



Crl.A.No.23 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.23 of 2023

Mujibur Raguman

... Appellant/Sole Accused

vs.

State represented by
The Inspector of Police,
Sivakanchi Police Station,
Chengalpattu District.
(Crl.No.1063/2014)

...Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, to call for the entire records in connection with the Special SC No.79 of 2019 on the file of the Special Court for Exclusive trial of cases under POCSO Act, Chengalpattu and set aside the conviction and sentence imposed by the learned Special Court for Exclusive trial of cases under POCSO Act, Chengalpattu Special in SC No.79 of 2019 dated 28.10.2022.

For Appellant : Mr.V.Parthiban



Crl.A.No.23 of 2023

for M.Mohamed Saifulla

For Respondent

: Dr.C.E.Pratap

Government Advocate (Crl.Side)

JUDGMENT

This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him vide Judgment dated: 28.10.2022 in Spl.S.C.No.79 of 2019 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under Protection of Children from Sexual Offences Act, 2012, Chengalpattu.

2(a). The case of the prosecution is that the appellant/sole accused and the victim were residing in the same village; and that the appellant, on 14.10.2014, at about 6.15 a.m., while the victim went out of her house to purchase milk, took the victim to a vacant land and behind a parked car, removed the dress of the victim and committed penetrative sexual assault by inserting his finger in the private part of the victim.



Crl.A.No.23 of 2023

WEB COPY

(b). It is further the case of the prosecution that the mother of the victim/P.W.1, on coming to know of the act committed by the appellant, had lodged a complaint on the very same day at about 10.15 a.m., which was registered for the offence under Section 8 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO Act).

(c) The Inspector of Police/P.W.15 registered the FIR in Crime No.1063 of 2014 on 14.10.2014, marked as Ex.P12, for the offence under Section 8 of the POCSO Act. He had conducted an investigation and altered the offence from Section 8 of the POCSO Act to Section 6 of the POCSO Act by the Alteration Report/Ex.P15 on 31.10.2014. On further investigation, he altered the offences from Section 6 of the POCSO Act to Sections 366-A, 354-B of the Indian Penal Code and Sections 4, 6, 8 and 10 of the POCSO Act by the Alteration Report marked as Ex.P16. Thereafter, on further investigation by P.W.16, a final report was filed for the offences under Sections 341, 366, 354-B and 376 (2)(i) of the IPC and Sections 6, r/w 5 (m)(i) and 3 (b) of the POCSO Act.



Crl.A.No.23 of 2023

WEB COPY (d) On the appearance of the appellant, the provisions of Section 207

Cr.P.C. were complied with, and the case was committed to the Court of Session in Spl.S.C.No.79 of 2019 and was made over to the learned Sessions Judge, Special Court for Exclusive trial of cases under POCSO Act, Chengalpattu for trial. The trial Court framed charges under Sections 341, 366 and 354-B of the IPC and Section 6 r/w 5(m)(i) of the POCSO Act against the appellant, and when questioned, the appellant pleaded 'not guilty.'

(e) To prove the case, the prosecution examined 16 witnesses as P.W.1 to P.W.16, marked 17 exhibits as Exs.P1 to P17 and marked 3 Material Objects as M.O.1 to M.O.3. When the appellant was questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. The appellant neither examined any witnesses nor marked any documents.



(f) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt and held the appellant guilty of the offences under Sections 341, 366 and 354-B of the IPC and Section 6 r/w 5(m)(i) of the POCSO Act, 2012. The appellant was sentenced as follows:

<i>Offence under Section</i>	<i>Sentence imposed</i>
341 of the IPC	To undergo Simple Imprisonment for a period of one month.
366 of the IPC	To undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.3,000/-, in default to undergo Simple Imprisonment for six months.
354-B of the IPC	To undergo Rigorous Imprisonment for five years and to pay a fine of Rs.2,000/-, in default to undergo Simple Imprisonment for three months.
6 r/w 5(m)(i) of the POCSO Act, 2012.	To undergo Rigorous Imprisonment for ten years and to pay a fine of Rs.10,000/-, in default to undergo Rigorous Imprisonment for one year.
Sentences are ordered to run concurrently.	

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



Crl.A.No.23 of 2023

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

5. The learned counsel for the appellant/accused would submit that the victim's statement is not believable; that there are several contradictions; that it is not corroborated by the evidence of the Doctor; and that in any case, the evidence at best discloses the offence of sexual assault.

6. The learned Government Advocate (Crl.Side), for the respondent, *per contra*, submitted that the occurrence took place at 6.15 a.m. and the complaint was lodged immediately; and that the victim had consistently stated about the occurrence both in her Section 164 Cr.P.C., statement and in her deposition and the appellant/accused was unable to discredit her testimony in any manner during cross-examination and therefore submitted that the Judgment of the Trial Court does not call for any interference and prayed for dismissal of the appeal.



Crl.A.No.23 of 2023

WEB COPY

7. We have carefully considered the rival submissions on either side and have perused all the relevant records.

8. As stated earlier, the prosecution examined sixteen witnesses as P.W.1 to P.W.16. P.W.1 is the mother of the victim and the *de-facto* complainant. P.W.2 is the victim. P.W.3 is the father of the victim, who corroborates the evidence of P.W.1. P.W.4 is the witness to the confession of the accused. P.W.5 is the Observation Mahazar Witness, who turned hostile. P.W.6 is another witness to the confession of the accused, who turned hostile. P.W.7 is the Observation Mahazar Witness. P.W.8 is the owner of the car, who had parked the car in an open space behind which place the occurrence is said to have taken place. P.W.9 is the brother-in-law of P.W.1, who corroborates the version of P.W.1. P.W.10 is the Registrar of Births, who issued the birth certificate of the victim [Ex.P7]. P.W.11 is a Doctor, who had examined the accused and issued the potency certificate [Ex.P8]. P.W.12 is a Doctor, who had examined the victim. P.W.13 is the Sub-Inspector of Police, who assisted the Investigating Officers. P.W.14 is the



Crl.A.No.23 of 2023

Constable who recorded the Section 161 Cr.P.C. statement of the victim.

P.W.15 and P.W.16 are the Investigating Officers.

9. The case of the prosecution is that the victim was taken by the appellant to an open field and there, he committed penetrative sexual assault by hiding behind a car belonging to P.W.8, which was parked in the said space. The nature of penetrative sexual assault, according to the prosecution, is that the appellant inserted his finger in the private part of the victim. The victim is said to have informed her mother/P.W.1 about the incident and immediately thereafter, the complaint was lodged. The victim was examined by the Doctor/P.W.12, on the very same day at about 11.25 a.m. The entries made by the Doctor/P.W.12 in the Accident Register [Ex.P11] read as follows:

*“Alleged history of sexual assault by a
known male on 14.10.2014 at about 6.30
a.m.”*

The Doctor/P.W.12 had stated in the chief examination that as follows:

“மேலும் நான் அந்த சிறுமியை பரிசோதித்த



CrI.A.No.23 of 2023

போது அவளுக்கு வெளிப்புற காயங்களும் எதுவும் இல்லை. மகப்பேரு மருத்துவரிடம் சிறுமியை அனுப்பி வைத்து அவரின் கருத்துரை பெற்றதில் அவளின் பிறப்புறுப்பு நல்லநிலையில் இருந்தது என்றும் பிறப்புறுப்பில் காயங்கள் எதுவும் இல்லை என்றும் அவளுக்கு கன்னித்திரை நல்ல நிலையில் இருந்தது. இதுகுறித்து நான் வழங்கிய விபத்து பதிவேடு அ.த.சா.ஆ.11.”

The above evidence of the Doctor/P.W.12, would show that the victim/P.W.2 had not sustained any injury in her private part and there is nothing to indicate that there was penetrative sexual assault. Further the doctor in the accident register had only referred to “sexual assault.” Though the victim is said to have stated to her mother that the appellant had inserted his finger in her private part, the victim in her deposition would state as follows:

“ஆஐர் எதிரி என கையை பிடித்து இழுத்து என்னுடைய பேண்டையும் ஜட்டியையும் கழற்றி என்னுடைய பாத்ரூம் போகும் இடத்தில் கைவைத்து அழுத்தினார்.”

The reading of the above evidence would only suggest that the victim had



Crl.A.No.23 of 2023

touched the private part and pressed it.

WEB COPY

10. Considering the above evidence and the evidence of the Doctor/P.W.12, who had examined the victim on the very same day of the occurrence within four hours, this Court is of the view that the offence of penetrative sexual assault has not been proved by the prosecution beyond reasonable doubt.

11. The prosecution has, however, established that the victim is a minor through the evidence of P.W.10/the Registrar of Births and Deaths. P.W.10 had issued the birth certificate of the victim and had deposed that the victim was born on 13.08.2005. The occurrence is said to have taken place in the year 2014. Therefore, the victim was aged nine years at the time of the occurrence. The appellant has not disputed this fact. P.W.2's evidence as regards the sexual assault cannot be disbelieved. Nothing has been elicited in the cross-examination on behalf of the appellant to discredit the evidence of P.W.2 in this regard. The evidence of the mother of the victim/P.W.1 is hearsay. Therefore, this Court is of the view that the



Crl.A.No.23 of 2023

prosecution has established the fact that the appellant had committed sexual assault and since the victim was nine years old at the time of the occurrence, it would amount to aggravated sexual assault punishable under Section 10 of the POCSO Act. Since the occurrence took place in the year 2014, the punishment prescribed is a minimum of five years that may extend to seven years.

12. Considering the nature of the evidence, the age of the victim, and the age of the appellant, this Court is of the view that it would subserve the interest of justice if the appellant is sentenced to five years of rigorous imprisonment and to pay a fine of Rs. 10,000/- (Rupees Ten Thousand Only) and in default to undergo two months of simple imprisonment.

13. Accordingly, the conviction of the Trial Court is modified from Section 6 r/w 5(m) (i) of the POCSO Act, 2012 to one under Section 9(m) r/w 10 of the POCSO Act and the appellant is sentenced to five years of RI and to pay a fine of Rs.10,000/- and in default to undergo two months of SI.



CrL.A.No.23 of 2023

14. As regards the offence under Section 366 of the IPC, this Court is of the view that the conviction recorded by the Trial Court cannot be faulted. Considering the nature of the allegations, the sentence imposed on the appellant for the offence under Section 366 is reduced from seven years to five years and the conviction and sentence in respect of the other offences i.e., Sections 354-B and 341 of the IPC are confirmed.

15. Accordingly, this Criminal Appeal is partly allowed; the Judgment of conviction and sentence imposed upon the appellant in Spl.SC.No.79 of 2019 dated 28.10.2022 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chengalpattu, is modified as follows:

(i) The conviction of the Trial Court for the offence under Section 6 r/w 5(m)(i) of the POCSO Act, 2012, is modified to one under Section 9(m) r/w 10 of the POCSO Act, 2012 and the appellant is sentenced to five years of RI and to



Crl.A.No.23 of 2023

pay a fine of Rs.10,000/- and in default to undergo two months of SI;

(ii) The conviction of the appellant under Section 366 of IPC is confirmed and the sentence is modified to five years of RI and to pay a fine of Rs.3,000/-, in default to undergo six months of simple imprisonment;

(iii) The conviction and sentence imposed by the trial Court on the appellant for the offences under Sections 341 and 354-B of the IPC are confirmed;

(iv) The sentences shall run concurrently;

(v) It is directed that the period of sentence already undergone by the appellant shall be set off under Section 428 Cr.P.C.; and

(vi) The respondent shall secure the appellant/accused, whose sentence was suspended by this Court on 11.01.2023, and commit him to prison to undergo the remaining period of sentence, as imposed by this Court.

28.11.2024

Neutral citation : Yes/No
dk



WEB COPY



Crl.A.No.23 of 2023

To

1. The Sessions Judge,
Special Court for Exclusive trial of cases
under POCSO Act, 2012, Chengalpattu.
2. The Inspector of Police,
Sivakanchi Police Station,
Chengalpattu District.
3. The Public Prosecutor,
High Court, Madras



WEB COPY



Crl.A.No.23 of 2023

SUNDER MOHAN,J.

dk

Crl.A.No.23 of 2023



WEB COPY



Crl.A.No.23 of 2023

28.11.2024