

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Criminal Appeal No.472 of 2018

State,
by the Inspector of Police,
Mettupalayam Circle,
Puducherry,
Through the Public Prosecutor
for Puducherry,
High Court,
Madras

.... Appellant

vs.

Iyyappan

.... Respondent

Criminal Appeal filed under Section 378(1) of Cr.P.C.,
against the judgment dated 11.12.2017, passed by the Special
Judge, Puducherry, in S.S.C.No.06 of 2016.

For appellant : Mr.D.Bharatha Chakravarthy

For Respondent : Mr.S.Sairaman
Legal Aid Counsel

JUDGMENT

The appellant herein is the sole accused in Special Sessions Case No.6 of 2016, on the file of the Special Judge, Puducherry. He stood charged for the offence under Section 10 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' for brevity). After trial, by judgment dated 11.12.2017, the trial Court acquitted the respondent/accused from the charge. Challenging the said conviction and sentence, the State is before this Court with this appeal.

2.The case of the prosecution in brief is as follows:

(i)The respondent herein, who is a public servant (Police Constable), went to the house of the victim child 'UM', 13 years old, daughter of Velu, residing at No.12, Middle Street, Sanarapet, Puducherry, with sexual intent and committed the offence of sexual assault, as defined under Sections 9(a) (iv) and 9(c) of POCSO Act, punishable under Section 10 of the POCSO Act. On the basis of complaint by the father of the

victim girl, the respondent/accused stood charged for the offence punishable under Section 10 of the POCSO Act, 2012, and ultimately charge-sheet was filed. Since the accused pleaded not guilty, the trial Court had proceeded with the trial.

(ii) During trial, on behalf of the prosecution, fifteen witnesses were examined as P.Ws.1 to 15 and 21 documents were marked as Exs.P1 to P21 along with Material Object M.O.1 and on behalf of the defence one witness was examined as D.W.1 and no document was marked.

(iii) After analysing the oral and documentary evidence, which were made available, the trial Court, by its judgment dated 11.12.2017, has found the respondent herein has not guilty of the offence under the provisions for which he was charged with. Aggrieved by the judgment of the trial Court, acquitting the respondent/accused, the present appeal has been filed by the State.

3. The learned Public Prosecutor appearing for the appellant/State would submit that though there were materials available pointing to the guilt of the respondent/accused, yet the trial Court has found the accused not guilty by overlooking such materials. According to the learned Public Prosecutor, as per Section 29 of the POCSO Act, the Court shall presume in favour of the prosecution that the accused had committed the offence. But such presumption has not been drawn by the trial Court and unfortunately, on the basis of benefit of doubt, the respondent/accused stood acquitted. He would further submit that though the crucial witnesses have not supported the prosecution case, including the victim girl P.W.2, her sister P.W.3 and her father P.W.4 and also the victim girl's mother, who gave evidence against the prosecution case, as defence witness, but yet, there are enough materials available, which would corroborate the case of the prosecution. However, the trial Court proceeded to deal with the case as if it is a case under the provisions of the Indian Penal Code and granted the benefit of doubt to the accused, without properly understanding the Special enactment of POCSO Act, particularly, Section 29 of the Act.

4. Although the learned Public Prosecutor has contended that there were enough evidence let in during trial on the side of the prosecution, he was unable to point out any clinching material from the records in order to prove the guilt of the accused in unmistakable terms. In any event, this Court has independently analysed the evidences let in on behalf of the prosecution and found as follows:

5.P.W.2 is the victim girl. P.W.3 is the eyewitness to the occurrence, viz., the sister of the victim girl. P.W.4 is the father of the victim girl; P.W.5 is the witness, who attested the confession statement given by the accused; P.W.6 is the Child Line Counselor, P.W.7 is the official, who issued the birth certificate of the victim girl, P.W.8 is the doctor who medically examined the victim girl, P.W.9 is the police photographer, P.W.10 is the person who stood as a witness for preparation of crime details form and rough sketch, P.W.11 is the Police Constable, who assisted the Investigating Officer in recording the statements in the computer, P.W.12 is the woman Sub-Inspector of Police, who recorded the statement of the victim girl in the present of the Investigating Officer, P.W.13 is the Judicial Magistrate, who recorded the 164 statement of the victim girl, P.W.14 is the Sub-Inspector of Police, who registered the FIR and has done preliminary investigation and P.W.15 is the Investigating Officer, who after conducting the investigation and after completion of investigation laid final report against the accused.

6.According to the victim girl P.W.2, her statement has been forcibly obtained by P.W.1, the Chair Person of the Child Welfare Committee and she disowns the statement. P.W.3, the sister of the victim girl, who is an eyewitness, had not supported the case of the prosecution and so also their father P.W.4. As far as the medical evidence is concerned, since this is a case where the accused was not charged with any penetrative assault, there was no conclusive medical evidence let in on behalf of the prosecution. In fact, the Investigating Officer/The Inspector of Police, who was examined as P.W.15, during the cross-examination has faulted, since he did not follow proper procedure while investigating the offence. In fact, this was recorded by the trial Court in Paragraph No.46 of the judgment.

7.As far as the main witness, viz., P.W.1 is concerned, during cross-examination, it was revealed that the statements given by the victim girl and the relatives are not voluntary and the victim girl was compelled to give such statement on the basis of the demand by P.W.1. According to the trial Court, there were lot of holes in the prosecution even otherwise and there was not even an iota of corroboration of any evidence in support of the prosecution, notwithstanding the complete denial of the incident by crucial witnesses, viz., the victim girl P.W.2, her sister P.W.3 and their father P.W.4. This Court finds that the trial Court has applied its mind and has rightly arrived at a conclusion, on the basis of lack of evidence on the side of the prosecution.

8. Moreover, the mother of the victim girl herself was examined as defence witness (D.W.1) and she deposed as against the prosecution. In such an event, the trial Court was left with no option except to come to the conclusion against the prosecution. No doubt there was some apprehension about the evidence given by the prosecution witnesses during the trial, but however, the evidence as given in the trial Court has to necessarily weigh with the trial Judge in order to come to the conclusion in one way or the other, in which event, any statement given prior to the evidence given in the trial, either before the Child Welfare Committee or 164 statement before the Magistrate, cannot prevail over the evidence given by the prosecution witnesses. In the face of complete denial by the crucial witnesses as afore mentioned, the evidence deposed by other witnesses loses its significance and cannot be relied upon and the same cannot independently point to the guilt of the respondent/accused. From the evidence given by the other witnesses, the Court can hardly come to any conclusion except to conclude that the prosecution has miserably failed to prove its case.

9. As regards the presumption under Section 29 of the POCSO Act is concerned, which is sought to be exercised by the learned Public Prosecutor before this Court, the trial Court has dealt with the same in paragraph No.48, which is extracted hereunder:

"48. As far as POSCO Act is concerned, it is well settled law that presumption under Section 29 is in favour of the prosecution and as against the accused. But is also well settled law that the accused can rebut the same through evidence adduced by the prosecution and need not examine any independent witness and the case of the prosecution would be demolished through prosecution witnesses. In the case on hand also the prosecution has failed to establish the prima facie case and nowhere the witnesses have stated about the commission of offence by the accused and the available evidence is not sufficient to prove the commission of offence and thereby the presumption under Section 29 of the POCSO Act, 2012 will not attract to this case. Further the accused examined the D.W.1 and her evidence revealed that the complaint was given due to coercion of Child Line people. The competent witnesses to speak about the occurrence are P.W.1, P.W.2 and parents of

the victim, but they have not supported the prosecution case, not only that, the mother of the victim girl deposed against the prosecution. Therefore, it is not appropriate to hold that the accused has committed the offence as alleged by the prosecution."

10.The trial Court, after analysing the evidence as well as the legal requirements of the POCSO Act, has finally held that there was no evidence that the victim girl was subjected to sexual harassment. In the said circumstances, the accused was entitled to the benefit of doubt and accordingly, acquitted him of the offence under Section 10 of the POCSO Act.

11.On a careful perusal of the evidence of all the prosecution witnesses, viz., P.Ws.1 to 15, all the prosecution documents and also the evidence of D.W.1, this Court does not find any material whatsoever to hold the respondent/accused guilty of the offence even remotely. There is a complete absence of corroboration or circumstantial evidence to implicate the respondent/accused to the offence charged against him. In the said circumstances, this Court does not find any kind of infirmity in the judgment passed by the trial Court. This Court is also of the considered view that there was absolutely no material whatsoever in terms of oral or documentary evidence in support of the case of the prosecution and hence, finds that the present appeal is without merits and substance.

12.In the result, this criminal appeal is dismissed. The judgment, dated 11.12.2017, passed by the trial Court in Special Sessions Case No.6 of 2016, is confirmed.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

msk

To :

1.The Special Judge, Puducherry.
Sessions Court, (POSCO Act)

2. The Inspector of Police
Mettupalayam Circle,
Puducherry

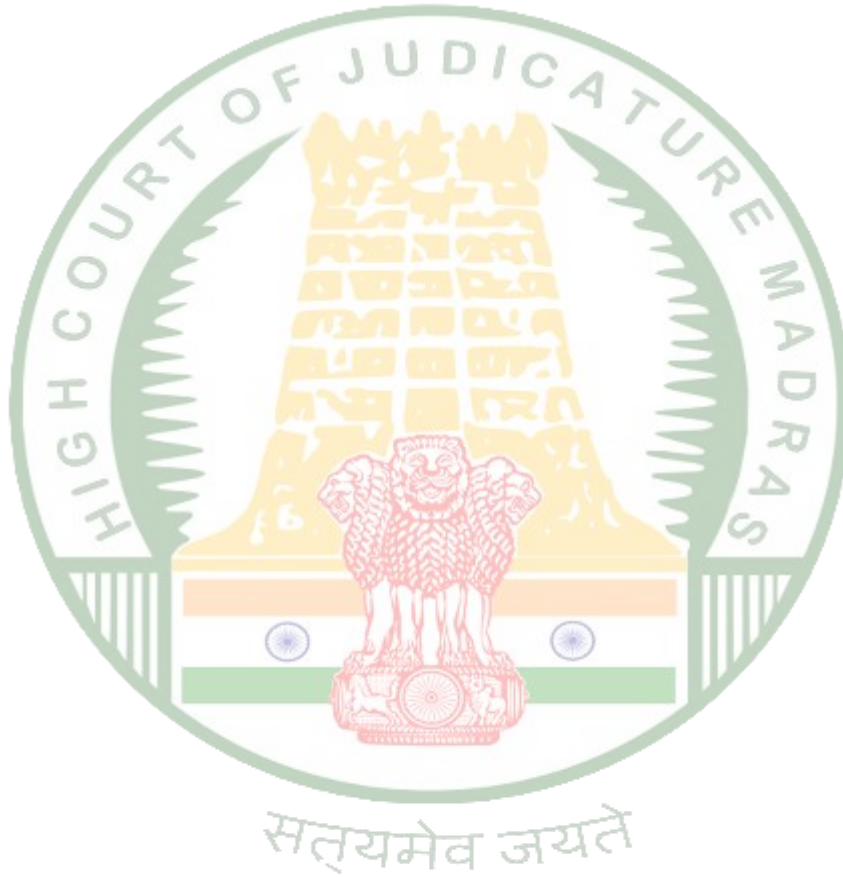
3.The Public Prosecutor,
High Court, Madras

4. The Section officer
Criminal Section, High Court, Madras 104

+1 CC to Mr.C. Sairaman, Advocate sr 81947
+1 CC to Public Prosecutor(P) sr 81983

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KJI (CO)
SP(03/01/2019)



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