

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2017

CORAM

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

CRL.A.No.90 of 2016

Anandaraj

... Appellant

versus

The State represented by its
Inspector of Police,
W-21, All Women Police Station,
Guindy, Chennai.

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. to set aside the judgment passed in S.C.No.393 of 2014 dated 16.09.2015 by the Honourable Sessions Judge, Mahila Court, Chennai and acquit the appellant/accused from all the charges.

For Appellant

सत्यमेव जयते : Mr.B.Nirmal Kumar

For Respondent

: Mr.K.Mathan,
Government Advocate (Crl. Side)

JUDGMENT

The accused is the appellant.

2. This appeal is directed against the conviction and sentence imposed in S.C.No.393 of 2014 on the file of the learned Sessions Judge, Mahalir Sessions Court, Chennai, ordering the accused to undergo Rigorous Imprisonment for 4 years and to pay a fine of Rs.2,000/-, in default, to undergo 3 months Simple Imprisonment for the offence under Section 8 of the Protection of Children from Sexual Offences Act, 2012 [hereinafter referred to as "POCSO Act"]. In addition to the punishment, the Trial Court directed payment of compensation of Rs.5,000/- to the victim.

3. The facts necessary for the disposal of the appeal, are as follows :-

[i] At the relevant time, Lavanya [P.W.1] was living at Door No.13/26, Ambal Nagar, Ikkattuthangal, Chennai, with her 4 daughters and one son. The victim child [P.W.2] and P.W.3 are P.W.1's daughters. P.W.1 was deserted by her husband. The accused was running a grocery shop in a nearby street.

[ii] On 02.05.2014, at about 2.30 p.m., after sending P.W.2 to buy milk powder from the shop of the accused, P.W.1 went out in connection with a bank loan. P.W.2 went to the shop of the accused and asked for milk powder. The accused asked her to come inside the shop. The victim refused.

The accused came close to the victim and touched her private parts. Immediately, the victim returned home.

[iii] P.W.1 returned home at about 3.30p.m. The victim narrated the incident to P.W.1. P.W.1. along with her eldest daughter [P.W.3], went to the shop of the accused and questioned the conduct of the accused. The accused was beaten up by them. A crowd gathered at the scene and questioned the conduct of P.W.1. Thereafter, P.W.1 went to a nearby Police Outpost. As no one was there, she rushed to the place of occurrence. Her eldest daughter [P.W.3] informed her that, she was beaten up by the crowd. Hence, P.W.1 contacted Emergency Police [100] over phone. By the time, the Police arrived on the scene, the accused disappeared.

[iv] P.W.1 went to the respondent police and lodged complaint [Ex.P.1]. The Inspector of Police [P.W.9], attached to W-21, All Women Police Station, Guindy, received the complaint [Ex.P.1] lodged by P.W.1 and registered a case in Crime No.5 of 2014 under Section 8 of POCSO Act. Ex.P.6 is the First Information Report. P.W.9, examined the victim [P.W.2] and arrested the accused on 02.05.2014 at about 8.30 p.m. in the presence of Ravi [P.W.4] and Murugan [P.W.5] and recorded the statement of the accused. She visited the scene of occurrence at about 10.00p.m. and prepared Observation

Mahazar [Ex.P.6] and Rough Sketch [Ex.P.8] and examined the witness [P.W.6] and one Punithavel. IX Metropolitan Magistrate [P.W.7] has recorded the statement [Ex.P.3] of the victim girl [P.W.2] under Section 164 of Cr.P.C. The Investigating Officer examined witness - Velmurugan [P.W.8]. After completion of investigation, she submitted a Final Report for the offence under Section 8 of POCSO Act.

4. The accused pleaded not guilty. The prosecution examined 9 witnesses and marked 9 documents [Ex.P.1 to Ex.P.9]. The accused examined two witnesses on his behalf. He examined his wife as D.W.1. She has given evidence that ordinarily she would look after their shop from 10.00a.m. to 4.00p.m. According to her, no incident has taken place, as alleged by P.W.1 and at the time of the alleged occurrence, the accused was taking rest at her house. D.W.2, a betel supplier to the shop of the accused would state that the accused always behave well towards his customers.

5. The Trial Court has accepted the case of the prosecution and come to convict and sentence the accused / appellant as aforesaid.

6. Assailing the said conviction, the appellant has preferred the present appeal.

7. The point that arises for consideration is whether the conviction and sentence imposed on the appellant are just and proper:-

8. It is not in dispute that Lavanya [P.W.1], at the relevant time was living at Door No.13/26, Ambal Nagar, Ikkattuthangal, Chennai, with her 4 daughters and one son. The victim child [P.W.2] and P.W.3 are P.W.1's daughters. P.W.1 was deserted by her husband. The accused was running a grocery shop in a nearby street. The victim was born on 01.04.2003 [as per Birth Certificate - Ex.P.2]. Admittedly, P.W.2 is a child, within the meaning of Section 2(b) of POCSO Act.

9. The evidence of P.W.1 is that, on 02.05.2014, she went out in connection with the bank loan at about 1.30 p.m., after sending the victim [P.W.2] to buy milk powder from the grocery shop of the accused. The victim [P.W.2] has given evidence that, she went to the shop of the accused and asked for milk powder that, the accused asked her to come inside the shop. He has also asked her to sit on his lap and came close to her and touched her private parts. Immediately, she rushed to her home and narrated the incident to her mother [P.W.1]. P.W.3 is the eldest daughter of P.W.1. At the time of incident, she was at a nearby browsing centre. P.W.1 came to the browsing

centre took P.W.3 along with her, went to the shop of the accused and questioned his misconduct and beaten him.

10. The learned counsel appearing for the appellant would contend that the evidences given by P.W.1 to P.W.3 are contradictory with each other. P.W.1 stated that she sent victim [P.W.2] to buy milk powder. But, P.W.2 stated that Vishalini, another sister of victim, sent the victim [P.W.2] to buy milk powder. Vishalini has not been examined as witness. He would further contend that P.W.1 states that on earlier two occasions prior to 02.05.2014, the accused misbehaved with the victim. But, P.W.2 states that only on 02.05.2014 touched her private parts. It is also submitted by him, according to P.W.1, the incident had happened inside the shop. But, P.W.2 says that the incident had happened outside the shop.

11. It is to be seen whether the prosecution has produced dependable evidence to prove its case. In the case at hand, P.W.4 and P.W.5 turned hostile. They are witnesses for arrest. P.W.6 - Mahazar witness has also turned hostile. P.W.8 does not say anything against the accused. IX Metropolitan Magistrate [P.W.9] recorded the statement of the victim under Section 164 Cr.P.C. The Prosecution mainly relied on the evidence of P.W.1 to P.W.3. The allegation against the accused is that, he groped the private parts

of the victim girl. Under Section 7 of POCSO Act provides that, a person is said to commit sexual assault if he with sexual intent touches the vagina of the child or does any other act with sexual intent which involves physical contact without penetration. Section 8 provides punishment for sexual assault.

12. The victim girl [P.W.2] has given clear evidence that the accused touched her private parts. Section 30 of POCSO Act provides that in any prosecution for any offence under the POSCO Act which requires culpable mental state on the part of the accused, the court shall presume the existence of such mental existence. However, it is open to the accused to prove the fact that he had no such mental state. In the case at hand, the plea of the accused is total denial.

13. It is well settled that minor discrepancies, not going to the root of the matter, cannot result in rejection of the evidence as a whole. The statement of the victim must be read in its entirety. The cumulative effect of her evidence must be examined. The victim is a child, aged about 11 years at the time of trial. The Trial Court found her to be a competent witness to depose. The victim [P.W.2] narrated incident in detail and the evidence of the victim clearly implicated the accused.

14. The wife [D.W.2] of the accused has given evidence that ordinarily she would look after their shop from 10.00a.m. to 4.00p.m. According to her, no incident has taken place, as alleged by P.W.1 and at the time of the alleged occurrence, the accused was taking rest at her house. D.W.2, a betel supplier to the shop of the accused would state that the accused always behave well towards his customers. However, there is no reason as to why P.W.2 would falsely implicate the accused. It is highly improbable that for making a false implication, the victim was used as a pawn. The victim [P.W.2] stuck to her statement made before the Judicial Magistrate [Ex.P.5]. Her evidence has been amply corroborated by the evidence of her mother [P.W.1] and sister [P.W.3]. It is seen from the evidence of P.W.1 that she was separated from her husband and had been living alone with her five children in a rental home. Therefore, there is no reason as to why P.W.1 would falsely implicate the accused. Her evidence is cogent and trustworthy. The Trial Court was justified in placing reliance on the evidence of P.W.1 to P.W.3. Therefore, the criticism of the appellant cannot be countenanced.

15. It is seen from the evidences of P.W.1 to P.W.3 that immediately after the occurrence, the victim informed P.W.1 that, P.W.1 took P.W.3, who was at a nearby browsing centre and went to the shop of the

accused and questioned his conduct. P.W.1 tried to report the matter to the nearest Police Outpost. The Emergency Police arrived on the scene, at the instance of P.W.1 that, the case was registered at about 6.00p.m by the Inspector of Police, W-21, All Women Police Station, Guindy. Everything had happened in the normal and nature course of events. These circumstances would clearly indicate that, there could not have been any false implication of the accused in this case.

16. Having regard to the entire materials on record, I hold that the prosecution has sufficiently and satisfactorily, established its case beyond reasonable doubt that the accused committed sexual assault punishable under Section 8 of POCSO Act.

17. The accused pleaded for leniency, when examined on the question of sentence under Section 235 Cr.P.C. The Trial Court sentenced him to undergo Rigorous Imprisonment for 4 years and to pay a fine of Rs.2,000/-, in default, to undergo 3 months Simple Imprisonment. In addition to the punishment, the Trial Court directed payment of compensation of Rs.5,000/- to the victim.

18. It is not reported that the appellant has criminal antecedents. He is the head of his family. The occurrence had taken place in the year 2014. He has been in custody since the date of judgment of the Trial Court. The accused must have suffered humiliation in the Society. Taking all these circumstances into consideration, I am of the view that the ends of justice will be satisfied, if the sentence of Rigorous Imprisonment of 4 years is reduced to 3 years, under Section 8 of POCSO Act.

19. In the result, the Criminal Appeal is allowed in part. The conviction is confirmed. The sentence of Rigorous Imprisonment imposed by the Trial Court in S.C.No.393 of 2014 on 16.09.2015 is reduced from 4 years to 3 years. The sentence of fine with default sentence and the order of compensation will remain undisturbed.

14.09.2017

Index : Yes/No

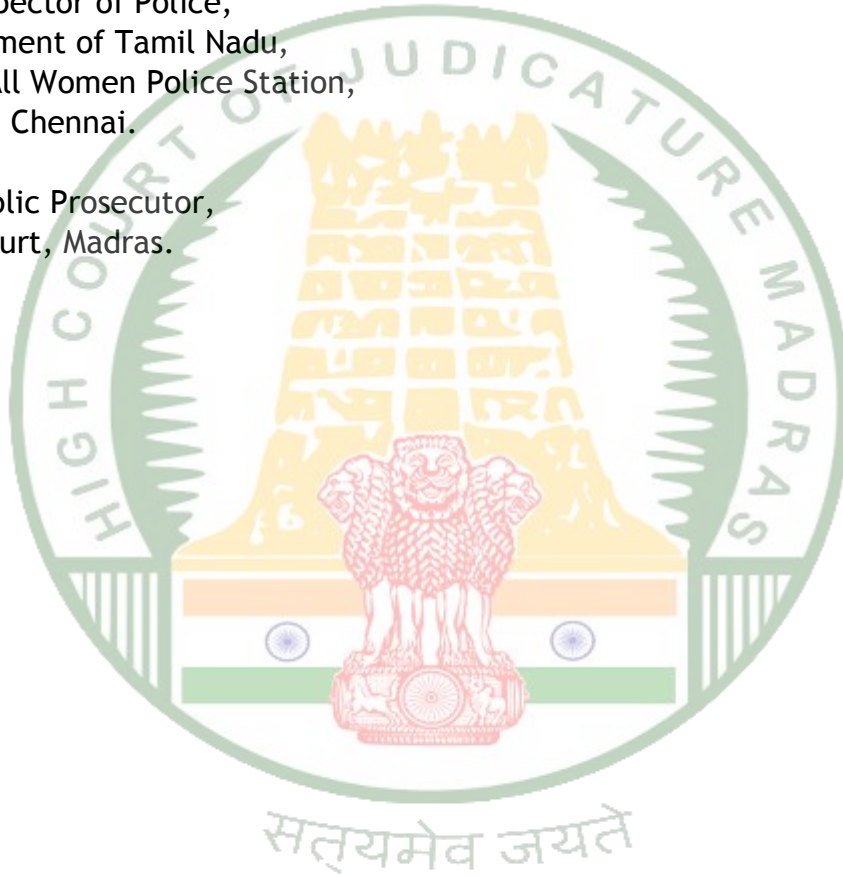
Internet : Yes

mst/sri

WEB COPY

To

- 1.The Sessions Judge,
Mahalir Court,
Chennai.
- 2.The Inspector of Police,
Government of Tamil Nadu,
W-21, All Women Police Station,
Guindy, Chennai.
- 3.The Public Prosecutor,
High Court, Madras.



WEB COPY

N.AUTHINATHAN, J.

mst/sri



CRL.A.No.90 of 2016

WEB COPY

14.09.2017