other Act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

32. The age of the victim at the relevant point of time was 10 years. Therefore, Section 9 (m) r/w. 10 of POCSO Act would apply in the given circumstances.

33. Section 29 of POCSO Act, 2012, provides for presumption as to certain offences. For proper understanding, Section 29 of POCSO Act, 2012 is extracted hereunder:

"29. Presumption as to certain offences.- Where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3,5, 7 and section 9 of this Act, the Special Court shall presume, that as the case may be unless the contrary is proved."



34. This provision is self-explanatory. The presumption arise against the accused is a rebuttable one. A suggestion is posed to the victim that because of the dispute between her family and the accused, she has deposed against the accused for which she has answered in positive as well as in negative. The accused has not rebutted the presumption arose in favour of the prosecution. P.W.2, during her chief examination and cross examination, has reiterated that the accused pressed her breasts. It is discernible from her evidence that she had stomach ache and her mother took her to the hospital.

35. The victim minor 'X' has deposed that before an year as she was complaining of stomach pain, her mother took her to Tharamangalam Hospital where she was treated for the same. Accused pressed her breasts, therefore she was feeling giddiness. Her brothers were shouting and the neighbours came there and she fainted. Before an year, the accused was standing near his house and call her when she refused to go there, he again called her that betel leaf and areca nut to be purchased and when she went near his residence he pressed her breasts by holding her hands. Earlier also he did the same thing.

36. In the statement which was recorded u/s.164 of Cr.P.C. P.W.2, the victim girl has repeated the same details. He took her to an aloof place and he hugged and kissed her breast. Again he held her and removed his inner wear and also removed the inner wear of the victim and manipulated and pinched her private parts. Her brothers shouted at him to leave their sister. The accused pelted stones on them



and they ran away. Again on one day he called her and kissed her. Her brother would go out for work and she used to cook at her home. When she told her that if he again called her, she would inform the Police for which he told her that she may inform the Police.

37. In this statement records u/s.164 of Cr.P.C., the victim has further stated that he came to school on a day and he kissed her and pinched her hip and she complained of pain to her mother. She has very naturally explained about the happening

38. From the evidence of P.W.2 it is very easily discernible that the accused for so many days utilized the child's aloofness taking advantage of the situation in order to satisfy his lust had committed sexual assault as enumerated by her. His culpable state of mind has many times reflected from his commissions. From the evidence of P.W.2 coupled with the medical evidence it is amply proved that the accused had committed sexual assault upon the child who was 10 years old beyond reasonable doubt. It is so pathetic that even the parents of the victim child have not supported the prosecution case. They are supposed to act as a protector of the child. The accused is the relative of P.W.3, Paramasivam. He being a relative he had sexually assaulted the child by taking her to lonely place. As the age of the victim at the relevant point of time was 10 years, he is liable to be punished u/s.9 (m) r/w.10 of POCSO Act which is a lesser offence. I find no valid reason to interfere with the finding of the Trial Court.



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39. The Trial Court has convicted the appellant / accused u/s.4 of POCSO Act and sentence him to undergo 7 years and to pay fine of Rs.25,000/- in default of payment of fine to undergo simple imprisonment for six months (the entire fine amount of Rs.25,000/- is ordered to be granted as a compensation to the victim child u/s.357 (1) of Cr.P.C.).

40. Section 10 of POCSO Act, 2012 is extracted hereunder:

"10.Punishment for aggravated sexual assault.- Whoever, commite aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine."

41. In the given circumstances, the appellant / accused who happened to be a close relative of P.W.3, has by utilising the aloofness of child has sexually assaulted the child by calling to his residence and even by going to the school of the child. No lenience need be shown to him.

42. Therefore, this criminal appeal stands dismissed. I n the result, instead of Section 4 of POCSO Act, he is found guilty u/s.10 of POCSO Act and convicted and sentenced to seven years rigourous imprisonment with fine of Rs.25,000/- in default of payment of fine to undergo simple imprisonment for six months (the entire



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fine amount of Rs.25,000/- is ordered to be granted as a compensation to the victim child u/s.357 (1) of Cr.P.C.) by confirming the sentence of the Trial Court. The Trial Court shall issue non bailable warrant against the accused within a period of four weeks from the date of receipt of this judgement and to secure the accused in order to serve the remaining period of sentence.

27.03.2024

Index : yes/no

Speaking order/Non-speaking order : Yes/No

NCC : Yes/No

rap

Note: Registry is directed to send the original records to the Trial Court forthwith.

To

- 1.Sessions Judge (Mahila Court), Salem.
- 2.The Inspector of Police,All Women Police Station,
Omalur, Salem District
- 3.The Public Prosecutor, Madras High Court.



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R.KALAIMATHI, J.,

RAP

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